

## **EAST AYRSHIRE COUNCIL**

### **DEVELOPMENT SERVICES COMMITTEE - 24 AUGUST 2004**

#### **PETITION BY DUNDEE CITY COUNCIL TO THE SCOTTISH PARLIAMENT RE PLANNING APPEALS**

##### **Report By Executive Director Of Development And Property Services**

### **1. PURPOSE OF REPORT**

- 1.1 To respond to a request by Dundee City Council regarding a Petition by them to the Scottish Executive to amend the current planning appeals legislation to give Councils the final decision on the planning merits of an application which is not "called-in" by Scottish Ministers.

### **2. BACKGROUND**

- 2.1 Following a unanimous decision by Dundee City Council to refuse a planning application for an amusement arcade in Dundee, the applicant appealed and the Reporter approved the application. The Council subsequently petitioned the Scottish Parliament's Public Petitions Committee to allow Councils to be given the final decision (and not a Reporter), on the planning merits of the case.
- 2.2 The concerns of Dundee City Council relate to the ability of a single reporter to disagree with a decision taken by democratically elected members. They consider there to be a democratic deficit whereby an unelected civil servant has the "last bite of the cherry" on the planning merits of an application. They also take the view that this democratic deficit is not mitigated in any way by the fact that the unelected Reporters are acting under the delegated powers of Scottish Ministers.
- 2.3 The petitions committee has asked Dundee City Council to gather the views of member Councils of COSLA, and for COSLA to then consider if the issues are of significance to the majority of their members. The committee are also consulting the Scottish Executive, The Royal Town Planning Institute and Planning Aid.
- 2.4 The Scottish Executive has no plans to review this aspect of the planning system as the right of appeal is a central and founding element which is highly valued by participants. The majority of appeals are dismissed (67% in 2002/03) and delegated procedures were introduced to streamline decision-making and ensuring that decisions would be swift and sound involving a thorough consideration of planning merits.

### **3. CONSIDERATION**

- 3.1 The right to an appeal has been a basic right introduced since the inception of Planning in 1947 in compensation for what was seen by many as a restriction on an individuals right to develop land. Whilst the “democratic deficit” is fully understood the right to an appeal is indeed a founding element in the planning system and ensures openness, accountability and independent scrutiny of decisions. Indeed the right of appeal was recently upheld as a critical feature of the ability of the planning system to withstand a challenge under Article 6 (Right to a fair hearing) of the Human Rights Act (County Properties v Scottish Executive).
- 3.2 Reporters are required to take account of all relevant issues including the terms of the development plan, policy guidance, views of local residents and any other relevant evidence. Failure to do so can be challenged in the Courts. On balance it is considered that this independent review of the planning merits of the case is an important feature of the planning system which should be retained.

### **4. LEGAL AND FINANCIAL IMPLICATIONS.**

- 4.1 There are no legal or financial implications.

### **5. RECOMMENDATIONS**

- 5.1 It is recommended that the Committee agrees;
- i) not to support the petition by Dundee City Council to amend the planning appeals legislation.

**James Lavery**  
**Executive Director of Development and Property Services**  
9 August 2004  
AN/IMB

### **LIST OF BACKGROUND PAPERS**

1. Letter and enclosures from Dundee City Council dated 23 July 2004.

Anyone wishing to inspect the above papers please contact Alan Neish on (01563) 576767.

Implementation Officer: Alan Neish