Local Government and Communities Committee

Planning (Scotland) Bill

Submission from the John Muir Trust

SUMMARY

- **Natural and cultural environment** - the Bill says almost nothing about the environment. There should be explicit reference to how its protection and enhancement will be ensured.
- **An overarching “Purpose of Planning Statement”** is one way in which environmental and social aims could be brought into the Bill. The lack of a vision for national planning is further compounded by the draft Bill’s proposal to remove the need for a “Vision” from the Local Development Plans.
- **Wild land** - is an important part of the environment which the public wish protected, and the Bill is an opportunity to give Wild Land Areas the same protection as National Parks and National Scenic Areas.
- **A Strategic Environmental Assessment of the draft Bill** clearly identifying those aspects of the draft Bill which might cause good or bad changes to the environment is very desirable. It is essential that MSPs have this information while considering different proposals in the Bill.
- **Strategic Development Plans** – removal of strategic planning to the National Planning Framework is centralising and removes opportunity for local engagement.
- **Local Development Plans** – should retain a Vision for the LDP.
- **Supplementary Guidance** - Planning authorities currently have drafted significant amounts of Supplementary Guidance and so, if it were removed, there would be further centralisation of planning and a significant reduction in the ability to reflect distinct local aspects of planning. Supplementary Guidance should be retained.
- **Simplified Development Zones** – Simplified Planning Zones, which are the current planning mechanism, cannot be designated in a conservation area; a National Scenic Area; in a green belt; in a Site of Special Scientific Interest. This protection is not in the draft Bill for Simplified Development Zones but must be retained.
- **Local Place Plans** – As drafted, Local Place Plans have too little “clout” and might soak up much community effort whilst having too little influence on the LDP and developments.
- **Equal Rights of Appeal (ERA)** Bringing in ERA alongside LPPs could give communities a genuine opportunity to challenge poor decisions, which would encourage meaningful engagement by developers early in the process. This would go a long way to increasing public trust in the planning and political system.
- **Judicial Review** is often said to be “a right of appeal”, as an argument that Equal Right of Appeal is not required. John Muir Trust’s experience of Judicial Review, and being refused associated Protective Expenses Orders, demonstrates the hugely excessive costs of Judicial Review. Bringing in a limited ERA would help address the Scottish Government’s current non-
compliance with the Aarhus Convention, as detailed by the Aarhus Convention Compliance Committee in 2017.

- **Environmental Impact Assessments** should be commissioned by either the Planning Authority or SNH. The costs would be borne by the developer with the usual pool of consultants being used.

**BACKGROUND**

The John Muir Trust welcomes the opportunity to submit evidence to the Committee. The Trust understands, and is supportive of, the aim of the Bill in securing adequate housing for Scotland’s needs. The Trust does not explore this aspect as it is not our area of expertise and we have not answered all questions. The Trust is an environmental charity whose Vision is for us to live in a world where wild places are protected, enhanced and valued by and for everyone. This response relates to the potential impact on, or enhancement of, the natural environment and wild places.

The planning system is the primary way in which our natural and built environment is protected and enhanced, as it balances society’s need and wish for development of varying kinds with the need to protect and enhance our environment, for current and future generations. There are many aspects in the Bill which could bring improvements, or have the potential to be a major step forward. However, to comply with the evidence guidelines, for readability and due to limitations on time, the Trust concentrates in this response on those aspects that we believe would benefit from further thought, amendment or removal.

**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?**

**No.** The Bill is about process, and there is little about the desired policy outcomes, other than the housing targets. This gives a significant problem in that the effects of the proposed changes have to be considered in the absence of a clear intention for each change.

**PURPOSE OF PLANNING STATEMENT**

**including ENVIRONMENTAL AND CULTURAL PROTECTION**

The draft Bill has virtually no mention of the natural environment or cultural heritage. This lack is further compounded by the draft Bill removing the need for a “Vision” from the Local Development Plans. The Trust believes there should be a Purpose for Planning Statement within the Bill, identifying the overarching aims of the planning policy and process. That Purpose should explain how the process will achieve protection and enhancement of the natural and cultural environment.

**WILD LAND AREAS**

The draft Bill is an opportunity to give Wild Land Areas, introduced by the Scottish Government to Scottish Planning Policy in 2014, the same protection as National Parks and National Scenic Areas. Wild Land protection is supported by four out of five Scots in a YouGov poll 2017.
STRATEGIC ENVIRONMENTAL ASSESSMENT (SEA) OF THE DRAFT BILL

It is unclear why there is not a Strategic Environmental Assessment Environmental Report published alongside the draft Bill. There was an SEA of the Review of the Scottish Planning System in 2017. The best process would be for that to have been updated alongside the draft Bill. This could address some of the many concerns raised here and by others about possible reduced environmental protection from the proposals. This lack should be addressed now.

Recommendation 1: Bring in a Statement of the “Purpose of Planning” which includes explicit reference to protection of the natural and cultural environment.

Recommendation 2: That Statement should include improved protection for Wild Land Areas equivalent to that which currently applies to National Parks and National Scenic Areas.

Recommendation 3: A Strategic Environmental Assessment for the Bill is produced.

STRATEGIC DEVELOPMENT PLANS

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?

No. Strategic planning is particularly essential when large development projects will impact in more than one planning authority area. These schemes will also be likely to bring environmental impacts which the public have a legal right to be consulted about, under the Aarhus Convention and the Aarhus Directive. The proposals in the Bill for cross-authority working do not seem to have the opportunities for public engagement which currently exist. The Bill refers to joint working between authorities and relevant agencies but that leaves a democratic deficit and it is difficult to reconcile this proposed move, from regional planning to national planning, with the government’s intention to meaningfully involve communities more.

The draft Bill, by abolishing Strategic Development Plans; giving very considerable, over-riding powers to a specific government employee, “the appointed person”; and by removing much of the decision-making from planning authorities thus centralising decision-making within the Government, is removing scrutiny and transparency from the local community. There are problems with the current Strategic Development Plan process but the Trust would ask that decision-makers look again at bedding in SDPs and increasing involvement of the public in regional planning.

Recommendation 4: Rather than abolishing Strategic Development Plans, Strategic Development planning should be improved - Delete Section 2 or amend to retain Strategic Development Plans.

LOCAL DEVELOPMENT PLANS (LDPs)

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 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 are likely to deliver some of these aims but, from the Trust’s experience of working alongside community groups engaged with the planning process, the Trust does not consider that this will meet the needs of communities.

The Bill proposes removing the current requirement for a Vision in LDPs. The Trust agrees with the Bill Policy Memorandum, paragraph 19, which says, “Despite previous reforms to the planning system, development planning has become too complex …This has come at the expense of implementation and achieving outcomes.”

However, the Trust does not agree with the conclusion that, “By removing some unnecessary process and general policy, more visionary place-based plans will be achieved and much greater effort can be directed towards making those visions a reality.” It is hard to see how “more visionary place-making plans” will be promoted by the removal of a Vision in Local Development Plans.

**Recommendation 5:** the Vision statement for Local Development Plans should be retained by deleting Section 3 (2) b of draft Bill.

There is an important reference in the Bill, regarding LDPs - Section 3, (2)(a) referring to Planning (Scotland) Act 1997 subsection 5(a). This notes that the plan is to take account of “(a) the principal physical, economic, social and environmental characteristics of the district”.

The Trust suggests that more specific reference should be included as to those physical and environmental characteristics to be protected. This should include National Parks, National Scenic Areas, Wild Land Areas, Local Landscape Areas and other natural and cultural designations.

**Recommendation 6:** For the Bill to be more specific about what natural and cultural characteristics should be taken account of in LDP planning.

**SUPPLEMENTARY GUIDANCE – Removal is a centralising move**

There is currently a considerable amount of Supplementary Guidance, and a significant amount of work ongoing in planning departments developing Supplementary Guidance. It might be argued that some of the requirement for Supplementary Guidance came about because of a previous 2010 government attempt at simplifying guidance, when Scottish Planning Policy became one unified document, rather than several subject-specific ones. It would seem that either much of current Supplementary Guidance is superfluous or it is necessary to clarify planning issues which have arisen. The Trust believes Supplementary Guidance is particularly important when detail is required for a specific geographic area; because of changing circumstances or because Scottish Planning Policy (SPP) and LDPs do not cover points identified as significant.

The proposed removal of the tool of Supplementary Guidance, which augments the Local Development Plan, would take away the possibility of a planning authority
responding to either specifically local or changing circumstances. This ability to respond to changing circumstances will be required even more if ten-year plans are used.

Some examination of the thinking behind the abolition of Supplementary Guidance would be helpful. Is it significant that the flowchart diagram accompanying the draft Bill, showing the proposed relationship between National Planning Framework and Local Development Plans, refers to the LDP “incorporating small amount of locally distinct policy”, where currently there is Supplementary Guidance?

Recommendation 7: Supplementary Guidance should be retained.

SIMPLIFIED DEVELOPMENT ZONES

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

No. The Trust has a significant concern about the removal of protection of the environment in SDZs, as currently proposed.

Planning legislation currently prevents SPZs from being designated on land:

- in a conservation area
- in a National Scenic Area
- forming part of a green belt
- in a Site of Special Scientific Interest

The Bill would remove these restrictions and allow Scottish Ministers to make regulations setting out new restrictions on land that cannot form part of a SDZ. The draft Bill, therefore, removes protections for nationally important, environmental designated sites and leaves it to Ministers to bring forward regulations to replace it, or not, as they see fit. This potential removal of protections is far too important to be left to secondary legislation or Scottish planning policy later.

Recommendation 8: The protection of these important natural and cultural heritage designations must be brought into SDZs.

LOCAL PLACE PLANS (LPPs), COMMUNITIES AND EQUAL RIGHT OF APPEAL

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?

Local Place Plans have the potential to provide more effective ways for communities to be involved in planning but will only succeed if the community will see results from their input. There are a number of problems with the draft Bill. The Trust has worked with many communities and individuals who have worked hard to engage “upfront” in their local planning process to date – inputting to the National Planning Framework,
Strategic Development Plans, Local Development Plans – but they often report that very little makes it through to final plans. It is often said that communities “want to be consulted” but actually people “wish to be heard and, if their views have merit, account taken of that input”. Effective LPPs will take considerable resource of time and money and it is a concern that the planning authority only has to “have regard to” the LPP when preparing the LDP. Insufficient finance or support is currently allocated to this new process.

EQUAL RIGHTS OF APPEAL

What is an “equal right of appeal” in planning? Currently if a development is refused, a developer can appeal the decision without taking a Judicial Review court action but community objectors can only take a Judicial Review - and this can only be won on a point about process deficiency, not on poor decision-making. Equal Rights of Appeal (ERA), limited to certain circumstances such as when a proposal goes against the Local Development Plan or where an Environmental Impact Assessment has been undertaken, would give communities and affected individuals a genuine opportunity to challenge poor decisions. No-one is right 100% of the time so a right of appeal in certain circumstances seems fair for all parties.

The argument is often made that having an ERA would discourage people from getting involved in early discussions – the “front end” of the planning process. There is no evidence for this. Moreover, is it reasonable to expect everyone to engage with the National Planning Framework (NPF), which is now proposed to have a lot of the regional planning criteria included? If they do not, a community may then find themselves facing a major development which has more or less been given “Planning Permission In Principle”, through the NPF. Allowing a limited Equal Right of Appeal would increase public trust in the planning and political system. ERA can be limited to certain circumstances, e.g. where the decision goes against the Development Plan; where the planning authority has a financial or land interest in the application; where an Environmental Impact Assessment was required.

Recommendation 9: A limited Right of Appeal should be introduced.

JUDICIAL REVIEW

Judicial Review is not “the answer” in planning for the public. It is often said that Equal Right of Appeal is not required to allow the public to challenge poor planning decisions, as it is possible to take a “Judicial Review which is a right of appeal”. John Muir Trust’s experience of Judicial Review, and the associated refusal of Protective Expenses Orders for the JR, is one of many cases brought by the public which gives the lie to this assertion. The Trust took a Judicial Review against the Scottish Government and Scottish and Southern Energy regarding the consent for Stronelaig windfarm, leading to the subsequent loss of wild land. The cost was several hundreds of thousands of pounds, including costs paid to the government and SSE after negotiation, of £125,000. This case was one reason that the Scottish Government was found, by the Aarhus Convention Compliance Committee in 2017, to currently not be compliant with the Aarhus Convention. ERA would help Scotland become compliant with “Aarhus”.

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Q9. 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?

No. Councillors are democratically elected, as MSPs and Government Ministers are, and so it does not seem correct to bar them from part of the duties they are elected to perform. Training should be offered and encouraged. To encourage take-up, council officials could offer training on several different occasions. Currently, major development decisions may be timetabled for consideration immediately after new Councillors have been elected. On at least one occasion, Councillors absented themselves, saying they had not been given adequate training for the decisions tabled the week after they were elected. On the other hand, Officers have to adhere to strict timetables for developments being considered within a prescribed period. So this issue is not as simple as “requiring Councillors to have training”, any more than requiring the Minister to have training before making decisions would be reasonable.

Recommendation 10: Remove this requirement from the draft Bill but improve training offered.

Q12. Are there any other comments you would like to make about the Bill?

ENVIRONMENTAL IMPACT ASSESSMENTS (EIAs)

The Trust would ask that consideration be given to including a requirement that Environmental Impact Assessments would be commissioned by either the Planning Authority or SNH, as opposed to the current process of the developer commissioning an EIA. The costs would be paid by the developer to the planning authority or SNH. This change would have these advantages - the developer would not be able to, or be perceived to, influence consultants unduly; SNH/Planning Authorities would gain expertise and capacity internally; SNH/Planning Authorities would be able to cut down the amount of work required for any one Environmental Impact Assessment, if there was already work undertaken for another project which was relevant and up-to-date. For instance, bird surveys over an area could be relevant to a number of neighbouring schemes. The usual pool of consultants would be used, so there would be no transitional issues about capacity or personnel, and implementing this would be relatively simple.

Recommendation 11: Give Planning Authorities the responsibility for commissioning EIAs.

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i The United Nations Economic Committee for Europe describes the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters as:

*The Aarhus Convention is a new kind of environmental agreement. The Convention:
- Links environmental rights and human rights
- Acknowledges that we owe an obligation to future generations
- Establishes that sustainable development can be achieved only through the involvement of all stakeholders
- Links government accountability and environmental protection*
• Focuses on interactions between the public and public authorities in a democratic context. The subject of the Convention goes to the heart of the relationship between people and governments."