

Planning Etc. (Scotland) Bill Stage 3 Debate

MSP Briefing
15th & 16th of November 2006



**Friends of
the Earth
Scotland**

1. Introduction and Summary

Public involvement in land use planning and the ability influence the nature of developments are critical to developing a sustainable and inclusive society. For this reason Friends of the Earth Scotland has supported and advised communities and engaged with the planning system for many years. Based on our experiences, we have campaigned for changes to ensure more consistent and transparent decision-making and therefore support the reform of the existing system. We are however not yet convinced that Scottish Executive's proposals are adequate or address the genuine concerns of communities.

2. Key Points

- The consultation measures in the bill whilst welcome are untested¹ and are not supported by any form of safeguard to ensure the views of communities are properly taken into account.
- We support a limited third party right of appeal so that the most controversial planning approvals are independently reviewed. There are various amendments that will introduce third party rights in certain cases (See notes below).
- Whilst developers have right of appeal and communities don't, the system remains unfair and biased in their favour, giving them an inbuilt advantage they can exploit.
- Unless the Bill is amended, to allow an inquiry into the National Planning Framework, communities and individuals will lose existing rights to firstly object and secondly argue at planning enquiries against the need for certain major developments. This could include the fast tracking of roads, power stations or incinerators, by Ministerial edict after token consultation.

3. Key Facts

- The Scottish Executive's own consultation revealed 86% support for a limited third party right of appeal².
- Ireland, Australia and Denmark provide objectors with rights of appeal and have economies that are more dynamic than Scotland's.
- A limited third party right of appeal would not bring the system to a halt as this would only apply to a small number of the most contentious and high impact developments, affecting between 50 and 240 applications based on the experience in Ireland and Sweden³.
- London and Northern Ireland all conduct enquiries into their major strategic plans, demonstrating that this would be practical for Scotland's National Planning Framework.

Please turn over for detailed briefing on individual amendments

¹ Ministerial written answers (S2W-20102) & (S2W-20105)

² Scottish Executive (2004) Rights of Appeal in Planning: Consultation Paper

³ Ibid 2

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4. Vital Changes to the Bill

If the final Act is to succeed in restoring public confidence and increasing participation in the planning it is vital the Bill is amended at stage 3. FoES supports the following amendments:

Amendment	Why support it
Section 1 National Planning Framework (NPF)	
<p>No. 93, 94 & 95 Bruce Crawford</p> <p>An examination in public for NPF</p>	<p>This is a vital amendment, that will ensure that formal objections can be made to the NPF, as is the case with existing structure and local plans and the proposed city region plans.</p> <p>An independent reporter would then hear evidence and make recommendations on necessary changes based on the evidence presented.</p> <p>This procedure is used in the approval of strategic development plans in both London and Northern Ireland.</p> <p>Without this amendment any future administration could designate and approve any major development, without any form of independent scrutiny.</p> <p>A number of contentious developments could go ahead in principle in the face of local opposition see LINKs Map at: http://www.scotlink.org/pdf/NPFmap.pdf</p>
<p>Amendment 75 Donald Gorrie</p>	<p>This amendment will ensure that a developer carries out community consultation properly, and allows local authorities to take action against developers with a poor track record.</p>
Section 18	
Rights of appeal	
<p>Amendment 123 Jackie Baillie</p>	<p>This amendment provides a safeguard that views of community bodies will taken into account, by allowing them to opportunity ask the Scottish Executive to review the planning authorities decision. Ministers could if necessary call in the application and hold an inquiry if appropriate.</p>
<p>Amendment 128 Rosemary Byrne</p> <p>See also amendments 157 & 158</p>	<p>This amendment would have the equivalent effect of TPRA by removing the developers right of appeal, creating a level playing field. Councils would no longer be threatened with the time and expense of an inquiry.</p> <p>It would free up resources in central and local government, by reducing the number of planning inquiries, which would now be limited to ministerial call-ins for nationally significant developments local authority interest cases. Resources could be redeployed to help deliver the upfront consultation measures in the Bill.</p> <p>The amendment also takes the intentions of the Bill to their logical conclusion e.g. the developer engages with plan preparation and community consultation, and therefore no longer require the fallback of an appeal.</p>
<p>Amendment 85 Donald Gorrie</p>	<p>This would create a limited but welcome form of appeal for third parties in the form of community bodies (e.g. community councils), in cases where a local authority has a conflict of interest or the area development plan is being ignored. After being notified Ministers would have to determine whether a community's objection was valid and whether a planning inquiry was necessary.</p> <p>This amendment would therefore ensure proper and transparent scrutiny of the most contentious cases thus providing a vital safeguard for communities.</p>

<p>Amendment 129 Patrick Harvie</p>	<p>This amendment would ensure that objectors could appeal any decision that was contrary to the development plan or any application where the development plan was out of date.</p> <p>This would ensure that the community's views as expressed via the approved development plan are properly considered when decisions are made. This reinforces the Bills intention to promote upfront participation and also creates a strong incentive for local authorities to maintain up to date development plans.</p>
<p>Amendment 130 Sandra White</p>	<p>This amendment would ensure that communities could seek the review of decisions concerning the most high impact developments, e.g. those requiring an Environmental Impact Assessment as required by European legislation.</p> <p>This would affect around 40 cases a year⁴, some of which would already be subject to inquiry (e.g. windfarms)</p> <p>This amendment would ensure proper scrutiny of the most contentious proposals, for instance the Cairngorm Funicular, A701 Dual-carriage-way Midlothian, Aucheninnes Moss landfill site Dumfries and Galloway, none of which went to inquiries despite high volumes of public objections.</p>
<p>Amendment 131 Christine Grahame</p>	<p>This amendment ensures that communities could seek the review of any approval by councils, where the authority has a potential conflict of interest such as land or a financial return. It would replace existing Ministerial call in powers that have failed to address the concerns of communities.</p> <p>It is vital that this amendment is accepted to increase scrutiny and transparency and restore public confidence the in the system.</p>
<p>Amendment 132 Sandra White</p>	<p>This amendment allows appeals where the local authority ignores its development plan when making decisions. This undermines public confidence in development plans, which are at the heart of the system and the central focus of public consultation.</p> <p>This amendment is essentially the same as amendment 129 in the name of Patrick Harvie, but does not specify that the development plan must be up to date.</p>
<p>Amendment 133 Dennis Canavan</p>	<p>This amendment is very significant as it would allow Ministers to extend rights of appeal community groups or individuals in the future, and could allow the any of the measures set out in 85, 129, 130, 131, 132, 133 to be introduced, sometime in the future.</p> <p>The amendment would allow the upfront consultation measures to be put in to practice and tested. Certain groups (e.g. community councils) should be given a right of appeal under certain circumstances (e.g. local authority interest cases) if further scrutiny of these applications was needed.</p> <p>As a reserve power it would create strong incentive for developers and local authorities to deliver effective public consultation, as failure to do so would open the door for a third party right of appeal in the future.</p>

⁴ Ibid 2

	<p>Little or no research has been done to determine the effectiveness of the new consultation opportunities created by Scottish Executive⁵, and communities remain unconvinced. This amendment provides a vital safeguard to address any future failings that might emerge. It also takes account of the continued demand for TRPA from communities, acknowledging genuine concerns, but also the efforts of the Scottish Executive to introduce upfront consultation as the most desirable way of restoring public confidence in the planning system.</p> <p>Failure to support this amendment firmly slams the door in face of the communities and groups who have continuously called for some form of right of appeal.</p>
Other amendments	
Section 50 Amendment 156 Sarah Boyack	<p>This amendment would ensure that impacts of the finalised Act are properly evaluated, three years after its approval. A report would be lodged before Parliament</p> <p>Given the fundamental and comprehensive nature of the reforms this seems a sensible measure, especially as many of the measures are untested.</p>
Schedule Amendment 157 & 158 Rosemary Byrne	<p>This amendment is connected to amendment 128 and would remove the developers right of appeal.</p> <p>Developers could contest decisions on procedural grounds in the court, (something most communities can't afford) but would lose there existing privileged position.</p>

For further information contact:

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⁵ Ibid 1