Third Party Planning Rights of Appeal (Scotland) Bill

Analysis of Responses
In total, 28 replies were received from individuals and organisations of 182 consultees. The responses represent 15% of consultees.

Of those, three did not provide any comment.

Eighteen respondents gave general comment on the issue, but did not answer the questions. These responses have however, where possible, been attributed to the relevant questions for the purpose of this analysis.

One respondent provided information from their submission to the Scottish Executive’s consultation.

The respondents consisted of five community councils and four local councils, with the remainder of responses from charities, unions, private companies and planning authorities who have an interest in planning rights. Two responses came from individuals, and another was an individual involved in an action group relating to planning rights.

Responses

1. What are your general views on the introduction of a statutory procedure to allow third parties the right of appeal in planning decisions?

The views on this were mixed. Eleven respondents suggested that to introduce a statutory procedure for third party rights of appeals would bring benefits. One of these respondents said that even a delay to the process was a small price to pay for increased fairness. One respondent said that they supported the principle and that the proposed Bill kept the issue on the agenda. One respondent thought that third party planning rights of appeal would bring a greater equity, however this issue needed to be handled with care.

In total, twelve respondents were sceptical as to whether the proposal would work. Seven of them felt that the proposal would only increase the delays while four suggested that there was already enough opportunities for objections to planning to be heard. Five respondents suggested that they thought that reform of third party planning rights should not be tackled in isolation, but as part of a rework of the entire planning process. Three respondents said that the delays could have an adverse effect on businesses. Two respondents thought that any legislative exercise would be best left to the Scottish Executive. Other comments included that objections from third parties were already dealt with in the current framework.

Other comments included a respondent who suggested that the introduction of a statutory procedure for third party rights of appeal would lead to an increased workload for officers dealing with appeals and increased pressure
on staff. This respondent said that it would also increase frivolous appeals, and that the views of a third party were not necessarily representative of the wider views of the community. They suggested that it also removed decision making from the democratically elected representatives.

One respondent suggested that the appeals process should be easily understood, and require no legal or specialist skills.

2. What are your views on certain restrictions being in place or do you believe that there should be no restrictions on who can appeal?

Eleven respondents answered this question.

Overall ten of the respondents thought that there should be restrictions on who is eligible to make a third party appeal. Of these, two thought that direct interest and a close proximity to the planned development should be part of the requirements. One respondent (a community council) thought that community councils should be exempt from appeal restrictions placed on third parties, and given more time for lodging an appeal. Three respondents suggested that only those who objected to the original application should be allowed to appeal. One respondent said that there should be restrictions on who can appeal, and that after limiting it to those who objected initially, there should be further restrictions. Other comments included a respondent who suggested that a clear set of criteria should be devised, to determine whether an entitlement to appeal existed, without giving examples.

In the consultation, the Member suggested that only those who have made written submissions to the planning application could appeal. She suggests an exception for those who should have been notified but were not, and those with an interest in adjoining land.

One respondent drew reference to the Green Balance Report mentioned in the consultation, and some of the recommended conditions for a scenario of third party rights of appeal. The Green Balance Report says that only those third parties who objected initially should be able to appeal, and that there should be no further restrictions. The Green Balance Report identified third parties as those who held a direct interest as owner, personal interest as a neighbour, or a wider interest as a community or interest group. This was cited by the Member in the consultation document. The respondent said that they agreed with the suggestions in the Green Balance Report (and within the consultation document).

Other comments included a respondent who said that there should be the right of appeal in cases in the following circumstances: where the planning application was different from the original plan; in major applications; applications where there was an interest from the local authority; and when the planning officer has recommended refusal. The respondent added that the Green Balance report recommended the condition of controlling the right of appeal by third parties to deter frivolous abuse of the system by using both written and hearings systems with a time limit of 28 days for lodging an
appeal. Another respondent thought that a time limit of 30 days should be imposed for lodging appeals.

Three respondents suggested that planning applications accompanied by an Environmental Impact Statement should be available for appeals.

Finally one respondent thought that there should be no restrictions at all.

3. What are your views on the proposal to follow the Irish model for third party appeals? Are you aware of any other models that you believe would be more suitable, if so can you provide details of them?

Nine responded to this question.

Four respondents to this question agreed with the idea of the Irish model, and another said that the system should be adapted to fit the Scottish system.

Four respondents were against using the Irish Model. Of these, one respondent added that they didn’t have enough background knowledge of the Irish model aside from the information provided in the consultation document, but that they were opposed to it as it did not have enough restrictions. One of the respondents added that they thought that the Irish Model had brought serious difficulties to the planning process. Other comments included a respondent who suggested that the Irish Model allows anyone who objected in the first instance to appeal, and that it should be limited to those who are genuinely affected.

Only one of the respondents discussed any other possible models from other countries. The respondent said that they thought that the Danish and Swedish systems would be worth consideration for implementing in Scotland. The respondent added that the New Zealand system offered a favourable cost, but that the system in Queensland Australia was not an option as it was too expensive.

4. I propose that there should be a fee for third party appeals which is set at £20. What are your views on the level of the fee? Should it be set higher for businesses and commercial organisations with a reduced rate for charitable organisations and individuals?

There were fourteen responses to this question.

In relation to the level of the fee, three respondents said that the charge should cover administrative costs, for example for lodging papers. One added that in addition to this a screening process should be in place for appeals to planning, although they did not specify how this screening process would work.

Two respondents though that the £20 fee would encourage frivolous objections, although neither of these respondents gave evidence to support
this. One respondent added that it was too low and it didn’t cover the cost of conducting the appeal. This respondent suggested that third parties would consider a £20 fee a small price to pay in order to cause delay or frustration to the developer.

One respondent thought that this was a reasonable fee to set for appeals. Two respondents suggested the fee should be £30.

One respondent said that any set fee should cover the costs, and should not be set lower. This respondent commented that the Irish model included a fee for third party appeals of £140. The respondent added that the fee should be similar to the appeals fee in Ireland for first party applicants for unauthorised developments of £1,260, and should cover the actual cost of the appeal.

Another respondent said that the fee should be nominal but gave no indication of what this should be.

One respondent suggested that the present level of fees paid by appellants whose previous appeals had been refused should be taken into account.

In relation to different rates for different organisations, three respondents thought that commercial companies shouldn’t be expected to pay an increased fee and that the fee should be the same as that set for individuals lodging an appeal. One of these responses came from a private company; and the remaining two responses came from local authorities.

Six respondents thought that there should be a method of graduated charges, and two of these thought that there should be a reduced rate for community councils. Both of these responses came from community councils.

Two respondents indicated they did not object to the idea of larger companies paying a larger fee for appeals.

5. What are your views on the proposal that Scottish Ministers should be responsible for handling third party appeals against planning decisions? If not, can you suggest an alternative?

Ten respondents answered this question.

Five respondents thought that the Scottish Executive Inquiry Reporters Unit should handle appeals. One of these respondents added that ministers might have conflict with an appeal, for example if the Minister were to screen third party appeals, before making the final decision.

Three respondents agreed that Scottish Ministers should handle third party appeals.

One respondent asked whether the Scottish Ministers would be completely independent, and not subject to “presumptions in favour” of commercial interests.
One respondent said that they had no opinion on this, but thought that whoever handled the appeals process should not be connected with either of the first or second parties.

6. What are your views on which cases should be subject to third party right of appeal?

Six respondents answered this question.

One respondent said that appeals should only be made on valid planning grounds.

One respondent said that the appeals process should be available where there was a large opposition from the local community, or where substantial changes have been made to the original planning application.

One respondent said that the Rural Scotland list published in the consultation document was acceptable. Rural Scotland who were in favour of third party rights of appeal, gave a list of methods to limit those objectors who could appeal. This was included in the consultation document in relation to views on Third Party Rights of Appeal.

One respondent suggested that appeals should be available to cases where the development was contrary to the development plan; where the local council had an interest in the development; where the development was granted against the advice of officers; or where the development required an Environmental Impact Assessment. The respondent added that it could prove problematic to define exactly what constituted as “development contrary to the development plan”.

The points listed above were also raised in the Green Balance Report, with the addition of a case for appeal where it was a “major application (as defined by the Planning Inspectorate)”. One respondent agreed with these points raised in the Green Balance Report, although they added that this may need to be expanded for legislation.

One respondent suggested that the appeals process should be made available to all cases.

7. Do you believe that your authority or organisation will be affected by resource or financial implications if third party appeals are introduced? If so can you please provide an indication of where these costs would occur and an approximate estimate of their level (if possible)?

Nine respondents answered this question.

Six respondents identified cost implications for third party applications. Four of these respondents identified resources, and one said that there were not
enough qualified planners to deal with the appeals. Other comments included a respondent who said that an appeals office would need to be created to deal with the appeals.

Other comments included a respondent who suggested that the delay in conducting the appeal would cause financial implications.

Two respondents said that the cost of lodging the appeal would be an implication.

One respondent said that it would deter developers from departing from the development plan in the first instance and would create more community consultation, so the cost would not be substantial.

A response from a local council, said that it would require one Professional Officer per Area Office and this would cost approximately £108390 per annum.

Three respondents said that they could not see any likely cost implications as a result of third party appeals.

8. What are your views concerning any ECHR implications in the proposal?

Six respondents answered this question.

Three respondents were not aware of any ECHR issues or implications or challenges to ECHR on the current planning system.

Another respondent said that they had no additional comments to add to the lack of clarity on the issue.

Other comments included a respondent who said that Article 6 was relevant, without any explanation.

One respondent added that they were considering a legal challenge using ECHR on the current planning system.

Further Issues to Consider From Responses

There was a mix of support and doubt from respondents in general comments made to the consultation. Some of the respondents had criticism of the proposed Bill, while others offered suggestions as to what they thought the proposed Bill should address.

Some of the suggestions that were made included one respondent who thought that the proposal should include a legal requirement for developers to notify in writing those who live on the boundary of a planned development at the planning application stage. The respondent suggested that this requirement should be to ensure that developers send notification by recorded
delivery, or if sent by a messenger, a signature and a printed name must be obtained. The respondent added that the local authority responsible for the development in the area should be required to publish details of the requested application in the local press.

Another respondent pointed out that an appeals process would require adequate and authoritative staffing by the body administrating the process.

Criticisms of the proposal included a respondent who suggested that it could be argued that there were already 14 stages for public involvement or policy review, before the requirement for a third party right of appeal might be considered. The respondent added that there was a greater issue in the public interest to consider namely whether or not the enormous investment of time, money and effort in these fourteen stages is frequently wasted.

One of the issues that arose was the democracy of third party planning appeals. Three respondents asked whether it was democratic to have a decision made by a local authority that was elected to represent the views of local people overturned by an appeals process where decisions might be made by civil servants.

Another respondent suggested that the proposal would present problems to Scotland as a whole. The respondent said that as third party rights of appeal had been ruled out in England and Wales, it would affect the ability to attract retailers to locate in Scotland. The respondent added that this would have wider repercussions for development in Scotland, although did not specify what these might be.

Two respondents said that the Member should reconsider continuing with the proposed Bill.

NEBU
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