

Local Government and Communities Committee

Planning (Scotland) Bill

Submission from West Lothian Council

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 Bill proposes greater centralisation of the planning system and this is not supported by the council. As stated in the council response to the Consultation on the Future of the Scottish Planning System (“consultation paper”), a move to centralise policy making will move key decision making away from local communities and would seem to be at odds with the provision of other aspects of legislation such as the Community Empowerment Act.

Longer time frames for development plans are welcomed. However, in a plan led system the development plan should provide opportunities for individuals and communities to actively engage in the plan making process and, having done so, should have certainty about future scale and location of development. The current system does not provide this certainty and the Bill does not address deficiencies in the current system.

For example, developers will still have the opportunity to test the development plan through the submission of planning applications which are significantly contrary to the development plan and then appeal any refusal of the application. The council in its earlier submission called for the right of appeal to be removed where a development proposal was significantly contrary to an up to date development plan and restates that position.

Similarly the proposed Bill fails to adequately address, or indeed ignores, a number of issues in the current system which bring uncertainty to local communities. In particular, government advice calls for an effective 5 year land supply to be available at all times, but it fails to provide a definitive methodology for calculating that requirement. Failure to address this issue will continue to leave the system open to challenge from developers at the expense of local communities.

Local communities will have the opportunity to have their views formalised through local place plans (LPP). However, the production of LPPs must be representative of the whole community and the council suggests that hard to reach groups of people should be involved in their production statutorily. In addition, LPPs must not be seen as a tool that restricts development in sustainable locations.

Overall, the Bill makes the planning system more complex than currently and although the views of communities might be better accounted for through the production of local place plans, there are areas where the views of local communities are less likely to be respected.

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?

In the council's view the Bill misses the opportunity to address the issue of infrastructure funding and delivery which is the single biggest constraint on housebuilding in West Lothian and in many other parts of Scotland. The key issue of forward funding of infrastructure has not been addressed by the Bill, despite the stated aim of promoting an 'Infrastructure First Approach'.

The council set out in its response to the consultation paper that it is firmly of the view that there needs to be a national agency and that the national agency should manage an infrastructure fund which is open to local authorities and the development industry. It seems to the council that this is a clear message, which is being sent by both local government and the housebuilding industry, and it is disappointing that the proposed changes to the operation of the planning system provide no workable solution to resolving the single biggest constraint on development.

Low levels of house building are not due to the operation of the planning system. For example, in West Lothian demand is significantly lower than that identified in the development plan but this is ignored by developers and consistently found to be 'not a material consideration' by Reporters. There is currently no legislation or guidance on re-assessing demand for housing in a local authority area but yet supply has to be re-calculated on annual basis. This means that actual demand can often be lower than the assumed demand it is being tested against. By way of an example, a Housing Needs and Demand Assessment which was confirmed as "robust and credible" by the Scottish Government was published in 2016. While this is the most up to date assessment of housing need in West Lothian, it forms no part of the land supply and demand calculation. The development planning system should be flexible enough to ensure that 'material considerations' such as an up to date assessment of housing demand form part of the assessment of development proposals.

The recent withdrawal of the Draft Planning Delivery Advice on Housing and Infrastructure has exacerbated these issues with there now being no agreed method of calculating the effective five year supply of housing land and the status of a Housing Need and Demand Assessment (HoNDA). This leads to inconsistencies in decision making by Reporters appointed to consider appeals for sites that area contrary to the development plan. Reporters can choose how they think the effective five year supply of housing land should be calculated and give what weight they wish

to the HoNDA. This issue leads to public mistrust in the planning system and provides no certainty for communities and the development industry.

An agreed method of calculating the effective five year supply of housing land and the weight given to the HoNDA is critical to ensuring public confidence in the system.

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.

Although, the council supports the removal of Strategic Development Plan (SDP), it has concerns about incorporating a regional dimension into the NPF.

As stated in the response to the consultation paper, the council is of the view that the role of regional partnerships should be focused on establishing effective delivery mechanisms for genuinely strategic matters such as infrastructure delivery. This will need to involve partners such as Transport Scotland. Currently at regional level, there are a number of agencies as well as funding currently available e.g. regional transport agencies, Scottish Enterprise, City Deals etc. Regional partnerships should bring these agencies and various funding streams together to determine regional priorities thereby integrating planning, transport and economic development. Independent leadership is key in this context particularly where priorities clash and cannot be agreed by authorities in regional partnerships.

In order to ensure public confidence in the system and accountability of decisions makers, policy decisions which impact on the use of land in and around communities should continue to be taken at a local level rather than a regional or national level. Any joint working arrangements or regional collaboration should respect this principle.

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?

It is the council's view that LDPs are already focussed on delivery. The key issue, as stated in the council's consultation paper response, is funding of infrastructure, which is the single biggest constraint on development. If infrastructure constraints are overcome the gap between LDP proposals and development on the ground will close.

As stated in the response to the consultation paper, where a site is successfully promoted in the development plan that site should be treated as effective for the whole plan period. In other words where it is the site promoters who fail to deliver against an agreed timescale the council and local communities should not be disadvantaged through the support for alternative sites through the planning appeal process.

The removal of the Main Issues Report (MIR) stage of the development plan preparation is welcomed and the move to go straight to a draft LDP will mean engagement is more focussed and will allow communities to have a better debate about the future of their areas.

The content of development plans being reduced with the majority of policy set out in a revamped NPF will be confusing for individuals and communities as they would expect that all policies for determining the future use of land in the local authority area would be set out, as far as possible, in a single planning document. The proposed removal of supplementary guidance is likely to result in more detail being added to LDPs at the expense of readability and is not supported by the council. That said, in the council's view, the provision of Supplementary Planning Guidance has proven to be clear and understandable. Consequently, the council's view is that there is no need for supplementary guidance to be approved by Scottish Ministers.

It is vital that the LDP retains its primacy in decision making as an expression of how a local authority seeks to determine planning applications within its area.

The idea of LDPs having a 10 year cycle is supported subject to the ability to amend parts of the document in the interim should that be required to respond to changing circumstances. Plans should not be left in a constant cycle of review as this does not provide certainty for individuals or communities.

The council gives cautious support to the early gatecheck in the plan preparation process. More detail investigation is needed to demonstrate that this procedure will speed up the process of preparing LDPs.

LDPs do already complement other local authority priorities with joint working across local authority departments. The production of Local Outcome Improvement Plans (LOIPs) has meant that there is a closer alignment between the corporate aims of local authorities and planning through physical regeneration. The proposed statutory link with community planning by taking account of LOIPs will help planning further complement wider local authority aims and is supported by the council.

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

SDZs may not provide enough safeguards in terms of environmental interests. Restrictions are to be put forward in secondary legislation but this does not give any certainty at this stage that environmental interests will be protected.

With regards to community interests, there is no clarity in Bill on how infrastructure impacts will be mitigated e.g. education capacity, transport etc. The Bill does not set out whether SDZs are going to link to a planning obligation or incur a charge under the proposed infrastructure levy. Schemes can be granted subject to conditions but where does the limit of conditions lie? Are conditions viewed in the context of meeting the six tests set out in Circular 4/1998 or can these extend to developer contributions?

The council questions the principle of re-branding the Simplified Planning Zones (SPZ) set out in the Town and Country Planning (Scotland) Act 1997 and Circular 18/1995 with an emphasis on housing. Provision for SPZs for housing currently exists in legislation and guidance and there is a lack of explanation as to why the 're-branding' will make a difference given that developers have not taken up existing provisions.

There is potential for the diluting of the planning system and a question mark over who would masterplan these schemes. The public sector does not have the in-house expertise to carry out said masterplanning but the private sector, that does have the expertise, will look to maximise value, which may come at the expense of good design outcomes. The purpose of planning is said to be to create great places and it is debatable whether this policy will achieve that aim.

Nevertheless, the council is not wholly against the concept of SDZs provided that identification of such areas is not binding on a local authority.

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?

Communities already have the opportunity to influence LDPs through submitting representations to the Proposed LDP and attending consultation events. If Local Place Plans (LPP) need to be compliant with the LDP then it is unclear how much difference this will, or indeed can, make to influencing LDPs.

Section 9 of the Bill provides no detail with regards to financial and technical support for LPPs. The accompanying financial memorandum sets out estimated costs for communities producing LPPs based on figures of the cost of producing neighbourhood plans in England. However, the financial cost to local authorities in terms of officer time spent assisting the production of LPPs is not quantified. If large numbers of communities wishing to prepare LPPs come forward at the same time then local authority staff will not be able to meet demand unless the cost of doing so is recognised in the context of full cost recovery in the planning service. The cost implications to local authorities need to be set out given the English experience has shown that neighbourhood plans have been resource intensive.

Furthermore, there is likely to be upfront costs for communities in obtaining advice on how to bid for various funding. Deprived communities may lose out as a result. To address this issue, the Scottish Government should establish a fund that can help with the costs of obtaining advice for LPPs.

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?

In the council's view there is nothing in the Bill, over and above current powers, that will dissuade owners and developers from carrying out unauthorised works. The proposed changes will make a small difference in a small number of cases but do not go far enough to ensure better compliance with planning control.

The public expects that the planning authority should be able to deal effectively with unauthorised works or other breaches but the reality is that current or indeed proposed arrangements do not provide a deterrent.

It is time and resource consuming for planning authorities to go to the Procurator Fiscal and the Bill does not address this matter. The council suggested in its response to the consultation paper that a fast track process to the Procurator Fiscal should be introduced in a similar vein to the Scottish Environment Protection Agency's environment crime protocol. The council is of the view that such a measure should be introduced to speed up cases being taken to the procurator fiscal.

The council's response to the consultation paper suggested a statutory duty for planning authorities to carry out direct action on serious breaches. With enhanced resources this measure would help to restore public confidence in planning control. Fines for unauthorised works or other breaches should be recurring following non-compliance with a notice. Such a measure would need to be proportionate and if work ceases and a person can demonstrate that a breach will be rectified by a certain date fines could stop and this is agreed with the planning authority. If the breach was not rectified by an agreed date then fines could begin recurring again.

The encouragement for the use of completion notices is welcomed by the council.

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?

There will still be a gap before the infrastructure levy is introduced at national level with secondary legislation drafted, consulted on and then finalised. Following that planning authorities will need to draft, consult on and finalise charging schedules. This will take several years and thereafter it will take a considerable number of years for the levy to achieve a sufficient funding balance such that infrastructure can be supported. As stated above, a national infrastructure fund will help to address the infrastructure gap and could be introduced without delay.

In areas of high viability, levels of development are unlikely to be affected by the levy unless there are abnormal costs associated with development.

Cases where there are abnormal costs associated with development or development in areas of low viability could mean that other levels of developer contributions secured by section 75 may be reduced. This could result in trade-offs between securing monies for infrastructure and delivering, for example, affordable housing. Moreover, in some areas of low viability, the levy could have a significant impact on development. Any secondary legislation should allow flexibility for planning authorities to charge the levy in zones to account for differing land values across local authority areas.

At this stage, it is unclear how the levy will interact with planning obligations. For example, affordable housing is not likely to be funded from an infrastructure levy. A review of policy surrounding planning obligations and consultation on secondary legislation will examine this issue but it would be helpful for planning authorities and the development industry to understand what the levy is intended to fund, or not fund, before policy reviews and draft secondary legislation is published.

The use of an infrastructure levy in England has not been shown to be a game changer in the provision of infrastructure. In some areas of England where there is low viability, an infrastructure levy has not been implemented due the effect on viability.

The council's principle concern is that an infrastructure levy is unlikely to address the real infrastructure problem which is ensuring that sufficient funding is available at the point in time where infrastructure is required.

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, this is supported.

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

The proposal to introduce annual performance reports and the appointment of a planning performance co-ordinator will not make a great difference to performance. The council supports the principle of moving the service to a full cost recovery basis through increased fees. In establishing the cost of delivering the service all aspects of the process need to be costed.

It is only through the proper funding of the system and the removal of constraints and barriers to development, as set out elsewhere in the council's response, that a step change in performance can be achieved.

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?

The provision for discretionary charging is welcomed, as is the ability to set higher fees for retrospective applications. However, as set out in the response to question 10, it is essential that the fee structure allows for full cost recovery. The calculation of cost recovery needs to recognise the need to bring in specialist support for complex applications and the 'cost of democracy' in the council discharging its functions as planning authority.

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

No.

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