Local Government and Communities Committee

Planning (Scotland) Bill

Submission from Culter Community Council

We ask that the Committee push for introduction into the Planning (Scotland) Bill, measures to deliver the following:

- Introducing Equal Right of Appeal, as a really powerful symbol of change, and by providing further scrutiny, will strengthen weak decisions and provide planning authorities with the confidence to make bold decisions. It will encourage developers to engage communities at an early stage, and will build hugely-greater trust in the planning system throughout the public. Is there a better way to deliver ‘Planning must be done with, rather than to, communities’ (“Places, people and planning” para 2.30)?
- aiding a change in the behaviours the planning and development sectors demonstrate towards communities, moving from ‘consultation’ to genuine engagement
- making significant development contrary to Local Development Plans much more difficult

The above points are included in our responses to the Committee’s specific questions, below:

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?

This prompts a question for you the Committee: what can MSPs introduce into the legislation which would help get the planning and development sectors to change their behaviour towards communities, and move from ‘consultation’ to genuine engagement? What can be put in place so that developers who do community engagement well, will be rewarded, and those who don’t, will face some form of sanction?

Our response to your question is ‘no’. There are numerous measures to simplify and speed up the planning process, but so far we have not identified any meaningful requirements in the Bill to ensure that the planning system will pay more attention to community views or to protection of the environment.

It is important that people are not just asked for a view (which is what “consulted” actually means today), but their input needs to be treated as meaningful. People
need to feel heard and have their concerns recognised and responded-to. We do not expect members of the community to get what they want on every occasion, but it does mean that there needs to be a genuine conversation, and those who have taken the time to engage end up understanding why the outcome is as it is. Here is the acid test: when the Scottish government, and Planning Authorities, are regularly quoting examples of how communities have affected decisions, then we will know that engagement (and not just ‘consultation’) is working.

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?**

There is a telling paragraph in last year’s Places, People and Planning consultation document: 3.13 makes the point very clearly that sufficient consents are being granted but there is a material gap in how quickly houses are being built under those consents. There will be higher levels of house-building when and where developers see that they are going to make decent margins on schemes. How will changing the mechanics of granting permission address this?

The various measures proposed to make it easier for developers to obtain planning permission will reduce their costs, but this is tinkering at the edges. No developer is going to build out a site if they don’t believe they will make an adequate return on that site under prevailing economic conditions. Let’s stop beating ourselves up about the planning system needing to be quicker (yes of course developers will always ask for a faster rather than a slower system). Does going through the current planning system really, truly cause undue cost and delay when developers act reasonably – or are the examples of slow approval quoted by developers actually to do with attempts to get approval for outrageous schemes?

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?**

We can speak only for the Aberdeen City & Shire region. The feedback we have is that the SDP has proved very useful in our environment, where some 40% of working people living in the Shire work in the City, and a further percentage have workplaces in the Shire adjacent to the City boundary – in other words, possibly half of all employment for Shire residents is in the greater Aberdeen conurbation. The loss of the SDP and the absence of any statutory replacement could lead to the two adjacent authorities finding it difficult to maintain the quality of connection on planning matters which has been present up to now. We expect this to be exacerbated as budget constraints force the Councils to concentrate on their statutory duties and abandon discretionary activities.
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?

We see the changes set out in the Bill dramatically reducing the opportunity for community involvement; especially:

- removing the Main Issues Report stage from the process for Local Development Plans
- allowing the interval between LDP editions to become 10 years
- removing the obligation to consult on the modified plan following consultation on the draft plan

Even today we see community interests largely ignored, especially for Major schemes. Recent examples in Aberdeen are the incinerator, Marischal Square development, the Aberdeen Western Peripheral Route, and the Kingsford stadium proposal currently being evaluated. Let’s be clear, there are innumerable examples of communities being ‘consulted’, and those obliged to consult can demonstrate they have indeed ‘consulted’, but there are precious few cases where there is any evidence at all that the points raised by communities have caused changes in the outcomes.

Developers have a financial interest in obtaining planning consents; the Planning Authority consists of officers and elected members who are paid to determine planning applications; communities and community groups are made up of unpaid volunteers working in their own time to try and influence outcomes for the betterment of their communities. Until such time as the Scottish Government can show examples of where the input of communities has resulted in material changes in the decisions made, there will remain an immense obstacle to our being able to enrol volunteers in the time-consuming and difficult effort of trying to influence those schemes which are materially sub-optimal from a community’s perspective.

The retention of the ‘examination’ of draft LDPs by the Scottish Government is a major barrier to effective community involvement in the development of plans. As long as a final examination is retained which intervenes in the detailed outcomes, Edinburgh is relieving local government of the obligation to get their plans as good as they can be, and eroding any hope of true community engagement. Aberdeen’s current LDP underwent 18 months of development, consultation and debate between Councillors, the administration, communities, and Community Councils, and then at the final step, the Examination overturned locally-significant (but not unresolved) decisions. How exactly can any of us seriously expect members of the community…
to invest the time and energy in engaging with the development of the LDP, when experience says Edinburgh will change it anyway?

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

No. Reducing the overall level of scrutiny in the planning process to a single one-off step about the establishment of or modification to SDZs, whilst making no material change to the existing provisions on community and environment, is bound to move the balance further in favour of development and away from effective engagement with communities.

Further, the very principle of SDZs rests upon a huge assumption: that development is being constrained by the planning system. As we mention in response to Q2 above, the core issue actually seems to be that enough houses are given permission, but only a limited proportion are being built. This speaks to developers seeing a lack of value in building out approved sites. How will changing the mechanics of granting permission make any difference to this?

The weight of reports submitted by developers today for a Major application is wearisome (especially in the case of those developers putting forward an egregious and off-plan scheme, who deliberately submit many thousands of pages of documents knowing that neither the Planning Authority nor the community can digest and undertake a critical review and then challenge said reports within the time allowed by the planning system) but there is at least in theory an opportunity for the community to review a considerable level of detail. It is hard to see that anything like the same level of detail could possibly be brought forward for an SDZ, when these will each cover a significant area involving potentially a number of developers.

Whilst the Bill requires consultation on the creation or amendment of an SDZ, there is no detail on who will be consulted or any other aspect of the process. Further, there is an obvious scenario whereby community concerns do get raised, and contribute to the Planning Authority refusing the original request. There is then a right of appeal to the Scottish Government.

The message we get from this section of the Bill is that the Scottish Government is saying: local councils, you do all the preliminary paperwork, and we are here to make sure the final answer is Yes. It would be more honest, and make it clear to communities that there are better areas upon which to spend the precious time of our volunteers, to declare that SDZs are a power reserved to the Scottish Government.
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?

Overall, no. There is no mention of an Equal Right of Appeal (see below). We ask that MSPs debate a provision to allow appeal rights for communities during the evidence sessions in Stage 1. This is something we raised during the consultation on ‘Places, People and Planning’ in 2017.

Further, removing the Main Issues Report stage from the process for Local Development Plans, and allowing the interval between LDP editions to become 10 years, both dramatically reduce the opportunity for community involvement.

There are no proposals to increase the quality of consultation and drive a shift in how decisions are made. Once any community sees that ‘consultation’ doesn’t result in changes, or that a developer has managed to obtain consent for a major development on a non-allocated site, or the community’s input to the LDP has been overturned by central government, that community is deeply unlikely to see its members invest the time and energy in any further planning matters for a very long time.

The one bright note is the ability to draw up Local Place Plans. It is however impossible to be confident from the provisions currently included in the Bill that these LPPs will actually be effective - the wording proposed in Part 1 9 (2) (a) of the Bill is to require Councils merely “to have regard to” an LPP. Changing the obligation on Councils to “to take into account” an LPP would make it much easier to justify the huge effort the preparation of an LPP will require of the volunteer organizations drawing them up. We see no mention whatsoever in the Bill for providing any financial or technical support for community bodies in preparing LPPs.

There is an opportunity for MSPs to introduce a really powerful symbol of change. This would be by adding a right of appeal for communities (ERA) via the forthcoming Act. We would expect all those involved in running the planning system to welcome enhanced scrutiny, and not to be afraid of it. Experience in Ireland demonstrates that a third-party right of appeal strengthens weak approvals and improves decision-making – and there is no evidence that appeals affect economic growth or slow down planning. We understand that Councillors in Edinburgh have joined the call for change, recognising that balanced appeal rights could embolden them to make better decisions.

ERA would enable communities to trigger exactly the same review mechanism in the event of a granting of planning permission, as a developer can already trigger in the
event of permission being declined. Many developers do strive to abide by the rules. Some, however, are greedy, and the thing which makes communities despair of the planning system is seeing these developers and landowners driving through egregious proposals for developments which have not been included in the LDP. Just ask the people of Banchory, faced with a plan to build more houses in one go than were set out as being required over the following 5 years for the entire area, on a site not in the LDP. The developer’s behaviour provided a magnificent case-study in how to drive a proposal through regardless of the controls in the planning system. These developers are people who fear nothing but a level of real power able to stop them. The one mechanism which will give such developers pause is the Equal Right of Appeal (ERA).

Correctly structured, ERA provides the means to engage exactly the same Local Review Body of local Councillors who would determine an appeal by a developer, to review an approval seen as either weakly-founded or deeply contentious. Appropriate constraints on when ERA could be used (such as only for off-plan cases, with a defined level of community objection, and similar) would avoid ERA acting as a general disincentive to investment, and avoid it being used (inappropriately) by commercial competitors.

Introducing ERA brings benefits to the whole planning system: it provides further scrutiny for weak decisions using the existing planning processes, provides a big incentive for developers to engage communities at an early stage and change proposals so that they will not trigger an appeal, and will build hugely-greater trust in the planning system throughout the public. Is there a better way to deliver ‘Planning must be done with, rather than to, communities’ (“Places, people and planning” para 2.30)?

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?

These provisions may help to some extent. A far-bigger issue in our area is failure to take enforcement action in the first place. There are examples of enforcement at the level of house renovations, but in my two years as a Community Council PLO I have heard of not one example made available to communities where those undertaking a Major development have been taken to task in an effective way for ignoring or breaching their consent or its conditions. Both the political will, and the resourcing, to enforce consents and their conditions are required to make otherwise-unacceptable developments acceptable to the public.

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?

The principle is attractive. The legacy schemes (planning gain, developer contributions) have manifestly failed in our area, for a multitude of reasons. A new mechanism which allows funds to be set aside for infrastructure, without the constraints attached to the current processes, has promise. Whether it proves to be effective will depend upon all the detail not yet set out. Two inter-related questions are (i) will it operate at a sufficient scale to allow for re-modelling of major roads and such like; and (ii) if it does operate at scale, what impact will this have on development (if a developer has to make a sizable contribution to the levy, there’s either less money for good deeds on the site, or the prices of the houses, offices or other buildings have to go up, possibly to the point where the developer says the scheme is too risky).

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?

Yes, training is good, but not enough. What will really make the difference is a widely-known, properly-resourced process of spot-checks of decisions, with consequences for those who go against the training without good cause.

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

This question is impossible to answer at present. No detail has been provided on what is meant by “performance”, nor on what would be measured and how in determining whether a council has indeed performed. Two key needs – on which the Bill is silent - are (i) to monitor the point at which proposals are refused, to make sure that inappropriate development is indeed refused permission, and that appropriate development is approved; and (ii) to measure the impact of public engagement on planning decisions and the delivery of quality places. Our fear is that “performance” will instead be taken to be speed of delivery and quantity of activity, rather than focusing on the quality of decisions. We ask that the Committee trigger a much-wider debate on what constitutes good performance.

Part 4 of the Bill introduces a policing function exercised upon local councils. In a democracy, policing is accepted not because it exists (as set out in Part 4), but because of how it is done and on what, in furtherance of goals which are important to the populace.
The Bill sets out many measures to reserve actions and decisions to the Scottish Government, thereby increasing its share of the responsibility for delivery of overall planning aims in Scotland. We cannot see mention of any measures to provide the Scottish Government with independent and critical review of its own part in the delivery of the planning function in Scotland.

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 have no basis on which to comment on this matter.

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

There is a major missed opportunity. The 2017 consultation, based on “Places, People and Planning”, explored in detail making it much harder to obtain planning permission for ‘non-allocated’ sites. We saw this as a big step in achieving the Government’s aim to make development Plan-led. In contrast, we see no proposals in the Bill to dissuade the countless developers who do not seem in the least-bit put off from applying for sites not allocated in the relevant LDP. Two measures which would send a very strong signal that if you want to develop, you need to get the site into the Plan, would be (i) to remove a developer’s right to appeal an off-plan decision, and (ii) to introduce Equal Right of Appeal (per (6) above) for the local community.

We would very much like to see added to the Bill something to prevent the tactic commonly used by those developers at the greedy end of the spectrum. At present there is nothing to stop developers from coming back time and again with slightly altered applications, requiring communities to start all over again with their responses to the planning process. We would like to see a presumption against development formally adopted whenever an application is refused because the principle of development is wrong for a site, plus a mechanism preventing a repeat application except where the applicant can demonstrate material changes in the proposal or circumstances. These measures could be limited to Major Applications (we think individual householders and small farmers can be forgiven for needing to submit a repeat application because they didn’t understand the process properly first time round).

For your information, we submitted a response to the 2017 consultation ‘Places, People and Planning’, and with the exception of Local Place Plans, we have seen no meaningful recognition in the Bill of the points we made at that time.
Andy Roberts
Planning Liaison Officer