Local Government and Communities Committee
Planning (Scotland) Bill
Submission from John Wilson

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?**

No. The Bill as presented fails to take account of a number of issues which affect the communities that are directly affected by planning decisions.

- Delegated powers to planning officers
- Planning Committee decisions
- Waver of Section 75 conditions
- Retrospective planning consent
- Developer appeals
- Call-in by Ministers
- DPEA Reporters decisions
- Judicial Review

The Bill adds to the confusion regarding the where planning decisions are taken and when a decision in planning terms is final.

For many communities awareness of the impact of the proposed developments is crucial to their understanding of the planning process, for many it is only when the diggers go on site that they become aware of the nature and scale of the developments that have been approved.

At present many communities are being faced with the removal of “green belt”, destruction of wildlife habitat, the upheaval of living next to a building site on an industrial scale and disruption to local health and education services. With some communities and villages facing construction of housing in the numbers of thousands over prolonged periods of time.

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?**

Despite the attempt to use Local Development Plans (LDPs) to identify areas of land for potential house building, the current system and the proposed planning legislation is still open to change dependent on the planning applications submitted, especially the proposal to go to 10year LDPs, with planning applications being considered within this time frame.

Currently there appears to be no account taken of the land identified in the LDPs for housing development when considering new proposed developments. More analysis has to be carried out to ensure where LDPs have identified permitted development
sites, these sites should be utilised before more land is allocated to house building, rather than at present developers are free to propose additional; housing developments out with the LDPs.

If the desired aim is simply to increase the number of houses built then the proposed legislation will fail to address the fundamental problem that house building in Scotland is dependent on the house building industry, which makes decisions based on financial benefits to the company, which has as its main priority the maximisation of profit.

One of the fundamental problems for many individuals and families is the cost of owning their own home, if the planning legislation is simplified to only deliver more house building then it fails to look at the economics of home ownership in the present economic climate. Questions regarding the affordability measure become crucial, however I understand this is not seen as a direct relevance to the planning legislation, however when drawing up legislation there is a duty to look at the unintended consequences of what you introduce into legislation.

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?

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 changes proposed in the proposed Bill while helping developers, does nothing to safeguard the decision making process at a local government level and more importantly will be meaningless to local communities.

The Scottish Parliament introduced Community Empowerment legislation in 2015 to give communities a greater say in the decision making process that directly impacts on communities, the current proposed legislation further inhibits to role of local communities in the planning process. There has been a failure in the proposed legislation to introduce an equal right of appeal for communities and individuals that object to planning decisions. At present the only right of appeal which exists to communities objecting to planning decisions is to go for Judicial Review at the Court of Session and can only be made on a point of law. This is a very expensive option with costs estimated at around £50,000. While communities and individuals have very limited rights to object to planning proposals developers have several avenues to appeal the decision of a planning authority.

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

No. As the current proposed legislation is framed the SPZs would provide less safeguards for communities and environmental interests.
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 answer to the three questions above is No; No and No.

The proposed legislation has to be read in its entirety to understand the impact that it would have in the different decision making tiers. The problem is that the proposed legislation gives less opportunity for communities and individuals to influence the planning decision making process. One of the main concerns is how does the views of a community become adequately reflected in the planning decision making process, particularly when they object to a proposal that would have detrimental impact on the community and that decision is made at the level of the Scottish Government or DPEA.

The proposed Bill does not give adequate assurances that the appropriate resources could be made available to communities to adequately engage in the planning decision making process. If the community wanted training to understand the planning process, who would fund that training? If a community wanted to challenge a planning decision would funding be provided by the Scottish Government to assist an appeal to the Court of Session? If a community wanted to bring in expert witnesses to present evidence or carry out environmental impact assessments would the Scottish Government be prepared to cover the cost?

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?

The experience to date of the planning enforcement system clearly shows that there has been a failure to take adequate enforcement action against developers/house builders who ignore Section 75 conditions. The use of retrospective planning consent and section 75 waivers has been all too often the way developers have avoided adhering to the conditions imposed on a proposal.

When retrospective consent and section 75 conditions are varied there is no consultation with the community when the changes are made and for many it is only made aware when the development goes ahead that community are alerted.

In Scotland over recent years we have seen natural habitat and SSSIs destroyed and decimated by planning decisions and developers with little or no action taken against those who have allowed this to happen.

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?

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?

There is a fundamental difficulty in the question of training for elected members, which raises issues of whether you confine the training just to planning issues or extend that to all elected members making decisions, whether in the council chamber or in parliament. While you would expect elected members to understand the decisions that they are being asked to take. The problem is who devises and delivers the training to elected members.

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

Depends who will be carrying out the monitoring and reporting. If the monitoring is simply a target driven by the number of planning consents then this may be fundamentally flawed. What provision will put in place to monitor the DPEA and ministers decisions and who will they be accountable too?

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?

One of the current issues facing planning authorities whether they have adequate resources to scrutinise the planning applications submitted, in particular the Environmental Impact Assessments (EIA). At present the developers are responsible for producing the EIA and due to the lack of resources within planning authorities to adequately scrutinise the assessment and take account of the impact on wildlife and many other natural habitat there is a failure to properly address the issues.

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

The Scottish Government have missed an opportunity to address some of the fundamental issues in the proposed legislation to correct the mistakes made in the Planning Scotland 2006 Act.

These include;

Introducing an Equal Right of Appeal for communities.
Strengthening the role of community organisations in the planning process, such as Community Councils, Resident/Tenants organisation and communities of interest.
Identifying adequate resources to enable communities to participate in the planning decision making process.
Unfortunately the proposed Bill gives very little confidence that it is intended to safeguard the planning process, with more decision making being taken a national level, by-passing local decision making and greater involvement by communities. As presented the proposed Bill appears to be more of a “developer’s charter”, than a serious attempt to address the fundamental failings of the current planning legislation. It is my view that local communities should have greater safeguards in the planning decision making process and there should be more accountability and public scrutiny of the decisions taken.

A recent example of letter sent to community objectors to a planning proposal from DPEA:

“PLANNING PERMISSION APPEAL

Please find attached a copy of the decision on the appeal.

The reporter’s decision is final. However you may wish to know that individuals unhappy with the decision made by the reporter may have the right to appeal to the Court of Session, Parliament House, Parliament Square, Edinburgh, EH1 1RQ. An appeal must be made within six weeks of the date of the appeal decision. Please note though, that an appeal to the Court of Session can only be made on a point of law and it may be useful to seek professional advice before taking this course of action. For more information on challenging decisions made by DPEA please see https://beta.gov.scot/publications/challenging-planning-decisions-guidance/

I trust this information is clear. Please do not hesitate to contact me if you require any further information.

Case Officer
Planning and Environmental Appeals Division”