Local Government and Communities Committee

Planning (Scotland) Bill

Submission from the Residents of Kirkburn

Regarding your current ‘call for evidence’ we wish to make the Committee aware of our personal experience of certain areas where current planning legislation is open to abuse, in the hope that you will give due consideration to how appropriate amendment of the new Planning (Scotland) Bill and related secondary legislation might address this situation.

We believe that the ‘personal experience’ evidence cited here is of direct relevance to the principles outlined in current Scottish Government proposals for ‘Reforming the Planning System’, in particular to Proposal 8 for ‘Improving public trust’ which includes a statement that ‘we propose removing the fee exemption for repeat applications and improving planning enforcement’.

Fees

For a number of years, we, the residents of the small hamlet of Kirkburn in the Scottish Borders, as well as the local planning authority, have been plagued by over 50 planning applications for the same area of neighbouring land. These have included such proposals as a ‘temple’, an ‘animal flotation unit’ etc., as part of a process that the applicant refers to as ‘the game’.

It is our understanding that this ‘game’ is facilitated by the current fee structure that allows that where a planning application is refused, the applicant is entitled to a ‘free-go’ provided that the repeat application of made within 12 months of the refusal. We would therefore request that, in keeping with ‘Proposal 8’ cited above, you examine this provision, which clearly involves a significant burden of costs and resource for planning authorities, and the possibility of providing for its removal in the drafting of this Bill, or in secondary legislation.

Enforcement

In July of 2017, this same applicant erected a large scaffolding structure adjacent to our properties with no other purpose than to cause aggravation. An enforcement notice subsequently served by the planning authority after numerous delays has now been circumvented by a retrospective planning application, refusal of which will then be subject to appeal and the further delays involved. The indications are, therefore, that the process of having this structure removed will take close to one year. It must surely be apparent that this points to significant weaknesses in current enforcement provisions, of direct relevance to the current lack of public trust that Proposal 8 seeks to address.
In this regard, we would ask the Committee to consider what purpose is served by allowing a retrospective planning application to be made following the serving of an enforcement notice, with all the additional resource and cost implications for the planning authority. Of direct relevance to this concern, the recommendations of the December 2016 report by Land Use Consultants Ltd, on 'Enforcement in Scotland: research into the use of existing powers, barriers and scope for improvement', commissioned by the Scottish Government Planning and Architecture Division Planning, pointed to relevant legislation in England which ‘empowers an authority to decline to determine a retrospective application for planning permission for the development if any part of the land relates to a pre-existing enforcement notice, or the application relates to matters specified in the notice as a breach of planning control. This closes a commonly-exploited loophole that enables developers to avoid taking action specified in an enforcement notice by submitting a retrospective planning application’.

Public confidence in this approach could be further strengthened by defining locally a target timescale for determining any subsequent appeal against an enforcement notice.

This same research report also recommended consideration of ‘the need for substantially higher fees for retrospective applications for planning permission, ....as a more effective deterrent to deliberate breaches’.

Further to this, it is our understanding that, following the removal of any such structure there is nothing in current legislation to prevent a structure with minimal changes from being immediately re-erected, thus initiating the whole lengthy and expensive procedure. By any measure of common sense, this surely is intolerable. Again, therefore, we would request that you ask your planning officials to consider how enforcement provisions might be strengthened in this regard.

In dealing with the issues raised here, we have liaised extensively with local authority planning enforcement officials, who have made it abundantly clear to us that their scope for action in situations such as these is severely constrained by the limitations of the powers currently available to them. Indeed the aforementioned report cites the concerns of enforcement officers about ‘lengthy delays in implementing formal action’, and about ‘the ability of developers to ‘play the system’ where they have appropriate knowledge or advice’. We hope, therefore, that you will give serious consideration to how these powers might be strengthened in this and resulting legislation.

As peace-loving, law-abiding ratepayers, we look to legislation to protect us from the excesses of those who seek to disrupt our way of life. We hope, therefore, that you will accept this submission as evidence that current planning legislation has significant failings in this regard, and will take this opportunity to address these concerns as best you can.
Thank you in anticipation of your consideration of this evidence.

Dr Arthur Johnston