



# People, power and planning: The Planning Democracy manifesto

October 2012

## 1. Who are Planning Democracy?

Planning Democracy is campaigning for a fair and inclusive planning system in Scotland. We are a national charity established in 2009 by a group of community advocates, community councillors, planners and individuals who have been affected by planning decisions. We aim to strengthen democracy by promoting a stronger public voice in the Scottish land-use planning system. 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. 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.

## 2. What is this document?

The Scottish Government promised greater public involvement in the planning system as a result of the 2006 planning reforms. We have been investigating the way the new planning system is working for the public, how easy it is for them to use and the problems they face.

Our views and conclusions have been shaped by thirteen case studies we examined, a review of academic papers and policy research and conversations and email correspondence with many individuals, including a dozen detailed exchanges. Over seventy people have considered a draft of this document and helped to shape the final version.

These experiences provide a powerful account of a voice that has not been sufficiently heard in debates about how the planning system in Scotland works. Our work fills a significant gap in recent debate about reform and culture change in Scotland's planning system.

This document is a summary of our full research and advocacy report *Re-valuing public participation in the Scottish planning system*. The Manifesto describes what's wrong with the system we've got based on our research and ends with a range of ideas for reform to help realise a more democratic planning system.

Please show your support for our Manifesto at  
[www.PlanningDemocracy.org.uk](http://www.PlanningDemocracy.org.uk)

## 3. Problems: what's wrong with the system we've got?

Planners and politicians recognise public participation is important to the planning system, but people do not feel listened to when it comes to key development decisions. The promises of better participation are not working in practice. Why is this?

### There's more to planning than efficient decision-making

The government have put a heavy emphasis on pursuing 'sustainable economic growth' as the overarching goal of the planning system. This has led to a prioritising of the interests of developers who have come to be identified as the chief 'customer' of the planning service over other voices. This leads to a focus on speed and efficiency that undermines inclusive democratic decision-making. For all the people we have spoken to there was a strong feeling that local authorities viewed their relationship with developers as more important than that which they have with local communities. People typically saw themselves as 'outsiders' struggling to get the attention of those who held the power to decide.

### There exists a significant inequality of arms

The planning system is complex and many groups become over-reliant on key individuals with expertise or knowledge, often gained on a very steep 'learning curve'. Most people we spoke to engaged with the planning system in their spare time, fitting it around the rest of life. Developers, however, are able to employ full time professional experts because they have a direct financial stake in the outcome. Poorer communities often have a strong disadvantage when it comes to representing their interests. Finally, there was a consistent perception that developers and local authorities engage in detailed negotiations and discussions that lack transparency and which are not shared with the public.

### The value of participation is not recognised

Whilst the government's policy statements recognise participation as important to the quality and legitimacy of the planning process, too often participation is seen as little more than a source of delay and unwanted opposition. 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 frequently used as a way of delegitimising

people's views and dismissing opposition. In more extreme cases, we spoke to people who had been threatened with legal action (defamation and threats to sue for delay) by developers for exercising their democratic rights within the planning system. In our experience people are not 'opposed to every development' but strongly believe decisions should be a product of public debate where their voices are heard.

### **The costs of participation are not understood**

The most striking thing to emerge from our interviews was the negative consequences that getting involved in planning had on people personally. For most, the impacts were a story of frustration, of long hours spent battling against the odds in an unequal fight (that many had reluctantly taken on) in which they didn't feel that their views were being taken into account. For many this translated into cynicism or mistrust of the system. For some it has resulted in feelings of complete disempowerment, leading to depression and anxiety states. The cost of delay to businesses in the planning process is well recognised; the cost to members of the public trying to get their voices heard is barely acknowledged.

### **The system 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. We support this laudable aim, but not at the expense of people's right to get involved later in the process. In our case studies, it was only pre-existing, well-resourced groups that were aware of any emerging development plan and seeking to influence policy within it. At the level of national planning (*National Planning Framework*) even well-established groups missed the opportunity to influence large-scale 'national developments' in their local area. Given the low levels of public awareness and the complexity of plan-making processes it is unfair to blame people for this.

### **Local plans with low participation and uncertainty in decision-making**

It can be difficult to interest people in abstract discussion about the future of an area. Typically people's involvement starts in response to a particular site designation or proposal. There is also considerable confusion about how a site designated for one use could be approved for another, often less welcome development. Whilst such discretion is a valuable dimension of the system, it is important that local plans 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.

### **Unequal rights of appeal**

We found widespread frustration at the inability to challenge unpopular decisions. This was notably the case where a decision seemed to represent a departure from the development plan, where it ran contrary to policy, where it seemed not to have taken into account important issues, or where the local authority seemed to have a material interest in a positive outcome.

Reforms to the appeals process, especially the move to more inquisitorial 'hearing' sessions rather than formal public local inquiries, has been met with mixed feelings. 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 provides a thorough opportunity to debate ideas and allows them a 'day in court'. Whilst most hearings seem to be conducted in a fairly inclusive way by the Directorate for Planning and Environmental Appeals 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 within the scope of an appeal.

### **Enforcement doesn't always work**

One particular theme that emerged from our case studies was 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, or are not, enforced. This was an important reminder, that for people living with 'bad neighbour' developments, there is an on-going 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.

### **Poor access to court justice**

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. 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.

## **4. Principles for active democratic planning**

What needs to change? Our research and analysis has highlighted the following key principles that should underpin change in order 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** to determine what is in the public interest and what is not.
2. A just planning process where **inequalities are challenged**, including access to various resources and power.
3. An open planning system that **builds public trust** through transparent accountable decision-making with a clear indication of how peoples' 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**.

## 5. Solutions and reform

What do our principles mean in practice? We suggest ten reforms that would help to realise a more democratic planning system. These have been developed from an analysis of our case studies as well as research and discussions with a wide range of people.

We hope you can use these ideas to campaign for a stronger public voice in a fair and inclusive planning system.

### (i) There's more to planning than efficient decision-making to sustain economic growth

To promote an active planning democracy where peoples' voices are heard there needs to be:

- An acknowledgement from government that efficient decision-making is not the only priority for planning.
- And recognition that key development decisions should be the product of robust public debate where people participate on equal terms.

### (ii) Valuing participation: recognising public expertise, supporting its development

To ensure the value of participation is fully recognised there needs to be:

- A culture change in planning to fully recognise the public's right to participate (as enshrined in the *Aarhus Convention*).
- A commitment to innovative and effective approaches to ensuring peoples' voices are not just heard, but listened to, and taken into account in decision-making.
- Recognition that citizen-experts have the skills to shape national policy and that local challenges to proposed developments should help shape national policies.

### (iii) Supporting participation: recognising the costs and benefits of participation

To support public participation there needs to be:

- Greater recognition of what is at stake for individuals and groups when they face unwanted development proposals, including the emotional, health, time and financial costs of participation.
- Dedicated officers to provide support and information about the process, to ensure that people know how and when their views can and will be taken into account.
- More effective policing of developer behaviour to ensure that their participation is in keeping with the spirit of a democratic planning system.

### (iv) Promoting more powerful participation: recognising the dynamics of participation

To ensure the system recognises how and when people are likely to get involved 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.
- An acceptance that site-specific debates can lead to important policy debates (for example on key issues like waste or energy), and a willingness to accept such challenges where policy in relation to the proposed development is ambiguous or out of date.
- A commitment to a planning system that values debate. The process should be efficient and clear but without a presumption that allowing rigorous debate represents 'delay'.

### (v) National planning as a national conversation

The government can promote active democratic planning at a national, as well as local, level; we believe:

- The *National Planning Framework* (NPF) should be the product of a genuine national conversation on priorities for the future.
- Innovative forms of public engagement such as citizen juries, consensus conferences, or grand debates (as used in France) should be used to promote this conversation.
- Those likely to be affected by proposed 'national developments' are fully included in 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 of national planning.

### (vi) Local plans and certainty in decision-making

Local development planning should be a genuine forum for democratic debate. The current concept of a 'plan-led' system that guides development but retains flexibility to adapt to changing circumstances is sound, however:

- People must have trust that their participation will be valued, worthwhile and lead to a degree of certainty in decision-making.
- Where people do get involved in shaping the development plan they should be aware of how their views have been taken into account and subsequent decisions should reflect and respect this input.
- 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.

- More officer time, dedicated advocacy services, public events and appropriate media channels should be used to raise awareness of the development plan and equip local people with the skills and resources to contribute.
- Site-specific designations commonly lead to active public debate and should feed into the production and revision of development plans.
- The system should not dismiss 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.

### (vii) Debate on equal terms

In order to challenge inequality and promote debate on equal terms there needs to be:

- A commitment from local authorities to have the skills, resources and culture in place to make public participation a genuine priority.
- A strengthening of the resources and professional advice available to communities, for example, dedicated outreach officers able to act as advocates for community concerns.
- A requirement for local planning authorities to publish pre-application discussions they have with developers and provide equal support to communities to use the planning system.
- Changes to pre-application consultation arrangements so that it is undertaken by either the Local Planning Authority or a neutral third party.
- The improvement of site notification, particularly for environmentally damaging proposals.
- A requirement to ensure that decision-making processes make it clear how they have taken into account representations made by the public.

### (viii) Appeals

To ensure greater accountability, debate on equal terms and public trust:

- A community party right of appeal should be introduced. Exact details should be subject to further consideration but the principle should be accepted and it should apply at least in cases where there is a clear departure from the development plan, where the proposed development is considered to have potentially harmful environmental impacts, or where the local planning authority has a material interest.
- The conduct of appeals should 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.

### (ix) Enforcing the rules

To ensure that public trust is built and people are not subjected to unwarranted levels of environmental impact:

- Greater resource and political will is needed to ensure developments comply with planning conditions and agreed environmental limits.
- Where people living next to a development report breaches, their evidence and experience should be valued and acted upon.
- There should be a community right of appeal against failure to take enforcement action that would be heard by an independent unit attached to the environmental tribunal (see below).
- Authorities must be able to be more confident that enforcing the rules will not lead them into unnecessary legal disputes with developers.
- There should be a new emphasis on viewing planning permission as a contract between a developer/operator and a public authority that is licensing certain activities. Where this contract is breached, action should be taken.

### (x) Access to court justice

To ensure people can exercise their democratic right to challenge poor decision-making:

- The Scottish government should commit to reviewing the judicial review process, limiting the cost of all public interest cases to zero through 'protective expense orders' and making legal aid available to those bringing 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'.
  - introducing environmental courts or tribunals that are resourced to hear both administrative appeals and legal challenges in relation to planning. The courts should provide an appropriate legal machinery to resolve disputes using independent specialists who, by regularly hearing planning issues, provide an efficient, expert and uniform system of justice.
- A wide definition of 'standing' should be promoted through the courts to ensure increased access to the courts on public law matters, making it easier for organisations and individuals to seek justice in the public interest.

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