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Planning etc (Scotland) Act 2006

The much heralded reform of the Scottish planning system finally came into effect in August 2009 – some three years after the passing of the Planning etc (Scotland) Act 2006. The Act has been cited as introducing a "culture change", and the driving force for many of the changes has been the desire for a system that delivers decisions more quickly but which is more inclusive and transparent. Sounds good, but the time needed to implement the legislation – the last three years has seen a raft of secondary legislation supporting the main Act - suggests how difficult it might be to achieve these laudatory aims.

The Act is far-reaching and includes arrangements for the preparation and publication of a National Planning Framework for Scotland and a change to the provisions under which planning authorities carry out the preparation, examination and publication of strategic development plans. However, the main interest has been in part 3 of the Act, which amends the "nuts and bolts" of the planning system, the way in which planning applications are dealt with. This article comments on a few of these changes.

There is a new hierarchy of development which is intended to focus resources on larger development applications an allow greater public participation and scrutiny of major developments. Such developments now require the developer to carry out pre-application consultation, including community consultation, intended to allow early identification of contentious issues and an opportunity for these to be addressed when the developer submits its finalised proposals. Its unlikely however that every area of contention between a developer and the local community will be resolved in this pre-application period.

Linked to the pre-application consultations is the promise that, once submitted, applications will be more speedily dealt with by the planning authority. Time will tell!

A number of time limits are altered – so that for example a planning consent now generally lasts for three not five years, and an appeal against a refusal has to be lodged within 3 months not 6 months. But one controversial change omitted from the Act is a right of appeal for third parties – it is still only the applicant who can appeal a refusal, neighbours and community groups can't attempt to overturn an application once granted. However there are changes in the way in which some planning appeals will be handled – the legislation introduces a Local Review Body appeal procedure for smaller, local developments. The procedure is to be determined by each planning authority but the Review Body is likely to comprise a group of councillors. This has benefits in terms of reducing cost and delay but raises concerns with respect to the effective removal of access to a truly independent arbiter for many applicants – in effect, the appeal is determined from the same group which made the original decision.

The Act also introduces a new type of planning agreement – the good neighbour agreement – intended to regulate the use of the development land (either temporarily or permanently) as between the developer and community groups. This furthers public involvement in the development process and is to be welcomed but developers will be concerned that there is scope for delay in concluding these agreements.

The intention of the Scottish Government is that the changes made by the Act will be implemented by local authorities in a positive manner and that both developers and community groups will grasp the nettle and look to settle their differences in a positive way. It is also hoped that the new regime will speed up the entire development process. Time indeed will tell – the belief that all development is bad development is deeply held by some and the seismic shift required to change attitudes won't happen overnight. The new regime also coincides with the largest recession in living memory and a consequential reduction in the number of planning applications so the efficacy of the new system won't be tested until the recovery is under way. In the meantime, the Government will need to monitor how the new system performs and respond quickly if things are not working. For the present, the Act remains a work in progress.

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