

*improving living in scotland*



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**Response to Scottish Executive consultation on  
Rights of Appeal in Planning**

**Impact on Scotland's Residential Development Industry**

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1. Homes for Scotland is the representative membership body for the home building and residential development industry in Scotland. Our member companies build over 90% of all new homes in Scotland and the industry is the largest user of the planning system in Scotland.
2. Scotland is facing a housing crisis. That is not only the view of Homes for Scotland and its member companies, it is also a view emerging from the Local Housing Strategies being prepared by local authorities across Scotland and it is a view being articulated by the Scottish Federation of Housing Associations, the Chartered Institute of Housing and many other organisations involved with housing on a day-to-day basis.
3. The recently published Report of the Barker Review<sup>(1)</sup> further confirmed the UK's housing supply crisis, making it clear that the supply of housing is constrained by a number of factors. The Report's most damning indictment is reserved for the planning system which is condemned for being too complex with timescales that are unacceptably long and requirements that can be used to prevent development of housing. The report by Professor Colin Jones for the Chartered Institute of Housing in Scotland<sup>(2)</sup> amply illustrates that the findings of the Barker Review also apply to Scotland.
4. The proposed introduction of a Third Party Right of Appeal (TPRA) in Scotland promises to add significantly to the crisis facing the housing market by further stifling development at a time when it is most needed.
5. Experience in Scotland indicates that most large sites attract objections, whilst they are going through the application process. In countries where TPRA exists, there is evidence that almost every application of any materiality attracts third party objections.
6. Developments will be put at risk of not proceeding and investment lost by the addition of substantial extra costs and further delays in the planning process. At a human level the housing crisis will deepen, fewer new homes will be provided and people in need of a home will not be able to find one.
7. Consultation with our member companies has highlighted concern over:
  - increased delays - at present the planning process from inception to start of development commonly takes over four years and "test" runs on projects currently in the pipeline have shown that additional delays generated by a TPRA will be a minimum of 12 months but could extend to 18 or 24 months.
  - the introduction of greater uncertainty over where and when the house building industry would be able to undertake investment.

- increased developer costs - based on the costs of a normal appeal involving a hearing with legal and planning advice together with expert witnesses and including management time, the costs involved in defending a TPRA are estimated to be in excess of £150,000. Whether a project is for 10 or 200 units, the time and overhead costs incurred in TPRA will be similar. An additional cost of this magnitude could make many small developments unviable.
  - increased public sector costs – as well as developer costs, there will be substantial increased costs to the public purse at both the Scottish Executive and Council levels as well as staffing problems at both levels.
8. Homes for Scotland would urge Ministers to reject TPRA. There are four main reasons to support rejection. These are:
- The introduction of a TPRA has been rejected in England and Wales. Should it be introduced in Scotland there can be no doubt that companies seeking to invest in the UK, or seeking to expand their existing operations in the UK, are likely to give Scotland a wide berth. At a time when the Scottish manufacturing sector is in danger of slipping back into a recession, a TPRA would further exacerbate the sector's difficulties.
  - A TPRA would also apply to major community developments such as new schools, hospitals or nursing homes, slowing down their construction. For example Midlothian Council has agreed a major extension to Pittendriech House Nursing Home near Lasswade in a bid to tackle a beds shortage. Regional list MSPs, however, are now calling for people to object as the building is in the green belt. And recently, protests were received against the City of Edinburgh Council's plans to build a much needed replacement for the badly run down Craigroyston secondary school on the basis that "the children would make too much noise!"
  - A TPRA would add to the cost of new homes and would make it more difficult for first time buyers to get on the first rung of the housing ladder. Thirty years ago many young people would place their names on a local authority waiting list in order to secure their first home. Nowadays the vast majority of young Scots aspire to own their own home. At a time of rising interest rates and with the Council of Mortgage Lenders suggesting that mortgage lending rates might have to "double" to avoid a crash in the housing market, the Scottish Executive should not impose a further burden on potential house purchasers looking for a new home.

- The existence of a TPRA would mean that fewer developers would bother to enter into pre-application discussions with local communities. If local “nimby” groups are of the view that no amount of discussion with a developer can persuade them that there is a necessity for a particular development, developers are likely to target their resources at possible appeals rather than in seeking to engage positively with the community in the first place.
9. Homes for Scotland fully supports the need for maximum community involvement in the planning process. However involvement with the public has to be at the right stage of the process, which is at the development plan stage, not when developments are being brought forward within approved local authority development plans. It is important that individuals and communities see developments in the context of “the big picture”, not in isolation and out of context.

## **OTHER CONSEQUENCES:**

### **Loss of investment**

10. The addition of further costs and delays to the planning process will put some proposed developments at risk of not proceeding. If the market is rising and perceived to be sustainable for a period of time, the effects of delays are more likely to be only inflationary. However, if the market is falling then delays will put entire developments in jeopardy. If only 10% of applications are affected in this manner it will mean a loss of investment of over £325 million per annum.

### **Supply side disturbance**

11. Scotland needs at least 28,000 new homes every year just to meet household growth and if the needs of hidden households, homeless families and the requirement to replenish outworn existing stock are factored in.
12. Already, however, Scotland is building at least 5,500 fewer houses a year than it needs. This includes both the private sector and housing associations. Homes for Scotland estimates another 10,000 units could be put at risk from TPRA.
13. At a human level, this means that the housing crisis will deepen, fewer new homes will be provided and people in need of a home will not be able to find one. Any disruption to the supply of new houses will also push up prices and be inflationary.

## **Potential number of developments likely to be affected by TPRA**

14. Homes for Scotland has estimated that **50%** of all projects will be affected by TPRA. Based upon current selling prices this means that over **£1.7 billion** of investment in residential development will be affected on an annual basis. This could mean over **800** additional planning appeals, representing around 25 additional appeals per local authority at the rate of one additional appeal every two weeks per authority.

## **Social inclusion and Affordable Housing**

15. As almost all local authorities expect a considerable number of affordable houses to be generated in conjunction with new private housing, the social inclusion aspirations of the Scottish Executive will be **delayed** or entirely **frustrated**. It will not be only private developments that may be appealed by Third Parties but also any proposed Affordable Housing and social/rented housing developments.

## **Specific questions raised in the Consultation Paper**

- Q1. Paragraphs 3.3.1 to 3.4.9 have identified arguments made to us previously both for and against a third party right of appeal. Do you think they accurately reflect the arguments? Are there other arguments not covered here which you wish to raise?**

- A1. The paragraphs do not give sufficient weight to the costs and risks associated with the introduction of TPRA. More research needs to be undertaken to quantify these costs and Homes for Scotland does not accept that the difficulties in determining the effects on business and the Scottish economy of the introduction of third party rights of appeal, (See Regulatory Impact Assessment) is sufficient justification for avoiding a full analysis by the Scottish Executive to quantify these direct and indirect costs. The Scottish Parliament should not introduce far-reaching changes of the kind being envisaged without fully and accurately quantifying the effects on the Scottish economy.

- Q2. Do paragraphs 3.5 to 3.14 accurately reflect what supporters of a third party right of appeal are seeking in a new appeal process?**

- A2. The framing of this question suggests that insufficient weight has been given in the document to a desire on the part of individuals or small unrepresentative groups to overturn decisions taken by democratically elected public bodies exercising their statutory responsibilities.

In most parts of Scotland there are determined individuals and organisations whose main objective is to curtail development adjacent to, or near, their own properties. Allowing a formal TPRA will frustrate strategic planning and place investment programmes in the hands of those who would encourage NIMBYism.

**Q3. If the right of appeal were to be extended to third parties, do you think it should be restricted to all or some of the four categories identified in the *Partnership Agreement*? Please give reasons to support your views.**

***Your response to this question will not prejudice any view you express on the principle of widening the right of appeal.***

A3. Homes for Scotland supports CBI Scotland's implacable opposition to the introduction of any third party rights of appeal in the planning system and would wish to reinforce the view that public confidence in the planning system should be addressed by making improvements to the procedures used to prepare and approve development plans. A careful examination of the "four categories" leads Homes for Scotland to take the view that a TPRA is an unnecessary burden on an already overstretched system as safeguards either already exist or will be strengthened by the Executive's proposals to modernise the plan making process.

With regard to:

**Cases where the local authority has an interest.** Current procedures (including reference to Scottish Ministers) and the evidence before Homes for Scotland would lead us to conclude that local authorities seek to maintain the highest standards of integrity when dealing with matters in which they have a material interest.

**Cases where the application is contrary to the local plan.** Established and well-recognised procedures are already in place to deal with significant departures from development plans.

**Cases where planning officers have recommended rejection.** Recommendations by officials and the planning authority's decisions are a matter of public record and, under existing procedures, the integrity of the decision-making processes will be strengthened by proposals that Councils provide clear reasons for their decisions.

**Cases where an environmental impact assessment is needed.** This is perhaps the most facile category for allowing a TPRA. Where an EIA has been carried out, the planning authority and its advisers are in possession of an enhanced information base to inform the decision-making process and many planning authorities already consult widely before a recommendation is brought before the planning committee.

**Q4. Which planning decisions do you think should be capable of appeal to the Scottish Ministers?**

A4. No planning decisions should be capable of appeal by third parties to the Scottish Ministers.

**Q5. If the right of appeal were to be extended, which third parties should be able to appeal and in what circumstances? Please give reasons for your answer and also, where relevant, explain why you think any of the third parties identified above should not qualify for a right of appeal.**

*Your response to this question will not prejudice any view you express on the principle of widening the right of appeal.*

A5. No third parties should be able to appeal under any circumstances. The focus of attention should be concentrated on efforts to bring communities and developers together at the plan making stage.

**Q6. Do you support, in principle, the introduction of a wider right of appeal in the planning system? Please give reasons to support your views.**

A6. Homes for Scotland supports CBI Scotland's implacable opposition, in principle and in practice, to the introduction of a wider right of appeal in the planning system. The arguments against a third party right of appeal, set out on pages 9 and 10 of the consultation document, our own observations and the need to ensure that Scotland remains a competitive location for investment support this view.

**Q7. How do you feel the planning service at both planning authorities and the Scottish Executive would be placed to manage the likely increase in workload?**

A7. The resourcing costs for Local Authorities to administrate this proposed legislation would be material.

One estimate would suggest that some 200 additional planners and administrative staff would be required to be engaged by planning authorities.

In addition the Scottish Executive Inquiry Reporters Unit would see a substantial increase in its workload and would require additional Reporters who would inevitably be drawn, to a large extent, from the most experienced ranks of local authority planning departments.

At present there are approximately 70 planners currently in Scotland's planning schools. Without huge additional investment to generate more planning graduates, there will be a serious shortfall in the staff numbers required in Scotland.

**Q8. Do you think there would be any implications for the attractiveness of planning as a career if there were to be a significant increase in the appeal caseload? Please give reasons for your answer.**

A8. Planning should be concerned with facilitating and targeting investment to improve the economic, social and environmental well-being of our communities. It should be set in a policy environment that is driven by negotiation with recourse to legal or quasi-legal procedures as a last resort. A TPRA would shift that balance. Public policy would increasingly be determined by adversarial approaches. This would undoubtedly impact on the perception of planning as a career and probably impact detrimentally.

**Q9. 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?**

A9. A fee should not be payable in order to object to a planning application. If a TPRA is introduced a fee should not be charged to lodge an appeal against the planning decision. That said Homes for Scotland takes the view that, where a third party appeal fails, the developer's costs of defending the appeal should be awarded against the appellant.

**Q10. Should the Scottish Ministers retain their role in deciding particular planning appeals, or should SEIRU decide all appeals?**

A10. Scottish Ministers must retain their role in deciding particular planning appeals. Major investment decisions must often weigh commercial, social and environmental factors and will call for political decisions to be made in the public interest. Those decisions can and should only be determined by Ministers.

**Q11. Would the introduction of mandatory public hearings in defined circumstances increase public confidence in planning authorities' decisions?**



A11. Homes for Scotland would support Model 2 – continuing with the ongoing programme of modernisation of the planning system without introducing a new appeal system. In supporting model 2 we recognise the need to increase public confidence in planning authorities' decisions and believe this can best be achieved by improving public involvement at the policy formulation stage rather than relying on costly procedures when development applications are being determined.

**Q12. 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?**

A12. Homes for Scotland would support the status quo.

**Q13. Would it be appropriate to introduce a screening process for planning appeals? Please let us have your comments on relevant screening criteria.**

A13. No. Homes for Scotland is opposed to the introduction of a TPRA and therefore sees no need to introduce a screening process for planning appeals.

**Q14. Are there circumstances in which any right to appeal against planning decisions should be withdrawn? Please give details.**

A14. Homes for Scotland would support the status quo.

**Q15.**

**(a) Please give us your views on each of the models outlined in section six.**

A15. (a) Homes for Scotland cannot support Models 1, 3 and 4.

**(b) Can you think of any alternative package of changes to the planning system to ensure a system which is both fair and effective?**

A15. (b) See Homes for Scotland's response to the Scottish Executive's consultation on "Making Development Plans Deliver".

**(c) How would each of these models (and any other packages you suggest) impact on the resources and objectives of you or your organisation?**

A15. (c) As the CBI has indicated, the regulatory impact assessment, accompanying the Rights of Appeal in Planning consultation document, sets out the impact on the resources and objectives of Scotland's business community and the economy in respect of Models 1, 3 and 4. The introduction of any of these models, or variants, would be highly damaging to Scotland's future economic growth and compromise the Scottish Executive's number one priority of raising the long-term growth rate of Scotland's economy.

**Q16. Please let us have any additional comments you wish to make, if any, on relevant matters not addressed in this paper.**

A16. If Ministers and/or the Scottish Parliament decide to proceed with the introduction of TPRA, Homes for Scotland takes the view that such rights must not be introduced into the planning system as it currently stands. The Scottish Executive's proposals for improving the plan making system should be put in place as a matter of urgency. Scotland requires a planning system that encourages, facilitates and targets investment. That system should use positive drivers; it should seek to be inclusive in the determination of policy and the identification of investment priorities. At implementation stages it should seek to give the business community and investors certainty and clarity. It should improve Scotland's competitive edge not impose burdens which will disadvantage Scotland

Homes for Scotland would urge the Scottish Executive, with the support of the Parliament, to reject the introduction of a third party right of appeal in planning.

Homes for Scotland is not opposed to greater community involvement in the planning process. Indeed, we would encourage the Scottish Executive, in the light of the current consultation on "Making Development Plans Deliver" to introduce measures to strengthen community involvement at the plan making stage of the planning process. When plans are being prepared, planning authorities should be required to bring together community representatives and the development industry to consider not whether development should take place but how it can take place to enhance the economic, social and environmental well-being of our communities.

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References:

- (1) The Barker Review of Housing Supply, 17 March 2004, HM Treasury
- (2) CBI Scotland meeting, 30 March 2004, Edinburgh
- (3) House Prices, Housing Market Trends and Housing Supply Issues in Scotland, Chartered Institute of Housing in Scotland report by Professor Colin Jones, Heriot Watt University, February 2004