Local Government and Communities Committee

Planning (Scotland) Bill

Submission from Comhairle nan Eilean Siar

The Comhairle would like to acknowledge the opportunities already afforded by Scottish Government to it and other island authorities in the preparatory stages of the Bill and the Planning Review which sought to ‘island proof’ the process. The Comhairle would wish to continue to participate in that process.

Q1 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?

A1 Some aspects of the Planning Bill are welcomed and the Comhairle acknowledges that it does aim to promote participation in planning whilst balancing protection of the natural and built environment. However aspects of the Bill which aim to achieve this will have resource implication for planning authorities and will test authorities in this respect, including changes to schemes of delegation, assimilation of local place plans, simplified development zones.

Aspects of development planning including simplified development zones (SDZs) and the removal of statutory supplementary guidance will reduce participation, certainty and transparency for local communities, and potentially cause more conflict with the extensive coverage of environmental and heritage assets in the Outer Hebrides – contrary to the objectives of the planning review.

The changes proposed within Development Management on Pre-application Consultation for Major and National developments, provided they bring more structure to the PAC process e.g. an early community engagement event and a subsequent feedback event (towards end of 12 week period) should aid community participation and a better understanding of the purpose and benefits of PAC in the planning process.

Q2 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?

A2 The Comhairle acknowledges that Scottish Government does recognises the distinct housing market characteristics in the Outer Hebrides, whereby
Scottish Planning Policy (SPP) permits a different approach to housing delivery in rural and island areas and recognition that the housing market areas do not function conventionally. The Comhairle would seek that this recognition continues and the need for a distinct approach in certain areas of Scotland is maintained.

Given the lack of volume house builders in the Outer Hebrides, a high incidence of individual self-build on windfall sites, and additional island building costs, any infrastructure levy would impact negatively on the rate of house building.

The Comhairle would seek greater recognition from Scottish Government of higher build costs in the islands which increase unit costs, for all forms of building including social house building. This is further exacerbated in the more remote islands e.g. Barra, where build costs can be around 40% more than the mainland, and there are infrastructure, supply chain and contractor availability issues. Could measures sought in the Islands Bill and Islands Deal negotiations around taking all housing grant schemes together in rural and island areas and giving greater discretion to local and regional housing stakeholders to deliver them, be considered or promoted in the Planning Bill?

Q3 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?

A3 Whilst the Comhairle is not within an SDP system, it does already proactively engage with other rural, island and Highlands authorities to maintain regional cooperation. This has included: joint working on areas of common interest including emerging legislation; regional policy interests e.g. aquaculture; the previous reviews of SPP and NPF e.g. areas of coordinated actions etc.; and regional forums including the North of Scotland Development Plan Forum.

However the Comhairle is concerned that the succession of the SDP system into regional geographies will preclude smaller and non-urban authorities, and that the bigger (former SDP areas) will dominate regional planning feed-in at a national level. In particular when it comes to revision of the National Planning Framework, and other national policy frameworks.

Q4 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 Comhairle welcomes a number of the changes in development planning and the focus on delivery. The move away from the stringent 5 year plan should in principle remove staff from the constant cycle of plan preparation. However, whilst the proposed changes in development planning aim to reduce some of the processes, a number of new additional processes being introduced which will still divert staff from Plan and development delivery. Whilst the removal of the Main Issues Report (MIR) stage is welcome the unknowns around the additional gate check process, a more developed Plan at this stage, and the process of submitting an evidence report is yet to be detailed and quantified.

The Comhairle does welcome the progression from the MIR stage though which should give communities, elected members and other planning stakeholders more understanding and buy-in to the development plan process. Some stakeholders struggled with their participation in the MIR stage.

The stronger integration with community planning and other local authority priorities is positive but the Comhairle notes the need to maintain the development plan’s function as a ‘land use’ planning tool. The cross over with community planning and the option that development plans will take up local place plans will raise expectations beyond delivery of land use planning. Yes, this should enable development but clarity on roles and responsibilities is required, to manage expectation.

Further, the expectation of simplified development zones will entail significant preparation of schemes by development teams.

The Comhairle has previously cited its concern that the removal of statutory supplementary guidance (SG) is a backwards move and will reduce certainty and transparency for communities and developers. The Comhairle is a planning authority dealing with some complex and sensitive topic areas e.g. aquaculture, wind energy development etc. which require technical and distinct policy frameworks, best addressed in statutory supplementary guidance. It is unfair to penalise authorities like the Comhairle which have been prudent in producing essential SGs only. The Comhairle would not oppose statutory SGs being subject to Examination, if they were reinstated.

Q5 Would Simplified Development Zones balance the need to enable development with enough safeguards for community and environmental interests?
The Comhairle would note that the principles set out for simplified development zones in the Bill should give sufficient safeguards for community and environmental interests. However the Comhairle is concerned that the onus and extent of preparation for potentially large and complex developments now lying with planning authorities is significant. SDZs may not be appropriate in the Outer Hebrides due to the high level of environmental designations and the dispersed nature and context of development in the Islands.

The Comhairle is aware of the simplified planning zone pilot undertaken in Argyll and Bute and would seek clarity on the scope there would be for implementing SDZs in rural areas or where volume developers are limited. The development pressure is different in rural areas. Would SDZs not be overly complex /resource intensive for some rural development, where consideration of development is very much on a site by site basis?

Q6 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?

A6 As outlined previously in A4 above, how you manage expectation of wider delivery of Local Place Plans within the capacity of the ‘terrestrial’ land use planning system needs consideration. The expectation of taking local place plans into the development plan relies on effective community capacity and skills to work up a local place plan in the first place. The Comhairle has concerns that in order to align with broader development plan timescales and realise effective community engagement, some local place plans will require significant planning service input for them to be to worked up, appraised and assessed.

Quality of, and community capacity to prepare, local place plans will vary and the timelines of local place plans will never wholly align with that of the Development Plan process. This will entail planning staff having to ‘hand hold’ and develop some plans which could make positive contributions to the Development Plan, but require support. That said, in the Outer Hebrides we already have an established and developed body of community land owning trusts that have experience in forms of local place planning, which could offer good practice to other areas or communities.

Who will be responsible for any strategic environmental assessment, habitats regulation appraisal or any other assessment process of local place plans
which seek incorporation in the LDP, as would be required of other elements of the development plan e.g. policies, proposal sites etc.?

The Comhairle would note though that it is still hard to promote community participation the in development planning despite staff being will to meet or involve groups currently.

Q7 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?

A7 In rural areas including the Outer Hebrides breaches of planning control can be difficult to identify timeously due to the rural geography and dispersed nature of development. Most breaches can be resolved by negotiation and/or retrospective application to regularise. For the small number of cases that require to go through formal enforcement proceedings any increase in the level of fines may help compliance. The registering of charges for Direct Action in the Land Register are unlikely to assist due to Crofting tenure and the low incidence of land transactions. Definition of development is sometimes at the root of enforcement and in relation to Marine Fish Farming the Comhairle would support an amendment to the definition of ‘development’, the effect of which would allow operators to remove cages and equipment for a short period (e.g. for replacement or maintenance) and thereafter re-install per the consent held without a need to reapply for planning permission.

Q8 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?

A8 Due to the limited economic or commercial development activity and the no large scale or volume housing builders in the Outer Hebrides, the scope for gaining significant infrastructure levy income is limited. Given the lack of volume developers in the Outer Hebrides, a high incidence of individual self-builders, and additional island building costs any infrastructure levy would impact negatively on the rate of house building and development, and fall to individual householders rather than major developers.

Because of the nature of development in the Outer Hebrides a significant portion of the planning casework in Outer Hebrides involves applications other
than mainstream applications e.g. prior notifications, EIA screening / scoping, agricultural applications etc. – would these reasonably be expected to make infrastructure levy payments? And there are very few major or national developments.

Would liability for the levy be taken into account when central government is calculating the resource planning assumption funding for the affordable housing supply programme?

Any income from the proposed levy would not be of a sufficient scale to offset island on-costs for construction, development and infrastructure provision.

Q9 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?

A9 Mandatory training would benefit elected Members in terms of the quality and process of decision making. The Comhairle’s existing Scheme of Delegation requires that Members undertake training before participating in any planning decisions. However as it is not mandatory there is no compulsion for members to attend timeously, and engagement may be enhanced if training sessions were undertaken with a full cohort of members present (experienced and new) and testing of learning undertaken (as per Licencing Board). While there is significant cost and resource required to deliver training in an island authority (due to member travel and subsistence and external trainer consultancy fees, travel and subsistence) these costs would in part be offset by a reduction in time and cost of delivering repeat training events.

Q10 Will the proposals in the Bill aimed at monitoring and improving the performance of planning authorities help drive performance improvements?

A10 Whilst Planning Performance monitoring is positive and can be constructive, it is an onerous and resource intensive process where the benefits are not necessarily met by the resource outlay. Even the current process is particularly onerous on smaller planning teams within smaller authorities, where diverting staff away from service delivery has a significant impact. It places the same resource intensive processes on a small planning team, as it does on a better resourced team in a larger authority. In a time of increasingly constrained staff resource it diverts front line planning staff away from service delivery, it is not tailored for the economies of scale of a small planning authority. A Performance Reporting mechanism tailored to the essential performance measures required of small planning authorities
should be developed as a means of balancing the public benefits of reporting versus the demands.

What capacity will the national performance coordinator and/or Scottish Government have to question or assess other planning stakeholders e.g. utilities providers, landowners etc. on their impact on planning performance?

Instead of this blanket approach would Government resources not be better targeted towards specific under-performing authorities and problem topics or areas of recurring constraint on performance and development (e.g. staff recruitment, staff development, effective land supply etc.)?

There are already a number of good practice sharing and performance practice mechanisms in place through HoPS and regional forums. Is this further national tier necessary when planning performance continues to improve? Adding to an already onerous exercise goes against the ethos of the Bill to reduce process and focus on development delivery.

**Q11** 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?

**A11** Fee income in small authorities is a challenge as there are very few applications of scale commanding large fees. The portfolio of cases is highly varied with householder applications representing a very small percentage of the work when compared with that of urban authorities; single houses applications being the predominant housing application and the majority falling into the category of Local – Other. The costs associated with assessing applications is high due to the time and costs associated with travelling over a remote dispersed geography and use of private car and ferry as the only viable means of transport. Waiving planning fees will only increase financial pressures on a small service. While the incorporation of the advert costs into the planning fee would be welcomed administratively the setting of fees does need to reflect that rural authorities have a higher incidence of advert requirements due to the rural aspect of neighbouring land.

**Q12** Are there any other comments you would like to make about the Bill.

**A12** The Comhairle welcomes some elements of the Bill, but has concerns that some aspects will not necessarily improve, or be relevant or proportionate to planning in the Outer Hebrides. Some aspects will actual increase pressure on
planning teams e.g., planning performance, simplified development zones, assimilation of local place plans. The removal of statutory supplementary guidance is penalising authorities such as the Comhairle who were careful to prepare only necessary supplementary guidance on complex or technical policy topics.

Community participation in the planning process, including early engagement with communities though PAC is welcomed but there should be scope for reduced period e.g. 8 week PAC in certain circumstances.

The performance improvement measures are not proportionate and the infrastructure levy not appropriate to the planning and development context in the Islands.

As stated at the beginning of this submission the Comhairle has welcomed opportunities to ‘island proof’ the Planning review and the subsequent Bill and would seek that the next stage of the Bill recognises the distinct development context and resources of rural / island areas and authorities. The need for particular approaches to planning and development delivery in rural and island areas is recognised in SPP already and the Comhairle would wish this to continue.