

Local Government and Communities Committee
Office Room T3.60
Scottish Parliament Edinburgh
EH99 1SP

1st February 2018

Dear Committee Members

Thank you for the call for Evidence in relation to the Planning (Scotland) Bill.

Built Environment Forum Scotland (BEFS) is an umbrella organisation that brings together 23 non-governmental organisations across Scotland's built environment sector. Drawing on extensive expertise and knowledge in a membership-led forum, BEFS informs, debates and advocates on the strategic issues, opportunities and challenges facing Scotland's built environment.

With the purpose and role of BEFS in mind, we would like to stress that existing Scottish Planning Policy states that "The planning system should promote the care and protection of the designated and non-designated historic environment" but legislation only provides protection for designated assets – listed buildings, scheduled monuments and conservation areas.

Undesignated heritage assets may not be recognised as of national importance but they are what makes local places distinctive and are often what communities' value about their local environment. This Bill is an opportunity to strengthen the protection for Scotland's non-designated cultural physical heritage, which in turn contributes to the preservation of all of Scotland's tangible and intangible cultural heritage; heritage which greatly benefits our nation's economic and social wellbeing.

It is also of note that those in the most deprived places have the least positive views about their neighbourhoods (Scottish Household Survey). The provisions within the Bill should ensure that inequalities of people and place are tackled, with the seldom heard supported and equipped to present their views.

The comments within this response were created and supported by the BEFS members listed in the appendix.

Yours faithfully



Ailsa Macfarlane
Policy & Advocacy Officer
Email - amacfarlane@bef.s.org.uk

1. Do you think the Bill, taken as a whole, will produce a planning system for Scotland that balances the need to secure the appropriate development with the views of communities and protection of the built and natural environment?

This is an opportunity to set out a clear statutory purpose and vision for the Scottish planning system, both of which are absent from this Bill. With this Bill, the Scottish Government could align the planning system, as it wishes to align the National Performance Framework, with international obligations; specifically the United Nations' [Sustainable Development Goals](#) (SDG). The [New Urban Agenda](#) was agreed by the UN in 2016 as a step towards implementing the SDG 11 and is another international framework that the Scottish planning system should align with to ensure development is sustainable.

As it stands, the Bill could potentially weaken environmental protections and, without the context of the secondary legislation and policy guidance, does not demonstrate how the balance between development and community interests will be achieved. Without this secondary legislation, confidence in this Bill increasing public trust in the planning system or delivering appropriate development is low. The decision to amend the already amended Town and Country Planning (Scotland) Act 1997 is a missed opportunity to create new planning legislation that has vision and clarity of purpose.

Introducing legislation without a clearly defined purpose, with details to be clarified through further research, raises concerns that it may result in legislation whose operation is vulnerable to judicial review, whether in the Scottish Courts, the UK Supreme Court, or the European Court of Justice during what may be a prolonged transition period.

Scotland's global reputation rests upon the quality of its natural and built environment, and is of social and economic value to residents and visitors. The Bill provides no additional mechanisms for protecting Scotland's heritage – SDZs may undermine existing protection. Without provision for resourcing the place-making agenda, new developments may not be of a quality to deliver enhanced places for communities.

Given the present doubt over how EU legislative requirements (whether imposed by Regulations or by Directives) are to be incorporated into Scots Law (apparently via Westminster), the Bill should enact the principal requirements. Specifically Article 191 from the [Lisbon Treaty](#).

2. To what extent will the proposals in the Bill result in higher levels of new house building? If not, what changes could be made to help further increase house building?

There is evidence of a need for additional affordable housing but the Bill's provisions provide no further clarity on how this will be delivered. The mechanisms for increasing house numbers appear to be in the new gatecheck process in advance of the preparation of the LDP and the introduction of SDZs. Affordable housing may be provided through these routes but if it is still contingent as a small percentage of private sector housing it remains subject to the multiple variables affecting the market and is therefore unlikely to deliver in the quantity and quality needed.

[Research for the Scottish Land Commission](#) does not identify securing planning consent as the major barrier to house building. Further research on Land Value Tax is pending and may have implications for this aspect of the Planning (Scotland) Bill.

National and local plans should be focused on delivering and shaping well planned, thriving communities in well-connected locations, not on the quantity of units delivered. The amendments presented seem to place the focus on housing numbers, not their means of delivery nor their quality.

3. Do the proposals in the Bill create a sufficiently robust structure to maintain planning at a regional level following the ending of Strategic Development Plans and, if not, what needs to be done to improve regional planning?

No. The NPF was originally conceived as a light-touch national spatial strategy. The Policy Memorandum itself explains (para. 26) that the NPF is a long-term strategy for Scotland, that it is the spatial expression of the Government Economic Strategy, and of the Scottish Government's plans for development and investment in infrastructure. Yet the Government proposes (para. 28) that Scottish Planning Policy, which is not spatial and not concerned with strategy, should be incorporated into the NPF. The wider proposals risk the NPF becoming a top-heavy, general repository of planning policy that could quickly fall out of favour.

BEFS concern is not just with regional expertise and capacity, but also with regional agency. The proposed legislative changes seek to enhance the status of the NPF while making no statutory provision for strategic agency at the regional level. Far from being strategically empowered or given regional agency, planning authorities are to be obliged to work collaboratively "to assist the Scottish Ministers in preparing the NPF" (para. 31). This could result in an increasingly centralised planning system. Flexible arrangements for cross-boundary working could be achieved without merging national and regional scale planning into a single document (para. 33).

High-level regional spatial strategies - formed through regional partnerships with agreed strategic outcomes - informing the NPF, could go some-way to protecting and enhancing the value of the NPF.

The consultation paper rightly stressed the importance of bringing together Scottish Government policies across all sectors, including Energy, Climate Change, Land Use, Digital Technologies and the Marine Environment. There is a real danger that making the NPF part of the development plan could work against this holistic perspective, reducing its ability to address strategic spatial issues beyond the statutory definition of 'development' in Section 26 of the Town and Country Planning (Scotland) Act 1997.

The removal of the statutory requirement for strategic regional plans will have funding and resource implications. Local authorities may see this as an opportunity for cost saving, resulting in a reduction of the funding available to planning departments – if local authority funding is stretched why would authorities fund a non-statutory activity?

The non-statutory status proposed for regional planning can also be seen as reflecting a drift towards the, critically reviewed, model of City Deals, focused more on individual projects than spatial strategy. BEFS acknowledges the development of the Regional Economic Partnerships, and whilst this might represent a future structure for city region planning, without a statutory outcome or purpose much is left to the individual actors.

The 2014, Scottish Government commissioned, [Review of Strategic Development Plans](#), made a series of recommendations. Based on this review the Scottish Government then committed to strengthen strategic planning, and set out a series of actions for Strategic Development Planning Areas, for both the Scottish Government's Planning and Architecture Division, and the Minister for Local Government and Planning to follow. Were these actions implemented and was their outcome independently evaluated?

SDPs have only been operational for 8 years and substantive evidence for the need to abandon them has not been produced as part of the recent review.

4. Will the changes in the Bill to the content and process for producing Local Development Plans achieve the aims of creating plans that are focussed on delivery, complement other local authority priorities and meet the needs of developers and communities? If not, what other changes would you like to see introduced?

The [Position Statement](#) acknowledged the need for dialogue between land use planning and community planning, and committed to a statutory link between development planning and community planning in the Planning Bill.

It is proposed that Section 3 of the Bill should introduce a requirement for the LDP to take into account the local outcome improvement plan for the plan area. How this link will work in practice still needs to be explained. There is a risk that local development planning may become subordinate to a community planning regime which currently fails to adequately empower communities.

There is a need for reciprocal requirements for local outcome improvement plans to take account of land use planning and have a place and space dimension. Without such provisions, and appropriate resource and guidance, there is unlikely to be any improvement in community planning practice

5. Would Simplified Development Zones balance the need to enable development with enough safeguards for community and environmental interests?

The preparatory work required for the creation of a simplified scheme will not be simple for planning authorities. The ability to include conservation areas and listed buildings within schemes will require extensive additional preparatory work to ensure that historic assets are protected, preserved or enhanced. It is unclear if the costs of this preparatory work are to be shouldered by the planning authority even when a scheme is upon the direction of Scottish Ministers. If a planning authority does not have the resource or access to relevant expertise, the danger is that adequate Environmental Impact Assessments will not be undertaken and designated and undesignated historic assets will be put at risk. It will also be critical that SDZs prioritise high quality development as well as speed of delivery.

BEFS are concerned that SDZs may undermine existing protection. If SDZs are not brought forward through a plan-led system they could threaten Scotland's natural and built heritage due to a bypassing of scrutiny.

The Bill provides for requests for a scheme to be made, but does not specify from whom the request may come. Landowners, developers and local communities may all have an interest. If there are multiple requests for schemes, what guarantees are there that adequate resources will be made available?

The integration of transport and planning is one positive advantage of a scheme, but why limit this to SDZs? While the Policy Memorandum reasserts the importance of 'place' (paras. 4, 18, 42 and 43), few of the Bill's provisions explicitly advance the place-making agenda. If the intention is that schemes should be resourced to deliver places of quality, which meet the needs of communities and safeguard and enhance heritage assets that are valued locally, then it may be more appropriate to call them Place Development Zones (PDZs). Linking such zones to specific land value capture mechanisms may help to deliver higher quality affordable housing, while also promoting social well-being.

The complexity which has resulted in only modest uptake of the SPZ mechanism does not appear to be significantly addressed in the proposals for SDZs. We note that the Law Commission is currently undertaking a consultation reviewing the planning system in Wales that recommends the withdrawal of SPZs and the greater use of local development orders.

6. Does the Bill provide more effective avenues for community involvement in the development of plans and decisions that affect their area?

Will the proposed Local Place Plans enable communities to influence local development plans and does the Bill ensure adequate financial and technical support for community bodies wishing to develop local place plans? If not, what more needs to be done?

If LPPs were adequately resourced to enable communities to acquire the skills they need to prepare them, with their proposals incorporated at an earlier/evidential stage, they could be a mechanism for embedding the aspirations of communities within the planning system in a way which encouraged: inclusivity, an integrated approach, and promoted both understanding and trust in the system.

It is by no means clear that LPPs will ensure that community aspirations are integrated into the process more effectively. Under the provisions of the Bill, the LDP is only 'modified' in light of consultation, not developed by or with the communities it is supposed to serve. LPPs are likely to be most effective when prepared with the local authority in a stakeholder role. This will require resource, which is not committed by the Bill's financial memorandum. The example of [Pollokshields Community Council](#) work in this area is just one example, which would appear indicative, of the challenges involved in the process.

LPPs should feed into the Evidence Report to ensure that community aspirations and relevant community assets are identified at an early stage and considered as part of the gatecheck. Otherwise there is a danger that the gatecheck will be a technocratic exercise primarily concerned with housing numbers and their delivery.

The Bill should require planning authorities to engage with communities on the identification of community aspirations and relevant community assets at the evidence gathering stage, whether or not a LPP has been prepared.

The financial memorandum suggests LPP costs of £13K [yet independent research carried out by Strathclyde University](#) places the average Scottish Government contribution at £18K with additional funding from other sources. Information from those conducting recent charrettes have stated that the cost is usually £30-40K. A proposed Leith Place Plan has recently received Scottish Government funding of £35K, building on the Leith Blueprint engagement exercise which was reported to have cost £46K. If these are the actual costs of preparing an effective LPP then the financial memorandum has grossly underestimated them. In turn the memorandum does not mention the costs of upskilling communities. If communities, particularly those in areas of deprivation, are not provided with the resources to equip themselves with the necessary skills, they may have to rely upon costly consultants. This is not a desirable outcome.

We are unclear about the practical difference between the requirement to "take into account" the NPF and the requirement to "have regard to" any LPP in Section 20AA.

The Policy Memorandum states that regulations for pre-application consultation will require two public events, but unless the consultation meaningfully responds to community issues it will remain an unsatisfactory process.

Community Councils could be required to play a role in LPP preparation, as they should be representing the opinions of a community area. The community council structure already exists and should be strengthened to increase community engagement following the principle of subsidiarity.

The recently published report '[Shaping better places together: Research into facilitating participatory placemaking](#)', supported by the Scottish Government, highlights the investment required in time and expertise for good community engagement.

7. Will the proposed changes to enforcement (such as increased level of fines and recovery of expenses) promote better compliance with planning control and, if not, how these could provisions be improved?

Whilst the ability to recover expenses is seen as a potentially positive addition, the intention that enforcement should remain discretionary, rather than statutory, is seen as a serious impediment to effective enforcement.

There is acknowledgement in the Bill that the current enforcement powers are not being used. This is seen as a further issue of resourcing for the Scottish Government and planning authorities. If a planning authority does not, or cannot, resource an adequate enforcement team, the level of the fine is immaterial.

Enforcement should be a statutory power and needs to be monitored, with the publishing of planning authority enforcement statistics produced as a matter of course. It has been suggested that the Ombudsman could be empowered for planning enforcement. It is acknowledged that this too may present resource challenges.

The £50k limit to fines seems to go-against the aim of fully taking into account the potential financial benefit for the applicant – and is not seen as a true deterrent to those wishing to evade their planning requirements.

8. Is the proposed Infrastructure Levy the best way to secure investment in new infrastructure from developers, how might it impact on levels of development?

Are there any other ways (to the proposed Levy) that could raise funds for infrastructure provision in order to provide services and amenities to support land development?

Are there lessons that can be learned from the Infrastructure Levy as it operates in England?

The Infrastructure Levy proposals have not been set out in a sufficiently clear and comprehensive manner to enable respondents to judge if they have the potential to be the ‘best way’ to secure investment, or may impact levels of development. There are too many unanswered questions, as is highlighted by the recognition of the need for further work in this area in the Policy Memorandum (para. 155). As it stands there is additional confusion over how the Infrastructure Levy and retained Section 75 would coexist. This issue is also linked to review of Land Value Capture, currently being undertaken by the Scottish Land Commission, and is unlikely to be resolved without close and detailed work between agencies and departments.

A [2016 report](#) presented to UK Government in early 2017 notes several concerns found with the English process. Namely: cost of implementation, varying views as to effectiveness, low impact on housing numbers, increase in exemptions over time, and disparity between areas of economic difference.

With reference to the above – but raised by many respondents - the nature of implementing the Levy across Scotland, and the economic differences between authorities, may prove challenging as land-value, affordability thresholds, and house prices would be difficult to balance with complex infrastructure needs.

In considering the funding of infrastructure, the Scottish Government needs to avoid locking the system into a mechanism where infrastructure funding is increasingly dependent upon development, or into a system that fuels a land or housing market that is assumed to be continually rising.

9. Do you support the requirement for local government councillors to be trained in planning matters prior to becoming involved in planning decision making? If not, why not?

Training would be beneficial, not just for those making development management planning decisions, but for elected members in general, especially given the provision that the LDP needs approval from the full Council not a delegated committee. Councillor training should be available to community councillors so that an understanding of roles and responsibilities is shared.

The question of an examination raises further questions: by whom would this be set/reviewed? As well as querying the potential delays that this could bring to the system; would a committee be prevented from making a decision until all members had completed their training/exam? A void in decision making created by this process (as would be inevitable following local elections) would not be desirable to applicants or decision makers, putting undue stress on the planning system.

When considering the use of examinations for Council committee members it is understood that currently, only those on Licensing Boards need to sit an exam. It is suggested this may not be a rigorous process, with candidates sitting a 40 question, multiple choice [examination](#). This format would not be seen as suitable to enable candidates to grasp an understanding of the purpose and desired outcomes of a strategic planning process.

BEFS noted that a planning committee does not need to be entirely elected members, and trained planners on a planning committee could be extremely beneficial – for example Cairngorm National Park Planning Committee.

10. Will the proposals in the Bill aimed at monitoring and improving the performance of planning authorities help drive performance improvements?

Is *performance*, in the sense of speed and percentage of approvals, the correct standard? The *quality* of places for all our citizens, with: appropriate infrastructure; sustainable economic growth; high environmental standards; affordability across housing tenures; and high-quality, shared, build standards; would be a more fitting measure.

Without increased resources, and with multiple changes to the Planning system within the Bill, it is unclear how planning authorities are being enabled to improve on their performance as it is currently understood.

11. Will the changes in the Bill to enable flexibility in the fees charged by councils and the Scottish Government (such as charging for or waiving fees for some services) provide enough funding for local authority planning departments to deliver the high –performing planning system the Scottish Government wants?

If not, what needs to change?

Full cost recovery is welcomed but would only be effective if fees were hypothecated appropriately, to the benefit of the planning service.

Whilst additional flexibility within the charging system initially appears positive it could prevent a level playing field across Scotland. Such flexibility could also appear unfair, or to benefit certain types of planning applications, if not scrutinised and monitored appropriately.

Ultimately, as is noted in the proposed Bill, more detail is necessary before a full answer to this question can be provided.

12. Are there any other comments you would like to make about the Bill?

Supplementary Guidance

The total removal of statutory supplementary guidance may have unintended consequences. There is a high degree of inconsistency across local authorities as to what they present as supplementary guidance and this may reflect previous Scottish Government advice on simpler LDPs being supplemented by detailed supplementary guidance. It is important that detailed local guidance on the protection and care of conservation areas, listed buildings, battlefields, gardens & designed landscapes is not diminished in the removal of Supplementary Guidance. Particularly when this guidance is considered in relation to the reduction of specialist officer roles relating to archaeology, conservation, landscape and other areas of expertise within local authorities.

We would ask the Scottish Government to clearly set out its understanding of what is Supplementary Guidance of a statutory nature, and what is local planning guidance that is a material consideration in the planning process, to ensure clarity in understanding the full implications of the proposal.

APPENDIX

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The comments within this response were created and supported by the following members of BEFS:

Archaeology Scotland
Architectural Heritage Society of Scotland
Association of Local Government Archaeological Officers in Scotland
Chartered Institute for Archaeologists
Cockburn Association
Historic Houses Association, Scotland
Institute of Historic Building Conservation Scotland
Landscape Institute Scotland
National Trust for Scotland
Royal Incorporation of Architects in Scotland
Royal Institution of Chartered Surveyors Scotland
Scottish Civic Trust
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