Local Government and Communities Committee

Planning (Scotland) Bill

Submission from Brodies LLP

1. Brodies is Scotland’s largest law firm. With offices in Aberdeen, Edinburgh, Glasgow and Brussels, we provide legal advice to private and public sector clients across all sectors of the Scottish economy.

2. Brodies’ planning team of eight experienced lawyers is the largest in Scotland, led by high-profile specialist Neil Collar. It has always been at the forefront of developing new approaches, and sharing information and experiences with the planning profession. It is active in all development sectors throughout Scotland, especially housing and renewables.

3. This response is based on our experience and discussions with a wide variety of clients and contacts.

Overview

4. Growth requires private investors to provide funding, for which there is worldwide competition. It is important to minimise delays in the Scottish planning system and uncertain outcomes, to avoid making it more attractive to invest in development in other countries.

5. There is a limit to what the planning system can achieve. Often delays in development are caused by lack of essential infrastructure that needs to be delivered by external agencies, which is beyond the control of planning authorities. The Bill does not provide the infrastructure first approach mentioned in the consultation process by the Scottish Government.

6. In the main, the existing ‘tool box’ of planning powers is sufficient, although the Bill does contain some useful changes. In our view what is required is:

- better use of those powers;
- sufficient financial resource for planning authorities and other public sector agencies;
- better collaboration within local authorities, and between local authorities, other public sector agencies and infrastructure providers.

Our response to the questions from the Local Government and Communities Committee

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?
7. We agree with the policy objectives of the Bill. In many instances the Bill provides enabling powers. This means that detail of many key proposals will emerge later. Until those details are available, it is not possible to assess the impact and outcomes.

8. We agree with the Scottish Government that the priority is effective engagement with communities at the early stage of the planning process, rather than introduce a third party right of appeal to address dissatisfaction with the outcome.

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?

9. The proposals in the Bill deal with more general matters, and will not directly result in higher levels of new house building.

10. The abolition of strategic development plans will remove housing land supply provisions. We assume that National Planning Framework 4 will promote housebuilding, including replacement housing land supply provisions, but that is still to be confirmed. Regardless of where the numbers are set, work on developing a fit for purpose methodology with industry buy-in is essential.

11. The proposed 10 year cycle would mean that existing local development plans would not be replaced in some cases until 2028/9. So effective implementation of NPF4, especially housing land requirements, should include a requirement on planning authorities to replace their local development plans within say 5 years of publication of NPF4. The Scottish Government also need to provide guidance to planning authorities to avoid development being delayed by a policy hiatus while NPF4 is being prepared. Planning authorities in the early stages of preparing a proposed plan might decide to postpone preparation, as the Bill would give them an extra 5 years before the new plan would need to be adopted.

12. We continue to have reservations about a 10-year plan review cycle reviving the previous problem of out-of-date plans. The Bill enables a planning authority to amend the LDP at any time, but we consider review in certain circumstances should be a duty, not left to the discretion of the planning authority – for example, where there is a significant shortfall in housing land supply.

13. Consideration also has to be given to avoiding local place plan preparation delaying determination of planning applications. Local place plans need only have regard to rather than take account of LDPs. While LPPs will not form part of the development plan (which we consider the correct approach), we are concerned at the scope for substantial inconsistency between an LDP and a LPP.

14. As mentioned above, the Bill does not contain proposals for an infrastructure first approach. Provision of education infrastructure in particular has been a problem for delivering housing.

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?
15. The Bill does not contain any details on regional partnership working. That provides flexibility, but guidance for planning authorities is required.

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?

16. We agree with the objective of reducing the time spent on plan-making. However, safeguards need to be maintained to ensure all parties have a right to be heard, especially in relation to the proposed gatecheck, or confidence in the process will be eroded. We note the word “assessment” rather than “examination” is used, but the significance of this is not yet clear.

17. It is disappointing that the Bill does not contain any detailed proposals focussing on delivery. It is notable that a requirement to prepare a delivery programme is to be introduced, but the scope and content is not prescribed in the Bill.

18. Although reducing the time spent on plan-making will free up resource, in the absence of ring-fencing, there is potential for the “spare” resource to be diverted to other local authority services rather than planning.

19. We consider that there should be a requirement for the LDP to comply with the NPF, otherwise there will be a opportunity for planning authorities to adopt non-compliant LDPs, in contrast to the existing situation where the LDP must be consistent with the SDP. This is particularly important as the housing land requirements seem likely to be contained in the NPF rather than the SDP. At present, there is no change proposed to the existing requirement for the LDP to take into account the NPF, despite the NPF being given elevated status, becoming part of the development plan. The Bill proposes that in the event of incompatibility between the NPF and the LDP, the later in date will prevail. In consequence, an LDP adopted after the NPF would prevail.

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

20. The key will be the regulations to be issued prescribing the consultation procedures.

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?

21. Preparation of a local place plan will require planning and other technical assistance. Many communities may not have people with those skills. Presumably financial resources will be needed, for the community body to pay external
consultants to assist it. Planning authorities will also need to provide information. The Bill is silent on these matters. The Financial Memorandum refers to possible sources of funding, including volunteer time. It also states that there will be no separate costs to planning authorities. However, it seems likely that additional burdens will be placed on planning authorities, which will be expected to provide information (even if there is no legal requirement), and will have to monitor preparation of the plan to avoid problems with their LDP.

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?

22 The existing enforcement powers are adequate. Planning authorities should be encouraged to fully resource enforcement and have the confidence to use their power to take direct action to remedy the breach.

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?

23. It is not appropriate for us to comment on this, as we have been involved in the research project commissioned by the Scottish Government.

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?

24. In our experience councillors welcome training opportunities. However, any compulsory requirement will have to take account of the full range of responsibilities of councillors and their working arrangements. Training should be on-going and not just when councillors are appointed to the planning committee.

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

25. The Bill provides a framework, but does not contain any specific provisions. The proposed national planning performance coordinator would have a key role in driving performance improvements.

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?
26. It is unlikely that the fee changes in the Bill will provide substantial additional funding. We note there is a proposal for new Fee Regulations, which will move towards full cost recovery.

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

27. **National Planning Framework** - The Bill proposes to elevate the status of the National Planning Framework, making it part of the development plan. It is therefore appropriate that the NPF should be subject to external examination by independent experts, which is an existing requirement for local development plans.

28. **Pre-application consultation** - The Bill contains welcome clarifications on pre-application consultation procedures. However, we remain concerned that development management procedures will not treat allocated sites proportionately. The amount of pre- and post-application consultation and scrutiny for allocated sites raises the question of the advantage of a site being allocated. The development management process for allocated sites needs to be made more efficient and proportionate. In particular, we query whether sufficient new information is likely to be available at the PPiP stage to justify PAC for an allocated site. Too much attention on the process rather than the purpose of consultation delays development, imposes cost on developers, and can lead to communities suffering consultation fatigue.

29. **Local review bodies** – we query whether it is appropriate to include certificates of lawfulness within the jurisdiction of local review bodies. Unlike planning applications, which involve balancing various planning considerations, applications for certificates of lawfulness involve deciding whether sufficient evidence has been provided to prove lawfulness. That can often involve complex legal issues which are better dealt with by planning professionals, i.e. reporters appointed by the Scottish Ministers.

30. **Modifying section 75 obligations** - We welcome the proposals to introduce flexibility to the section 75A provisions for modifying planning obligations.

31. **Development management** – there is little in the Bill to reduce complexity of planning application procedures, or provide confidence that decisions can be made faster. Hopefully this will be addressed when proposals are brought forward for changes to secondary legislation.

32. **Planning conditions** – a process for deemed discharge of conditions needs to be considered to avoid the substantial delays which are currently holding up development starts, or pushing developers into breach because pre-commencement conditions cannot be discharged.