Local Government and Communities Committee

Planning (Scotland) Bill

Submission from Walker Group Scotland

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?

1.1 In 2016-17, in all sectors approximately 17,000 new build houses were completed in Scotland. Of that figure just over 13,000, or about 75% of those new builds, were private sector led. In 2017, the DPEA sustained appeals for over 3800 houses. That figure equates to around 30% of the private sector output. It seems that, despite the claim of a plan led system, nearly 30% of the private sector housing output appears to be derived from planning permissions which have been pursued through the appeal process. In our opinion, this represents a failure of the current plan led system. We consider that moving from a 5 year to a 10 year cycle for both National Planning Framework and Local Development Plan’s will not improve or secure the levels of new housing which are required. If Local Development Plan’s cannot deliver and perform on the basis of their current 5 year review cycle, they are unlikely to do better in a 10yr cycle. There must be a real prospect that the changes to the development planning could result in even more housing being delivered through the appeal system. There is therefore a need for Development Plan review triggers to be clearly defined to allow such changes to be responded to timeously.

1.2 With regards the view of communities, we do not consider that communities will have any greater involvement in the development plan process and enhanced PAC at development management stage will not improve this. In terms of statutory development plans, the Bill will make it much more difficult for individuals to be directly involved in their shaping and the development industry seems to have been all but cut out of the process.

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?

2.1 The Bill does not address some of the fundamental issues of productivity within development management related to the delivery of new house building. Analysis of the 2016/17 Planning Performance Statistics shows that the number of determinations has declined from over 56,000 in 2006/07 to just over 41,000 in 2010/11 and around 27,000 in 2016/17. This indicates a significant fall in development management productivity and it certainly
confirms our own view that securing planning permission today just takes so much longer.

2.2 With regards the introduction of a community INFRASTRUCTURE LEVY, we do not believe that it is necessary or indeed that planning authorities will rise to the challenge of actually working out what infrastructure they require long before a planning application is put before them. The introduction of such a charging mechanism will certainly involve more work for planning authorities. As it is not intended to replace s.75’s but stand alongside them, the introduction of an additional charging mechanism will not necessarily provide more certainty over the cost of developer contributions at the Plan stage.

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?

3.1 It is not clear how the views of the development industry will influence the making of the Framework but it seems clear that the bulk of planning policy with which future development is to accord will be set by Scottish Government. It will be important that the Scottish Govt undertake this responsibility in a robust and transparent manner and that appropriate scrutiny of the NPF is allowed.

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?

4.1 There needs to be real and meaningful involvement in the delivery plans by the development industry if these are to properly reflect what is achievable over what timescale – proper assessment of deliverability and viability is essential for the successful delivery of any plan. However, the nature of that engagement and involvement has to be measured against the risks to landowners and developers of participating in the LDP process.

4.2 Although the financial memorandum indicates that expenditure by developers in participating in the LDP process is discretionary, clearly the author has not tried to promote land in South Lanarkshire recently. We at the Walker Group were asked to provide Transport and Environmental Statements, Flooding, Water Supply, Surface Water and Sewerage Infrastructure Statements, Air Quality and indicative layouts before the planning authority would even consider a site they already identified in the MIR, for inclusion in the forthcoming LDP. Frontloading will be costly and risky for developers. The price of participation in the development plan process will be too much for
some landowners regardless of how sustainable the site is. Should a sustainable site be rejected for consideration because a landowner cannot afford to provide the level of detailed information necessary to prove effectiveness?

4.3 It does not follow that introducing a 10 yr cycle for LDP’s will itself ensure delivery. To-date, development plans have simply planned or more specifically, determined where development should not take place. There remains a fundamental culture issue with the idea that a plan led system should promote, assist and ensure delivery of development.

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

5.1 The Walker Group do not consider that SDZ’s will contribute significantly to the delivery of the new housing which we all acknowledge is required. We do not consider that there exists a political will at local authority level to direct and fund residential SDZ’s on a scale which will make a difference. There will also be a concern that the qualifications which will be attached to any “deemed consent” will be enough to either stifle the development potential or indeed fail to align with market requirements.

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?

6.1 It is the view of the Walker Group that the Bill entirely fails to address the issue of upfront community engagement. It is not clear where, in the gate checking process, communities will be able to become involved. The focus of community engagement in the Bill seems to remain firmly at the development management stage of the process. Developers who propose to make planning applications for a development which may already be identified in a development plan, will be required to explain not just once but twice, that the principle of development is no longer a matter for discussion. Only after they have done this will they be able to lodge their planning application. Carrying out enhanced pre-application consultation on sites already identified in adopted development plans does not produce meaningful or effective community engagement. Where a site has been allocated in the adopted LDP it should be exempt from PAC.

6.2 We don’t believe that the current PAC requirements offer communities genuine opportunity to influence development. We see very few meaningful
changes arising from PAC and do not believe that simply making developers repeat themselves will empower and promote people and communities to get more involved in local development decisions or have a real influence over future development.

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?**

7.1 As a responsible developer the Walker Group have no comments to make on this matter.

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?**

8.1 The Walker Group remain to be convinced that it is necessary or indeed that planning authorities will rise to the challenge of actually working out what infrastructure they require long before a planning application is put before them. The introduction of such a charging mechanism will certainly involve more work for planning authorities.

8.2 As it is not intended to replace s.75’s but stand alongside them, the introduction of an additional charging mechanism will not necessarily provide more certainty over the cost of developer contributions at the Plan stage.

8.3 Notwithstanding the requirements of the existing Circular on Planning Obligations, which has been in place for over 5 years, most development plans have so far failed to clarify the expected costs of any contributions that might be sought from developers. As a new means of capturing land value uplift the devil will be in the detail and whilst a levy might be capable of capturing land value as a simple charging mechanism, it remains to be seen whether it will actually support or guarantee the delivery of infrastructure.

8.4 West Lothian Council have had SPG in place for nearly 10 years which captures land value to delivery major education infrastructure such as secondary schools costing upwards of £30million. Yet so far all they have managed to achieve an accumulation of cash, whilst the additional secondary schools, which were identified as being required, have yet to be delivered.

8.5 We have heard it suggested that the secondary legislation may include provisions preventing the grant of planning permission until the levy has been
paid. Given that planning permission is only one of many consents required to produce an implementable development, it would, in my opinion, be unreasonable to require payment in advance of the grant of planning consent. I suspect some developers could not secure borrowing against the promise of a planning consent but instead would be required to demonstrate to a lender that planning permission had been issued. There will undoubtedly be problems and conflicts negotiating a s.75 which obliges a planning authority to issue consent following registration and then also requiring the payment of a levy prior to the consent being granted!

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?**

9.1 We consider that it is the responsibility of professional officers to explain planning matters to councillors. Furthermore, officers should act professionally and be prepared to explain to councillors where their views and comments may be at odds with policy or practice or are just not material. If councillors proceed to take a contrary view point, officers acting professionally should immediately distance themselves from the decision and play no further part in either concocting spurious reasons for refusal or drafting illegal conditions. This is not the experience of the Walker Group, where we can cite examples of officers, having recommended approval of a proposal, then become complicit in the preparation and justification of a contrary position at the request of Councillors. Such practice is contrary to the RTPI Code of Conduct.

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

10.1 So long as monitoring and assessment of performance is carried out by the planning authorities themselves and in a manner which is not transparent, the provisions of the Bill will not itself drive performance improvements. There is a fundamental failure to recognise poor productivity and to mask performance statistics by way of clock stopping. Use of the ‘Stop the Clock Protocol’ will lower some overall decision times between years. For instance in 2016/17 for major housing developments there were 34.3 per cent of applications that had the clock stopped, with 41 weeks on average removed from decision times for these applications. This has a marked effect on overall average decision times for major housing applications. Furthermore, the obsession by Heads of Planning Scotland and planning authorities in general, with unaccountable “full cost recovery” has blinded the Scottish Government to the issue of actual productivity.
10.2 Analysis of the 2016/17 Planning Performance Statistics shows that the number of determinations has declined from over 56,000 in 2006/07 to just over 41,000 in 2010/11 and around 27,000 in 2016/17. This indicates a significant fall in development management productivity and it certainly confirms our own view that securing planning permission today just takes so much longer despite the significant fee increases imposed on developers.

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?**

11.1 Whilst there is no doubt planning authorities will have additional flexibility to charge fees for planning services, however, the changes will not result in improved performance. The implication of the expectation that fees will provide enough funding for planning services is that all benefits of increased fees can be retained by a planning service; that is simply not the case as planning fees must be absorbed into general funds within a local authority.

11.2 Notwithstanding 25% increase in planning fees in the 5 years up to June 2017, Midlothian Council’s most recent draft budget allocation proposes the deletion of two planning posts which they admit will lead to delays in the determination of planning applications. This demonstrates disconnect between the planning fees charged by local authorities and planning service services provided. Furthermore, performance over that 5 year period has not improved overall and the use of clock stopping may be masking an even worse performance.

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

12.1 The Walker Group supports the rejection of a third party right of appeal and the retention of the existing rights of appeal. The justification of a right of appeal was set out at paragraph 2.4 of the Scottish Government's consultation paper of 2004 on the Rights of Appeal in Planning\(^1\) as: “This existing right of appeal should be seen in the context of the introduction of the current system of planning legislation in 1947 which, in effect, had the potential to restrict a property owner’s "right" to develop their land. The appeal provision formed part of the planning process to provide appropriate scrutiny of the denial of that right to develop.” That reason remains as valid today as it was in 1947 or 2004.

12.2 Whilst there exists a loss of trust in the planning system by communities, there is a perception that the planning system is operated for the benefit of developers. It is our perception that it is quite the opposite. Indeed, many in

the development industry perceive an unjustified suspicion on the part of those officers operating the planning system and which often manifests itself in anti-development sentiments and displays of unprofessionalism on the part of planning officers. Unfortunately, the Bill itself will not address the culture which undermines the intentions to 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, nor will it deliver housing in the scale and numbers which we all acknowledge is required.

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