



# Community Right of Appeal Civic Voice Briefing- February 2013

## Background

Civic Voice has been approached by Chris Skidmore, MP, seeking our support for a Private Members Bill on the “Community Right of Appeal” which he is presenting for its second reading in the House of Commons on the 26th of April 2013. The Board of Trustees and Officers have discussed this request and have agreed to support the second reading.

The absence of third party rights of appeal in planning has for many years been a subject of concern to many organisations and community groups, in particular where development objections to a local authority have not been successful. Government most recently considered such rights during the Parliamentary process that led to the adoption of the Localism Act. Government maintained a view that an individuals right to appeal a planning decision was already adequately protected under current legislation, mainly through the Act which was designed to increase community participation in local decision making amongst other rights and opportunities.

It is widely viewed that the power of the Localism Act has been steadily eroded with the introduction of such supplementary legislation and guidance as the Permitted Development and Growth and Infrastructure Bill currently going through Parliament.

## What is the “Community Right of Appeal” (CRA)?

The town and country planning legislation gives no legal rights for private individuals who have objected to a proposed development to pursue a challenge if the development is approved by the local planning authority. At present their sole right is to make their objections known to the local planning authority before the planning application is determined. The underlying assumption is that objectors can rely on the authority to take into account their views and an interest in determining what is in the public interest.

If a Community Right of Appeal was introduced it would enable genuine widely felt objections from a community to be heard as part of the planning process, as indeed stated in the Localism Act. What such an introduction would achieve would be clarity in the process in addition to ensuring that an agreed mechanism with timescales is adhered to. Introduction of a CRA would also support local authorities that fear the costs associated with an appeal from a developer following planning refusal. There have been cases where powerful developers have entered into a “war of attrition” with planning authorities, bringing to bear considerable resources in fighting a refusal, resources that are not at the disposal of local authorities.

Key to the adoption of a CRA is ensuring there is a reasonable and considered “participation threshold”. This will help legitimise genuine concerns within communities against a particular development proposal and ensure that such a petition really does reflect a percentage of a community. If such a measure was put in place it may encourage communities to petition as they would have a degree of surety that their petition was taken seriously and at the same time dissuade small minority groups from taking up valuable time and resources of the community volunteers, planning authority, and indeed the developers themselves.

The CRA would also complement and support the Localism Act in its aim of ensuring local community views are seen as an important consideration in the planning process and ensuring a truly bottom up approach is put into practice. It would also lend weight to Neighbourhood Plans, leading to community confidence in development of their neighbourhood plan. The CRA would give a neighbourhood plan a greater degree of legitimacy and credibility as well as ensuring developers undertake quality community participation in preparing applications.



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## Chris Skidmore MP Proposed Private Members Bill

It is proposed that a right of appeal would address this imbalance and restore confidence in the planning system. The introduction of a means to appeal planning decisions would address the asymmetry at the root of the perception that the planning system is geared in favour of developers.

The appeal would have to command the support of the community. There would be participation thresholds based on the electoral rolls of a relevant geographic area. If these are not met within a specified time limit then no appeal could be brought. It would not act as a block on all development or a major brake on the planning process. Many countries have legislated community rights of appeal but these have not led to large proportions of developments being blocked or appealed. The use of time limits prevents a right of appeal creating lingering uncertainty.

A Community Right of Appeal would solidify the localism agenda of Government planning reforms. The Government is already attempting to make the planning process more would encourage developers to work with communities in the early stages of the process. It would also allow for the creation of incentives for communities to organise neighbourhood plans, extending the reach of the policy. These would serve to greatly enhance the power of communities within the planning process, a key aspiration of the Localism Bill.”

### Community Right of Appeal seen in Practice:

“What we (MPs) are proposing is more community-centred than the more general third- party appeals used in other countries. In the cases examined above appeals can be lodged by any individual subject to some eligibility criteria. Our proposal relies on the demonstration of community support for the appeal in order for it to be heard, which is likely to prove more restrictive.

The need for community support will act as a guard against vexatious appeals. In order to command the support of the community an appeal is likely to need to be based on legitimate grounds. Similarly it will prevent a right of appeal being used for commercial purposes by individuals or businesses in order to delay developments, create publicity or in any way secure benefits from the developer. The time limit will prevent repeated appeals being made by the community in order to indefinitely frustrate development.

There are three key practical dimensions to determine:

- ☞ The time limit. In order to stop the CRA acting as a brake on development the time limit should be as short as possible, even a short as 1 month
- ☞ The geographical scope of petitions. There is a balance to be struck between considering the view of the community at large and recognising those living in the immediate area. Chris Skidmore is proposing that the most practical solution to this problem is by looking at the electoral roll of the local ward
- ☞ Participation requirements. In order for the existence of a CRA to have the incentive effects we would wish there has to be a realistic chance that sufficiently many people can be mobilised in order to make an appeal.

One option would be to use the petition requirements suggested in the DCLG discussion paper relating to community governance reviews for those communities which have neighbourhood plans. The thresholds suggested are electorates of below 500, 25 per cent; 125 signatures for electorates between 500 and 2,500; and 5 per cent for electorates above 2,500. For communities without neighbourhood plans the requirement would be 50 per cent. Such a system would serve a



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dual purpose, both ensuring reasonable community support before an appeal is made and creating a strong incentive for communities to make neighbourhood plans. This is coherent with one of the principal objectives of bringing in a CRA: strengthening the localism agenda the Government has been pursuing and incentivising the involvement of communities in the early stages of the planning process.

It can further be considered whether limitations on what the basis of the appeal can be would be appropriate. It would also be possible to limit the number of appeals by specifying specific grounds upon which appeals will be heard. For instance one might impose a restriction limiting appeals to developments on green field sites or where the community is making a claim that planning rules are being violated. This is essentially a trade off between reducing the threat of slowing down the planning process and watering down and thus limiting the positive effects of a CRA. Of course some filtering is desirable but to some extent the participation threshold does this job already, as it is likely to act as a very strong filter against appeals, preventing the creation of an excessive appeals workload.”

## **Civic Voice thoughts**

We recognise the benefits that a clear understanding of community rights through adoption of this Private Members Bill could bring. In particular it would clarify the process a community can take once a local authority grants planning permission in opposition to its communities. The suggested parameters in the Private Members Bill regarding numbers of applicants and timescales seem reasonable and if allowed to run their course would not unduly hold back development. Indeed there is an argument that such a Bill would give a developer clear understanding of timescales and therefore afford a degree of security in developer investment. It would also give a local authority support where it is fighting a planning proposal and has exhausted resources to do so.

For the Private Members Bill on “Community Right of Appeal” to go forward Chris Skidmore, MP, requires 100 votes in the House of Commons at its next Reading

We believe that Civic Voice and its membership should support the Private Members Bill proposal:

- 🗨️ Write in support of the Private Members Bill to local MPs
- 🗨️ Write to the Department for Community and Local Government, the department responsible for the Bill at [contactus@communities.gsi.gov.uk](mailto:contactus@communities.gsi.gov.uk)
- 🗨️ Lobby local MPs to support the Private Members Bill at Debate on the 1<sup>st</sup> of March. Include in the lobbying a plea for your MP to ensure that the Reading is not “timed out”