

Planning (Scotland) Bill – The Cockburn Response

You cannot get an effective planning system on the cheap!

The planning system, as it stands, is by no means perfect. Increasing we are aware of community dissatisfaction regarding the current system's ability to deliver what their community wants, where they want it and when they want it. The purpose of the planning systems should not only be to speed growth and development. Rather it should protect heritage and conservation interests against insensitive and inappropriate development, enhance amenity and support community well-being and cohesion.

We are concerned that the Bill may erode some of the benefits of the current system but bring no meaningful, additional benefits, safeguards or enhancements for communities or heritage. It is particularly notable that the Bill does not take the opportunity to rebalance the statutory planning system with respect to the interests of developers and the legitimate interests of communities and 'communities of interest' where development is proposed.

The statutory planning system in Scotland should exist to ensure that development is in the public interest, when due consideration is given to the sustainable economic, environmental and social benefits and drawbacks of proposed development. And it should play a key role in making sure the places where we live and work are attractive, exciting and thoughtfully conceived. However, much of the content of the current Bill seems to focus on speeding-up and facilitating housing provision and development. This is not the role of the statutory planning system. And without a similar investment of time, effort and money in support of communities and 'communities of interest' it is poor legislation and unacceptable in its current form.

It is the view of the Cockburn Association that the Planning (Scotland) Bill will not improve the planning system in Scotland which has been well-served by its two-tier, regional and local, statutory planning system to date.

- The strong drive throughout the Bill is to facilitate and accelerate development (particularly house building), underpinned by direction from Scottish Ministers, where deemed to be required. While the right to adequate housing is an important human right that the Scottish planning system must embrace, "adequate housing" involves more than numbers: quality, affordability and place-making should be central concerns, and more weight needs to be given in the Bill for a requirement to seek a reasonable balance between the requirements of development and those of the natural/cultural heritage and the needs of communities.
- The Cockburn challenges the underlying assumption of the Bill that the planning system is a 'block' to new housing development. In a speculative land economy, driven by private sector interests, market forces will continue to be the main drivers for housing growth.
- The Bill shows greater continuity with the planning system built in the 20th century than with these global 21st century concerns which the Scottish Government has endorsed but not translated into its planning system. Action to combat climate change and its impacts (SDG13) should be one of the purposes written into the planning legislation.
- We believe the introduction of a limited form of TPRA/ERA into the planning system is required, tailored to Scottish circumstances. It is sufficiently important to warrant a National Opinion Poll to seek the views of the Scottish people.
- We do not believe that the proposals in the Bill create a sufficiently robust structure for regional planning in the future. Although we welcome the recognition that there is scope for action at regional scale beyond the current four SDP areas, and that boundaries can be more flexible than those of local councils. However, at a time when there is growing recognition of the importance of functional regions as planning units, and of the need for subsidiarity, we believe that the current proposals in the Bill are unsound.
- We welcome the continued emphasis on a plan-led system. But we have concerns that the proposed changes will not enhance current practice. To be blunt, you cannot get an effective planning system on the cheap!
- The Cockburn sees no evidence that Simplified Development Zones will be a positive re-introduction into the Scottish planning system. believes that it would be it is very risky to embark on SDZs without first trialling them in different circumstances. This was mooted in the Position Statement and we are very disappointed that it has not been adopted in the Bill. If SDZs are implemented without trial, it is essential that all SDZs are subject to rigorous SEA and HRA assessments.
- We are not convinced that the Bill will provide more effective avenues for community involvement. As the Bill stands, it is not easy to see what the incentive is to a local group to prepare a Local Place Plan. There is very little clarity in the relationship between LPPs and the NPF/LDPs and to Development Management services. It is proposed that the resourcing of Local Place Plan preparation should fall on local communities. We regard this a both unrealistic and unfair. So, while the Bill appears to have the potential to provide more effective community involvement in the production of development plans and thereby to influence outcomes. This will only be effective if communities have trust in the system, know that their views are listened to and due weight is given to them during the decision-making processes.
- We support the enhanced enforcement proposals. The experience of the proper application of the enhanced proposals will indicate if they are effective. The main barrier to effective enforcement at present is the inability

of hard-up councils to invest sufficient resources in the service. This is a further factor that creates confusion and distrust of planning amongst the public.

- We welcome that the Levy review will also include the appropriate use of s.75 planning obligations, which are often unenforced or ignored, much to the chagrin of communities and others.
- We support we support the requirement that local government councillors should be trained in planning matters. However, as some planning decisions are taken by a Council then it is essential that all councillors should be trained. Training should include consideration of development quality, urban design and place-making.

1. Do you think the Bill, taken, 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?

No, we do not think that the Bill, taken, will improve the planning system in Scotland which has been well-served by its two-tier statutory planning system to date. We are concerned that the Bill may erode some of the benefits of the current system. That being said, we welcome the confirmation of a plan-led system and the ambition of many of the proposals e.g. to simplify and improve the plan production processes, to involve communities more closely in them, to enhance the resources for planning and to improve the quality of decision making by elected representatives through training.

However, the key question posed is about 'balance' in the new planning system and we are not convinced that this will be effectively and consistently achieved in all circumstances. Furthermore, the Bill appears not to be informed by the UN's Sustainable Development Goals (SDGs), which the first Minister has committed Scotland to achieving. The Bill misses the opportunity to update the purpose of planning in Scotland in line with SDG 11 in particular ("Make cities and human settlements safe, inclusive, resilient and sustainable"), and its targets including 11.3 ("By 2030, enhance inclusive and sustainable urbanization and capacity for participatory, integrated and sustainable human settlement planning and management in all countries") and 11.4 ("Strengthen efforts to protect and safeguard the world's cultural and natural heritage"). In respect of the latter, for example, the crucial role that planning plays in conservation is not addressed by the Bill.

The strong drive throughout the Bill is to facilitate and accelerate development (particularly house building), underpinned by direction from Scottish Ministers, where deemed to be required. While the right to adequate housing is an important human right that the Scottish planning system must embrace, "adequate housing" involves more than numbers: quality, affordability and place-making should be central concerns, and more weight needs to be given in the Bill for a requirement to seek a reasonable balance between the requirements of development and those of the natural/cultural heritage and the needs of communities. In some sensitive situations, where there is conflict between development and the environment, it may be necessary to give greater weight to the environment and the interests of established communities in decision making.

Furthermore, the SDGs, and the associated New Urban Agenda (NUA) agreed by governments in 2016, put poverty alleviation and inclusion at the centre of our endeavours. SDG10 seeks to reduce inequality not just between countries, but within countries. SDG 5 highlights the need for gender equality (and the NUA recognises the relevance of this to urban planning and development). SDG 8 endorses the idea of sustainable economic growth, but in Target 8.4 links it to decoupling economic growth from environmental degradation.

We welcome the importance which the Scottish Government has attached to well-being, and its recognition that the environment can be a positive (or negative) factor. The Planning Bill is an opportunity to give legal status to the issue as a planning matter, and by doing so would also help deliver SDG 3, which aims to "promote well-being for all".

In short, currently the Bill shows greater continuity with the planning system built in the 20th century than with these global 21st century concerns which the Scottish Government has endorsed but not translated into its planning system. Action to combat climate change and its impacts (SDG13) should be one of the purposes written into the planning legislation. Conversely, the priority attached to the demands of the private housebuilding industry is not reflected in international agreements, which rather put the emphasis on sustainable use of territorial ecosystems and halting land degradation (SDG 15) and on "access to justice for all" with "effective, accountable, and inclusive institutions at all levels" (SDG 16).

We believe the introduction of a limited form of TPRA/ERA into the planning system is required, tailored to Scottish circumstances. It is sufficiently important to warrant a National Opinion Poll to seek the views of the Scottish people.

In summary, while there is much important detail to follow in secondary legislation and guidance, at this stage, our concern is not so much "the devil in the detail" as the "devil in the (limited) vision". A Planning Bill gives Scotland a once in a generation opportunity to reflect on needs and priorities: this one comes fortuitously in relation to the timing of new international obligations that the Scottish Government rightly has embraced with confidence and enthusiasm. Scotland should be seeking a world class planning system through this legislation: the Bill in its present form lacks ambition, and

draws its inspiration from changes made to the English planning system rather than looking to Scandinavia or today's international agendas.

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?

The Cockburn challenges the underlying assumption of the Bill that the planning system is a 'block' to new housing development. In a speculative land economy, driven by private sector interests, market forces will continue to be the main drivers for housing growth. One of the more significant challenges, in terms of housing provision, is the gap which exists between what the private sector provides and what the community needs. Of concern, is the gulf between affordability and the availability of accommodation that is well designed and contributes to high quality place-making that will enhance Scotland's international reputation.

The proposals in the Bill could have the potential to increase levels of house building, but the types of housing required have not been specified. We believe key housing requirements are that there should be adequate housing for all. This means that the planning system should be able to promote and prioritise: affordable housing to buy or rent; accommodation for homeless people; accommodation for rough sleepers; accommodation for disabled and older people. None of these requirements appear to feature in the Bill. The impression given is that private sector developers will deliver all the housing required, based on purchase and market prices. We contend that this will not deliver civic society's important housing needs. In this respect, no indication is given of the important role public sector house building could play in providing for these needs.

While we have concerns that the drive for increased development could jeopardise environmental quality and community requirements, we also fear that the Bill will not result in the increased levels of house building expected.

Quite simply, the planning system is only one factor in housing supply, and primarily influences location rather than the number of houses built. Investor and consumer confidence, interest rates and financial availability, business practices (including land banking to facilitate an even demand for labour and release of products to the market), and the supply of building labour and building materials (both of which could be affected by Brexit) are just some of the other variables which will remain untouched by the provisions of this Bill. The planning system is an easy scapegoat.

3. Do the proposals in 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, we do not believe that the proposals in the Bill create a sufficiently robust structure. We welcome the recognition that there is scope for action at regional scale beyond the current four SDP areas, and that boundaries can be more flexible than those of local councils. However, at a time when there is growing recognition of the importance of functional regions as planning units, and of the need for subsidiarity, we believe that the current proposals in the Bill are unsound.

By taking aspects of regional planning (notably housing numbers) into the NPF a regional issue is being "nationalised". Replacing the SDP with a less directive partnership, backed by a version of the English "duty to cooperate", could have benefit IF the various stakeholders really commit to integrate their efforts. However, there will be less power to require that than through an SDP. The results also seem more likely to be a series of relatively one-off projects (along the lines of City Deal) than an integrated plan. An alternative would be to get key infrastructure providers and planning authorities to sign publicly available contracts to carry out agreed works that have a public good outcome.

We believe it will be important to carefully monitor the outcomes, to identify best practice for different circumstances. It may also be helpful if SG provided guidance on a range of issues that should be addressed in different circumstances

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?

We welcome the continued emphasis on a plan-led system. But we have concerns that the proposed changes will not enhance current practice. Delivery of LDPs will usually come from development management services. The continued retraction of staffing in local Planning Authorities, such as the City of Edinburgh Council, will undermine any efficiencies gained through a more structured LDP process. To be blunt, you cannot get an effective planning system on the cheap!

One further concern is that the NPF, which has greatly benefited from being non-statutory, and so able to address a range of strategic development issues, could become constrained by being part of the Development Plan system. It is important that the incorporation of the NPF and SPP within the revised LDP process does not diminish their environmental policies.

The requirement for the Development Plan to conform to the Community Plan is lop-sided and confusing to the public whose scope to influence the LDP will be correspondingly constrained. While Community Plans could benefit from having a spatial dimension, they are typically prepared without the degree of external scrutiny that LDPs must have. Community Plans are largely prepared by public sector officials to align their priorities, without necessary alignment with place-based community areas, and can too easily result in outputs that are generalised statements acceptable to all the agencies.

We agree that the LDP must be based upon 'robust evidence' (policy memo para 47). However, it should be made explicit that such evidence may be qualitative, and that qualitative evidence should carry equal weight with quantitative evidence; this is particularly important when the system needs to be used to conserve Scotland's natural, built environment and cultural heritage. The priority for the Scottish planning system to be an "inclusive institution" (SDG 16) should mean that the system is simple and equally accessible to all: there should not be barriers that favour those who can hire external consultants over those with local knowledge and subjective strong attachment to their place.

We think the revised processes for producing LDPs are supportable. We recognise that with some 95% of planning applications being approved, the real delays in the system are to do with the appeal system (and its inequitable basis). It is crucial that the production of revised LDPs not only 'meets the needs of developers and communities', but also safeguards the natural and cultural heritage (SDG Target 11.4) and advances equalities – the equalities impact assessment conducted focuses on not making inequalities worse, rather than putting equalities at the heart of the new planning system.

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

No, we see no evidence that SDZs will be a positive re-introduction into the Scottish planning system. Although no evidence has been presented in a Scottish context, evidence is available from England, when SDZs have been trialled, indications are that they do not work or are difficult to make work effectively. There are also unanswered questions about who would have the right to designate SPZs and we have concerns regarding the relationship between SPZs and the speculative land market.

We note there is much theoretical justification of SDZs in the Policy Memorandum. But, in terms of 'safeguards', we believe it is very risky to embark on SDZs without first trialling them in different circumstances. This was mooted in the Position Statement and we are very disappointed that it has not been adopted in the Bill. If SDZs are implemented without trial, it is essential that all SDZs are subject to rigorous SEA and HRA assessments.

We also strongly consider that sensitive areas must be exempt from the introduction of SDZs. The existing list (that includes Green Belts, Conservation Areas, NSAs etc) should be extended to include National Parks, wildlife protected areas, cultural sites, etc

The provision in the Bill for Scottish Ministers to direct the use of SDZs seems unwise before their 'holistic' effectiveness has been determined.

The Cockburn would strongly advocate Heritage Action Zones (HAZs) as a new tool to compliment SDZs, if these are implemented. The aim of HAZs would be to facilitate economic growth by using heritage as a catalyst. It would be clearer and more understandable from sectoral perspectives to have SDZs, with a focus on non-sensitive areas, and HAZs with a focus on areas of built and natural heritage sensitivities and designations. This would be particularly relevant to areas such as the City of Edinburgh with multiple levels of existing designations.

The Cockburn would be delighted to present to the committee on the Topic of HAZs.

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?

No, we are not convinced that the Bill will provide more effective avenues for community involvement. LPPs should explicitly be defined as an exercise in subsidiarity. As the Bill stands, it is not easy to see what the incentive is to a local group to prepare a LPP, as it will have to conform to the LDP, which itself must be consistent with the Community Plan and reflect the NPF and SPP. There is a risk that people will be disillusioned if their efforts are overturned for non-compliance. To make LPPs work, there must be some two-way process. We propose that during the making of the LDP local and community groups should be able to identify and propose matters that should be left to be decided in a LPP; planning authorities should be required to provide "robust evidence" if declining such devolution, and should in the LDP set out matters/places for which they would seek LPP initiatives.

There is very little clarity in the relationship between LPPs and the NPF/LDPs and to Development Management services. That said, we believe that the process of preparing a LPP will benefit from the engagement of professionals with expertise in the built and natural environment and in community development. We should not pretend that good LPPs can be done on the cheap: they should be ways to deliver not just on statutory planning but on the government's community empowerment agenda. Again, there is an opportunity here for the Scottish planning system to serve up more than a version of the English Neighbourhood Plans, but at the very least the lessons from that practice in the South need to be the evidence on which its Scottish equivalent is developed.

It is proposed that the resourcing of Local Place Plan preparation should fall on local communities. We regard this a both unrealistic and unfair. It is important to acknowledge that the people involved with community bodies are volunteers, many of whom are leading busy lives and/or are retired and elderly. They are already involved in many consultations, planning applications and other local issues. They may lack relevant expertise. So, even with support, some community bodies are likely to experience difficulties in contributing effectively to the onerous (likely) production of Local Place Plans.

So, while the Bill appears to have the potential to provide more effective community involvement in the production of development plans and thereby to influence outcomes. This will only be effective if communities have trust in the system, know that their views are listened to and due weight is given to them during the decision-making processes. Some communities might be able to prepare a LPP. However, the majority will not have the technical, management or financial resources to do so.

We would take this opportunity to point out that proposals found in the 2005 Planning Act were meant to provide effective outcomes for community involvement but they failed to do so. No evidence has been sought to explain this failure and, consequently, there can be little confidence put in new community engagement initiatives which have not learnt from and addressed the reasons for past lack of success in this area.

The 'appeals' system, for example, should be approached through the lens of SDG16. We believe a major and serious flaw in the Bill is the rejection of a Third Party Right of Appeal (TPRA)/Equal Right of Appeal (ERA). The evidence selected for this rejection is all negative and as such appears unbalanced. There will be occasions when the proposed 'front loaded' engagement will not solve conflicts/disagreements between developers and communities/others. In such circumstances, developers can resort to appeal, but third parties cannot, because there is no provision for this. This is demonstrably unfair and public discontent/distrust with the planning system is likely to continue. If there is indeed a desire to simplify the planning system, then the appeals system needs scrutiny.

The fact that the system is "plan-led" but a planning authority or reporter or Minister can award a permission that is a departure from that plan is confusing and fosters distrust. The fact that a developer can initiate expensive appeal proceedings, effectively taking matters out of local democratic control and beyond the financial capacity of ordinary citizens to contest, means that the appeals system proposed in the Bill, as an institution is not "effective, accountable and inclusive".

Hence, we strongly recommend that the Bill includes a provision to trial options of limited forms of TPRA/ERA in different circumstances/locations in Scotland. This will provide relevant evidence as to the acceptability or otherwise of a TPRA/ERA system that could be tailored for Scottish circumstances. This will also provide a clear demonstration that the SG is complying with the 'fairness' principle of its own 'Programme for Government'!

As an alternative, we would strongly advocate the restriction of First Party Rights of Appeal.

We believe the circumstances that led the House of Lords to introduce Appeals, as a late amendment to the 1947 Act, no longer apply in 21st century Scotland.

If the primary focus of the Bill is to speed Housing application. Community considerations will always be a secondary concern.

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?

We support the enhanced enforcement proposals. The experience of the proper application of the enhanced proposals will indicate if they are effective. The main barrier to effective enforcement at present is the inability of hard-up councils to invest sufficient resources in the service. This is a further factor that creates confusion and distrust of planning amongst the public.

In many instances planning breach is a result of poor client advice from professional consultants, builders and contractors. Consideration should be given to if and how poor professional advice should be addressed to promote better compliance with building control.

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 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?

We welcome that the Levy review will also include the appropriate use of s.75 planning obligations, which are often unenforced or ignored, much to the chagrin of communities and others. Fundamentally, we are operating a system where private companies are expected to deliver public goods. For this to work effectively and fairly there needs to be a balance of expertise on either side of the negotiation, which is not the case at present as so much expertise has been sacrificed in planning authorities to balance budgets. Also, it is essential that the whole process is transparent; lack of transparency due to “commercial confidentiality” negate accountability and drain public confidence.

The provision/enhancement of infrastructure prior to development is essential for its effectiveness and success. Hence, we support the proposal for an infrastructure levy, though putting the idea into legislation assessing the lessons from this English mechanism seems to ignore the case for “robust evidence”.

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?

We support this requirement. However, as some planning decisions are taken by a Council, as a whole, then it is essential that all councillors should be trained. Training should include consideration of development quality, urban design and place-making. If the principle that training will result in better decisions is accepted, then presumably it should apply at Ministerial level also, and in respect of officials in central and local government who have influence over plans and planning decisions, including those involved in the Community Planning process.

We would be happy to assist in devising suitable means of training, including content, delivery and assessment.

In the drive to enable development, we are still concerned about how planning officials /elected representatives can retain their impartiality, objectivity and sense of balance and fairness with other important planning policies and community interests in the LDP? We believe this issue must be included in the training syllabus for these people.

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

We agree with the principle of monitoring performance, in order to seek improvements where required. It would be helpful to indicate the criteria for satisfactory/unsatisfactory performance. For example, a key criterion would be consistent and effective planning decisions to achieve a reasonable balance between the requirements of development and those of the environment and community requirements. Indicators should not be devised on the assumption that applicants are “customers” whose needs are best satisfied by a quick, and positive decision: the planning system exists to serve the public good, and so its performance needs more sophisticated measures.

For example, in sensitive circumstances, where there may be conflict between development and the natural/cultural heritage, we believe it would be prudent to take time to reach a decision that gives proper weight to the natural/cultural heritage.

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?

These changes should help the funding required by local planning authorities, but may not cover all costs incurred. As planning can, arguably, also provide a ‘public good’, it is not unreasonable that any justified/reasonable shortfalls could be reimbursed from the public purse. The Scottish planning system has seen exceptional levels of resource reduction over the past decade, and in its present state will not be able to deliver the world class planning system that Scotland should aspire towards.

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

It would be helpful to have an indication of when the further technical paper outlined in para. 15 of the Policy Memorandum will be published.

