Planning Bill: Stage 1 Evidence

Introduction

1. COSLA welcomes the opportunity to provide evidence on the Planning Bill. This response is informed by 18 months of work with Scottish Government and partners since the independent review report was published in May 2016. In this time we have established a position on the key elements of the Bill for local government, on which this response now focuses. These key elements are:

   - The removal of the requirement to prepare strategic development plans
   - Local place plans
   - Financial aspects of the Bill, including planning fees
   - Performance of planning authorities
   - Infrastructure levy

2. This response complements other, more detailed submissions from individual local authorities and professional local government associations, including Heads of Planning Scotland.

Removal of Strategic Development Plans (SDPs)

3. COSLA supports partnership working between councils and we believe that local authorities should be able to come together in ways that work for them. While we understand the premise behind the Scottish Government proposal is to direct energy and resources at establishing the spatial needs of a region rather in the process of developing a plan, we question whether what is being proposed is sufficiently thought through to warrant the removal of SDPs entirely. It is not clear, for example, how replacing SDPs with a general duty on local authorities to cooperate on the National Planning Framework (NPF), will work in practice. We acknowledge that the current system does not work as well as desired, and that preparing an SDP is a lengthy and resource intensive process. For this reason, the removal of SDPs was a recommendation of the independent review of planning, when the report was published in May 2016, just after the last Scottish Parliamentary elections.

4. Since the election we have seen multiple approaches to collaboration at a regional level, notably, and especially relevant to this Bill, the enterprise and skills review. We have also seen the increasing establishment of city and other deals within the public sector landscape. In short, the public sector and the prevailing policy which drives it, is not the same in early 2018 as it was in summer 2016. While this direction of travel is referenced within the Bills supporting documentation, we question whether the complete removal of SDPs now makes sense, when some form of regional planning seems increasingly essential to
economic development. It is possible that reform of the current planning process could equally deliver a more flexible approach, without the need for whole-sale removal of SDPs.

5. We are also keen to ensure that local democratic process, even when this is expressed regionally and across boundaries is not undermined by incorporating regional spatial aspirations within the National Planning Framework. Regional collaboration must not, therefore, become a route towards centralisation. If Scottish Government’s proposals are to be enacted and the regional priorities of local authorities are to be incorporated within a reformed National Planning Framework, then there must be more clarity over how much say Ministers will have on what goes in, and what stays out of the NPF. Our clear preference is for a system which is within the full democratic control of the local authorities involved, as we believe this will provide authorities with the fullest possible say over what needs to be delivered to unlock the economic potential of their region.

6. Increasingly we are seeing a diversification in public sector delivery at a regional level because of city and related deals. The model which works in one part of Scotland is not necessarily supported in another. However, whatever model is preferred, regional spatial planning should have a significant role to play in the economic development of wider regions. We can see merit in allowing this diversification of regional spatial planning. This could mean that local authorities covered by a strategic development plan have the option of continuing with this model, if this is desired. However, other models, may also be pursued by local government. One example, which others may seek to adopt, is to join up the existing activity of the SDP, with the work of the regional transport partnership and economic planning for the region, using the developing governance arrangements for the city region.

Local Place Plans

7. COSLA supports strengthening the connection of local people to the services which affect their lives and communities. This major theme was explored by the Commission for Strengthening Local Democracy, which was supported by COSLA. Giving our commitment to strengthening local democracy, COSLA took the difficult decision not to support the original proposal for local place plans as set out in People, Places and Planning: A Consultation on the Future of the Scottish Planning System. This decision was based on a variety of issues, the most fundamental being a concern that local place plans had the potential to become restricted to more affluent and empowered communities, potentially drawing scarce resources away from less affluent areas in the process.

8. We are aware from the consultation sessions organised by Scottish Government that we are not alone in having this concern. While the Scottish Government has tried to respond to concern over their original proposals for local place plans, questions and potential issues remain. We, therefore, feel more scrutiny is needed before the principle of local place plans is agreed and that guidance will be essential to ensure local place plans complement local development planning and community planning.
9. COSLA supports the increased integration of spatial and community planning. It is by doing this that the needs of communities can be addressed in a comprehensive way. The Bill will reform the development planning process to increase the involvement of communities at the start of the process, thereby ensuring the local development plans reflect the views of communities from the start. We support this approach. If this approach is undertaken correctly, local development plans will be developed in line with the views of communities, balanced against the view of others, including developers, and adopted by the council democratically. While local place plans may be complementary to this approach it should be recognised the planning system is being purposely reformed to better engage with communities.

10. While local authorities do not seem to be obligated in the Bill to support the development of local place plans, councils may feel that support and assistance will have to be offered if, once the plan is submitted, the local authority must have regard to any final local place plan. This could become a new burden on local authorities at a time of resource constraint. As we have previously highlighted, this will become a bigger concern if local place plans predominate in better off and, comparatively speaking, more empowered communities. The Bill is silent on the process which governs how local place plans are to be developed and whether local authorities will be able to prioritise local place plans to tackle inequality of outcomes. Without an ability to prioritise plans which arise organically from different communities, local authorities may have to treat all plans equally. This could lead to a conflict with council policy and the new socio-economic duty (also known as the Fairer Scotland Duty) which requires local authorities to consider the socio-economic impact of their decision making to reduce social and economic disadvantage. To avoid this, the relationship between local place plans and the local development plan must be made clearer, with the primacy of the LDP and the Community Plan emphasised. This does not necessary have to happen in the Bill itself and could be achieved through guidance.

11. As we have said the steps which a community body must take to develop a local place plan are not clear. Ideally, further detail should be provided before the principle for local place plans is agreed in the Bill, but at the very least this process needs to be clarified in guidance. If local place plans are to become an important contribution to the planning system, they will have to be supported by both citizens and the local authority alike. This will probably require the investment of time and resource from both communities and local authorities. It is likely that some communities may wish to draw on support to develop a local place plan, and it is not clear whether this has been considered by Scottish Government. Equally, if local place plans are to be credible to communities they will have to be representative of all the viewpoints within a community. As for local development planning, a process will be needed to ensure fairness and transparency, although we are keen to avoid introducing complexity and bureaucracy. We also envisage a need for a mechanism for reaching an agreement within communities and for balancing competing viewpoints. Again, guidance may be the best place for this information as we will want to ensure that there is some flexibility to adapt local place plans to the needs of different communities.
12. Although we support enhancing a community’s involvement in the planning process, we believe there are real questions about how statutory local place plans will operate. Given the potential complexity our preference is that community level plans should not be statutory, as the current system allows for planning to take place at this level. In this scenario, guidance could be developed allowing local authorities and communities to adapt the concept of local place plans to their own needs. To assist with this approach, investment could also be made available to local authorities to assist communities develop local place plans. This is an alternative proposal, but if the Bill is to include local place plans then guidance will also be required to ensure local place plans support and complement local development planning and community planning.

Financial aspects of the Bill, including planning fees

13. COSLA has responded to the Finance Committee’s call for evidence on the Bill’s financial memorandum. However, we felt it important to make some general comments about the financial implications of the Bill in this submission.

14. The costs and savings set out with the Bill are estimates and may not represent the true financial impact for local authorities. Some of the proposals within the Bill are difficult to cost, which is acknowledged by the financial memorandum. We expect that more work will be required to refine the financial implications of the Bill as proposals become clearer and as secondary legislation is developed, but also as a result of implementation, once the Bill is passed and the proposals enacted.

15. The financial memorandum assumes that part 1 of the Bill, including changes to the national planning framework, strategic development plans and local development plans will deliver savings for local government. As we have said, this is an estimate which will have to be validated by the experience of implementation, but it is important to note that while the Bill may lead to savings, this does not mean that the planning system, or indeed Local Government as whole, will see significant savings. We believe this for the following reasons:

- Firstly, the financial assumptions within the financial memorandum must prove accurate which will only be known once the Bill is enacted.
- Secondly, one of the key presumptions underpinning planning reform is that the development planning process should be made more efficient to release resources for the delivery of the local development plan. In other words, money and staff time should be allocated to make places better rather than to make new plans. If this is to happen, resources will need to be re-invested in spatial planning, community planning and service delivery.
- Thirdly, the Bill will require local authorities to carry out new responsibilities. Currently not all local authorities carry out regional spatial planning through strategic development plans. As a result, the potential savings from the removal of SDPs will not apply to thirteen local authorities that are not currently part of a strategic development plan area. Moreover, the Bill will require all local authorities to collaborate to inform the new national planning framework so regional spatial planning will
continue for authorities covered by a SDP, and will have be introduced for all other councils.

- This also applies to the introduction of new proposals such as local place plans and the assessment of planning authorities’ performance. The financial memorandum suggests discretionary spend for local place plans, but does not attach any figures to this assumption, most likely because the proposals are not detailed enough to be able to cost accurately. As we have set out earlier in this submission, councils may find that they have little choice but to support local place plans, if they are to have regard to the final plan. Equally, the assumption that the cost of section 26 of the Bill on performance will be zero to local authorities, but will lead to increased cost to Scottish Government do not ring true as the current system of voluntary performance reporting still requires considerable investment of staff time.

16. As with any new Bill we are happy to work with Scottish Government to help improve the accuracy of financial assumptions. In some situation this may require more detail on the proposals in question to be developed to allow this to take place.

**Performance of Planning Authorities**

17. COSLA recognises the importance of a well-run and high performing planning system. However, we have concerns about the three proposals in section 26 of the Bill, namely annual reporting, the national planning coordinator and the assessment of a planning authority’s performance. We believe these three proposals, taken together, are out of kilter with both a general trend of improvement in planning performance and the close working relationship which has characterised Local Government’s relationship with Scottish Government on planning. Local Authorities currently voluntarily report to Scottish Government on planning performance. The background to this is set out in the policy memorandum for the Bill as is the role of the High Level Group on Planning Performance, which is co-chaired by COSLA and Scottish Government.

18. The decision by Scottish Government to legislate on reporting came as a surprise. Scottish Government had been working with Heads of Planning Scotland to improve the Planning Performance Framework, which has evolved since it was first established. The working assumption as of October 2017 was that this work would continue and was separate from the Bill. Given that Local Authorities currently willingly provide the information that Scottish Government requires on planning performance, and have done so since 2012, we do not believe that introducing a statutory requirement is necessary. It is also not clear whether the proposed requirement for an annual report will mirror what is currently reported by local authorities. This detail, and how this information may be used by Scottish Government and in conjunction with the coordinator post and assessment power, has yet to be established.

19. It is worth emphasising the Bill proposals are being introduced against the background of a long-term trend of improvement in planning performance. The current information, which was presented to the High Level Group, shows that
performance against key markers has improved significantly from 2012/13. In 2016/17, over 26,000 local applications were determined within 9.2 weeks, the quickest since 2010, when we began collecting data in this way. While major application decision times, which account for 1% of all applications, has been criticised by industry, the source of delays are often with the developer and not the local authority. While we accept that performance can be improved further, there is no suggestion that Local Government is presiding over a poorly performing system. In fact, we argue that the evidence points to a generally well-run system, although one that would benefit from further investment, which can only realistically come from a planning fee increase.

20. Along with our partners on the High Level Group, COSLA has been in discussions with Scottish Government on the development of a coordinator post. Discussions were still ongoing as of the last meeting in October and we were not expecting the inclusion of the post in the Bill. The working concept behind the proposal, which arose in working group discussions which were hosted by Scottish Government, was that it would be able to offer support to local authorities to improve planning performance. A report to the High Level Group in October suggested roles and responsibilities for the post could include: overseeing performance monitoring, supporting the stakeholder feedback process, identifying skills gaps and assisting in solutions whether training, shared services etc; sharing of good practice and identification of opportunities for shared services or peer review. No decision was taken at the High Level Group and a further report was expected to be considered at the next meeting. In general terms, COSLA has been supportive of creating such a post although we always imagined it being a function of Local Government rather than a Scottish Government post. We do not oppose the proposal in the Bill, although we question whether legislation in this regard is strictly necessary, but we have questions over how the performance coordinator will work and how the post could relate to the proposals for assessing a planning authorities’ performance.

21. It is the proposals on assessment which give us most concern. As far as we are aware, the appointment of an assessor for local government performance has never recently been discussed. It is our understanding that the coordinator and the possible appointment of an assessor are intended to be separate functions and will not be the same individual or individuals. However, it is how the two interact that requires most careful consideration. Taking the two proposals together we are now looking at something akin to the creation of an external scrutiny and inspection function for planning which encompasses improvement and the auditing of planning authorities’ performance. It is not clear, for example, how the two roles will interact and whether there will be any link. We do not know, for example, whether a judgment by the coordinator that a planning authority’s performance has not improved by some markers could lead to a separate assessment. The financial memorandum indicates that the costing of the Bill is based on an assessment rate of one every two years, which suggest a relatively rare occurrence. However, we would welcome some clarity from Scottish Government on their initial thinking for how frequently assessments could take place. This is also important to judge the possible resource implications for local authorities, as currently no funding is available to local authorities to cover the cost of the new performance regime. We are also
unaware whether this approach has been discussed with the Accounts Commission, as the Commission is responsible for coordinating and facilitating scrutiny in local government.

22. It is worth noting that the legal framework being established for assessment, while lifting from what was originally in the 2006 Planning Act, has the potential to be strictly applied to any local authority. Once enacted, Ministers will have the power to make the appointment and set the scope of the assessment, and once appointed the assessor will have significant access to documentation, facilities and individuals in the local authority. Failure to comply, without a reasonable excuse, to the requirements of the assessor, could lead to a person within the local authority committing an offence, and liable to a fine if convicted. While this type of approach is set out in other legislation and is not new, it is a marked change in tone from the partnership orientated approach which has been a long-standing feature of work on planning performance. For us, it is surprising to go from several years of constructive engagement with Scottish Government on planning performance to the threat of a court case against local government staff, and without any prior consultation. This proposal was not discussed at the last High Level Group which was held at the end of October.

23. It must be remembered that Scottish Government also maintains on statute the planning penalty clause, which can financially penalise councils for what they deem to be underperformance. The proposal in this Bill, therefore, comes on top of section 55 of the Regulatory Reform (Scotland) Act 2014, which in an ideal world COSLA would like to see repealed, and suggests a lack of trust by Scottish Government of local government’s commitment to improvement, which is not borne out by the evidence. Moreover, these measures are likely to reinforce the impression that the speed of decision making is the metric which matters most to Scottish Government and that they are, by extension, putting developer’s interest first. This could undermine balance within the system and detract from place making and the wider engagement of communities, which has been such a significant theme of planning reform.

24. Finally, we do not have a clear statement from Scottish Government on what performance level they wish to see achieved, and what local government should be doing that it is not currently achieving. We argue strongly that if Scottish Government does indeed want to see quicker decision making on some major applications, they should be transparent about this and on the wider implications of doing this. They should also provide local government with the tools to achieve this aim, some of which we acknowledge are in this Bill such as discretionary charging, and move to a position that local authorities can recover their full cost through planning fees. We absolutely believe that the proposals in section 26 of the Bill make a fundamental review of planning fees and a move to full cost recovery for local government even more urgent.

Infrastructure Levy

25. COSLA is supportive of the principle of an infrastructure levy if it can be set, collected and spent locally. We support Scottish Government having the power to introduce a levy, but we will need to see the draft regulations before offering more
than principled support for the proposal. We have offered our assistance to Scottish Government to develop the levy in partnership with Local Government.

26. Ideally, we wish to see a levy working as part of a suite of local choices by which Councils can make decisions locally and flexibly, and which ensure accountability to their communities. The re-investment of the levy should have tangible and understood benefits to local communities, which seek to improve economies locally. It is also worth stating that we do not see an infrastructure levy being different to any other form of local taxation and that, therefore, it needs to meet some basic key principles, over and above what has been set out so far. In line with COSLA’s local taxation principles, we would, therefore, argue that a levy should be fair and easy to understand; be efficient to collect; avoid de-stabilising the underlying tax base; should be determined locally including any exemptions; and should empower local authorities to raise local funding for local priorities.