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Dear Liam

### **Modernising the Planning System: Development Management Consultation**

The Commission for Equality and Human Rights was established in statute in the Equality Act 2006 and was launched on 1 October 2007. The Commission champions equality and human rights for all, working to eliminate discrimination, reduce inequality, protect human rights and to build good relations, ensuring that everyone has a fair chance to participate in society.

The Commission welcomes the opportunity to comment on the Scottish Government's consultation paper on development management. We hope that our comments will build on the valuable discussions which the Commission has had with Scottish Government officials on equality issues and planning policy. Given these discussions, we will limit our comments here to Section 6, Design and Access Statements, and Section 12, Bad Neighbour Developments

### **Statutory Equality Duties and Equality Impact Assessment**

Much of the comments the Commission would like to make in connection with the consultation relate to the statutory equality duties on public authorities in Scotland, and to the need to equality impact assess new and existing policy. The duties give public bodies legal responsibility for

demonstrating that they treat people fairly, and in particular, require that public bodies work to eliminate discrimination and harassment and promote equality of opportunity on the grounds of gender, disability and race. The Disability Equality Duty specifically requires public bodies to take account of people's disabilities, even where that means treating disabled people more favourably than other people, and to promote positive attitudes towards disabled people and encourage their participation in public life. The Race Equality Duty specifically requires that public bodies promote good relations between people of different racial groups. The Gender Equality Duty requires public authorities to eliminate unlawful discrimination and harassment, and promote equality of opportunity between men and women.

The Equality Duties require public bodies to conduct and publish impact assessments in all their functions, such as primary legislation, policy development or employment. The purpose of impact assessments is to ensure that people are not disadvantaged by an organisation's decisions and activities and to identify where it is possible to take action to promote equality of opportunity. The Commission notes the partial equality impact assessment which accompanies the consultation, but would welcome further evidence on how specific proposals, particularly in relation to Design and Access Statements, were weighed against the requirements of the duties and the needs of all Scotland's communities.

Although religion, sexual orientation and age are not covered by a positive duty, public bodies should strive for best practice in this area and include these equality strands in impact assessments wherever possible.

### **Design and Access Statements – Resource Implications**

The Commission notes the comments at paragraph 6.4:

'there are potential resource implications for all parties which include the direct costs of the preparation and submission of a statement but also the costs of ensuring that the contents are

appropriately assessed.'

It is important to emphasise that the potential resource implications involved in the preparation, submission and assessment of an access and design statement are dwarfed by the costs, in social as well as economic terms, of a poorly designed built environment. Access and design statements must not be approached as an additional burden, or as an adjunct to the 'real' business of development management, but as fundamental to demonstrating and assessing whether a development application is fit for purpose. Problems and oversights are hugely less costly to amend at the development application stage than retrospectively.

### **Preferred Option**

The Commission understands the reasoning behind option two, and the anxiety to avoid requiring a design and access statement for a development proposal where it is clearly not necessary. However, there is a more fundamental need to ensure that, barring those exceptions listed in the draft regulations, there is a presumption in favour of requiring access and design statements.

For those bringing forward development proposals where there are genuinely no significant design or access considerations, there should be little difficulty in demonstrating this. There should however be an objective process to determine how this decision was reached, rather than simply a blanket omission for certain classes of development. Making design and access statements a requirement for most types of development also helps mainstream the thinking into the development process and can, again, help shift lingering perceptions that thinking through the design and access aspects of a building is somehow a drag on the development management process or an additional and unnecessary burden.

## **Scope of Design and Access Statements**

The Commission recognises that common sense and flexibility should be applied in determining which development applications require only a design or an access statement – there is clearly less need to consider the access considerations which have informed a development proposal for a sewage works or fish farm, and the access implications of a minor extension which does not impact on the overall situation or character of an existing development may be more effectively dealt with through building standards. Nevertheless, we believe that the number of such applications will be small.

For the majority of development applications, the desired approach should be a document that demonstrates how design and access principles have been addressed, not separately, but in tandem. Again, this approach should encourage better thinking at the initial stages about how to integrate good design and access principles into a building.

## **Assessing Access and Design Statements**

The Commission recognises the hugely valuable job done by access panels throughout Scotland, and the expertise and comment that panel members bring to their work. It is of course vital that planning authorities continue to benefit from this resource. However, it is also important that access panels are not seen as a way of delegating thinking about access – they should complement the focus and expertise already possessed by planning authorities.

The assessment of design and access statements should be embedded in the core work of planning authorities. The Commission recognises that the initial sift of development applications will be quantitative, that is, it will simply determine whether a design and access statement has been submitted. It is vital however that there are rigorous and objective criteria to determine the content of a statement – a glossy brochure heavy on rhetoric but low on evidence must not be allowed to suffice as an access

statement.

The Commission agrees that the Scottish Government will have to prepare assessment guidance to assist planning authorities evaluating statements, but would also underline that the knowledge required making an effective assessment of a design and access statement should not be viewed as external to the work of development management, but as integral to that process. In achieving this, leadership will have to come not just from Scottish Ministers, but from local authority Directors and Chief Executives. The equality schemes which are required as part of planning authorities' statutory duties should already set out some of the practical steps planning authorities are taking to ensure that they are able to respond effectively to the task of assessing design and access statements.

### **Bad Neighbour Developments**

We agree that this term is perhaps outdated and unhelpful and are encouraged that the Government is seeking to redefine these types of applications.

In looking at the current list and the proposed amendments we would suggest that the Scottish Government may wish to consider the potential impact on proposed sites for Scottish Gypsy Travellers which could be objected to on these grounds, specifically on the grounds that such a development may

(8) the construction of buildings, operations, and use of buildings or land which will—

- (a) affect residential property by reason of fumes, noise, vibration, smoke, artificial lighting, or discharge of any solid or liquid substance;
- (b) alter the character of an area of established amenity;

- (c) bring crowds into a generally quiet area;
- (d) cause activity and noise between the hours of 8 pm and 8 am; and
- (e) introduce significant change into a homogeneous area.

We are aware that objections to Scottish Gypsy Traveller sites have historically been made on points b) and e) and suggest that the Government may wish to consider a separate line of consultation on these specific methods of objection, given the real difficulties that Local Authorities currently face when trying to develop facilities for this section of the community.

I hope the above points are useful – if you have any queries, please do not hesitate to get in touch.

Yours sincerely

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