Local Government and Communities Committee

Planning (Scotland) Bill

Submission from St Andrews Environmental Protection Association Ltd

From our experience in challenging a planning decision into procedures regarding the location of a new secondary school, we would like to submit the following and we refer to the absence in the proposals of any improvement in the ability of individuals and communities to appeal against a planning decision which is so clearly against policy or otherwise so flawed that it should not be allowed to stand.

We note that applicants for planning permission can appeal, without providing grounds, and at no cost (unless they choose to pay for professional advice), to the DPEA. This should be contrasted with the absence of any similar appeal process for objectors, even in any limited way, for instance when the application fails to meet the provisions or policies of the development plan. The only possible process of redress for objectors is to seek a judicial review. While the consultation does not seek case information, this can sometimes be informative, and we provide the following account of the reality of this judicial review process.

In the case in point, the development was a local authority’s own application. Objectors to this major planning application, which was acknowledged to be damaging to the environment, were clearly up against a powerful adversary with significant professional and financial resources, when the local authority granted planning permission to itself. Challenging this decision through a judicial review, although covered by the provisions for “free or inexpensive access to justice” of the Åarhhus Convention, cost in the region of £110,000 for our community organisation’s own expenses alone – and would have been significantly more, if the case had been lost, even when capped by a protected expenses order.

It should also be noted that any Judicial Review could only be argued on the basis of flawed procedure rather than the planning merits of the case, as it would if decided by the DPEA for an applicant’s appeal. In the event, the Court, at the appeal stage, quashed the planning permission after a process that lasted for nearly two years and commanded many hours of legal time. The cost to the community group, even with an award of expenses, was over £70,000. It must be clear that such a time consuming and costly process is extremely damaging to both parties in a judicial appeal. It must also be apparent that it is against natural justice that there should be such a disparity between the ability of applicants and objectors to access an independent tribunal when there are significant grounds for this. There is also an issue of social justice. Many socially disadvantaged communities do not have the resources to enter into a complex and costly judicial review.

We therefore consider that if the new Planning Act is to have any credibility as a fair and just piece of legislation, it must have provision for both parties to have a no-cost or low-cost access to an appeal process that is judged on planning grounds. We consider that grounds of appeal for applicants should be that their application has been refused but is in accordance with the development plan, while for objectors, that the application has been approved against the provisions and policies of the
development plan. This would provide an even playing field, for both parties, be in accordance with natural justice, and bring Scotland into compliance with all three pillars of the Æarhus Convention.

Importantly, it would also reflect the primacy of the Development Plan, reflect the Intention of the Bill to front-load the planning process, increase confidence in the consultation process for the plan, and have the additional benefit of improving the quality of planning decision-making by subjecting approvals as well as refusals to independent review when they met the criteria for a competent appeal. By limiting the many current appeals which are an automatic response to planning refusals, extra capacity to deal with community right of appeal could be established in the DPEA.

Yours sincerely,

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