Local Government and Communities Committee

Planning (Scotland) Bill

Submission from JCR Mulholland

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?

If the question had been, do you think the Bill, taken as a whole, will produce a planning system for Scotland that balances the need for the views of communities and the protection of the natural and built environment with the need to secure the appropriate development? There might have been something community could get excited about.

However when the views of community follow behind the essentials and needs of appropriate development the scales have been set, only unbalanced. This will do nothing to change the public perception of the done deal and the brown envelope. As long as the system is driven in essence by the economic need, dependant on the need of landowners, both those that would want to turn their fields to houses, but also those who would keep the grouse moor intact, or deny the tenant opportunity to develop, then the reactive nature of planning law will continue.

The Bill will result in no substantive change in the Planning System in relation to Public confidence in the planning system, which the ongoing story of the historic picturesque village of Symington in Ayrshire will illustrate. Active participation by the Symington Community Council throughout the process has resulted in no effective community engagement despite hundreds of hours of work by volunteers. The ongoing MIR will confirm toothless Community Council. South Ayrshire Council performance has been worse than negligent. Valid arguments to reject a site on environmental grounds disappear in subsequent LDPs

The following is a potted version of the systematic destruction of the Symington Conservation Area and ultimately the village itself as it becomes a suburb of Glasgow.

Housing development to the west of Symington has done nothing to protect the historic Symington Conservation Area (SCA). In the cumulative impact of multiple developments over a number of years is the piecemeal destruction of the Rural Village as identified in the November 2017 Main Issues Report, by the inclusion of a picture of housing on Main Street on page 50 in the Issue 6: Rural Housing section of the Report. Proposals contained throughout the ongoing MIR need to be considered alongside the ongoing development of Symington and over the last two decades. All of which are indelibly linked to planning decisions made shortly after the 1947 Planning Act.

Prior to the establishment of the SCA the planning authority agreed to a housing development to the North West of the SCA (South Townend Development) and then
proceeded to forget it had done so. Fifty years later developers found the approval in the bottom of a drawer and resolved the outstanding matters of their appeal. Since then multiple attempts were made by developers to connect this development to the SCA. Some of them were unsuccessful like the Public Local Inquiry 24\textsuperscript{th} August – 31\textsuperscript{st} March 2005, including development to the west of the CA. Reporters E Thomas and H Begg were “\textit{driven to the conclusion that Symington was ill served by planned intervention in the twentieth century}”.

The Summary of the case for South Ayrshire Council (SAC) agreed with the reporters. The Inquiry included evidence in support of their rejection of Site 4. “It was stated that most of the development at Symington had taken place north of the Conservation Area and the land on site 4” (SYM1) “was the last location where there was still a border between the historic village and the open agricultural land to the south west.”

“All assessed against the criteria set out in ASP policy G8, site 4 was not suitable for development.”

“\textit{Site 4 formed an attractive setting for the Conservation Area and development of the site would be to the detriment of the wider area.}” SAC 2005

During the creation of the South Ayrshire Local Development Plan in 2014 Symington Community Council made objection to the inclusion of SYM1 (or site 4) into the LDP on size, loss of identity, internal transport network and Landscape Setting. The Community Council also detailed many parts of the SAC case for rejection in 2005 to SAC.

Mr Martin Seddon was appointed to deal with objections to Issue 62. On his behalf Jayne Hollas wrote to SAC and copied the letter to Ms Kelly of Symington Community Council on the 9th January 2014, in her letter to Ms Kelly she stated “A copy of this request will be published on the DPEA website, together with a copy of the authority’s response once received.”

To SAC she asked the following “4. The council’s response in the Schedule 4 makes some general comments in relation to the points and quotations made in representations. It adds any adverse impacts may be resolved through the planning application process including seeking developer contributions toward infrastructure provision. However, the previous reporters comments were particularly robust in the response to sites 4 and 5 (SYM1) and the recommendation was clear.”

Then she went on to ask her question “5. Could the council please provide a more detailed response in relation to the points raised regarding the previous Reporters’ findings and explain what circumstances have clearly changed since the Local Plan Examination in 2005.”

Issue 62 Summary of responses (including reasons) by planning authority to the objections included.

From the published Issue 62 Planning Authority Summary of representations comes,
“The Council has no record of a site report recommendation which states that this site is not preferred for release, this is not contended. If this did indeed occur, it was a process error”. That SAC does not have a copy of the 2005, ‘Report of Public Local Inquiry into Objections to the Finalised South Ayrshire Local Plan Part 2: Housing Sites’, in 2014, when making a new Local development plan is strange, never mind apparently forgetting the evidence they submitted to the inquiry in 2005. It is also somewhat inconsistent with the ‘Council’s Response’ in the letter from Jill Cronin (with Executive Director: Lesley Bloomer as the letterhead) to Jayne Hollas on the 16th January 2014. The letter claimed in answer to question 5 the following.

“5. The Reporters finding in the South Ayrshire Local Plan Inquiry Report relating to the sites that, together, form SYM1 are noted. The Council has been aware of this from the outset of the LDP process”

On the actual issue of traffic SAC in the ‘Issue 62 response’ to representations replied, “The Council’s road’s service has been consulted on the proposed site and has indicated that a transport assessment for the site should be submitted at the planning application stage. This requirement will be included in the action programme (CD42). The Council’s road service has not objected to the inclusion of the site in the LDP.” Despite identifying congestion from Symington along the A77 to Whitletts Roundabout in the 2009 Monitoring Report on infrastructure. So where did this place the earlier part of SAC submission of “seeking developer contributions toward infrastructure” on a village with no transport issues?

No actual attempt was made by SAC to actively assess traffic impact on the Conservation Area in the face public objection and concerns over the CA. In ‘Issue 62’ responses to objections SAC declared, “A conservation area appraisal would not determine whether further development within the settlement could occur.” Despite the presence of SPP 139

“Local development plans and supplementary guidance should provide a framework for protecting and, where appropriate, enhancing all elements of the historic environment. Local planning authorities should designate and review existing and potential conservation areas and identify existing and proposed Article 4 Directions. This should be supported by Conservation Area Appraisals and Management Plans.”

The Jill Cronin letter to Jayne Hollas, (16/1/14) (Executive Director Lesley Bloomer) could be considered misleading, “Overall, on the basis of the input from Historic Scotland and the Council’s own assessment the impact of the development of the site on the conservation area and listed buildings were not deemed to be factors that warranted excluding the site,” because of the lack of any mention of the site (SYM1) in "ANNEX1 - Historic Scotland Comments on Development Locations", as part of letter sent to Neale McIvanney on the 15th January 2010 (Historic Scotland ref LDP/SAYR Case ID 200901841) listing sites of concern and containing no reference to the SYM1.

Historic Scotland said, “We also understand that you are content that at this stage we focus on sites which may be either strategically problematic, or those sites which raise technical issues, rather than those which raise no concerns.” Then they said
the following, “Given that we have no information about the land use for these land allocations, we would stress that any comments we make in this consultation are treated with caution.”

Jill Cronin states in her letter (16/1/14) “2. Please find enclosed Historic Scotland’s representation on the LDP site at pre-MRI site scoping stage, MIR stage and Proposed Plan stage. None of the correspondence from Historic Scotland raises any concern or other comment on the potential impact of the development of SYM1 on the conservation area.” Significantly SAC letter made no claim of any citation of support of SYM1 by Historic Scotland.

In answer to the question, what circumstances have clearly changed since the Local Plan Examination in 2005? The Jill Cronin letter (16/1/14) included this response by Robert Orr Supervisory Planner, Environment, specialising in conservation “The setting of the village is distinctly rural and this is unlikely to change irrespective of where the boundaries are drawn,” as part of his seven-paragraph response and quite a change from the SAC position in 2005. SAC claimed as part of the changed circumstances, “This highlights the incongruous nature of the South Townend development, and it is this development that irrevocably altered the setting of the village at this location.” The identification is of Symington as a village, to which SYM1 would not change anything, according to SAC. Therefore with regard to, village is the current identified status of Symington by SAC planning department (Conservation). However, South Townend Development was completed in the late nineties prior to the 2005 inquiry. Given the new position of SAC in 2014 it would seem unlikely SYM1 was identified as a site of concern when consultation with Historic Scotland was concluded in January 2010 prior to the conclusion of the site call process. Considering the time scales and Historic Scotland issues with site identification, in their ‘early sight of land allocations’ the omission of any reference to SYM1 by Historic Scotland and the Directorate for the Built Environment in their letter on the 12th July 2010, a very expensive question mark hangs over the due process beyond the means of a small community.

Given Historic Scotland opening line of their letter (15/1/10) to SAC, “Thank you for consulting us with other key agencies on the recent call for sites.” The question has to be, did SYM1 exist at the time of the letter from SAC to Historic Scotland?

As the Chief Executive of Historic Scotland pointed out to me in an E-mail to me, Historic Scotland has no remit for CAs and listed buildings.

“Functions of Historic Scotland

Historic Scotland is required to discharge Scottish Ministers' functions in relation to the built heritage _ that is, ancient monuments and archaeological sites and landscapes, historic buildings, historic parks and gardens; and designed landscapes. These functions are set out in legislation and outlined in further detail but focus on safeguarding ancient monuments and buildings of special architectural and historical interest. )”

A conclusion can be reached that no comment was made on the adverse effect of SYM1 on the SCA because the “Planning (Listed buildings and Conservation Areas)
(Scotland) Act 1997 places the general duties of preserving or enhancing the character or appearance of that area upon the statutory planning authority.” (SAC)

Community concerns over adverse effect on the CA, so adequately expressed by SAC in 2004, “Site 4 formed an attractive setting for the Conservation Area and development of the site would be to the detriment of the wider area,” were readily dismissed by now considering the "site, in principle, would not unacceptably affect the conservation area." (Please note the SAC downgrading of Conservation Area to conservation area)

Planning was introduced to protect community from unscrupulous developers and Symington demonstrates the failure of the planning process to even safeguard a small Conservation Area. Even two South Ayrshire Councillors were moved to reject the application at the Regulatory Panel Meeting on 2nd April 2015. Following a recess an amendment was tabled and the application approved by a majority subject to conditions. One of which the developer is now actively seeking to overturn with an application to modify. The community deemed to failure on that one as well.

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?

Symington Community Council made this submission to the SAC MIR only this week

The Scottish Government Guide to the planning System identifies development plans as follows

“The development plan is a document that sets out how places should change and what they could be like in the future. It says what type of development should take place where, and which areas should not be developed. It sets out the best locations for new homes and businesses and protects places of value to people or wildlife.”

Simply supplying more land where developers can best sell houses is not the same as determining the best location for new homes. The allocation of further land for housing in the vicinity of Symington undermines the ability of other developers to sell houses at previously allocated land at sites such as site 48 East of Dundonald (626 units. Retain existing LDP1 greenfield allocation), along with sites earmarked for retaining 70,71,72,66,53,51 and others, is a fundamental breach on the principle of Planning Law to determine the best locations for new homes. (not necessarily the closest to Glasgow)

While developers decide where development goes our public participation through any planning department is quite frankly a waste of money. As was the General Duties section for Conservation Areas in the Planning (Scotland) Act 1997 of preserving or enhancing the character or appearance of that area upon the statutory planning authority (SAC)
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?

While planning law continues to allow the developers the right to balance the weight of evidence on any given decision by a statutory body, without affording the same right to the public. It makes not a lot of difference at what level those decisions are taken. That said, even the regional level is far too centralised and the German model is superior and delivers better quality housing.

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?

The focus of the question indicates the bias towards ‘delivery’ with ‘Community’ very much in second place. Every ten year three different Community Councils will come and go in the meantime.

Now real reform would be to adjust the time scales of the planning system to one compatible with the time scales for the volunteer Community Councils where meetings on a two monthly basis is acceptable under the legislation for Community Councils.

In Symington we would agree with our friends from Midlothian, it is clear to us that any strengthening of the ‘front loading’ process in plan preparation must bring with it a greater willingness by planning authorities to listen to and act upon community views.

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

The only safeguard carrying any credibility is an Equal Right of Appeal on Planning Issues. Then Planning Law might be going somewhere in terms of community value.

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?

More effective avenues for community involvement are not provided in the Bill. One only has to read section 20AA to see the true position for community. There is nothing at all in the Bill about the supposed voice of the Community, the local Community Council, only ‘some services that come together’, CPPs with no accountability to local community.
The bill only allows for regard to LPP and take account of a “Community Planning Partnership (or CPP) is the name given to all those services that come together to take part in community planning. There are 32 CPPs across Scotland, one for each council area. Each CPP is responsible for developing and delivering a plan for its council area.”

No substantive change to the lip service currently given to Community Councils under the guise of effective Community Engagement. A fact underlined by a need to ask the question at all, highlighting public discontent throughout the nation, reinforced by the numbers of redundant Community Councils, backed up by public levels of interest in local elections. The SNP are on a vote loser on this one.

If after ‘each copy of the LDP is placed in the local library’ the planning authority may change it at any time it likes, so why do we have an LDP at all? It must be assumed the intention of the Scottish Parliament is for the integrity of any given LDP, from a public perspective, remains intact following any amendment.

Therefore we can assume all the procedures for amendments contained within the sub sections contained in section 20AA will safeguard for the public the integrity of the LDP. For after each amendment we have a de facto new LDP. Why go through the expensive process of making another.

Therefore Section 20AA carries the whole picture in terms of Community versus Scottish Ministers and the development industry. To maintain the integrity of the LDP the amendment process must contain all the essential ingredients of effective community engagement and it is simply not there.

With no mention at all of community councils in 20AA or in the rest of the Bill it appears Community Councils are as redundant as they always were with the only legal requirement on statutory bodies, being one of informing Community Councils about proposed development in their area.

(“(within the meaning of section 6 of the Community Empowerment (Scotland) Act 2015)” is extant legislation merely defining local output improvement plans.)

Proposals for communities to produce Local Place Plans sound good in principle. However section 9(2) of the Bill only requires planning authorities to ‘have regard to’ local place plans when preparing a local development plan and is insufficient to give the necessary confidence to participate in the planning process. The history at Symington demonstrates the true position of ‘have regard to’, and the lesson is clear. Every development carries some form of economic benefit if not to the immediate community then to the wider community and Planning authorities are very likely to decide to override a community’s expressed preferences for the land in their area, if only for the economic benefit of savings made through not having a developer appeal the decision.

‘ensure adequate financial and technical support for community bodies wishing to develop local place plans’ is a waste of resources, if the outcome is merely one of ‘have regard to’. The introduction of new rights and responsibilities
through LPPs does have more than informing Community Councils of development, but it does nothing to empower community.

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 with SYM1 resulted in naturally conditions being attached to the approval which the developers are now seeking to overturn. Hopefully SAC will enforce the conditions costing time and money. The very presence of ERA could well alter the financial equation and make compliance the cheaper option.

The need for greater enforcement only underlines the lack of effectiveness in planning law to bring about circumstances of acceptable behaviour by developers. 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.

Going to court is expensive business for both the Public and Developers and more likely to occur in circumstances when the development is controversial in the first place and with high public expectations of enforcement. (For instance SYM1.) Had an equal right of appeal existed SYM1 may well have gone from 144 back to the LDP number of 100 without any actual appeal, and the change of stone now requested be of little concern to the public. (M&M are trying it on in Symington)

(I can hear, the development industry claiming economic suicide and lack of delivery on the 100 number. In which what was the point of having LDPs using economically unviable numbers)

Good Planning has nothing to fear from Equal Rights of Appeal and only reduce the current adversarial nature of planning when desperate people have only recourse to the very expensive judicial review from which everyone loses out. With large legal costs for both objectors and planning authorities, trying to uphold a poor decision, where the weight of the arguments for and against the decision forms no part of the review, is poor value for money for society.

Increased fines in line with inflation will only maintain the status quo and provide no substantive change. Stronger mechanism for the additional funds generated being ploughed back into greater resources for the enforcement function in planning authorities is the true game changer.

The benefit of ERA to insure the development is right in the first place has little to equal it.

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?
Land Value Capture is the mechanism. Increased land value through the public allocation of development rights belongs to the public for the public to use as it sees fit. Infrastructure Levy will only paper over the cracks of once again poor development. Once again good development has nothing to fear.

Kevin Stewart was worried about being different from other parts of these islands when he referred to his opposition to ERA when giving evidence to the committee, worried about the negative impact on development in Scotland.

Let’s be clear it is the Scottish Housing Market, the Scottish Fracking Issue, the Scottish Windfarms Donald has so much trouble with. All developers will have the same increase in supply costs and still the same demand, so only a new position on the graph where the supply and demand lines cross. Community might get a return on the sacrifice paid by community when a village at the turn of the century of only 959 becomes 2,256 in twenty five years and with the protection of SPP81 “In accessible or pressured rural areas, where there is a danger of unsustainable growth in long-distance car-based commuting or suburbanisation of the countryside, a more restrictive approach to new housing development is appropriate.”

Any infrastructure levy system must deliver on (1) timeliness, (2) the full range of required infrastructure and (3) the needs of the wider community, not just the future 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?

Yes we fully support these proposals and would stress that they must be properly funded and must apply equally across all planning authorities. However as we saw in the case of Symington, by the time the matter comes to their attention, the planning authority was legally committed to a course of action too expensive to back out, despite councillors concerns on the adverse impact upon the Symington Conservation Area

Again with the support of section 64 of the Planning ( Listed Buildings and Conservation Areas ) ( Scotland ) Act 1997

64 General duty as respects conservation areas in exercise of planning functions. (1) In the exercise, with respect to any buildings or other land in a conservation area, of any powers under any of the provisions in subsection (2), special attention shall be paid to the desirability of preserving or enhancing the character or appearance of the area

10. Will the proposals in the Bill aimed at monitoring and improving the performance of planning authorities help drive performance improvements?
The ongoing MIR in South Ayrshire Council contains no proposal to reallocate outstanding housing supply sites, with a Housing Technical Paper July 2017 declaring 69% of sites allocated to the housing supply as non-effective

Of 144 inactive sites contacted by SAC for research, the Royal Mail were unable to deliver 8% and only 40% replied, two of whom indicated they no longer intended to develop their sites.

MacTaggart and Mikel sat on a site in Symington, with 7 homes completed from 1970 until 2013 when they started to complete the remaining 42 units. Having forgotten about the 44 units in Symington going back to 1953 and completed in 2002.

Anything to improve on such levels of performance would be welcome. (On the purchase of our own property in Symington in 1984, a small amount of the price paid was held back in protection of the 1970 development. The seller claimed the money in 2011 twenty eight years after the sale on the grounds the adverse impact of the development had not occurred.)

The planning blight, of a housing supply of 8,667 units or sufficient to meet the HDNA for the next 32 years, is cast across the whole of South Ayrshire. This will merely intensify as South Ayrshire have decided to identify yet more greenfield sites for housing development in the ongoing MIR, compelled they say to provide an effective supply of land for housing.

The Bill needs to go further on the matter of completion of applications subject to a ‘minded to grant subject to a legal agreement’ decision. It would appear South Ayrshire are unable or unwilling to apply section 46 of SPP to reallocate ineffective sites. We see nothing in this Bill that will make any meaningful change to the process of developers hanging onto the LVC 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.

The Bill will only allow developers to continue playing the LVC game.

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

The Scottish Government Guide to the planning System identifies development plans as follows “The development plan is a document that sets out how places should change and what they could be like in the future. It says what type of development should take place where, and which areas should not be developed. It sets out the best locations for new homes and businesses and protects places of value to people or wildlife.”

Yet the reality is the developer decides what and where, usually through a low density proposal which becomes high density once the hurdle of getting in the LDP is over. The Planning Authority reduced to an incoherent Tam aboard his horse trying to stay ahead of the devil.
This Bill will make no substantive change to the current planning system. 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 even if those views as basically flawed.

“The Rule of Law” - Tom Bingham -2010 (Master of the Rolls, Lord Chief Justice, , Senior Law Lord of the United Kingdom) Chapter 5. Equality before the Law

(3) The laws of the land should apply equally to all, save to the extent that objective differences justify differentiation.

“Most British people today would, I think, rightly regard equality before the law as a cornerstone of our society.”

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. However this can only be a stepping stone towards the full equality demanded by the people.

The prisoner does not appeal the sentence solely because he doesn’t like it. He appeals because; the sentence is too harsh for the crime, because he is innocent. Because is reason enough and the outcome, the validity of the argument. For the 69% of sites sitting idle in South Ayrshire and good effective planning there is no end to life as we know it Jim, because of the existence of ERA.

Whether in this Bill or the one yet to come, equality cannot be denied.