

Third Party Right of Appeal

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**Friends of
the Earth
Scotland**

Despite the recent emphasis given to community participation in planning, the focus of the current planning system remains on the relationship between local authorities and developers rather than community groups and individuals. This imbalance is reflected in the planning appeal process.

How the system works

In planning, the 'first party' is the proposer of the application, the 'second party' is the planning authority and an individual or community who objects to the application is referred to as the 'third party'. Where a developer's permission is refused the developer can appeal the decision to the Scottish Executive who can recommend whether to uphold or dismiss the appeal. However, if the authority approves the decision there is no opportunity for appeal against this decision by the third party.

Marginalised communities

Many communities and individuals feel marginalised by the lack of opportunity to engage and the

current system is both undemocratic and also leads to poorer standards in planning decisions.

"When you live beside two opencast sites, two landfill sites and are threatened by more of the same, Third Party Rights of Appeal is essential. The community cannot rely on protection from the Authorities. We should have the same rights as developers."

Ann Coleman,
North Lanarkshire resident

Comparisons

In other countries attempts have been made to level the playing field for communities. Ireland, Denmark, Sweden and Australia all already have a form of Third Party Right of Appeal (TPRA).

Research on the experience in Ireland demonstrated that third party appeals were made against 2.6% of all planning applications and that 37% of these resulted in

and that 37% of these resulted in refusals of permission, 60% with revised conditions and just 3% in a planning permission with the same conditions as those given by the local authority. It is also interesting to note that nearly 36% of those that appealed sought only to change the type or design of the development rather than prevent it. Given that over 10% of appellants became aware of the proposed development after the local planning authority had made a decision, the opportunity for appeal by third party is critical – in the absence of this the group would not have had any opportunity to participate in the decision-making process.

TPRA in Scotland

Friends of the Earth has long campaigned for the introduction of TPRA in Scotland. Also that it be accompanied by a mediation process and an education component on both the existence and appropriate use of third party appeals aimed at communities and individuals. Over the last year we have been seeking commitment from political parties to introduce TPRA in the context of wider planning legislation reform in the next term of the Scottish Parliament.

TPRA will deliver better planning not, as some commentators have claimed, inhibit development. Given the environmental and social consequences of planning it is

imperative that we create a more democratic system with increased public confidence. The introduction of TPRA has a critical role to play in this transition.

The way forward

Green Balance: In 2002 a report published by Green Balance, for a coalition of groups including FoE recommended the introduction of limited third party right of appeal (TPRA) in order to address current inequalities within the planning system. The report identifies specific criteria that should apply to the use of TPRA:

- Where the planning decision is contrary to the development plan.
- Where the planning application is one in which the local authority has an interest.
- Where the planning application is accompanied by an Environmental Impact Assessment (EIAs).
- Where the planning officer has recommended refusal of planning permission to the Council (i.e. the case is unlikely to be decided solely on the basis of planning merits).

The Scottish Executive should now update the planning system in Scotland to incorporate a Third Party Right of Appeal in cases where these criteria apply.