Local Government and Communities Committee
Planning (Scotland) Bill
Submission from Gordon Drummond

I understand that the Scottish Parliament is currently considering the Planning (Scotland) Bill. This submission is for the Scottish Parliament’s Local Government and Communities Committee, regarding Equal Right of Appeal. I write in support for equal right of appeal, in particular to ask that all evidence to be submitted should be made publicly available to those wishing to appeal, before final appeals are lodged, so that the substance and veracity of the evidence is able to be inspected and if necessary comment can be provided to amplify, support, or refute such evidence.

I take as an example the use of inadequate or absent evidence to inform decisions, in the case of this example with regard to atmospheric pollution: both the precautionary principle, and now increasing direct evidence of damage, are being ignored and the opportunity to adequately examine wrong decisions is insufficient.

I believe this attached case report strongly supports the need for an Equal right of Appeal. This is nothing other than a basic principle of legal equity.

The Cockburn Association newsletter, December 2017, on the judicial review of the planning permission for the India Buildings states:

“Finally, on air quality, the argument was that the hotel will exacerbate the "canyon effect" of high buildings trapping pollutants within an area where air quality is already a problem. The developers had engaged a consultant whose analysis led to a conclusion that the impact of the hotel on air quality would be minimal. While the Council's Environmental Services team had a contrary view, they had not undertaken the necessary research to back up their views. Lady Wise concluded that in these circumstances the decision makers were entitled to conclude that there was no reason to reject the application on air quality grounds.

The air quality issue exposes the disparities that are embedded at the heart of today’s planning system. Developers can afford to hire expert witnesses; those opposing them generally have to rely on what professional expertise is left in councils after a decade of redundancies and budget cuts.”

The consultant engaged by the developers had not conducted any experiments¹. The conclusion was not

¹ The Consultants submitted a document 1533637.500/B.0 to the planning committee. The consultants modelled conditions, based on council data. They made no measurements of their own. They provided no evidence at all that the data they had chosen to use were representative. Their report contains the following statement on page 10:

"The comparison of modelled with monitored NO₂ for the diffusion tube 48e indicates that the model is under-predicting concentrations by approximately 5%. A single comparison is not sufficiently..."
unsurprising, but also certainly arguable.

What evidence there was, was limited and one sided. In other words, there was no satisfactory evidence. The scientific aphorism that is applied here is “absence of evidence is not evidence of absence”. It’s the same argument that was used for years by the manufacturers of cigarettes: we have no evidence that cigarettes are killing people.

In regard to obtaining adequate facts to argue against council decisions, it’s very hard to get adequate information out of elected councillors about planning decisions. My example is below:

I had a long email correspondence about the adequacy of the air pollution evidence, with the chairman of the planning committee. I have to say that this left me with the feeling that there was an attempt to conceal the inadequacy of the evidence.

Email to chairman of planning committee, CEC

Dear Councillor Perry

I note that the Environmental Assessment report by [redacted] for Communities, recommended that planning permission for the proposed India Building's hotel be refused. This is consistent with the inevitable increase in air pollution resulting from increased diesel coach traffic that would be caused by building a hotel at this site. I am sure that you are aware that the site of this hotel lies within the central air quality management area, and that Edinburgh is regularly in breach of EU regulations with regard to permissible levels. The council plans for air quality management state clearly that local air quality is a key consideration in the integration between planning and transport.

It seems more than perverse that the planning committee can seek to approve a development that is demonstrably harmful and has been proscribed on environmental grounds, and without considering any alternative use for what is currently council land.

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robust as to rely on the comparison, nevertheless it indicates a good correlation of the model with measured concentrations. This is considered sufficient given the objective of the study is not to predict absolute concentrations, rather to determine the change is concentrations as a result of the development.

There are no monitoring stations for PM10 within the study area. As such, the model cannot be verified for PM10.”

The sources for these statements are to be found in the council planning documents:
15_04445_FUL-AIR_QUALITY_ASSESSMENT-3199360
15_04445_FUL-DM_SUB_REPORT-3346136
15_04445_FUL-SEPA_RESPONSE-3218382
In addition, the displacement of the health and social service provision from Cowgatehead Church will have an adverse effect on the poorest inhabitants of the area. I feel that those who are poor and don’t get to vote seem to be ignored by the Council. Well, I do get to vote: and I shall avoid voting for those who approve these plans.

I encourage you to think again about this proposal which will an adverse effect on the health of Edinburgh’s citizens and inhabitants.

His reply:

On behalf of Councillor Ian Perry, Planning Convener

Dear Mr Drummond,

Thank you for your comments.

Members of the Planning Committee have to balance a number of material considerations against each other when reaching a decision. In judging whether or not to grant planning permission, it is legitimate for the Committee to give greater weight to certain factors over others. In this case the air quality concerns did not, in the view of the Committee as a whole, justify refusing planning permission for the proposal where the benefits of the proposal, including the restoration of a category A listed building that is at risk, outweighed the concerns. I trust the above clarifies this matter.

I replied immediately: > On 5 Jul 2016, at 14:46,

Dear Councillor Perry

Thank you for your reply, which I received as a communication from you in your position as Chairman of the Planning Committee. I am not content that the matter has been clarified. I have several comments: After my enquiry about pollution, the first reason that I was given to discount this concern was that “SEPA were consulted and had no objections to the proposal.” I am sure you will agree with me that There clearly were cogent considerations relating to pollution. Why was SEPA consulted? This appears to be inappropriate, Is it a means of over-riding other opinion and to be served up to constituents who ask tricky questions?

Edinburgh council is breaking the regulations on atmospheric pollution. It is causing harm to its residents by failing to act effectively to reduce pollution levels. How can the Planning committee approve a scheme that will make this pollution – and the lawbreaking - worse?

I have no doubt that the Committee saw an advantage to restoring this building. I
suspect that many are more interested in finance than health. After all, illness is a drain on another, seriously challenged, budget. One might even suppose that ill people don’t see the link between their misfortune and council planning decisions. To show you the extent of the concerns, I hope you will have the time to look at the two attached papers about the harm caused by atmospheric pollution. They are of course a very small sample of substantial amount of evidence. I have selected them because they are striking and relatively straightforward. With regard to the BMJ Open paper: We already know that air pollution in the UK could cause 40,000 early deaths a year, from illness such as lung disease, heart attacks and strokes. The EU and WHO limit for nitrogen dioxide (NO2) is 40mg/m3, but levels can reach many times that in polluted cities like London. In this paper, researchers found that a 10mg/m3 increase in NO2 corresponded to a 9% increase in mental illness in Swedish children. For the same increase in tiny particulate matter (PM2.5 and PM10), the increase was 4%. Sweden has low levels of air pollution. A link with illness was found even below levels of 15mg/m3. Countries and cities such as ours have an even bigger challenge, as they will have to make great improvements in air quality to reach Sweden’s. Most air pollution studies show that the effects seem to be dose related. This research cannot prove that air pollution increases mental illness, but there is a plausible mechanism from generating inflammation in the body. Edinburgh based research by Professor Newby at the RIE has shown this in direct experiments, where the adverse effects are clearly demonstrated. The other paper is a clearly argued and convincing editorial from a highly respected journal. I also attach an interesting judgement, which I suspect you will not have the time or desire to read in full. However it contains the judicial opinion “the state, (has an) obligation to act urgently in order to remedy a real and continuing danger to public health as soon as possible.” And the judgement states: “That makes clear that, regardless of any action taken by the Commission, enforcement is the responsibility of the national courts.” The UK is in breach of EU law. In other words, Edinburgh Council Planning committee has taken a decision that in essence could be illegal, and thus could be open to legal action. I am writing to you as my councillor. I appreciate that your position as Chairman of the Planning Committee prevents your acting directly on my behalf: a feature of council rules that might encourage constituents not to vote for those who hold positions in field that they consider important. I would appreciate your comments on this, and the matters I have raised above.

I met with Councillor Perry and wrote the subsequent email dated 22/09/2016

Dear Councillor Perry

Thank you for the opportunity to meet with you last week and hear about the planning process. It gave me an insight into the processes that are involved. However I still haven’t received the documents that we discussed, that I was unable to obtain from the council website. You agreed that you would ask for these to be forwarded. They were:
The planning application 15/04445/FUL which contained a report on environmental factors which include air quality.

The representation from SEPA

In addition any other material directly provided by the Air Quality team to the planning committee officer regarding this submission would be helpful.

I cannot find a Council Air Quality Action Plan for a period more recent than 2008-2010, although a progress report was published in 2015. In this report, I note the following comment, which is germane to the questions I put about the planning process:

“The current AQAP also highlighted a failure to address cumulative impacts associated with development. Therefore, to gain a more accurate understanding of cumulative impacts, a Policy Initiative to develop a Land Use and Traffic model capability was included in the AQAP. No progress has been achieved with this initiative, primarily due to the high capital and revenue costs involved. However, a National Modelling Framework is proposed in the draft Low Emission Strategy for Scotland 2015 which aims to address this issue.” (para 1.1, page 9)

Has this Policy Initiative been abandoned?

The report’s conclusions include: “It is recognised that the Council’s current AQAP requires to be revised to address areas of concern within new and extended AQMAs. This work is being progressed.” (section 6, page 44)

Who might be able to let me know if the current AQAP has now been revised?

I apologise for this litany of questions. You may be able to direct me to a council officer who could answer them.

However by this time [redacted] as you can read:

Dear Mr Drummond,

I refer to your meeting with Councillor Perry about the above site. Here is a link to the planning portal - https://citydev-portal.edinburgh.gov.uk/idoxpa-web/search.do?action=simple&searchType=Application

Attached is an email from an Environmental Health Officer who has provided links on air quality data.

Kind regards,
(The attached email was unable to be opened)

Mon 26/09/2016 16:58 DRUMMOND Gordon

If you have any specific questions about air quality monitoring please contact [redacted] directly. In the previously attached email she explains that the most recent update report is with the Scottish Government awaiting approval however she may be able to discuss its content informally.

Kind regards,

[redacted]

Needless to say I have had no replies to emails that I have sent to [redacted].

In summary: no response from my elected representative concerning serious concerns regarding the public health implications of a planning decision.