



PUBLIC PETITION NO.

PE01534

Name of petitioner

Clare Symonds on behalf of Planning Democracy

Petition title

Equal rights of appeal in the planning system

Petition summary

Calling on 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.

Action taken to resolve issues of concern before submitting the petition

Between 2000 and 2006 a coalition of civil society groups, including members of Planning Democracy, campaigned for a 'Third Party Right of Appeal' in the planning system – a change that would balance the existing right of appeal against the **refusal** of planning permission with a right of appeal against the **grant** of planning permission (for certain people in specific circumstances).

The campaign had various levels of support from political parties. In 2004 the then Scottish Government published a consultation on third party right of appeal. 86% of respondents were supportive but the government ultimately ruled out the introduction of a balancing right of appeal in 2005. Incoming administrations have inherited, and so far retained, this policy approach.

Administrations before and after the 2007 election stated that the revisions to planning procedure which were put in place (through the Planning (Scotland) Act 2006 and subsequent Regulations), with an emphasis on “upfront consultation” should enable members of the public with concerns about planning proposals to positively influence Applications.

As part of our work to promote public engagement in decision-making Planning Democracy has worked to increase the understanding of communities and individuals affected by the planning process and has campaigned to improve the rights of those whose lives are affected by planning decisions.

Since 2010, we have:

Spoken to over 100 communities and conducted case study research to inform a list of changes that would create a more fair and inclusive planning system – The lack of equal rights of appeal was seen as deeply unfair by the communities we have spoken to and those who attended a conference organised by Planning Democracy - 'The People's Conference' in 2012.

We successfully campaigned, with others, for a change to the 'rules of court' in 2013 to

make the only existing appeal route more accessible Judicial Appeal is the only route open to objectors where an Application is granted and it generally deals exclusively with administrative failures and not the merits of a decision. The change to the 'rules of court' made it easier for people going to court to gain a Protective Expenses Orders (PEO) in cases dealing with environmental matters. PEOs cap the costs of going to court to provide a level of certainty for petitioners but costs are generally capped at £35,000 – way out of reach of most people and directly at odds with the Aarhus Convention's provisions on access to justice [this general area is the subject of another petition: PE01372]. However, many objectors and “public interest” organisations such as charities are likely to be excluded from a PEO.

In January 2014 we submitted written evidence to the Local Government and Regeneration Committee during its scrutiny of the National Planning Framework 3 and revised Scottish Planning Policy which included recommendations to strengthen people's appeal rights.

We sent round a briefing to all MSPs attending the parliamentary debate on the NPF3 in March 2014 that included a recommendation for an equal right of appeal.

Most recently we met and corresponded with the Minister for Environment and Climate Change who confirmed the Government's existing policy on rights of appeal.

Petition background information

The need for this petition comes from a strong feeling of injustice from people in Scotland who have been affected by the decision to grant planning permission but who have had no right of appeal against the decision. This sense of injustice is compounded by the fact that an easy and accessible route of appeal is available to developers where there is a decision to refuse planning permission.

We believe this imbalance represents a fundamental injustice in the Scottish planning system which should be resolved, and Planning Democracy propose that the Scottish Parliament call on the Scottish Government to commission a review of appeal rights in the planning system with a view to providing equal rights of appeal.

The current inequality in rights of appeal can be seen as a historical artefact. The Town and Country Planning (Scotland) Act 1947 created the foundations of the modern planning system. This legislation removed landowners' right to develop their land in whatever way they chose, instead requiring them to seek permission from the Local Authority. This significant change in rights was associated with a right to appeal against a decision to refuse planning permission.

Since 1947 much has changed. We now recognise that development should serve the public good and contribute to sustainable development. The requirement for public consultation in the planning system recognises the fact that people who may be affected by a development have some rights to be heard. We believe it is now time to properly balance people's rights and provide the right to appeal a grant of planning permission for people who are affected by a development.

What difference would Equal Rights of Appeal make?

Create a more level playing field for all stakeholders: The overarching conclusion of our case study research is that while planners and politicians recognise public participation is important to the planning system, people do not feel listened to when it comes to key development decisions. The promises of better participation are not working in practice. Equal rights of appeal would provide a strong incentive to genuinely involve people in decisions about development. Many argue compellingly that currently there is an inherent lack of natural justice and equity between those proposing development and those that may be affected by it. To many it appears unjust that applicants are given a right to challenge a decision that appears to unreasonably constrain their rights in land, but this is denied to those who believe that their interests may be compromised by a proposed development.

Promote a plan-led system: one of the qualifying conditions for a right of appeal should be if the grant of planning permission is a clear departure from the Local Authority's Development Plan or the National Planning Framework. The Government has 'front-loaded' consultation to encourage people to get involved in shaping development plans. People who have made the effort to do so accept that, except in exceptional circumstances, planning applications are only granted when they are in line with the plan. This offer of certainty is the only reason why people would make the effort to engage at the start of the process. Unfortunately our case study research has examples of communities who have done everything asked of them in good faith but who have ended up having to live with an inappropriate and damaging development in their community which they had successfully opposed in the local plan. Equal rights of appeal would help to provide an incentive for people to get involved in development planning and promote a plan-led system.

Provide an alternative to Judicial Review: And equal right of appeal would give members of the public a reasonable route for an incorrect decision to be examined and, if necessary, revoked. This would address the unreasonable costs, for all parties, of the only current action available to the public – Judicial Review – as well as provide a method whereby the QUALITY and merits of the planning decision can be considered, as opposed to only the PROCESS which has been adopted. Judicial Review can, in most cases, only consider the process.

Ensure that all proposed development is made in the public interest: particularly in the case of major or controversial cases or where there may be perceived conflicts of interest on the part of the planning authority.

Response to common arguments made against Equal Rights of Appeal.

Some people argue that appeal rights will create delay and extra costs for developers. However, Judicial Review also extends the planning process considerably but it involves considerable more cost and complexity. A well designed appeal system would reduce the burden on the courts. The experience in the Republic of Ireland where a limited right of appeal was introduced, demonstrates that a planning system can "function effectively with even a liberal system of third party appeal". There is no evidence that investors have been deterred from investing in the Republic of Ireland as a result of the system of third party appeals (Ellis, 2009).

Another concern is that anyone and everyone will object. For example, organisations or businesses in competition with an applicant may appeal purely to sabotage the business interests of their competitor. However, this argument also applies to Judicial Review - indeed, most appeals which end up in the courts for Judicial Review are commercial (Collar 2013). Vexatious action such as this can be avoided by having restrictions on who can bring an appeal and only allowing appeals if certain conditions are met, for example: when the Local Authority has a material interest in the development or where development clearly departs from the Development Plan; as well as restrictions on who can bring an appeal. This risk of vexatious appeals can be avoided by establishing a screening process with qualifying criteria to ensure only reasoned appeals are lodged.

Overall, objections to Equal Rights of Appeal are typically not arguments against the principle but rather how it might work in practice. It is clearly important to develop qualifying criteria. We hope that in accepting this petition the Scottish Parliament will examine the principle of Equal Rights of Appeal in planning. Planning Democracy believe that consideration will show that eight years after the introduction of the Planning (Scotland) Act 2006, it is time to look again at the principle of giving members of the public equal rights and will ask the Scottish Government to consult on and review this matter.

Other organisations who the Committee might wish to ask for comment:

Scottish Environment Link
Royal Town Planning Institute

Communities whose situations in particular would have benefited from ERA:

Badenoch and Strathspey Conservation Group
Sustainable Shetland
Canonbie and District Residents Association

References:

Ellis G, 2009, Northern Ireland Planning Reform: Third Party Rights of Appeal
Collar N, 2013 Judicial review of planning decisions in Scotland

Unique web address

<http://www.scottish.parliament.uk/GettingInvolved/Petitions/PE01534>

Related information for petition

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NO

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1

Closing date for collecting signatures online

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