Local Government and Communities Committee

Planning (Scotland) Bill

Submission from Highland Council

Introduction

The Highland Council is one of the largest planning authorities in Scotland both in terms of the area covered and the volume of planning applications that we handle. There are also significant developments and investments proposed across our numerous urban and rural areas and good levels of housing completions. Full and sustainable cost recovery is needed to enable reinvestment in key planning work areas and improved performance levels.

The Council supports the direction of travel set out in the Planning Bill for the repositioning, simplifying and streamlining of the planning system but there remains a lack of detail on proposed requirements, transitional arrangements and the implications of new procedures and working practices for the resourcing of planning services and the delivery of development and infrastructure. The Council is concerned that the financial assumptions set out in the accompanying Financial Memorandum, are not detailed or specific enough due to the lack of prescription and the lack of certainty around the take up rates. Forward budgeting for all planning authorities will be difficult to manage with any degree of precision and certainty. The Council supports groups such as COSLA and HOPS in calling for a sustainable and self-funding approach to planning fees, resources and full cost recovery, all of which will become more critical in the years ahead.

Our response to the questions posed in the Call for Evidence is set out below:

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?

Generally the Council supports the direction of travel contained within the Bill, but wishes that a full place is given to local decision making in formulating planning policy that meets the needs of and reflects the distinctiveness of local areas. In particular, as an increasingly important document for development decisions the preparation of National Planning Framework 4 (incorporating new Scottish Planning Policy) will rely on a careful approach to stakeholder engagement across the country. We would welcome further clarity on Local Authorities’ role in coordinating and contributing to this exercise, and on how the Scottish Government will approach the consideration and negotiation on the content of NPF4. The Technical Paper published by Scottish Government in December 2017 refers to co-production with
Regional Partnerships for the preparation of NPF4 but it is unclear whether Highland would be covered by such arrangements. We would query how local authorities not covered by any existing or future formal partnership arrangements would be engaged in the NPF4 preparation. In addition, we would also query how areas to be covered by strategic housing land requirements in NPF4 will be decided.

**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 onus for delivering improvements towards achieving these aims has been placed mainly with Local Authorities. However, we believe that the optimum arrangements for achieving these aims would include clearer definition of how developers, landowners, public sector partners (including Scottish Government) and communities work in closer collaboration and with improved communication and transparency to assist the delivery of new homes. Local Authorities have an opportunity to lead the coordination of these partners and stakeholders but increased house building will rely on transparency and a shared responsibility and accountability for delivery.

It will also be necessary to ensure that Local Authorities are appropriately resourced, skilled and financed to guide and deliver development and infrastructure alongside new housing and to match this with economic development and inward investment. We believe that to provide absolute certainty on the delivery of development, further detail is required to address what we believe to be the most significant challenge for Local Authorities and the greatest potential constraint to housing delivery: funding and delivering infrastructure. Working arrangements should allow for open and transparent discussions about how the costs for delivering required infrastructure will be met and any shortfalls in funding addressed taking account of any local or central funding opportunity.

A standardised method for calculating the effective five year supply of housing land is also considered to be essential in providing transparency and certainty on future development.

**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?**

Yes. The Council does not currently have formalised Strategic Development Planning arrangements. The Bill provisions are unclear at this point what the new arrangements will mean for planning authorities sitting outwith the current four SDPA areas. The Council sees merit in retaining close working relationships with partner organisations such as Highlands & Islands Enterprise and HITRANS to ensure that
economic development and transport issues are fully aligned. It is important that any new arrangements in respect of City Regions reflect the growth of the Inverness and Highland City Region and we would urge for the Highland Council to be involved in any further discussion on this matter.

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 focused 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?

YES. The Council is broadly supportive of the changes to Local Development Plans which should bring better clarity and focus and a simplified process. The emphasis on early and fuller engagement, a front-end gate check process and an emphasis on delivery rather than action are all positive measures. This fits with what the Highland Council have been seeking to achieve through the new Delivery Programme for the Inner Moray Firth LDP (which will eventually be broadened to cover all parts of Highland) which aims to support a partnership approach for monitoring and leading the delivery of development and infrastructure.

The Bill proposal to extend the LDP review cycle to 10 years rather than 5 is also a positive step, but there must be provision for changes as required – without the need for wholesale plan review. Given the scale of the Highland area, there will be challenges to ensuring that the land use frameworks for our development areas remain up to date, particularly with the proposal to remove statutory Supplementary Guidance. This is particularly important when ensuring that planning delivers true value in providing place specific guidance or where the Council is required to prepare for unexpected or accelerated growth. A case in point would be the Fort William Smelter investment which is likely to have a significant effect on the wider infrastructure for the area. The Council is not convinced that the new arrangements would allow sufficient flexibility to bring forward changes such as this over a relatively short term period and we believe that new arrangements, and particularly the triggers for LDP review, should allow Local Authorities and LDPs to be responsive and supportive. In particular, the precise circumstances for where the mid-LDP review procedure can be used, also needs to be made clearer.

It is felt that an opportunity has been missed in the Bill to fully integrate Community Planning and Land Use Planning. The requirement for LDPs to take account of Local Outcome Improvement Plans is supported in principle and we would highlight the outcome based approach that has been used in Highland to ensure that our recent Area Local Development Plans are taking direct account of Community Planning outcomes so that planning decisions can contribute to achieving them. Indeed, we have also engaged the Community Planning Partnership in Highland to ensure that plans are aligned with local authority, partnership and community
priorities, but also to enable Community Planning Partners to contribute to the implementation of the LDPs. However, the opportunity to empower CPPs with responsibility to collaborate in leading the implementation of the LDP alongside the Local Authority has been missed.

The Highland Council support the principle of communities being given the right to prepare their own place plan. However, these arrangements ought to have been placed within wider community planning arrangements rather than the planning system in isolation to ensure that the wider range of issues raised by communities are adequately handled by the appropriate community partner. As drafted in the Planning Bill the requirement for LDPs to have regard to Local Place Plans could have significant implications for the plan preparation process. We note that diagrams prepared to support the Planning Bill clearly indicate that LPPs should be “built in” to the Proposed Plan. The level of engagement and assistance that is likely to be required to support these arrangements, and to then incorporate into the LDP process, could have an undue burden.

Having said that we believe that any planning element of LPPs should be complementary to, and compatible with, the planning framework and any place-specific principles set out in the relevant LDP.

It is also unfortunate that there is no certainty that the communities that would benefit most from such plans would be as motivated or as well resourced as others to prepare them. We provide further comment on LPPs under Q6.

Q5 Would Simplified Development Zones (SDZs) balance the need to enable development with enough safeguards for community and environmental interests?

Although the Bill allows Ministers to create an SDZ in a local authority area the criteria for establishing them is unclear. How the potential loss of planning fees in such areas will be accommodated is not clear and this is a major concern for the Council, since the same degree of assessment will be required up front rather than through the formal consideration of planning applications. There are also concerns about loss of local democratic involvement in the development of such areas, particularly where these are adjacent to or within local communities.

The proposal to include other consents (road construction consent, listed building consent, conservation area consent, and advertisement consent) is also welcomed as it will provide a better and more efficient service to applicants and developers. It should be noted that Highland Council is the first local authority to develop an eRoad Construction Consent Process as part of the drive towards this.
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?

With reference to communities role in decision making on planning applications - communities and elected Members have provided feedback that there is frustration about how their views are being heard and considered, and how well they are being kept informed of the progress of decisions, including appeals and communication from the DPEA. On the one hand, we believe that encouraging a more proactive contribution to the preparation of the LDP and Development Briefs etc can greatly assist and empower communities to shape decisions. However, in light of the comments about the experience of using the planning system we would ask for greater clarity on how to improve communities’ influence on planning applications.

In terms of LPPs we refer to our response to Q4. The proposal for Local Place Plans to be embedded within the structures of the planning system is misguided and may not be helpful for communities who decide to prepare them. Under these proposals there is a risk that communities direct very wide ranging issues at planning officers who may not be best placed to help and to the LDP process which again may not provide any assistance to address all issues raised. Had LPPs been placed within the context of Community Planning, and the existing requirement for community partners to prepare LOIP and Locality Plans, it could be argued that this wider range of partners would be better equipped and resourced to listen to and deal with the various requests that are typically raised through community activity.

Having said that we believe that any planning element of LPPs should be complementary to, and compatible with, the planning framework and any place-specific principles set out in the relevant LDP.

We would also like to see details of how all types of communities can be encouraged to undertake LPP work, not simply those who might be better resourced and/or more proactive to carry out such work.

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?

While welcomed they are not sufficient to increase public trust in the system. They will perhaps give security to Local Authorities to undertake more direct action and pursue cases to Court where there may be hope of prosecution but they don’t necessarily prevent the breach in the first instance.
If a breach does occur retrospective applications at a higher fee may be a deterrent. But if S33A is offered and application not submitted then a rolling fixed penalty charge would be an incentive to regularise - this currently doesn’t exist.

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?

As stated in our response to Q2, we believe that the proposals stop short of ensuring that the fundamental issues for funding and delivering infrastructure to support the delivery of development can be addressed. In short, the proposals fail to flesh out how any gaps in funding infrastructure requirements will be addressed where the combination of Council funding and developer obligations do not cover the full costs. In principle, the proposed levy might provide means of securing contributions towards infrastructure that can be attributed to more than one development. Various attempts have been made to address the cumulative impact of development under current regulations however some of these approaches have been subject to challenge leaving LPAs cautious about further introducing such an approach. Whilst the levy based approach may assist, we note that this is based on capturing a proportion of land value uplift. It is therefore unclear how decisions on the scale and extent of levy to be applied will align with the scale and extent of impact each particular development will have on each type of infrastructure. We also query and request further detail on the mechanism which requires the transfer of levy income to Scottish Ministers, particularly on the circumstances and the types of infrastructure where this arrangement will be used, and how this will ensure mitigation of development impacts.

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

The proposals put forward are fine in principle, but any assessment of performance needs to build on the existing arrangements that are in place for submitting Planning Performance Frameworks. It is important to understand that planning authorities across the country have different levels and types of caseload – areas like Highland for example have a much lower proportion of planning applications than more urban areas and have different challenges in resourcing site visits than much smaller more compact areas. These examples serve to illustrate that a centralised approach to performance management must provide for a level playing field and for a clear understanding of local context. One size will not necessarily fit all.
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?

Highland Council is one of a small number of planning authorities that has charged for discretionary fees for a number of years which has helped to sustain service delivery and assist in the move towards cost recovery. The Council’s major development pre-advice service is very well used and receives very positive feedback from those that use it.

That said these and many other areas potential charges would benefit from express powers being set out to allow local authorities to levy such charges as appropriate. This approach will allow for greater certainty whilst ensuring that planning authorities deliver against timescales. More detail is required and the Council will be pleased to offer the benefit of our experience to assist if required.