

EAST AYRSHIRE COUNCIL

DEVELOPMENT SERVICES COMMITTEE - 29 JUNE 2004

CONSULTATION BY SCOTTISH EXECUTIVE ON RIGHTS OF APPEAL IN PLANNING

Report by Executive Director of Development and Property Services

1. PURPOSE OF REPORT

- 1.1 The purpose of this report is to consider a response to the Scottish Executive on their proposals to widen the rights of appeal in planning to third parties.

2. BACKGROUND

- 2.1 The Scottish Executive are committed in the Partnership Agreement to consult on new rights of appeal in planning cases where:

- the local authority involved has an interest
- the application is contrary to the local plan
- planning officers have recommended rejection or
- an Environmental Impact Assessment is needed

- 2.2 This commitment to consult has to be seen in the context of the high level commitment that “we will improve the planning system to strengthen involvement of communities, speed up decisions, reflect local views better and allow quicker investment decisions.”

- 2.3 The consultation considers whether there should be a third party, right of appeal and if so, how it should operate. Given that the paper assumes no change to the current role of the Courts and the Public Services Ombudsman the issue is whether there should be a review of the planning merits of a case rather than any procedural issue. The outcome of this consultation could lead to one of the most significant alterations to the land use planning system since its introduction in 1947.

3. CONTENT

- 3.1 The consultation asks a series of questions which are considered in Section 4 but sums up the arguments for and against as follows, (pointing out that no comments thereon should be taken as being represented as that of the Executive).

For Third Party Rights of Appeal

- creates a “level playing field by giving the same right as that of the applicant”
- makes Authorities accountable for all decisions i.e. approvals as well as refusal
- encourages developers to engage with the Community at an early stage to obtain their support
- improves the quality of decisions especially those contrary to the Development Plan
- enables more involvement by local people, particularly as regards the cumulative effect of development on a local area
- ensures compliance with the European Convention on Human Rights and the Aarhus Convention on access to information, and public participation in decision-making

Against Third Party Rights of Appeal

- a further procedure would add delay and uncertainty in an already slow system
- the proposal is contrary to the Partnership Agreement on quicker investment decisions
- with opposition to TPRA in England and Wales such a right in Scotland would deter inward investment by making Scotland a harder place to do business than other parts of the UK
- TPRA would be abused through unjustified opposition to development proposals intended to serve the wider public interest
- TPRA could delay important public sector development as well as those in the private sector
- objectors might not be representative of the wider community
- a much needed facility could be delayed by a single objector
- TPRA would undermine local democracy and the role of elected members
- the proposal would not create a level playing field as it would allow communities to challenge a decision already made on their behalf by the councillors they elected
- the taxpayer would bear the cost of funding additional casework; applicants would incur additional costs defending appeals; public sector bodies would have additional costs as would third parties themselves

4. CONSIDERATION

4.1 The consultation poses various questions and suggested responses are shown in bold.

4.2 Question 1: Are the arguments for and against fairly summarised or are there other arguments that should be raised?

The arguments are fairly summarised but they do not give recognition to the fact that our own Authority already gives an opportunity for a hearing of objectors. The arguments do not address the real conflict between speeding up decisions and involving more people that originates in the Partnership Agreement.

4.3 Question 2: Those that wish TPRA wish so for 3 broad reasons

- Principle
- Concern about aspects of the planning system and
- A desire to overturn decisions; is this accurate?

This is fairly accurate but misses the point that decisions are complex and controversial and that certain parties will never be satisfied with the outcome. It is also easy to criticise a system when one has no responsibility for its proper implementation.

- 4.4 Question 3: If TPRA were to be extended should it be restricted to all or some of the 4 categories identified above in para 2.1?

The categories selected are not supported for the following reasons. Procedures already exist to give an independent view by the Scottish Executive on decisions contrary to the development plan and on sites wherein there is an local authority interest. This already provides a safeguard and, given the privacy of the development plan, any decision to the contrary would undermine its status which is important in guiding investment decisions. In the context of applications subject to an EIA, the bodies responsible for providing views on a wide range of environmental effects provide the required professional input, and again, certain categories of application require to be referred to the Executive. The idea of TPRA when a decision goes against an officer recommendation is at complete odds with local democracy and could alienate officers performing their professional role.

- 4.5 Question 4; Which decisions should be capable of appeal to the Scottish Ministers?

None, because of the arguments against TPRA identified in Section 2.1 above.

- 4.6 Question 5; Which third parties should be able to appeal and in what circumstances?

None, for the reasons identified in Section 2.1 above and certainly not anyone who is not directly affected by a development.

- 4.7 Question 6; Do you support TPRA in principle?

No, for the reasons identified in para 2 above with emphasis on the adverse effect on local democracy, the limitations that would accrue to the economic development of an area; and finally as any benefits to a third party would be outweighed by the ability of an already over stretched and under resourced system to meet the costs.

- 4.8 Question 7; How do you feel the planning service at both planning authorities and Scottish Executive would be placed to manage the likely increase in workload?

It would simply not be possible to absorb the increased workload which could vary between 550 to 3,500 cases per annum in Scotland. The latest recruitment survey from the Society of Directors of Planning identify unfilled vacancies of 85 posts due to the lack of qualified staff. The existing system without TPRA is already slow and unresponsive due to the ever increasing workload and the impact of additional environmental regulation against this background of staff shortages. This applies to local authorities, Scottish Executive and SEIRU.

- 4.9 Question 8; Are there any implications for the attractiveness of planning as a career if there were to be a significant increase in appeal caseload?

There would be many and varied opportunities for planners but the existing shortage of skilled staff would take many years to address. At the end of the day, no matter how many people are involved, a decision will still require to be taken and people may still be aggrieved at the final outcome.

4.10 The remainder of the paper concentrates on how to implement such a proposal. This is dealt within the attached Appendix given the strong objection to the whole principle.

5. FINANCIAL, PERSONNEL AND LEGAL IMPLICATIONS

5.1 None arising from the process of consultation but if TPRA is implemented there are very serious financial and personnel implications which would have to be addressed before any changes comes into force.

6. RECOMMENDATION

6.1 It is recommended that Committee:

- i) strongly oppose the principle of TPRA for the reasons identified in this report.

James Lavery
Executive Director of Development and Property Services
4 June 2004

LIST OF BACKGROUND PAPERS

1. White Paper on "Your Place Your Plan" 2003.
2. Consultation Paper on Rights of Appeal in Planning 2004.

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

Implementation Officer: Alan Neish

APPENDIX 1

SUGGESTED RESPONSES TO ADDITIONAL QUESTIONS

Question 9; Should a fee be payable to object to a planning application and/or to lodge an appeal against a planning decision? If so, what do you think would be an appropriate level of fee?

Yes, a fee should be paid by an objector in the interests of creating the level playing field suggested by those proposing TPRA. The fee should be variable to address the differing costs incurred by appellants and the authority and the differing costs of holding hearings and inquiries. Costs should also be set at a level that dissuades spurious objections. Expenses should also be payable by any party in the event of unreasonable behaviour.

An applicant already bears some of the cost of processing an application and has to take a considerable risk which would only be exacerbated by TPRA.

Question 10; Should the Scottish Ministers retain their role in deciding particular planning appeals, or should SEIRU decide all appeals?

If a decision is democratically taken by a local authority and is then subject to appeal, it is inappropriate for Ministers to overturn the reporter's recommendation unless it is in the national interest.

Question 11; Would the introduction of mandatory public hearings in defined circumstances increase public confidence in planning authorities' decisions?

Public hearings are useful in increasing public confidence in the authorities decision and in the interests of transparency and awareness of the planning system. They are resource intensive but would be preferred to TPRA. Experience in this Authority is positive but there are always some dissatisfied customers because to them it is the decision that is important and not the process of arriving at a decision.

Question 12; Would extending the circumstances in which the Scottish Ministers are notified, to include all development plan departures, sufficiently address concerns about decisions being made by planning authorities against the terms of development plans?

Yes, but this would require to be implemented as part of the wider review of development plans as these generally contain many criteria based policies which could trigger a referral.

Question 13; Would it be appropriate to introduce a screening process for planning appeals?

Whilst opposed in principle to TPRA, anything that minimises the number of appeals would be welcomed. The desire to have a tight programme is also supported but there are still not enough staff resources available to support such a system.

Question 14; Are there circumstances in which any right to appeal against planning decisions should be withdrawn?

This implies that TPRA should be allowed with a power of veto on special projects favoured by the Scottish Executive which would be quite inappropriate in terms of creating a level playing field.

Question 15; (a) Please give us your views on each of the models outlined in this section. (b) Can you think of any alternative package of changes to the planning system to ensure a system which is both fair and effective. (c) How would each of these models (and any other package you suggest) impact on the resources and objectives of you or your organisation?

Model 1; New Right of Appeal for Third Parties within the stated categories. Totally opposed in principle due to conflict with speeding up decisions and the detrimental affect on regeneration and economic development of Scotland. There are not enough trained professionals to deliver the current system and this will only exacerbate this to the detriment of all development proposals.

Model 2; Continue with ongoing programme of modernisation of the planning system without introducing a new appeal system. This option is supported by the Council. The Council has previously objected to the proposal to transfer responsibility for neighbour notification to local authorities due to resource implications.

Model 3; No new appeal system; introduction of mandatory public hearings in specific circumstances. This option is currently used in this Council and is thus supported provided that a code of practice is adopted to ensure equity and efficiency of process (see attached hearing procedure).

Model 4; New Appeals system with screening and additional changes. Opposed for the same reasons as in Model 1.