

PE1534/H

Save Stockbridge Campaign – Submission to the Scottish Parliament Petitions Committee

PE01534: Equal rights of appeal in the planning system

Introduction

1. The experience of the Save Stockbridge Campaign in opposing a major planning application has shown that the planning system has become unbalanced and a right of appeal should be available to objectors in certain circumstances to rebalance the system. We believe that the system operated to favour the applicants' arguments and their presentation of "facts" and to disadvantage the facts and arguments presented by Save Stockbridge. Hence the decision to approve was highly questionable and an appeal would have provided a means for reconsideration.

Background to Save Stockbridge and the Major Development Proposals

2. The Save Stockbridge Campaign came into existence to oppose a planning application for major development in the Stockbridge/Comely Bank residential area of Edinburgh, adjoining Stockbridge Town Centre (as defined in the LP and LDP). The application was contrary to the development plan, in a Conservation Area and out of scale with the surroundings. It was overwhelmingly opposed by local residents, the Community Council and many traders. The proposal was to develop about 30% of a private playing field designated as open space in the LP with the loss of 1 pitch, contrary to policy. It included:

retail/business/restaurants	(1848 sq m (19,892 sq ft)) (up to 9 units)
a function suite/conference rooms*	(431 sq m (4,639 sq ft))
bar/lounge/clubhouse*	(363 sq m (907 sq ft))
corporate sponsors boxes*	(443 sq m (4,768 sq ft))
sports changing rooms	DK
a stand for 2,500 spectators plus another 2,500 standing. And 1 playing pitch was to be lost	

*to be available for private functions, business conferences, etc. Capacity of over 1000 people.

An Unbalanced System – Our Experience

3. The Officials, including at a senior level, had meetings with the applicants before the application was made and during the time when the report was being prepared. This included discussions on the objections and making a revised application in response. This gave the applicants access to the Officials on a scale and frequency not afforded the objectors. Yet the applicants still had a right to appeal had the decision been to refuse.

4. The change in terminology from Development Control to Development Management appears to have had an unintended consequence. i.e. less of a focus on controlling the development of land and more of a focus on managing the development process alongside the applicant.

5. The policy of Sustainable Economic Growth was quoted to us as a policy which trumped the other relevant policies.
6. Save Stockbridge did not have the facilities or finance to enable it to co-ordinate public opinion and try to influence decision makers on the same scale as the applicant. We believe, but have no evidence, that they used a specialist PR and media management company.
7. Some councillors came to the view that the community was split 50:50, even though the statutory consultation resulted in 1063 (79%) objections from people in the 2 postcode areas most affected, EH3 and EH4, and only 288 (21%) letters of support.
8. There was an impression that the commercial elements of the proposals were essential to save the rugby ground and the Club. As it was contrary to the Local Plan, it should therefore have been defined as 'enabling development' which would have required stringent financial analysis, but it was not. The Community Council made this point during the Hearing, but to no effect. An appeal against approval would have allowed this issue to be explored.

Imbalance in The Committee Meeting and Hearing

9. Some Councillors appeared to believe that there was a "presumption in favour of development" and said so in Committee. They did not say 'a presumption in favour of development *which accords with the development plan*', which is the principle established in City of Edinburgh vs Secretary of State for Scotland (See Planning Circular 3/2013 Annex A)
10. Some Councillors appeared to think they should approve the application because refusal would lead to an appeal and they feared losing. Of course they did not fear an appeal if they approved.
11. Lack of Transparency – The Council do not normally minute the Committee meetings. On this occasion some were provided in response to an FoI request but they omit what was said by members of the committee and the officials. Hence they cannot be held to account or challenged for what they said, including matters which may not have been material planning considerations.
12. The Hearing lasted about 3 hours. Councillors and officials had a lot of information to assimilate in that time but most did not take notes (as evidenced in response to an FoI request).

Existing Remedies Don't Work

13. **Pre-application consultation cannot be a substitute for the right to appeal an errant decision.** It is meant to give those affected an early input to the design process so that their views can be taken into account, but in our case it did not work. It changed nothing. It was presented to the PA as being supportive of the proposals.
14. **Judicial Review is not a remedy for bad planning decisions.** It is only a remedy for bad process, which can then be re-run to reach the same bad decision. And at a cost of something like £50,000. We were anyway advised that Judges are increasingly reluctant to challenge the decisions made by elected councillors.

15. The Ombudsman Service is not really designed to provide a remedy even if the Committee Report or procedures amount to maladministration. It can do nothing if planning permission has been issued. The complaint made in April 2013 by Save Stockbridge regarding numerous errors and omissions in the Planning Official's Report is still under investigation, and the opportunity to influence the Decision Letter issued in July 2014 has passed. (The Ombudsman was only contacted after the Council's complaints procedure failed to offer a remedy.)

16. Major developments do not have to come forward through the development plan so the so called 'plan led' system does not work. Thus they are not considered in context with full public involvement, the right to object AND the right to have a Reporter consider the issues. This did not happen in our case even though the preparation of the LDP was at an appropriate stage.

Conclusion

17. The issues above illustrate a serious imbalance between the rights of applicants and the rights of other parties. This brings the "quasi-judicial" status of the planning system into question. The existing remedies don't work. In 1948 when the planning system was founded a 3rd party right of appeal was not thought necessary because the planning authority was acting in the interests of the community. We think that in the 21st century an equal right of appeal for communities opposing major developments which are *contrary* to the development plan is essential to rebalance the system.

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On behalf of the Save Stockbridge Campaign