



Campaign to Protect
Rural England

COMMUNITY RIGHTS OF APPEAL: SOME QUESTIONS AND ANSWERS

A CPRE Briefing Paper

December, 2010

The Government is committed to devolving planning powers. Central to this radical reform of the planning system is the intention to give neighbourhoods far more ability to determine the shape of the places in which their inhabitants live. CPRE welcomes the emphasis on getting more people engaged in developing local and neighbourhood plans. We believe that the introduction of a limited public, or community, right of appeal is vital if these reforms are to realise their full potential.

Why is CPRE calling for community rights of appeal now?

The Localism Bill, which will take forward the proposed planning reforms, is a critical opportunity to re-balance the appeals process. Where decisions are taken that are not in line with the local development plan, and therefore against the wishes of the local community, we believe the public should be able to question this through an appeals process. This view is supported by many other civil society organisations.

Both the Conservatives and the Liberal Democrats have recently proposed a limited right of appeal for the public, in the *Open Source Planning* Green Paper and 2010 Manifesto respectively. We welcome the suggestion by the Government that local people should play a critical role in developing plans for the areas in which they live and work. In order to ensure people really do feel empowered it is important that to ensure that decisions on applications for planning permission are in line with the development plan.

Would community rights of appeal prevent economic recovery?

Such rights exist in Australia and they have not prevented that country from enjoying sustained periods of economic growth in recent years. Nor did they stop Ireland's recent property boom, involving a 70% increase in the rate of new housebuilding between 1995 and 2001. The risk of 'third party' appeals by rival developers can be addressed by giving the Planning Inspectorate powers, supported by policy, to summarily dismiss appeals that are vexatious or where there is no case to answer.

Would community rights of appeal stop all development?

Environmental groups want to see development needs considered through the process of preparing development plans. Community rights of appeal should only be triggered where a decision to grant planning permission is not in line with an adopted plan, or where the local authority has a financial or other interest. According to recent Government statistics, in the last decade 8,663 planning applications - just 0.15% of the six million submitted in this period - were deemed to have significantly cut across agreed development plans¹.

In countries where 'third party' rights exist, new development continues to take place. Community rights of appeal ensure public influence over the most controversial cases. In Ireland in 2008, 8.1% of all local planning authority decisions were appealed against, with an approximately 50-50 split between applicant and 'third party' appeals. Overall, 39% of 'third party' appeals fully succeeded. This means that less than 2% of all local planning authority decisions were overturned as a result of third party appeals. In 60% of third party appeal cases, conditions were modified and planning permission granted. A significant proportion (possibly as much as a quarter, or around 200 in number) of all the third party appeals that fully succeeded were against 'one-off housing' in the countryside. Irish planning and environmental organisations have highlighted 'one-off housing' as a particular problem in recent years.

In June 2010, the Planning Inspectorate and National Planning Forum cited New Zealand's Environmental Court as a model of good practice in using mediation to resolve disputes before planning

¹ House of Commons Hansard (written answers), 13 September 2010.

decisions are made. New Zealand has an established public right of appeal against the grant of planning consent. The Court achieved agreement in 40% of the 449 cases where mediation was employed in 2006-7. The presence of a community right of appeal is an active incentive for both developers and planning authorities to focus their efforts on plan-making and pre-application discussions, and involve local communities in such discussions. Using mediation at other stages could also help reduce the need for appealing.

Would there be a lot of vexatious appeals?

The evidence from Ireland and elsewhere suggests that this is not a significant problem. As noted above, third party appeals by rival developers can be addressed by dismissing vexatious appeals; and the majority of third party appeals result in changes being made to the conditions placed on planning permission. This would suggest that most appeals raise valid planning grounds. Other filters can be considered based on established mechanisms, such as a requirement to prove ‘standing’. There is a recent and well-developed body of case law on this in relation to legal challenges to planning decisions made by Government Ministers.

Would community rights of appeal cost more time and money?

The Conservative Green Paper calls for a ‘symmetrical’ system, where both applicants and ‘third parties’ have similar, but limited, rights to appeal. Currently, only applicants for planning permission can appeal, with no restriction on grounds, to the Secretary of State against a local authority refusal. The only recourse for communities against poor planning decisions is judicial review. The May 2008 Sullivan report on access to environmental justice concluded that the costs currently associated with judicial review ‘inhibit compliance’ with the Aarhus Convention², to which the UK is a signatory.

A number of well established mechanisms within the UK system can prevent community appeals taking as long to consider as can be the case in other countries. These include rigorous processes of development plan examination and pre-application consultation, as well as ensuring capacity for Inspectors by reducing the existing scope for applicants to appeal.

The appeals system cost £25 million in 2007/8 and there were 22,897 appeals. To contain costs, CPRE believes that the right to appeal should be more fairly distributed across society. Existing rights of appeal for developers should be restricted, perhaps by removal of the right in relation to decisions where a development plan is up to date. Alternatively, an Inspector’s report could be remitted to the local authority for final decision; the Localism Bill already proposes a similar reform for nationally significant infrastructure projects.

Would the democratic role of local authorities be undermined?

All appeals should be limited to cases where the local authority’s development plan policies may have been contravened or due process not followed, as *Open Source Planning* recommends. In such cases, the scope for independent review should, in our view, make the local authority as accountable for applications it approves as it currently is for those it refuses.

A community right of appeal could also reduce the need for Government to call-in planning applications. The call-in provisions will remain an important reserve power, but a properly designed right of appeal would enable local people and civil society groups, rather than Ministers and civil servants, to decide whether such an intervention should take place. Wider reforms to existing developer rights of appeal, as suggested above, could also reduce the number of local authority decisions that are overturned by the Planning Inspectorate.

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² The full title of the Convention is *The United Nations Economic Commission for Europe (UNECE) Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters* and it was ratified by the UK in 2005.