Local Government and Communities Committee

Planning (Scotland) Bill

Submission from Aberdeenshire 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?**

As a whole Aberdeenshire Council consider that the Bill would produce a balanced planning system. It seeks to balance development needs with the needs and aspirations of communities although greater clarity is required in relation to the anticipated working relationship between community planning and the development plan process. However there is concern that not all are in the best interests of the Council and that a number of changes are proposed that appear to address issues in other areas eg issues regarding the preparation of Strategic Development Plans. There is concern that there appears to be centralisation of many aspects of the planning process, not least with the removal of Strategic Development Plans and introduction of the National Planning Framework into the Development Plan process. The likely role for local authorities in the preparation of the National Planning Framework is not clear.

Clarity in relation to the Local Place Plans is required regarding the role of local authorities in relation to facilitation / involvement, the time period that a Local Place Plan would cover and, the connection with the statutory process of Local Development Plan preparation. Duplication of work must be avoided and meeting and managing community expectations will be necessary although a balance between desires, expectations and feasibility needs to be considered. Potential exists for conflict between communities, local authorities and the development industry and further clarity of roles and expectations is required.

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?**

In the context of Aberdeenshire Council there has been a history of generous housing land allocations and housing targets. It is not considered that the proposals are likely to increase the amount of new houses being built and that economic circumstance play a bigger part in the provision of housing than the planning system. Until recently there was a high demand for housing, however its delivery has not always met the demand often caused by the lack of, and difficulties associated with, providing necessary infrastructure. The Infrastructure Levy could go some way to addressing this.

It will be essential that the new housing supply targets set at a national level are accurate and are deliverable. If a lack of deliverable housing sites becomes an issue then it would be helpful if the Bill was amended to identify this as a trigger for an amendment to a Local Development Plan.
3. **Do the proposals in the 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?**

A strong message is reiterated that there is a need for the proposals to recognise that a ’one size fits all’ approach is not appropriate on the basis that the planning function is and has been delivered effectively and efficiently in the north east.

The north east of Scotland has a long tradition and a strong track record of both joint/partnership between the two councils on regional planning, transport and economic development. Regional working is evidenced through the production of the Aberdeen City and Shire Strategic Development Plan, NESTRANS and ONE (Opportunity North East) and before that the Aberdeen City and Shire Structure Plan and ACSEF (Aberdeen City & Shire Economic Future).

Regret is expressed at the move from strategic plans being prepared by the SDPA, subject to approval by Ministers, to a system where contributions will be to a centrally prepared NPF. As part of that change it has not been demonstrated that civil servants in Edinburgh are better placed to assess the needs, aspirations and ambitions of the north east than locally elected and accountable councillors.

The proposals however do not contain a statutory direction to ensure partnership and regional planning across local authorities. If the Bill were to include a direction to cooperate on a continuing regional basis using a structure agreed by the local authorities themselves then Strategic Development Planning Authorities could be repurposed ensuring regional economic development strategies and regional housing strategies are aligned to ensure local needs are fully addressed.

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?**

Provisions seeking to better align community planning and spatial planning are welcomed in order to recognise the role spatial planning plays on improving local outcomes. There is a real concern surrounding the removal of the Main Issues Report, allowing policies and allocations to be properly explored and alternatives considered. The introduction of a gate check is welcomed. Seeking “buy in” at an early stage of the plan making process can only help to ensure a smooth process for local development plan preparation.

There is concern that removing supplementary guidance would have the effect of potentially significantly increasing the size of the local development plan which goes against the aim of producing a leaner and clearer plan.
5. Would Simplified Development Zones balance the need to enable development with enough safeguards for community and environmental interests?

The expansion of Simplified Development Zones (SDZ) from the former Simplified Planning Zone (SPZ) scheme could potentially further enable development however this is only likely in areas where it is clear that the planning or regulatory system is seen as a barrier to development. The incorporation of Road Construction Consent (RCC), into the remit of SDZs will make these areas more attractive to potential developers as an issue with SPZs was that even with the principle of development being established technical matters such as RCC could hold up development. Similarly with Listed Building Consent (LBC) and Conservation Area Consent (CAC) built and natural heritage interests restricted the use of SPZs in areas where potentially they could be of significant benefit in terms of regeneration efforts in town centres. The greater scope for their use may see them being more widely considered as a marketing/promotional tool to encourage development although it is still unclear at this stage their effectiveness in influencing any locational decisions.

In relation to the safeguards for community interests, the proposals allow for front loading or early engagement in relation to the creation of the zones. In practice however it is the case that communities/individuals do not always engage with the planning system until such a time as a proposal is well developed and likely to directly impact upon them. By frontloading the system and indicating a potential range of uses or specifications for new development an opportunity will be available for community interests to be considered. However the final check/balance, or most utilised opportunity for communities/individuals to become involved, will be lost.

For environmental interests including built and natural heritage the simplifying of regulation and removal of checks/balances is not completely compatible with the desire to enable development. Consultation with stakeholders at the designation stage will provide an opportunity for consideration to be given about how to maintain/protect these interests but care will need to be taken to ensure that in an effort to avoid any ‘worst case’ or unforeseen impact upon these interests that the aim of the SDZ is not undermined or that potential developers are not seen to be overly restricted. It is often the case that the planning process can make schemes acceptable and allow competing interests to be balanced to facilitate development.

The creation of SDZs is to facilitate development by streamlining/removing aspects of the planning and other regulatory process. The balance is clearly in favour of enabling development in these areas with the attraction being primarily the removal of potential safeguards such as community engagement or environmental protection in the form of CA and LBC legislation however it may be an acceptable price to pay in areas where the priority is to facilitate development.

The quality or level of community and environmental safeguards will ultimately depend on the type of scheme being developed in terms of its detail/aims/objectives for the individual location. However there is concern that both Councillors and the public will effectively be bypassed because they will have no involvement or be able to scrutinise individual development proposals. It is not considered reasonable for
the public to screen weekly planning lists to find out if development may occur next to them in a SDZ. The public should be involved in the decision-making process.

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?

It is anticipated that the introduction of Local Place Plans (LPPs) and the likely significance in preparing the Local Development Plan (LDP), would, in theory, enhance the opportunity for communities to engage in, and influence the planning process. However, at this time it is believed that the Bill proposes too much in the way of flexibility and further clarity is required with regard to the preparation of LPPs. There is concern that involving communities in LPPs may not always be practical and that “communities” potentially involved in preparing a LPP may not be representative of the whole community.

There needs to be some consistency in the way in which LPPs are to be prepared to ensure they can be transposed to the LDP. Further guidance is required as to how LPPs would be prepared, and what support would be provided, if any, by planning authorities. Would there be a facilitation role provided by either Policy Officers, or Community Planners to help a community body in delivering their LPP? It is not clear from the Bill what period a LPP would cover, or what public consultation, if any, would be required prior to publication, and inclusion as part of a statutory LDP. LPPs would require to put forward deliverable actions/land allocations, rather than being aspirational, in order to align with the revised focus of LDPs.

Clarity is required to ensure that LPPs complement any Community Action Plan, and does not lead to duplication of effort, or confusion.

The Financial Memorandum accompanying the Bill outlines that support from Scottish Government and Planning Authorities would form part of discretionary funding. It is not felt that the costs to Planning Authorities has been fully considered, largely as a result of the uncertainties remaining about how LPPs would be prepared and what support may be required by planning authorities. Clarity is required as to how the costs to communities has been derived. Should this be a cost, per community body, this would result in a significant potential spend in the Aberdeenshire area, should all community councils, decide to prepare a LPP, plus additional costs for other community bodies falling within the definition, who decide to prepare a LPP.

Aberdeenshire Council welcomes the introduction of LPPs, however there are a number of aspects that require clarity to ensure that LPPs can truly enhance opportunities for community involvement in development planning and lead to more efficient and robust LDPs.
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 changes will simplify the process for serving and confirming completion notices and brings the process in line with other statutory notices, namely a notice will give the affected persons 28 days to lodge an objection after which the notice takes effect. This is in the same way as an enforcement notice where the recipient of the notice has 28 days to lodge an appeal with the Directorate of Planning and Environmental Appeals (DPEA) after which the notice takes effect.

Completion notices are a tool available to Planning Authorities which can be used as a means of controlling development, albeit their use has to be carefully considered. The serving of such a notice does not necessarily result in development being completed. An incomplete development at the end of the notice is still lawful and cannot be removed using enforcement powers, nor can it be completed as the permission will have been removed. Thus, in practice, their use will likely continue to be limited.

The increase in fines for non-compliance with enforcement action is welcome and long overdue; the levels of fine have remained the same since the coming into force of the 1997 Act. However the modest increase in 'maximum' fine is likely to lack effectiveness in significantly tackling planning offences.

Research undertaken on behalf of the Scottish Government on ‘Planning Enforcement in Scotland: research into the use of existing powers, barriers and scope for improvement’ 2016, shows that few Scottish Planning Authorities pursue the reporting of planning offences due to difficulties in preparing cases and securing prosecutions. Even cases that are reported are not taken up for a variety of reasons, including not satisfying the tests of public interest, there being no reasonable prospect of conviction, and not meeting the standards of evidence required. The research highlighted the need for the Crown Office/Procurator Fiscal Service to work with Planning Enforcement to help deliver effective planning prosecutions. Improved collaborative working and training are required on the reporting and securing of prosecutions if any benefits are be gained by the increase in penalties for planning offences.

The introduction of charging orders is a positive and effective step towards helping to reduce the risks associated with taking direct action. This brings Planning Enforcement closer in line with Building Standards legislation which allows the use of the charging orders on property and land for building standards enforcement. This new provision is greatly welcomed as a measure to improve debt recovery for direct action.

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?

Under the auspices of the Town and Country Planning (Scotland) Act 1997, the Planning Etc (Scotland) Act 2006 and Circular 3/2012: Planning Obligations and Good Neighbour Agreements, developer obligations are calculated and secured on a site by site basis.

Since 1998, £81.5M has been paid to Aberdeenshire Council by way of developer obligations. However as demonstrated by Figure 1 a significant failing of current legislation relates to how and when developer obligations are paid to the Council. While, the Council secures an average of £24.5M in developer obligations annually the amount paid to the Council is dependent on the number of houses built and the rate at which houses are built. This means that any delays in the delivery of housing or a reduction in the numbers of houses built will have a direct impact on the level of developer obligations income. This is evidenced by the annual developer obligations income averaging £3.8M.

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<th>Contribution Secured</th>
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Aberdeenshire Council currently has in excess of 300 sites that have been granted planning permission with an agreed package of developer obligations. However many cannot be delivered due to infrastructure constraints outwith the Council’s control. Circular 3/2012 dictates that developer obligations can only be secured to mitigate the impact of development and that the spending of developer obligations must be related to the impact of the contributing development. This means that it is outwith the scope of current developer obligations legislation to mitigate the impact of development on Scottish Water’s water and drainage network, local and strategic transport networks, flood defences or telecommunications etc.

Through the introduction of Section 75A by the Planning Etc (Scotland) Act 2006 planning obligations can be modified or discharged should there be a change in planning circumstances at any point in time following the registration of the obligation. As most packages of developer obligations are secured by planning obligations agreed under Section 75 of the Town and Country Planning (Scotland)
Act 1997 as amended, this has meant that developers can challenge the reasoning for securing developer contributions or reduce the level of contributions they had previously agreed to if there has been a change to the circumstances in which the obligations were originally secured.

Together, these elements of the current legislation and guidance governing developer obligations impact significantly on the financing and delivery of Capital Projects, often increasing the Council’s borrowing costs due to the creation of a funding gap. The funding gap is created by the loss of developer obligations income through sites that are granted planning permission being undeliverable due to infrastructure constraints or the removal or reduction in developer obligations obtained through Section 75A of the Act.

In addition to the above drawbacks of the current developer obligations process there is the matter of development viability which looms large in the current financial environment. In terms of development viability the current legislation and guidance creates:

- An environment of uncertainty in the amount of contributions (financial and works in kind) that developers require to provide.
- A situation where land owners benefit from the inflation of land value when planning permission is granted but are not required to pay developer obligations or contribute to the mitigation of the development granted planning permission.
- An environment where the developer in most cases is obligated to pay the agreed package of developer obligations. Due to current market conditions the current legislation is impacting on development viability and therefore the deliverability of development. Limitations to the infrastructure that local authorities can provide meaning that in most cases development that is granted planning permission and a package of developer obligations is agreed cannot be delivered due to infrastructure constraints outwith the local authority’s control.

The advantages of the proposed introduction of an infrastructure-levy are:

- Levy rates provide certainty at the outset about how much money developers/land owners will be expected to pay, when they pay and how they pay.
- A levy shall deliver additional funding for local authorities to carry out a wide range of infrastructure projects (not necessarily connected with the contributing development) that support growth and benefit the local community. It is anticipated that this shall enable Council’s to address infrastructure constraints impacting on the delivery of the Local Development Plan and sites with planning permission.
- The proposed levy shall give local authorities the flexibility and freedom to set their own priorities for what money should be spent on as well as create a predictable funding stream that allows them to plan ahead more effectively;
- The proposed levy shall ensure greater transparency for local people because they will be able to understand how new development is contributing to services and facilities in their community.
Prior to the Community Infrastructure Levy (CIL) being introduced in England only 6% of all planning permissions nationally contributed to the cost of providing infrastructure. These contributions were directed toward the mitigation of the impact of development. Under CIL all but the smallest of development projects contribute to the provision of the additional infrastructure that is required as a result of development.

CIL introduced a charging mechanism whereby contributing developers/landowners paid the required levy contribution after planning permission had been granted but before development commenced on site. CIL is secured and paid independent of the statutory development management process. Thus increasing efficiency and reducing the timescales for processing planning applications. Through CIL the requirement to enter into Section 106 planning obligations is reduced to site-specific circumstances only.

The Bill makes provision for local authorities to be given powers similar to CIL. This would expand the range of development that levy contributions could be secured from as well as the amount of levy revenue generated annually. While at present Aberdeenshire Council secures an average of £24.5M annually in Developer Obligation contributions the rate at which this amount of money is paid to the Council is dependent on the number of houses completed each year. However, a levy operating in a similar vein to CIL would mean that development that has obtained planning permission cannot commence on site until the outstanding levy contribution has been paid. Therefore, levy payments would require to be paid in full prior to the commencement of development. In theory this should mean that the Council shall benefit from increased availability of development-ready land by using levy revenue to fund works to alleviate the constraints preventing the delivery of development.

In practice, however, it is likely that a levy similar to CIL would bring issues of development viability to the fore delaying development delivery. This is because land owners often receive a phased payment for their land as development progresses on site and developers rely on unit sales to pay for the land as well as their obligations to the Council.

Although the introduction of an infrastructure levy in Scotland should in theory enhance the level of funding available to local authorities to deliver infrastructure it may take a significant amount of time for this to become a reality. When CIL was first introduced in England and Wales local authorities averaged 35% of their anticipated annual levy income between 2010 and 2012. This is because the CIL is only applicable to new developments rather than existing planning permissions bound by Section 106 Agreements. Therefore, due to the time taken for new planning permissions to be implemented there would be a delay in levy income generation. Although contributions secured under the current developer obligations system would continue to be paid while the infrastructure levy is introduced the anticipated uplift in income generated by the proposed levy would not be instantaneous and is not a quick fix to infrastructure funding.

There is no doubt that an infrastructure levy shall benefit local authorities engaging in infrastructure projects to support the delivery of development in their area. However, the issue of how and when levy payments should be made requires to be detailed
either through the principal legislation or associated regulations. This shall have a significant bearing on development viability and the deliverability of Local Development Plans.

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, this requirement is supported. It however should be taken into account that training is already mandatory for elected members within Aberdeenshire Council. Outwith expected statutory training requirements, flexibility should allow training to reflect the circumstances and context of each local authority area and the local issues pertaining to that area.

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

After six Planning Performance Frameworks, it must be recognised that planning performance has in general significantly improved across Scotland. The new proposals will undoubtedly retain the focus on performance and rightly so. A better resourced planning system with increased fees will have to result in improved performance and greater certainty for its customers. Mindful however should be the thresholds of performance and the ability of authorities to continuously retain high levels of performance where budgetary constraints may begin to impact. There is however concern about the proposals in relation to the need to appoint a National Planning Performance Co-ordinator and how this will work in practice to ensure compatibility in assessment of performance between authorities particularly as different Councils approach the need to complete the current Planning Performance Framework differently. A bad decision taken quickly should never be seen as an improvement in performance.

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?

It is agreed that an increase of fees is required to cover the cost of effectively resourcing a planning service, but a balance must be struck to avoid fees becoming prohibitive to development. Whilst discretion to charge fees is welcomed, consistency is also required in what can and cannot be charged for and avoid local flexibility causing dubiety and uncertainty. There may be a case for imposing a national fee scale for ‘other charges’ such as pre-application services etc where currently only some authorities have chosen to set charges for this. Prior to any fee setting, the recently suggested costing exercise should be undertaken across all authorities to consider the true costs of providing the Planning Service.
12. Are there any other comments you would like to make about the Bill?

In relation to infrastructure, whilst the proposed Infrastructure Levy deals with ensuring infrastructure is available to benefit and incentivise the delivery of development, it would be worth considering the value of requiring subsequent development and to consider that provision is made for future expansion/upgrade of existing infrastructure. This could include advances in technology and infrastructure related to broadband/wireless technology which would be particularly beneficial in rural communities.

Robert Gray
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