

Scottish Parliament, Local Government and Communities Committee

Planning (Scotland) Bill – call for evidence

Planning is central to the protection of our natural and cultural heritage, and to shaping places that provide wellbeing and enjoyment. Scotland’s current planning system, as our own research finds, does not currently give sufficient protection to our heritage¹, does not have sufficient checks and balances², and leaves citizens feeling disempowered.³

We therefore ask that the Committee consider how this draft planning bill can:

- Better engage with people and what they want from the planning system, including protections for their local built heritage and character, and for natural heritage and greenspace.
- Create a system that maintains and enhances our valued places, including meeting Scottish Government commitments to United Nations Sustainable Development Goals, specifically the fast approaching target: “By 2020, integrate ecosystem and biodiversity values into national and local planning, development processes, poverty reduction strategies and accounts.”⁴
- Rebalance the planning system to give all involved greater certainty as to the outcomes sought, the ways in which these will be delivered, and the required level of democratic scrutiny and control.

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?

No. The current bill primarily amends existing legislation, rather than delivers a new approach to planning. The question itself is somewhat odd, seeming to suggest that development is a zero sum game, where development inevitably conflicts with communities and with protections for the built and natural environment. We would prefer to see a more positive approach where development is envisaged as sustaining and enhancing community life, and a good quality environment.

Specifically, we would wish to see a positive role for the planning system in preventing inappropriate development, in improving middling proposals, and in promoting developments that help deliver a range of economic, social, cultural and environmental outcomes.

Alignment of the planning system with the Land Use Strategy, and the application of ecosystems services to planning by 2020, as required by the United Nations Sustainable Development Goals, would

¹ [The National Trust for Scotland \(November 2017\), *Planning for Scotland – citizen views*](#). Less than half of Scots thought their local historic character or greenspace had been well protected or enhanced by the planning system.

² Ibid. 90% of respondents thought communities should have equivalent rights of appeal to developers.

³ Ibid. 60% of respondents felt they had no influence on planning decisions affecting their local area.

⁴ <http://www.un.org/sustainabledevelopment/biodiversity/>

help ensure these multiple benefits are secured. The current planning bill is Scotland's best opportunity to meet this target.

The lack of public engagement in developing policies and plans, resulting in citizen concerns and opposition to specific developments, is a continuing feature of the planning system. Our own research found that 60% of Scots felt they have no influence on planning decisions affecting their local area (27% felt they had a little influence, and only 9% a reasonable amount of influence). The current bill proposals do not address this dissatisfaction. Several proposals in fact appear to increase the central government role, and therefore the distance between the decision-makers and those affected.

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 planning system was created to manage development in such a way that private interests can be reconciled with public interests. It should not have a bias towards any particular type of development. Our own research⁵ found that the Scottish public's current priorities for the planning system were varied, with outdoor areas and greenspace (49% of respondents), housing (47%) public facilities and shops (46%) and transport (40%) all identified as needing improved delivery.

The Policy Memorandum identifies the purpose of the bill as being to enable good quality development. The Financial Memorandum identifies the purpose as being to create a more effective planning system with a sharper focus on delivering development and high quality places. Enabling better place-making is evidently a core objective of the bill; increasing housebuilding is a subsidiary objective to this.

The bulk of Scotland's housing supply, some 2.6 million dwellings, already exists and will change only slowly. Current house-building rates are around 17,000 completions a year, representing a 0.65% addition to total stock. Even at the very highest levels of housebuilding in the last century at 40,000 dwellings a year, reached in the early 1970s, this is still only a 1.5% change year on year. The key to a liveable Scotland will therefore continue to be keeping buildings in good repair, adapting these as needed, and ensuring that employment, public services and transport support existing settlements.

On the specific issue of planning controls – which are intended to help secure the appropriate housing types in the appropriate locations – these are only one factor in new housing supply. For new housing developments, research⁶ finds that variability within planning authorities, developer appeals, and the impact of large sites can all lead to delays in planning decisions. The solutions are therefore likely to involve greater capacity and skills within local authorities, greater adherence to development plans and less reliance on appeals, and a more varied mix of development sites and sizes.

⁵ [The National Trust for Scotland \(November 2017\), *Planning for Scotland – citizen views*](#)

⁶ Ball, Michael (January 2010), *Housing Supply and Planning Controls - The impact of planning control processing times on Housing Supply in England*, National Housing and Planning Advice Unit

Land supply through planning permission is obviously only one factor in the supply of new housing. Market demand, and ability to pay, will be major factors. In terms of build-out rates⁷ housing developers appear to prefer to build at a rate that secures their return on investment, increasing or slowing production to marry up market demand with their target price. This research suggests that an increase in land supply would not lead to a significant increase in production rates, and that it would take time for a fundamental shift in the balance of demand and supply to result in lower land prices.

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. While the bill proposals are clear on the removal of the current system of Regional Development Plans and their supporting processes, there is no suggestion as to what should replace this, nor how comprehensive, robust or transparent these systems should be. The Policy Memorandum states: “In light of this emphasis on subsidiarity more generally, it would be counter-productive to prescribe how regional partnerships should be formed or operate for strategic planning interests.”

We would wish to see a statutory approach to regional planning that guarantees that relevant issues are taken into consideration, and that there is a transparent process with adequate citizen involvement.

The removal suggests that planning is moving in the direction of City Deal model – a project basis rather than a strategic approach. We would suggest that this not a particularly democratic model and could heighten public dissatisfaction with regards to effective engagement in the process.

We would argue that for issues best planned at a regional scale – for instance, transport infrastructure, energy infrastructure, major settlement boundaries, landscapes - there needs to be more, rather than less, regional planning.

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?

LDPs and the National Planning Framework need to remain distinct. The NPF was designed as a framework for national spatial planning and should remain so. The bill proposal that the most recent document will prevail and that, in practice, the Minister will use discretionary powers to ensure compatibility is not appropriate or practical. One must maintain primacy; otherwise current proposals will lead the system open to extensive legal challenge. Due to Parliamentary pressures, specific developments in the NPF themselves can only be given limited scrutiny by MSPs, and cannot readily

⁷ [Adams, David, and Leishman, Chris \(February 2008\), “Factors Affecting Housing Build-out Rates”, University of Glasgow](#)

elicit or incorporate community aspirations. Public awareness of the NPF is also very low⁸, and greater reliance on it is therefore likely to increase the democratic deficit.

With regard to the shift to having interim reviews of LDPs in a ten-year timeframe, it is unclear what the new arrangements for community engagement will be. It would also be possible for ministers to amend LDPs. It is unclear whether these amendments will undergo any scrutiny or wider engagement. The benefit in having a ten-year timeframe is that it allows for long-term planning provided these plans are applied consistently over the period. This benefit is negated if the plans are amended without consultation and to a degree where they cannot be relied upon by those contributing to them.

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

Simplified Development Zones would not remove safeguards, rather they would be frontloaded, based on the anticipated usages. The examples to date have involved only a small number of use types, in a restricted area, and for variations within a restricted palette of interventions. SDZs are therefore less likely to be suited to more complex or large-scale developments, or where residents are affected, without accompanying investment in master planning and site investigation.

The bill proposals are based on the example of only two Simplified Planning Zones: Renfrew town centre, and Hillington industrial park. The first was relatively cheap at a cost of £15,000, covering three streets in Renfrew, and allowing change of use between residential, retail, food and drink, and office use; and minor alterations to exteriors. All other developments were required to go through normal planning controls. Hillington Park SPZ was more expensive, at £200,000, but covers a larger area at 200 hectares. Under the control of a majority land owner, it was possible to anticipate the types of development that might come forward, with the main planning issues already known. As there are no residents on site or close by, the scheme would have had less social impact or affect the delivery of public services.

These schemes therefore illustrate both the benefits, and the limitations, of SPZs. They are likely to work best where there is a relatively restricted palette of potential developments, which can then be anticipated and planned for, and where impact on alternative uses is low. They are therefore likely to be less applicable where there are multiple uses, multiple owners, and where residents could be affected.

It is proposed that ministers are given powers to direct and amend these zones, though again it is unclear how or if these decisions and amendments will be consulted on. Section 54 of the 1997 Planning Act excludes SSSIs, Conservation Areas, green belt and other natural heritage protections from

⁸ As low as 11% of Scots, according to our own public opinion research carried out in July 2012.

such Zones. We would wish to see this approach retained within the primary legislation due to the designated status of such protected areas and are concerned to see the proposal to remove this exclusion. Research⁹ on SPZs highlighted the need to pay special attention to Conservation Areas. It also recognised the existing duty to pay special regard to listed buildings, recognising that ‘Listed Building consents are typically focused on detail, meaning that it is unlikely that sufficient information about a future proposal would be available to allow pre-consenting’. We are not aware of any evidence that makes an effective case for including designated assets within the proposed SDZs and would argue that consenting regimes exist in order to ensure more detailed scrutiny of assets of special value.

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, much more could be done here to improve both the performance, and public perceptions, of the planning system. Our own research found respondents with the most perceived influence, were the most satisfied with planning outcomes.

However, the bill appears to propose a reduction in community involvement in decisions affecting their area. With the increase in ministerial and central authority over local plans, the removal of regional development plans, greater use of the centrally-determined National Planning Framework, and the lack of new opportunities for local communities to contribute, it is unclear how communities will have adequate say in the development of their areas. This is significant when considering that already 60% of Scots feel they have no influence on the planning system. We would not expect this to decrease with the implementation of current proposals.

With regards to the Local Place Plan, these could be effective tools of engagement. However, currently there is little incentive for a community to produce one due to the capacity and resource required to do so. This is exacerbated by the relatively low status of community councils, the natural level at which to produce such a plan. This local level of government could potentially be bolstered if the place plans extended beyond development control, to directing the care and maintenance of existing assets. For communities, it is often the level of maintenance that makes assets usable, or not¹⁰.

⁹ <https://beta.gov.scot/publications/simplified-planning-zones-equivalent-mechanisms-outwith-scotland-research-report/>

¹⁰ Quality of place, not simply basic provision, is closely linked to usage and enjoyment. For example, public perceptions of the quality of their greenspace has declined (from 40% very satisfied in 2011 to 23% in 2017), at the same time as the weekly usage of greenspace has declined, from 63% in 2009 to 43% in 2017. Perceptions of

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 proposed changes to enforcement. However, we would observe that the single greatest deterrent is not the penalty, but effective enforcement. If there is no enforcement, then it does not matter how high the penalty is.

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?

We support the principle of developments affecting local infrastructure helping fund that infrastructure.

We would note that there is recent research¹¹ on England's equivalent Community Infrastructure Levy which has identified: issues with consistency in application (by local authority and by type of development); lower levels of income than first expected, with fees based on viability and what the developer can afford to pay, rather than infrastructure need; difficulties in developing complex sites where the burden and risk of providing infrastructure has been transferred to local authorities; and a higher level of bureaucracy.

In developing a Scottish approach, we would ask that a consistent approach to charging be encouraged, that this addresses the real costs of infrastructure provision, and that the process does not disadvantage small and medium-sized developers.

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?

decline were higher in lower income areas. Source: greenspace Scotland (2017) *Greenspace Use and Attitudes Survey 2017*

¹¹ CIL Review Team (October 2016), *A New Approach to Developer Contributions*

The measure of the planning system is whether it is delivering the desired public outcomes. There is a role for measuring the efficiency of processes, but ultimately it is the effectiveness of the process that matters.

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?

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

Supplementary guidance

We question the proposed removal of supplementary guidance, which provides valuable direction on specific issues established in the Local Development Plans. This guidance was originally included in LDPs, but was removed to make these documents more succinct. While there is an argument for ensuring greater consistency of approach, there must also be scope for the system to be able to manage development that reflects the local character and richness of Scotland's places.

Rebalancing the system

The current planning system is not perceived by citizens as empowering them or giving them a voice in how their neighbourhoods are being developed. This is exacerbated by the perception that the system is weighted in favour of developers, including their right to appeal local decisions. To rebuild trust in the system, we would ask the Committee to consider how the system can be rebalanced. This could potentially be through a more plan-led approach, giving communities and developers greater certainty; through limiting the grounds for challenge; or expanding the right to challenge decisions.

Vision for spatial planning in LDP

Section 3 of the bill introduces a new requirement for the LDP to take into account (and contribute to) the local outcome improvement plan for the area. It is proposed that the existing requirement for the LDP to provide a vision statement is repealed. While appreciating the aim to strengthen the link between community and spatial planning, we are concerned at the potential loss of a strong spatial vision at local plan level to attract community support. Retaining a vision statement within the LDP would also strengthen the ability of the LDP to contribute to environmental priorities set out in Local Outcome Improvement Plans.

Permitted Development Rights

We note the proposals to potentially broaden the scope of permitted development rights. While this is appropriate in many cases, the individual and cumulative impact of such developments also needs to be considered, and restrictions may be needed to manage development in protected areas.