

Flamingo Land, the democratic deficit and the need to reform Scotland's planning system

Description

Political developments over the last week have helped expose the fundamentally undemocratic nature of Scotland's planning system and the Loch Lomond and Trossachs National Park Authority (LLTNPA)'s morally corrupt handling of Flamingo Land's proposed development at Balloch still further. Last Tuesday, 10th June, the Scottish Government minister responsible for planning, Ivan McKee, issued a very brief announcement saying he had decided to call in the planning application because *the development raises issues of national significance in view of its potential impact on Loch Lomond and the Trossachs National Park*. This made both Ivan McKee, who I regarded as one of the more competent ministers in the Scottish Government after he dared to challenge HIE's expenditure on the funicular ([see here](#)), and the LLTNPA look very stupid.

The rottenness at the heart of Scotland's planning system

Three weeks previously, in response to questions by Ross Greer, MSP, Mr McKee had told the Scottish Parliament ([see here](#)): *Given the very technical planning issues raised in this case and the high level of public interest, I consider it appropriate that objective planning judgement is applied in this case, and for that reason I do not intend to recall this appeal.*

Whether Mr McKee's U-turn was a consequence of over 50,000 people contacting him in less than two weeks asking him to reconsider ([see here](#)) or the prospect of being defeated in a vote on a parliamentary motion from Jackie Baillie, MSP, calling for the application to be called in is unclear. But the planning *issues of national significance* have been there ever since Scottish Enterprise and the LLTNPA first agreed to develop the Riverside Site in Balloch ([see here](#)) and ([here](#)) and the Scottish Government have had several opportunities to intervene before now. Last September, for example, after the LLTNPA had refused planning permission for the development the First Minister, John Swinney, refused to intervene and stop Scottish Enterprise renewing their Exclusivity Agreement with Flamingo Land on the grounds that this might prejudice the planning appeals process ([see here](#)).

The unaccountable Department of Planning and Enforcement Appeals (DPEA), who in my view are partly responsible for the Scottish Government appearing headless chickens, have then added to the planning chaos with the two letters they issued on 11th June. Both letters, one to Flamingo Land's agents and the other to third parties (i.e people who commented on the application) ([see here](#)), state:

Scottish Ministers have decided that they will determine this case. A direction to that effect is available to view on the DPEA website.

The reporter will produce a report and make recommendations in order for the final decision to be taken by Scottish Ministers.

This is in line with the Scottish Government's guidance on appeals ([see here](#)) which states:

The vast majority of appeals are considered and decided by Scottish Government reporters [officials]. The reporter is appointed by Scottish Ministers to make the decision on their behalf.

A very small number of appeals are not delegated to reporters for decision; but instead are recalled by Scottish Ministers who will then make the final decision themselves. In those cases, the appeal will still be examined by a reporter, who will then write a report and make a recommendation for Ministers to consider before they make their decision. Ministers do not have to agree with the reporter's recommendation.

The letters do not explain if this will be the SAME reporter, Mr David Buylla, who published his Notice of Intention to allow Flamingo Land's appeal against the LLTNPA's refusal of planning permission ([see here](#)). If so, it is not clear why any report he produced would be any different to the one he has already written. Moreover, the letters fail to explain what factors Scottish Ministers would want any Reporter, whether Mr Buylla or someone else, to consider differently. This process is open to manipulation and therefore rotten to the core and I am grateful to the Balloch and Haldane Community Council, who have written an angry letter to the DPEA expressing their concerns, for alerting me to this.

The substantive issue is that while the Scottish Government have not given any indication that they believe the report produced by Mr David Buylla was flawed. Indeed they have gone out of their way to say as little as possible. Mr McKee did not attend the debate in the Scottish Parliament ([see here](#)) and Tom Arthur, who attended in his stead, avoided saying anything about Flamingo Land on the grounds that Scottish Ministers do not comment on live planning appeal even to provide a proper explanation of why they have been called in.

The appeal has been called in under paragraph 3(1) of Schedule 4 to the Town and Country Planning (Scotland) Act 1997. This says nothing about how appeals should be handled:

Determination of appeals by Secretary of State

- 3 (1) The Secretary of State may, if he thinks fit, direct that an appeal which would otherwise be determined by an appointed person shall instead be determined by the Secretary of State.
- (2) Such a direction shall state the reasons for which it is given and shall be served on the applicant and any person who has made representations relating to the subject matter of the appeal and the person required to take into account under section 38(2) and, if any person has been appointed under section 38(2), on that person.
- (3) Where in consequence of such a direction an appeal falls to be determined by the Secretary of State, the provisions of this Act which are relevant to the appeal shall, subject to the following provisions, apply to the appeal as if this Schedule had never applied to it.
- F4(4)
- F4(5)
- F4(6)
- (7) In determining the appeal the Secretary of State may take into account any report prepared by a person previously appointed to determine it.

The law therefore effectively hands Scottish Ministers absolute discretion to do what they want. Ministerial call-ins therefore should be viewed as a sort of black box at the apex of Scotland's Planning System designed to enable the Scottish Government to override the supposedly quasi-judicial nature of the planning system on political grounds. Sometimes Ministers use this power to force through developments and other times to reject them. At present it is far from clear which option they are likely to choose in the case of Flamingo Land or indeed whether they might not just sit on a decision..

The political issue this raises is that IF there is the discretion to decide planning applications on political grounds at a national level, whether as a result of pressure from developers or the public, why shouldn't similar discretion be allowed at a more local level? Indeed, what was striking about the debate in the Scottish Parliament was how MSPs, from across the political spectrum, described the issues: Jackie Baillie (Labour) talked how the National Park was set up to protect Loch Lomond and be different; Ross Greer (Greens) raised the importance of democracy; Pam Gosal (Tories) talked about how development needs to be proportionate AND help people; Bob Doris (SNP) articulated the need for documents about plans and planning to be written in ordinary language so that people can understand what is being proposed. None of the MSPs used quasi-judicial speak.

Set aside the political point scoring in the debate, the contrast between all of that parliamentary free speaking and the way that the quasi-judicial planning process has been used to extinguish political debate at a local level is striking. An example is how the LLTNPA excluded locally elected Member Sid Perrie from the Board Meeting that determined the Flamingo Land Planning

Application for daring to raise questions and concerns about the whole process.

I thought the most interesting contribution, however, came from Bob Doris who represents Glasgow Maryhill and Springburn and was one of the few SNP MSPs to attend the debate. Commenting on the level of opposition to the proposed development, Mr Doris argued that the LLTNPA's Local Development Plan (for which they won a planning award!) must be fundamentally flawed:

It would perhaps be far better to allow the new local development plan process to run its course before taking a decision on a new development of such significant scale. The reporter noted that there were no significant objections from the community when the LDP was first drafted, but it was drafted to cover 2017 to 2021, and consultation started long before 2017. A decade had probably passed before the community was properly consulted on the matter. Asking a community whether it is okay to expand tourism through the development of a high-quality amenity is very different from proposing a development of such sheer scale.

As explained in the Flamingo Land Story (links above), LLTNPA staff kept the local community and wider public in the dark about their and Scottish Enterprise's plans for the Riverside Site while consulting on the Local Development Plan and by doing so paved the way for the development. One hopes that Ivan McKee instructs the Reporter that is now appointed to fully investigate how that LDP came about and why it failed to represent the views of the public. That would then give him every reason to refuse Flamingo Land's appeal.

The LLTNPA in a tale-spin

The timing of the announcement by the Scottish Government, that it was calling in the Flamingo Land decision because of its implications for the Loch Lomond and Trossachs National Park, could not have been worse from the LLTNPA perspective.

The day before, Monday 9th June, the LLTNPA board had decided to accept the Scottish Government Reporter's recommendation and to give Stuart Mearns, the member of staff responsible for the flawed Local Development Plan and who had been involved in appointing Flamingo Land as preferred developer for the site, the green light to pave the way for Flamingo Land ([see here](#)) and ([here](#)). In the course of their discussion board members had accepted Mr Mearns' advice that it would be very unusual for a board to ask for a planning decision to be recalled and to engage the Minister and decided to do nothing that would challenge the quasi judicial process. That was despite having unanimously decided last September that the proposed development was incompatible with the National Planning Framework 4 and the statutory aims of the National Park

The only board member to dissent from that decision was Sid Perrie, the locally elected member for Balloch. He had tried to ask about the implications of the Reporter's decision for the four statutory aims of Scotland's National Parks and where that left the LLTNPA. The response from Stuart Mearns was to the effect that it's very established how we apply the aims of the National Park to planning decisions. What he meant was that neither the LLTNPA nor the Cairngorms National Park Authority give more than cursory attention to the four statutory aims of Scotland's National Park when deciding planning applications. Instead, they apply the same planning policies and the same

quasi-judicial approach to their application as applies everywhere else in Scotland. That explains why the Flamingo Land development, which most people appreciate is completely incompatible with what a National Park should be about, has got so far.

It also explains why most of the LLTNPA board meekly decided to accept the Reporter's decision and decided it had no implications for the National Park. Mr McKee's call-in decision, which is ostensibly justified by there being national issues of importance to the future National Parks at stake, has left the LLTNPA board looking like useless idiots.

The LLTNPA's response to being exposed was immediate ([see here](#)). On the one hand their Convener, Dr Heather Reid, claimed the LLTNPA Board was standing by its *unanimous decision to refuse the Lomond Banks planning application in September last year*, on the other she claimed the LLTNPA was standing by the officers' report which effectively recommended they should do nothing to challenge the Reporter's decision. In truth Dr Reid, who is trying to ride two horses heading in the opposite direction at once, stands for nothing and does whatever her Chief Executive tells her.

The need to democratise the planning system in the National Park

The fundamental planning issue which needs to be addressed in the Loch Lomond and Trossachs National Park is the lack of democracy. Democratising the planning system would fundamentally strengthen the statutory aims of the National Park, rather than undermine them as is happening at present. The argument for this is that most people do actually care about those aims: the conservation of the natural and cultural environment; the promotion of public enjoyment of the natural qualities of the area; sustainable development and the wise use of resources. Had people, both visitors and local residents, been properly involved in the development of plans for Balloch, the Flamingo Land proposal would never have got off the ground.

Instead, the LLTNPA board have allowed staff who were behind the Flamingo Land development from the start to exclude themselves and the wider public from the development planning process, for example:

- they have failed to consider why the existing Local Development Plan for Balloch got it so wrong and what needs to change (unlike Bob Doris, MSP, in the debate last week);
- they have delegated almost all power to their senior staff (there has been just one planning committee meeting so far this year compared to four in the Cairngorms National Park DESPITE the LLTNPA having greater planning powers);
- they have allowed staff to constrain what they think, do and say by cutting off all contact with the general public (e.g there is no means to contact board members except through staff), banning all discussion on the handling of individual planning applications and the constant emphasis of staff on the quasi-judicial nature of the planning system.

This then serves to exclude the public from the planning system too. A very recent example, which is very relevant to the Flamingo Land development and which I referred to in my post on the transfer of land from Scottish Enterprise to the LLTNPA ([see here](#)) is the Pierhead Action Plan. The Action Plan report ([see here](#)) claims:

• Public engagement centred on an on-site event at Balloch Pierhead, supported by a broader online and in-person outreach programme. Community groups were invited to take part in workshops, walking site audits that encouraged open discussion about how the site is used, how people arrive, and what opportunities exist for future improvement. The Balloch & Haldane Community Council was engaged as part of this process to ensure local voices were represented.

Set aside the fact that the online engagement involved only 200 people about the same number who get off a single train on a sunny afternoon the report FAILED to state that the Balloch and Haldane Community Council had submitted a written response to the consultation or record what they said ([see here](#)):

There is an urgent need for collaboration between ALL interested parties as to the requirements of the pierhead area, which needs to be done in conjunction with a completed integration of the Station Square, West Riverside, Pier Road, Drumkinnon Wood and Lomond Shores areas of Balloch.

AND

This in conjunction with, or, before any regeneration of the pierhead is started.

Stuart Mearns, who had oversight of the Pierhead Action Plan and his boss, Chief Executive Gordon Watson, appear to have once again totally ignored the views of the local community, kept their board in the dark and pushed through their own Action Plan, basically a glorified parking area which appears designed to support the Flamingo Land development next door. That needs to be stopped now and the Scottish Government should fund no further work at the pierhead (estimated cost £2.4m) until there has been widespread involvement of both local residents and visitors in the development of a place plan for Balloch. That then feeds in to a fundamentally revised Local Development Plan as Bob Doris suggested. This, as the BHCC said in their response to the Pierhead consultation, needs to involve ALL interested parties, broadly defined. It also needs to be focussed on developing alternative proposals to Flamingo Land which promote and support the statutory objectives of the National Park.

Kevin McKenna, at the end of an interesting article in the Herald ([see here](#)) outlined Peter Haining's vision for one such alternative, a watersports centre. There will be others. Last week I wrote to the BHCC and local MSPs making some suggestions about how all the various interests could be brought together to discuss the way forward. The LLTNPA should have been at the centre of that process, supporting it, but instead they are part of the problem, not the solution.

An opportunity for Ivan McKee?

While the Flamingo Land development encapsulates much of what is wrong with the planning system in Scotland and the way their planning application has been handled exemplifies this at each stage in the planning process, including at the highest levels, because of this it could be used to reform the planning system from bottom to top, putting transparency and democracy at the heart of decision making at every level. That would enable some good to arise from what until now has been an unmitigated planning disaster. From the way MSPs spoke in the debate last week it appears there might now be some political appetite for a fundamental re-think about how the planning system should work.

Category

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Tags

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