

Third Party Right of Appeal in Planning

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Making the planning system fairer

Scotland's planning system is legalistic, intimidating, unfair and heavily skewed in favour of developers. This bias is blatant in the appeals system, where applicants have the right to appeal planning decisions while the public and others do not. Friends of the Earth believes that in order to deliver environmental justice in Scotland there needs to be equality in the planning system. Within the context of a wider reform of the Scottish planning system, Friends of the Earth is campaigning for the introduction of limited third party rights of appeal (TPRA).

What are Third Party Rights of Appeal?

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'. Currently if permission is refused developers can appeal against that decision, yet third parties have no right to appeal against the granting of permission, even where the decision is contrary to policies in the democratically adopted development plan. TPRA will help to level the playing field in a planning system which is currently weighted in favour of developers over individuals and communities.

Many communities and individuals feel

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

Ann Coleman,

North Lanarkshire resident

marginalised by the current lack of opportunity to engage and feel that the current system is both undemocratic and leads to poorer standards in planning decisions.

The experience elsewhere

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).

The Republic of Ireland has had TPRA since the 1960s and studies have shown that the vast majority of appellants and local authority planners support its existence. Interestingly, TPRA has not been used to block developments as the Scottish business and industry lobby claim will happen if TPRA is introduced in Scotland. A mere 3.5% of all applications were appealed by

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third parties in 2002. Of these appeals, over half sought to change conditions of applications, while 45% of appeals succeeded in overturning the original decision. Only 1% of applications were upheld, showing that TPRA is crucial in improving the quality of developments *and* ensuring community rights.

What are we asking for?

In 2002 a report published by Green Balance 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 a departure from the development plan;
- Where the local authority has an interest in the planning application;
- Where the planning application is 'a major development', defined as one those which fall under either Schedule 1 or 2 of the Environmental Impact Assessment Regulations;
- Where the planning officer has recommended refusal of planning permission to the Council.

These are the same categories upon which the newly formed coalition government agreed to consult in the 2003 Partnership Agreement.

What the opponents say...

Commercial developers are spreading myths and misinformation about TPRA. They claim that it will cause delays and increase costs, will be a meddler's charter, will discourage investment in Scotland and will be used by other business competitors to block each others' plans.

We refute these myths. Other reforms in the planning system will free up resources, and careful design of TPRA (such as primarily using written representations) will limit the costs. Strict time limits and a restricted use of TPRA will minimise delays. There is no evidence from Ireland of anything more

than negligible abuse of the system, or that it has acted as a deterrent to investors. On the contrary, the Irish economy has boomed.

Political context

The Scottish Executive is currently in the process of a thorough modernisation of the planning system. As part of this process they consulted in the spring / early summer of 2004 on Rights of Appeal in Planning, seeking views on whether they should widen rights of appeal.

A total of 1620 responses to the consultation were received. 86% of respondents were in favour of its introduction, and 13% against. The majority of those in favour were individuals, Community Councils, and environmental / heritage organisations. Support for TPRA was for its introduction in the limited circumstances outlined previously.

Conclusions

TPRA ultimately affects a very small proportion of applications, but these rights have symbolic value that suggests the planning system is not entirely pro development. The fundamental question is whether it is acceptable to have absolute inequality between those proposing development and those who are affected by it?

“Our community felt nobody was listening to us despite our legitimate concerns. TPRA will ensure a formal independent scrutiny of proposals on behalf of local residents.”

Sid Mattison
Benderloch resident