Local Government and Communities Committee

Planning (Scotland) Bill

Submission from Falkirk Council

Background

On 4th December 2017, the Scottish Government published a new Planning Bill. The Bill is a key element of the Government’s Review of Planning which was commenced in 2015. The Review is intended to strengthen and simplify the planning system, with a greater focus on delivery, particularly of housing and infrastructure. The planning system was last subject to major change in 2006 through the Planning etc. (Scotland) Act.

The Review of Planning commenced with the appointment of an independent panel in 2015 which produced a report ‘Empowering planning to deliver great places’ in May 2016. The Government took this forward with a consultation paper ‘Places, people and planning’ published in January 2017 which set out 20 proposals under four key areas of change.

- Making plans for the future
- People make the system work
- Building more homes and delivering infrastructure
- Stronger leadership and smarter resourcing

Falkirk Council responded to the consultation in March 2017.

The Planning Bill seeks to deliver those areas of change which require primary legislation. Other strands will be implemented through non-statutory mechanisms and workstreams. The key areas of legislative change are outlined below.

On the 15th December 2017, the Scottish Parliament’s Local Government and Communities Committee issued a call for views from interested organisations and individuals as part of its Stage 1 scrutiny of the Planning Bill. Submissions are due by Friday 2nd February 2018. This paper contains the Council’s responses to this consultation. These are in line with the views previously submitted by the Council in respect of the ‘People, places and planning’ consultation paper last year.
Development Planning

The Bill includes a major overhaul of the development plan system which is intended to simplify the system, improve engagement, and bring a greater focus to delivery of development. It includes the following measures:

- **Incorporating Scottish Planning Policy (SPP) into the National Planning Framework (NPF)** and enhancing its status by making it part of the statutory development plan, along with local development plans (LDPs). With the proposed removal of strategic development plans (see below), NPF is likely to provide more guidance at the regional level, and there is a duty on planning authorities to assist in NPF’s preparation. It is not clear how detailed or prescriptive this will be, e.g. setting out national or regional targets for new housing. Statutory status for SPP would mean policy content currently in SPP would not have to be restated in LDPs, and many policies of a general nature would effectively be removed from LDPs. NPF would be reviewed on a 10 year rather than the current 5 year cycle.

- **Removing the requirement to prepare strategic development plans.** Falkirk Council is not currently in a Strategic Development Plan area, so this will have no direct impact on the Council as a planning authority. The Government’s intention is that more informal and flexible regional partnerships will co-ordinate development across regions where necessary, but these are not provided for in the legislation.

- **Changing the process for preparing LDPs.** This will include
  - **Extending the review cycle from 5 to 10 years,** but with a provision whereby amendments can be made between full reviews
  - **Introducing a requirement for LDPs to take into account local outcome improvement plans** (thereby better aligning development planning and community planning)
  - **Removing the Main Issues Report stage.** A single draft plan (the Proposed Plan) will be produced instead, rather than the two stage process at present
  - **Introducing a new ‘gatecheck’ examination stage** in the early stages of the LDP where the evidence base and certain important parameters such as housing land requirements would be scrutinised by a Reporter and agreed.

The changes have the potential to shorten and simplify the plan process, although the new gatecheck procedure is as yet an unknown quantity and may to some extent negate the time savings achieved by removing the Main Issues Report. The lengthening of the LDP cycle should release development plan teams from the present almost continuous process of plan making and allow more time to be spent on delivery of plans.
Falkirk Council Response:

1. The Council is not within a Strategic Development Plan area, and has no strong views on the abolition of Strategic Development Plans. Setting out regional priorities within NPF could work, but there will be an inevitable loss of democratic control. It is unclear as yet how prescriptive NPF will be in important areas such as setting housing targets, or how regional partnerships will evolve in practice.

2. The enhanced role of NPF as part of the development plan, with SPP incorporated, is accepted, particularly as a consequence of the removal of Strategic Development Plans. The Council has some concerns about standardisation of detailed policies within the enhanced NPF, which again may represent centralisation of policymaking. For local users of the development plan in Falkirk, there will be additional confusion in that the Local Development Plan will no longer be the single repository of planning policy for the area.

3. The simplification and shortening of the LDP process is generally welcomed, although it must be accepted that opportunities for meaningful, front loaded engagement may be diminished by removing the Main Issues Report. This Council has found the Main Issues Report an effective, open and transparent method of involving the public.

4. The new early gatecheck procedure may to some extent negate other time savings achieved by the new process. It is by no means clear that this procedure will achieve its aim of significantly reducing debate at the final examination stage.

Supplementary Guidance

The Bill removes the provision for supplementary guidance to be a statutory part of the development plan, which was introduced by the 2006 Act. Guidance additional to the LDP could still be produced but it would not have the same status in decision making and would revert to being another ‘material consideration’ as prior to the 2006 Act.

Falkirk Council Response

5. The Council has worked hard to produce a suite of robust supplementary guidance to accompany its LDP. This has fulfilled the intended purpose as part of the Planning etc. (Scotland) Act 2006 of producing necessary detailed guidance for development, whilst keeping LDPs short and focused. The rationale for removing this provision is not clear, if the intention is still to produce succinct plans. In practice, authorities will still need to prepare much of this guidance, but it will now be non-statutory and carry less weight in decision making.
Local Place Plans

The Bill introduces a new right for communities to produce plans for their places – local place plans - with scope for these to be become part of the development plan. The Bill does not introduce a fixed procedure for these. They are produced by ‘community bodies’, have to have regard to LDPs, and are submitted to the planning authority. Planning authorities in turn are required to have regard to local place plans in preparing LDPs. The legislation does not make it entirely clear how the relationship between LDPs and local place plans would work out in practice, although some issues may be clarified in subsequent regulations.

Falkirk Council Response:

6. The Bill leaves uncertainty over a whole range of issues concerning local place plans. There are questions over the relationship between LDPs and local place plans, with one simply having to ‘have regard to’ the other. Greater clarity is needed on the status of these documents in decision making. There is as yet little indication of the scope of local place plans, the process they will follow, or the scrutiny they will be subjected to. There is also an issue of how local place plans will be resourced to allow all communities equal access to the process. Pending further clarification on these matters, the Council remains of the view that the introduction of local place plans into an already complex landscape of plan making will serve to confuse the public. It may also raise unrealistic expectations as to the degree of control which community bodies may exercise over planning decisions.

Simplified Development Zones

The Bill introduces powers for planning authorities to designate simplified development zones (SDZs), which are similar to the current provisions for simplified planning zones (SPZs), but extended. These zones are areas where planning permission for specified types of development is granted by a scheme. They are seen as a mechanism whereby planning authorities can take a more proactive role in encouraging development and investment in a particular area. SPZs have not been much used and the new legislation is intended to make the procedures more flexible. There are provisions to oblige planning authorities to more actively consider making SDZs, including a requirement to consider ‘valid’ requests to make them. It is clear, however, that promoting such schemes will be resource intensive for authorities, shifting the burden of detailed work on bringing forward development from developers on to planning authorities, while potentially losing fee income. The Government has indicated that it would seek to address this in the future review of planning fees.
Falkirk Council Response:

7. The Council generally welcomes the additional flexibility in the provisions for simplified development zones, which will no doubt be a useful tool to promote development in certain circumstances. However, the implication that planning authorities may be put under pressure, and potentially compelled, to make schemes is concerning, bearing in mind the potentially major additional resource burden which preparing large, complex schemes may have on authorities.

Development Management

Although the development management process is not a major focus of the planning review, the Bill includes some proposed changes including:

- Changes to the provisions for pre-application consultation with communities on national or major applications;
- Provision for further delegation of decision making under schemes of delegation and further movement of appeal decision making responsibilities from Scottish Ministers to local review bodies;
- Provisions relating to the duration of planning permission which are designed to bring greater clarity, and improve flexibility and transparency around the scope and process for extending the duration of permissions where appropriate; and
- Some streamlining of the process by which planning authorities can serve completion notices.

Falkirk Council Response:

8. The Council is supportive of most of the new provisions. However, there is concern about the additional burdens that will be placed on planning authorities through further shifting of appeal decisions to local review bodies.

Other Matters

There are various miscellaneous provisions in the Bill. These include:

- Proposed changes broadening Ministers’ regulation making powers with regard to planning fees to allow more flexibility;
- Increases in fines for failure to comply with enforcement notices;
- A requirement for elected Members involved in making planning decisions to have relevant training; and
- Provision for greater scrutiny of planning performance through requiring statutory annual performance reports, appointment of a national planning performance co-
ordinator, and powers to conduct assessments of planning authorities’ performance.

Falkirk Council Response:

9. These provisions are largely welcomed. With regard to performance, it is vital that this is viewed broadly, having regard to qualitative planning outcomes as well as statistical performance on planning applications. This was the basis under which the current planning performance frameworks were developed, and should continue to be the case if these are made statutory. A national planning performance co-ordinator should work to support authorities in making improvements.

Infrastructure Levy

The Bill enables the introduction of an infrastructure levy, which could raise funds for infrastructure provision beyond what is legally capable of being sought through section 75 obligations (which are limited only to funding infrastructure required as a direct consequence of development). This is similar to provisions which have been in place in England for several years. Further work is needed to define a precise model for the levy, so there is no detail at present.

Falkirk Council Response:

10. An infrastructure levy could, in principle, be a useful tool to provide more general funding for infrastructure over large areas. However, there is no detail as yet to comment on. There is a question over whether sufficient resources could be raised through a levy to make a significant difference to infrastructure delivery. There is also a danger that it will only work in parts of Scotland where land values are sufficient to sustain additional payments, and that in parts of the Falkirk Council area where the housing market is less buoyant, imposing a levy could have an adverse effect on viability and be counterproductive to delivery.

Alistair Shaw
Development Plan Co-ordinator
Falkirk Council Development Services