



Modernising the Planning System in Scotland

Managing Differences Early and Effectively using Mediation

A recent participant in a major mediation involving environmental and planning issues considered that

“The valuable process of mediation has forged co-operation instead of confrontation”.

General Context

There is a world-wide evolution occurring in the way that disputes and differences are handled. The quest is to turn disputes from a threat into an opportunity - a problem to be solved. Communities, legislatures, commerce and organisations want to procure outcomes speedily, with less cost and more effectively. People wish to engage in discussion about their futures and to be involved in decisions which affect them. Processes to engage communities in decision-making are familiar in a number of countries, often described as consensus building or deliberative discussion.

In Scotland, we have seen significant increases in use of mediation across a wide range of disputes and differences in the business, public, neighbourhood, family and criminal justice sectors. This increase is world-wide and, elsewhere, includes planning and environmental issues. In England, there have been a number of initiatives in planning (for example involving the Planning Inspectorate and the Office of the Deputy Prime Minister). There are important schemes in New Zealand, Australia and Canada.

The skills and processes of what is known as (and which underpin) mediation offer real opportunities to deliver tangible benefits in a modern planning system in Scotland.

What can mediation offer?

- involvement and engagement of people with an interest
- (early) communication among stake-holders and others, bringing increased understanding of different perspectives
- identification of the key issues and acknowledgement of concerns: an opportunity to hear and to be heard within a structured process
- building of working relationships – and a broader appreciation of wider interests
- creative and timely exchange of information and narrowing of differences
- generation and assessment of different options and analysis of risks and opportunities arising with different courses of action
- helping people to look forward and find mutually acceptable, or at least tolerable, solutions - and avoiding carrying frustrations into future dealings
- greater prospect of resolution of differences – and reconciliation of viewpoints
- enhancement of trust, openness and mutual respect among people with divergent viewpoints



The role of the mediator

- acts as an independent facilitator and impartial designer and manager of the flexible process
- an intelligent questioner who can help those involved to identify what the real issues are
- an absorber of the emotions and frustration which are present in difficult situations and a builder of bridges where chasms may exist
- a tester of reality, focussing on durable, sustainable and realistic solutions while generating a context for lateral thinking and creative outcomes

When might mediation be used?

- at public consultation stages
- to connect the developer and affected stakeholders
- at every (contentious?) stage
- in the preparation of local and strategic development plans
- in development management
- facilitating conclusion of planning (section 75) agreements and good neighbour agreements
- after refusal of planning permission and prior to appeal
- to reduce objections and narrow issues prior to an inquiry

Some Issues

There are of course issues to be addressed. These include: increasing *awareness* of how mediation might work; how effective *decision-making* can be secured in a facilitated process; how to ensure maximum *participation* and how to address the absence of any interested parties; the extent to which the conventional approach to mediation which provides for *confidentiality* needs to be modified; the *costs and benefits* in money and time; and securing high *standards* and full understanding the *role* of the mediator. However, these issues arise in other settings and all are capable of mature consideration and resolution.

It is important that some *mention is made of mediation in the primary legislation*, in addition to secondary legislation in due course. This might be achieved for example within the context of the definition of "consultation" generally or "consultation statement" (section 2 (21)) or "pre-application consultation report" (section 10).

There is an important role for *pilot schemes* (as in England and as recognised in the Scottish Executive's White Paper) to explore the way in which the use of mediation can be most effective in planning in Scotland.