



Briefing for the Public Petitions Committee

Petition Number: [PE1534](#)

Main Petitioner: Clare Symonds

Subject: Calls for the Scottish Parliament to urge the Scottish Government to review the current rights of appeal within planning and other consenting processes which give deemed planning consent, considering the benefits of widening the scope of appeal, and providing an equal right of appeal.

Background

The right to appeal against a planning decision is currently limited to the applicant. Third parties to a planning application (that is people other than the applicant or planning authority) have no right of appeal.

The possible introduction of a third party right of appeal was considered during parliamentary scrutiny of the Planning etc. (Scotland) Bill in 2006. At that time, several major environmental groups, including Friends of the Earth Scotland, WWF and RSPB Scotland, supported the introduction of a third party right of appeal for the following types of development:

- where the planning permission would be a departure from an adopted development plan
- where the local authority has an interest in the planning application;
- where the application is a 'major development', defined as those which fall under either Schedule 1 or 2 of the Environmental Impact Assessment Regulations;
- where a planning officer has recommended refusal of planning permission and the planning authority decides to grant permission

Friends of the Earth Scotland¹ gave the following arguments in support of the introduction of a third party right of appeal:

- It would help to create a level playing field between the public and developers, providing a foundation for trust and cooperation, and a disincentive for developers to produce repeat, twin-tracked or poor quality applications
- It would increase local authority accountability, since there would need to be reasons given for a decision, and thus improve the quality of planning decisions.

¹ Friends of the Earth Scotland (2004) Briefing on the Introduction of a Third Party Right of Appeal in Scotland. Edinburgh: Friends of the Earth Scotland.

- It would enhance the status of a development plan if one of the criteria for third party appeals were to be departures from the development plan, and may act as an incentive to councils to make sure plans are up to date.
- It would enable the cumulative impact of decisions to be challenged, especially in areas which have a high number of negative developments.
- The lack of a third party right of appeal is not consistent with the spirit and objectives of the Aarhus Convention on environmental rights, and may also be pertinent to the European Convention on Human Rights.

While the introduction of a third party right of appeal had support amongst environmental and community groups there was considerable opposition from the business community, e.g. CBI Scotland² questioned whether the introduction of third party rights of appeal would really benefit community groups as its supporters argue, stating:

...the introduction of third party rights of appeal could give rise to appeals by businesses against businesses (small and large), individuals against individuals, businesses and individuals against each other, and various parties against health and social developments.

The Scottish Chambers of Commerce³ agreed with the view of the CBI and argued against the introduction of third party right of appeal for the following reasons:

Undermine economic investment: by increasing delays in planning, make Scotland a less attractive place to invest in and shift the balance in favour of those who want to prevent development.

Undermine social and environmental investment: important social and environmental improvement projects, e.g. hospitals or renewable energy developments, would also be open to a third party right of appeal.

Be Impractical to Administer: concerns have been raised about the resources available to local planning authorities and SERU [now DPEA] to cope with the increased workload caused by any new right of appeal.

Have Unintended Consequences: an example given would be the use of the system by business rivals to scupper competing developments

Malcolm Chisholm MSP, then Communities Minister, made it clear in his statement to Parliament on 29 June 2005 that the then Scottish Executive did not intend to introduce a third party right of appeal, stating that the:

...white Paper does not propose a third-party right of appeal. Our aim is to strengthen the participation of local people from the outset of the process in order to make the system fairer and more balanced; to avoid building new delays and unpredictability into the system, which could

² CBI Scotland (2004) CBI Scotland's Response to the Scottish Executive's Consultation – "Rights of Appeal in Planning". Edinburgh: CBI Scotland

³ Scottish Chambers of Commerce (2004) Scottish Chambers of Commerce response to the consultation on Rights of Appeal in Planning. Glasgow: Scottish Chambers of Commerce.

add costs to development and act as a deterrent to investment in sustainable growth; and to strengthen rather than undermine local authority decision making. I hope that everyone in the chamber and throughout Scotland will consider the package of reforms as a whole and consider their views on issues such as rights of appeal in the light of the proposals.

Scottish Government Action

The Scottish Government is not considering the introduction of a third party right of appeal.

Scottish Parliament Action

In addition to the scrutiny of this issue during consideration of the Planning etc. (Scotland) Bill, the Public Petitions Committee considered [petition PE916](#), calling for the introduction of a third party right of appeal, on 18 January 2006. The petition was referred to the then Communities Committee and it was considered as part of that committee's scrutiny of the Planning etc. (Scotland) Bill.

Sandra White MSP lodged a proposal for a members' Bill on [Third Party Rights of Appeal](#) on 11 May 2005. The Bill was never introduced and the proposal fell at dissolution in April 2007.

Key Organisations

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