



Scottish Parliament Public Petition No. PE01534

Equal rights of appeal in the planning system

The Petition

This petition was considered by Parliamentary Committee on 11th of November 2014. Certain bodies, including Homes for Scotland were asked for their views on what the petition sought, the discussions taken at the meeting of the 11th and specifically how a third party right of appeal (TPRA hereafter) would sit within current arrangements. Gladman Developments are a member of Homes for Scotland and while we endorse their submission would like to take this opportunity to submit our own views. The company works across Scotland and England and is actively involved in both planning systems.

The petition *"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."* This review and proposed change is sought due to a feeling of injustice amongst those who have been affected by decisions to grant planning permission. The petition suggests that introducing TPRA will create a more level playing field for all stakeholders, promote a plan led system, provide an alternative to judicial review and ensure all proposed development is made in the public interest.

With regard to 'creating a level playing field', currently applicants have a right to appeal against non-determination, refusal or conditions imposed by an approval to compensate for restriction of the right to develop land in any manner they so wish. Those who do not have a legal right to the land, but who may be otherwise affected by development proposals have numerous opportunities to engage in the planning process. These opportunities are present during the production of development plans and policies and during the consideration of planning applications and are available to individuals directly or through their elected members and representatives.

Homes for Scotland's submission documents the various elements of public participation and engagement and Gladman endorse this submission. The planning system is charged with balancing many considerations, including those of the applicants and of third parties, to take decisions in the wider public interest and the current balance of engagement and appeal rights achieves this.

Secondly, the petition suggests that allowing TPRA against approvals which were contrary to the plan will promote a plan led system. The plan led system in Scotland was designed to give certainty to all parties involved however this needs to be balanced with the degree of flexibility and discretion which is given clear expression in the Planning Acts. Development which does not conform to the development plan is not necessarily inappropriate. Development plans can often be out of date (either older than the stated number of years in the statutory sense or be out of step with the current economic, social, environmental, technological or political factors), fail to achieve the actions they initially set out to do or there may be material considerations which warrant the setting aside of the development plan. Flexibility is required in the planning system to consider applications within these circumstances and subsequently certainty in the final decision. To introduce TPRA would cause further uncertainty and delays for everyone involved in the planning process.



The planning system is based around the control of the use and development of land in the public interest, and that public interest is protected through the taking of decisions at the local level where possible, by locally elected representatives (or by Ministers of the elected government), and the consideration of third-party representations, canvassed through extensive consultation during both the plan-making and decision-taking processes. Development which does not conform to the development plan can only be approved in circumstances where material considerations warrant such action.

It appears the real issue is the dissatisfaction felt by those who have engaged in the planning process, particularly where development not included in the development plan is approved. Gladman is not of the view that TPRA would improve this situation. Instead it would result in a new arena for local disputes, potentially vexatious appeals and create an opportunity for further uncertainty for the applicant, planning authority and other stakeholders (including third-parties). Adding delay and uncertainty to the planning process would directly contradict the aims of recent reforms and updates to the system.

It may be appropriate to review public engagement in the planning process in order to establish the stages and degree to which third-parties engage with the system. This may identify areas to improve, and could include awareness-raising of the importance of the plan-making process and strategic planning, all of which has a substantial impact on the local, decision-making process, which is the level at which most conflict and dissatisfaction arises.

During the discussion at the meeting in November, the use of TPRA in Ireland was used to demonstrate a lack of economic impact. Comparison with Ireland is, we consider, of limited value given the markedly different economic, political and social context of the Scottish planning system. However, that is not to say that there are not lessons to be learned from other planning systems in order to improve processes and engagement. The public participation requirements for major applications in Scotland area already different to those in England, giving an extra stage of compulsory public engagement prior to the submission of certain types of application.

Conclusion

Gladman Developments does not support the introduction of TPRA, as it would compromise the aims of the 2006 Act by slowing down the planning system and creating uncertainty and potentially reintroducing local disputes which the 2006 Act sought to remove from the system. In introducing the 2006 Act, the Scottish Government took steps to increase the level of public engagement in the planning process and it is considered that the current legislative and policy framework does ensure that there is ample, appropriate and equitable opportunity for all parties to engage in the planning process and that this is appropriately balanced with the need for a strong yet responsive planning system.

Gladman Developments Ltd
19th December 2014