

HISTORIC ENVIRONMENT ADVISORY COUNCIL FOR SCOTLAND

RESPONSE TO THE CONSULTATION PAPER RIGHTS OF APPEAL IN PLANNING

Introduction

The Historic Environment Advisory Council for Scotland came into being on 01 June 2003 and was established by Scottish Ministers as a new advisory Non-Departmental Public Body to provide informed and independent advice on issues affecting the historic environment, which includes structures and places of historical, archaeological and architectural interest. It has twelve Members appointed in accordance with the Code of Practice for Ministerial Appointments to Public Bodies.

HEACS has been charged with the task of advising the Minister for Tourism, Culture and Sport on the matter of heritage protection legislation in the light of changes that are under consideration presently in England and Wales. In taking evidence a working group of HEACS has considered the question of third party rights of appeal in the planning system, and is aware of the legitimate interest of third parties in responding to development proposals that may be deemed to be harmful to the historic environment. There have been several high-profile cases in recent years under the current planning regime, drawing attention to the significant level of interest in applications involving the historic environment. Experience of third party right of appeal cases in Ireland suggests that this interest will continue to figure prominently in any consultative or appeals process.

HEACS believes that the matter of TPRA cannot be regarded in isolation of the views expressed during the public consultation over the review of the structure and functions of Historic Scotland during the latter part of 2003, when many of the correspondents argued for greater transparency in the decision-making processes. These concerns appear to reflect a growing tide of opinion in support of policies for Environmental Justice.

This response is structured to acknowledge the options for possible change in the specific context of the historic environment, rather than the wider issues raised by the consultation paper.

Selective responses to questions set out in Annex A

Q3 If the right of appeal were to be extended to third parties, do you think that it should be restricted to all or some of the categories identified in the *Partnership Agreement*?

In general, yes. See the response also to Q15 in which it is suggested that additional categories should be introduced in relation to cases affecting the historic environment.

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

Those listed in the categories listed by the *Partnership Agreement*, and set out in Clause 4.10; the recommendations set out in clause 4.11 are endorsed.

Q5 If the right of appeal were to be extended, which third parties should be able to appeal and in what circumstances?

HEACS acknowledges the risks in the planning system from widespread and unrestricted appeals, and favours limiting the categories to those listed as 'representatives' in 4.2.14. An effective screening process would need to be introduced to the system to ensure that the substance of an appeal is not frivolous, and that it falls within the jurisdiction of the relevant statutory acts.

HEACS strongly endorses the right of amenity/heritage organisations to challenge decisions, much as happens in the PLI process at the present. Effective representation by these organisations suffers, too often with the present system, from a lack of resources needed to mount a sustained case.

Q6 Do you support, in principle, the introduction of a wider right of appeal in the planning system?

HEACS considers that, on balance, a wider right of appeal should be introduced beyond those measures identified by Ministers for streamlining the planning system. These should be implemented in any event. The goal should be a more rigorous and defensible planning system in which both applicants and appellants have greater trust than is the case currently.

In order to achieve this objective there should be an obligation upon the Executive to ensure that Planning Advisory Notes are relevant, and that they are updated regularly. There should also be clear guidance provided in relation to current strategic planning issues (for instance, the planning and siting of windfarms).

Unequivocal guidance should be given to applicants on the scope and quality of material accompanying applications. HEACS is aware that too many applications currently fail to meet the required standards of competence; they should be sifted out of the system and returned to the applicants at an early date. If sound decisions are to be arrived at (reducing the risk of future appeal) proposals that are better researched and presented should become the norm.

The sanction of appeals being lodged against the determination of applications would ensure greater rigour in the process of decision-

making, and in order to implement this there should be an obligation to embark on widespread pre-application consultation and mediation. A measurable target could be an overall reduction in the percentage level of successful appeals, even allowing for the fact that the number of appeals would be likely to increase.

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

HEACS acknowledges that there is, in general, a shortfall of skilled advice within local authorities for applications related to the historic environment, and that the problem may be worsening rather than improving. This is currently the subject of study by one of the HEACS working groups, upon which advice will be made available to the Minister in due course. Further, while it is acknowledged that the introduction of TPRA will lead to an increased workload at both the planning authorities and the Scottish Executive, HEACS considers that this should not be offered as the principal reason for holding back from effecting beneficial improvements to the planning system.

In many respects the present planning system is not well-integrated. As noted above there can be the lack of strategic advice from the Executive, and where such advice exists, for instance through PANs, it may not be reflected always in the system; frequently local and development plans are not updated and adopted as they should be.

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?

Deterrents would need to be introduced to the system to limit the numbers of frivolous objections, and those aimed primarily at frustrating the process. It would seem to be reasonable to introduce a fee. However, the level of fee should not be prohibitive to those organisations listed in 4.2.14 (and amenity bodies with charitable status in particular), otherwise this would work against the principles of democracy, and would not be in the public interest.

Q15 Please give us your views on each of the models outlined in this section

Model 1 - new right of appeal for third parties within Partnership Agreement categories

Model 2 - Continue with ongoing programme of modernisation of the planning system without introducing a new appeal system

Model 3 - No new appeal system. Introduction of mandatory public hearings prior to determination of planning applications and additional requirement to notify the Scottish Ministers

Model 4 - New appeals system and related changes

While HEACS endorses the programme for modernisation of the planning system set out in Model 2, it favours strengthening that process by the limited introduction of TPRA. In this respect the screening set out in the four categories of the *Partnership Agreement* (Model 1) is the preferred option of the four presented, provided that the timetable for the appeals process is kept to a minimum.

Rather than advocate wholesale change at present, HEACS would favour the incremental introduction of TPRA, which might be on a pilot basis over sufficient duration to gauge the effectiveness of the proposals against the success of modernising the planning process as set out in Model 2. As part of this modernisation process HEACS strongly advocates that national amenity bodies should be granted the statutory right to be notified during the application stage, and proposes to look at this further in its review of the infrastructure of the historic environment.

Initially, the introduction of TPRA might be restricted to buildings listed in Categories A and B, Scheduled Ancient Monuments, Outstanding Conservation Areas and Inventory landscapes; equivalent designations may be appropriate for the natural environment (for instance, SSSIs, and Areas of Great Landscape Value).

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

The omission of Crown Exemption from Planning Law throughout the Consultation Paper is noted. Likewise there is no reference to listed building consent cases referred to Historic Scotland, after the determination of an application by a local authority. HEACS considers that these matters should not be overlooked in the review process.

The potential for TPRA to have a negative effect on attracting inward investment appears to have been overstated. Even though changes to the planning system to accommodate TPRA would result in Scotland adopting a different system to the majority of the rest of the UK, the potential benefits should outweigh the risk of encouraging inappropriate development, or development that may be harmful to the outstanding natural and historic environment which draws so many visitors to this country. Tourism should be recognised as a key industry capable of attracting

investment (in the more remote parts of Scotland it is often the major employer). Arguably more than elsewhere in the UK the protection and enhancement of these assets calls for a rigorous and defensible planning system that promises to enhance the quality of life of Scotland's citizens, rather than frustrate it. The limited introduction of TPRA is considered by HEACS to be commensurate with these ideals.

HEACS reserves the right to comment further on this issue in its advice to the Minister on the question of heritage legislation protection, and following its review of the infrastructure of the historic environment.

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