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PE1534/P

David Stewart MSP
Public Petitions Committee
Scottish Parliament
The Scottish Parliament
Edinburgh
EH99 1SP

7th December 2014

Dear Mr. Stewart,

Planning (Rights of Appeal) PE1534

I write to you in your capacity as Convener of the Public Petitions Committee of the Scottish Parliament in respect of Petition PE1534, which was considered at the Committee meeting on 11th November. I note that the Committee agreed to write to a range of organisations to seek their view on the petition which requests the Scottish Government to review current rights of appeal in planning. I have seen from the minutes of the meeting and note that there was some discussion of the system of third party rights of appeal in the Republic of Ireland and indeed, my research on the operation of this system was referred to. As far as I am aware, I am the only academic that has undertaken a comprehensive and robust analysis of the Irish system of planning appeals and I have made a detailed consideration of the implications this could have for the planning systems of the UK. My work has been published in top peer-reviewed journals of the field¹ and I have also been commissioned by the Department of the Environment in Northern Ireland to specifically examine the impact of third party appeals in that jurisdiction². This work coincided with a major increase in an interest in equal rights of appeal, prompted specifically by the UK's Human Rights Act 1998 and the impact of the Aarhus Convention. I have retained a strong interest in the role of appeal rights as a way of improving the performance of the planning systems of the UK and I am pleased that the Public Petitions Committee has agreed to give this issue further examination.

Although rights of appeal are an important element of the planning system and define some crucial elements of control, power and exclusion in planning decisions, there is however, very little real evidence to inform opinion on the impact of extending such rights. It has been very easy in the past to dismiss the extension of rights of appeal as being uncompetitive, a 'NIMBY's charter' or unnecessarily slowing down the decision-making process. I have not come across any credible evidence of any of these impacts and indeed, such claims appear to be based very specific development-led view of the role of the planning. I would therefore be very grateful if you could consider the points below on the need to consider further investigation of the benefits and costs of extending appeal rights in the Scottish planning system:

- *The purpose of the planning system*

Scottish Planning Policy (SPP, 2014) sets out the purpose of the planning system. There is no need to quote this at length, but I draw your attention to a number of key points, particularly the statement that planning is about *'enabling high-quality development and making efficient use of land to deliver long-term benefits for the public while protecting and enhancing natural and cultural resources'*. SPP also notes that planning should *'make decisions in a timely, transparent and fair way to provide a supportive business environment and engender public confidence in the system'*. It is worth considering each element of these principles as policy debates about planning often get reduced to whether planning holds up development, while overlooking the need to securing greater public confidence in the system. Yet, the planning is, and always has been, about ensuring only development that is in the *public interest* is permitted. The role of extending rights of appeal must be seen in this wider context – would it help or hinder the identification of the public interest and would it increase or decrease public confidence in the planning system? There is a range of evidence that suggests that recent planning reforms across the UK have focussed on further supporting economic growth, but in so doing have tended to reduce public confidence in planning. Very few planning reform measures have focussed on increasing public confidence, yet over and over again third party rights of appeal have been shown to have strong public support and would help address this very issue.

- *The purpose of extending rights of appeal*

The reform of appeal rights are often seen in an over simplified way – and often reduced as being simply the adoption of the Irish system where virtually everyone has rights of appeal. This is not the only way of conceptualising appeal rights and there are a very wide range of options available and different configurations could be adopted according to what are considered the main priorities for reform. For example rights could be extended primarily to address the 'inequality of arms' between applicants and those objecting to development; as a way of further safeguarding property rights of landowners adjoining proposed development; to better ensure consistency and policy conformity of planning decisions; to increase public confidence in the planning system; or to increase the scrutiny of development against a test of the 'public interest'. A system of appeal rights could be designed to address one, or all, of these.

- *Designing a system of rights of appeal to best meet society needs.*

Following from the last point, a system of rights of appeal can be designed around many variables according to the desired purpose. These variables include limiting rights or appeal according to: the type of decision (outline, full planning permission, listed building consent, enforcement etc); the type of development (major/minor, subject to EIA, certain types of land use); the type of decision (e.g. when a local authority is awarding permission to itself; making a decision contrary to an officer recommendation; or contrary to a local plan); different interests could be awarded rights of appeal (e.g. only those materially affected by a decision, recognised bodies, or only statutory agencies); different time limits for appeal; and one could consider the awarding of costs based on the outcomes of any appeal launched. My main point here is that many organisations (including perhaps those who you have approached for further views) may have an over simplified view of the implications of extending rights of appeal – this can imply many different things and this is why I think the call for a more detailed review by the Scottish Government is so important.

- *Rights of appeal in the Irish Republic*

My final point relates to the situation in the Irish Republic, which is often invoked by both proponents and antagonists of third party rights of appeal. It is easy to jump to conclusions about the system in operation here and I have seen many erroneous conclusions drawn from the Irish experience. I undertook a comprehensive review of the system in operation over ten years ago and drew some surprising conclusions about who was using rights of appeal, for what purpose and the impact on development in general. These findings are found in the documents detailed in footnotes below. My conclusions were that in the context of the Irish planning system, extended rights of appeal played an important and valued role; they were accepted and welcomed by a wide range of parties and that there was very limited evidence of abuse. Indeed, overall I felt that it provided a valuable way that citizens could express their views in a robust way and that such rights really increased public confidence in the system and resulted in a better quality of development.

I hope you find these comments useful in your deliberation of petition PE1534 and please do not hesitate to contact me should you need any further information.

Yours sincerely,

Prof. Geraint Ellis BSc MPhil, PhD, PGCHET FHEA
Chair of Environmental Planning
Director of Research, Institute of Spatial and Environmental Planning

¹See for example: Ellis, G. (2006) Third Party Appeals – Pragmatism and Principle. Lead paper in Interface section of *Planning Theory and Practice*, Vol. 7, No. 3, pp. 330-339; Ellis, G. (2004) Discourses of objection: Towards and understanding of third party rights in planning, *Environment and Planning A*, Vol. 36 p. 1549-1570; Ellis, G. (2002) Third Party Rights of Appeal in Planning: Reflecting on the Experience of the Republic of Ireland, *Town Planning Review*, Vol. 73, No. 4, p. 437- 466.

² This included: Ellis, G. (2002) *Third Party planning Appeals: An International Review*, Research report to the Department of the Environment, Northern Ireland, May 2002 ; Ellis, G. (2000) *Third Party Planning Appeals in the Republic of Ireland*, Research report to the Department of the Environment, Northern Ireland, June 2001.