

Local Government and Communities Committee Planning (Scotland) Bill

Submission by Biofuelwatch

Biofuelwatch is a UK/US non-profit organisation which provides research, information, advocacy and campaigning in relation to the climate, environmental, human rights and public health impacts of large-scale industrial bioenergy. Since 2008, we have been supporting local community groups across the UK that are concerned about bioliquid and biomass power plant developments in their area. We have also been working closely with UK Without Incineration Network since a significant number of the proposals we are contacted about involve waste wood and/or a combination of biomass and Refuse Derived Fuel. In Scotland, we have provided support to community groups in Dundee, Edinburgh, Grangemouth, Glenrothes, Markinch, Mid Lothian, and Moray (Craiggellachie). We therefore have a good level of understanding of planning legislation and policies and its effects on communities in Scotland as well as in England and Wales. Many of the principles of planning legislation and policies England, Scotland and Wales are of course identical.

Through our work around planning proposals, we have become very aware of how biased the planning system, including in Scotland, is in favour of developers as opposed to local communities. We are concerned that the proposals contained in the current draft of the Planning (Scotland) Bill would worsen rather than reduce the unfair advantages given to developers over communities. We believe that the Bill must be amended significantly to empower communities, something which is mentioned as one of the policy objectives of the Bill.

Question 1:

Do you think the Bill, taken as a whole, will produce a planning system for Scotland that balances the need to secure the appropriate development with the views of communities and protection of the built and natural environment?

We do not believe that the Bill will achieve this aim, to the contrary, we believe that the proposals will make it even harder for communities to influence development decisions and to protect their environment.

We do not believe that fostering economic growth should be considered the aim of planning policy, however at the same time we are not aware of any evidence that strong planning regulations and rights for communities to challenge development have any adverse effect on economic growth either. For example, Sweden, Denmark and Ireland all have a Third Party Right of Appealⁱ, and countries such as Germany have far stricter planning regulations than Scotland, yet in fact have higher growth rates than the UK. Furthermore, all of those countries rank higher than the UK in the ranking of the "World Happiness Report" published by the Sustainable Development Solutions Networkⁱⁱ.

We support the position of Planning Democracy and other organisations that protecting the environment, increasing public trust in the planning system and

empowering communities requires introducing a commitment to a plan-led system, a third party right of appeal, and a statutory purpose for planning.

Our experience with the planning system relates primarily to development decisions rather than the development of plans. In this context, we would like to share our concerns about the current lack of an equal right to appeal:

- We believe that the lack of an equal right to appeal seriously undermines the quality of planning decisions. We have heard anecdotal evidence from members of planning committees and planning officers in England that they are concerned about rejecting controversial applications for financial reasons, and we have heard this being cited openly as a reason for recommending planning approval by a planning officer in one local authority (Bristol). When developers challenge decisions to reject planning applications, local authorities incur their own costs associated with presenting their case and often complex evidence during appeals, and they also face the risk of having expenses awarded against them if the appeal is approved. On the other hand, the only remedy which local communities have against bad planning decisions is Judicial Review, which can only be raised on a very limited number of grounds which generally do not relate to the substance of the planning case. Furthermore, high legal costs make it very difficult for communities to use this remedy. Out of the dozens of planning cases we have been involved in throughout the UK, we have only seen a single case in which a planning decision was set aside through a Judicial Review (in Lincolnshire). The financial risks to planning authorities of a bad decision to approve a planning proposal are therefore negligible. Local authority budget cuts can only increase pressures on planning authorities to approve planning proposals regardless of their merits. Although the examples above are from England, there are no reasons to believe that the situation would be any different in Scotland;
- Equal right to appeal would give planning authorities a strong incentive to make planning decisions – whether approvals or rejections - which are robust and well-reasoned enough to not be overturned on Appeal;
- We believe that equal right to appeal would reduce the sense of disempowerment, disengagement and distress currently experienced by local residents and communities which have tried to engage with the planning system. In a significant number of campaigns which we supported, local residents expended a lot of time and effort on analysing planning documents, researching relevant evidence and putting together strong and well-argued planning arguments, only to see applications approved with little consideration being given to the evidence presented by objectors. People with previous experience of trying to engage with the planning system regularly tell us that “there is no point objecting” and that “developers get what they want anyway”. Many are left with a sense that any engagement with the planning system is futile and that there is no possibility of a fair outcome and communities have no way of influencing any developments in their local area. Although equal right to appeal is not the only change required for a fair and just planning system, we believe that it would go a long way towards reducing this sense of disempowerment.

We therefore strongly hope that the Bill will be amended so as to introduce an equal right to appeal.

Question 12:

Are there any other comments you would like to make about the Bill?

An additional concern of ours is the lack of a statutory duty to strictly enforce planning conditions. Over the past 18 months, we have been in close contact with a resident affected by noise disturbance linked to a biomass plant in Scotland. Her own monitoring has revealed that noise levels regularly breach the maximum noise levels set out in a planning condition. The local authority initially denied that the planning condition existed, until we helped the resident prove that it did. Nonetheless, she has been unable to persuade the local authority to even investigate whether the planning conditions are being breached, let alone discuss possible enforcement. The lady tells us that her sleep continues to be disrupted and there is strong evidence that the noise levels she is monitoring adversely affect health – which is presumably why the planning condition was originally put in place. Yet, at present, there is no duty on planning authorities to investigate and address any breaches of planning conditions. In the absence of such a duty and with shrinking local authority budgets non-enforcement of planning conditions will perversely be in local authorities' financial interest.

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ⁱ <http://www.cpre.org.uk/resources/housing-and-planning/planning/item/1908-third-party-rights-of-appeal-in-planning>

ⁱⁱ <http://worldhappiness.report/faq>