Local Government and Communities Committee

Planning (Scotland) Bill

Submission from Argyll and Bute Council

Note: this response has been prepared by Argyll and Bute Council officers and is due to be endorsed by the Council’s Planning Protective Services and Licensing Committee on 21 February.

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?**

   The need to balance the views of communities, protection of the built and natural environment and to accommodate new development is one of the main principles of the planning system. Overall the proposed changes will help to simplify the system and to make it more transparent. Moving to a 10 year review cycle could result in plans becoming dated and out of touch with the communities they seek to serve. It is important that the flexibility to promote mid-term amendments as proposed in the Bill is retained. The hierarchy of plans in the Development Plan should also be clearly set out.

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?**

   The promotion of higher levels of housebuilding is a key issue at both a national and local level. The role of the development plan in coordinating and supporting the delivery of infrastructure on a planned basis to support development may help to do this. However, the planning system is only part of a complex process of housebuilding supply and demand. Changes proposed in the Bill such as a 10 year time span for local development plans, and strengthening the role of action programmes by changing them to delivery programmes can help, by providing more certainty and confidence to housebuilders. Simplified Development Zones where they are established to support housing development may also help. However in many areas the economic viability of housebuilding requires to be taken into consideration. This can be significantly influenced by the requirement for infrastructure investment, for smaller schemes and in remoter rural and island areas the costs of these can be considerable. The proposed infrastructure levy may act as a disincentive in such areas, and there could be a real challenge in achieving enough contributions to recover the costs of administering such a system, let alone provide funding to make a meaningful contribution to infrastructure investment.

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?**

   It’s not clear how the removal of SDP’s and their replacement with a requirement to contribute to a new National Planning Framework will operate, nor how regional
Partnership approaches will operate. There may be increased resource implications for those authorities which are not currently part of SDP areas, and a risk that those outwith former SDP areas will not be able to fully participate at a National or regional level. Further detail is required on how regional partnerships should operate and consideration given as to how those authorities who may fall between two or more regional partnerships should be best represented.

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?

The move to a ten year cycle of plan replacement may help to refocus development planning from the process of plan preparation to delivery. The requirement for an Evidence Report and for that to be gatechecked prior to commencement of preparation of the proposed plan, and the proposals to move from an Action Programme to a Delivery Programme will help to place more emphasis on monitoring of the plan and its implementation. Greater corporate ownership of the Local Development Plan with approval required by full Council and Chief Executive, and the requirement for the LDP to reflect the local outcome improvement plans should help to ensure local authority priorities as they relate to land use are reflected in the LDP. It should be recognised however that LOIP and potentially Local Place Plans can, or could, reflect broader community planning proposals which extend beyond land use planning and these may not readily be reflected in the LDP. There is a risk that by moving to a ten year review period that LDP’s will not be able to reflect current Corporate or Community Planning initiatives. There will also be potential issues with expectations as to how Local Place Plans are to be reflected in an LDP given the potential 10 year timescale for replacement LDP’s. The ability to make amendments to an LDP may help to address this, however further detail in the Regulations should clearly set out how each should relate to the other. Moving to a ten year timescale, will help to provide greater certainty for both communities and developers and will allow infrastructure delivery to be better planned and coordinated. However there is a risk that without flexibility, the ability for LDP to anticipate the economic climate and development requirements over a ten or so year period, may mean that change is less easily accommodated. In this regard the ability of a planning authority to amend or if necessary prepare a new Local Development Plan within the ten year period will be crucial.

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

SDZs are given particular prominence within the Bill with more detail and prescription than any other topic. Presumably this signals a step change in direction by the Scottish Government to focus on growth and investment areas in order to support development.

The idea of SDZs to replace SPZs is supported, but the rate of take up is uncertain, given the relatively few SPZs designated under the current system. In principle the
designation of new development zones could help to support the delivery LDP strategies and particular local priorities by highlighting those areas which are “development ready”. However it is considered that such a designation would also need to be supported by a commitment from key agencies via the LDP to support the delivery and co-ordination of the provision of infrastructure and services within the SDZ area.

Widening the scope of SDZ’s to include conservation areas, green belts and national scenic areas is supported, provided that recognition of appropriate standards and types of schemes which would be eligible for SDZ status within such areas made clear.

Including the potential for other consents such as road construction consents, listed building consent, conservation area consent, and advertisement consent to be covered by such a scheme is also supported, however it should be recognized that not every scheme will be suitable for such a blanket approach to consents.

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?

Removing the Main Issues Report stage will potentially reduce the opportunities for early engagement in the plan process. However having undertaken two cycles of plan preparation, experience has shown that public involvement at the MIR stage can be varied. In general communities become more involved when there are specific proposals affecting their communities and where more details of proposed developments are available. MIR has not therefore been as effective as it might have been in generating public interest the local development plan system.

Going to a proposed plan stage, providing for a longer statutory consultation period, and enabling planning authorities to make minor modifications to the proposed plan, in response to the consultation exercise, before proceeding to an examination, should help to secure more effective and meaningful community involvement in the process. Enabling the planning authority to make modifications to the proposed plan in response to representations will allow authorities to demonstrate their public accountability and transparency.

Making provision for Local Place Plans prepared by communities themselves to be recognised as part of the development plan, and for these to be reflected in the Local Development Plan could enable greater community involvement in the plan process. However, this is not without its challenges. There will be significant resource implications both for communities preparing Local Place Plans, and for planning authorities in supporting and responding to them. This will be particularly so where there are numerous communities within the planning authority’s area, and where smaller communities may require more professional support to prepare Place Plans. The Bill provides no detail on the financial and technical support that will be required in order to enable local place plans to be prepared, and further detail in regulations
and other guidance will be required in order to explain how it is envisaged they will be carried out. The availability of skills within communities themselves and/or professionals to support them in the preparation of Local Place Plans could result in a broad range of approaches to them, and regulations will be required in order to establish a minimum requirements in order to for the planning authority to give due consideration with regard to the Local Development Plan.

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 the fine level is welcomed; however planning enforcement should be about resolution rather than punishment. Clarity and consistency in the application of the enforcement service and compliance monitoring will have a far greater impact on public confidence in the planning system than increasing the level of fines.

The changes proposed in the Bill to strengthen enforcement powers will help but further changes in the following areas, as part of a wider review of enforcement processes could help further:

**Environmental Courts**

Consideration should be given to establishing a separate specialist environmental court which has the expertise to deal with the offences (This could also include other environmental matters from SEPA/SNH). Although the issue of environmental courts was looked at some time ago and rejected it has been successful in other countries and the case for them should be re-examined.

**Fixed penalty fines**

The use of fines is not considered to be a sustainable, long term solution as a workable enforcement tool. Even at the increased rates fines are still relatively low and an offender may choose to pay it to be immune from further enforcement action. A solution may be to allow the planning authority to impose repeat/increasing fines until the breach has been remedied. At the same time planning authorities may need additional powers to make it easier to recoup any unpaid fines.

**Planning Contravention Notices- PCN/S.272 notices**

Under existing legislation the failure to comply with PCN/s.272 notices should be referred to Procurator Fiscal, but in practice this is not a realistic option as it is not seen as a serious offence. Without proper sanctions, PCN's/S.272 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 possible solution would be to introduce a fine that can be served quickly and easily in the same way as a parking ticket.
Retrospective applications

Circular 10/2009 suggests that we should be seeking retrospective applications for breaches that require permission but are otherwise generally acceptable. Where a planning authority has already spent resources investigating alleged breaches then 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 (at a higher than normal fee) may also help to improve public confidence in the system.

Powers to decline to determine a retrospective application

Some offenders submit retrospective applications when enforcement action is being taken. In some circumstances, the offender can be playing the system to prolong the unauthorised use/development. To prevent this, the planning authority should have the discretionary power to refuse to accept applications where enforcement action has been taken.

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?

The principle of an infrastructure levy is supported, however there are concerns that economically fragile and rural areas may not be able to support a levy at rates which would be sufficient to deliver the infrastructure required by new developments. This is particularly the case in sparsely populated rural areas and on islands where the costs of infrastructure provision are considerably higher on a pro rata basis and where the scale of development and rates of completion are low. Consideration would need to be given to the potential to vary the rate of contribution to the infrastructure levy, and it would also need to be applied to both large scale and small scale developments.

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 all councillors who sit on Planning Committees or Local Review Bodies should receive mandatory training. In particular, the introduction of a national training agenda and examination/course completion for councillors is supported. It will ensure national consistency, and will provide a comprehensive training manual which will be kept up to date. This national standard of training should also be supplemented by local training, illustrated by local examples and case studies to provide practical and be more meaningful examples to councillors.

For those councillors involved in Local Review Bodies additional and more detailed training should be provided. There are specific and unique differences between a member being part of a planning committee and a member being on the LRB.
10. **Will the proposals in the Bill aimed at monitoring and improving the performance of planning authorities help drive performance improvements?**

Local Authorities are currently preparing Planning Performance Frameworks and submitting them on an annual basis to Scottish Ministers. These provide annual monitoring of performance against key indicators, and have helped to deliver performance improvements. The role of the proposed independent co-ordinator and independent assessors will be crucial to the success of promoting performance improvements, and should be seen as part of an ongoing and two way process. It will be important that the new procedures identify improvements and enhancements against a jointly agreed set of indicators. Measures such as quality of design and places, community engagement, and quality of outcome should be taken into account as well as more traditional measures such as speed of planning decisions.

It will also be important to recognise that other factors can influence the performance of planning authorities, and it may be appropriate to extend the assessment by the independent assessors to include other stakeholders in the system such as the key agencies, the business and development industry, housebuilders and Homes for Scotland, and also the DPEA and Scottish Ministers where they are also involved in the process.

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?**

Planning fees should seek to move the operation of the planning system towards full cost recovery, in order to ensure that sufficient resources are available to deliver an effective high quality planning service. There should be scope for authorities to adopt a more flexible fee structure that could involve charging for some discretionary services, and waiving the fee, or providing for reduced rates in some circumstances. Consideration should be given to ring fencing planning fees to fund planning services. Both Heads of Planning Scotland (HOPS) and the Royal Town Planning Institute in Scotland (RTPI) have recently published background papers and survey data in 2013, 2014 and 2015. Figures provided by HOPS indicated that, in 2015, planning fees covered only 63% of the cost of handling applications.

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

The proposed changes to pre –application consultation (PAC) detailed in section 12 of the Bill are welcomed. These could help to streamline the current process by removing the need for further PAC, should a new application be needed to address, relatively small but material changes to a scheme. However, come more effective evidence of public engagement and relevance to the application would be demonstrated to the application if the requirement to submit this was within 12 months of the PAC rather than 18 months as proposed.