

Scottish Government submission of 31 January 2024

PE2075/A: Prioritise local participation in planning decisions

Thank you for your e-mail of 20 December 2023, on behalf of the Citizen Participation and Public Petitions Committee, seeking the Scottish Government's views on Petition PE2075 which calls on the Scottish Government to prioritise local participation in planning decisions affecting their area by:

- providing a clear and unambiguous definition of the word 'local' insofar as it applies to planning legislation;
- giving decision-making powers to community councils for planning applications in their local areas; and
- ensuring the way in which decisions on planning applications are taken is compatible with the provisions and ethos of the Community Empowerment Act 2015.

The Planning (Scotland) Act 1997, as amended, sets a clear agenda to enhance opportunities for engagement within the planning system, facilitating greater empowerment of communities and putting their voices at the heart of the system.

The planning system currently provides extensive opportunities for community engagement in the planning process. At the earliest stages, this is through engagement in the preparation of the National Planning Framework (NPF) and in the local development plan (LDP) process. Together, the NPF and LDP make up the development plan for an area, and set the framework for development in their area. There is also the opportunity to comment on applications for planning permission for development which may affect them.

It is vital that communities engage with the preparation of local development plans in their area. In 2023 we published '[Local Development Planning Guidance](#)' which includes information on opportunities for engagement. We are preparing, and have consulted on, '[Effective Community Engagement in Local Development Planning Guidance](#)'. The consultation draft considers the levels of engagement that may be applied at different stages of preparing a local development

plan to assist planning authorities, communities and those who wish to engage with the planning system.

National Planning Framework 4 (February 2023) is a spatial strategy for Scotland's long-term development. One of its cross-cutting outcomes is for a 'fair and inclusive planning system' where everyone involved in planning acts to ensure a wide range of people are involved in shaping their places.

Recent amendments to the 1997 Act through the Planning (Scotland) Act 2019 seek to increase the opportunities for individuals and community bodies to engage in the planning process, including by preparing local place plans for their own areas. In the preparation of LDP, planning authorities are to take into account any registered local place plan for the plan area.

The petitioner is calling firstly for a clear and unambiguous definition of the word 'local' insofar as it applies to planning legislation. It is unclear what purpose a definition of 'local' would serve or what aspects of planning legislation such a definition would apply to.

Given the context of the petition, it may be the case the applicant is referring to local decision making. It is a long-standing tenet of the planning system that planning applications are considered, in the first instance, at the most local administrative level, i.e. the local planning authority. The Town and Country Planning (Scotland) Act 1997 sets out that this is normally the relevant local authority and the planning authority's area of responsibility is the same as the area for which the local authority has administrative control. The two National Park Authorities also act as planning authorities for certain purposes of the 1997 Act; these responsibilities and associated powers for determining applications are explained in the National Parks' respective Charters.

The second strand of the petition calls for community councils to be given decision making powers for planning applications in their area. The current status of community councils in the planning system is that, where a community council exists, the local planning authority is required to notify them on a weekly basis of any applications received for proposed development in the community council's area. The community council can respond specifying any, or all, of the applications on the list on which it must be consulted by the planning authority. Even where they do not respond, a planning authority is required to consult a

community council on applications for development which is likely to affect the amenity in the area of the community council.

The planning system is 'plan-led', meaning decisions on individual planning applications are based on the development plan, mentioned above, and relevant material considerations.

Under planning legislation, applications for planning permission must be determined in accordance with the development plan for the area (comprising the National Planning Framework and Local Development Plan) unless material considerations indicate otherwise. This is the case regardless of who the decision-taker is: whether it be a person appointed to do so on behalf of the planning authority, the planning authority, members of a Local Review Body, a Reporter appointed by the Scottish Ministers or the Scottish Ministers themselves. This would also be the case if community councils were empowered to determine planning applications. More information on material considerations can be found in Annex A of [Planning circular 3/2022: development management procedures - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/planning-circular-3-2022-development-management-procedures/pages/12.aspx).

Extending powers to determine planning applications to community councils would require comprehensive revisions to the current legislation - the Scottish Government does not currently have any plans to consider such a fundamental change to the planning system.

If such a change were to be taken forward, a wide range of issues would need to be considered in detail and subject to consultation, including:

- The route for parties to seek to appeal or review decisions made by a community council;
- How applications for development would be handled where the application is located only partially within a community council's area of responsibility;
- Where potential impacts extended beyond the boundary of the community council into areas where there was no elected community council;
- The operational capacity and resources of community councils, which is understood to vary significantly between areas;
- How community councils would be supported in this role; and
- How accountability for decisions would be maintained. Currently any person who considers that a planning authority has not acted in accordance with its statutory duties in reaching a decision on

any application can seek to challenge the authority's handling of the application through judicial review.

The most recent review of the planning system as a whole was conducted by an independent panel, whose findings were published in a 2016 report '[Empowering planning to deliver great places](#)'. Wide engagement and collaboration following the review led to the [Planning \(Scotland\) Act 2019](#), passed by the Scottish Parliament in June 2019. Our work is continuing to implement the Act.

The report explored inclusion and empowerment as one of its six key themes. The independent panel's findings included: 'Given the limited resources of community councils, we believe frontloaded engagement could usefully be prioritised over the current resource-intensive involvement in development management decisions.'

The report recommended communities be empowered to prepare local place plans and this was included in the Planning (Scotland) Act 2019. Local place plans are community-led plans setting out proposals for the development and use of land, they set out a community's aspirations for its future development. The 2019 Act provides for community bodies to prepare local place plans, and community councils established in accordance with Part 4 of the Local Government (Scotland) Act 1973 are recognised as community bodies.

The third strand of the petition refers to the Community Empowerment (Scotland) Act 2015 and calls on the Scottish Parliament to ensure that the way in which decisions on planning applications are taken is compatible with the provisions and ethos of the Act.

While the Community Empowerment (Scotland) Act 2015 makes reference to community councils being engaged in decisions on the matters covered by the Act, it reinforces the current statutory position of community councils as consultees on matters which affect their area of representation – rather than statutory decision-takers. The Act makes no specific reference to planning matters under the 1997 Act, but we would consider that, as a consequence of giving decision making powers on planning applications, it would be necessary to remove their consultee role. Our view is that this could in fact reduce opportunity for community participation in the planning system contrary to the spirit, aims and intentions of the 2015 Act.

Planning, Architecture and Renewals Division