SCOTTISH PARLIAMENT FINANCE AND CONSTITUTION COMMITTEE CALL FOR EVIDENCE ON THE PLANNING (SCOTLAND) BILL

Introduction

1. The Scottish Property Federation (SPF) is a voice for the property industry in Scotland. We include among our members; property investors including major institutional investors, lenders, developers, landlords of commercial and residential property, and professional property consultants and advisers.

2. We welcome this opportunity to provide evidence on the financial implications of the Planning (Scotland) Bill. There are potentially significant financial consequences for our members particularly in relation to the enabling powers that will be developed further in secondary legislation.

Key Issues

• Our members appreciate that it is difficult to be precise when final decisions have still to be made and that many of the provisions and powers in the Bill will depend on secondary legislation. However, it would have been helpful to have more information on the Scottish Government’s intentions during the consultation, which would have assisted the identification of the financial implications particularly on the introduction of an infrastructure levy.

• Any increase in fees paid by the private sector needs to result directly in an injection of additional resources for planning services, delivering stronger leadership that supports appropriate development and encourages new investment in our built environment. We have yet to see full commitment by planning authorities to tie fees to better outcomes in the way that’s needed.

• Our members continue to hold major reservations over the prospect of a Scottish Infrastructure Levy and further discretionary fees. Infrastructure delivery is a key challenge under the current system and it will be a test of success for the proposals in the Bill, bearing in mind the experience of members with the Community Infrastructure Levy in England.

• While our members understand that s.75 is not in itself sufficient to fund the level of essential infrastructure investment to adopt an Infrastructure First approach and unlock development, it is vital that the viability of projects is not compromised.

• The SPF is clear that there cannot be any notion of a duplicate development tax and s75 must therefore account for only basic community amenities fairly and reasonably related to the development.

Consultation

3. There were no financial assumptions made during the consultations, but we did comment on the partial Business and Regulatory Impact Assessment. The SPF was asked to complete a
questionnaire on the cost and savings of the proposals in the consultation. However, the questionnaire did not contain any financial assumptions.

4. The SPF is of the view that our comments given in the questionnaire that supported the Business and Regulatory Impact Assessment were reflected in the Financial Memorandum and our members appreciate that it is difficult to be precise when final decisions have still to be made and that some of the powers in the Bill will depend on secondary legislation. However, it would have been helpful to have more information on the Scottish Government’s intentions during the consultation, which would have assisted the identification of the financial implications particularly on the introduction of an infrastructure levy.

5. We note that the Scottish Government has published the outcome of a research project to identify and assess the options for the introduction of an infrastructure charging mechanism in Scotland. A range of costs and assumptions in the Financial Memorandum would be helpful reflecting the possible options set out in the research as this is likely to create a significant additional cost to our members and impact on the viability of projects.

Costs

6. There are considerable financial implications for our members. The open-ended nature of the Pre-Application Consultation (PAC) process will be closed with the introduction of an 18-month time limit on the submission of a planning application, post Proposal of Application Notice (PAN). This is currently very much a grey area and in our members’ view, it is not unreasonable to require an application within a defined timescale from giving notice of a PAN. In addition, more than one consultation event will be required as part of the PAC process. Whilst this will offer communities a further chance to input into the design process it does add another financial burden on developers.

7. The SPF has particular concerns about the introduction of an enabling power for the introduction of an ‘infrastructure levy’ without a clear indication of how this would work. It is impossible at this stage without that information to give a true reflection of the cost to the Scottish Administration, local authorities and other bodies, individuals and businesses. For example, the Financial Memorandum states that there would be a cost to developers when some of what is being suggested in the research published recently by the Scottish Government would result in a considerable charge to the landowner.

8. The proposals outlined in the research document are likely to create considerable costs to the public sector, as publicly owned land is rationalised and local authorities will have a further negative impact as proposals indicate that they will be responsible for the administration of the scheme. The proposed ‘land tax’ would result in a reduction in land values as the cost would fall back to the landowner. This reinforces market failure as land owners are unlikely to be willing to sell and there would consequently be insufficient land to meet challenging housing targets.

9. The ‘infrastructure levy’ could have significant impact on any development as it is unclear what the criteria will be for establishing a contribution. This amount if significant could impact on the viability of a development at a juncture when moneys have already been expended that could not be recouped.

10. While the Financial Memorandum states that the introduction of the scheme would be cost neutral, there is a considerable risk that the scheme will not deliver the intended additional capital for investing in the critical infrastructure required.
11. The great majority of planning applications for new homes are delayed by negotiations around viability and the ability of a development to support the multitude of requests for developer contributions which often go well beyond any impact of the development concerned – for example contributions towards the construction of new transport systems, new school buildings, health facilities and enhanced public realm which can be some distance from the site etc. Greater efficiency in the planning system is unlikely to be delivered where there is no wider commitment to the delivery and funding of essential infrastructure. Delays in the delivery of new homes have financial implications in the housebuilding industry, but there is also a wider cost to Scotland in general.

12. Our members are firmly of the view that section 75A obligations must be considered alongside any future decisions on the role of a levy. While our members understand that s.75 is not in itself always sufficient to fund the level of essential infrastructure investment to adopt an Infrastructure First approach and unlock development, it is vital that the viability of projects is not compromised with duplication of planning obligations for infrastructure. The SPF is clear that there cannot be any notion of a duplicate development tax and S75 must therefore account for only basic community amenities fairly and reasonably related to the development.

13. Our members have concerns about the provisions set out in Clause 9 of Schedule 1, which could have unintended consequences. The majority of land transactions, whether options or conditional contracts, are concluded on a ‘subject to planning’ basis. The option/contract will therefore only determine and the development proceed on the grant of planning permission. If planning permission were to be withheld until an infrastructure levy is paid, this could hamper the exercise of most land contracts and therefore prevent development from proceeding, even if there were no other obstacles to development.

14. Proposals in the Scottish Government research suggest the collection of the proposed levy by local authorities and a process for spreading funding to poorer areas. Creation of a ‘land tax’ in a general form could however create the risk of a reduction in overall land values, with the potential to reinforce market failure around housing. A sufficient number of land owners, in both the private and public sectors, must be incentivised to supply their land into the development system and could be less willing to sell if the new legislation creates undue obstacles and costs for doing so. However, the SPF supports development growth in all geographic parts and business sectors of Scotland, and will look to the emerging National Investment Bank for innovative ways of encouraging development across Scotland with the aid of a fair infrastructure charging mechanism and strong linkage to existing or emerging public-sector funds.

Wider Issues

15. The lack of a national infrastructure co-ordination agency is a real missed opportunity especially given experience of some members for example in schools funding. This causes unnecessary and long-term delays to projects that would bring major economic benefit to Scotland as a whole.

16. Our members have strong concerns that there is a risk that the Infrastructure Levy could potentially turn into a blanket payment for national infrastructure and regeneration threatening the viability of development. This is further compounded by what our members sometimes see as a ‘shopping list’ of demands under S75 obligations from local authorities such as junction improvements, education contributions and health facilities etc. This could potentially mean an additional burden on developers to prepare a viability submission for every development and
create a significant disincentive for landowners to sell their land. Our members are firmly of the view that the link, long enshrined in the planning system, between the level of contributions and the size and scale of the development concerned should be retained.

17. The SPF has major concerns about the collection and distribution of the infrastructure levy being operated through local authorities. Our members are firmly of the view that the proposals for the co-ordination of investment programmes and working with existing agencies does not go far enough and fully supports the recommendation in the independent Planning Review Report that a new Infrastructure Agency should be introduced. Our members are of the view that a National Infrastructure Agency is important to ensure that there is an accountable fair and transparent structure in place for the full co-ordination of diverse funding sources. This would cover funding across key agencies, utility providers, local authorities as well as other public bodies and arrangements for the funding where appropriate between public and private sectors.

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