Local Government and Communities Committee

Planning (Scotland) Bill

Submission from the Federation of City Farms and Community Gardens

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?

While hopeful that the Bill will have this effect, the level of detail that is still to be confirmed through secondary legislation makes it difficult to properly answer this question at this stage, there’s not yet any guarantee that the Bill’s potential will be realised in full. This is particularly so for proposals such as those in respect of the infrastructure levy, on which the Bill effectively ensures that the option to introduce a levy in the future is there, but does not definitively say that this will happen and, if so, what it will look like. As such, we are reserving judgement on this meantime.

From the information that is available in the Bill itself though, we do have some concerns about the protection of the built and natural environment, particularly in terms of the proposals for new simplified development zones (on which, please see our response to question 5 below).

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?

While recognising that the availability of housing is a serious concern for communities across Scotland, we have some concerns that focusing purely on quantitative improvements risks losing sight of the fundamental purpose of planning, which is to create great places. Some mechanism is required to ensure that planning performance takes account of quality outcomes, not just how many houses can be built how quickly. This includes ensuring that the houses that are built are those that the community actually requires (including, for example, appropriate housing for new entrants into agriculture, for whom access to affordable housing is often a particular issue), and that they are accompanied by the infrastructure needed to make the place great (including, for example, access to growing spaces).

On the point about new entrants in farming in particular, we have quite specific concerns about the extent to which the current planning system allows farm houses to be severed from farming land, encouraging the consolidation of the land and the commoditisation of the houses at the same time. Against this background, we would welcome further work to look at the provision of housing for those working in agriculture, without further feeding into a system in which these houses become investment opportunities rather than homes, thus further pushing up prices of both land and housing and placing ever increasing pressure on good quality agricultural land. For example, this could be done by reconsidering the use of occupancy conditions on planning consents, or through innovative use of s75 agreements.
More generally, we have concerns about the extent to which the Bill doesn’t show any indication of challenging the predominant model of housebuilding in Scotland, whereby this is done on a speculative basis by volume builders, rather than in response to genuine needs on the ground. And about the extent to which this model allows the uplift in land value that results from the grant of planning permission for residential development to primarily benefit private interests rather than public ones.

The obvious alternative to this model is to embrace the potential (as originally envisaged when the planning system was first introduced) for local authorities to acquire potential development sites at existing use value and, when shovel ready, sell these on to the individuals and communities (or the developers working for them) at a price that means genuinely affordable housing can actually be delivered that, at the same time, leads the way in terms of design, quality, and responsiveness to the needs of those who will actually live in it.

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?**

We would question the merits of removing SDPs as the two-tier system has worked well in some areas (for example in the North East of Scotland) and, although we appreciate this hasn’t necessarily been the case everywhere, we would suggest it would be better to look at how this could be made to work across Scotland rather than simply get rid of this.

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?**

We welcome the Bill’s stated aim of focusing planning (and planners) on reducing complexity and delivering the development that communities need, rather than focus on continuous writing of plans that lack a clear route to delivery. As a general principle, the aspiration to frontload the planning system and remove unnecessary processes is considered to be a good thing if it makes the system more transparent. However, there is a risk that the removal of stages in the process also removes opportunities to engage in the system, and care must be taken to ensure that communities are properly involved in the stages that remain.

We also have concerns about the removal of statutory supplementary guidance from LDPs, on which please see our response to question 12 below.
5. **Would Simplified Development Zones balance the need to enable development with enough safeguards for community and environmental interests?**

On the proposed new Simplified Development Zones (SDZs), we have two main concerns:

- Although the detail of where SDZs may or may not be created is still to be confirmed through secondary legislation, the policy memorandum indicates that this could include currently protected areas such as conservation areas and/or greenbelt land. This seems entirely counter-intuitive. Why protect land on the one hand, and then just allow for carte blanche development of this on the other?

- Perhaps more pressingly however, and again acknowledging that the detail is yet to be confirmed through secondary legislation, the procedure for creating a SDZ would seem to run contrary to the principle of planning being a plan-led system, not least because doesn’t seem to be any obvious or express requirement for regard to be had to the Development Plan in making any decision on a SDZ, let alone any relevant LPP. If a SDZ is to be created, then this cannot be taken as an opportunity to bypass statutory plans – and the extensive community engagement that will have gone into the preparation of these - which might favour an alternative use of the area in question.

On these points, it is noted that the policy memorandum states that:

> “Making schemes in previously restricted areas would not risk a loss of standards for development amenity or protection of the environment; rather it will allow planning authorities to proactively set out their intentions for development and the standards required.”

This though seems like a somewhat disingenuous view of the planning system. If the planning authority wants to proactively set out their intentions for development, this can be done through the LDP (with this in turn having due regard to the community’s aspirations, as set out in any relevant LPP), with that allocation than balanced against other policy considerations at the application stage. This is particularly so in protected areas, where the impact of any potential development cannot effectively be assessed until the detail of that development is known. This is not to say that SDZs don’t have a role to play in certain circumstances, just that more care needs to be taken to ensure that these don’t have the effect of disenfranchising communities and undermining the locally democratic plan-led system in the name of making the planning process quicker (aka cheaper) for commercial developers.

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?**
The proposed new Local Place Plans are perhaps one of the most interesting elements of the Bill for communities, and do offer a unique opportunity for places to actually be planned by and for those who live and work there. They also present an opportunity to better integrate land use planning with community planning and to really deliver the aspirations of communities.

It does though need to be recognised that many communities are already engaged in non-statutory community place planning exercises, perhaps through the preparation of a town charter (as done by Neilston Development Trust for example) and, for these communities, this existing work would seem to be the logical starting point if they were then to prepare/submit a local place plan. However, the wording of proposed Schedule 19 indicates that the procedure for the preparation of LPPs is to be prescribed by regulations, placing a big question mark over the status of earlier work that was carried out before these provisions come into force.

It surely cannot be the intention that communities who have traditionally been active in this regard, and which now want to prepare a LPP, will have to set aside earlier work and start again. Instead, we would suggest that there be express scope for existing community place planning work to form the basis for LPPs, provided of course that this has been properly informed by appropriate community engagement etc.

Also, while welcoming the provision that requires local planning authorities to have regard to relevant LPPs when preparing LDPs, it’s not clear what (if any) status LPPs have in their own right. In particular, what happens if a LPP had been prepared in which, while having regard to the LDP, it was decided that material considerations justified making different proposals for a certain piece of land – what weight should then be placed on the LPP and LDP respectively when determining any planning application that is made in respect of that land?

At the same time, feedback from communities indicates that the proliferation of plans for both land use and community planning is generating confusion about exactly which plan does what, and the status and priority of each. As such, serious thought needs to be given to how these plans are rolled out in practice. Otherwise, in trying to be helpful, it’s possible that these proposals will simply add a layer of complication that did not previously exist. Similarly, to ensure that LPPs to deliver on their potential, and that these aren’t just a plaything for better off communities rather than a powerful tool for all communities, there does need to be funding and support in place for their preparation.

And finally, to bring together various policy elements, we would also encourage the Scottish Government to look at aligning local authority food growing strategies with local development plans to facilitate the delivery of food growing sites in accordance with these.

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?
We welcome the strengthening of enforcement powers, but this needs to be accompanied by resources to ensure that the powers available to local planning authorities are actually used – at the moment, the main issue with enforcement seems to be that available powers aren’t used, and when they are it is a slow and cumbersome process, which exacerbates the feeling in many communities that the focus of planning is development at any cost, rather than promoting and improving great places for people to live.

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?**

The lack of funding for infrastructure has long been a frustration for many, and we welcome the idea of a levy to provide certainty on contributions towards this. However, this needs to be done in a way that genuinely captures the uplift in land value that results from development and has a redistributive effect, rather than just resulting in already affluent areas receiving yet more investment at the expense of other areas which already have poorer outcomes.

We also note that the definition of infrastructure is quite broad and includes ‘facilities and other places for recreation’. We would like to see this include the development of allotments or other community growing projects, but we would welcome clarification on this.

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 welcome the principle of local government councillors being trained in planning matters but, as with other elements of the Bill, this needs to be accompanied by resources to ensure that local planning authorities can effectively provide this. This is particularly so given the provisions in s25 whereby, where a planning authority cannot exercise its functions because members have not been suitably trained, this function may be exercised on the authority’s behalf either by another planning authority or the Scottish Ministers.

The concern here for communities in already underfunded and overstretched local authority areas is that this potentially becomes another way in which local democratic decision making is undermined by the transfer of decision making powers to people other than those locally elected to do so.

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

No comment
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?

In terms of circumstances in which a planning authority may waive or reduce any charge of fee connected with the making of a planning application, would encourage the use of reduced/waived fees for applications for community led development (which could be defined as applications made by community bodies, with the definition of community body as set out in paragraph 3 of the new schedule 19 inserted by s9(4)). At the same time, we are conscious that a particular issue for many community groups is that funding may be contingent on planning permission being granted but, until funding is in place, they may struggle to pay a planning application fee (particularly if increased fees are introduced). To the extent that fees aren’t waived for such projects, we would encourage local authorities to look at how payments might be structured to ensure that this does present a barrier to these projects going ahead.

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

For the reasons set out in our response to the position paper before this Bill was published, we continue to be concerned about the proposal to remove statutory supplementary guidance from the development planning system on the grounds that this is an important source of locally specific environmental protections, in particular in terms of protections for biodiversity, green spaces, growing spaces, woodlands and the natural landscape. At the same time, the preparation of supplementary guidance allows a significant level of expertise in these areas to be fed into the planning process upfront.

We do though note the scope for non-statutory SG, and would welcome further clarity on the role this might be expected to play, and the weight that might be attached to it in decision making. For example, is there potential for non-statutory guidance which has nonetheless been prepared on the back of public consultation and committee approval that is analogous to the process followed for statutory guidance at the moment to be afforded greater weight than guidance that has not been subject to this level of scrutiny?

At the same time, we welcome the incorporation of SPP into NPF, and this being brought into the development plan as a move to make the system easier to understand, albeit that this this needs to be done in a way that avoids the status of specific local issues and/or development needs being dwarfed by national ones. This is particularly so in cases where the new NPF is more recent than LDP given the provisions that, where there is a conflict between the two, the most recent one takes precedence (which, if one were adopted just after the other, could lead to a situation where local concerns are consistently reduced to second class status, all as an accident of the timing, which seems perverse!). Instead of reducing decisions to a timescale lottery we would suggest that, where there is inconsistency between the LDP and new NPF, a decision should be taken on the basis of a balancing exercise,
just as it is in situations where there is inconsistency between two policies within the statutory Development Plan at present.