Local Government and Communities Committee

Planning (Scotland) Bill

Submission from Dandara Limited

Introduction

Dandara Limited welcome the opportunity to respond to the ‘call for written evidence’ on the Planning (Scotland) Bill. Dandara recognises the introduction of the Bill into Parliament signals a major step towards the implementation of legislative amendments to the Town and Country Planning (Scotland) Act 1997 that will spawn many changes to how the current planning system operates. Dandara has previously engaged with the Planning Review and recognise that the Scottish Government has considered feedback from a wide range of stakeholders.

Dandara generally supports the focus on streamlining of the Development Management function and the introduction of a number of measures through The Bill to assist in the delivery of housing and economic development. However, Dandara believes there remains several areas which require further consideration and which pose concerns for our clients, should they be implemented in accordance with provision contained within The Bill.

The following response addresses the specific questions as contained in the Call for Evidence published by the Scottish Parliament. Dandara would be happy to expand on any part of this response if required.

Question 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?

Dandara, having had the opportunity to review The Bill, feel that on the whole it is difficult at this stage to determine whether it will secure appropriate levels of development, balanced against community involvement and protection of the natural environment, due to a lack of appropriate detail at this stage. Clearly, there is a focus on improving performance, as well as an emphasis on delivery of development through a reduction in plan making; which should hopefully free up resources within local authorities to provide a greater focus on delivery. A drive to monitor the performance of planning authorities must achieve the desired results before any further increase to planning application fees be considered and implemented. Careful thought must be given to how the Infrastructure Levy will operate in practice to ensure proportionality between the delivery of development and infrastructure.
Communities will have much greater influence on the planning process as identified in The Bill, however further detail on Local Place Planning must be provided to prevent potential misalignment with Local Development Planning. Dandara note that much of the drive to improve performance will be measured on the basis of quantitate improvements, however The Bill should not lose sight of the importance of quality in the decision making process at the expense of the natural environment.

**Question 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?**

It is widely acknowledged that Scotland continues to face a ‘housebuilding crisis’, with the demand for new housing far outstripping available supply. Dandara therefore welcome a number of proposals set out in The Bill, which if implemented and rigidly monitored, could result in increased delivery rates across Scotland. The proposed streamlining of Development Plan preparation is welcomed as existing process is widely acknowledged to be protracted. The amalgamation of NPF and SPP is therefore a move Dandara supports, as they recognise the benefits of an all-encompassing national policy document, however it needs to remain clear, concise and avoid being too cumbersome a document; which would be entirely counterproductive. The removal of SDPs is only likely to lead to increased housebuilding if its statutory function is appropriately absorbed into NPF. This will require proactive and collaborative working between planning authorities and a general acceptance that to meet Scottish Government housebuilding targets, substantial amounts of deliverable land needs to be released through LDPs, guided by clear Housing Land Requirements (HLR) and ambitious Housing Supply Targets (HST).

The Bill would benefit from providing clarity on how local authorities should calculate their HLR and in turn set ambitious HST. This is often a bone of contention between developers and local authorities; which wastes time during preparation of LDP’s and delays adoption. A standardised approach, similar to that expected for publication in England, would accelerate the planning system and remove the debate regarding the HLR. The HST should also be set as a minimum requirement and not as a target. Doing so, will direct the focus on delivery and further ensure that a 5 year housing land supply (HLS) was maintained at all times. In turn, this would increase the delivery of much needed housing in Scotland.

LDP’s should ‘weed out’ sites that have, for whatever reason, not come forward for development from their effective HLS numbers. These sites could remain was ‘windfall sites’ within LDP’s but not contribute to the overall HLS numbers. Doing so would aid the delivery of housing land and reduce the instances where local
authorities fail to meet their 5 year housing land supply requirement. It would also reduce planning by appeal.

The proposed 10 year cycle for the review of both NPF and also LDP preparation timescales may appear logical in theory, however in practice Dandara has grave concerns that this will lead to ambiguity in the preparation process and such lengthy timescales may not be reactionary enough to changing market conditions. Within the last 10 years, Scotland has been through an economic recession followed by significant recovery in the Central Belt, with housing demand far outstripping supply. Indeed, this seen a number of Local Authorities (The City of Edinburgh Council, East Lothian, Stirling etc.) failing to maintain a 5 year Housing Land Supply at all times. Conversely, the North East had bucked the trend during the years following the economic recession due to a booming oil and gas sector. More recently, however, the development industry has felt the impacts of an economic decline due to a rapid fall in oil price at the end of 2014. The Bill needs to include strong provision for intervention should any deficiencies in land supply become apparent, not merely a choice for local authorities to undertake an earlier review. It is vital that LDPs are able to respond to changing economic climates. My client therefore believes that the core aims of the Bill can be achieved within 5 year cycles, through a more focussed look at improving the existing Plan preparation requirements and accelerating the plan writing process.

Question 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?

Whilst the resultant structure from the removal of SDP’s appears to provide sufficient policy framework to ensure Scotland’s regions are appropriately planned for, it will require proactive engagement between local authorities to ensure an effective spatial planning function continues to be delivered. NPF must be focussed on all regions, setting out clear objectives to ensure their continued sustainable and ambitious growth. Scottish Ministers must carefully monitor local authorities as the new legislation beds in and utilise their powers for intervention should any lack of collaborative working emerge within a particular region.

Question 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?
Dandara acknowledge the proposed changes to the preparation of LDPs, a number of which may create a greater focus on delivery, rather than simply allocating land and waiting for the development industry to react. The Bill includes the removal of the requirement to produce a MIR, which Dandara acknowledges have often felt disengaged with both communities and the development industry. Instead a new front-loaded process is proposed, requiring Local Authorities to produce an “Evidence Report”, which will be examined by a Reporter appointed by Scottish Ministers through an early gate check to inform the subsequent preparation of the LDP. Dandara tentatively welcomes this initial frontloading and independent scrutiny from a Reporter early in the LDP preparation process, which will hopefully ensure effective tie-in with NPF, housing targets and policies which promote sustainable development. However, our client believes there should be opportunity for stakeholders to make representation to this process if opposed to the evidence base. Further clarity is also required on what is considered as sufficient information and it is considered that Reporters at the gate check should have the opportunity, as they do at examination stage, to make recommendations on the evidence report as opposed to simply being ‘satisfied’ or ‘unsatisfied’.

Removal of Supplementary Planning Guidance is also welcomed by Dandara, as it can lead to significant restrictions on development that are often separate and misaligned with overarching planning polices contained in the primary LDP. Its removal will provide greater clarity in decision making for all parties, especially developers and communities who feel detached from it. My client would however emphasise that its removal should not revert to overly complex and prescriptive LDP policy which would only serve to be counterproductive. Additionally, any non-statutory guidance should be kept to a minimum for similar reasons and should also require appropriate stakeholder consultation prior to adoption.

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

Dandara welcomes the additional powers brought forward by the Bill for the wider use of Simplified Development Zones (SDZs) to help facilitate delivery of housing at scale, which had never really been a product of the existing legislative provision for Simplified Planning Zones. In particular, our client welcomes Paragraph 5 of Schedule 5A of The Bill, which places a duty on Planning Authorities to consider which parts of their areas would be desirable to implement such a scheme. This approach should be embraced. If Local Authorities fail to deliver on this fundamental aspect of Specialised Development Zoning, robust reasoning must be provided and subjected to further Scottish Government scrutiny. Our client acknowledges that community and environmental benefits need to be considered to ensure
transparency and prevent any potential conflicts. This may be achieved through the proposed frontloading of the process.

The Bill’s Policy Memorandum provides additional detail on preparation requirements for SDZ’s and my client would note that the process appears very similar to the existing LDP requirements for the preparation of masterplans to supplement applications for Planning Permission in Principle. Dandara would therefore question the speed at which SDZs could be delivered in practice, as the frontloading element appears very similar to current masterplanning practice. Our client believes the success of SDZs will hinge upon how prescriptive and time consuming their associated conditional development restrictions are. Furthermore, in order to deliver housing at scale around Scotland’s main towns and cities, this will involve unlocking greenbelt land. A contentious issue, particularly for local communities whose aspirations and understanding of the Greenbelt often presents conflict with the development industry. Finally, our client notes that current financial practice normally means that bank funding will only be released following the receipt of a planning decision. This raises questions over the ability to secure bank funding in relation to development in an SDZ which would not require any formal release of planning consent. Further clarity must also be provided on the mechanisms for securing developer obligations and contributions towards the proposed Infrastructure Levy through implementation of an SDZ.

**Question 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?**

Dandara considers that the new Bill allows substantial provision for community involvement in Development Planning. Whilst my client on the whole supports community involvement in the planning process and recognises the importance of empowering communities the ability to shape the places they live, however there remains a lack of clarity on procedure and how LPPs will operate in practice that gives our client cause for concern. It is considered that quality, early and continuing engagement with communities throughout the development of LDP’s would provide communities a greater sense of ownership in shaping the LDP. If robust and meaningful engagement with communities is undertaken correctly during the preparation of LDP’s, it would negate the need for additional LPPs. Indeed LDP’s are the correct vehicle to give communities the opportunity to plan their future.

Rather than introduce LPPs, which have proven costly, elitist and counterproductive in England, Dandara believes previous recommendations outlined within
“Empowering Planning to Deliver Great Places” in respect of Planning Permission in Principle being awarded to sites allocated within a LDP could be beneficial. This font loading of the process could have presented much better opportunities for community engagement very early in the LDP process, thus promoting a greater sense of ownership for communities in planning the future of their places, without the need for a dual LDP and LPP system.

With regard to financial support, our client notes that within Table 1 of the supporting Financial Memorandum to The Bill, it stipulates that costs involved in the preparation of LPPs will be discretionary. Unless sufficient funding and training is allocated to communities, LPPs run the risk of being under resourced and lacking in appropriate detail, which would undermine the development plan process. Furthermore, clarity needs to be provided in respect of what takes precedence, LPPs or the LDP? The Bill in its current form presents confusion on this matter. Section 9 (2) of the Bill requires Planning Authorities to have regard to LPPs when preparing their LDP. Dandara strongly believes that the emphasis should be placed on the LDP, with LPPs prepared in accordance with the LDP strategy.

A further concern relates to specific practice in some communities, in particular those living in more affluent, sought after areas for development, utilising LPPs to stymie development in those areas. If the development industry is precluded from involvement in the preparation of LPPs, Dandara would question the deliverability of development aspirations as local communities may not benefit from the same knowledge of development viability and marketability of sites. The £11,960 cost apportioned to LPPs within the Financial Memorandum appears unrealistic for a document that will require sufficient detail to assume statutory weight.

Concern is expressed at managing the expectations of local communities who have prepared LPP’s. As seen in England, there have been countless instances where Neighbourhood Plans (a LPP equivalent south of the boarder) have been set aside where housing land supply shortage dictates that further housing land supply is needed. Residents who had actively participated in the preparation their Neighbourhood Plan and had ownership over the future shaping of their area, felt they had been let down and abandoned by the planning process that they engaged so heavily with. This is at odds with the spirit of community engagement which The Bill seeks to achieve and yet could pose a reality in practice should LPPs be implemented. Often communities who have prepared LPP’s in area’s requiring regeneration have been left feeling disappointed as developments supported by their LPP are either unviable or not delivered at the pace/ scale as had been expected.

**Question 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 could these provisions be improved?**
Dandara generally welcomes the proposed changes to planning enforcement matters as contained within The Bill. In recognition that the levels of fines have remained fixed at a maximum of £20,000 since their introduction through the 1997 Act, the proposed increase to £50,000 appears relatively fair. However, such fines should continue to be utilised proportionately, based on the specific circumstances surrounding the breach. The increased fee and provision for recovery of expenses would act as a deterrent and ensure people engage with the planning system in a lawful manner.

Question 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?

Dandara acknowledges provision within the Bill for a proposed new Infrastructure Levy. On the surface this appears to be a step in the right direction, introducing a fair and transparent means of charging for much needed infrastructure improvements. However, the devil will be in the detail in respect of its administration and implementation to ensure it does not become a ‘land tax’. It is therefore difficult to conclude at this time how it will impact on levels of development. My client would be concerned that poor administration and the imposition of significant charging (in addition to proposals for increased planning fees and S75 obligations) will lead to a stifling of development rather than positive increased delivery if viability is jeopardised.

Our client would also query whether the monies accrued will be ring-fenced for specific infrastructure projects within the Local Authority area? Additionally, will there be clear timescales set out for the implementation of these projects and appropriate mechanisms in place to ensure monies are refunded, should these projects fail to be delivered in accordance with these? The Schedule 1 of The Bill lacks detail and Dandara have concerns that it may prevent increased levels of development if it becomes unviable for landowners to sell to developers.

The Schedule also suggests that planning permission may not be granted until payment of the Levy in full. Our client is concerned that such restrictions would seriously impinge on availability of up-front finances to secure delivery of the site and in turn could delay or prevent development on the ground. A proportionate, phased payment would be a more appropriate means of collecting funds. As our client has previously stated through previous representation to the Planning review, the development industry should not be responsible for the resolution of existing infrastructure deficiencies, nor should the Infrastructure Levy be restricted solely to
the housebuilding industry as commercial and industrial development can create significant infrastructure demand. Furthermore, any affordable housing units proposed as part of a development should be exempt from any payments.

**Question 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?**

Dandara fully support the proposals contained within Sections 24 and 25 of The Bill, which are focussed on the provision of training for Councillors who take decisions at Planning Committee. Councillors are often entrusted with taking key decisions on complex planning applications which have significant implications for the growth of Scotland’s regions. Members of planning committees should, like members of licencing committees, be required to undergo some form of assessment of competence prior to taking planning decisions, therefore the proposed introduction of an examination is fully supported. Furthermore, it would also be prudent for Members to undergo appropriate training on viability, as too often the aspirations of communities and their appointed councillors are not viable to deliver.

Our client would however query the potential implications of Section 25 of The Bill, should members of a local authority fail to demonstrate appropriate training requirements, particularly the continuity of service if functions are transferred to another local authority who are likely to be unfamiliar with the area and its issues. Dandara would have concerns over how such measures would operate in practice and resultant knock-on delays this could present for the determination of planning applications.

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

Dandara welcome the proposed measures aimed at monitoring and improving the performance of planning authorities across Scotland contained within The Bill. Our client supports the 3 measures which introduce powers for Scottish Ministers to appoint a representative to monitor the service being provided by Planning Authorities should their performance fall short of what is expected to deliver an efficient and high quality planning service. Dandara would expect these measures to be put in place in such circumstances. Experience of performance varies widely across planning authorities in Scotland, therefore any efforts to improve this situation must be embraced. The proposed powers for an appointed person to undertake an assessment of the planning authority’s performance and issue directions where they consider appropriate action must be taken to improve, seem logical and if appropriately monitored and administered, will no doubt lead to performance
improvements. These directions should be made compulsory, rather than introducing a process whereby a planning authority can challenge them, which would only lead to further delays.

**Question 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?

Dandara remain opposed to any further increase in planning fees introduced by The Bill and have previously responded through consultation into the Planning Review setting out their concerns on this (Appendix 1). Our clients would object to Section 21 of The Bill and any proposed charges being introduced for Scottish Ministers’ planning activities, especially in relation to planning appeals. Developers should not be prejudiced on their statutory right to challenge a planning decision.

The introduction of discretionary powers allowing planning authorities to calculate fees and charges could lead to significant inconsistencies across the country and particular areas less attractive to develop than others. Given the wider public benefits accrued from development, Dandara would continue to question the requirement for full cost recovery on planning applications. An element of the planning service should be met by the public purse. Additionally, given the significant savings to Planning Authorities forecast in the Financial Memorandum by moving to a 10 year LDP cycle, Dandara would question the need to increase planning fees at all?

The Bill lacks sufficient detail relating to the correlation between increased fees and improved performance. The previous Review of the Planning System sought to bring about “culture change” within planning authorities to improve performance, however dramatic improvements have never materialised. Additionally, financial sanctions against underperforming authorities by way of decreased planning fees were introduced under the Regulatory Reform Act, but disappointingly have never been implemented. Unless increased fees can be tied directly to a marked improvement in the service provided by local authorities, then Dandara would continue to oppose any fee increases.

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

Much detail has yet to be defined and it is expected that this will come through as secondary legislation prior to any formal changes being enacted. Until Dandara have had the opportunity to review these in full, unfortunately it is very difficult to
determine whether the proposed changes will work in practice. My client would therefore welcome further opportunity to engage in this process, as this detail begins to emerge. Finally, Dandara would note the additional comments on the Bill not set out above:

- The proposed increase from current statutory 60 day adoption timescales for NPF to a proposed 90 days conflicts with overarching desire to speed up the Planning System.
- Similarly, proposed increase from 28 days to 8 weeks for LDP adoption seems excessive and is queried. If LDPs have been appropriately consulted on, there should be no need for additional timescales.
- Concern over proposed requirement to submit planning application within 18 months post submission of a Proposal of Application Notice (PoAN). If proposal remains unaltered and has merely been delayed due to funding etc., where is the benefit in additional consultation?
- Powers introduced for Scottish Ministers to adopt a LDP in part may cause ambiguity. Should a LDP be unsatisfactory, it would be more beneficial that all modifications are made prior to adoption.
- There should be a requirement within The Bill for Local Authorities to engage in regional partnership working.
- The Bill lacks detail on how LDP’s will be consulted on.
- At present LDP’s are required to be consistent with SDP’s however, there is no requirement within The Bill for LDP’s to be consistent with the NPF; which lacks consistency with the Policy Memorandum and should be addressed within The Bill.
Appendix 1

RESPONSE TO CONSULTATION ON RAISING PLANNING FEES ON BEHALF OF DANDARA LIMITED

Introduction

Dandara Limited welcome the opportunity to comment on the ‘Consultation on Raising Planning Fees’. Whilst not opposed to the principle of increasing planning fees, Dandara are concerned at the scale of the increases proposed, particularly in the absence of any detail on performance improvement. They are also not convinced that the proposed charging structure is competitive with that of England and Wales.

Comments

The consultation notes that the Scottish Government recognises the importance of planning in supporting economic growth, in the delivery of quality homes and in community empowerment. This is reinforced through the ongoing consultation on the future of the Scottish Planning System, which acknowledges that planning can be recognised as a force for change and like any public service, it will be measured by what it delivers. It advises that “…the planning service must have the resources its needs to deliver the world class service our communities deserve and our economy needs”.

There is clearly a wider public benefit to be accrued from the planning service and in that context one must question the need for full cost recovery from the housebuilding and wider development industry. The public purse must share an element of this cost given that wider public benefit. If the burden is to be met entirely by the development industry it could act as a deterrent to development, restricting opportunities to only those with the ability to pay. This could seriously restrict the delivery of new housing, both mainstream and affordable, as well as economic development.

The increases proposed are substantial and no evidence has been provided as to the justification for those increases. For residential development the maximum fee for both Planning Permission in Principle, and for Full Planning Permission increases more than six fold. Unfortunately, it is not clear if those increases meet part of the cost of processing applications, the full cost or, indeed, go beyond meeting the full cost. Until such time as the cost of the service is clear it is not possible to reach a definitive view on an acceptable level of increase.
The increases also need to be considered in the context of other changes that may arise from the wider review of the planning system. This could further increase the cost burden on developers. As an example, the previous review imposed a requirement for pre-application consultation for major developments. This, added to the ‘up front’ cost of preparing and submitting an application and, theoretically, should have resulted in a shorter determination period but evidently has not. Any outcome which adds further to the cost burden on the development industry should be resisted.

If fees are to be increased the monies should be ‘ring fenced’ to ensure it is only spent on resourcing the planning service. It must result in enhanced performance in terms of the time taken to determine planning applications. This is acknowledged in both the current consultation and the ongoing consultation on the review of the planning system.

Unfortunately, neither provide any indication of the means by which this improvement can be achieved. The previous review of the planning system was intended to bring about a ‘culture change’ within Planning Authorities to improve performance, but that has not materialised other than in some local instances. The Regulatory Reform Act has provision for sanctions against under-performing Councils but, to date, this has never been invoked. Whilst Dandara are not suggesting that it is necessary to do so, any increase in fees must be tied to a clear and tangible improvement in performance. Unless improved performance can be guaranteed support from the development industry for increased fees is unlikely to be forthcoming.

It is also important to consider the competitiveness of Scotland compared to the rest of the UK. Indeed, the consultation acknowledges the need to ensure that applicants in Scotland do not pay more than they would in other administrations for any size of development. Whilst it is acknowledged that the maximum fee limits proposed are significantly less than those in England and Wales, developments of a smaller scale, which are more likely to be prevalent in Scotland, will pay more.

In every instance the examples set out in Section 9 of the Consultation incurs a higher fee than the equivalent development in England and Wales. The proposed fee for a 100 house development in Scotland is £30,050 compared to £24,799 in England and Wales. For a 500 house development the proposed fee in Scotland is £110,050 compared to £70,799 elsewhere. Whilst not quite as marked, it is the same for buildings other than residential and agricultural, and for plant & machinery applications. Clearly this is a matter that requires further consideration if Scotland is to maintain a competitive edge.
Conclusions

In summary, Dandara consider that an element of the cost of the planning service should be met from the public purse given the wider public benefit that has accrued from development.

Any increase in planning fees must be proportionate and based on the actual costs of the service provided. There must also be a clear improvement in performance.

The matter of competitiveness with other administrations also requires further consideration, as it is clear from the above, that applicants in Scotland will pay more than they would in other areas for certain sizes of development.

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