

Local Government and Communities Committee

Planning (Scotland) Bill

Supplementary Written Submission from Professor Cliff Hague

Further to my appearance before the Local Government and Communities Committee on 7 March 2018, I am pleased to submit a few additional observations in the hope that these will assist the Committee in its work on the Planning Bill.

1. Purpose

As I indicated to the Committee I believe that the Bill should carry an explicit statement of the purpose of the planning system. I mentioned the South African Spatial Planning and Land Use Management Act (2013), which is usually referred to as “SPLUMA”. It begins as follows:

ACT. To provide a framework for spatial planning and land use management in the Republic; to specify the relationship between spatial planning and the land use management system and other kinds of planning; to provide for the inclusive, developmental, equitable and efficient spatial planning at different spheres of government....

Something like this could usefully be inserted at the head of the Scottish Act, e.g. specifying the relationship between spatial planning and community planning, other kinds of planning and also Land Reform and Community Empowerment. A reference connecting planning to promotion of public health and well-being would also be appropriate, since the link between place and non-communicable diseases is increasingly recognised. Similarly, I believe that the words “inclusive” and “equitable” need to be at the heart of the Scottish legislation if trust is to be restored to the planning system.

SPLUMA then has a Preamble. Much of it is specific to the South African context, but it includes “*Whereas spatial planning is insufficiently supported by infrastructure provision and investment*” which highlights an issue that is recognised here in Scotland, and which the Bill should be addressing in more realistic ways than at present.

A further “Whereas” in the Preamble is “*the State must respect, protect, promote and fulfil the social, economic and environmental rights of everyone*”. This is a much more appropriate approach than Scotland’s reductionist emphasis on “sustainable economic growth”, which lacks international currency now that the UN’s 2016-30 Sustainable Development Goals (SDGs) have provided the definitive global statement of what sustainable development means. Lest there be any doubt about

this, the SPLUMA continues “*Whereas sustainable development of land requires the integration of social, economic and environmental considerations in both forward planning and ongoing land use management to ensure that the development of land serves present and future generations*”.

Before we get to a statement that “Be it therefore enacted...”, a further “Whereas” adds that it is “necessary” that “*the system of spatial planning and land use management promotes social and economic inclusion*”. Given the enduring nature of spatially embedded inequalities in Scotland, represented most dramatically but not exclusively in differentials in life expectancy and in educational attainment, why would we not want to use the planning system “to promote social and economic inclusion”?

Zambia’s Urban and Regional Planning Act (2015) also has a section at the very start:

“An Act to provide for development, planning and administration principles, standards and requirements for urban and regional planning processes and systems; provide for a framework for administering and managing urban and regional planning for the Republic; provide for a planning framework, guidelines, systems and processes for urban and regional planning for the Republic; establish a democratic, accountable, transparent, participatory and inclusive process for urban and regional planning that allows for involvement of communities, private sector, interest groups and other stakeholders in the planning, implementation and operation of human settlement development; ensure functional efficiency and socio-economic integration by providing for integration of activities, uses and facilities....”

Since these Acts were passed we have the SDGs. SDG 11 is about making cities and human settlements “Safe, inclusive, resilient and sustainable”. As the Scottish Government has supported the SDGs, it seems perverse to exclude any reference to this “urban goal” in a Planning Bill. Similarly, climate change adaptation and mitigation is something that should be a declared aim of any responsible 21st century planning system. SDG Target 11.3 “By 2030, enhance inclusive and sustainable urbanization and capacity for participatory, integrated and sustainable human settlement planning and management in all countries” and Target 11.4 “Strengthen efforts to protect and safeguard the world’s cultural and natural heritage” should be pursued through this reform of the Planning system.

2. Local Place Plans

The Technical Paper strikes such a negative and restrictive tone on LPPs that it is difficult to imagine that they will redress the loss of trust in planning. There have been many comments on the under-resourcing of LPPs and the risk that more affluent / professional neighbourhoods will make use of the LPP option, but others

will not. During last week's hearing I began to float some ideas about how the system might be made to work in a progressive direction. I now flesh these out.

My suggestion is that in the Evidence Stage of a Local Development Plan, community organisations would be asked to submit Expressions of Interest to produce a LPP. These Eols would be required to indicate:

- The organisation(s) proposing the LPP and their credentials;
- The intended purpose and aims of the potential LPP;
- The proposed boundaries;
- The methods intended to ensure an inclusive approach to plan preparation;
- The resources (including non-financial resources) that the organisation(s) propose to commit to the LPP process;
- The additional resources they would need to produce the LPP;
- The anticipated timescale for production of the LPP.

The Eols would then be considered in the Gate-Check, where recommendations would be made about which LPPs should be prepared to what timetable. Then the Planning Authority would contract with those LPPs it wished to see proceed. This would be a negotiated process, in which boundaries for the LPP area would be agreed, and the Planning Authority would give some commitment about the resourcing it would provide (if any) and the status that the LPP would have in relation to the LDP and development management. In turn, the LPP producers would be negotiating on the scope and status and timetable of their plan. This is important because of the proposal for LDPs to be generally a once-every-decade exercise. If people produce a LPP only to find that it will gather dust for 8 years until the next LDP review, while developers submit applications and appeals at any time during that period, cynicism about the planning system will only increase. As a general rule, no planning application lodged in an LPP area (if the LPP has been adopted by the Planning Authority) should be decided by appeal to the Minister – these are LOCAL plans and so by definition are not matters of national significance. Any right of appeal in a LPP area should only be to the Local Planning Authority.

It would also be open in the Gate Check stage for areas to be identified for LPPs where currently no Eols have been submitted. In such circumstances the reasons, resourcing and methods of outreach would need to be specified and tested.

The Eol, Gate Check and contracting approach outlined above should avoid resources being wasted by work on LPPs that are then rendered irrelevant by Planning Authority or ministerial decisions. Those preparing an Eol for a LPP, and subsequently negotiating with the Planning Authority, would be helped by provision of an indicative template to identify the financial and other resources they will need. Organisations such as PAS or the Cockburn Association could provide support to

this process. Similarly, if the negotiations are unsuccessful and the local organisation feels what is on offer from the planning authority is insufficient, it can withdraw its EoI, just as the planning authority could also decide not to go ahead if it could not strike an agreement with the proposers.

A fundamental point here is that national level government should not be trying to specify in detail what a LPP can or cannot do. One reason why people are disillusioned with planning in Scotland is because the system has become over-centralised. Solutions like this proposed here would begin to redress that imbalance. The LPPs should be an iterative process based on mutual learning in line with well-established ideas of planning as a “collaborative process”.

3. Appeals

Appeals are the most problematic part of the system. Though relatively small in number, they consume a disproportionate amount of time, money and expertise, and are planning at its most confrontational. They are the weak spot in the plan-led, yet discretionary, planning system, e.g. when an appeal is upheld for development in a green belt the public loses confidence in the whole process. Thus the Bill should have a section on appeals.

The aims should be to achieve equity (in line with the New Urban Agenda agreed globally at Habitat III, 2016, and in the UN-Habitat International Guidelines on Urban and Territorial Planning, 2015), and to reduce uncertainty and costs. Grounds for appeal should be limited to situations where a planning authority has overturned the professional advice of their officers, or where policies in the LDP have been disregarded. This would mean that LDPs would need to be more definitive and less ambiguous in statements of policy. The practice of allowing an applicant to run with two or more simultaneous appealed applications for the same site should be discontinued. If the NPF is to become part of the Development Plan it should narrowly specify what sites will be seen as of national significance and be subject to ministerial decision. The same, constrained, rights of appeal should be extended to third parties. I know the development industry is opposed to this, but I know of no planning system in other countries which so encourage developers to make appeals and/or which so remove decisions from local level decision-makers. If Equal Rights of Appeal were to operate it would not mean that a “good” application would fail to get permission: ERA does not give objectors the right to block a development, but only to challenge the desirability of that development. If an “inclusive” aim is written into the legislation, it should not be possible for appeals based on excluding disadvantaged groups from an area to succeed.

Last word

I would urge the Committee to check out the International Guidelines on Urban & Territorial Planning and also the new book that I co-authored for UN-Habitat, *Leading Change: Delivering the New Urban Agenda through Urban & Territorial Planning*. Both can be downloaded for free from www.unhabitat.org/. In setting the framework for planning in Scotland over the next generation, there is no logical reason to only look to the kind of changes introduced into planning in England over the past generation, especially as the outcomes those changes have produced have done nothing to create the housing numbers, types or quality places that Scotland should be aspiring to. It is often remarked that “insanity is doing the same thing over and over again and expecting different results”.