

Briefing

Third party rights of appeal in the planning system

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Shelter

Third party rights of appeal in the planning system

Introduction

The Scottish Executive has consulted on whether the planning system should be reformed to give “third parties” (for example, neighbours) the same or equivalent rights of appeal as developers.

This paper sets out Shelter’s position.

There is a case for third party rights of appeal (TPRA). There is certainly an argument that the presence of TPRA might focus attention on getting better decisions at consent stage. There may also be an argument that it will strengthen the credibility of the planning system overall. Finally, it will recognise that people do not stop objecting to a proposed development once it has been granted consent: TPRA will give that objection somewhere formal to go and that seems better than the often bitter disputes which linger for months, sometimes years, after planning permission is granted.

So Shelter supports the introduction of TPRA in a limited set of circumstances.

TPRA and “Social Development”

However, the level of such support depends on the design of TPRA. It seems that much of the motivation around TPRA is to protect communities from aggressive, often commercial and sometimes lucrative large-scale or disproportionate development. However, development is also that which is done by community-based housing association or co-operatives or voluntary organisations seeking to provide services for disadvantaged people. Measures which affect development of one kind (say supermarkets) will also impact on development of all kinds, as the planning system per se takes no account of social need. In fact, we are concerned that, for four specific reasons, barriers to development could, without careful design, impact on socially needed development in a disproportionately adverse way. These reasons are:

1. One of the four proposed criteria for TPRA to be triggered is that the local authority itself has an “interest” in the development. The local authority interest criterion will affect far more social development than commercial development: depending on how it is defined, it may affect all social development.
2. The groups for whom social development is intended are often subject to stereotype and prejudice and therefore are more likely to attract hostile views when planning applications are submitted.

3. Linked to the above point, these groups are often among the least powerful in society and have fewer resources than wealthier social groups who may be among those who object to such development¹.
4. Larger or commercial developers have the resources to hire consultants and other assistance to combat opposition and overcome barriers to developments. Small voluntary organisations do not.

For this reason, the design of TPRA is important. If it is not right then the consequences of TPRA might be quite different from the intentions. This is particularly important at a time of significant change in the housing and homelessness sector. Firstly, the landmark Homelessness Task Force (2002) has unlocked historically significant additional amounts of money for homelessness services. Secondly, since September 2002, local councils have had new duties to provide single homeless people with temporary accommodation: this has prompted councils to look at providing new forms of accommodation. Thirdly, the Housing (Scotland) Act 2001 opens up the transfer of development funding from Communities Scotland to local authorities: this is important in looking at development in which the authority has an “interest”. Finally, the Supporting People initiative has greatly increased the number of voluntary organisations who now receive revenue funding from local authorities.

Designing TPRA

Shelter proposes three main ways in which TPRA can be implemented without damaging social development.

First of all, as a general point, the period in which appeal rights can be exercised should be reduced not just from 6 months to 3 months (as suggested by the Scottish Executive) but right down to 28 days. We would also suggest that intending appellants should submit of notification of intention to appeal within 14 days of the planning application being determined by the local authority.

Secondly, as above, an important trend of the last two decades has been the increasing extent to which local authorities have acted as the enablers of development rather than the direct providers: for example, by providing funding or land for organisations building for or providing support to disadvantaged groups.

In planning terms, local authority interest has to be quite specifically defined. The Scottish Executive consultation paper (4.5.1) suggests that interest may be defined as including

¹ This view tends to be echoed in Ireland where Ellis (2002) has found that higher socio-economic groups make greater use of appeal rights than others.

any circumstances in which development follows from a partnership in which the local authority is involved. Since almost all social development comes from just such a partnership (indeed that has been the strong policy exhortation since at least the late 1980s) that would mean almost all social development would be subject to TPRA.

Furthermore, it would call into question attempts to negotiate with developers to include a proportion (say 25%) of housing on a site as affordable. If such developments involve a developer finding a housing association partner then the development is potentially liable to appeal (especially with transfer of development funding from Communities Scotland to councils). This could have two effects: one would be to make the prospect of partnership less attractive to a developer; the second would be that the development's "affordable" component would be provided by the developer itself. This is less satisfactory than a housing association being involved, with a specific remit to build and retain homes for people on lower incomes.

At the very least the definition of local authority interest should be limited to being "significant financial or property interest".

Thirdly, even modest changes to the "local authority interest" criterion would still leave a lot of social development subject to appeal. A more wide-ranging change is needed. In section 6.8.18 of the consultation paper the Scottish Executive invites thoughts on types of development where appeal rights for third parties might be withdrawn.

Shelter suggests that certain types of social development, which is subject to statutory duties (such as homelessness) or a national strategic priority (homelessness again but also, say, accommodation developed under the national strategy on domestic abuse) should be seen in this light.

The criteria would have to be carefully drawn up to prevent its use in all sorts of situations where it could be abused. Shelter favours criteria on specific sets of circumstances coupled with a general power to determine new criteria in future circumstances.

Examples of criteria working could be as follows:

- a) **Development designed wholly or mainly to fulfil statutory duties part II of the Housing (Scotland) Act 1987 (ie the homelessness duties).**
- b) **Development funded under the relevant sections of the Housing (Scotland) Act 1988 or the Housing (Scotland) Act 2001 (which give public bodies the powers to grant-aid housing associations and co-operatives).**
- c) **Development designed to the further the implementation of a programme designed to assist disadvantaged social groups.**

In the case of the third criterion, because it is not linked to a specific statutory provision, there would have to be rules governing its use. For example, in the case of accommodation for women leaving abusive situations, the criterion could be triggered by ministerial power during the parliamentary debate on a national strategy for domestic abuse. There would be other such examples.

Clearly, the most far-reaching option would be withdrawal of TPRA in those situations. It may be that withdrawal should sit alongside other options which would also ensure that social development does not lose out: for example, a fast-track procedure if appeals are to be heard by the Scottish Executive Inquiry Reporters Unit.

Conclusion

Shelter supports limited third party rights of appeal as part of a package of reform by which the planning system becomes more responsive to social (as opposed to purely land-use) needs. There are legitimate concerns as to the impact of TPRA on disadvantaged social groups but we have suggested ways in which they can be addressed while still retaining TPRA as a means of increasing confidence in the planning system.

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