

Proposed Third Party Right of Appeal (Scotland) Bill
Response to Consultation Paper from Moray Friends of the Earth

Question 1: What are your general views on the introduction of a statutory procedure to allow third parties the right of appeal in planning decisions?

We are in favour of the introduction of a third party right of appeal (TPRA). This will go some way to establish equality into the process of appeals in planning decisions. Local communities should be given every opportunity to be involved in their own environment and the decision making process which affects their lives. TPRA may be an empowering tool for some communities and initiate a culture shift in increasing involvement in the political and planning process.

Question2: What are your views on certain restrictions being in place or do you believe that there should be no restrictions on who can appeal?

There should be restrictions placed on who can raise a TPRA. Individuals should have a right to appeal if they have raised an objection to the original planning decision or can demonstrate that there is good reason why they did not raise such an objection at the appropriate time. A good reason could include being unaware of the planning application particularly if the complainant has an interest in the adjoining land.

Another element to be considered is if new matters have come to light which were not available to potential objectors when the original planning application was made. In these situations individuals should also have the right to appeal.

In order to justify this restriction it is important planning applications are subject to greater publicity and individuals are made more aware of their rights concerning planning matters and the grounds for objecting to planning applications. The sanction of imposing fines on developers who do not inform all neighbours may also be considered.

Question 3: What are your views on the proposal to follow the Irish model for third party appeals? Are you aware of any other models that you believe would be more suitable, if so can you provide details of them?

The Irish model is, for the most part, a good starting point for an equivalent Scottish act. Another model to consider is the *Zetland County Council Act (1974)* which allows third parties 28 days to appeal to the Scottish Executive on works licences for seabed operations around the Shetland Isles.

Question 4: I propose there should be a fee for third part appeals which is set at £20. What are your views on the level of the fee? Should it be set higher for businesses and commercial organisations with a reduced rate for charitable organisations and individuals?

There should be no fee levied. A low level of fee would not be sufficient to prevent malicious or pointless appeals and a high level of fee would act as a disincentive for aggrieved individuals or communities. In any case, placing a financial obstacle in the path of those seeking to appeal a perceived injustice is unacceptable in any instance including planning decisions.

Instead, a screening process on appeals could be introduced. This could determine if the case can be subject of a TPRA and if the grounds for the original objection and the ground for the appeal are material considerations under planning law.

There are currently precedents for screening legal appeals. Social Security Appeals to the Commissioner are currently screened before being accepted as a valid appeal.

Question 5: What are your views on the proposal that Scottish Ministers should be responsible for handling third party appeals against planning decisions? If not, can you suggest an alternative?

The SEIRU are best suited to handle TPRA's. However there have been concerns raised over their independence from the Executive. In the cases where the Scottish Executive calls in cases there could be conflicts with EHCR Article 6 if the body overseeing the appeal are not seen to be sufficiently independent from the Executive.

Another issue to be addressed is the current under funding of the SEIRU which is already overstretched and would need extra financial resources to oversee the process of TPRA.

Question 6: What are your views on which cases should be subject to third party right of appeal?

Friends of the Earth Scotland have drawn up a list of criteria which would apply to the use of TPRA. These are:

- i. Where the planning decision is contrary to the development plan;
- ii. Where the LA has an interest in the planning decision;
- iii. Where the planning application is accompanied by an Environmental Impact Assessment;
- iv. Where the planning officer has recommended refusal of planning permission to the LA.

An appeal period of 28 days for written submissions of appeals should be sufficient,

Question 7: Do you believe that your authority or organisation will be affected by resource or financial implications if third party appeals are introduced? If so can you please provide an indication of where these costs would occur and an approximate estimate of their level (if possible)?

For appeals decided by written submissions this is not relevant to our group. For appeals decided by Public Inquiry there would be the potential for substantial financial implications for community groups. This potential inequity could be lessened by ensuring that appeals are normally decided by written submission and the Reporter should have some discretion in opting for written submissions rather than a full Public Inquiry.

A Public Inquiry should be reserved for developments which are large in scale or impact, are highly controversial or are subject to contradictory appeals.

Question 8: What are your views concerning any ECHR implications in the proposal?

We may currently be in breach of Article 6 (right to a fair and public trial within a reasonable time) by not allowing a fair hearing for planning matters. The introduction of TPRA would certainly compliment the spirit of this section of the EHCR. Article 1 of Protocol 1 (right to peaceful enjoyment of possessions and protection of property) may have implications as TRPA might be seen as a mechanism preventing peaceful enjoyment of property ie developing their property. However this could be overcome if the appeals process is speedy and not allowed to be drawn out. This potential for delays in the process could have implications to Article 6 and therefore is a reason why the decision making body should be properly resourced to carry out its remit.

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Moray Friends of the Earth