PE1534/E

Our Ref: Land/FB

19th December 2014

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

Dear Sirs

Petition No. PE1534: Third Party Rights of Appeal
Response by Barratt Homes

I refer to the terms of the above named petition, whereupon the petitioner:

"Calls for the Scottish Parliament to urge the Scottish Government to review the current rights of appeal within the 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".

Prior to outlining the views of Barratt Homes, we would firstly welcome and endorse both the sentiment and the points raised in the response from our industry body, Homes for Scotland. Similarly, I note the letter of 17th December 2014 from the Scottish Government's "Local Government and Communities Directorate". In particular, Barratt Homes would support the Scottish Government's position in regard to the extensive change that has already occurred within the planning system, with a significant emphasis now placed on front-loading the engagement process, offering an extensive opportunity for public comment and input, not only through the Strategic and Local Development Plan Process, but also during the Planning Application process, for qualifying applications. In this regard, Barratt Homes welcomes and acknowledges the opportunity for continued public engagement in the planning process, with the aim of securing better and more relevant plans, that decisions are both consistent and satisfactory and that unnecessary delays in the process are avoided.

In addition to the recent comments from Both Homes for Scotland and the Scottish Government, it must also be noted that the issue of 3rd party rights of appeal were

discussed extensively during the period of parliamentary scrutiny of the Planning etc. (Scotland) Bill in 2006. During this period, a wide range of arguments and positions were put forward from numerous organisations and individuals both in support and in opposition to the introduction of 3rd party rights of appeal. The SPICe briefing note highlights the commentary from the then Communities Minister, Malcolm Chisolm, confirming that the then Scottish Executive had no intention of introducing 3rd party rights 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 in new delays and unpredictability into the system, which could add costs 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".

The 2006 Planning etc. (Scotland) Act, associated Regulations, Circulars and Policy has sought to implement these aims and principles and Barratt Homes are clear that through this change-process, the Scottish planning system now contains ample opportunities for differing views and positions to be heard and considered.

The petitioner has submitted that there is currently an imbalance within the planning system, which the introduction of 3rd party rights seeks to address. The petitioner seems to believe that there is a fundamental injustice within the planning system, as the applicant has a right to appeal a decision, but not the 3rd party. However this fundamentally misconstrues the decision-making process. Throughout the LDP adoption process and during the planning application period of objection, 3rd parties have numerous opportunities to comment – MIR, Draft Plan, Proposed Plan etc. An applicant's right to appeal only exists following a refusal by the Local Authority, which in the main will result from a vote made by the democratically elected representatives of the 3rd party. In the event of an approval, it is those same representatives who make that decision – this is a fundamental tenet of the democratic process.

It is interesting to note, albeit not entirely unexpectedly, that the petitioners are not themselves developers and so the question does arise as to whether their perspective seeks to achieve a truly positive planning process that secures sustainable development and growth, or merely seeks to prevent development, based on their own self-interest. Indeed, the arguments and language used throughout the petition such as "interests", "perceived conflicts of interest" and "feelings" of not having sufficient say are highly subjective and contextual and may not necessarily reflect actual planning views. The petition also talks about the right to appeal against "inappropriate and damaging" development and again, you would need to ask "*from whose perspective*"?

It is clear that with the introduction of 3rd party rights of appeal, the petitioners would bring about a significant shift of power into the hands of non-developers and in the view of Barratt Homes, this would be at the expense of the planning process, the applicant and achieving the aim of sustainable development. In particular, the introduction of these rights would impact the commercial decision making process, as it is likely that developers would lose confidence in the system over concerns that consents might be at risk. Ultimately, this could result in a reduction of inward investment into Scotland, putting jobs and economic recovery at risk, not to mention achievement of the Scottish Governments' objective to secure sustainable growth and development.

It is a well understood and accepted principle that planning decisions are to be made in line with the policies contained in the plan, except where material considerations indicate otherwise. This principle is tested throughout the adoption process, with multiple opportunities for engagement at the MIR, draft plan and proposed plan stage. Introducing 3rd party rights are unlikely to do anything to improve the robustness of this process and/or result in better plans. In reality, it is more likely to result in further delays, with continuing re-emergence of arguments around principles that have already been tested and agreed through the process. All "Major" applications go through a 3-month, pre-application public consultation process, which requires full notification to the Council members, local Community Council/s and of course members of the public, with at least one public event being held. Although this has gone some way to allow developers to directly address any concerns that interested parties might have in a development proposal, numerous objections are still received that focus on principles of development, which are often already established within the plan. We also see a mixture of comments clearly revolving around the wish to resolve local and/or long-running disputes that have no relevance in planning. Furthermore, it would be much more likely that a single individual could mount an objection under the guise of protecting the community, but in reality, only representing their own views – NIMBYism. These issues represent the difficulties inherent with 3rd party rights, which were rejected by the Scottish Government in 2005/2006, as it would result in delays, added costs, additional uncertainty and introduce the possibility for vexatious or trivial appeals. Concerns have previously been raised through other forums with regard to the consistency of appeal decisions in Scotland, particularly when compared to England, and the introduction of another variable would only add to this anxiety.

Whilst it is true that local views are important and should be a material factor, it is accepted that they should not necessarily be an overriding one, particularly where there is no relevance in planning law. The test of relevancy is not related directly to the volume of objections, as some people believe, but rather in the quality of the objection itself. 3rd party rights would serve to undermine this principle as it would provide an opportunity for trivial, irrelevant and vexatious objections to receive a significance of weight not otherwise due them.

It would not be difficult to imagine a scenario where 3rd party rights could also lead to a rash of objections and counter objections on competing schemes, the intention being merely to frustrate the process for a competitor, rather than improve the application. The issue of Judicial Review, which is being raised by the petitioner, misrepresents the difference between an objection and a legal challenge. The ability to frustrate the planning process through erroneous and vexatious objections would be a far easier and more accessible proposition than securing a Judicial Review, even with the protective provisions as suggested. Regardless of the protections that might be suggested, there is no likelihood that the test of legitimacy on an objection would be of the same standard required to undertake a Judicial Review and therefore, the likelihood of vexatious objections would not be removed. In this context, the financial constraints placed upon Local Authorities and which still exist within the economy at large need to be borne in mind, where a malicious objection might, for example, lead to an extended application process. This would only add costs for the developer and Planning Authority, cause delay, and ultimately, would not actually improve the decision or outcome.

Notwithstanding our concerns regarding the direct and obvious opportunities for abuse and/or the unintended consequences of delay and cost, it must also be borne in mind that the planning system already allows for significant external input and the opportunity to make representations. In this regard, Planning Authorities are already dealing with the full range of competing views and objections and these are taken into account in the preparation of the plan. The plan is thereafter subject to examination by the DPEA, allowing an independent assessment of the plan's relevance. Finally, locally elected Councillors have the opportunity to review and vote on applications and in some cases this referral will extend up to the Minister. In this context, do we really need another layer of control over an already burgeoning planning system?

Conclusion

The Planning etc. (Scotland) Act 2006 introduced a range of changes to the planning system and in conjunction with the relevant regulations, policies and guidance that have since been introduced, there has been a significant improvement in the robustness, fairness, consistency, speed and openness of the planning system. Whilst there are still some areas in which improvement can be made, it is clear that the number of checks and balances and opportunities for the public to comment through the LDP adoption process is more extensive than ever. In addition, the introduction of public consultation for all "Major" applications has resulted in a significant level of further engagement that was hitherto unavailable. The result of this is a much more balanced system that allows difficulties and objections, in the main, to be resolved and therefore, a good deal of the intended changes from the 2006 Act have been successful. Therefore, it is the view of Barratt Homes, in agreement with Homes for Scotland and the Scottish Government, that the introduction of 3rd party rights of appeal are unnecessary, would not result in a better plan and in fact, would only serve to further frustrate the planning process. The

ongoing focus on delivery must be maintained, if we are to achieve the underpinning ethos of modernising the planning system in Scotland.

Yours sincerely

BARRATT HOMES SCOTLAND