



RTPI

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MODERNISING PLANNING APPEALS

Directorate of the Built Environment
The Scottish Government
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Edinburgh
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Email to: planningappeals@scotland.gsi.gov.uk

7th May 2008

Dear Sir / Madam

Modernising Planning Appeals

The Royal Town Planning Institute (RTPI) welcomes the opportunity to respond to this consultation which seeks comments on proposed changes to the planning appeals system in Scotland. Members of the Institute will be at the forefront of the implementation of these proposals and therefore have a close interest in achieving a viable appeals system which increases efficiency, is respected by all stakeholders, is supported by readily available information and training opportunities; and which is professional and impartial in implementation.

The RTPI is the UK body chartered to represent the planning profession and offers these comments from the point of view of a diverse and policy-neutral professional body committed to supporting devolved government in Scotland. The Institute has approximately 2000 members in Scotland, working across all sectors of central government, local government, government agencies, the voluntary sector, private consultancy, the development industry and academia.

Since devolution, the Institute has empowered its RTPI in Scotland Office, together with its Scottish Executive Committee, with the responsibility for working with government and public bodies generally for the improvement of the planning system in Scotland. This is in accordance with its charter obligation to work for the public interest. The response to this consultation has been led by the Institute's Task Group on Development Management. Our detailed response to the questions set out in the consultation paper are set out in the Annex to this letter and a summary of our main points is given below.

General comments

In general, the Institute support the proposals for the streamlining of the appeal system. We support the reduction of the appeal period from six months to three months but consider that the reduction of planning authority response times from 28 days to 14 days is too short.

Whilst the Institute acknowledges that provision for Local Review Bodies (LRBs) has been made in the primary legislation, we feel that further consideration requires to be given to the proposals as set out in the consultation paper. The Institute has reservations about the impartiality of the proposed system, the sourcing of independent advice and the availability and prompt delivery of training and supporting advice and guidance. While we accept that a properly structured scheme, ensuring the independence of the appeals panel from any conflict of interest, is consistent with the principle of subsidiarity, we are not certain that there is any real advantage in saving cost to a central, technically expert appeal panel in favour of incurring cost locally; and we have reservations about impartiality and technical support and the consequential impact on members of our profession.

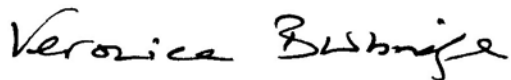
The Institute considers that:

- it may be useful to consider transitional arrangements and phasing of recommendations. For instance the Institute considers that an up-to-date development plan; firm planning policies; effective training systems and guidance for members of local review bodies; and readily-available well-publicised information for local communities and those notified of planning proposals will need to be in place in advance of the adopted system being introduced;
- clarification is required of the resourcing of the administration, technical support and training of members of LRBs and planning authority staff;
- the extent to which proposals are compliant with recent ECHR judgements should be clarified; and
- further thought needs to be given to the sourcing of independent advice.

The Institute would be pleased to help with any further work on these proposals including the design of pilot studies and alternative schemes, and the preparation of training and publicity materials.

The Institute trusts that these comments are of assistance and has no objection to its comments being made available to the public in the usual way. Should you wish any clarification or further assistance, please do not hesitate to contact me at our Edinburgh office: 57 Melville Street Edinburgh, EH3 7HL phone: 0131 226 1959, or email: veronica.burbridge@rtpi.org.uk

Yours sincerely



Nation Director RTPi in Scotland.

DETAILED RESPONSE BY THE ROYAL TOWN PLANNING INSTITUTE IN SCOTLAND TO THE CONSULTATION ON MODERNISING PLANNING APPEALS

Question 1: Do you agree with the scope of schemes of delegation as set out in the consultation paper?

1. The Institute acknowledges that the primary legislation on local schemes of delegation has already been approved but we remain concerned about the detailed application of these provisions. In our response to earlier consultations on the Planning Bill, the Institute expressed sympathy with the aims of local accountability and the reduction of involvement and costs to the Directorate of Environmental and Planning Appeals. However, we considered that further work would be needed to demonstrate clearly that suitable structures were possible; to ensure compliance with the European Charter of Human Rights; to avoid conflicts of interest, or perceived conflict for members of a Local Review Panel; and to maintain the high levels of politically impartial and professional judgement inherent in the existing system.
2. It would be helpful if the Scottish Government could set out the results of any pilot exercises; and outline the implications for the operation of the Code of Conduct for Councillors in relation to involvement in planning decisions. It would also be helpful to clarify the extent to which the European Court of Human Rights judgement in the case of *Tsfayo v United Kingdom* issued on 14th November 2006 might have implications for the operation of Local Review Bodies¹. It is suggested that any LRB will need to be seen to be fully independent of any party to the dispute in considering an appeal. The definition of 'Local Review Body' given under the 'Interpretation' section of the Regulations as '*the planning authority to whom the application for planning permission, consent, agreement or approval, as the case may be, was made*' would therefore have to be revised to avoid contradictory decision notices being issued by the same authority.
3. The Institute remains concerned about the complexity of the proposed delegation system and possible double-handling of some cases such as in relation to listed building consent where an appeal against a decision to refuse a planning application would be considered by a LRB but an appeal against refusal of an accompanying listed building consent application would be directed to Scottish Ministers.
4. The Institute also considers that it may be difficult to ensure independent, impartial and professional advice to the LRB, as decisions are often based on the views of various expert officers from across the planning authority. The Institute also considers that in practice such an arrangement would result in tensions between the planning service and the planning expert supporting the legal officer. There are a number of potential alternative models but all have associated problems and varying costs. The use of consultants, the establishment of a dedicated team within the Authority, or the involvement of staff from neighbouring authorities are possibilities which might be considered further. Alternatively, the model of Eire's *An Bord Pleanála* might be examined with regard to its coverage of planning and related appeals, membership structure, code of practice, range of professional expertise, political neutrality and effectiveness.

¹ See Reid C.T. 2007 'Judicial review not always a guarantee of a fair trial. *Tsfayo v United Kingdom* European Court of Human Rights, 14 November 2006 *The Times*, 23 November 2006' in SPEL No 119 pp 13 – 14.

Question 2: Are there other categories of decision which should not be delegated to officials?

5. The Institute notes that current schemes of delegation exclude applications submitted by staff employed by the planning department.

Question 3: Should planning authorities be required to undertake local consultation on their proposed scheme of delegation?

6. The Institute does not consider that a planning authority should be required to undertake consultation on their proposed scheme of delegation but believes this to be good practice. The need for an information campaign and for readily available information and explanation of the adopted system to be available in a number of different formats should be encouraged.

Question 4: Do you agree with the proposed approach to preparing and adopting the scheme of delegation?

7. In commenting on the approach set out in the White Paper 'Modernising the Planning System' the Institute noted that *'we feel that this requires careful consideration of the status of the designated officer in each authority. We would oppose delegation to an officer who was not professionally qualified'* [in planning].
8. The Institute notes that delegation schemes are now in place with an increasing percentage of decisions being dealt with in this manner. It is considered that whilst a degree of consistency across Scotland is desirable, arrangements should allow for local flexibility and build on existing practices. Examples of good practice might be shared through the issuing of a Planning Advice Note.

Question 5: Do you agree that it is reasonable not to invite additional comments from third parties to those made during the course of considering the planning application when considering a review?

9. In general, the Institute considers that it is reasonable when considering a review not to invite comments from third parties additional to those made during the course of considering the planning application.

Question 6: Do you agree that the proposed size of the Review Body is appropriate?

10. The Institute agrees with the proposed size of a Review Body. However, further thought should be given to the range of professional support which may be required and to the issues relating to independence of advice from within the planning authority. Members of LRBs would require clear operating rules. These should be included in a revised code of conduct for councillors.

Question 7: Are the timescales proposed for carrying out a review reasonable?

11. The Institute considers that the proposed timescales for carrying out a review will be too short in some cases, particularly where new material has been introduced. The demands on resources are as yet unknown. It may be reasonable to expect that appeals may increase in the short term and this will have implications for LRB members, officers, accommodation and finance. It will be important to ensure that increased costs are covered to ensure an efficiently-run system.

Question 8: Are there additional provisions to those proposed which would improve the process of reviewing the decision?

12. Further to our response to question 1, the Institute remains concerned about the proposed professional support to be given to the LRB and the associated impacts on the local planning authority. We also note that there are difficulties with arrangements for delegation within the National Park Authorities.
13. It will be important for the LRB to be bound by the Council's own policies set out in the Development Plan in guiding its appeal decision. The existence of an up-to-date Development Plan must therefore be a pre-requisite to the establishment of a LRB. Clear guidance must be made available to members of LRBs as to the basis for decisions made.
14. Further clarification is needed on the nature of 'local' developments and the degree to which there is compatibility with existing schemes of delegation; and on the financial arrangements which will need to be put in place in support of the LRB and its administration.
15. More specifically, the Institute agrees that discussions by a Local Review Body should be conducted in public. It is considered that the LRB and its advisers should visit the site.

Question 9: Do you agree that it is reasonable not to invite additional comments from third parties to those made during the course of considering the planning application when considering an appeal?

16. The Institute considers that more information is required on the input that interested parties may have where 'new issues' are allowed, and more information will be required on the definition of this term either through guidance or the 'interpretation' sections of the regulations.

Question 10: Do you agree that Ministers should seek to use the method of examination that best fits the circumstances of the case, taking account of the views of the parties?

17. The Institute agrees that Ministers should seek to use the method of examination that best fits the circumstances of the case, taking account of the views of all parties.

Question 11: Do you consider that the framework set out in the accompanying regulations reflects the more proportionate appeals regime envisaged in the White Paper?

18. The Institute would prefer greater flexibility in relation to the length of precognitions and considers that 2000 words may be too restrictive in complex cases.

Question 12: Are there any particular issues in relation to proposals for Crown development which require special handling in relation to schemes of delegation, local review and appeals procedures?

19. In general, the Institute does not consider that special handling arrangements should be required except in exceptionally rare cases of interests of national security.

Question 13: Are there any potential impacts on the business or voluntary sector that we should be aware of in finalising these regulations?

20. The Institute notes the need for clear guidance and readily available information on procedures and practice for business and voluntary groups. These should be generated in advance of the introduction of the new system and will need to stress the importance of early engagement in the planning process. A more efficient and swifter decision making

process should have clear business benefits and improve relations between planning and the business, voluntary and community sectors.

Question 14: Are there any impacts on particular societal groups that we should be aware of in finalising these regulations?

21. Systems of information and guidance will need to be provided in line with equalities legislation and closer working between planning services and community education services within the council may be helpful. Planning Aid Scotland may be able to assist in reaching minority groups and in providing information and training for community groups across Scotland.
22. Training will be particularly important for councillors and members of LRBs. It is suggested that successful training should be a pre-requisite of membership of a LRB and that a training programme should be in place before any new scheme is introduced. Such schemes may involve the Institute through its Politicians in Planning Network; the Planning Development Programme; and Planning Aid Scotland. Training should also be made available to community councillors.

Question 15: Do you have any other comments to make on the draft regulations covering schemes of delegation, local review bodies or appeals examinations?

23. The Institute notes a few detailed points below:
 - the LRB may require advice from a number of specialists. This may not be clear from the identification of an 'appointed officer';
 - as noted in response to question 1 above, the LRB will need to be a separately defined body to the local planning authority;
 - S10(2)(a) requires rewording;
 - the explanation of 'a substantial body of objections' in S5 might be further clarified; and guidance given on how to define the 'local community'; and
 - the term 'assessor' in Schedule 1 Part 2 S9 should be defined.