

Local Government and Communities Committee

Planning (Scotland) Bill

**Submission from the Association of Local Government Archaeological
Officers**

Dear Committee Members,

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

The Association of Local Government Archaeological Officers

ALGAO: Scotland represents 28 of the 32 Local Authorities and National Park archaeological services in Scotland and is part of the UK-wide organisation, ALGAO: UK.

Its members' work primarily focuses on the protection and management of the historic environment within the development management process. This ranges from early pre-application advice with developers and planning officers, through ensuring appropriate mitigation and design is in place during the application process, to facilitating the historic environment as a valuable contributor to local communities, whether it be a sense of place or an economic asset.

This response was drafted with the aid of ALGAO: Scotland's members in conjunction with other colleagues across the sector.

Yours faithfully,

Hugh McBrien DipFA FSA Scot
Manager, West of Scotland Archaeology Service
Chair of ALGAO: Scotland

Local Government and Communities Committee: Call for evidence on the Planning (Scotland) Bill.**The views of The Association of Local Government Archaeological Officers (Scotland)****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?**

We are concerned that as currently drafted, the Bill may weaken current environmental protections because of a lack of clarity on several matters, such as for example, the introduction of the proposed Simplified Development Zones, the impression given to the unwary by the removal of Statutory Supplementary Guidance, and the inter-relationship between the new spatial planning system and Community Place Plans.

We are also concerned about the impact the UK's withdrawal from the EU will have on the incorporation of EU legislative instruments (whether resulting from Regulations or Directives) into domestic laws or regulations. In the absence of such clarity from the UK government on these matters, there is a danger that current protections may lose their underlying legislative basis. Therefore there is an argument for specific provision to be made for the necessary environmental protection requirements to be enacted in the Bill to safeguard existing protections and regulatory processes which currently operate well and are widely understood and accepted.

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?

It is not clear from the Bill how higher levels of housing provision will be delivered. Securing planning consent (with or without conditions relating to the possible survival of archaeological remains within the site) does not appear to be a significant blockage in the construction timeline for development. Our members are of the opinion that the volume of housing completed is dependent on factors outwith the planning system, such as market demand, business confidence, and the availability of finance.

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?

Not as currently defined within the Bill. The structures and procedures proposed may be able to deliver the desired outcome, but are insufficiently specific or detailed to ensure that this will be delivered in all 'regions'. While encouragement to work

collaboratively in bespoke regional partnerships may produce good results, good outcomes require sufficient capacity and expertise in the partner authorities to address the regional issues raised, and without a statutory requirement for regional plans, a lack of resources for non-statutory functions may lead to under-resourcing or their omission. Greater clarity on what is expected on a formal basis would provide greater confidence in the system going forward.

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?

In meeting the needs and desires of communities, the inter-relationship between spatial planning and community planning requires greater definition, particularly with regard to the proposed requirement for the Local Development Plan to take account of community planning. If an iterative and/or reciprocal process of reference and cross-fertilisation of ideas in the development of the different plans and their updating is intended, then this needs to be clearer. There should be explicit provision of a mechanism to resolve what may appear to be conflicting priorities in LDPs and Place Plans.

There is concern that if Place Plans are formally linked to LDPs that the responsibility to produce appropriate 'environmental assessments' (including Archaeological and Heritage Assessments) will fall onto councils and their specialised services, which would have significant resource implications.

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

The broadening of the concept of Simplified Planning Zones into Simplified Development Zones is welcome, as it is assumed that matters previously outwith the remit of planning control will be able to be integrated into a more holistic approach to landscape-scale schemes. However, without greater definition of proposed working relationships and responsibilities, it is unclear whether accelerated development can be delivered without detriment to historic environment assets, particularly those which are currently unrecorded. There would require to be extensive preparatory work to ensure that historic assets (especially those which are buried and invisible at ground level) are protected, preserved or enhanced within any proposed SDZ. It is unclear whether the costs of this preparatory work would be shouldered by the planning authority, or whether they could be included within the definition of 'infrastructure' works in advance of development. If a planning authority does not have the resources required, or access to relevant expertise to address these specialised issues at the appropriate point in the preparation of the SDZ, the danger is that adequate Environmental Impact Assessments will not be undertaken and designated and undesignated historic environment assets will be put at risk, or lost

without adequate record. If proposed SDZs are not brought forward through a planned system they could threaten Scotland's cultural heritage through lack of appropriate scrutiny, or advance works.

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?

Local Place Plans (LPP) will require to be adequately resourced to enable communities to acquire the skills and information they need to prepare them. If their resulting proposals are incorporated into the LDP at an early stage, they could be a mechanism for embedding the aspirations of communities within the spatial planning system, and improve community 'buy-in'. Access to good quality information and advice will be critical, especially in disadvantaged communities or areas of deprivation, where there is often a higher proportion of (often dwindling) cultural heritage resources associated with past industries and social structures.

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?

The ability to recover expenses is seen as a potentially positive addition, but if enforcement remains discretionary, rather than statutory, this will undermine its effectiveness. Effective, monitored performance in enforcement will add to community confidence in the planning system.

Current enforcement powers are not being used, but our members consider this to be primarily an issue of resourcing. In addition, if a planning authority does not, or cannot, resource an adequate enforcement team, the level of the fine set in legislation is immaterial. An arbitrary limit to fines does not fully take into account the financial risks and possible benefits to a developer. A level of fine that was proportionate to the value of the development would be a greater deterrent.

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 sufficiently detail to judge if they have the potential to be the 'best way' to secure investment, or if they would

may impact on the level of development, but in principle, they would appear to be an incremental, positive step towards facilitating better development in the right areas.

Greater detail is required on the workings of the levy, its relationship to the existing provisions for S75 agreements, and other, more abstract issues such as what may be included in the definition of “infrastructure”. (For example - would advance archaeological evaluation of areas of a SDZ to identify unknown sites so they could be avoided or excavated in advance be an appropriate use of the levy?)

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?

Yes.

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

Streamlined, clearly understood procedures and efficient working practices have the greatest effect on performance. If greater clarity is provided on the provisions of the new Bill, then improvements will follow.

However, where there are strains on resources, outcome demands tend to lead to a prioritisation of the quantity of output, rather than its quality, so a monitoring system for performance should take account of both factors before assessing success.

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?

While this is an area where greater detail would be required, full cost recovery would be welcome, but would only be fully effective for the desired purpose if such fees were hypothecated appropriately, to the benefit of the relevant planning service. This would be essential if any new fee structure was to provide the necessary funds for a better-performing planning system, especially in areas with a high development pressure.

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

The Removal of Statutory Supplementary Guidance

Our members are concerned that the removal of statutory supplementary guidance may have unintended consequences, or may give ‘the wrong message’ to developers who have seen SG used to implement design constraints or to enforce

procedural best practice. While it is recognised that there is a high degree of inconsistency across local authorities in what they present as supplementary guidance, this may reflect some councils' reaction to previous Scottish Government advice on how to produce simpler Local Development Plans, supplemented by detailed supplementary guidance.

It is important that detailed local guidance on the protection and care of conservation areas, listed buildings, battlefields, designed landscapes, or other undesignated historic environment assets is not diminished in the understanding of developers by the removal of Supplementary Guidance.

We would ask the Scottish Government to clearly set out its existing 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 implications of the proposal.