

**PE1534/C**

**Local Government and Communities Directorate**  
Planning and Architecture Division

T: 0131-244 40928  
E: cara.davidson@scotland.gsi.gov.uk



FAO Ned Sharratt  
Public Petitions Clerks  
Room T3.40  
The Scottish Parliament  
Edinburgh  
EH99 1SP

In 2014 Scotland Welcomes the World



17 December 2014

Dear Mr Sharratt

### **Consideration of Petition PE1534**

*“Calling on 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.”*

Thank you for your letter of 12 November requesting the Scottish Government’s views on the above petition, and on the discussions that took place during the Committee’s consideration of that petition on 11 November.

The Scottish Government considers that one of the core values of the planning service is to be inclusive, engaging all interests as early and effectively as possible. As set out in the revised Scottish Planning Policy<sup>1</sup>, effective engagement can lead to better plans, more satisfactory decisions, and help to avoid delays in the planning process.

As the Committee has heard, planning reform sought to front-load engagement in the planning process, and strategic and local development plans are designed to facilitate meaningful participation at an early stage in the process. We are keen that we continue to see improvements in the way applicants, local communities, the wider public and planning authorities engage in the existing planning system and not just through the statutory opportunities for engagement on plans and applications. For example, we have sought to embed this principle of effective engagement in our approach to the preparation of the National Planning Framework 3 and Scottish Planning Policy, learning and building upon our previous experience in this regard. We were encouraged when Malcolm Macleod, representing Heads of Planning Scotland, gave evidence to the Local Government and

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<sup>1</sup> <http://www.scotland.gov.uk/Publications/2014/06/5823>

Regeneration Committee on NPF3 and noted that our approach to engagement was now informing the way authorities are involving people in the preparation of development plans. Further examples of steps taken to promote engagement as a positive part of the planning process include our annual Scottish Awards for Quality in Planning,<sup>2</sup> which have a category on Community Involvement, highlighting the best examples of effective public engagement.

Last year we also sought stakeholders' views on good practice in pre-application consultation. As a result, the updated Circular 3/2013 on Development Management Procedures,<sup>3</sup> which issued in December 2013, included additional good practice guidance on implementing the requirements in that regard. We have also recently consulted on good practice in "Public Engagement for Wind Turbine Proposals"<sup>4</sup> and we will continue to promote early and effective public engagement as and when suitable opportunities arise.

There is, however, an issue of balance and, as well as introducing procedures for greater scrutiny of proposals such as major developments, previous reforms to the planning system also sought to ensure procedures are proportionate. As you will know, decisions on planning applications are required to be made in line with the development plan unless material considerations indicate otherwise. There will be developments considered by the planning system that some individuals will remain opposed to, and where there are competing interests some parties may not be supportive of the decision. Our position is that, on balance, the system operates effectively in balancing these competing considerations in planning.

Extending the right of appeal in the manner you suggest would involve changes to primary legislation and there are currently no plans to introduce such a right. As the Committee will be aware, the issue of a 'third party' right of appeal was considered and was the subject of public consultation prior to the laying of the Planning etc. (Scotland) Bill, during which time considerable concerns were raised regarding the potential economic impact, were such a right introduced. Following those considerations we were clear that introducing such a right would add delay into the process and would have an adverse effect on economic growth. Furthermore, we do not consider that such rights are necessarily representative of the wider community, which is the focus of an inclusive planning system.

During the passage of the Planning etc. (Scotland) Bill there were a number of proposed amendments to include a 'third party' right of appeal, however these were rejected by the majority of MSPs in Parliament.

### **Specific Issues raised during the consideration of the petition by the Committee**

Turning to the specific points raised during the Committee's considerations, our performance agenda includes the preparation, by planning authorities, key agencies and the Scottish Government, of an annual Planning Performance Framework Report and Service Improvement Plan. The framework covers both quantitative and qualitative elements of performance including high quality development on the ground; certainty; open for business; communications, engagement and customer service; and efficient and effective decision making.

With regard to references to Scotland not being compliant with the Aarhus Convention, the Scottish Government has emphasised that it takes seriously its compliance with EU and international obligations. The requirements of the Aarhus Convention as set out in binding

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<sup>2</sup> <http://www.scotland.gov.uk/Topics/Built-Environment/planning/SAQP>

<sup>3</sup> <http://www.scotland.gov.uk/Publications/2013/12/9882>

<sup>4</sup> <http://www.scotland.gov.uk/Publications/2014/11/7727>

European legislation have been transposed into Scots law by a range of Scottish Statutory Instruments. No legal challenge against the Scottish Government made on the grounds of non-compliance with the Aarhus Convention has been successful.

Reference was also made by the Committee to the planning system in Ireland where a 'third party' right of appeal exists. Whilst examples from other Countries are of interest, they cannot be regarded as immediately transferable to Scotland as they exist in the context of planning systems which are considerably different from our own, therefore direct comparisons are difficult to make. For example, the Scottish Government understands that there is much less opportunity for public involvement prior to the initial decision within the Irish system. As noted earlier, the Scottish system seeks to engage all interests early in the process.

With regards to concerns regarding the costs associated with seeking judicial review of decisions, the Scottish Government is introducing changes through the Courts Reform (Scotland) Act 2014 which are intended to speed up the judicial review process and thus make it less expensive. In addition, since March 2013 Protective Expenses Orders (PEOs) have been placed on a statutory footing for statutory appeals and judicial reviews of certain environmental decisions. Such orders can, and have been used by parties seeking judicial review of such decisions to limit their liability for expenses to significantly reduced sums than those quoted to the Committee.

Finally, it was also suggested that planning obligations under Section 75 of the Planning Act were being ignored by developers. Whilst enforcement of planning obligations is a matter for planning authorities, the Scottish Government believes that the enforcement measures available to planning authorities under planning legislation enable authorities to undertake the action they consider appropriate, and which is in the public interest, in any particular case.

Yours sincerely

***Cara Davidson***