Local Government and Communities Committee

Planning (Scotland) Bill

Submission from Moscow and Waterside Community Council

The Planning (Scotland) Bill is currently progressing through the Scottish Parliament. It has been proposed by the Cabinet secretary for Communities, Social Security and Equalities. The Bill aims to ‘improve planning to better serve Scotland’s communities and economy’.

The Bill provisions will apparently ‘improve the system of development planning, give people a greater say in the future of their places and support delivery of planned development’.

Despite the published aims, the reality of this Bill appears not to empower and engage with the citizens of Scotland but to move in a direction which stifles democracy in favour of the few; the commercial developers and land owners planning to make profit, often to the long term detriment of Scotland’s communities, landscape and environment.

1. Empowerment and equality: Moscow and Waterside Community Council, in East Ayrshire has been involved in submissions to our Local Development Plan, has contributed to other local and nationwide planning consultations and we regularly assess planning applications in our area.

The Scottish Government promises to improve community empowerment and engagement, but in regard to planning issues, this appears to be lip service.

We would love to see a Bill that really delivers community empowerment and equality.

Unfortunately, this Bill fails to introduce mechanisms that will improve the quality and value of public engagement; it actually reduces existing community empowerment, reduces equality of representation and favours developers still further than at present.

Watered down versions of local place plans are proposed in the Bill with several consultation opportunities being removed. Local Place Plans only ‘may’ be a material consideration in planning decisions and there is no mechanism for community input if proposed LDP’s are modified. Approved Local Development Plans have been lengthened, to be valid for 10 years, rather than 5, as at present. This is likely to be inflexible. This will remove the ability to modify the LDP if there are planning decisions based on the LDP which result in adverse impact, or if there is a need to adapt to changing demographics or environmental concerns. It removes the ability of adversely affected local communities to influence decision making to prevent further, similar development.

2. Equal Rights of Appeal: Fundamentally, the Bill fails to acknowledge the inequalities that ordinary people face in the planning process.
Whilst developers have a right of appeal if their planning application fails, with their costs funded tax free as a business cost, the ordinary public have no right of appeal, even if there is a fundamental error in the planning process. The only recourse for public justice is a Judicial Review (JR). Costs for mounting a public JR come out of earned income, or savings, and this is not tax deductible. JR costs will run into many thousands of pounds, making justice inaccessible to all but the very rich, even if a protected expenses order (PEO) can be obtained. There is clear inequality even in the judicial process.

This Bill should include a right of appeal for communities under certain circumstances. The automatic right of appeal for developers should also be limited only to applications that accord with the development plan. This would correct a glaring injustice whilst also strengthening the plan-led system.

Communities, like Moscow and Waterside spend a lot of time working very hard to engage in the planning process, submitting comment at Local, Scottish and UK Government level.

We get very little recognition for our submissions, unpaid hard work and little or no acknowledgement. Unlike developers, we get no place at the top table and no direct access to Scottish Ministers. We think the Bill has an opportunity to change that.

3. **Local driven plans:** we would like to see communities really empowered, assisted and resourced to make their own place plans.

How can the planning process energise communities to be active stakeholders in their area and feel a Pride of Place in their surroundings and Scotland as a whole? That will only happen when concerns of communities are properly acknowledged and become a material consideration of the planning process.

This means starting at the local level, not having local places dictated to by nationally driven priorities. East Ayrshire Council has tried to involve local communities, but following funded lobbying from developers, when the Development Plan is submitted to the Government it is changed, without right of appeal, as not adequately addressing the interests of developers and government policy of the moment. That will not change under this Bill which does not even recognise Local Place Plans as a material matter in decision making.

Whilst national policy cannot be ignored, it should not be at the expense of existing communities without proper investigation and acknowledged equal representation by those communities.

We feel that local plans should be an equal part of the conversation to frame policy guidelines set by Ministers, not a junior partner.

As it stands, this Bill gives communities little or no mechanism to influence national, regional or even local plan policy. We want Local Place Plans to have regard for, but not be dictated to, by national policy. Additionally, we would like a statutory duty to involve and acknowledge the contribution of community councils and bodies in NPF and LDP development.
4. **A right to be heard:**

The Bill proposes a ‘Gate checking’ mechanism before LDP’s are accepted for review and approval by the Scottish Government.

We can achieve much better, quality engagement in local development plans if a new mechanism to involve communities in the gate-checking process is introduced (as was suggested earlier in the review process). It is also important to allow community consultation on a modified plan, after the draft plan has been consulted on, so that people can see where their views have been taken into account and to allow those communities to have the opportunity to make further comment on the proposals. Under the proposals in the Bill this will not happen, there is only the opportunity to comment on an initial draft plan.

5. **Better regulation and Enforcement:** Planning conditions need proper enforcement.

Greater resource and political will is needed to make sure developments comply with planning conditions and environmental law.

Planning conditions allow otherwise unacceptable planning applications to be consented.

Planning conditions are often crucial to prevent a development causing damage to the natural environment, water supplies, wildlife, other businesses, aircraft and not least, the amenity of unfortunate neighbours.

SNH used to be charged with protecting our environment, but now often back down from objecting on the promise of mitigation by attached conditions and monitoring.

It is crucial that planning conditions imposed either by the Scottish Ministers, or by Local Authorities, are strictly enforced and monitored. The resource for doing that should come not from Council tax payers, but from the developer who would otherwise have had the application refused.

We want planning authorities to be properly supported to take enforcement action and the data for enforcement should be measured and monitored at a national level.

There needs to be a substantial increase in fines and fees for retrospective applications with a presumption against retrospective approval.

There needs to be legislation to prevent developers adopting the very common tactic of submitting repeat applications for essentially the same, or minimally modified planning applications following refusal, even at appeal. These applications cause a huge amount of unnecessary work and cost for planning authorities and local communities and result in a planning blight which adversely affects individuals and the community going forward.

If an application is refused because the principle of development is wrong or is contrary to the LDP or environmental law, the Bill should include a mechanism where
there is a presumption against submission of repeat applications, unless the applicant can prove first there are material changes in the proposal or circumstances.

6. **Careful special zoning:** Strategic Development Zones (SDZ’) may simply favour profits for landowners, developers and housebuilders at the expense of existing communities and their environment, whether rural or urban. These new zones will have fewer restrictions than the previous Simplified Planning Zones, making it possible for SDZ’s to be made in conservation areas for example. The process for making and altering these schemes looks worryingly informal, with some centralising mechanisms to refer matters to Scottish Ministers, with what appears to be heavy emphasis on approval of SDZ’s in favour of development at all costs.

Once again, creation, notification and consultation requirements of SDZ’s for existing local communities and bodies have been diminished. Politicians should surely consider that what is really needed are better development zones, developed in consultation with and with due regard for host communities. This is not to exclude much needed housing development, but to ensure that local communities have their say, to ensure there is adequate consideration of open spaces, community/leisure facilities, schools, medical practices or local shops within new developments where these are needed, even at the expense of developer profit.

7. **Environment protection:** How we can improve planning so that it cares for people and place rather than just the residual site value in developers’ ledgers?

It seems clear that the majority of Scotland’s people value our wild lands.

A recent YouGov survey for the John Muir Trust showed that 80% of Scotland’s people want to keep Scotland’s Wild Land Areas free from major developments. Despite this, consent is granted for widespread industrialisation and development of wild lands and unique habitats despite opposition by local communities, local authorities and often opposition from SNH and NGO’s. Scottish Government Ministers appear unaccountable to their electorate for direct involvement in planning matters and in making controversial decisions based on political targets, rather than taking cognisance of public concern, environmental law and sound planning principles.

If, under Planning Law, developments require Environmental Impact Assessments, these should be carried out by independent local authorities or SNH, but still funded by the developer as at present. This would avoid duplication of effort for developments in the same area, but more importantly would provide a publicly credible independent assessment.

Much of Scottish Water’s publicly owned land has been industrialised with wind farm developments which risk public water catchment areas. Both public and private water catchment areas need specific safeguarding measures in this New Bill.

This planning Bill needs to set rules and boundaries to protect these areas and essential natural assets from development, as well as the wild lands of Scotland. That has just not been addressed in this Bill. There are often few people in these rural areas and whilst their environment may be destroyed ‘for the greater good’, their concerns are often disregarded.
Our Community Council is not alone in understanding the implications for excluding public participation in the planning process, should this Bill receive consent as it is written. We hope that you will take cognisance of the voices of very many community councils across Scotland, concerned that this Bill disenfranchises the Scottish people.

Yours faithfully,

Dr Rachel Connor
Chair
Moscow and Waterside Community Council