Local Government and Communities Committee

Planning (Scotland) Bill

Submission from Old Aberdeen Heritage Society

The Society wishes to address the questions as follows:-

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?

In short, no. We do not think that this Bill, as a whole, would produce a balanced planning system.

The emphasis is very much on increasing speed, at the expense of scope for input by the public, especially in terms of the loss of a valuable stage of early consultation on LDPs. by removing the Main Issues Report, and by allowing the introduction of SDZs in Conservation Areas, accompanied by authorisation to give consents such as listed building consent etc. The former would reduce the potential for communities to give their views at a formative stage of the LDP, and the latter would present an extremely serious risk to both the built and natural environment.

Also, although the Bill introduces new powers for Communities such as producing Local Place Plans, these are powers which can only bring benefit as part of a major, lengthy and sustained undertaking. This will simply not be possible, for a variety of reasons, for many communities.

On the other hand, the opportunity for views of communities to be heard on actual proposals for their area will be much reduced, as they will lose the chance to make early comment on what might go into the LDP, and also will lose the chance to make meaningful (i.e. adequately informed) comment on what might be large-scale developments in their area. This latter being the case when an SDZ is proposed, and the public are asked to comment on plans which by definition can not give full detail on what might eventually be allowed in that location. After an SDZ is approved, communities are then powerless to comment on aspects of any ensuing development which might not have been foreseen at the consultation stage, but which now gives cause for serious concern.

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?

We do not believe that these changes to the content of LDPs, with the removal of Supplementary Guidance, meet the needs of communities.
In the face of development pressure in their area, communities need to have the assurance that applications for permission for any kind of development will be scrutinised and determined in line with guidance which has been drawn up by their own local authority, in the context of local experience, and of local priorities, and which goes into adequate detail on every issue, to give certainty as to the Council's stance.

Communities need to know that this guidance, finely tuned over many years, and all the detail consulted on each time will have statutory status for decision-making. The alternative is that very much shortened versions of some SGs might make their way into the LDP, but would lose most of their breadth, detail and clarity, and therefore lose most of their usefulness to communities in making representations about proposals. Other SGs might be downgraded to Technical Advice Notes, and carry far less weight than they do at present. This would remove a considerable amount of protection that communities have at present in the face of an inappropriate proposal, because quoting advice from a TAN in a letter of representation will have far less influence than drawing attention to the same advice in the form of statutory Supplementary Guidance, which the Planning Case Officer must, by law, take serious account of, in his/her handling report.

Supplementary Guidance is an invaluable asset for both developers and communities, because it provides detail on what must be carefully considered, and on the Council's general stance on particular issues. This provides certainty for developers, and assurance for communities that the Council will abide by well established, well examined and detailed guidance.

We firmly believe that Supplementary Guidance should retain its statutory standing, and if this means a second round of consultation, so be it. In terms of the importance of transparency and consistency in the planning authority's determination of applications, it is a vital tool and safeguard.

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

We strongly oppose the introduction of Simplified Development Zones. We believe that this proposal is heavily weighted in favour of potential developers, to the great detriment of the interests of the public, amenity bodies, communities, and of environmental concerns.

There are not, and in our view, there can not ever be, enough safeguards attached to SDZs to protect community and environmental interests.

By definition, to consider giving permission to a development in advance of final details being presented, is to disenfranchise all those who would wish to comment
on the detail, which might be of significant impact on an area, both in terms of appearance and character, and of amenity. This is the very reverse of empowering communities.

The Society's most serious concern is about the amendments advanced in the Bill which would allow the designation of SDZs in Conservation Areas, green belt, or other protected areas. This proposal runs contrary to everything the Scottish Government stands for in terms of safeguarding our special and treasured places.

The proposed accompanying powers for an SDZ to authorise, (in advance of any definite proposed development), consents for road construction, work to listed buildings, demolition within a conservation area, or display of advertisements, would endanger all aspects of our Historic Environment.

The proposed safeguard of prior consultation on SDZs would in reality be no safeguard at all.

Scotland's special areas have been designated as such in order to give them cast-iron protection which requires in-depth scrutiny of every aspect of any proposal which might affect their character, appearance or environmental value. Certain buildings outside these areas have been listed to give them protection also.

This, it has always been understood, is because these areas and these buildings, as well as having intrinsic value, are of infinite value as an irreplaceable part of Scotland's heritage and natural environment, and as such, also of considerable value to the tourism economy.

The expansion of the powers attached to SDZs to be introduced in conservation areas, and other protected areas, and to be applied to issue further kinds of consents would therefore be destructive not only of these precious areas in themselves, but could seriously damage Scotland's potential to present itself as a country which genuinely values such assets, and which hopes to attract visitors from far and wide, on that basis.

To enable SDZs in conservation areas is, frankly, madness. It would negate everything a conservation area is about. The same applies to allowing an SDZ to authorise work to listed buildings, etc.

The character of a conservation area and the integrity and special interest of a listed building, along with considerations of its setting are matters far too complex to be decided in advance by an SDZ pre-approved consent. The fragile balance between elements of a historic environment, and the relationships of a listed building to its surroundings, for instance, are issues which must be considered in the context of detailed final proposals for an area. Even the smallest change can have an inordinate impact on the character or appearance of an area or the special interest of a historic building.
Regulations or restrictions set down in advance can hardly be relied upon either, simply because one cannot predict what a developer might actually build, which could easily comply with these regulations, but might still have a seriously detrimental, unexpected, impact.

It is our firm view that no planning authority, not even with advice from consultees, could possibly anticipate the complex and subtle impacts a development could have on an area, or on the setting of a Listed Building or Conservation Area, without detailed, finalised plans. Not only the height, massing, materials and layout are important, but crucially the design, aesthetics, character and appropriateness in terms of historic integrity must be seen, scrutinised and judged in detail in response to detailed plans.

To do otherwise is to risk grave and permanent damage to Scotland's precious historic assets.

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 Society welcomes the proposed changes to enforcement in the Bill, and would urge that planning authorities are given every support possible to strengthen enforcement powers. Specific funding for further enforcement staff would also help.

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?

We support the requirement for local government councillors to be trained in planning matters. This practice is already well-established in Aberdeen.

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

The proposals for improving the performance of planning authorities will only help drive performance improvements in the fullest sense if equal effort is made to improve the performance for the benefit of the public, as there is for the benefit of developers or other applicants for planning permission or other consents.

The appointment of a National Planning Performance Co-ordinator could be helpful. It is not clear, however, what is meant by the requirement (para 147 of the Policy Memorandum) that feedback be "effectively gathered from users of the planning system".
If this means **all users**, not just applicants, or potential applicants, then this would be a helpful move. There would, of course, have to be an easily accessed and well publicised means for all the public to take concerns to the Performance Co-ordinator. Clearly, performance should not be seen solely, or even primarily, in terms of speed, but rather in the **fair and transparent handling of applications**, which gives **equal value** to the interest of the public, as to that of the applicant, and which accords them equal respect and consideration. At the end of the process, the **real criterion by which to assess performance** is whether it has delivered a **fair judgement** by thorough, inclusive and wide-ranging examination; given the fullest opportunity for the public to advance views as to material considerations; and delivered a decision based on reasoning which is presented in a transparent and logical manner.

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?**

The Society welcomes the introduction in the Bill of powers to enable flexibility in fees charged by councils and the Scottish Government.

We very much hope that fees for planning applications and other consents can be much increased to reflect the amount of work and other costs incurred by both bodies.

We also hope that the Scottish Government will seriously consider charging for Appeals against refusal of planning permission, and indeed set a substantial fee. The present system simply encourages applicants to appeal even when they have little hope of having the decision reversed, and the consequent costs to others are clearly considerable.

Not only do Appeals cost Planning Authorities and the Scottish Government a lot to arrange, but it must not be forgotten that the objectors to an application will be affected too. Many objectors, whose interests would be significantly impacted by approval, will have to spend much time and effort examining the basis of the Appeal, researching facts, and writing a further representation. More importantly, however, they may well be subjected to a significant amount of unnecessary and prolonged stress, which they could have been spared had the applicant been dissuaded from making an Appeal which was unlikely to succeed, by the introduction of a fee for this.

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

There are several important issues which the Bill does not mention, and which we would like to see addressed.
These are all matters which could be dealt with in the Regulations, and we would ask the Committee for an undertaking that the Government will look at a change in the Regulations to address these issues - all of which concern the potential for public engagement with the planning process.

Our concerns are as follows:-

(i) Press Advertisements for planning applications and other consents

At present there is what seems to be an inequable apportioning of the length of time allowed for representations on an application, from the date it is advertised in the newspaper, on the basis of what type of proposal is involved.

Under the Listed Buildings & Conservation Areas Act, 21 days is allowed for representations from the date of publication in the Press, but under other regulations this period allowed for representations is as little as 14 days. While we believe that this is an inadequate period of time to allow for responding to any proposal, it is surely particularly inadequate in the case of "Projects of Public Concern", for which only 14 days is allowed for representations.

We believe that the original reasoning behind a 21 day period was that, as many people take annual holidays of two weeks, they could easily miss entirely the chance to comment on an application if they were away the full time that was allowed for representations. The extra week, then, is of considerable importance.

We would ask that new Regulations should correct this anomaly. It is our view that if an application merits advertising in the Press, then the full 21 days should be allowed, whatever its type.

(ii) Extension of response/consultation period to make up for number of working days when Council offices are closed.

We would ask that Regulations be introduced to make it mandatory for Councils to add extra days to the period for representations to an application, corresponding to the number of working days on which Council offices are closed. At present, it seems, this is left up to individual authorities to decide, and when a Council decides not to allow extra days, this seriously disadvantages members of the public.

When, for instance, 21 days are advertised as the period allowed for representation, and the Christmas and New Year holidays fall within that period, the Council offices can be closed for as many as seven days which would otherwise be working days (as they were this year in Aberdeen), and as a consequence, members of the public wishing to make representation on a proposal are disadvantaged.

This is not because there is no way of submitting an objection, but because during those seven days when offices are closed, there is no-one to contact for further
details of a proposal, or an explanation of a proposal, or concerns about missing details, etc. Potential objectors have, thus, seven days less in practice, in which to prepare a representation.

It is our view that not extending the period for representations in these cases is contrary to the aims of the Scottish Government to empower communities.

(iii) Statutory Consultees (e.g. Environmental Health, Roads)

It is of concern that, quite often, various statutory consultees submit their views on an application in a report which goes online at the very beginning of a public consultation period, and therefore are not in a position to respond to any unanticipated, but none the less valid" concerns raised by representations from the public. This can give the impression that these representations can not be taken fully into account in the consideration of the application, as an authoritative assessment has been made.

Perhaps there should be a requirement on such consultees to look at issues raised by objectors, before posting their report.

(iv) Validation of Applications

Our concern here is that it is now quite common for an application to be validated with the very minimum information, and often clearly inadequate presentation of the proposal. Often, important drawings are missing, or drawings are illegible or unclear, or even self-contradictory. Sometimes a Design Statement or similar is missing. Even when members of the public (and, indeed the planning officer) draw attention to this, the missing information or clarification does not arrive until after the period allowed for representations.

Once again, this is the opposite of empowering communities and encouraging Public engagement in planning.

It can be hugely dis-spiriting to go to great lengths to make a meaningful and well informed representation, only to be prevented from doing so by a conspicuous lack of adequate information. This is clearly not an equable state of affairs.

We would ask Ministers to look at ways of using Regulations to tighten up controls on documents and adequate information required before validation takes place. Without such measures, members of the public are effectively being seriously disenfranchised in relation to being enabled (or not) to make meaningful representation on applications.
(v) Advertisement Control Regulations

The Society would urgently request that the Bill allows also for regulations on Advertisement Control to be tightened up. The existing regulations are old and inadequate in so many ways. This area of planning, though often neglected, is very important, given that signs and banners can have a very significant visual impact on an area, or on a particular building.

At present, we believe, there is no requirement for an authority to take into consideration any representations on an application for Advertisement Consent, and this is surely not in line with current thinking on public engagement. We would like to see a mandatory obligation for the planning authority to consider any representations, and to assess these in their handling report.

We would also like to see more stringent regulations about the type, and size of advertisements allowed, particularly in Conservation Areas.

Lastly, and most importantly, we would like areas which have been designated as Areas of Special Control for Advertisements (such as the High St, Old Aberdeen) actually to be subject to more rigorous control. At present, we understand, the only consequence of such a designation is that a planning application is required, but there seem to be no more stringent standards applied to the actual form which the advertisement takes. The results of this lack of rigorous control is that unsympathetic advertisements and other signs can be approved (as has happened in the High Street) where the planning officer is not fully aware of the importance of the area or its designation. Stricter regulations could prevent this.

We would very much welcome the most rigorous protection being given to such areas by way of new Regulations.