Local Government and Communities Committee

Planning (Scotland) Bill

Submission from Aberdeen City Council

I write on behalf of Aberdeen City Council to set out our views on the Planning (Scotland) Bill. This consultation was launched on 15 December 2017. Please find our comments enclosed with this letter.

Aberdeen City Council welcomes the opportunity to make a measured and considered response to the Bill, and we look forward to learning of its progress through the legislative process.

The North East of Scotland is a diverse region which can often face different challenges and opportunities to other areas of Scotland. We suggested in our previous response to the ‘Places, People and Planning’ consultation that we feel our experiences and expertise can help to contribute in a positive and effective way to shaping the future planning system in Scotland. As such, we would welcome the opportunity to work with the Government as a ‘pilot’ authority to ‘sense-check’ detailed proposals as they develop. We maintain this suggestion as the Bill moves forward.

Whilst there is more progress to be made in terms of fleshing out these proposals, we continue to support the broad principles that the Bill sets out. We trust the above enclosed to be in order, however if you have any queries or require further information please do not hesitate to be in touch.

Aberdeen City Council would be grateful if these views can be taken on board as the Bill progresses through Parliament, and seek acknowledgement of the comments provided in due course.

Yours faithfully

Gale Beattie
Planning and Environmental Policy Manager
On behalf of Aberdeen City Council
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?

We agree that the current system is in need of review, and that the proposed package of reforms would have some benefit in improving the current planning system. There are a number of particular elements of the proposed package that we support in principle.

The Bill does aim to balance the views and interests of various groups; however we are not yet in a position to comment on whether this will be effective in practice until further details emerge. More specifically, issues of financial resourcing, knowledge and expertise resourcing, repetition/duplication of work, and ‘consultation fatigue’ when introducing new components to the system (such as Local Place Plans within the Development Planning process). These are essential considerations when seeking a suitable balance between the expectations of the Local Authority, the local communities, and the development sector, and so should be clarified.

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 higher level of housebuilding – and thus the delivery of homes – is linked with aspects of both public and private policy; the role of the planning system is just one aspect of this. It is not the sole responsibility of the planning system to deliver higher levels of housebuilding. We support that the best route to deliver homes, in planning terms, is through the Local Development Plan (LDP) process. Given the gaps in detail surrounding the proposals for Development Planning, it is difficult to comment at this stage.

The emergence of a new National Planning Framework (NPF) and Scottish Planning Policy (SPP) may also impact upon housebuilding statistics. The replacement of the Strategic Development Plan (SDP) tier - which currently sets relevant housing targets in the North-East region - with an enhanced NPF should still provide realistic and deliverable housing targets.

Other proposals identified in the Bill, for example revised planning application fees, may influence the number and nature of planning applications submitted by developers, and consequently impact the level of housebuilding. Revised planning application fees will however contribute towards the level of work undertaken by the planning authority, and support their operation.

Similar comments are also applicable to the proposals relating to an ‘Infrastructure Levy’, discussed later in this response. One major challenge in relation to housebuilding is the availability and delivery of infrastructure. This issue is relevant not only in Aberdeen City, but across the majority of Scotland. We support any measures that can assist the delivery of infrastructure in a sustainable and viable way, to both Authorities and developers.
However, these measures would require long-term analysis to identify any positive or negative changes to actual development completions.

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 North East of Scotland has a long and productive tradition of both partnership and regional working. The North East of Scotland has an almost unique geography and environment and has, over many years, developed a very strong bond between the City, the regional centre, and the surrounding country. The regional planning tier, as it currently exists, is successful.

Regional planning includes vital data gathering and monitoring exercises that are at risk under the proposed system; spatial planning (including the determination of housing and employment land requirements), regional transport strategy, regional economic development and the identification and co-ordination of infrastructure delivery (e.g. digital connections and other key utilities). Resilience measures dealing with climate change must also be addressed.

‘Regional planning’ concerns projects and policies that cannot be delivered by individual communities or Local Authorities on their own, or which require cross boundary co-ordination – which we find to be common in the region. Enhancing the status of regions through the NPF is supported; however we are doubtful as to whether the necessary level of detail compiled in the current ‘regional tier’ can be achieved in NPF.

Whilst we acknowledge this may not be the case for other SDP Authorities around Scotland, we believe the current development planning process works well in our region. We strongly encourage the Government to consider retaining a mechanism via secondary legislation to allow strategic planning to be undertaken locally (within regions), should Authorities wish to opt-in, moving forward. There is a lack of detail as to what, if any, regional partnership working will be retained under the new process and a risk of over-reliance on NPF in the decision-making process. This is clearly a missed opportunity and unfortunate if this remains unresolved. This being the case, we will explore and seek to establish our own arrangements.

There is a strong concern that centralising the amount of housing or employment land required into the NPF undermines local decision making and accountability. A mechanism for Authorities such as our who have provided a healthy land supply to effectively participate in the targets that they have to deliver in LDPs will be essential.

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 agree that changes to the process for producing LDPs increase the focus on delivery – however whether this will lead to the physical delivery of development is unknown. We expected a greater aspiration from the Bill with regards to ‘delivery’ and the LDP. Though a greater focus has been placed on ‘delivery’, the challenges that currently face the delivery of development still remain; it seems that certain aspects have been repealed but not replaced with practical measures to assist delivery. The delivery of development is a joint endeavour for both the public and private sectors, influenced by many factors including market conditions. As mentioned in Q2, the planning system is just one aspect of this.

In terms of complementing other Local Authority priorities, it is intended in the Bill that the Local Outcome Improvement Plan (LOIP) and Local Place Plans (LPPs) will feature in the LDP preparation process. This will rely heavily on cross-department working, and require a consistent approach across all to ensure there is no conflict between each document. The priorities set out in each of these documents are likely to change over time to respond to local and national social, economic and environmental factors. Flexibility is therefore needed to allow each document to operate individually but compliment the others.

The needs of developers and communities would be best voiced by the respective respondents.

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

The Simplified Development Zones (SDZ) process as a whole is currently very complex and costly to Local Authorities, and would require guidance for both Local Authorities and developers in order for it to be used effectively. We support the work that the Scottish Government is currently doing in this regard, and agree that a fee should be charged for the initiation of such areas. Balancing community and environmental interests always presents a challenge in planning, but there is still time to incorporate sufficient safeguards to protect such interests.

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 revising the LDP preparation process, the Bill introduces further opportunities for communities to engage in and influence the LDP – foremost through the introduction of LPPs. We have supported this proposal throughout the Bill process; but have remained clear that the LDP should always remain prevalent in any case. It seems the Bill does propose this, and so we have no further comment in this regard. In terms of practical application, there is still a level of detail we seek in the preparation of LPPs. Ensuring that a fair cross-section of each community is represented is of particular importance when establishing the community bodies for preparing LPPs.
We are keen to seek further guidance on how Local Authorities can effectively balance local interests in this process.

With regards to technical and financial support; improved, user centric, systems can provide guidance and support to make the aims, objectives and outputs of a LPP understandable for all stakeholders. Using digital mapping, data analytics solutions, augmented reality/ visualisations and place based apps could all enhance positive engagement in the development of LPPs.

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?**

Increasing penalties to a level at which they represent a real deterrent is only one part of encouraging better compliance; however it should also be easier for Local Authorities to ensure enforcement action is effective. Feedback from colleagues tells us of a general feeling of no real disincentive for developers to breach planning control, given the limited penalties on offer and resulting lack of interest in planning enforcement activities from the Procurator Fiscal.

Formal enforcement activity, or ultimately direct action, is expensive for Local Authorities to consider in almost all circumstances, and thus politically and corporately there are many reasons why action is not seen as the best ‘value’ option. For example, the maximum fine for a breach of condition notice is £400, whereas the cost of taking a case to court can run into the tens of thousands – thus the public interest in prosecuting can be limited.

This demoralises and affects trust in the system and, as a result, the public perception is that the planning function is weakened and public confidence lost, with breaches left either unaddressed or taking excessive time to resolve through the only reasonable and most cost effective option – negotiation. We agree with the provisions proposed in the Bill at present, but this evidence may require consideration by the Scottish Government.

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?**

Good infrastructure increases efficiency and productivity. It should be seen as a sound investment that delivers real returns for all, rather than a burden for all.

However for this to happen, investment in infrastructure needs to increase significantly from current levels. Whilst the public sector will continue to be the largest funder of infrastructure projects, we believe private sector contributions must be much more meaningful.
Circular 3/2012 states that Developer Obligations can only be obtained for the mitigation of the development in question, and that its spending must be related to the impact of the contributing development. This means that the current legislation for Developer Obligations falls short in allowing the real mitigation of development in many cases. As a result, Developer Obligations payments collected by our Officers cannot be used effectively, and also due to other constraints outwith the Council’s control, for example; ownership, resource, viability, etc. The issue is further intensified when developers can later challenge their Section 75 Agreements (S75) under the current system (i.e. ‘S75A’ amendments), either reducing or removing the contributions.

Another important consideration in light of the recent Supreme Court judgment (Aberdeen City and Shire Strategic Development Planning Authority v Elsick Development Company) is that the Supreme Court created a new test for S75 agreements which has the potential to impact local authorities across Scotland.

We recognise some benefits of the proposed Levy; i.e. more certainty for developers/applicants with regards to the expected Developer Obligation levy rates; an opportunity for Authorities to identify what infrastructure constraints are impacting on the delivery of the LDP and address these as priorities; and a potential for greater public transparency with how monies are being used in their communities. We agree that a levy would go some way to provide a sound basis for capturing infrastructure funding, particularly cumulative or collective contributions towards strategic infrastructure, and infrastructure of a larger scale – but we are not clear whether the proposals outlined in the Bill (in their current form) can resolve this issue.

The Bill suggests that the Levy would be collected by individual Local Authorities and that Scottish Ministers are given powers to have some or all of it transferred to them. The introduction of the Levy will result in an additional resource burden through both establishment and operation. Funding should be made available to ensure this process is self-financing, with establishment costs funded from government and operational costs repaid through the operation of the Levy.

There is no mention of any role for regional partnerships. Because strategic infrastructure is likely to involve cross-boundary issues, we suggest the Levy would be best dealt with at a city-region level. Monies collected for this area must then be retained within this area. Within the North East, this process should be carried out by the new regional partnership body. Whilst we note that NPF will be enhanced to integrate some regional planning – we are concerned that the level of detail may not be adequate, or become quickly outdated.

Furthermore, whilst the theoretical ‘front loading’ of infrastructure funding might be an attractive starting point in addressing the current ‘standstill’ in practice, we are concerned that developers/applicants would raise the issue of development viability, as is often the case now. Further detailed guidance would therefore be needed to outline solutions for various scenarios in practice, and to allow us to apply this at a city and regional level.

Specific, localised impacts should continue to be mitigated through existing means by the relevant Local Authority on a site by site basis.
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 – we fully support the provisions outlined in the Bill.

Aberdeen City Council currently has a system in place for the training of Elected Members involved in planning decisions. We support the formalisation of this process to ensure consistency across Local Authorities in Scotland.

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

The existing performance markers focus on the flow through the planning system. As a Council, we have formally addressed a system process improvement method, and we’ll continue to use aspects of this to drive our performance.

We should distinguish between the performance of the narrow, statutory defined, functions as opposed to the much broader definition of place planning that is addressed by these reforms.

The focus of these ‘performance’ proposals should be shared between Development Planning and not be dwarfed by Development Management processes. Both components are equally important within a Planning Authority, with Development Planning at the front end of the process. It would be encouraging to see positive reinforcement of this, with additional funding identified for Authorities who keep Development Plans on track. This is of particular relevance when proposing greater emphasis on ‘delivery’ in future Plans.

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?

There is a strong case for amending the Fees Regulations to increasing planning fee income and move further towards full cost recovery so that the planning service has the resource to meet wider Scottish Government ambitions.

We agree that proposals to increase and reform planning application fees will go some way to improve how the statutory planning service is resourced, and support a planning fee structure which more accurately reflects the resources required to deal with complex applications. High quality places which make a sound economic contribution to an area require engaged and motivated planners to manage this process.

However, it more important to consider how these proposals improve Place Making, Place Leadership and Place Stewardship, i.e. where the real measure of success is whether the public health and well-being of the community has improved. The planning fee proposals may serve to improve the cost recovery of statutory planning
functions, but ultimately these reforms in total must also be judged against public health and well-being measures. Our comments provided in Q11 (above) with reference to the performance of Development Planning teams are echoed in this section too.

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

We broadly support the aspirations of the recent Bill. We echo our views expressed in previous consultation responses and also views expressed by other respondents; that we still await further detail as to how these aspirations can be applied in practice.