

## THE CITY OF EDINBURGH COUNCIL

4 MAY 2023

## DEPUTATION REQUESTS

Subject	Deputation
<b>3.1 In relation to Item 8.20 on the agenda – Motion by Councillor McKenzie – Review Rights of Appeal in Planning</b>	Planning Democracy Verbal presentation and written submission
<b>3.2 In relation to Item 8.4 on the agenda – Motion by Councillor Caldwell – Sewage in Edinburgh’s Waterways</b>	SOS Leith Verbal presentation and written submission
<b>3.3 In relation to Item 8.17 on the agenda – Motion by Councillor Parker – Edward Windsor</b>	NLRP12 Verbal presentation
<b>3.4 In relation to item 8.4 on the agenda – Motion by Councillor Caldwell – Sewage in Edinburgh’s Waterways</b>	Water of Leith Conservation Trust Verbal presentation and written submission
<b>3.5 In relation to item 8.17 on the agenda – Motion by Councillor Parker – Edward Windsor</b>	Radical Independence Campaign Scotland Verbal presentation
<b>3.6 In relation to item 8.17 on the agenda – Motion by Councillor Parker – Edward Windsor</b>	Our Republic Verbal presentation



### **Breaching International Commitments**

A ruling by the Aarhus Complaints Commission; a UN body tasked with upholding international environmental rights, relating to a complaint about the lack of community appeal rights in planning in Northern Ireland, found them in contravention of the Aarhus Convention; a treaty to which the UK is a signatory.

The fact that a developer is entitled to a full merits review of a planning decision by a specialist planning body, whereas members of the public do not have the same entitlement, was viewed, by the commission, as clearly not fair and failing to uphold public access to justice rights.

A complaint has now been raised by the Environmental Rights Centre Scotland, Planning Democracy, RSPB Scotland and Friends of the Earth Scotland with regard to the situation in Scotland. The complaint states that the same situation applies in Scotland as in Northern Ireland and therefore *Scotland are also in breach of international law*.

The groups are requesting that the Scottish Government review appeal rights in Scotland and provide a remedy to the injustice by introducing equality of appeal rights.

### **What is Equality of Appeal Rights ?**

Currently developers enjoy statutory appeal rights if planning permission for a development is refused.

But members of the public do not enjoy equivalent rights to appeal if a development is approved, even if it negatively impacts their health and environment, or if the decision-making process was flawed.

The only way for the public to challenge decisions, developments or policies is by raising judicial review proceedings in the Court of Session, which is "prohibitively expensive". Judicial review does not allow for a full merits review of a planning decision and only extends to the legality of the decision.

Equal Rights of Appeal (ERA) is so named because it provides the opportunity for those most affected by a planning approval, the right to a full merits appeal of that decision. This puts them in an equivalent position as allowing applicants the opportunity to appeal the refusal of an application.

### **Appeal rights can support planning decisions in the public interest**

In 2019 the Planning (Scotland) Act introduced a purpose of planning; to "manage the development and use of land in the long-term public interest".

The term public interest in planning is however much contested.

It is often taken to mean that a development is in the public interest because it contributes to the economic growth. However, there is an opportunity here to bring more consideration and

In relation to Item 8.20– Motion by Councillor McKenzie – Review of Appeals in Planning.



debate over a broader more definition of planning in the public interest relevant to current societal and environmental challenges.

On 13<sup>th</sup> February this year the new National Planning Framework 4 (NPF4) was adopted by the Scottish Government. The climate and nature emergencies are given significant priority in this influential policy document, along with other priorities of housing and economy. The increased emphasis on nature and our planet, two issues that are often at the heart of public concerns on planning decisions, introduces a broader interpretation of public interest than previous planning policy documents, such as NPF3.

Planning Democracy's research including a survey of 228 community councils throughout Scotland, showed that environment and climate were key concerns regarding planning issues, yet most felt they had no power to influence decisions. Focus group discussions with representatives from community councils that have ceased operating, showed that a key reason for the demise of these important aspect of local democracy, was the lack of influence in planning. Planning Democracy have had 14 years of interaction with communities about planning, the glaring inequality that comes from a lack of appeal rights is the most frequently cited complaint about the system.

Redressing the obvious imbalance over appeal rights, could be a key factor in enhancing public trust in the system. Appeals could provide a crucial platform to debate whether certain contested developments are delivering development in the public interest.

### **Will increased rights of appeal clog up the system?**

Efficiency in decision-making is needed, but it must be balanced with other vital characteristics such as an inclusive system which fosters trust from communities. ERA is a mechanism to provide additional scrutiny, only where sufficient grounds of appeal exist. A few weeks of additional exploration to ensure the public interest nature of a proposed development is acceptable considering effects that may impact a place and community for fifty years or more.

### **Will it negatively affect the local economy or housing targets?**

A right of appeal should pose no barrier to development that clearly serves the public interest, such as housing need.

### **What about vexatious appeals?**

Appeals can be designed in ways to prevent misuse. The purpose of introducing rights of appeal is to right an injustice and it is misguided to dismiss people's rights because of concerns over misuse when there are a myriad of configurations that appeals can take. There are likely to be many overriding benefits to introducing appeal rights, including providing excellent motivation to ensure that developers bring forward proposals that deliver development in the long-term public interest.



## **SOSLeith**

### **Water of Leith/Sewage Motion to Council**

I am submitting notice of support for above motion on behalf of Leith Harbour and Newhaven Community Council.

SOSLeith have been working tirelessly to investigate and report major issues regarding the number of Combined Sewer Overflow (CSOs) outputs in Water of Leith. During this time SOSLeith representatives have been providing detailed reports at our monthly meetings with updates on their concerns and frustration at lack of active support or progress.

Jennifer Marlborough (Mrs)  
secretary  
Leith Harbour and Newhaven Community Council

<https://lhncc.org.uk/>

**From:** Helen Brown

**Sent:** Tuesday, May 2, 2023 11:04 AM

**To:** Committee Services <Committee.Services@edinburgh.gov.uk>; Jack Caldwell <Cllr.Jack.Caldwell@edinburgh.gov.uk>; Hal Osler <Hal.Osler@edinburgh.gov.uk>

**Subject:** Deputation is support of Motion 8.4 Sewage in Edinburgh's Waterways

The Water of Leith Conservation Trust works to conserve and enhance the Water of Leith - conducting weekly river clean-ups, water monitoring projects, learning opportunities, and habitat improvement projects.

We are very concerned about the obvious increase in frequency of CSO's venting into the Water of Leith. We see the evidence of these events as wet wipes and sanitary products are left on trees and branches along the river. We are still dealing with this waste attached to the riverside from a high flow event on 30<sup>th</sup> December. See image.

Regularly reports of waste, sewage and pollution come to us and are reported on the Scottish Water and SEPA. The sewer network is nearly always the origin.

We work with Stirling, Edinburgh and Napier Universities on water quality testing projects. When Edinburgh University did test in 2020, the river was in spate at the time and they recorded that the faecal bacteria counts exceeded safe levels, which demonstrates that there is a significant problem.

The Murrayburn is of significant concern as its conductivity measures max 1700 Microsiemens, whereas the general Water of Leith level is 320 microsiemens. This burn is culverted, straightened and with many 'wrong' connections to the sewer network, overall, it has a significant impact on the water quality of the whole river.

More extreme weather causes intense precipitation events leading to flash flooding – the Water of Leith is very susceptible to this as over 50% of the catchment is urbanized. We have already seen this happen on a number of occasions, recently with river levels rising by up to a meter in less than an hour, putting pressure on the existing flood defences and water quality. This has resulted in raw sewage and other waste to discharge onto rivers – not just poo and pee but also all household chemicals, cleaning products, wipes and fats from washing up. There are around 150 Combined Sewer overflows in the Water of Leith Catchment. Should we really be treating the river like a high-speed unmonitored drain through our city?

Longer periods of drought conditions will mean sustained low flow in the river and warmer conditions for aquatic life to cope with. Low river levels also leads to a build up of pollution and high nutrient levels. This can cause toxicity and algal blooms – in

my 20 years working on the river I saw my first bloom in the river in Leith in September 2021, with the whole area smelling of sulphur and the river turned green.

This leads us on to our main concerns around venting CSO's, which is the potential build up in Leith due to the impoundment of the river by Leith Docks. Most rivers have a tidal ebb and flow which means sewage is washed into the sea. This does not happen in the Water of Leith.

I would be please to come a speak to Councillors on this issue and will raise it at our next Water of Leith Action Group. For more information about the management of the river see the management plan online: <https://www.waterofleith.org.uk/management/>

Helen Brown - Trust Manager

Water of Leith Conservation Trust

Water of Leith Visitor Centre

24 Lanark Road

Edinburgh

EH14 1TQ

[www.waterofleith.org.uk](http://www.waterofleith.org.uk)

[admin@waterofleith.org.uk](mailto:admin@waterofleith.org.uk)

0131 455 7367

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Working to conserve and enhance the Water of Leith as a haven for wildlife  
and an educational and recreational resource for all.







