Local Government and Communities Committee

Planning (Scotland) Bill

Submission from Eskbank and Newbattle Community Council

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?

In our view, the Bill does not achieve its declared central aim, which is: “to change planning's operation and its reputation from that of a regulator to a positive and active enabler of good quality development; a shift from reacting to development proposals to proactively supporting investment and quality placemaking.”

- There is no attempt to move from a system of dependence on private land developers as the main proposers of housing developments. If the new planning system continues to rely on the preferences of private land speculators as the basis for development plans, it will not sufficiently take into account the views of communities nor the need to protect the environment.
- There are no effective proposals to improve methods of reflecting and implementing community views.
- There is no attempt to address the growing need to protect the environment. The word ‘environment’ appears only once in the Bill, and then only in relation to Scottish Ministers directing planning authorities to provide information to support the preparation of the NPF. Given the thrust of the Bill to facilitate and expedite built development, we see no evidence that it will secure better protection of the environment.
- The proposal to double the development plan cycle to ten years and place stronger emphasis on ‘front-loading’ has several drawbacks:
  - There has been increasing reliance on front-loading consultations over recent plan cycles, with no evidence of improvements in outcomes.
  - Committing to a ten-year development plan makes little sense, given the electoral cycles, funding periods and the speed of change in society.
  - Reducing community input to once in a decade, in plan design, requires the development and application of robust systems to respond to community concerns when circumstances change. Otherwise the current situation, where communities feel their views are rarely reflected, will simply persist indefinitely.
  - If the development plan is only reviewed every ten years, it is inevitable that there will be an increasing number of applications that are contrary to the plan, particularly in the later years of the cycle. The ten year cycle must be accompanied by a greater willingness by planning authorities and the Scottish Ministers to refuse applications that are contrary to the plan to avoid undermining public confidence in the system.
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?

This question avoids the real issue of ensuring that actual housing need is identified and met. Higher levels of new house building do not solve the housing need if there are insufficient “social” houses built. In Midlothian, there are over 4,000 applicants waiting on the social housing list, while the plans for such housing will meet only a fraction of this need. Meanwhile, over 4,000 speculative houses are planned to meet “market” needs. The social housing is needed by the people who already live in the area and want to stay there and who will put no further strain on the infrastructure and services, as they already use them. The failure of the current planning system is that it facilitates speculative private housing development dominated by larger houses that make the highest profits for the developer. These proposals do nothing to address this issue.

To increase further, necessary, house building, Local Authorities should be empowered to undertake a massive programme of social house building and reforms should be introduced to land purchased for such developments, such that no premium needs to be paid over the price of agricultural land. This would prevent land banking and land speculation driving up costs.

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?

The descriptions of “regional partnerships” are frustratingly vague. It is very unclear how communities would be involved in regional partnerships. Experience suggests that there is a real danger of a democratic deficit in regional planning. The proposals require much greater clarity about decision-making responsibilities and the process for involving communities.

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?

As detailed in our answer to Q.1, we do not have confidence in the ten year cycle for LDPs. It is unclear how, for example, such a plan could be revised to deal with necessary changes to objectives to respond to ongoing revelations, such as the amount of particulates in the atmosphere, or the omni-presence of plastic throughout the environment. As Government policies to deal with pollution, increase active travel and healthier lives, gain in priority, it would be disastrous to be stuck with a plan that paid insufficient attention to protection of Green Belt or the development of safer cycleways and pedestrian routes. Technological changes, such as the introduction of autonomous, electrically-powered buses, for instance, would instantly render obsolete most Light Rail or Tram proposals. There must be a clear
mechanism for reviewing plans within the ten year cycle to ensure that significant environmental, technological and community concerns are addressed.

Within our own community we are currently dealing with an application to amend a planning approval, approved against the wishes of the community and the Local Authority, by Scottish Government, over 3 years ago. The new application dramatically amends the design that was approved and intensifies the number of housing units. We thus have a proposal that was roundly rejected by the community 3 years ago and which, in even less acceptable form, is now likely to be approved, despite renewed objections from the community. Communities must be given the right to have a meaningful appeal against such abuses of the planning system.

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

In Midlothian there is no evidence that complexities in the planning system are holding back development. Therefore we see no need for Simplified Development Zones that would water down the requirements to address community concerns and environmental impacts.

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?

We fully support proposals for communities to produce Local Place Plans. However section 9(2) of the Bill only requires planning authorities to “have regard to” local place plans when preparing a local development plan. We believe a stronger commitment to LPPs is required since community confidence in the system will be seriously undermined if planning authorities are permitted to override a community’s expressed preferences for the land in their area.

Resources are a significant concern. Introducing new rights and responsibilities that cannot be met in practice because of lack of funds or technical skills will not empower communities. The Bill needs to specify a level of support for Community Councils (CC), as these are the most relevant bodies for expressing community preferences and concerns, with a statutory right to comment on local developments. At present, the support provided to each CC is determined by the Local Authority and is essentially minimal.

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?

Our experience is that enforcement is currently very poorly resourced and that planning authorities are often reluctant to enforce because of fear of the financial implications of enforcement cases going to court. We believe that the Scottish
Government should establish a fund to enable Local Authorities to undertake any necessary enforcement, without fear of significant financial losses. Laws and Regulations that cannot be enforced because of financial concerns might as well not exist. We support the increased fines proposed.

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?

We support the concept of the proposed Levy but recommend that it covers the full range of required infrastructure and the needs of the wider community, not just the specific occupiers of proposed new housing 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?

We fully support the proposals to ensure that Councillors are adequately trained in planning matters. We have seen too many poor decisions by the Local Review Body, overturning the recommendations of the planners, often because they have limited knowledge of planning matters.

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

The Bill contains no proposals to speed up the completion of applications subject to a ‘minded to grant subject to a legal agreement’ decision. This is an area that is governed only by a Scottish Government recommendation, which is applied highly inconsistently across Scotland. This has allowed developers to string out the application process over several years, causing blight and uncertainty for communities. The Scottish Government recommendation that applications should be refused if the legal agreement is not completed within six months should become a legal requirement.

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?

We do not have sufficient information to comment meaningfully on this question.

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

We believe strongly that the Bill should introduce a right of appeal for communities against planning consents and that its omission is a major failing of the Bill as it currently stands.
The planning system is heavily weighted in favour of private developers. If communities are to be empowered to take a greater part in the planning system, and to have a clear role in defining the future of their places, they must have the right to challenge decisions that are contrary to their vision for the development of their area.

Extending the right of appeal to communities would strengthen the system by deterring poor applications and encouraging developers to properly engage with and respond to the views of communities.

We believe that there is no evidence that providing communities with a Right of Appeal causes any significant delay to the processing of planning applications and would highlight the fact that the last Scottish Government consultation on this topic produced a very high percentage of requests for such a right, despite the consultation attempting to avoid the topic.

The extended right of appeal could be limited to specific circumstances, for example applications that are contrary to Local Development Plans or Local Place Plans.

Sincerely yours,

Bill Kerr-Smith
Chairman
Eskbank & Newbattie Community Council