



Re-valuing public participation in Scotland's planning system

A Planning Democracy Advocacy Paper

Discussion draft - April 2012

Planning Democracy

Campaigning for a fair and inclusive planning system in Scotland

www.planningdemocracy.org.uk

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What is Planning Democracy?

Planning Democracy is campaigning for a fair and inclusive planning system in Scotland. Planning Democracy is a national charity established in 2009 with the aim of strengthening democracy by promoting a stronger public voice in the Scottish land-use planning system.

We do this because planning decisions have a long lasting effect on people's lives and they have a right to influence what gets built where, and how land is used.

We believe planning and planners have a crucial role to play in shaping Scotland for the future. We believe that the planning system should be a democratic forum to debate development priorities and to help determine what development is in the public interest and what is not.

We are a voluntary organisation made up of a group of community advocates, community councillors, planners and individuals who have been affected by planning decisions.

Our vision is for an equitable, inclusive and transparent planning system in Scotland where people are empowered to shape a better future through a process of robust debate.

We have been investigating the way the newly reformed planning system is working for the public, how easy it is for them to use and the problems they face.

This paper is the result of that work and the stories people have shared with us. It starts by explaining the approach that has underpinned our thinking and research. It then goes on to assess existing opportunities for democratic participation in planning decisions before describing some of the overarching issues our research has identified and detailing some of the specific problems that we feel currently inhibit participation.

Finally it lays out a range of possible solutions and reforms that would help to realise a more democratic planning system.

Send us your comments. This paper is a 'discussion draft'. We welcome your thoughts, comments and suggestions to help inform the final draft due for publication in early-summer 2012.

Our approach

Planning Democracy was formed to promote a fair and inclusive planning system in Scotland. The starting point for this report was concern that the promises of a more inclusive planning system made as part of the reforms that led to the passing of the 2006 Planning Etc. Scotland Act were not being delivered in practice.

Our work was informed by an initial review of arguments for and against a more democratic planning system in policy and academic. Whilst this review recognised that there are limits to the role and effectiveness of public participation in planning, it also pointed towards key arguments in favour of a more democratic planning system, these are explained in box 1 below:

BOX 1: Arguments in favour of a more democratic planning system

- *Participation is an important right*

Planning decisions affect people's lives directly. It is therefore an important principle that they have a right to be involved in these decisions. This right is enshrined in the Aarhus Convention to which the UK government is a signatory.

- *It can help to develop active citizenship and a stronger democracy*

Democracies are more likely to be successful if they develop active citizens who participate in public debate, hold government and decision-makers accountable, and believe in the power of their own participation (both in representative and participatory democratic processes). Participating in planning is one way in which people can develop as active citizens, learning about what is required to successfully participate in the political life of a society, and in turn strengthening the legitimacy of democratic decisions.

- *It can lead to better decisions*

Planning decisions are often very complex. Though they may involve a technical element they are also highly political, often raising value-laden questions about the kind of places we want to live in now and in the future. Such questions cannot be decided objectively and neither are they too technical for non-experts to understand. Planners have increasingly been forced to accept that their professional knowledge is just one of the many different knowledges that must be considered.

A strong democratic planning system provides opportunities for those different types of knowledge to be voiced and considered. An inclusive process therefore allows decision makers to take account of differing opinions, values and world views, whilst also increasing the capacity of citizens to engage with technical and legal complexities. Everyone has the chance to explore assumptions, question definitions, contest facts and findings and promote understanding of the issues. This kind of approach creates better understanding of complex issues. It won't lead to a perfect outcome, and there will still be winners and losers, but, ultimately, it can help to decide on the best available course of action, best for society, best for the environment

In addition it helped to shape our understanding of the principles that should underpin a more democratic planning system. We have used these principles as the basis for our analysis of how the system in Scotland is working, and to help frame our vision of the changes we want to promote. These key principles are set out in box 2 below:

Box 2: Key principles of a more democratic planning system

1. Open national government engaging in a national conversation over policy priorities

There is a need for a planning system where power and influence flows both from the top-down and the bottom up, and for the national government to showcase its strong commitment to participation by seeking to engage in an ongoing national conversation over policy priorities on issues such as energy, waste, housing and urban development.

2. A culture of active democracy

A national level commitment could set the tone for a wider cultural shift towards a greater acceptance of the priority that should be afforded to participatory democracy. This encompasses a wide-range of different actors including civil servants, various professionals, politicians, developers, advocacy groups, and members of the public. It is important that we develop a shared understanding of what a genuine culture of active democracy would look like, and how we can all play a role in bringing this about through both representative and participatory democratic channels.

3. A just planning system

We need a planning system that prioritises both a just process, e.g. where inequalities of access to various resources and power are eradicated to ensure decisions are made in ways that can be considered fair; and the realisation of just outcomes by actively considering the social, environmental and economic impacts of development on both present and future generations. At the moment there are substantial inequalities that influence both planning processes and outcomes.

4. An open planning system

In order to build public trust in the process it is important that decisions are also made in as transparent a way as possible. It is important to ensure that information about processes and decisions is made more accessible, that people are given a clear indication of how their input has been taken into account in the

decision-making process, and that channels of accountability are clear.

5. An empowered public

All participants need skills, experience and knowledge to participate in a decision-making process. People need to have strong rights, and to be made aware of these and how they can best be exercised. Only then will participation seem worthwhile to many people. This requires a range of resources to educate and support people so that they can make their voices heard, and engage in debates in an informed way.

Drawing on these principles we conducted a range of 'case studies' investigating the experience of people seeking to participate in the post-2006 planning system. Previous research has sought to gauge the opinions of the public as a whole and has sometimes found low levels of interests in participating in planning decisions. We have started from a different premise, looking to explore the experiences of people who *have* sought to engage with the system to find out what it means to try and actively participate in the planning system as a member of the public. The aim of these case studies was to identify whether people have been able to participate effectively in planning decisions, and, if not, to explore what they felt were the major barriers they faced.

Each case study involved a face-to-face meetings, and subsequent phone calls and email discussions for clarification. During this interview process we sought to talk through the experiences of the members of the public involved; to construct a timeline of what happened, when; and to explore what they felt might have been done differently to allow them to participate more effectively. These people's stories form the basis of the arguments we make below, and we have sought wherever possible to include examples from our case studies that highlight the points we are making.

Our cases were self-selecting in that we put out a call through community and NGO networks asking for any interested parties to come forward. In total we have conducted 13 studies, and have also been in touch with another 12 individuals and groups seeking advice or wanting to share their experiences.

Many of the stories we have collected have concerned major developments and controversial land uses (energy, waste, large scale housing) and we have sought to ensure that our recommendations reflect this.

Whilst the case studies do not provide a representative sample of experiences of participating in the planning system (and may have attracted a negative bias by attracting more dissatisfied parties), or an in-depth analysis of how the new planning system is working, they are a valuable account of the experiences of members of the public who have sought to engage with the system and to test the promises it has made about their ability to influence decisions. Based on our anecdotal experience of many other cases, and the wider literature we have reviewed on the experience of participating in planning, we feel that the cases raise very important issues. Moreover, taken together, we feel that these thirteen

stories provide a powerful account of a voice that has not been sufficiently heard in debates about how the planning system in Scotland works. As such this report fills an important gap in recent debate about reform and culture change in Scotland's planning system.

Rights to participate in the current system

Before going on to recount what we found out from our case studies, it is important to start from a clear understanding of the role and status of participation in Scotland's planning system.

The principle of participation is backed up at the international level by the Aarhus Convention (to which the UK is a signatory) that grants the public rights regarding access to information, public participation and access to justice in environmental decision-making. Such rights are well established in the Scottish planning system. The Scottish Government's commitment is reflected in legislation which establishes a number of different opportunities for the public to participate (these are summarised in table 1). In addition, the Government makes the following commitment in its key statement of planning policy, neatly outlining the value of participatory democracy in planning:

"Effective engagement with the public can lead to better plans, better decisions and more satisfactory outcomes and can help to avoid delays in the planning process. It also improves confidence in the fairness of the planning system. The Scottish Government expects engagement with the public to be meaningful and to occur from the earliest stages in the planning process to enable community views to be reflected in development plans and development proposals."

The government's commitment to participation is backed up by a range of other policy advice on community engagement in the planning system including PAN 3/2010 on Community Engagement in Planning and the broader principles established in the National Standards for Community Engagement. These documents provide statements on how community engagement should be approached. More recently the Scottish Government has also put considerable energy into promoting the use of key participation techniques such as 'charettes' in the development of its Sustainable Communities Initiative. In addition the Government continues to provide substantial financial assistance to Planning Aid Scotland, an organisation that provides free professional advice to the public on planning matters and which can call on the expertise of a large number of volunteer professional planners to help communities.

All of this has led to claims that the 2006 Planning Act has enhanced opportunities for people to engage with the planning system. However, given long-standing concerns that participation in planning has tended towards the tokenistic, and anecdotal evidence that little was changing in practice post-2006, we believe it is important to investigate whether these commitments are being realised.

In doing so we are not aiming to launch an attack against planning and planners. We believe in a strong and well resourced planning system, providing a democratic forum for making decisions about how places should change.

Planning decisions are often very difficult as they must balance social, environmental and economic priorities that can have wide ranging impacts (e.g. a development might look very different to local people than it does to national level policymakers). In this context, hard choices have to be made that will not please everybody. However, we strongly believe that such choices should be the product of active debate, and should be subject to full public scrutiny.

We believe that the system must set out to proactively encourage active participatory democracy if it is to realise the benefits that the government and others see as stemming from participation. We hope that the analysis and recommendations set out here can help to open up debate and encourage change to make this vision a reality.

TABLE 1: opportunities for the public to participate

Stage of the process	Windows of democratic opportunity, e.g rights enshrined in system
National planning framework preparation	NPF consultation and parliamentary committee scrutiny (formal written) 12 week written consultation period on draft plan. May also include workshops and other informal consultation. Concurrent SEA process with 12 week written consultation on the SEA. Draft NPF subject to parliamentary debate (and lobbying)
Strategic development plan preparation Local development plan preparation	-Participation statement required to outline the consultation process. -formal written representations on main issues report, draft plan, modified plan, possible PLI Must be passed by council
Pre-application consultation	Pre Application Consultations on Major applications (informal consultation process) Process 'monitored' by planning officials who check the statement of conformity.
The application process	Right to make representations, lobby councillors and other statutory consultees (incl. community councils). 21 day consultation period for representations. Neighbours notified by local council. Some applications subject to vote by planning committee
Post-application (the appeal process)	Applicant has right of appeal Those that made representations on the original application typically have right to pursue this in appeal process

So what's wrong with the system we've got?

Despite the recognition of participation in the planning system and the rights enshrined in the legislation our case study research suggests that people do not feel that these promises are being realised in practice.

Overall, our case studies suggest that people feel that the system remains difficult to influence and understand, and that the 2006 Act did not go far enough to promote the change required to realise a more participatory planning democracy. This is both a **hardware problem** (e.g. related to the structures of opportunity to participate in the process) and a **software problem** (e.g. related to the attitudes and values of those who use the system, including various professionals, politicians, advocacy groups and members of the public). Below we outline the key hardware and software problems our work has identified before going on to suggest some of the solutions we think are required to realise a more active planning democracy

There's more to planning than efficient decision-making

The Scottish Government has been keen to pursue a culture change for Scottish planning, developing new values and practices amongst all of those involved. However, we feel that the culture they are promoting and the change they want to see may work against the realisation of a participatory planning democracy.

The government has promoted multiple different goals for the planning system. Since 2006 the statutory purpose of plan-making in Scotland has been to promote sustainable development, but there has also been an emphasis on pursuing "sustainable economic growth" as the overarching goal of the system. This has effectively re-emphasised the primacy of what is known as the 'presumption in favour of development' within the Scottish planning system whereby the default answer to any application for planning permission should be 'yes'. It has also led to a prioritising of the interests of developers who have come to be identified as the chief 'customer' of the planning service (and who, above all, want quick and positive decisions) over other voices, leading to a focus on efficiency (e.g. speed) that undermines commitment to democratic decision-making.

This focus on efficiency is perhaps revealed by the recent Ministerial Statement from the new Planning Minister.

"The 2006 Planning Act contained the most significant changes to the planning system in 60 years. It has bedded down well but more needs to be done to deliver the efficient plan-led system we aspire to... What I am publishing today is a comprehensive package of measures to drive improved performance, simplify and streamline the planning process, deliver development and promote a plan led system." Derek Mackay MSP
28th March 2012

With concern for efficiency and the belief that the costs of delay in decision-making are a major problem dominating political conceptions of planning in Scotland, it is not surprising that professionals and other actors who work in and with the system on a daily basis come to see participation as a 'problem' that

gets in the way of development, rather than a key priority. Equally it is unsurprising that in practice people continue to feel that they are sidelined.

Within our case studies, people's experiences of engaging with their local planning authorities varied considerably, and seemed to rely a great deal on the culture of individual authorities, attitudes formed by previous experience and even the attitudes of individual officers and their willingness to help. However, for all there was a strong feeling that authorities viewed their relationship with developers as more important than that with local communities and people typically saw themselves as 'outsiders' struggling to get the attention of those who held the power to decide. There were few instances where authorities actively offered support to 'third parties' to participate effectively, and as a result the considerable 'inequality of arms' faced by the public was reinforced.

Inequality of arms

Whilst the principle of public participation in planning is widely accepted, members of the public face a number of substantial disadvantages when they try to engage with the planning system. A true commitment to ensuring democratic planning requires proactive effort to ensure that there is 'equality of arms' between all of the actors influencing and affected by a decision (developers, public authorities, and the wider public). At present, however, this is far from the case. As noted above the idea that the key relationship in planning is that between the public authority and the private developer means that the potential contribution of 'third parties' to determining where the public interest lies in the use and development of land is not fully recognised. Key areas that need to be rebalanced include:

- Expertise

The planning system in Scotland is a complex process that is part legal, part bureaucratic, part technical and part political. The system is premised on discretionary decision-making by public authorities which makes it capable of responding flexibly to applications on a case by case basis. However, this also creates a great deal of uncertainty as to how things work and what is likely to matter when a decision is being made. This in turn leads to a reliance on experts who can help explain the logic and rationale behind how things work, help to identify areas of possible strength and weakness in often lengthy and complex technical and policy reports and arguments, and translate people's ideas into the often obscure technical language required. Developers have a financial interest in having a development approved and as a result can afford to employ experts. Communities cannot afford such luxuries.

All of the individuals and groups we have met have noted the expertise gap as a major problem that requires a very 'steep learning curve' and often leads to large amounts of wasted effort being spent poring over legal or technical details that may later prove irrelevant. Many such groups end up being very reliant on the small amount of expertise they find within their ranks, but this is often uncertain and leads to an over-reliance on certain key individuals (moreover, it often means that wealthier communities with better educated residents have a strong advantage over other areas when it comes to being able to represent their interests through the planning process). Local

planning authorities can, at times, be very helpful, spending time answering queries and questions. However, in other cases (often where the authority saw public concern about a development as hostile) even this support was not available. Moreover, in the final analysis local authorities do not generally seem to see their role as being to support public representations. Many of the groups we spoke to had approached Planning Aid for help, believing it would offer a full support service like legal aid. Whilst grateful for the advice the service was able to offer there was a general perception that this was inadequate to provide the kind of support required to really influence what was happening. In more general terms, planners in Scotland seem not to support third party representations with the same amount of time and resources as they dedicate to supporting developers drafting proposals, the effect of this is that communities are left to their own devices and the inequality of expertise is perpetuated.

Faced with these technical barriers to participating through formal channels it is perhaps unsurprising that many communities prefer to turn to forms of political campaigning. This can often be an effective way of influencing local political decision-makers. It does, however, suggest the failure of the planning system to provide an effective forum for debating development.

Case study: Lomond Quarry in Fife

Residents of a housing estate in Leslie in Fife live less than 100m from a sand and gravel quarry where blasting began suddenly out of the blue experienced the steep learning curve and expertise gap that many communities face when engaging with the planning system for the first time.

The first many in the area knew of the blasting was when the first explosion happened and the initial blasts in particular were very large. Around the same time residents reported cracks appearing in some of the houses closest to the quarry, many of which are built on a restored landfill. The residents formed the Lomond Quarry Action Group to sort out grievances they have with the quarry operators and Fife Council who gave permission for the blasting.

The quarry in their village had operated for many years and was due to close down and be restored under the terms of its licence in 2015. There was a general tolerance of the trucks passing through the village because they understood the situation was temporary. However in 2010 the quarry's license was extended for a further 20 years and permission granted to blast and extract harder rock.

Members of the action group began reading the weighty and highly technical documents and exploring different way to help protect their property. There was no one available to explain how the environmental impact assessment took their lives in to account. Alongside the blasting issue a road to bring trucks through the village and past a children's play area had been

upgraded without consent and was considered unsafe. Safety specifications and roads consent was another complex regime to understand alongside the planning system. Residents have lodged several complaints with the SPSO on this and on the quarry operating earlier than allowed. With each complaint however they learnt what can and cannot be challenged and how different policies can be interpreted. All this has taken an incredible amount of time and effort. Finally five weeks after the formation of the Action Group its chair received a letter threatening legal action against her personally. The group had no funds to employ lawyers but have had to learn how to protect themselves with affidavits.

- Time and awareness of what's going on

The focus on efficient decision-making in planning has led to a renewed concern to ensure that development plans are up to date and that decisions are made within strict timescales. This is important and a worthwhile aspiration as it is in everyone's interest to deal with such issues in good time. However, there are questions raised about whether communities are being given enough time to respond to applications and proposals, particularly where they often only become aware of them relatively late in the process. The timescales for determining planning applications have not been changed for more than sixty years, though the technical complexity of the supporting documentation has increased massively. As a result, meeting the targets requires well resourced planning authorities and puts increasing pressure on planners to work quickly rather than collaboratively. In light of the problem of expertise noted above this adds further problems for citizens seeking to engage with the system.

These issues can be exacerbated by the timing of public notifications and consultations which may arrive during holiday periods, or when other issues have distracted people.

Time is also a problem in another sense – for citizens seeking to engage with the planning system this is generally a spare time activity that must be fitted around the rest of a life. Time constraints mean that certain groups (particularly the retired) are more able and likely to be involved. They also exacerbate the problem of expertise as the time required to understand what is happening, and respond effectively to it is often considerable, particularly where developers are able to employ full time professional experts.

For many of the people we met conducting a local campaign had become a huge time commitment that they struggled to maintain alongside other commitments. Some confided that their lives had been disrupted to the extent that they had cancelled holiday plans for fear of notification arriving whilst they were away (along with a sense that canny developers and even local planning authorities would often deliberately chose holiday periods to open public consultations). Finally, there is always the prospect that having fought a lengthy and energy sapping battle against an unwanted

development, the developer is able to simply submit another application – meaning that the process can come to seem endless.

- Money

The public have to put enormous amounts of time into responding to planning applications or engaging in a development plan process. If the process moves onto public local inquiry then the financial costs can also mount up (quickly running into tens of thousands of pounds). Legal challenges are, at the moment, even more expensive. People engaging in the planning system have no external resources available to help them recoup the cost of getting advice from or engaging technical experts.

- Transparency and access to information

This last point suggests the difficulty individuals and groups have in following the progress of an application or site designation proposal through the lengthy and complex planning process. This is exacerbated by a consistent perception that developers and public authorities often engage in detailed negotiations and discussions that lack transparency and which are not shared with the public.

This leads to a sense that an important principle of 'natural justice' in decision-making is often not adhered to in the planning process. The legal doctrine of natural justice requires that all parties are treated fairly and equally, and none has privileged access to the decision-maker. This sense of an unequal relationship led many of those we interviewed to express cynicism about the planning process and their power to influence it.

Case study: Incinerators in Lanarkshire

Near Coatbridge a community campaign group, Monklands Residents Against Pyrolysis Plant, was formed when proposals to build a nearby pyrolysis plant became public. Demands on their time and the struggle to understand how best to influence the system have been ongoing themes in their engagement with planning.

One key member of the group received a leaflet as she was going on holiday for two weeks only getting the time to read about the proposal on her return. Since then the group has been involved from the pre-application stage, the application itself, where thousands of objections were registered, the appeals process and finally through to Judicial Review (although this was taken by the North Lanarkshire Council and not the community). Key members of the group had no previous experience of the planning system and had never been involved in campaigning before the development proposal: "There are so many strands – local, national UK policy. How can anyone pull all this together and know what to do?"

Close by in South Lanarkshire members of a second campaign against a waste incinerator on Dovesdale Farm near Stonehouse have faced similar challenges and steep learning curves. “We felt like getting on the train at the last stop, everyone else is more prepared, decisions seem to be already made.” They had an initial “scatter gun approach” to influencing the decision but had to learn quickly for themselves where to focus their energies, becoming experts in incineration, planning policy and local decision-making and politics.

A third incinerator near Greengairs, North Lanarkshire is discussed below.

These issues will not surprise anyone who has sought to participate in the planning system, and they have long been recognised. In our case studies, however, they continued to be major problems, acting as a real barrier to the emergence of empowered public participation and until the system and those that work it recognise the value of participation change may prove difficult to realise.

Lack of recognition of the value of participation

Underpinning the issues raised above is the persistence of a long standing view that public participation is an additional element in planning decision-making. Whilst the government’s own policy statements do recognise that participation is important to the legitimacy of the planning process and can make an important contribution, too often in practice participation continues to be seen as little more than a source of delay and unwanted opposition.

Many of the people we spoke to felt that this was how they were viewed both by developers and often by planning authorities or local politicians. In this light they had come to see opportunities to participate as little more than exercises in box-ticking or pro-development marketing, designed to allow the appearance of participation with minimal disruption to development. One of the most common complaints we heard was simply a sense that people felt they were not really listened to, or taken seriously when trying to make their views heard.

Such attitudes are revealed in the use of dismissive labels to describe citizens who get involved in the process. The widespread description of opponents of development as NIMBYs, or the ‘usual suspects’ for example is often a way of delegitimizing the views being expressed and dismissing opposition. Similarly the courts have long seen public interest claimants as potential ‘busybodies’ who must not be allowed to interfere with decisions.

The use of such labels detracts attention from the fact that many citizens who get involved in reaction to a proposed development have an important contribution to make. This is often not just in relation to detailed local knowledge, but where controversial and unusual development is proposed we found that citizens had often become expert in the issues raised by, for example, waste disposal. In other places and fields the contribution of such citizen experts to policy development has been recognised and positively valued as a form of engaged citizenship, but in planning the logic of development and of a hierarchy

of policy flowing from the top-down has worked against such a valuing (see below how 'national planning' has tended to work against such recognition).

Case study: Valuing participation in North Lanarkshire?

A coalition of villages in North Lanarkshire worked together to create a community vision for their area and successfully influence their emerging development plans. Their area has for years been blighted by waste and the associated traffic, dust, noise and smells from Europe's largest capacity landfill, four other recently completed landfills and a long history of open-cast mining. The area's community councils knew they needed jobs and investment and did not want more waste dumped on their doorstep. They also had experience of the planning system through their role as statutory consultees and community representatives.

The North Airdrie Joint Community Group made joint submissions to the structure and local development plan processes and were successful in influencing local land designations. The Scottish Government even congratulated them on their proactive engagement. They supported nine wind turbines and suggested areas for large-scale reuse and recycling facilities: "We did everything we could to make sure that no one in North Lanarkshire need live with an incinerator."

However, in 2009 a developer was granted permission for a massive 300,000 tonne incinerator despite this being contrary to the local plan and the community's input. Though the Scottish Government agreed that the community had done everything right they refused to call the application in to scrutinise the local planning authority's decision, telling the community that they were simply unfortunate:

"How come it was the communities that were 'unfortunate' and not the development? If members of the public with no relevant expertise, no financial resources and no template to follow, could make successful submission through the appropriate processes using the new planning system criteria, in advance of any application being submitted – we earned the right to have our input supported by our political representatives and for it to be acknowledged as an influential material consideration. It wasn't."

The community was therefore left powerless to influence or force further scrutiny of the planning merits of the case. Despite the fact that they had followed the procedure through all of the relevant development plan stages, whilst the developer had not, they had no right of appeal.

"We did everything 'by the book', followed all the appropriate procedures and yet we are going to be worse off than if we had

never engaged with the Development Plan process, while the incinerator developer completely circumvented the process and the planning system supported approval of the application. We were refused a Public Local Inquiry and some of our questions remain unanswered. All of this despite the Government rhetoric that the system will be "plan-led" and that the public should engage early with the development plan process to influence our local area. Our input wasn't acknowledged or even mentioned in the decision making process. Despite having done everything that was asked of us and more - the public still have no voice in shaping their own environment."

"We are not Nimby's in this scenario. We supported large capacity recycling technologies; we supported wind turbines in the area; we suggested business opportunities resulting from recycling for the area; we suggested public access options and all put forward through the proper procedures. We have put up with dust, noise, odours, pollution and heavy traffic for years. We have a considerable area of contaminated land that will not be safe for options of use for years to come. We have acted appropriately at all times and shown a great deal of foresight and responsibility in the options that we supported and suggested for the future."

Their only option was to pursue a Judicial Review which required them to identify an individual who would qualify for legal aid. After raising the £1500 for a legal opinion on the potential grounds for appeal, however, they pulled back. The developer had written to their legal advisor asking for the names and addresses of every individual involved as they reserved the right to sue every each of them for any costs resulting from delays caused by a Judicial Review.

This case shows the limits to people's rights to be heard and exposes the contradictions of apparently recognising people's rights to participate and encouraging them to get involved only to leave them powerless at the point where decisions are actually made. It also demonstrates how local people can become expert enough to participate effectively in planning, and in particular technologies such as incineration providing valuable scrutiny and asking difficult but important questions. This citizen expertise should be harnessed to influence the top-down policies and processes that create national and local policy.

Lack of understanding of the costs of participation

Whilst much has been made of the high costs of delay in the planning process to businesses and developers (though the evidence to back up these claims is often less clear), much less has been made of the costs that affect members of the public trying to get their voices heard in the system.

One of the most striking things to emerge from our interviews was accounts of the personal impacts that people had felt from their attempts to get involved. Some of these may be seen in a positive light as examples of people becoming more engaged citizens, involved in their local community and local politics, getting to know their neighbours and discovering new networks of contacts and support, even leading some to new training opportunities. However, for most, the impacts were mainly a story of frustration, of long hours spent battling against the odds in an unequal fight in which they didn't feel that their views were being taken into account. For many this had led to a high degree of cynicism or mistrust of the system. For some "casualties of the system" it has resulted in feelings of complete disempowerment, leading to depression and anxiety states.

Very few of those we spoke to had deliberately chosen to get involved in their particular battle. They weren't busybodies in that sense. Rather they were genuinely concerned local citizens worried about the impacts of development on their families and the environment they lived in and valued. Once involved, however, they were committing huge amounts of effort into their cause, this involved a commitment of time, energy and money, but also of emotional energy. In some cases this was bound up with a particularly strong attachment to a particular piece of land which the planning system did not seem to recognise or value. Sustaining this emotional investment over time was very difficult for many, and local groups often found their number dwindling as the length of the process took its toll.

Sustaining commitment therefore required often remarkable perseverance in the face of multiple barriers. In some cases individuals and groups were faced with the prospect of putting their financial or personal health and well-being at risk in considering costly legal action, or facing the threat of it from frustrated developers.

For many groups the financial costs of paying for lawyers or other experts to help fight PLIs added a huge extra strain requiring extensive local fundraising and commitment of personal savings, whilst attendance at PLIs cost people large amounts of their annual leave, or left them struggling to balance commitments to their businesses and families. The prospect or threat of legal action also hung over many of these cases raising genuine fears about the potential costs of continuing to seek answers from better resourced developers and public authorities.

For those living with the impacts of environmentally damaging development once planning permission had been granted there were also more immediate physical impacts. Being reminded of these is to be reminded of the importance of planning decisions and of the need to ensure that such impacts are minimised and only imposed when necessary, following an inclusive process of debate and discussion.

Deliberate exclusion from decisions that affect peoples' lives has a direct emotional toll, inclusion in a 'box ticking' consultation is frustrating and rapidly erodes trust and mutual respect. There may well be long term implications for public trust in planning where such frustrations are not addressed. Inclusion in a

truly participatory process where key decisions are open is refreshing and empowering but is currently too rare.

Case study: Portobello, Edinburgh

Portobello is a coastal town now part of Edinburgh that retains its own high street and identity. Residents fought a planning application for a major supermarket just outside of the town. They feared that the character-rich high street would disappear, small shops would go out of business and good quality jobs would be lost. The campaign group raised £20,000 to fight the proposals and dedicated many months of spare time to protecting the identity of Portobello. Fundraising events helped bring the community together but the campaign cost the organisers many months of late nights and stress. Eventually they won and the proposal was thrown out at appeal but despite the months of community input they know that a developer can come along at any time and propose a similar development. The planning reforms have done little to ensure the costs of participation are recognised and community input is valued.

Case study: Buldoo and Dounreay

Buldoo is a community of crofters living next to the Dounreay nuclear power station on the north coast of Scotland. The power station is being decommissioned with the low and intermediate waste from the process dumped nearby.

We spoke with three members of the community, one of whom was the third generation of her family to live on their tenancy which the nuclear facility had grown next to. She grew up on her land and has a strong and deep connection with the croft and the coast below it that grew not just from her life, but her family and community's history. This indigenous 'sense of place' is described in the Gaelic tradition of Caithness as the people's 'dùthchas' by which a person claims their right to live on the land as a result of ancestral ties to it. An expression of this right is apparent in Scotland's crofting rights and laws.

In Dounreay it had long been assumed that all the waste from decommissioning would be dumped somewhere on the relatively large site. However, a decision was made on "sound geological and logistical reasons" to locate the dump off-site between the croft and the coast. This has cut off a historic route the community took to the sea to bathe, play and exercise their fishing rights (hard-won in the 19th century) and destroyed habitat for rare plants and animal species.

The crofters know this land intimately and are distraught. They feel like they were never part of the decision-making, that the decision was a done deal and their engagement was tokenistic. No procedures were apparently ignored but they question how

scheduling a large wind-farm application and a nuclear waste dump for one planning committee can give adequate democratic oversight to major developments.

There are no reasons to doubt the technical arguments for locating the dump where it is but this case illustrates how the planning system can fail to accommodate local knowledges, can ignore local people and indulge in tick-box participation where decisions are already made – especially where vast power discrepancies occur between the nuclear industry and a small number of local people.

More generally many people feel a 'sense of place' is threatened by development. At Planning Democracy we feel this is too easily dismissed. However, the planning system should be a way of harnessing this 'sense of place' to create a vision and plan for how local land is used and people's connection to place enhanced. There should still be arguments and disagreement (and decisions will never please everyone) but these should concern the substance of major decisions, not people's rights to be fully involved.

We now move on to consider some of the opportunities to participate that exist at present, the 'hardware' of the system and the issues that it raised

A system that doesn't work with the grain of how and why people get involved

The aim of recent approaches to participation in planning has been to encourage early engagement or 'frontloading' of participation, where people are encouraged to have a say earlier in plan preparation and on proposals for development. The laudable aim is to ensure that people's views are taken into account earlier in the process, which it is hoped might lead to less conflict later on. We support the principle of early engagement, but not at the expense of people's right to get involved later in the process.

As currently conceived frontloading is a way of relieving pressure by removing the scope for disagreement at the 'business end' of the decision. Moreover, we are concerned that the move to a 'frontloaded' system of engagement does not really take into account the way in which most people are likely to want to participate in planning decisions – at the point where they are most likely to find out about a proposal and where it matters most to them. Most of the people we spoke to only found out about development at the point that an application was being considered, or through pre-application consultation (which was widely described as a PR exercise on behalf of developers rather than a real opportunity to influence decision-making). As a result they were not really organised and ready to make representations until considerably later in the process. In this way the existing windows of opportunity to participate did not seem to offer people particularly effective opportunities to get involved.

In our case studies it was only pre-existing, well organised groups that were aware of any emerging development plan and seeking to influence policy within

it. Given the low levels of public awareness of plan-making processes it is unfair to blame people for this. Rather there is a need to shape a system that acknowledges rather than resists the dynamics of public engagement, and values the scope for reactive challenges raised in relation to particular developments, which can often raise key issues overlooked earlier in the process. This would recognise that such reactive challenge is also often the grounds on which effective public participation can be built into future development planning, and this link should be more explicitly explored.

Whilst it is a good idea to try and create a process in which people's awareness of potential development can be developed earlier, allowing more time and space for everyone to get involved – a system that fails to develop this awareness and then denies people the right to be involved at the point of decision is unlikely to command public trust.

National planning, top-down decisions and commitment to participation

One good example of how the principle of 'front-loading' can limit public debate about important decision can be found in relation to national planning.

The planning system in Scotland is based on a hierarchy of policy, strategy and plans that works from the top-down to influence how decisions are made about the use and development of land. At the top of this hierarchy is the National Planning Framework (NPF) which sets out a vision for the development of the country and designates key 'national developments', typically large scale pieces of major infrastructure like power stations, ports, and key transport networks. The national development designation was designed by the Government to smooth large developments through the system in response to fears about the length of time they can take to gain approval. Once something is designated as a 'national development' the principle of the development is established, leaving only matters of detail to be debated once an application for planning permission is lodged.

The idea of an NPF is a good one, potentially providing an opportunity for an innovative national conversation on big issues like how the country is to deal with waste disposal and energy production. This could prove hugely important in establishing a culture of active democracy in Scotland's planning system.

However, any such conversation must also take into account the rights of those who will be directly affected by 'national developments'. This is a commitment that is built into the Aarhus Convention. In our view, none of the national developments received nearly enough scrutiny from the public before being given this greenlight. The three national developments that we have studied also suggest that it is only at the local level, in relation to particular proposals, that a genuine debate is likely to occur.

This highlights the importance of recognising the dynamics of how people get involved, but also the potential contribution of citizen experts, and of those who will be affected by development, in contributing to the setting of national policy from the bottom-up. We believe that only by recognising these dynamics and shaping processes that work with the grain of them can the promises of participation be realised.

Case study: Debating Hunterston - the last minute national development

People living close to Hunterston, Largs are angry and frustrated at not being given the opportunity to respond to a proposal for a coal fired power station on their doorstep. The development was not included in the National Planning Framework until after the main consultation process had finished. It first appeared in a supplementary strategic environmental assessment consultation a few months later.

This supplementary consultation however was extremely poorly advertised. It appeared on a page of the Scottish Government's website and one advert was placed in the Edinburgh Gazette, the little known official newspaper of the Government. Nothing appeared in a locally-circulating newspaper and no more efforts were made to tell local people about plans for the power station. There was almost zero local public scrutiny from the people living near to the site at the point at which it was designated as a national development.

Despite being faced with legal costs of over £100,000 if he lost, Marco McGinty from Largs appealed for a judicial review of the plans on the grounds that the Scottish Government had not consulted the public according to standards required by European law and that assessments that were carried out did not adequately examine alternatives to a coal-fired power station.

Since Marco's challenge, and the power station earning the dubious title of Scotland's most objected to development, there has been much public debate and scrutiny. In February 2012 the local council voted to remove all references to Hunterston power station from the draft of its development plan in direct contradiction with top-down national policy. By objecting to the application the local authority has also ensured that there will be a public local inquiry at Hunterston, however, it remains unclear what the scope of that inquiry will be (e.g. will it be able to address the substantial objections raised to the principle of the development or only matters of detail).

This neatly illustrates how the dynamics of participation and debate work in planning. It suggests that to generate real public deliberation it is necessary to recognise that debate is most often generated once the local impacts of development become apparent. The government should therefore use this participatory energy to ensure a full and robust debate about the principle of potential national developments. It is possible to encourage such debate earlier in the process to prevent potentially costly delay, but it does need to be actively encouraged.

Local plans and certainty in decision-making

Local plans have a very difficult job to do, seeking to forge a vision of how an area should change that takes into account a wide variety of different issues and interests. This can only be effective if people buy into the vision and help to make it happen which requires a process of robust public debate about the priorities and interests that should shape change. Moves to involve people more fully in development planning are therefore to be welcomed.

At present, however, too few people are aware of development plan processes. It can often be difficult to interest people in abstract discussion about the future of an area, and as we have seen they are typically likely to get involved in response to a particular site designation or proposal. Most of the groups we spoke to had formed in this reactive way and were not really aware of the local plan and its development or their ability to get involved in shaping it. However, several having emerged like this had gone on to become more proactively engaged in development planning processes, becoming increasingly expert on the issues that interested and affected them and how to help influence decision-making. It was frustratingly rare, however, to find examples where the involvement of such groups had been welcomed or encouraged by local planning authorities.

Another issue for people stemmed from the level of discretion that remained even after a site had been designated in a development plan. This created considerable confusion about how a site apparently identified for one use could suddenly be approved as appropriate for another, often less welcome development. Whilst such discretion is a valuable dimension of the system, adding much needed flexibility, it is also important that local plans do provide a level of certainty to communities to ensure that, where they do make the effort to get involved, their time and energy is not wasted. It also highlights again the issue of expertise and the need to ensure that people have access to the information and expertise they need to understand the system and how it works.

This uncertainty was made all the worse by the sense that people were often given little indication of the extent to which their concerns had been taken into account in decision-making processes.

Appeals

In the build up to the 2006 Act being passed there was a widely supported campaign to have third party rights of appeal introduced into the planning system in Scotland. Ultimately this proposal was rejected, primarily due to fears that it would lead to delay in decision-making as NIMBYs and busybodies were empowered to challenge every decision they didn't like.

This was a major defeat for democracy in our planning system, perpetuating the cultural problems we have identified above about the undervaluing of participation.

If, as the Scottish Government does, we accept the rights of so-called 'third parties' to participate in planning decision, (e.g. that they are fundamentally entitled to help shape the places they live in, and it is desirable that they be fully involved) then it is simply illogical that they do not have equal rights to appeal

against decisions that appear to have been made without due consideration of all of the issues involved.

Evidence from other places where third party rights of appeal do exist suggests that they have not led to many of the negative effects that have been claimed by opponents, and it is surely possible to shape a system of third party rights that promotes justice and equality between parties, without unduly delaying development that meets policy objectives and helps to promote the public interest (indeed, a system that fully recognised the rights of all parties to participate could also become much more effective at communicating the responsibilities that go with participation, including a need to accept the legitimacy of fair decision-making processes).

In our case studies we found widespread frustration at the inability to challenge unpopular decisions, and several cases where the sense of injustice that this provoked was hard to disagree with – notably where a decision seemed to represent a departure from the development plan, ran contrary to policy, seemed not to have taken into account important issues, or where the local authority seemed to have a material interest in a positive outcome. Such dissatisfaction may be unsurprising, but in a system that operates on a discretionary case-by-case basis it seems vitally important that the exercise of discretion is subject to full public scrutiny to make sure that decisions that are made, and that often have lasting impacts on people's lives, are the best they can be.

Since 2006 there has also been a drive to reform the appeals process in Scottish planning including the introduction of controversial local review bodies, and a move to make greater use of more inquisitorial 'hearing' sessions rather than more formal public local inquiries. The stated aims here have been to ensure efficiency in the appeals process, and in so doing to create a friendlier and more accessible format in which the costs and intimidating cross-examination by lawyers associated with the quasi-legal inquiry process can be avoided wherever possible.

We have found that people have mixed feelings about these changes. Whilst the format of public local inquiries imposes huge challenges on communities in terms of expertise, time and money, they also often feel that the formal interrogation of a proposal through PLI provides a thorough opportunity to debate ideas and allows them their 'day in court'. Whilst most hearings seem to be conducted in a fairly inclusive way by the DPEA there are concerns that people do not have a 'right to be heard' in a hearing and that sometimes issues that are important to communities are not adequately addressed.

Enforcing the rules

One issue that we hadn't expected to hear much about came up several times in our case studies. This was enforcement and the extent to which claims made in planning applications about the environmental impact of development, or conditions attached to applications to minimise such impacts, are enforced. This was an important reminder that for people living with 'bad neighbour' developments there is an ongoing emotional and environmental toll that can last throughout the life of a planning permission. The sense of injustice that people

felt where promises made in applications were not being met was acute and entirely understandable.

Case study: Enforcement in Douglas Valley

Douglas Valley in South Lanarkshire has four operating open-cast coal mines and two undergoing restoration. The area has a long history of major developments including 20 years of coal mining and there are many issues, one of which is enforcement.

Douglas Community Council told us wheel-wash facilities for trucks leaving the local mines are required by planning conditions to minimise coal and dust spreading to the roads and villages. On one mine the wash was too small and completely inadequate and it took many months of complaints to install a larger one.

Enforcement issues can go further than simple non-compliance with planning conditions, however.

Mainshill open-cast coal and fireclay mine is the latest mine to be granted planning permission. Its environmental impact assessment made it clear that "there will be no HGV traffic travelling through Douglas" - representations were drafted and the planning permission was granted on that information. However, since the opening of the mine trucks have been travelling through the town regularly. A 2011 traffic survey conducted by Coal Action Scotland found over 130 coal-carrying HGVs passed through the village in one day. The community have complained but the Council have told them they have no power to hold the operator to the haulage routes described in the environmental report.

The community feel cheated and deceived and are faced with noise, pollution, dust and the safety risk of large trucks running directly through their village for years. If the impact on the local villages been clear in the application they feel this would have been likely to trigger stronger objections, a public local inquiry and more efforts to protect their health and environment.

They feel strongly that the information given to consultees is the basis on which any development should operate. Any other way and the credibility of the system will quickly crumble.

Access to court justice

Recourse to the courts should be a last option, and where a full and fair process has been followed in which people feel they have had a fair say it is rarely

necessary. At the end of the day, however, things do sometimes go wrong and the courts play an important role adjudicating disagreements, and ensuring that decision-makers remain accountable to the public.

The potential costs and implications of legal action were an issue that recurred in our case studies. This perhaps reflected the fact that many of the stories we heard were of communities that had lost the planning battle and were seeking other means to challenge decisions with which they continued to feel aggrieved. For many this was about a desire to have their view recognised and listened to in a way that it wasn't in the initial decision-making process. Improving the initial process is therefore the best way to deal with many of these cases. However, where things had gone wrong, it was important to people that the courts would take seriously their concerns and recognise their right to have decisions scrutinised.

Things are beginning to change, the technicalities that prevent public interest cases from being heard in court are gradually being removed and the need for a cap on costs for such cases is now recognised. However access to the courts in Scotland remains intimidating and prohibitively expensive for communities. Moreover, it seems that the courts remain reluctant to truly recognise the value of public interest claimants.

Case study: Judicial Reviews in Scotland

Planning Democracy supported Marco McGinty's legal challenge to the inclusion of a coal-fired power station in the National Planning Framework. We supported Marco's case because we believed he was denied his right to influence the development because he was unaware of the consultation process that led to its inclusion as a national development.

Our involvement in this case demonstrated to us the extraordinary difficulties that ordinary citizens, seeking justice in the planning system, have to overcome in taking a case to court. The enormous financial costs and hours of preparation required to go to court are now reasonably well recognised. The government have recently been forced into proposing changes to the rules that will cap the expenses of people fighting cases, not for their own gain, but in the public interest. However we feel that the toll of taking court cases and the impact on people's lives is severely underestimated by those more familiar with the workings of the legal system.

People do not take judicial reviews lightly; there is a lot at stake, not just their finances. We have spoken to disadvantaged mining communities whose lives are massively impacted by mine workings, vehicle movements, blasting, noise and other nuisances such as dust and fumes. Those financially disadvantaged communities would not consider taking a judicial review unless it was a last resort, indeed in some places it seemed like a step that was out of keeping with important social conventions. It takes courage to ignore such conventions when

you have lived in a small community for years. This in itself can be a major barrier to bringing a case and indeed to raising the required funds needed from within the community.

We have spoken to communities whose lives are affected everyday by odours and pollution from landfill and contaminated land. These people have faced intimidation, such as letters threatening to sue, that have been a factor that prevented them from taking a judicial review.

We also have spoken to tenants and farm workers who fear that taking judicial review might cost them their jobs and livelihoods. These obstacles along with the amount of time and effort required to continue with protracted and complex legal process are extremely significant barriers.

What needs to change to realise an active planning democracy?

Our research and analysis has highlighted the following key principles that should underpin change to create a fairer and more inclusive planning system for Scotland.

1. A culture of active democracy where policy priorities and planning decisions can be **debated on equal terms**.
2. A just planning process where **inequalities are challenged**, including access to various resources and power, and where wider social and environmental interests are balanced with local interests, not private gain.
3. An open planning system that **builds public trust** through transparent accountable decision-making with a clear indication of how people's input has been taken into account.
4. An **empowered public with the skills, experience and knowledge** to participate in a decision-making process.
5. An accountable planning process in which there is an **affordable and speedy system of redress**.
6. A planning system where power and influence flows both from the **top-down and bottom-up** where development is 'plan-led' but people can challenge the principle of developments supported in national policy.

We believe that the following changes would help to address both the hardware and the software issues identified in our research and to promote these principles.

There's more to planning than efficient decision-making to sustain economic growth

In order to promote participation we believe that there needs to be:

- Recognition that efficient decision-making is not the only priority for planning
- A specific plan of action to determine how an active planning democracy can be realised in Scotland's planning system

Debate on equal terms

In order to challenge inequalities and promote debate on equal terms we believe there needs to be:

- A strengthening of the resources and professional advice available to communities
- A commitment within local planning authorities to provide equal support to communities and to enable them to articulate their concerns
- The creation of dedicated community outreach officers who are able to act as advocates for community concerns and a commitment to ensuring that local authorities have the skills, resources and culture in place to make facilitating participation a genuine priority
- The improvement of site notification to ensure local people are made aware of possible development proposals at the earliest possible stage, particularly where proposed development may be deemed environmentally damaging.

- Changes to pre-application consultation arrangements so that it is undertaken by either the Local Planning Authority or a neutral third party
- A requirement to publish details of all pre-application discussions that precede applications for planning permission
- A requirement to ensure that decision-making processes make it clear how they have taken into account representations made by the public.
- A commitment to ensuring that consultation processes create a genuine space for discussion in which people are enabled to explore issues and represent their views

Valuing participation: recognising public expertise, supporting its development

In order to ensure that the value of participation is fully recognised we believe there needs to be:

- A move to recognise the importance of the right to participate enshrined in the Aarhus Convention and a commitment to making Scotland a leader in international terms in developing innovative and effective approaches to ensuring people's voices are not just heard but also listened to and taken into account in decision-making
- This must include a recognition of the potential contribution of citizen-experts to shaping policy, and of the value of bottom up challenges in helping to shape innovative policy on key environmental questions (see below)
- Political and Governmental leadership in changing the culture of planning towards a more active democracy

Supporting participation: recognising the costs and benefits of participation

In order to better support empowered public participation we believe there needs to be:

- Greater recognition of what is at stake for individuals/ groups when they face an unwanted development proposal
- The use of dedicated officers to provide support and information about the process to ensure clear communication about how and when people's views can and will be taken into account
- Greater research and promotion of understanding of the cost and impact to individuals and communities due to lack of ability to participate

Promoting more powerful participation: recognising the dynamics of participation

In order to ensure that the system recognises how and when people are likely to get involved and works with the grain of how people participate we believe there needs to be:

- An acceptance that interest and debate is likely to emerge when development proposals become clear and a willingness to engage in debate at this stage and enable bottom-up challenges.
- An acceptance that site specific debates can lead important policy debates and a willingness to accept such challenges where policy in relation to the proposed development is ambiguous or out of date, e.g. in relation to key issues like waste or energy
- A commitment to designing processes that allow these debates to occur and value them as part of the process. These should ensure an efficient

process but without a presumption that ensuring rigorous debate represents 'delay'.

Re-thinking national planning and the hierarchy of development

In order for the national planning framework to become a symbol of a new culture of active planning democracy we believe there needs to be:

- A commitment to ensure that the NPF is a product of a genuine national conversation about priorities for the future
- A commitment to explore innovative forms of public engagement such as citizen juries, consensus conferences, or grand debates (as used in France) to promote this conversation, ensuring that Scotland is at the forefront of attempts to foster an active participatory democracy and to explore innovative approaches to policy making.
- A commitment to ensure that those likely to be affected by possible national developments are fully included in these deliberations. This means creating mechanisms through which bottom up challenges can be successfully raised against the designation of national developments, without unduly undermining the value and principle of having a NPF.

Local plans and certainty in decision-making

In order to ensure that the local planning process is able to operate effectively as a genuine forum for active democratic debate about the future of an area we believe:

The current idea of a plan-led system guiding development yet retaining the flexibility to adapt to changing circumstances is sound, but...

- Greater effort should be made to raise awareness of the importance of contributing to development plan preparation and equipping local people with the skills and resources to do so effectively (see recommendation regarding dedicated officer community advocates, or increasing resources for planning advocacy services). Greater resources should be available for local planning authorities to ensure such awareness through officer time, dedicated advocacy services, use of appropriate media channels and public events.
- There should be an acceptance that site specific designations will often be the best way to promote active public debate and this should be used to feed into the production and revision of development plans.
- Where a local campaign has fought against a particular type of development any repeat applications should be required to explain how they have addressed the concerns raised previously and rigorous efforts should be made by planning authorities to ensure that developers do not profit by simply wearing down local communities.
- The system should not dismiss as 'too late' people who respond to applications but haven't got involved earlier in the process. After all, in a discretionary system where developers can submit applications that don't accord with the plan, there should be room to accept that each application has to be dealt with as it comes up for consideration.
- Where local people do get involved in shaping the development plan there should be a commitment to ensuring that they are made aware of how their views have been taken into account and to ensuring that subsequent decisions respect this input.

Appeals

In order to ensure greater accountability, debate on equal terms and public trust in the system we believe:

- a third party right of appeal should be introduced. Exact details of this should be subject to further consideration but the fundamental case should be accepted and it should apply at least in cases where there is a clear departure from the development plan, the proposed development is considered to have potentially harmful environmental impacts, or the local planning authority has a material interest in the outcome of the application
- The conduct of appeals should also be reconsidered to ensure that third parties are provided with the resources, skills and expertise they require to fully understand and represent their case in the appeal process.

Enforcing the rules

In order to ensure that people are not subjected to unwarranted levels of environmental impact and that public trust in the operation of the system is maintained we believe:

- In cases where development has potentially harmful environmental impacts, there needs to be a greater commitment of resources and effort to ensuring that the level of those impacts do not exceed those agreed in any planning permission
- There should be widespread use of enforcement powers to monitor and act against breaches of promised/ agreed levels of acceptable impact, and a new emphasis on viewing the planning permission as a contract between a developer/ user and a public authority that is licensing certain activities. Where this contract is breached action should be taken.

Access to court justice

In order to ensure that decisions are fully accountable and debate can be conducted on equal terms we believe that:

- The Scottish government should commit to reforming the judicial review process by limiting the cost of cases through protective expenses orders and assisting with the cost of bringing the action (the cost of the litigants legal expenses) through the widespread availability of legal aid to bring public interest cases.
- The Government should bring Scotland into compliance with the Aarhus Convention by ensuring all environmental judicial reviews and statutory challenges are "fair, equitable, timely, and not prohibitively expensive"
- A wider definition of title and interest should be promoted through the courts to bring them into line with the broader definition of public interest that operates in a modern deliberative democracy and accepts the rights of the public to participate in planning decisions
- An environmental tribunal should be introduced that would be resourced to hear both administrative appeals and legal challenges in relation to planning. This would provide a fair and impartial means of dealing with appeals and could ensure that all participants are resourced to participate fully.

Appendix A: Our Case Studies

We have worked with communities from throughout Scotland from Aberdeen, Fife, Perth, the Highlands, North and South Lanarkshire, Edinburgh and Sutherland.

In Aberdeenshire we spoke to members of the Tillydrone community where a new bridge is planned to cross the River Don that will bring in more traffic to allow access to the city centre from wealthier areas to the north, resulting in the compulsory purchase of some of their houses. We have followed the legal battles of Roadsense, a group opposed to a bypass that would follow a route that was not one of the original five routes that went out for public consultation.

In the Highlands we collected stories from the crofting community living next to a nuclear power plant and new nuclear waste dump. Their lives have been impacted by the new repository which is being constructed outwith the original boundary of the power station. In the Cairngorms national park, we have been talking to residents who are concerned about the way decisions are being made about the future of the Cairngorms National Park.

In the city region of Edinburgh we have collected the story of Portobello community's struggle with the Council and within their own community over plans to build a new school on Common Good park land. We have spoken to people in Edinburgh about several large-scale developments including Caltongate which threaten Edinburgh's World Heritage status. We have also spoken to people concerned about the disregard of their input into development briefs near Tollcross.

In the heavily populated 'Central Belt' region outside of the cities we have collected studies from communities living next to waste dumps, incinerators and coal mines.

Douglas, Glespin and Hawksland communities have been fighting to get the council to enforce planning conditions, the lack of enforcement has resulted in them being subject to noise, dust, traffic and vibrations from the neighbouring open cast mines. We have advised a group in Stirling who have concerns about proposals that are in the very early stages proposing train washing facilities being placed next door to residential housing. We have heard from Greengairs community who live next door to Europe's biggest landfill site, who have engaged proactively in the planning system over the years, but who have found their successful input into the local plan usurped by greater corporate interests. And in Coatbridge and Stonehouses we investigated community-run incinerator campaigns and their experience of influencing the process.

Following the planning reforms and the introduction of 'national developments' we have collected case studies from three of the 15 developments designated in the NPF2: Hunterston, Rosyth container terminal and the 2nd Forth Road Bridge. In all cases the national development status of the developments have denied local people a voice at the planning application stage of the process.

We have followed the first tranche of new development plans and examinations in the Highlands to the east of Inverness, an area planning for a large amount of new housing; in Fife where new housing allocations in a historic town have

resulted in legal challenge; and Aberdeenshire where new housing developments were proposed contrary to local people's input into the plans.