Local Government and Communities Committee
Planning (Scotland) Bill
Submission from Alistair Godfrey

Dear Convener and members of Committee,

Call for Evidence on the Planning (Scotland) Bill

Thank you for the opportunity to respond to this call. My responses follow each of the questions set.

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?

No. The introduction of Local Place Plans is an interesting concept and may be useful.

Planning remains too complex and remote for people in Scotland. The amount of legislation needs to be reduced and legislation must be made provided in formats that are easy to understand. Planning as a concept should be taught in primary schools, so that by the time of reaching adulthood, everyone in Scotland should have a grasp of the basic principles and be sufficiently aware to participate in the process that affects them. There is no better guidance required than the wisdom of Scotland’s own Sir Patrick Geddes.

The pity is the Bill will lead to an amending Act rather than consolidating existing Acts into one, where all required information can be found in one place.

There is friction within existing legislation. Some legislation is visionary and holistic, such as Scottish Planning Policy 2014 and National Planning Framework 3. The Planning etc. (Scotland) 2006 is not holistic. It has a heavy emphasis on development where, depending on the planning authority, the needs of the developer come before the needs of the community. This is one of the reasons for considerable public discontent. The Act of 2006 has an admirable aim towards “sustainable development” but the drive towards “sustainable economic growth” is providing different results through Local Development Plans and approvals for large developments.

Recognition of the views of communities, the electorate, depends on the attitude of the planning authority. One local planning authority consulting on its proposed Local Development Plan interpreted the provision for consultation as “a minimum period of 6 weeks for representations”; whereas, what the Act states is “not less than 6 weeks”. There is in effect no minimum. Planning Circular 6/2013 provides guidance “Authorities may therefore wish to consider offering a longer period, of up to 12 weeks for complex plans, to give parties sufficient time to formulate their case in full.” In this case there were good reasons to follow the guidance. Nine weeks were allowed, but for 1½ weeks the planning authority was closed and public buildings
where paper versions of the plan had been available were closed, also due to holidays. At least one request for an extension was refused and another limited. The will of a planning authority to listen to those it represents must reach a much higher standard.

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?

Local Place Plans may provide a solution where communities will be willing to identify sites suitable to their location.

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?

The majority of residents in an area are probably unaware it is covered by a Strategic Development Plan. TAYplan covers, Angus, Dundee, North Fife and Perth & Kinross with a focus around the Tay Estuary. There were only about 40 individual responses to its consultation from the entire area. The area of interest is basically a reincarnation of the former Tayside Regional Council and North-east Fife District Council. TAYplan has little connection to the Kinross, Strathearn and Highland Perthshire areas.

A more sensible approach is to include in plans a need to demonstrate connectivity to all adjacent planning authorities, including National Parks, to ensures policies are compatible and delivery is co-operative.

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?

Much depends on the willingness of planners or time available to them at an early stage to engage with communities. When the first sight a community has of a Proposed Local Development Plan with large allocation of housing or other significant development, the negative reaction of a community, where it has had no input, is not difficult to understand. The onus should be on the developer to make the first move in approaching a community, before a Local Development Plan is drawn up; a move planners need only facilitate, to leave them to get on with the rest of the process. The developer should then be responsible for holding meetings with communities to discuss and resolve issues at which planners should chair. Planning authorities can then ensure a proper balance of representing rights equally.

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

Simplified Development Zones would be detrimental to safeguards currently in place in the planning system and would be detrimental to communities and counter-productive. This fast-track process would render the Local Place Plans process
meaningless, would lead to land-grabs and uncertainty over some land that is zoned or land adjacent to it. There is also every likelihood of development appearing in unsuitable locations to meet targets.

Section 84 of the Policy Memorandum refers to an approach that will create greater tensions between communities and developers, because developers are given more recognition than communities and they are provided with circumstances where they will have the default for approval, rather than seeking a consensus first with the communities that will be affected.

Section 84 does not place planners in their proper place, they are planning authority employees who deliver a service and should not be treated as glorified estate agents.

Simplified Development Zones are likely to side-track environmental requirements, especially on larger schemes requiring an Environmental Impact Assessment. Environmental Statements to support planning applications are often incomplete and compiled by several authors with no cross-referencing to pull the document together as a whole to meet overall statutory requirements. Environmental Statements are too often tailored to the application than presented as an assessment of what is present. Environmental benefits from developments are poor at present, taking benefit of what may be present, such as adjacent woodland, rather than providing a significant benefit within the site. Poor layouts and architectural design lacking inspiration and originality is unfortunately the imprint of mid to late 20th century and early 21st century development in the Scottish landscape. Developers need to make considerable improvements to integrate their designs before being trusted to deliver development under a fast-track process.

Simplified Development Zones are not shown on the flowchart of future process. Presumably these would be introduced in the gathering of evidence and engagement stage? This needs to be addressed. The Explanatory Notes are far from clear how new provisions will be implemented into current legislation. They do highlight extraordinary new powers that require further scrutiny. The Policy Memorandum is clearer and Section 84 gives rise to considerable concern “removing the need for an application for planning permission.” This undermines the planning principle and would lose the protection required in order to achieve a balanced outcome. No doubt this would be the preferred approach for every developer between Gretna Green and John O’ Groats. This arrangement would destabilise the planning system and completely lose public confidence in it.

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?

In principle, Local Place Plans are a positive step forward in recognising local democracy. However, wording in the Bill is unlikely to be strong enough to deliver its intentions. One of the amending sections is Section 16 of the Town and Country Planning (Scotland) Act 1997. There are currently two levels of recognition here; “to
take into account” (the National Planning Framework) and to “have regard to”. If a planning authority fails to take into account, it can be held to account. To have regard to anything does not constitute a definitive change in decision making, therefore the wording as it stands is likely to lead to little or no change.

Local Place Plans and Local Development Plans could arise separately and give rise to future difficulties. Local Place Plans need to be part of the preparation of Local Development Plans and embedded within them. This could be achieved with a simple procedure and avoid the complexities, difficulties and disagreements of a separate procedure. This would also reduce or remove the financial burden on the community body. Community Councils have very small budgets that provide for very little beyond basic operating costs. In the Financial Memorandum “discretionary” payments may mean no payments and the absence of funding should not be sought from voluntary commitments where communities are already stretched to maintain their services by voluntary commitments.

Local Place Plans should be included at the “Evidence gathering & engagement” stage in the flowchart for the proposed future process to ensure they are fully part of it.

The Bill should be amended to include the preparation of Local Place Plans by communities within the Local Development Plan process. This would resolve the same use of “regard” in Schedule 19 of the Bill and the undefined “prescribed requirements” could be replaced with simple procedures to follow.

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 could provisions be improved?

The proposals would improve non-compliance with conditions in a planning consent as the larger fines would be a deterrent to not meeting the consent conditions. There are other issues to consider, one being the time or number of enforcement officers available to ensure conditions are met.

There needs to be a higher expectation on planning authorities to compel developers to comply with conditions. Failure not to enforce conditions, especially for a serious breach, should be a matter for external scrutiny and a planning authority penalised should it be found wanting.

The Bill needs to introduce a provision to deal with development where no planning application has been lodged nor consent received. This is often dealt with by retrospective planning consent and weakens the planning system. The default position on development without consent should be a rejection and removal of the development at the developer’s cost, unless by successful appeal to the Planning and Environmental Appeals Division at the developer’s sole cost. This would strengthen the planning system, deter unplanned developments and reduce pressure on enforcement officers.

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?

Infrastructure levies are already in place, but not in name. They are achieved through planning conditions and Section 75 Agreements. Developers may have a legitimate claim that they are being asked to pay towards infrastructure that is not part of their development by any kind of levy. If levying is applied in any form, the cost will be passed on to the customer and house prices will rise as a result. A levy cannot be a substitute for reduced budgets at a national or local level. The cost of maintaining or replacing existing infrastructure and providing new infrastructure has to be in line with performance of the economy and the ability of the consumer, or inability, to meet higher costs.

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?

The question should not need to be asked and the question is an indictment on the planning system where councillors are making decisions on matters they do not fully understand. There is a presumption that this is in place and at least in some planning authorities there is training in place. Whether this training is sufficient or of an appropriate kind is open to question. Proper and appropriate training should be provided as a matter of right.

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

The provisions are clear and for that are welcome. What in effect is being monitored in some cases will not be the planning authority’s performance, but the developer’s. If the developer is unable to sell houses, there is nothing a planning authority can do to change that. Placing too great an expectation on planning authorities may lead to the release of development land that is not suitable, in order to reach targets. The local authority will need a right of appeal in some cases, such as under Section 251G.

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?

The first is two questions rolled into one. Only local authorities can answer the question on charging. Whether fees are dependent on performance is another. I am sure the majority of planning authorities do their best under difficult conditions. Where they could do better is to be more accountable to those they represent.
12. Are there any other comments you would like to make about the Bill?

The future structure diagram on the flowchart could give rise to bewildering array of complex arrangements for regional partnerships “in flexible combinations where strategic issues arise”. Guidance is required for fairness of representation on such partnerships and community representation must be a requirement.

A structure that “incorporates small amount of locally distinct policy” is begrudging. Local distinctiveness, practices and landscape are the hallmark of Scottish character. These are the making of communities and the areas they live in; their pride and local distinctiveness that attracts visitors to Scotland. To assume a one-size fits all apolicy is to demean our very being.

Yours sincerely,

Alistair Godfrey