

**PE1534/L**

**Scottish Parliament**

**Public Petition No PE01534**

**Equal Right of Appeal in the Planning System**

**Objection by Persimmon Homes**

### **Introduction**

The Scottish planning system was radically changed through the Planning etc (Scotland) Act 2006, which introduced a more robust method for planning within Scotland, and highlighted the importance of community engagement throughout the planning process. One of the main aims of the Act was to ensure that planning was faster, more responsive but also better balanced by creating a number of opportunities for any interested party or stakeholder to become involved in the planning process and to have their views considered in planning decisions.

The Scottish Executive describes the 2006 Act as<sup>1</sup>:-

***“The new Planning etc (Scotland) Act 2006 is the central part of the most fundamental and comprehensive reform of our planning system in sixty years.***

***It will bring in a much more inclusive and efficient planning system to improve community involvement, support the economy, and help it to grow in a sustainable way.***

Since its publication, the Act and associated policy and circulars have been intended to implement the aims as already discussed, which have seen significant public participation throughout both the Development Planning and Development Management Process. Views and opinions are considered by a number of parties, from Local Authorities and Councillors, to Developers through every stage of the process. We are therefore of the opinion that the planning system is much improved and provides ample opportunities for all viewpoints to be heard, debated and considered in determining any planning decision.

We are also pleased to see that the Scottish Government is not considering the introduction of a third party right of appeal and can confirm that Persimmon Homes supports the Scottish Governments position.

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<sup>1</sup> Scottish Executive “A Brief Guide to the 2006 Scottish Planning Act”, published March 2006 (<http://www.scotland.gov.uk/Publications/2007/03/07131521/1>)

## **Response to the Petition**

When considering public participation within the planning system, there are opportunities at every stage for every stakeholder to become involved and to submit their views on a specific proposal or plan where relevant.

One of the key principles in the planning led system is the importance of the Development plan. A fundamental flaw in the petitioners argument is that plans should be up to date, which is a status they already have. Once a plan has been approved any proposal which accords with the plan, normally in the case of an allocated site, the principle of development has already been approved, as each site will have had all comments considered prior to its official allocation through the adoption of the LDP which it is contained within. There are far too many third parties who still consider themselves to have unlimited scope to challenge principles which have already been established, and the time for comments regarding them has already passed.

The 2006 act requires Local Authorities to consider all views from any interested party through the Local Plan process. The first of these opportunities comes with the publication of the Main Issues report, where consultation normally runs for a period of six to eight weeks. Once the Proposed Plan has been published, the Local Authority is required to provide a Participation Statement indicating how they have considered all comments received, and any changes to the plan which arisen on the basis of. This statement forms a significant part of the Reporters examination, and I am unaware of any development plan which has been rejected on the basis of poor community engagement. Once again, interested parties are able to submit their views and comments to the proposed plan at this stage.

Whilst planning authorities are required to take into account a diverse range of views which are often conflicting in order to create a plan which conforms to specific subjects as Housing Land supply, sustainable economic growth and sustainable development, they utilise a wide range of tools in order to achieve this. However, democratically elected politicians make a number of decisions based upon information provided to them by Local Authority planners and taking into account all representations made during the various plan process, any development plan is still required to be considered by a Scottish Government appointed Planning Reporter. The Reporter will consider all responses received at the proposed plan stage and has the power to dramatically alter any development plan which they feel does not meet key criteria or does not take into account views and comments from any respondent.

The development plan process allows everyone an extensive range of opportunities, often over a period of at least two years, to make their views known. In situations where there is a Strategic Development Plan (SDP) in place, the opportunities are doubled, as a similar process has to be undertaken to that of the local development plan. The time period is also often significantly extended given the complexity of the SDP.

In terms of development management, any major application is required to undertake a mandatory 3 month consultation process. This requires the applicant to hold public meetings and can often include meetings with community councils and other interested parties within the locality of the application site. The applicant is then required to show how the views collected at consultation are then considered and addressed where necessary within the application, through production of a the Planning Application Consultation Report. Again, the public are able to comment and have their views known, which are considered by anyone making the decision, whether that be the local planning officer or a reporter (if a refusal is appealed by the applicant). In this situation, it is often the case where local objectors can make their case directly to the Reporter, who will consider their comments in determining the application.

The above process gives a number of opportunities for the public to become involved in the planning process. If they do not take these opportunities, then there is no reason to introduce yet another procedure, which could prejudice the already established principle of development on a site. This is especially true of major developments, which currently take on average 40 weeks to be determined. This is roughly three times the statutory period, which is already deemed unacceptable by developers.

It is also necessary to comment on one of the key points to which the petition highlights. Judicial Reviews. The petitioner makes a number of references to this, when in fact they are very rarely used for any sort of application determination. If we consider the 61 appeals that have been made within East Scotland for major residential schemes since late 2010, only 5 dismissed appeals have been taken forward to Judicial Review (8%), with only 2 being allowed (3%). These figures clearly indicate that Judicial Reviews are not often worth considering as there is a very small chance of the appeal being overturned. In terms of the arguments put forward by the petitioner, there is actually no need for an alternative to a Judicial Review, as it would appear they are not used in great numbers.

## **Conclusion**

It is clear that the improvements brought forward by the 2006 Act to the development management process have been made to make the process simpler and more standardised, all with the objective of improving access to information, ensuring inclusion of all and every party in order to ensure decisions are made faster and are fairer.

The planning act set out to achieve these basic principles, and until now has managed to do so, although there are still some improvements to be made. Allowing third party rights of appeal was considered unnecessary when the act was agreed, and remains unnecessary now. To allow third parties to appeal would cause catastrophic delays to planning when there are clearly already ample opportunities for people to be heard through current legislation. The petition itself is flawed as it is not apparent that it acknowledges:-

- Individuals and communities are only two players amongst many in planning decisions
- Planning decisions have to be based on a careful weighting of facts and evidence, rather than views
- More speed not less is required in the decision making process