Local Government and Communities Committee

Planning (Scotland) Bill

Submission from East Dunbartonshire Council

East Dunbartonshire Council welcomes the opportunity to provide comments to the Local Government and Communities Committee in relation to the proposed Planning (Scotland) Bill.

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?

Partially. The Planning Bill is enabling legislation, meaning that we do not have full clarity of the detail of the reforms until there has been significant progress in the preparation of secondary legislation. Likewise, many of the reforms to the planning system will be implemented through policy and guidance and it is here that a real difference could be achieved. There are a number of provisions in the Bill which give Ministers powers to create secondary legislation without necessarily committing the Ministers to taking forward the regulations. This detail and further clarity will be absolutely essential in ensuring the new system functions as effectively and efficiently as possible.

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?

The provisions within the bill itself are unlikely to result in increased house building. The Council has maintained in our previous consultation responses that we do not agree with the removal of Strategic Development Plans and believe that the extensive partnership working between the 8 Clydeplan authorities has contributed positively and significantly to housing delivery. The Clydeplan Strategic Development Plan 2017 sets ambitious targets for housing delivery across the region, which will be achieved by joint actions to overcome development constraints and continue the successful decline in vacant and derelict land.

The Glasgow and Clyde Valley Housing Market Partnership has developed expertise in strategic housing delivery and the Council considers that effective and coordinated regional planning contributes to increased housing delivery. The proposed duty in section 1 and 7 of the Bill for key agencies to co-operate with Scottish Ministers in preparing the National Planning Framework is welcomed. EDC supports Glasgow City Regions recommendation to create a regional spatial strategy to
act as the co-ordinating framework for delivery of development in the city region. As set out in the Glasgow City Region and Clydeplan responses, it is important to ensure that the NPF, Key Agencies and LDP align with a regional spatial strategy to coordinate key infrastructure in order to promote appropriate housing development in sustainable locations proportionately across the city region. Regional planning and partnership working is discussed further in question 3.

More locally, and in high market areas such as East Dunbartonshire, adjustments to the system are unlikely to result in higher levels of delivery. Policy/ funding interventions however are perhaps more likely to influence delivery rates and the proposed reviews of Scottish Planning Policy and the National Planning Framework potentially have greater scope to encourage increased housebuilding. However, the allocation of housing land and other activities by a planning authority are only one factor affecting housing delivery rates and the planning system alone cannot be expected to increase delivery rates.

The use of Simplified Planning Zone’s in marginal market areas could have a positive impact upon viability in areas where profit margins are slim. However, once again in high market areas such as East Dunbartonshire, where there are recent examples of house builders willing to take risks on submitting applications for non-allocated sites and take them to appeal, the cost of the process in terms of both money and time is clearly not an unassailable barrier (see also comments on SDZ’s in response to question 5).

Q3. 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?

The Council has maintained in our responses to previous consultations that we do not agree with the removal of Strategic Development Plans. Our response on regional planning matters is provided as part of the Clydeplan Strategic Development Plan Authority response and the Glasgow City Region response.

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?

In our previous responses, the Council has considered that there would be positive and negative consequences of moving to preparing LDP’s every 10 years. Given the accelerating pace of change, the ability to amend an LDP in the interim will be crucial in ensuring that a 10 year development plan does not become out of date or
ineffective. It is considered that moving to a 10 year development plan cycle will likely save some time in plan preparation and free up some local authority resources, however this will unlikely be to the extent envisaged by the proposed reforms (see comments below). Benefits of the proposed preparation cycle are that communities may get relief from repeat proposals, consultation fatigue should reduce and confidence in the system may improve. However, in a suburban area such as East Dunbartonshire the most likely part of an LDP that would require interim updating is the housing land supply and the allocation of any new sites would normally be of great interest to the community.

Greater clarity is required on the provisions for keeping the LDP’s are kept up to date over the 10 year timeframe. The Council expects to be consulted on secondary legislation and in particular a full exploration of any limitations on the form and content of periodic review and updates to the LDP. Particular regard should be paid to strategic land release and volume required across the plan period, associated issues with unequal land take across the city region particularly in high market areas and the requirements to introduce phasing across LDP periods for particular uses to sustain brownfield reuse and safeguard against unallocated greenfield release.

The Council does not object to the process as set out in the Bill in principle, but the timescales by which planning authorities are expected to follow the process should be realistic and allow Council’s to engage inclusively with stakeholders. If the Scottish Government’s aspiration of delivery focussed development plans is to be realised then the quality of LDP’s and their understanding of local issues including development viability must not be compromised. Furthermore, regarding the quality of LDP’s and preparation time, although it is expected that LDP’s should not reiterate national policy and focus on local planning issues, the removal of Supplementary Planning Guidance will likely result in the need for additional information, that was previously included in SPG, to be reintroduced to main body of the plan.

With regards to provisions incorporating the National Planning Framework into the development plan for the purposes of determining planning applications the Council notes that page 7 states ‘that in the event of incompatibility between the National Planning Framework and a local development plan, whichever of them is the later in date is to prevail.’ The Council considers this to be appropriate where the incompatibility is purely a result of time where policy and best practice has moved on. However, in the event that localised circumstances have necessitated a different policy direction in the LDP then the NPF should not override such cases simply because it is newer.

**Q5. Would Simplified Development Zones balance the need to enable development with enough safeguards for community and environmental interests?**
As stated in question 2 above the Council does not consider that the use of SDZ’s will be particularly useful in increasing housing delivery in high market areas such as East Dunbartonshire. However, an exception to this could be where an SDZ has been established specifically to encourage other models of delivery such as self/custom build or co-housing to meet demand that is not being fulfilled by the volume house builders or through publicly funded affordable housing. Otherwise, the main potential for SDZ’s is likely to be large-scale regeneration areas where the market requires significant intervention to encourage house building. However, in these circumstances there are other interventions available to planning authorities.

The Council considers that the cost of preparing SDZ’s would be significant and that it would present a further strain on local authority resources. A solution could be that if developers were willing to work in partnership with authorities to help fund the work; or if there could be some form of clawback of expenses for the authority (see also answer to Q11).

With regards to safeguards for community interests the Council is pleased that although little detail is contained within the Bill itself, it does commit the Scottish Ministers to prescribing the consultation that will be require to establish an SDZ’s in further legislation.

With regard to environmental safeguards, the Council is disappointed that there is no direct mention of environmental considerations in the Bill. The Council is also concerned that SDZ’s can grant authorisation for works in relation to listed buildings and conservation areas where the sensitive nature of these necessitates additional protection.

The Council notes that the Bill requires authorities to consider the question of whether or not there are parts of their district that would be desirable to make an SDZ from time to time. This is very vague and perhaps Local authorities would be encouraged to consider SDZ’s more seriously if the regulations required the question to be considered as part of the LDP preparation every 10 years.

The Council also notes that the Scottish Ministers can direct a planning authority to make an SDZ. The bill as introduced does not include any mechanism for challenging the direction where a local authority feels it is unreasonable or where there are exceptional circumstances. The Council considers that the circumstances by which Ministers may direct a planning authority to make an SDZ should be clearly set out, as well as a procedure for challenging the direction where the planning authority may have sufficient grounds for doing so.

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?

Whilst the Bill contains some reasonable measures that could provide more effective avenues for community involvement, as per question 4 above, the speed at which plans are expected to be produced will significantly affect a planning authorities ability to engage meaningfully with communities, particularly in the early stages of preparation.

With regards to the Evidence Report stage, whilst the flowcharts show the need for planning authorities to engage with stakeholders the activities to be undertaken at this stage are unclear. The early stages of plan preparation provide the best opportunity for stakeholders to influence the direction of the plan and there should be a minimum requirement for early stage engagement.

We also note that third party stakeholders have no involvement in the gatecheck process. Therefore, it will be even more important for authorities to undertake meaningful engagement whilst preparing the Evidence Report, and to report the results of that engagement to Scottish Ministers at the gatecheck.

With regards to proposed plan stage, the proposal in the Bill to extend the statutory consultation period from 6 to 8 weeks is welcomed. This additional time will give communities longer to understand the content of the proposed plan more fully and give community groups such as Community Councils more time to formulate a position and compile responses. Conversely, the impact of the extra 2 weeks on the overall timescales for preparing the plan will be negligible. Additionally, the ability for planning authorities to modify the proposed plan after the consultation period will help build trust as communities will be able to see tangibly where their input to the plan has made a difference.

Turning to Local Place Plans, whilst the Council welcomes the intent behind Local Place Plans to empower communities and place them at the centre of local decision-making, we have concerns regarding the practicalities and resource implications of preparing such plans. Communities will rarely have the finances and expertise to prepare and implement a Local Place Plan and subsequently this will fall to the Local Authority. The current pressure on Local Authority resources is well known and this could present a significant strain on Councils unless specific funding mechanisms for Local Place Plans are provided by the government.

The Council considers that Local Place Plans will be of most value in places where regeneration is a priority or where there are specific issues where communities and/or community bodies are best placed to address these issues; they should not be used simply as an attempt to fend off potential development. In the latter case,
the LDP preparation process is the appropriate vehicle for such concerns to raised
and stakeholders must have sufficient opportunities to get involved.

On the issue of imbedding Local Place Plans into the development plan further
clarification on the process for doing this is required.

The Council is disappointed to see that whilst the Bill sets out a requirement for the
preparation of LDP’s to take Local Place Plans into account there is no requirement
to consider locality plans implemented under the Community Empowerment Act.

See also our comment regarding consultation arrangements for Simplified
Development Zones in Question 5.

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 could these provisions be improved?

Yes. We welcome the introduction of charging orders associated with recovery of
costs for undertaking direct action and the increase in maximum fines associated
with non-compliance with notices served. The extension of liability where planning
authority has carried out steps required by an enforcement notice to future owners is
a positive step in the right direction. However, it is considered that the success of
improved enforcement provisions will be dependent on the prosecutor fiscal who are
often reluctant to prosecute.

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?

An Infrastructure Levy could play a role in supporting the delivery of strategic
infrastructure in some areas. However, it is likely to be of marginal benefit and
should certainly not be seen as a primary source of funding to support infrastructure
or to remove the focus on the need for direct funding for infrastructure delivery. It
would be more effective to focus on direct funding of regional partnerships to
implement regional priorities for sustainable economic growth and housing delivery.
If the step change required in housing delivery in Scotland is to be achieved, the
Scottish Government should consider a direct funding model such as the Greater
Manchester Housing Fund and engage with regional partnerships to determine
regional needs and develop appropriate infrastructure and housing funds which
remove existing barriers to development.
The Council would expect the NPF and National Infrastructure Plan to recognise and adopt the infrastructure needs set out by the regional planning partnership and engage with the partnership to determine appropriate funding to support them. Government should also work with regional partnerships to develop and help fund existing and new infrastructure delivery models, which should include expansion of government funding on initiatives such as the Building Scotland Fund and the Scottish National Investment Bank.

The levy could be perceived as an additional tax on development. However, in a high market area like East Dunbartonshire it is unlikely that the need to pay a levy would result in a decrease in housing completions. However, the levy could inadvertently discourage developers further from developing brownfield land put increasing pressure on greenfield sites.

The levy could be complex to collect and administer especially as it would not replace the need to obtain and negotiate planning obligations such as affordable housing contributions. Additionally, whilst the power in Schedule 1 of the Bill allowing Local Authorities to waive the levy is cautiously welcomed, clear circumstances permitting the use of this power should be set out to ensure that the need to pay the levy is not routinely challenged by the development industry. It is also our view that there should continue to be a statutory test setting out how planning obligations should be assessed.

The definition of what constitutes infrastructure in the bill is largely considered to be appropriate however we are disappointed that there are no references to green/ sustainable infrastructure.

Whilst the Infrastructure Levy would normally be accrued and spent by planning authority area, there should be the ability for funds to be pooled on a cross-boundary basis with neighbouring authorities, where appropriate; for example to deliver strategic infrastructure such as transport networks which straddle at least 2 or more authority areas.

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?

Yes, whilst the Council already organises informal elected member training a legislative requirement for formal training in planning matters prior to Councillors becoming involved in planning decision-making is supported in principle. Further regulations would be required to set out specifics in relation to the level of training required including the format, style, best practice and lifespan of any qualifications gained. A standardised approach across all Local Authorities would be welcomed similar to the requirements placed on Members of other decision making Boards
such as Licensing Board. However, ensuring that costs are kept low and proportionate should be a key consideration when determining what the training should consist of and ultimately there should be no additional cost to planning authorities to design and deliver training to elected members unless additional funding is provided.

The Council seeks clarification on what the process for determining planning decisions would be in the event that a local decision making body falls short of the training requirements.

The Council also seeks clarification that whilst the proposal for elected member training is contained within the development management section of the planning bill that it will apply to all areas of planning authority decision-making.

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

While we welcome the formalising of the PPF monitoring system, the Scottish Government need to be clear as to where the resources to achieve this will be found. Undertaking a higher level of customer engagement and improving peer review processes could displace scarce staff resources into monitoring and paradoxically undermine delivery of the core aspects of the planning function. We have had 5 years of PPF which now include a high number of key performance markers. As part of the reporting the key markers from the PPF should be more focused and streamlined. This will ensure planning authorities are focusing resources efficiently in order to deliver the ambitious reform agenda.

In addition, it is important that the Scottish Government identify ways in which it can support Heads of Planning Scotland and the Royal Town Planning Institute to continue and expand their work on improving the effectiveness and performance of the planning profession. This is particularly important as continuing pressure on local authority resources is not only reducing available training budgets but with increasing workloads and expectations officers have less time to devote to professional activities outside their core employment.

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?

Given the limited existing powers in current legislation around resourcing, we welcome the introduction of additional enabling powers that provide a statutory basis for discretionary charging and to extend the range of services for which fees can be
charged. However new facets of the system should not be introduced before the fees that will allow them to operate as effectively as possible, as this could lead to frustration and poor implementation. If used these new powers could help ensure that resourcing of the planning system catches up with the expectations of it.

We would welcome an introduction of fees to cover the cost for appeals and Local Review Body reviews to contribute to full cost recovery. Consideration also needs to be given to the significant cost that could fall on planning authorities for developing Simplified Development Zones (SDZ). The cost recovery principle would require that these costs are passed on to developers within SDZ areas through use of the use of discretionary charging powers. The preparation of any SDZ should be based on an analysis of the costs and the benefits to be achieved.

We would like to take this opportunity to reaffirm our view that any additional monies generated should be for the Local Authority to utilise in a bid to achieve full cost recovery.

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

It is imperative that stakeholders including planning authorities are consulted on the preparation of each piece of secondary legislation referred to in the Bill. Equally, Ministers must pro-actively engage communities and planning authorities in the preparation of the National Planning Framework to ensure that it effectively encapsulates regional aspirations and priorities.

Further information from the Scottish Government regarding their expected timetable for the implementation of secondary regulations would be valuable. As would be any information available on possible transitional arrangements.