

26 April 2008

Lord Gill  
Lord Justice Clerk  
Supreme Courts, Scotland  
Parliament House  
EDINBURGH EH1 1RF

Your Lordship

May I submit a proposal that a new Administrative Court should be created to hear appeals in planning development and control?

The planning control system in Scotland is in a parlous state and the pantomime involving Mr Trump's application for planning consent in Aberdeenshire is only one example of the present situation which tarnishes the reputation of Scotland and fails to provide a reliable appeal forum for ordinary people wishing to alter their houses or for developers with larger projects in mind.

Since I retired as a solicitor, I have had time to investigate the reasons for the failure of planning control. My correspondence with all councils in Scotland has allowed me to conclude that the main reason for the failure is the lack of enforcement of planning law and planning decisions. Planning Appeals are considered by Reporters within the Directorate of Planning and Environmental Appeals and this is unsatisfactory because:-

1. the Reporters are accountable to no-one
2. they take no interest in whether their decisions are implemented or enforced
3. they do not consider, or fail to see, the consequences of their decisions.

The new Planning etc (Scotland) Act 2006 was supposed to cure the ills of the 1997 Act but the faults have not been remedied.

If one looks at the situation in Europe, appeals are heard in Administrative Courts in Eire, France, Germany, Italy, Portugal, Spain, Sweden and Switzerland. While there is the possibility of applying in Scotland to the Court of Session for a Judicial Review of a Reporter's decision, the costs are daunting for a private person and appeals are possible only by councils and corporate bodies.

The important point is that if a Court decides an appeal, the law is enforced. Here, ethnic groups, developers and builders have chosen sites themselves and built houses, then applied for consent afterwards. Reporters have ignored breaches of planning law.  
Irresponsible/

Irresponsible tolerance by councillors and officials results in a chaotic planning state. Unfortunately there is also the prevalence of cronyism. Applicants, having been refused planning consent by a council, appeal, a Reporter is appointed and even although the Reporter overturns the council's decision, the applicants themselves flout the Reporter's decision and do what they want. The Reporter has no power to make a council enforce a decision. A great deal of time and money is wasted.

Service companies (electricity, water, drainage, telephone) provide services to applicants who have neither planning consent nor building warrant.

The Administrative Courts in the countries mentioned above provide systems which are more efficient than the weak Scottish system..

I appreciate that it would be for the Scottish Government to initiate the change which I am proposing but in Your Lordship's present review of the role of the Scottish Courts, might there be an opportunity to consider the possibility of the formation of an Administrative Court for Planning Appeals?

I remain  
Your Lordship's obedient servant

*Mr Wright*

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