

Local Government and Communities Committee

Planning (Scotland) Bill

Submission from the Royal Incorporation of Architects in Scotland

Call for evidence on the Planning (Scotland) Bill

RIAS Submission to the Local Government and Communities Committee

Thank you for consulting the RIAS on the Planning (Scotland) Bill 2017.

With over 5000 members the Royal Incorporation of Architects in Scotland (RIAS) is the professional body for all of Scotland's chartered architects. Our members work in over 1000 architectural practices of all sizes, as well as in areas of industry from housebuilding to local and central government. The RIAS has charitable status and offers wide range of services and products for architects, students of architecture, construction industry professionals and all those with an interest in the built environment and the design process.

This submission was compiled with the participation of RIAS members and RIAS committees, in particular our Planning Committee representatives who have given long, and careful consideration to the consultation process and sought comments from the RIAS membership.

In preparation, the RIAS representatives have attended many events about the review of the planning system – from the BEFS workshop to the cross party working group on Architecture and the Built Environment, to the Burness Paul event, Brodies event, and most recently the full day workshop arranged by the Scottish Government where we participated in the Housing and the Community engagement sessions. The RIAS should be seen as a prime participant in the review process.

General Summary Position of the RIAS

The RIAS welcomes the changes to the planning system that are proposed in the Planning (Scotland) Bill.

We are encouraged and supportive of the stated primary policy objective of the Bill and wider review aim to change planning's operation and its reputation from that of a regulator to a positive and active enabler of good quality development; a shift from reacting to development proposals to proactively supporting investment and quality place making.

We await, considering it critical to the Bill's success, much of the detail at the secondary legislation stage on the implementation of the Bill and look forward in engaging on that stage also.

The experience of the direct involvement of the RIAS members in the planning system has informed the pulling together of the variety of views of the Architects in practice in responding to the questions set.

Architects are continually dealing with the sharp end of planning, assisting their clients through the application process. Their clients can be developers, business owners, landowners, housing associations, public bodies or communities. The planning system can be a frustrating experience, from all perspectives, as sometimes the quality of the environment that will be created often gets lost in a preoccupation with policy and process; and at times the experience in engaging with the system can leave people feeling disappointed not just in an outcome but also in a process or the way it was handled; or indeed the way they were heard. There is an assumption among clients that they have a right to be heard in the planning process and often this is denied to them whether it be down to a lack of resources in local authority planning departments or a decision being made in a forum that does not give the Architect, agent or applicant a fair hearing within it and a right to be heard by the body making the decision.

Some RIAS members have become increasingly involved in community engagement and charrettes; working with communities to create future plans for the places in which they live and work – at what should indeed be the front end of the planning system.

The RIAS offer their support to working in collaboration to help deliver the ambitious transformational change in planning in Scotland that are presented in this Bill.

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?

There is a concern that as it stands the Bill will potentially weaken environmental protections and does not necessarily balance the relationship between development and community interest.

The Policy Memorandum suggests that the detail will be found in secondary legislation but without sight of this, confidence in this legislation increasing public trust in the planning system or delivering appropriate development is low. We understand however, that this is the next stage.

Introducing legislation without a clearly defined purpose (Local Place Plans and Infrastructure Levy for example), with details to be clarified through further research is a less than ideal approach and raises concerns.

The quality of its natural and built environment is of social, cultural and economic value to both residents and visitors in Scotland. There is a concern that the Bill provides no additional mechanisms for protecting Scotland's heritage and indeed potentially weakens them i.e. Simplified Development Zones.

New planning legislation is an opportunity to set out a clear statutory purpose and vision for the Scottish planning system, both of which are absent from this Bill but expanded upon in the Memorandum. This is an opportunity for the Scottish Government to align the planning system with international obligations, specifically the United Nations' Sustainable Development Goals (SDG) which provide a global definitive statement on what sustainable development means and present a clear, unified message.

Existing Scottish Planning Policy states that *the planning system should promote the care and protection of the designated and non-designated historic environment* but legislation only provides protection for designated assets – listed buildings, scheduled monuments and conservation areas. Undesignated heritage assets or places may not be of national importance but they are what makes local places distinctive and are often what communities value most about their local environment. The Bill is an opportunity to strengthen the protection for Scotland's non-designated cultural heritage and make positive statements in that regard.

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?

National and local development plans should be focused on delivering and shaping well planned, thriving communities in well-connected locations - not just on the quantity of units delivered.

In the past the local plan process has become dominated by discussions on housing numbers. The amendments presented seem to shift the focus to housing numbers not their means of delivery, commitment to quality and innovation.

The mechanisms for increasing house numbers are believed to be in the new gatecheck process in advance of the preparation of the Local Development Plan and the introduction of Simplified Development Zones. We understand there are conflicting schools of thought as regards housing land supply and request that the government give clarity on this issue; particularly in relation to the generous allocation of a housing land supply. Clarity as to where the sequential, brownfield sites first fit into this is also requested.

In addition, given the longer lifespan of the LDP we believe there is there merit in reintroducing first and second stage sites for example: year 1-5 sites as early plan sites and years 6 -10 sites as later plan sites.

The emphasis on providing all of the 'evidence' as to effectiveness to be demonstrated for the gatecheck or earliest stage in our view favours the volume builder who in a larger organisation can carry the cost of this and is detrimental the smaller builder. The smaller builder or different arrangement of housing provider will be more likely to engage Architects and will also be more likely to build a bespoke product that delivers

contemporary and sustainable solutions, rather than a standard product. With the place making, design quality criteria emphasis the smaller company should not be prohibited from participating in the allocation of land for housing as it will be with the process as suggested.

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 National Planning Framework has been a valuable innovation, setting out a long-term vision and identifying developments of national importance. However, we believe it is a mistake to believe that it can be enhanced and made more effective by loading more onto it. There is a danger that charging it with responsibility for setting not just national but also regional priorities could have rather the opposite effect, making the NPF unwieldy, top-heavy, and at risk of collapsing under its own weight. The danger is compounded by the intention to merge Scottish Planning Policy into the NPF. The NPF was originally conceived as a light-touch national spatial strategy. It begs the question that there is still a need for a strategic plan particularly dealing with the issues of housing and infrastructure and importantly for the city regions.

The current proposals could result in a shapeless general repository of planning policy that could quickly fall out of favour.

The removal of the statutory requirement for strategic regional plans will have funding and resource implications. A local authority may use it as a cost saving exercise, reducing the funding available to a planning department.

The 2014 Scottish Government commissioned Review of Strategic Development Plans made a series of recommendations that bear revisiting. Rather than abandoning the SDP the review recommended the need:

- to reinforce its role, significance & validity at different levels
- to promote a positive community building approach that uses integrative place making to address the main geographic areas of change over the next generation
- to advocate and deliver update awareness training & Continuing Professional Development and
- to facilitate more effective outreach and engagement with the communities that may be affected.

The Scottish Government's response in 2014 gave a commitment to strengthen strategic planning and set out a series of actions for Strategic Development Planning Areas, Scottish Government's Planning and Architecture Division and the Minister for Local Government and Planning to follow. We await to hear whether these actions were implemented and was their outcome independently evaluated?

We would comment that SDPs have only been operational for 8 years and substantive evidence for the need to abandon them has not been produced as part of the recent review. We believe it is short-sighted not to have some form of strategic plan that deals with the city region level of 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?

The Position Statement published last summer acknowledged the need for two-way dialogue between land use planning and community planning and committed to a statutory link between development planning and community planning in the Planning Bill.

It is proposed that Section 3 of the Bill should introduce a requirement for the LDP to take into account the local outcome improvement plan for the plan area. Such a provision would do nothing to improve community planning practice in relation to community engagement, but would effectively subordinate local development planning to a dysfunctional, top-down community planning regime which actively disempowers communities. There is a need for reciprocal requirements for local outcome improvement plans to take account of land use planning and have a place and space dimension. Without these, there will be no improvement in community planning practice.

Stakeholder engagement will be critical to the gatecheck process and as such should be stated as a requirement. Early engagement with communities is essential. Planning should not be something that is 'done to' people but that it is something that all age groups participate in and become active citizens producing plans relating to their place.

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

It is not understood how or why an old idea from the 1980's that clearly had limitations at the time should form part of the Bill especially at a time when place making and design are high on the agenda. The SDZs are not supported, there is grave concern over their use.

In consulting the membership, we acknowledge that there can remain a divergence of view in many of the topics, and in particular, there is some strength of feeling about planning controls in SPZ's, as may affect Conservation Areas; also in the continuing use of Supplementary Planning Guidance. We look on such matters as being more suitably addressed in further, more detailed consultation.

6. Does the Bill provide more effective avenues for community involvement in the development of plans and decisions that affect their area?

If Local Place Plans (LPP) were adequately resourced and communities were skilled appropriately or funded to engage the professional expertise they require to produce them then they could be a positive step. However, they need to be able to be adopted into the LDP to have any weight.

At present the provisions for Local Place Plans appear to be a clumsy discretionary bolt-on to the Local Development Plan preparation process and the proposed procedure for their integration into development plans is flawed.

RIAS members have been directly involved in the charrette process. As an example the LDP Charrettes which have been undertaken by the Loch Lomond and the Trossachs National Park Planning Authority, supported by the Scottish Government's Scottish Sustainable Communities Initiative, have put professionally coordinated design led place making at the front end of the LDP process. The outcome is that the communities' future vision for their place defines the agenda for the LDP rather than consultation being a reactive response to something that is already determined. This demonstrates a key element in turning the planning system we have known on its head and front loading engagement and obtaining buy-in from communities as a result of them being directly involved from the start; an admirable objective.

It is heartening that our direct involvement in such positive planning experiences is a key strand of the Bill's objectives as, too often, LDP's still regress into 2-dimensional zoning which doesn't capture what kind of place such development should be. Architects have the unique skills to visualise and articulate communities' future visions for their towns, villages and cities and have a key role to play in a collaborative process that moves away from professional silos towards a holistic, design led, approach to place making.

The proposal to introduce Local Place Plans is a positive step forward, in this respect, but this initiative alone will not bring about the sea change in attitudes and culture that is needed to turn the perspective of planning around so it is evidently proactive rather than reactive. By making Local Place Plans only an option for community bodies who effectively volunteer to prepare them, rather than embedding them in the LDP process, there is a danger that they only become representative of the communities who have the means to prepare them or they could become a convenient vehicle for those who wish to oppose development for selfish reasons. Neither scenario will necessarily make planning more democratic or cultivate the greater level of certainty that is needed to encourage investment and the effective delivery of the volume of new homes which are urgently needed in Scotland. Positive engagement with communities and a clear commitment to their role on the future vision of a place should be at the heart of the LDP process and define the agenda for quality place making.

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?

No comment.

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 Infrastructure Levy is not clearly and comprehensively set-out in a manner which could enable respondents to judge if it holds the potential to be the 'best way' to secure investment, or whether it may impact levels of development. There are too many unanswered questions, as is highlighted by the repeated recognition of the need for further work in this area within the Bill.

The Bill Memorandum is clear that this is a section that requires more time and, one would suggest, a clarity of vision. As it stands there is additional confusion over how the Infrastructure Levy and retained Section 75 would coexist.

This issue is also linked to review of Land Value Capture, currently being undertaken by the Scottish Land Commission and is unlikely to be resolved without close and detailed work between agencies and departments.

The need to get wider community benefit from the development process was widely positively received, but the current suggestions seemed to allow for the Infrastructure Levy to provide a percentage of funding (where applicable) – but does not enable/allow/finance the Authority in question in a way which meaningfully enables them to afford any of the major infrastructure projects which may be envisioned.

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?

There is Universal agreement that training would be beneficial, not just for those in a planning decision capacity – but for the wider authority, especially given the provision that the LDP needs approval from the full Council not a delegated committee. There is also a suggestion from the membership that councillors taking decisions on a planning committee or local review body should be required to take a test/ exam as they are for licensing.

The Scottish Government needs to clearly articulate what training is already available for those taking place in the planning process, and whether it is both adequate and well

accessed. Standardisation of this training across authorities would be tentatively welcomed.

It was noted that a planning committee does not need to be entirely elected officials, more Chartered Planners and an Architect and Urban Designer on a planning committee would be extremely beneficial. This is a successful model used in the national parks.

It was suggested also that the training should be available to community councillors, as well as mandatory for all elected officials playing a determining role in the planning system. Better use of Urban Design Panels and working with Architecture and Design Scotland could provide this much needed expertise.

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

The quality of places for all our citizens; with appropriate infrastructure, sustainable economic growth, high environmental standards and suitable, affordable homes would be a more fitting archetype as opposed to the speed of decision.

Without increased resources, and with multiple changes to the Planning system within the Bill, it is unclear how planning authorities are being enabled to improve on their performance as it is currently understood (speed, percentages etc).

What is needed are quality standards, embedded across all planning authorities and a ring fencing of planning fees for re-investment in planning 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?

Architects raise the concern that there have been large increases in planning fees yet we have not seen an improvement in the planning service across Scotland as a result. The difficulty lies in the lack of ring fencing of planning fees in order to support a planning service.

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

Equal Rights of Appeal

The RIAS does not support Equal Rights of Appeal in the planning process and understands from our engagement in various groups that this is something that there is a strong lobby for. We feel it would undermine the decision making process. Given that

the process is changing to front load community engagement into the plan preparation stage then this weakens the argument for equal rights of appeal.

Use of Mediation in the Planning System

The RIAS fully supports a commitment, as mentioned in the Review outcomes to encouraging mediation in the planning, enforcement and appeals processes. The Bill, however, does not emphasise this.

Local Review Bodies

RIAS suggests that the enhanced role proposed for LRB's, gives urgency to the need to make them fit for purpose. There has been long standing concern and complaint from agents and appellants about the lack of any proper feeling for natural justice as they operate at present.

Complaints centre around the procedures followed and the overlying influence of political affiliation rather than the planning merits of a proposal. There is no opportunity for appellants or agents to speak on matters of fact; while the councillors themselves, appear to have little formal training or background, or interest, in making a balanced, planning assessment of the cases before them. Against that background, a democratic view has little chance of producing a well informed, balanced decision. As they currently operate LRB's are not fit for purpose.

To make good the shortcomings of LRB's, councillors should go through proper training, even to the point of taking an exam. Since the LRB's are composed of elected members who are part of the organisation which turned down an application, the Chair should be a person drawn from an independent background. That may be from the development related professions, or an officer from a neighbouring authority. Essentially the chair should be independent of any local influence, as in the Directorate for Planning and Environmental Appeals.

Conclusion:

Scotland is well served by a good planning system, which, since the late 40's, has developed and changed to meet the changes and challenges of the time. The system has a further opportunity to evolve to meet the need of this period, and we look forward to the opportunities presented in the Bill to participate in this positive process. The members of the RIAS have a great breadth of experience across the field of Planning in Practice, and offer to share that experience through engagement with the Scottish Government Committees and Planning Authorities.

ⁱ <http://www.gov.scot/Resource/0044/00448818.pdf>