Local Government and Communities Committee

Planning (Scotland) Bill

Submission from Moray Council

Moray Council response in bold.

The Committee invites views on any aspect of the Bill but it would be helpful if written submissions could address the following questions:

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?

A- No. While the provisions in the Bill will undoubtedly bring about improvements to the Scottish planning system, with a reduction in some aspects of plan preparation, alignment of plans and a focus on delivery, taken in isolation it will not bring about the full suite of reforms required. It is vital that the right balance is achieved between community aspirations and the focus on delivery and outcomes. It is equally important that planning authorities have the necessary resources, particularly staffing, finance and powers to deliver the aspirations of the Bill.

Planning authorities must be able to “intervene” when market conditions are not delivering the expected outcomes, with the powers and funding available to acquire land and be an enabler of development with the funding to ensure an infrastructure first approach is taken. Good placemaking, the re-positioning of planning as an enabler of quality development, better use of technology and more community engagement all need additional staffing and budgeting to deliver. If an authority is unable to intervene, it can lead to appeal decisions which undermine the plan led system and the extensive engagement process the local development plan has followed. It could also lead to members of the public becoming disillusioned with the planning process.

The “game-changing” reforms which the review panel aspired to achieve at the outset of the review process appear to have been diluted considerably and the Bill is in danger of missing the opportunity to truly deliver the full package of reforms necessary to maintain Scotland as an exemplar in town and country planning.

The absence of a third party right of appeal in the Bill is welcome as it will stall the planning process and impact upon delivery. There is also a danger that Local Place Plans could create a tension between community aspirations and securing the “appropriate” development the Bill aims to deliver, which would be a step back from the current process. The levels and methods of engagement being delivered in Moray are considered to be a better approach to be taken at the outset of plan preparation rather than introducing Local Place Plans.
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?

A- There is no guarantee that the proposals in the Bill will result in higher levels of new house building. In Moray, there is a significant effective and reserve longer term housing land supply and considerable funding has been made available for the delivery of affordable housing through the Strategic Housing Investment Programme. However, the barriers to increased delivery remain as “unlocking” land where sites are not coming forward or being released, infrastructure costs and Reporter’s decisions undermining the plan led system. This problem was highlighted recently in a report “Stimulating Housing Development in the Highlands and Islands, October 2017, which concluded, “Land supply is not generally problematic, but credible, effective land is in short and decreasing supply, where the risks and costs to enable viable development are often too great without intervention, especially in more rural and remote environments.”

While proposals such as simplified development zones are strongly supported, they do not address the above fundamental issues, which need to be tackled to increase delivery. Simplified development zones could be a very strong tool in promoting a different model for delivering sites, however these will require significant staff resources to frontload the system.

Alignment of the Planning Bill with funding and new compulsory purchase powers would allow planning authorities to purchase sites at existing use value and control their release for development. The Infrastructure levy may address some of the issues around infrastructure funding, but the lack of details at the moment makes it difficult to assess.

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?

No comment as not directly relevant to this authority.

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?

A- The Council welcomes some of the streamlining of the process, focus on delivery and the removal of the often confusing Main Issues Report stage. The introduction of a Gatecheck process is also welcomed and could be a powerful tool in ensuring the infrastructure needed to support development is fully considered at the outset of the plan process and that there is wider “buy in” from community planning partners and for early community engagement. However, the Gatecheck must be able to demonstrate the benefits of this frontloading and the subsequent reduction in time spent at Examination.
The Council wish to ensure that planning authorities can develop their own local policies as these are often the innovative drivers for real change. The Bill should also strengthen the relationship between community planning and spatial planning with the Gatecheck forming part of that strengthened relationship.

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

A- Potentially yes, in Moray a number of large scale Masterplans have been approved as Supplementary Guidance and these could easily be the foundation for simplified development zones. This would require design codes and additional detail to be worked up and would potentially support smaller phases and self-build opportunities. The next review of planning fees must allow for fees for such approaches as the development of simplified planning zones and their design codes will require significant staff resources. Fees introduced should be mandatory rather than discretionary.

The proposal to widen the scope for other consents such as road construction consent and listed building consent is also welcomed as it would provide a more joined up and streamlined approach for applicants.

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?

A- The Bill has to ensure that the right balance is achieved between delivering development and meeting communities aspirations. While the Main Issues Report stage has caused some confusion, especially in the first round of LDP’s, in Moray, the MIR stage is now better understood and the opportunity is being taken to highlight the positive role that planning plays in our lives and our aspirations for the future. It is important that similar early engagement is used as a focus on plannings role to be built into new procedures to support the aspiration to reposition planning.

Local Place Plans are not supported as they create an additional layer to a process which is supposed to be getting streamlined and simplified to reduce confusion, adding another layer of engagement onto one of the most engaging processes undertaken by a local authority. What would be more effective is to ensure that the thinking behind early engagement at MIR stage in the current system is built into the process to precede the Gatecheck, ensuring that communities aspirations and changes at local level are fully considered at the outset of plan preparation and balanced against the wider, strategic objectives, spatial strategy and drivers which the Plan must address. The Gatecheck could also be a useful tool for highlighting tensions between community aspirations and strategic objectives arising from early engagement.
Feedback suggests that the Development Plans section in Moray Council is regarded as carrying out some of the most effective engagement within the Moray Community Planning Partnership and proposals to increase engagement even more must be resourced properly. The planning authority and local community must work together and communicate at the outset of plan preparation and continue that dialogue throughout the stages of plan preparation and throughout delivery. The Bill should focus on further integration of early and continuing engagement, rather than introduce another layer of plans and further complications to the system.

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?

The increase in fines is welcome, however the key issue is to ensure planning enforcement is about resolution rather than enforcement and therefore resources are required to ensure that enforcement teams are properly resourced to carry out the job, which will instill public confidence in the planning system. This will have a far greater impact on public confidence in the planning system than increasing the level of fines.

Further changes are required as part of a wider review of enforcement processes;

*Environmental Courts- Need to consider a separate specialist environmental court with expertise to deal with the offences. Enforcement cases should only be sent to them where the authority has no other option. The integrity of the planning system is undermined if breaches are not enforced and planning conditions are not complied with as members of the public feel let down.

* Planning Contravention Notices-PCN/s.272 notices- without proper sanctions PCN’s/s272 are ignored which slows up the investigation process and can cost taxpayer money as the planning authority has to gather the necessary information itself. A solution would be to introduce a fine that can be served quickly and easily in the same way as a parking ticket.

* Retrospective applications-If a planning authority is to seek a retrospective application, it should be allowed to charge a higher fee for such applications in order to cover its costs. The fact that the offender has to regularise the unauthorised development may also help to improve confidence in the system.

*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?
A- The infrastructure levy may bring some consistency across Scotland, but the levy is only one of a number of measures which are required to address future infrastructure funding and delivery of development.

Some clarification of what is covered by infrastructure is welcomed although widening to include communications, drainage, sewerage, flood defence systems, supply of water and energy all needs to be clarified or there is a danger that the levy could be at such a high level that development becomes unviable or, in some cases, even more unviable and undermines the focus on delivery of development and importantly, quality places and outcomes. There is also a danger that the infrastructure finance available would become so thinly spread that it takes even longer to deliver necessary infrastructure and without significant change the transition to an “infrastructure first” approach will not be achieved. It is important that local authorities can determine the priority given to how the levy is to be spent.

Currently the developer obligations function requires significant staffing from a number of Council services and a streamlined process through consenting to delivery on the ground is required. Moray Council is currently in the early stages of working up a whole plan viability assessment to inform the Local Development Plan 2020.

In Moray, developer obligations in Elgin City are significantly higher than other towns due to the investment required in the school estate, road network and health facilities. The nature of developer obligations means that the Council and other infrastructure providers have to forward fund facilities and then recoup costs through staged payment developer obligations. As currently presented it does not appear as if the proposed infrastructure levy will address this issue.

Significant additional central government investment in education, health and strategic transport would significantly increase viability and speed up delivery of development and quality placemaking and provide the infrastructure first approach.

Land value is a significant barrier to development coming forward and there is a very real danger that the revenue generated from the infrastructure levy will fall short of covering the cost of new infrastructure and the current funding gap will continue as the balance between development viability and development delivery is achieved. House sale prices realised in Moray are significantly lower than other parts of the country, which creates stresses between the balance of viability and delivery. If set at the wrong level, the levy could lead to an increase in house prices, slowing delivery and increasing demand for affordable housing and failing to recognise the wider benefits which quality placemaking can provide.

The infrastructure levy therefore needs to focus in on “local” infrastructure with different funding arrangements for strategic infrastructure and the work on strategic and local infrastructure has to align with land reform and land values. In this context strategic infrastructure would include new health
centres, new schools and significant road schemes, which would need to be defined, while local would include extensions to existing facilities and improvements to local spaces and places. This differentiation is key to changing the economic context of delivering development and would support investment in placemaking.

Significant additional funding from the Scottish Government is required to achieve the infrastructure first approach and this must be aligned through the Local Development Plan process. While the Gatecheck procedure being introduced offers the opportunity for community planning partners and key stakeholders to “sign up” to the evidence base, a key missing link is the opportunity for the Scottish Government to “sign up” to the Delivery Programme and support the necessary strategic infrastructure funding.

The levy needs to support the infrastructure first approach and it is suggested that a whole Plan viability (Infrastructure planning) report should form part of the Delivery Programme submitted to the Scottish Government outlining proposed development rates with costed plans for essential infrastructure to support the scale of development proposed. This could extend across Community Planning partners to create much better alignment between spatial planning and community planning. The Delivery programme would then be used as a financial tool applying for strategic infrastructure funding to the Scottish Government. This would accelerate delivery of development, provide a truly planned infrastructure approach, provide co-ordination between community planning partners and be supported by a local infrastructure levy. This would also alleviate developers and local authorities concerns regarding viability, delivery and financing of infrastructure. Moray Council would welcome working with the Scottish Government to investigate this option further.

Developers want consistency and certainty and the option of Council’s being able to opt out of the infrastructure levy seems to be at odds with that desire. A consistent, fit for purpose levy, supported by significant strategic funding from the Scottish Government to finance and support an infrastructure first approach is supported by Moray Council.

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?

A-Yes, Moray Council undertakes a considerable amount of training in planning for elected members and this is mandatory prior to elected members making decisions on planning matters, with additional training provided for members on Local Review Body.

The Council notes and supports the Heads of Planning Scotland proposal for a national training agenda and examination. However, training has to be delivered on an ongoing basis as issues and needs arise and the training should be delivered locally as it brings the benefits of establishing relationships and understanding issues in a local context. Training also has to
be provided quickly after elections to allow Committees and Local Review Body meetings to continue and avoid unnecessary delays, which could impact upon delivery and is also required on an ongoing basis, covering a multitude of planning topics.

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

A- This depends on how “performance” is to be defined. The current emphasis upon timescales and numbers has to be expanded/reviewed to include quality and outcomes which will include forward planning and alignment of infrastructure, engagement, delivery and quality placemaking. The performance monitoring has to be widened out to include and gauge the views of key stakeholders and their relationship with planning authorities including Homes for Scotland, Scottish Natural Heritage, SEPA and the NHS. Performance and decision making timescales are reliant on the quality of submissions from developers. For major planning applications there should be a statutory requirement for developers to undertake pre-application meetings with local planning authorities. All information identified at the meeting (including agreeing heads of terms for section 75 agreements) should be a requirement for the application to be validated. Without this fundamental change average timescales for determination will not improve and development will not be delivered on the ground quickly.

Annual reporting of performance is welcome and builds upon the current Planning Performance Framework approach, but again, this has to reflect the wider aspirations for the planning system. The proposed Performance co-ordinator offers an opportunity for better links and sharing of best practice. A fundamental issue about driving change and being able to improve performance, provide leadership, be creative, innovative and bring about change is having the time to do so, which comes back to the common theme throughout this response, of human resource and the need for the planning system to be properly resourced.

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?

Flexibility is welcome, but it would be helpful if proposals for revised fees were forthcoming to allow these to be considered in the context of the requirements from the Planning Bill and allow planning authorities to ensure sufficient resources are available to fulfil statutory requirements.

It is equally important, in a plan led system to ensure that the increased fees are used to cover resource requirements across the wider Council services which contribute to the process. At present the discussion appears to revolve around full cost recovery for the development management function, yet no
reference to how the cost of wider engagement, infrastructure co-ordination, delivery and Local Development Plan preparation will be resourced.

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

To summarise, the Council strongly supports the aims and aspirations of the review programme, but considers that the Bill does not fully address the aspirations and needs to be considered in a wider context of land reform. Significant additional funding is required to provide an infrastructure first approach and to ensure the planning system is properly resourced to deliver the Scottish Government’s aspirations.

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