

Local Government and Communities Committee**Planning (Scotland) Bill****Submission from Stewart Milne Homes****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?**

In many respects we are of the view that the Bill can help secure appropriate development with the desired balance of greater community engagement and the protection of the wider built and natural environment. We do not however agree with all the changes proposed in relation to Local Place Plans. This is covered later in our response. Changes sought through the Bill will only be successful subject to the culture change outlined in our response to Question 2 (below) being taken on board. Individual policies set through the National Planning Framework (NPF) and Scottish Planning Policy (SPP) will provide the framework for plan making and decision-making and the quality of these plans and decisions will be the determining factor. The Scottish Government must through the new legislation, ensure that authorities deliver the best plans they can with sufficient land supply. It is when these aren't in place that applications contrary to plans have to come forward and communities lose trust in the planning process. Further comments on the detail of primary legislation have been made throughout this response.

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?

We remain to be convinced that this Bill, or any variant of this Bill, in itself will result in an increase in housebuilding. Legislative changes through the Planning etc (Scotland) Act 2006 failed to deliver this and we are of the opinion that this Bill still will not deliver homes, unless there is a major change in the mindset of policy makers and decision takers including the Scottish Government and the Reporters' Unit. Clear direction must be given that development is positive and it delivers economic growth and on this basis a presumption in favour of sustainable development must be applied. To ensure this message is clear we believe that the Bill should include a presumption in favour of development as a primary test with conformity to the development plan being the secondary test. In addition to this, government messaging must be clear and consistent about the need for the delivery of all tenures of homes, levels of which should be set out as national targets within the National Planning Framework (NPF). This is an area the Bill does not make clear, and should re-address this to ensure clarity for Local Authorities preparing Local Development Plans. Targets set out within NPF should then directly translate to minimum allocations within Local Development Plans.

We support the proposals to ensure that decision makers are appropriately trained and believe that if full and proper training on planning and economic factors are mandatory; this will go some way to enabling better decisions. This topic is covered in more detail further into the response.

In the short term, there may be a need to consider fiscal penalties where authorities refuse application which should have been approved. This should be an automatic rather than the current claim for award of expenses that currently can be applied for. Some elements of culture change will be difficult to achieve in the short term. There is a need to create a new generation of decision makers and planning enablers. Perhaps consideration could be given to apprenticeships to train planners of the future through a partnership between local authorities, developers and private consultancies to ensure a balanced planning education.

We are concerned that there is a lack of transitional arrangements in place while the Bill comes into force. A delay in the publication of the NPF and Scottish Planning Policy (SPP) to 2020 has already been proposed. The combined effect of these elements will result in a policy vacuum whereby some planning authorities will choose to delay plan making and put off decision making. We are already beginning to see this in some authorities. Clear direction is required from the Scottish Government and clear transitional arrangements put in place that focus on positive planning and decision making. Councillor training should be introduced now to help this rather than waiting for the Bill to be finalised and the next round of local government elections.

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?

Stewart Milne Homes are in favour of creating a more streamlined plan preparation process. In parallel there needs to be strong leadership within Government and Local Authorities which ensure plans are prepared and implemented properly to guarantee development delivery. Regional Partnerships must have the authority to resolve disputes between local authorities. An example of this would be funding priorities which cross administrative boundaries. We believe the legislation should include a statutory requirement for regional joint working to be established through a regional partnership. We are concerned that without regional partnerships, some authorities will neglect to fulfil their responsibility to look beyond their boundaries which would compromise the sustainable and economic growth principles behind City Regions. There must be clear legislative direction to prepare and most importantly deliver regional strategies through regional partnerships. In order to ensure regional partnerships have the appropriate status they should be awarded statutory duties and powers. These powers should include Compulsory Purchase Order (CPO) powers where appropriate to deliver strategic infrastructure. Valuable lessons on the delivery of infrastructure can be learnt from "Development Agencies" which were in place to deliver new towns and urban regeneration and it is suggested that regional partnerships could take the form of regional development agencies. In order to ensure all aspirations are met, they should be made up of leaders from both the public and private sectors as well as infrastructure providers.

Regional partnerships should be required to review their strategic planning boundaries to ensure they are focused on the "city region" and thus on the most marketable and deliverable boundaries. Boundaries could be focused on tight Housing Market Areas. An example of where this could happen would be in the north east of Scotland where the focus should be the Aberdeen Housing Market Area rather than the whole of the City and Shire administrative boundaries.

The National Planning Framework will become the economic driver and must provide strong and clear links to regional strategies and Local Development Plans, not only in terms of policy but arguably more importantly in terms of delivery. Mechanisms to remove identified barriers to development sooner in the process needs to be strengthened, to ensure that delivery of development is as strong as the market will permit at any given point in the plan lifetime.

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 plan making process being proposed through the Bill has a number of benefits. We welcome the Gatecheck (subject to prior consultation on evidence reports), the removal of the Main Issues Report stage and the removal of a number of policies to SPP to prevent repetition and ensure local development plans are more spatially focused. These all have the potential to streamline the process and be clearer for users of the system. Guidance must be clear that LDPs must be well written with clear aims, objectives and targets as set out within new NPF and the policies of SPP. Previous guidance in respect of LDPs whereby they only had to be appropriate and sufficient must be removed. They must conform to NPF and this step is missing from the Bill. Plans must be visionary, demonstrate leadership and ensure the needs of an area are met. They should be written in a positive manner that encourages growth and development within the area.

Focus on plan delivery and implementation is welcomed, but Delivery Plans will need to be strengthened if they are to be key enablers. There must be a statutory duty on key stakeholders to meet delivery obligations. Without a corporate infrastructure body delivering strategic infrastructure then this responsibility must be embedded in current providers capital programmes etc. (e.g. Scottish Water) to ensure delivery against set and specific timeframes. Government intervention will be required where they fail.

We have significant reservations over the proposals for LDP cycles to be revised up to 10 year periods. On the basis the proposal survives, development plans must be directed to ensure either an effective housing land supply for the Plan period or the current 5 year supply period with a 5 year review obligation during the 10 year LDP period is put in place. This would mean that there must be as a minimum a 5 year supply at all times. Plans should therefore be directed to include “future” housing sites which can be drawn down should a shortfall occur. These should be standalone sites that do not rely on previous phases being delivered first as they cannot be relied on in the short term.

Presuming the 10 year LDP lifespan is taken forward, there needs to be clear landmarks set through legislation for monitoring and the need for review. Part of our concern with the 10 year proposal is the lack of detail establishing the duty, process and criteria for formal interim review(s) of housing land supply with plan making. A

formal monitoring report should be submitted to the Scottish Government every 2-3 years setting out whether there is a need to review the Plan. This report should be the subject of stakeholder engagement and Ministers should have the power through legislation to direct LDP reviews even where local authorities do not deem it necessary. Where NPF is reviewed there should be an automatic requirement to review an LDP within 24 months.

The timeframe for LDP preparation and the 2 year preparation that was suggested in earlier consultations has been removed. We consider it is essential that a longstop is provided to ensure the plan making process is not unnecessarily drawn out and the focus can shift to delivery thereafter.

We wholeheartedly agree with the removal of the need for Supplementary Guidance. We do however believe there remains a need for additional planning guidance especially for site specific guidance such as development frameworks and masterplans. These provide benefits in terms of delivering good and consistent design and place making, but they must be done in such a way that they do not delay development. As such the opportunity should be made to bring forward development frameworks and masterplans in tandem with finalised plans.

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

We do not believe that Simplified Development Zones will help deliver significant amounts of mainstream housing quickly, and that the principle is better suited to commercial developments, town centres and regeneration areas. To ensure that design guidance and the like is robust and properly prepared will take time and therefore will not speed up the process. However, we believe there is merit in taking forward a simplified planning process which would include planning, building warrant and road construction consent as a single consent as this has the potential to speed up the process and prevent to post planning consent delivery delays.

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?

Again we have significant reservations over the Local Place Plan (LPP) proposal. Yes, establishing more effective and engaging community consultation in the preparation of Development Plans is to be welcomed and fostered, but without more detail on the process to secure a single LPP per cohesive area and procedures to address conflicting aims of different groups we are concerned about the impact for delivery of the statutory development plan and the sense with which communities will actually feel an effective part of the process. The Independent Review of Planning of

May 16 concluded that the English equivalent had limited success with reports of “engagement fatigue” and fractious communities. Whilst the Scottish Government have recognised the need to build community capacity and local involvement in plan and place making, we have concerns about the substantial differences between communities, and likely disparities in relation to accessing technical and professional expertise to enable formulation of LPP. This is a notable failing of the English Legislation making it difficult to provide inclusivity across all communities in the creation of Neighbourhood Plans (NP). The introduction of LPP could very well create the opposite of what the Scottish Government envisage by excluding communities who do not readily have access to skills and expertise required to become involved in a meaningful way.

If broader sections of all communities being involved in the plan making process is now a key driver for the Planning Bill, the current proposals may not achieve this. Community planning and engagement with broader demographics within communities should be focussed as a part of the Local Authorities’ plan making remit. There requires to be a partnership driven approach to community involvement and aspiration balanced with need for economic growth and delivery of development. Partnerships can be formed to deliver this into LDPs between local planning authorities, community bodies (not just community councils) and other key stakeholders for example local landowners and developers to truly create a realistic and deliverable vision for all Scottish communities. This would be set out within LDPs as detailed settlement statements which would fully assess need against environmental impacts and bring forward balanced sustainable solutions through a developed land use plan.

The Bill as it stands does not provide clear and effective guidance to manage community expectations. There must only be one Local Place Plan for each geographical area. There is a need to regulate against alternative versions of such Local Place Plans in the same community areas to prevent delay in the Local Development Plan process as a result of contrasting community opinion. Local Place Plans must conform to Local Development Plans. Where treated as part of the development plan they must also be subject to the same scrutiny and examination as LDPs to ensure full stakeholder buy-in. The Scottish Government must fund training of community bodies to ensure the plans must be positive and recognise the need for development and not become a process that in anyway establishes a NIMBY Charter. They should establish principles securing inclusion rather than less advantaged communities being penalised.

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 have no comment to make in relation to this element.

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?

In principle an infrastructure levy could be acceptable. The key to its success will be how it is determined and how it is implemented. Any infrastructure levy must be clearly related to development proposed. The recent attempt to implement a transport levy in the north east of Scotland failed on this point highlighting the complexity of introducing an infrastructure levy. Any new levy would have to be clear from the outset as to its purpose and the development industry and landowners would need to be convinced there would be no double counting between local contributions (s75) and strategic contributions (infrastructure levy). We believe that an infrastructure levy would be best considered for education and transport contributions with monetary rates set at a national level.

The process being proposed by the most recent review will result in landowners not selling their land for development and housebuilders not being able to meet funding hurdle rates thus preventing the delivery of new homes. Further time is required to carry out further investigation and research into the most appropriate form of levy. It cannot simply be a money grab that prevents development land coming forward. Further investigation is required by parties who understand development economics and the housebuilding industry must be fully engaged in this research and endorse the findings.

A number of studies have demonstrated that the use of the Community Infrastructure Levy (CIL) in England) has not delivered its objectives. For example, many authorities have failed to create the relevant policy required to pursue it and others have chosen not to introduce it for fear of their areas being less competitive, especially in areas which cannot sustain additional cost burdens.

Any levy will need to be subject to full scrutiny to ensure its implementation and thus development is not delayed by legal challenges. If introduced there should no longer be suspensive conditions delaying development until infrastructure is provided.

We are concerned at the proposed deletions in respect of relationship with land to s75 of the Act. Any relaxation in the current legislative requirement linking developer contributions to the land must ensure tests of proportionality are retained and transparent funding requirements can be satisfied on a continuing core principle to limit the risk of legal challenge.

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?

This is fundamental to an improved planning system and we fully support this approach. Training needs to be focussed on the delivery of development and the implementation of NPF, SPP, Regional Strategies and the ambition of the Local Development Plan. Understanding of wider economic impacts and benefits of development also require to be integrated into the training to ensure a holistic appreciation and importance of decisions being taken. Decision making should be monitored and training should also be refreshed during the term of office, this will

ensure consistency in decision making and will leave the Local Authorities less vulnerable to appeal decisions that also grant awards of expenses. Training should also be given outwith the particular local authority so that the same standard of training is given across Scotland to ensure quality decisions are being made, this should include Community Councils.

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

The principles of this proposal appear to be positive, and we agree that continuing with an informal approach to performance management would not meet with the wider objectives of the planning review. In addition to the proposals there should be stakeholder reviews as part of the monitoring process. This function would feed positively into the drive for performance improvement where best practice can be identified and taken forward by example.

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?

We do not agree with the potential for discretionary fee making. Fees should be set by Government and strictly aligned to performance. Significant fee increases were introduced in 2017, with planning fee increases of over 500%. The fee increase was not linked to improved performance, nor were the fee increases guaranteed to be ring-fenced specifically for planning functions within Local Authorities. This was a missed opportunity and this connection must be made to any fee increases in the future. All fees generated through planning applications must be ring fenced for the planning function of the local authority alone. We would support a 2 stream fee system where major applications can be fast tracked.

We do not agree that fees should be payable for an appeal.

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

National Planning Framework – We support the simplification of the planning system and the enhanced status of NPF however there is a need for additional stakeholder engagement prior to its adoption as a statutory document. We note the intention to have parliamentary debate and scrutiny into NPF. We query whether this is inclusive enough and suggest it may be intimidating for parts of the community. We would recommend that an Examination takes place that can then be fed into the parliamentary debate. This should include detailed scrutiny of housing target figures. We are of the opinion that the 10 year cycle for NPF is too long. There must be clear statutory requirements for monitoring and review, either in line with the publication of population forecasts (2 years) or HNDAs (5 years). Reviews must also have appropriate engagement and scrutiny.

Development Management – We accept in principle the need to lodge a planning application within 18 months of lodging a PoAN. However when LDP adoption is delayed sometimes applications will go beyond the targeted period. This

requirement should therefore be waived where a delay is created as a result of a LDP not being adopted in line with the Development Plan Scheme target.

We do not agree with the removal of decisions of some major applications by Full Council. This should be left to the discretion of Councils. Full Council decisions are generally more aligned to Development Plans than more local committee decisions. Whilst we accept that this will hopefully be overcome by appropriate training, the area committee set ups of some larger rural authorities may always result in decision needing made by a higher level committee.

We do not accept that decisions on CLUDs should be considered by LRBs. These are too complex to be considered at LRB especially when they are often required as a result of a CPO and are a pre-cursor to a Lands Tribunal case. It is therefore essential that appeals are considered by appropriately trained Reporters.

Appeal rights - Any attempt to introduce an equal right of appeal or third party right of appeal must be resisted. Objectors' interests are represented by the local authority's determination of planning applications in the public interest. Any additional right of appeal, in our view, would unnecessarily delay home building, including affordable home building. Currently, it takes approximately 3 to 4 years in the planning process to secure major application consents and start development. Such an appeal process could add up to 24 months to this thus negating any benefits. In addition, any further appeal rights would result in uncertainty for housebuilders' investment decisions. For example, decisions may be taken to invest in England and Wales where there are no 3rd party or equal rights of appeal as there will be more certainty over investment. Such a disparity within part of the UK would be damaging to the Scottish economy and an inequitable risk. Additional appeal rights would also have cost implications. An appeal can easily cost £50-75k to deliver and this does not include the costs associated with delayed site starts. The combined cost of this could render some developments unviable especially for smaller sites and smaller local housebuilders. Such appeals will also put an unnecessary cost burden on local authorities diminishing the investment that can be made improving services and contributing to the national effort to deliver more much needed housing.