

PE1800/A

Scottish Government submission of 13 August 2020

Thank you for your request dated 2 June 2020. Please find below a response to PE1800. This contains input from Planning and Architecture Division and from Justice Division, who have responsibility for the Lands Tribunal, and with whom I have consulted in order to provide a Scottish Government response to the petition.

The petition calls on the Scottish Parliament to expand the remit of the Lands Tribunal for Scotland to include the consideration of planning decisions which are currently called-in by Scottish Ministers. The main statutory basis for operation of the Tribunal is to be found in the Lands Tribunal Act 1949. The process at the Lands Tribunal for Scotland is separate from the process of obtaining planning permission from the local authority. Where planning is concerned with the development and use of land in the long-term public interest, including aspects of public amenity, traffic, noise, density of building, and so on, the Lands Tribunal is concerned solely with the matter of private rights. The Tribunal has no power to hear appeals on a planning decision.

At present, the Scottish Government is conducting a consultation on the future of the Scottish Land Court and the Lands Tribunal for Scotland. One of the proposals discussed in the consultation is a merging of the Tribunal into an expanded Land Court. The consultation asks the question: 'If there is a decision to merge the Scottish Land Court and the Lands Tribunal for Scotland, do you consider that the merged body should take on more functions than those separately undertaken by the two bodies at present?' This provides the petitioner with the opportunity to express the view that an expanded Land Court take on the role of hearing appeals to planning decisions. Scottish Government will take into account all responses when considering the way forward at the end of the consultation. The consultation ends on 19 October 2020 and can be accessed at: <https://consult.gov.scot/justice/land-court-and-the-lands-tribunal>.

Planning permission on the other hand, is concerned with land use. Whether granted by the Scottish Ministers or the planning authority, planning permission does not confer property rights, merely that the land itself has planning permission to carry out a specified development. Anyone seeking to implement that planning permission would have to have the relevant property rights to do so legally. Any dispute about whether a party had the relevant property rights is not a planning matter, but a private one between disputing parties, and presumably one which could be decided by the Lands Tribunal.

It is a common misconception that granting planning permission allows a developer to carry out development on the land specified in the permission or that in determining an application for planning permission the planning system should resolve any dispute about ownership. In deciding whether planning permission should be granted or not, the issue is whether a specified development at a specified location is appropriate in planning terms, not who owns the land.

Planning is established as a process where decisions are appropriately made by elected representatives, usually at the local level, and in some cases by Scottish Ministers. The role of elected representatives in the planning process was explored

during the passage of the Planning (Scotland) Act 2019. There was cross-party support for Scottish Ministers continuing to have the power to call in applications. This is in recognition of the benefit of Scottish Ministers being able to take decisions where an application raises issues of national importance.

Scottish Ministers have a general power to intervene in the determination of a planning application; so in effect taking on the decision-making role themselves. In practice, Ministers exercise this power very sparingly, recognising and respecting the important role of local authorities in making decisions on the future development of their areas. Ministers will only call in an application where it appears there may be some matter of genuine national interest at stake.

Conclusion

The petitioner's proposal would require a change to primary planning legislation. While a consultation on the future of the Scottish Land Court and the Lands Tribunal for Scotland is currently underway, the role of the Scottish Ministers in the planning process is well established through planning legislation and was considered during the passage of the Planning (Scotland) Act 2019. Scottish Ministers would not be minded to seek further change to planning legislation in this respect.

I trust the above is helpful in setting out Scottish Government's initial response to petition PE1800.