

Local Government and Communities Committee

Planning (Scotland) Bill

Submission from the Royal Institution of Chartered Surveyors in Scotland (RICS)

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?

RICS welcomes the Government's proposals to amend the planning system to tackle Scotland's primary land and built environment issues; namely, the significant housing shortage and infrastructure deficit.

The Bill is the result of extensive stakeholder engagement by an independent review group and the Scottish Government over a protracted period of time. RICS, like all those who take interest or work in areas relating to planning, therefore feel that the Bill could have been stronger, more definitive and more prescribed.

The objective of the Bill is to improve the system of development planning, provide communities with a greater degree of input to the future of their places, and support delivery of planned. Whilst this Bill is a primary instrument, it is still vague in many areas. The contents of the Bill's Policy Memorandum advises that the secondary legislation will be more informative, but with no such legislation available, this makes proper scrutiny difficult. As such, it is hard to provide a definitive answer.

However, there are welcome proposals and intentions, such as withdrawing Strategic Plans and training Planning Committee Councillors; but others, such as changes to S75 agreement could lead to disproportionate influence amongst communities, decisions-makers and developers.

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 little in this Bill that truly emphasises on housing development. RICS believes that to tackle the housing shortage effectively and efficiently, a cross-tenure approach is required. This would require support and promotion of all housing tenures, but there is little in this bill to deliver housing of all types.

Within the Bill's provisions, there are two main strands aimed at increasing house building:

- i. Gatecheck: introduced prior to the preparation of the Local Development Plan (LDP)

This is a welcome notion in the Bill, as it could ensure that major strategic issues can be addressed early on before it is too late. However, like many other provisions in this bill, more detail on the actual mechanics is required in terms of what this will involve, and what stage in plan preparation this will be undertaken.

Ideally, the 'gatecheck' should provide adequate scrutiny of major strategic issues. As such, the final examination should consider the more technical details and unresolved objections. This should make the Reporter's remit less complex, as they wouldn't be faced with objections to strategic issues after all the detail had been planned, thus alleviating some work pressure.

- ii. Simplified Development Zones

Whilst Simplified Planning Zones (SPZs) may speed up delivery, they could do so at the cost of innovation and diversity, which is not conducive to a cross-tenure approach. Considering the processes of setting up an SPZ, they could end up delivering at the same pace as the current (or future "new") system.

Similarly, whilst SPZs could increase availability of land, and with that house building starts, they may not necessarily support the creation of "place". In considering SPZs, this Committee needs to consider whether they could tip the balance between quality and quantity of housing.

Both these measures could lead to an increase in the quantity of affordable housing, but the actual quantum of housing need will not be met unless other builders are supported through this Bill, such as cooperative and self-build housing. We would urge Parliamentarians to consider approaches to support and encourage these housing participants and measures that provide a wider choice of housing for all ages and circumstances.

Extending the time period of LDPs to ten years may not sufficiently assist the delivery of higher levels of housing, and means that they are unlikely to reflect current housing demand. In addition, the proposed introduction of an infrastructure levy could also place an increased financial burden on developers, making residential schemes unviable and therefore not result in higher levels of new housebuilding. We provide further commentary on the levy in response to question eight.

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?

The cessation of Strategic Development Plans (SDPs) is a positive manoeuvre as they provided little additional value. This move should make provision for planning to be more aligned to the economic and infrastructure needs of Scotland.

However, the future planning system that may arise following the enactment of this Bill must recognise and plan for efficient connections and interactions between economic centres and their surrounding locality. Co-operation between local planning authorities and national planning is essential if we are to support and gain the benefit of well-planned national, regional and local economies. Such economic drivers function at varying scales of activity and for this reason Planning has a strategic economic function as well as a more local micro responsibility.

The National Planning Frameworks (NPF) is very important in providing long term developments at a national level, achieving consistency on national and regional initiatives that are required to be delivered locally and ensuring that appropriate infrastructural connections are in place.

However, historically, NPFs have been drafted for to provide an overview of development priorities at a national level. It would therefore not be pragmatic to increase the NPF's remit as they require flexibility – particularly in light of the removal of SDPs – to adjust to turbulent economic conditions.

Indeed, the form and detail of the NPF remains unclear as to how it will influence the Local Development Plans (LDP) going forward. Furthermore, the extension of the LDP's timescales could impact on the ability for both documents to respond to regional requirements.

RICS also wishes to raise concerns that the review of the NPF is not mandatory for Ministers, and that they could potentially opt out of review in five years. Whilst they then have 10 years to prepare a new NPF, they could still opt out after that period. Given the proposal to enhance the NPF, a development or review should be a Ministerial obligation.

The NPF should be recognised as a fundamental policy document of the Scottish Government's economic, social and environmental policies; acting as an instruction manual of how we all should plan our functioning.

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?

A key output from the Bill is to make Local Delivery Plans (LDPs) stronger and more effective. Whilst this is a positive notion, RICS professionals do not feel the Bill provides the necessary tools for planners to make this desire a reality.

LDPs need to encompass the delivery of development processes and economic considerations, such as infrastructure investment. This will require a rounded discussion with economic participants in a locality, as a means to capture their motivations, and not just planners making LDPs. RICS' has always stipulated that planners need to have a more corporate role, and this Bill should look to assist this

i.e. planners should have a say in the economic development of their locality, and be part of discussions with other professionals looking to enhance economic and social development activity.

Furthermore, LDPs must be relevant and up to date, and extending them, to 10 years is potentially too long. A lot can happen in technology and economic activity in such a period, and if LDPs are not relevant, then challenges to the plan will inevitably take place. As such, there should be triggers put in place that would necessitate a review within that period.

Alternatively, this committee should consider whether a seven year plan may be a more suitable.

Finally, LDPs will need to take into account Local Place Plans (LLPs) which, at times, could have negative implications for local authorities in the form of conflicting aspirations between the Council's requirements set out in the LDP and the community aspirations

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

See response to question 2.

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?

There is a lack of detail about how the proposed Local Place Plans (LPP) will be prepared, what they will cover and what weighting they will be given in terms of the determination of applications. For LPPs to work, there is a need to engage the **whole** community, and not just those who are have a greater capacity to participate or have their own personal interest or agenda. As such, the constitution of who prepares LPPs needs clear, and cannot be led by community groups that, at times, are driven more by self-interest over community interests.

Local Authorities will likely have to allocate Planning Officers to work with the community to prepare these plans sufficiently, and this could cause additional resource burden within Planning Departments which are already stretched.

However, even if the right quantum of resource is supplied, and communities are adequately supported with their views appropriately incorporated, there needs to be a shift in the often cited planning culture of a 'top-down' approach. If this can be achieved, then the LPP could be a useful mechanism in embedding community views within the planning system. This will enrich the planning system in a way

promotes community involvement and, ultimately, reduce the potential for appeals. Both of which are very much aligned to the Bill's overall intention.

However, more detail on the Evidence Report is required and the scope for its scrutiny in public prior to being adopted. It is apparent that this will have to be signed-off before the Local Development Plan (LDP) can be prepared, and there is scope for dispute at the sign-off stage and what the process is. Furthermore, there appears to be an overlap in conformity and priority between the LPP and LDP.

Finally, the Policy Memorandum states that the plan has to "take into account" NPF and "have regard" to LPPs, and this raises the question of whether they actually have to comply and could they be inconsistent with the NPF.

The LPP (Local Place Plan) could play a role in promoting community engagement, however it will require skilled and knowledgeable community input; there are concerns that the requisite skills are simply not present in, or accessible by, many communities.

As such, RICS wishes to highlight the [Neighbourhood Planning Independent Examiner Referral Service \(NPIERS\)](#). NPIERS is a cost-efficient service which is currently offered to communities in England and Wales. It supports the neighbourhood planning process by providing quick and easy access to impartial and highly qualified expert examiners to carry out a "health check" on plans before they are submitted. This service gives those who have drafted a plan invaluable insight into whether the plan meets the basic requirements, and if it is likely to succeed at the next stage. The examiner provides Advice on changes that may need to be made to ensure plans succeed.

Administered by RICS, NPIERS guides applicants through the neighbourhood planning process through engagement with professional, Independent Examiners. The Examiners have to undertake rigorous professional assessment, thus they have a diverse array of skills, knowledge and expertise that covers the planning system; and like all RICS professionals, Examiners have an obligation to undergo Continuous Professional Development (CPD), have access to redress mechanisms, have quality assurance procedures in place, and relevant insurance.

This service could be tailored to suit the community engagement needs of this Bill; for example, by an independent professional facilitating discussions with local communities, which would chime well with the front-loading approach to the planning system.

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?

Strengthening enforcement powers, in general, should improve the credibility of the planning system, but the risk of passing liability of new owners will only be known at the time of purchase. To complement this approach, notices will need to be registered.

The Bill may also wish to include provision for instances where a site takes six months, or more, to get receive planning approval - stricter enforcement in these instances may not be seen a fair reaction.

Furthermore, enforcement, in its proposed form, is discretionary which may inhibit its effectiveness

A key point through all the above is that to ensure compliance, monitoring and enforcement, planning departments need to be suitable resourced.

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 proposed Infrastructure Levy does not provide sufficient information to scrutinise adequately. At present, it is not clear how any infrastructure levy could work with the retained, but changed, Section 75 agreements. In addition, there are a number of issues and questions that need to be ironed out and answered in advance of any introduction:

1. Is it a tax or a levy?

Unlike in England and Wales, the levy will be set and introduced centrally by the Scottish Ministers and not by local authorities, whose role is to collect and spend the Levy.

2. How will it be set?

The draft legislation provides no indication about how the 'Levy' rate(s) will be set or, indeed, whether the rates will even be based on any development viability calculation. All of this is left to secondary legislation (regulations) which, as stated previously in this submission, are not available for comment.

3. Enforcement.

There are extensive enforcement measures and penalty provisions for non-payment of the Levy, and these go even further than the already comprehensive enforcement powers within CIL legislation. This would suggest the levy is more attune to a tax.

4. Pre-payment

The draft legislation includes the power to defer the grant of planning permission until the levy has been paid in full. This would place a significant and unwelcome strain on development finances that could ultimately slow down house building – a core objective of this Bill.

5. Mandatory reliefs

Unlike in England and Wales, there are no mandatory reliefs or exemptions from the levy, only a power for regulations to enable local authorities to set reliefs or discounts.

If a levy is introduced it would have to be at a rate that does not deter investment or development, and that could be a delicate balance. It would be prudent of the Scottish Government to request the Scottish Land Commission research this issue.

The CIL charge, enacted in England and Wales, is one way of capturing land value, but we urge the Scottish Government to find a more rigorous approach to how the enhanced value is shared. This appraisal should consider what proportion of that enhancement is reasonable and practical as it needs to avoid slowing provision down by overly taxing landowners to a point where land is withdrawn. Essentially, this would require experienced land and property professionals, equipped to commercially evaluate land values, who deal with such matters on a regular basis.

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. Training would be beneficial, and committee members should have to undertake 'top up' courses – comparable to a professional's requirement to undertake Continuous Professional Development (CPD).

The requirement for an examination raises questions around, for example, who would set and review the examination's content; or whether decisions would be delayed until all planning committee members have passed? But, ultimately, committee members would need evidence that they have understood the training content. Additionally, training and assessment would need to be consistent across all Councils.

Furthermore, we suggest this committee explore the notion to extend the training requirement to other officials who have jurisdiction over planning decisions i.e. the relevant Government Cabinet Secretary and/or Minister. This would ensure all officials understand their responsibilities.

The training provision should reduce the politicisation of the planning system, with appointed members making decisions based on planning, rather than political, grounds.

If this committee believes that training of all aforementioned officials is not appropriate, Government Ministers should have an obligation to seek professional advice on applications that are 'elevated' to a Government level.

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

This depends on how "performance" is defined; whether it based on approvals, pace of decisions, or quality of places approved, based on infrastructure, housing need, environmental standards and/or economic impact.

RICS has always taken the view that to improve performance, planning departments require increased resources; and the Scottish Government needs to recognise this increase in resourcing as an investment, not funding.

It should be noted that the Scottish Government consulted on increasing planning fees, with changes being introduced in June 2017, on the proviso that the increases should be to improve planning department services across local authorities.

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?

Any additional fees charged by councils would need to be ring-fenced for reinvestment in a planning department's service(s). However, inconsistent charging of fees across Scotland's Local Authorities could create competition, which may be welcome in some aspects, but could confuse the system's users which is not an ideal outcome. Furthermore, the ability for local authorities and other public bodies to charge fees would create uncertainty and additional financial burden for developers as full costs are not known upfront.

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

Pre-Application Consultation (PAC) changes acknowledged and not really of concern.

Third party rights of appeal could slow down the system, undermine collaborative planning, and would not be aligned to this Bill's overall objective. They are, however, still a possibility, this RICS seeks confirmation whether these will be tabled going forward.

Equal right of appeal is a positive notion, but a planning system should operate in a way that negates the need for appeals - from all participants, with LDPs being sacrosanct in a 'plan-led system'.

If implemented sufficiently, the training measures of elected decision makers i.e. councillors and relevant Ministers, in this Bill should ensure adopted planning policies are adhered to. This, in turn should allow them to act in a clear and precise framework which, ultimately, could lead to consistency in decision making, and thus contribute to a reduction in the need for an appeals system.

In addition, having robust, up-front transparent development plans that are backed by rigorous engagement, evidence, and buy-in from communities, developers, planners and elected officials should provide a consistent planning system that does not waver. This will lead to minimal interventions in the planning system which will ultimately produce this Bill's objectives

Appeals

This Bill presents an opportunity to abolish Local Review Bodies (LRBs) and reinstate the right of appeal for all applicants as it is not in the public interest to have a planning system where certain applicants are not given the same rights as others.

Section 75

As stated in response to question eight, RICS has concerns over the compatibility with a proposed infrastructure levy and the changes to S75. This needs clarification in the immediacy - having both will likely lead to confusion and delays.

RICS has concerns that the proposed changes to S75 vest too much influence over requests and will no longer be restricted to mitigating the effects of development. This has potential to lead to more S75a appeals.

Similarly, changes to Section 75B also vest too much influence to Councils and/or Ministers, by, essentially, allowing them the opportunity to change applications, with applicant consent