



AJTC SCOTTISH COMMITTEE – CONSULTATION

Administrative Decisions made by Public Bodies in Scotland where there is no Right of Appeal against the Decision or where the Right of Appeal is Inaccessible or Inappropriate.

Supplementary response from Accountability Scotland

We are submitting the questionnaire separately, with comments.

Accountability Scotland (AS) welcomes this opportunity to pass on its views and to register its interest in these matters. Unfortunately we became aware of the survey very late, so that our comments here are hurried and in some ways inadequate. Throughout we bear in mind your seven points regarding a good Administrative Justice system and we hope that our response will be useful.

We write primarily regarding the matter of Planning Appeals where you state: "...a fifth policy area (planning), where procedures for challenging local planning decisions do exist but do not appear to be functioning satisfactorily. Although Local Review Committees, which are committees of the (local) Planning Authority, are quite easy to access, they are not really independent and do not appear to give more than perfunctory attention to the appellant's case." All examples given here are based on factual experience and evidence can be provided.

AS considers that reform is needed in regard to:

1) GOVERNMENT REPORTERS:

A Reporter has the potentially useful function of providing an unbiased judgment on appeal. However, our limited experience indicates that the result can be inappropriate, as when a Reporter ignored or over-ruled the views of all the elected Councillors, Community Councils and most of the local population in regard to a green-belt development in East Dunbartonshire. There is **no right of appeal.**

2) COUNCIL PLANNERS:

Evidence can be provided to support all of the points made below.

(Based on previous experience of putting complaints against Glasgow City Council to the SPSO, we are now reluctant to waste time going down that route.)

a) PLANNERS CAN IGNORE THE SECRETARY OF STATE FOR SCOTLAND (i.e. Historic Scotland). In making planning decisions Council Planners can and do ignore Historic Scotland when they should consult (i.e. for developments in Conservation Areas). We experienced several instances of this with Glasgow City

Planners. The public and Historic Scotland itself are powerless - **no right of appeal.**

b) PLANNER DECIDING TO REFUSE CONSULTATION ON PLANNING PROPOSALS

We have experience of an arbitrary decision left to one official who consulted only with the developer on whether general public notification was required for an initial plan to build into a Conservation Area. He decided that it was unnecessary to notify the public and also regarding a major modification of an accepted plan. **There is no right of appeal against decisions of this one man.**

c) PLANNER FLOUTING THE REGULATIONS OF ANOTHER COUNCIL DEPARTMENT (Road Transport, regarding obligatory provision of integral parking space.) **No right of appeal.**

d) IGNORING EVIDENCE (written and pictorial) provided by members of the public and a Councillor, showing that the developer was breaking the terms of the planning permission. He accepted the misinformation of the developer's agent without any inspection (so foundations were laid 'illegally'). **No right of appeal.**

e) NO ENFORCEMENT OF PLANNING PERMISSION REGULATIONS on protection of trees in a Conservation Area whilst work in progress. Ignoring evidence from residents and Councillor. Both trees eventually destroyed, thus allowing the development to proceed. **No right of appeal.**

f) BREAKING THE LAW ON CONFIDENTIALITY of personal information by sending on personal contact details of a complainant to the developer - resulting in threats from the developer's agent to the complainant. No point in appealing when damage done.

g) GRANTING PLANNING PERMISSION FOR A FALSE PLAN, in that the plan misleadingly showed protected trees placed well away from the proposed building, when in fact development necessitated tree destruction. **No right of appeal.**

h) PLANNER REFUSING TO GET THE DEVELOPER TO MODIFY HIS PLAN so that the trees (shown in a false position) could be saved. The reason given by the Planner was that this would be seen as "vexatious". No consideration of the public, and **no right of appeal.**

i) PLANNER REFUSING TO ACCEPT THE DICTIONARY DEFINITION OF WORDS, to the developer's advantage. **No right of appeal.**

j) PLANNER DENYING INFORMATION TO COUNCILLORS. Opposition Councillors had difficulty getting information from Planning Officers. One stated "I am being stone-walled". **No appeal possible**

k) PLANNER NOT INSISTING ON THE DEVELOPER SUPPLYING

INFORMATION ON BUILDING FRONTAGE CHANGE. Refusing to obtain information for the public and a councillor about changes in the frontage of a building (appearance of massive garage doors) as demanded by a Reporter. We have no way of obtaining this information: apparently developer merely gave an assurance, but the required information was not demanded by the Planner. **No appeal possible.**

3) COUNCIL PLANNING COMMITTEE (ELECTED COUNCILLORS) ARE GIVEN NO TIME TO EXAMINE PLANNING APPLICATIONS

In both Glasgow City Council and East Dunbartonshire and probably elsewhere, the Councillors are given only a couple of days to examine plans and details of the Planner's recommendations: they cannot possibly do it in the time. (This concern has been expressed to me by Cllr Craig Mackay (Glasgow) and Cllr David Ritchie (East Dunbartonshire). This means that the summary recommendations of the Planner are passed without possibility of proper scrutiny by elected representatives. This procedure is a negation of democracy and it allows the decisions of a Council Planner to be accepted without proper scrutiny or right of appeal.

THERE IS NO PUBLIC RIGHT OF APPEAL AGAINST A REPORTER OR AGAINST A PLANNING DECISION OF A COUNCIL, whilst a developer has this right and can appeal to the Government. We are concerned about the unfairness of this

4) SOME GENERAL POINTS RELATING TO ACCOUNTABILITY OF COUNCIL OFFICIALS

It has been pointed out to us that to aid accountability it is necessary that:

- i. Officials provide their identities whenever asked to do so. (Currently they can refuse.)
- ii. All heads of departments are publicly identified on local authority websites.
- iii. Officials clarify the nature of their activities whenever asked to do so.
- iv. allegations made against staff are dealt with without attempting to cover up or corrupt the complaints process. Council staff should be made aware that they are not immune from criminal conviction.

5) SPSO: The SPSO is unaccountable for the justness of decisions and has no power to enforce its recommendations. Accountability Scotland is sending you the report on the SPSO that it recently submitted to the SPCB. (This is separate from this document). In general we concur with the Consolidated List of Recommendations in the UK Law Commission's Report on Public Services Ombudsmen (July 15th 2011.)

6) JUDICIAL REVIEW is beyond the pocket of most people so no appeal is possible, as pointed out in our other submission.

We mention just one of the other matters relating to your consideration of Higher Education, but specifically the *selection methods* for higher education.

7) THE SCOTTISH QUALIFICATIONS AGENCY

The SQA is another body against which there appears, in a sense, to be no right of appeal in regard to its examining procedures. The Education Minister has no powers in this regard. We have in mind their use of examination methods that have been proved unsatisfactory by peer-reviewed academic studies and which have been brought to their attention, but ignored. We appreciate that the SQA may not be in the remit of the AJTC's current appraisal, but think this is an important issue.

Dr John Wallace Hinton
Convener of Accountability Scotland.

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