

Planning System Reform in Scotland: Third Party Right of Appeal



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).

The government is currently holding a consultation on widening the right to appeal in the lead up to a new Planning Bill in 2005. **You can support our campaign to deliver equality in the planning system by submitting your views as part of the consultation** (see back page).

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 a '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 when 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.

What are we asking for?

Communities must have the same rights of appeal which already exist for developers. We are calling for a limited TPRA for applications in the following circumstances:

1. where the planning decision is a **departure from the development plan**;
2. where the **local authority has an interest in the planning application**;
3. where the **application is a 'major development'**, defined as those which fall under either Schedule 1 or 2 of the Environmental Impact Assessment Regulations;
4. **where the planning officer has recommended refusal** of planning permission.

We are not asking for TPRA as an add-on to the current planning system. We believe TPRA should be one part of a wider reform of the system which aims to increase levels of public participation and improve standards of planning applications.

"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



BENDERLOCH:
permission has been given for a sand and gravel quarry here which will spoil the environment and landscape for years to come with few local benefits

Communities need Third Party Rights of Appeal for equality in the planning system and Environmental Justice in Scotland

An application for a third quarry near Strathnairn was rejected but the developer is now threatening to take legal action. The community also fears yet another quarry application in the area.



The community in Nethy Bridge, Strathspey, are fighting against an application for housing and a business unit as it will mean the destruction of ancient woodland, damage to protected wildlife and there is a lack of local need for the housing

Benderloch sand and gravel quarry in Argyll & Bute gained approval in 2003 despite local objections. The area is designated 'greenfield' and 'sensitive settlement' in the local plan.



The Cairngorm funicular railway opened in 2001 with £15m of public money despite 10,000 written objections. Environmental groups feared the destruction of this fragile environment.

Photo: Chris Townsend

Urban greenspace is being lost in our inner cities. Housing is needed, but applications should be in line with the development plan and should not endanger wildlife sites. Communities at Churchill Drive and Thornwood Park in Glasgow are fighting to save public parks which are being lost, mainly to executive housing. TPRA would make sure communities had a say in development conditions.



Dunblane and Bridge of Allan communities in Stirling are currently fighting the second proposal in 12 years for a hotel development on green belt land at Park of Keir.

TPRA in Ireland

The Republic of Ireland has had TPRA since the 1960s and studies have shown the vast majority of appellants and local authority planners support its existence. Interestingly, TPRA has not been used to block developments as claimed by the industry in Scotland; instead a mere 3.5% of all applications were appealed by 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. Just 1% of planners' applications were upheld, showing TPRA is crucial in improving the quality of developments and ensuring community rights – rights that are not available in Scotland.

Trearne Quarry, North Ayrshire is protected for its valuable fossils, yet permission has been given for it to be used as a landfill site despite 900 letters of objection by the local community.



At Birkhill, Lower Clyde Valley, permission was given in 2003 for an industrial estate, on the basis of an unseen plan to develop the M74 corridor.

"We need a third party right of appeal as a basic right to challenge unjust decisions"
Andy Robinson, local resident



Midlothian Council's plans for a new A701 route received 400 objections from local residents, yet it still received permission in 2000. The road will destroy a section of ancient woodland.



Photo: Airdrie & Coatbridge Advertiser

Greengairs in North Lanarkshire, dubbed "dustbin village" by the press, is surrounded by nine open-cast mining and landfill sites. The community understandably feel they have no way to oppose new applications without TPRA.

"When you live beside two open-cast sites, two landfill sites and are threatened by more, TPRA is essential. The community cannot rely on protection from the Authorities. We should have the same rights as developers."

Ann Coleman, local resident

What the opponents to TPRA say

Commercial developers are spreading myths and misinformation about TPRA. They claim:

- TPRA will cause delays and increase costs
- TPRA will be a meddler's charter
- TPRA will discourage investment in Scotland
- TPRA will be used by business competitors to block each others' plans.

We refute these myths. Other reforms in the planning system will free up resources. 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 acted as a deterrent to investors; in fact, the Irish economy has boomed.

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. Debates around any procedural impacts, such as delays, are secondary to a more fundamental discussion around issues of principle: **is it acceptable to have absolute inequality between those proposing development and those that are affected by it? We don't think so!**

TPRA and social developments

TPRA will ensure that commercial house builders deliver on promises to include affordable housing in new market-based developments. But development is also done by community-based housing associations, cooperatives or voluntary organisations seeking to provide services for disadvantaged people, such as affordable rented housing, sheltered accommodation, etc.

In order for TPRA not to impact negatively on social developments, mechanisms need to be in place, such as exemptions for development which is subject to national strategic priorities for disadvantaged groups. The issue therefore is how TPRA is designed, not whether we need it or not.

TAKE ACTION

What you can do to help Scotland get a planning system that is fair for all

It is only through vigorous campaigning over the past few years that TPRA is now on the political agenda. We can't stop now! To help get a planning system we can all be proud of, please support our campaign.

Please write a letter or email in response to the government's consultation on widening the right to appeal by 30th July 2004. Express your support for the principle of TPRA in response to Q6, and in line with Model 1 in the consultation document as noted in Q15. Send your letter to: Richard West, Rights of appeal in planning, Scottish Executive Development Department, Victoria Quay, Edinburgh EH6 6QQ; or email: rightsofappeal@scotland.gsi.gov.uk.

Further information, including the consultation documents and our own consultation response, is available on our website: www.foe-scotland.org.uk/nation/tpra.html, or call us for more information on: 0131 554 9977.

The every**one** campaign, a group of 26 Scottish environmental charities, including Friends of the Earth, is also campaigning for TPRA. Information is available on their website: www.everyonecan.org.

"We recommend that third parties should have a right of appeal against decisions on planning applications in certain circumstances."

Royal Commission on Environmental Pollution

"We see the case for a limited TPRA with protection for defined groups of vulnerable people, as part of a package of reform by which the planning system becomes more responsive to social needs."

Shelter Scotland