Local Government and Communities Committee

Planning (Scotland) Bill

Submission from Persimmon Homes Limited

Persimmon Homes Limited (PHL) welcomes the opportunity to contribute to the Local Government and Communities Committee’s consideration of the Planning (Scotland) Bill.

PHL is a frequent user of the Scottish planning system having built 10% of all new homes in Scotland during 2016. During 2017 PHL built 1,689 new homes in Scotland and it is likely that once the national figures are available PHL will, again, be recognised as a key user of the planning system and deliverer of housing in Scotland.

In responding to the following questions we wish to highlight that PHL's priority when commenting on the review of the planning system is to achieve a self-sustaining planning function that allows developers to deliver.

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, whilst the principle behind some of the suggested changes is understood there is concern regarding the implementation of the proposed changes. As ever, the devil will be in the detail of the secondary legislation, but the following points are mooted.

In theory the ten year Local Development Plan (LDP) cycle will free up Council staff resources in the interim period. However, we are concerned that Council’s will stick rigidly to this cycle and not take a pragmatic approach should economic circumstances change and the LDP not be able to keep up. If a trigger event, such as a shortage in housing land supply, requires a Council to review their LDP prior to the expiry of the 10 year period there may not be sufficient evidence gathered to allow a review to take place swiftly.

As with the previous planning reform it will also take Council’s time to adjust to the new system. Many currently have threadbare policies within LDPs preferring to set out detailed requirements in Supplementary Planning Guidance. The status of the latter will be downgraded and Councils may not have a sufficient Development Plan to plan their area effectively.

Greater community involvement is sought however communities will only get the chance to comment on the LDPs every ten years. As a result instead of feeling more involved they may feel less empowered and disenfranchised. This is highlighted at the suggested Gatecheck point where there is no provision for either communities or developers to input into the parameters being agreed. The Proposed Plan stage could be too late to make comment. Consideration should therefore be given to Council’s publishing their Evidence Reports for scrutiny.
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?

We would welcome the Housing Land Requirement for each Council area being set by the Scottish Government through the National Planning Framework, providing the overall numbers were not challengeable. Key to this would however be the review of the Housing Land Requirement alongside the National Planning Framework every ten years.

At a local level Council’s could adopt higher housing targets should they desire and only reduce their requirement through agreement if an adjoining Council increases theirs accordingly. Setting this number and agreeing it as part of the Gatecheck process will allow Councils to focus on allocating sufficient land for housing in the right places.

The Scottish Government will need to review the Housing Land Supply against the Housing Land Requirement and housing completions across all tenures annually. Although Council’s will have to allocate land for ten years worth of housing development the review will track a potential shortfall within a Council area. A shortfall should trigger a review of the Local Development Plan.

If a shortfall does not trigger a review of the LDP the alternative is to incorporate an early release policy within either national or local policy. This would mean that where there is a shortfall in supply sites that are not allocated for housing could potentially be released for housing providing they satisfy all of the other relevant policies. A similar presumption exists at present within Scottish Planning Policy (paragraph 33) where there is a presumption in favour of development if the plan is over 5 years old. We would however be concerned if this presumption was extended to 10 years and that settlements could stagnate if there is still a sufficient land supply within the wider Council area but allocated sites within a settlement had been built out. Greater status could then be given to the Proposed Plan which is likely to be published around year 8 of the new LDP cycle and will indicated the Council’s current thinking. It would be material in determining proposals for emerging sites.

There is a focus on revitalising Simplified Planning Zones to create Simplified Development Zones. We are concerned that these will be resource intensive for Council’s to set up with little return. The majority of sites that will be brought forward will belong to the public sector and unless they deliver a level of development large enough to be considered major (50 homes or above) they should be left to market forces.

Key for many house builders is the timescale involved in not just determining the application but gaining agreement on pre-start planning condition and concluding legal agreements promptly. There is a considerably financial outlay in preparing and submitting a planning application and greater certainty on timescales for determining applications would mean that developers could more accurately plan a timeline for delivery. Unfortunately, case officers workloads combined with delays in obtaining responses from both internal and external consultees mean that developers are often delayed from starting on-site even after planning consent and other technical
consents have been granted. Council performance when discharging conditions or finalising legal agreements is not monitored. It is suggested therefore that if there is no response to submissions to purify conditions within 2 months the details submitted should be deemed approved.

In our view the Bill does not incorporate meaningful proposals to improve Council performance when determining planning applications. There is provision for the planning functions within Council’s to be reviewed by an assessor however Councils do not have to adopt any of the suggested changes. This effectively rendered this review process toothless. Enhanced performance will provide the development industry with greater certainty and enhance delivery.

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?

No, we do not believe that there will be a robust regional structure following the abolition of the Strategic Development Plans. Whilst there will continue to be a degree of regional partnership working between Councils on a range of projects, such as transport strategies, new ad hoc planning arrangements are likely to be formed. Failure to have a robust and credible structure with an opportunity for public and developer scrutiny through consultation will go against the aim of enhancing public involvement. To maintain a credible transparent system parameters for regional working should be set along with a structure for engagement with relevant interest bodies, such as SEPA, Homes for Scotland and Scottish Natural Heritage.

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?

Current proposals within the Bill mean that where there is a difference in strategy/policy between the NPF and LDP the newest document would prevail. In our view the LDP must be in accordance with the NPF. The enhanced status of the National Planning Framework and setting of housing numbers at a national level will remove some of the contentious issues from the LDP process. The Gatecheck is intended to ensure that the LDP is consistent with the National Planning Framework. This two tier Development Plan will allow Councils to focus on delivery. If a proposed LDP is not in accordance with the National Planning Framework this would delay the Gatecheck stage and LDP cycle.

Below the LDP we suggest that the new Local Place Plans should be in accordance with the LDP and where agreed by the Council form a material consideration when applications for development within or adjacent to the Local Place Plan boundary are being considered. The number of Local Place Plans that will be brought forward and could potentially overlap is unknown and including them within LDPs could make the LDP unwieldy. Local Place Plans should be granted similar status to airport masterplans, which have also been prepared by third parties seeking to influence how land is developed.
5. Would Simplified Development Zones balance the need to enable development with enough safeguards for community and environmental interests?

Ultimately it is all in the detail, but as noted above we are concerned that the administrative burden of setting these up could be greater than the benefits gained. There is likely to be a substantial administrative process to agree the extent of provisions with external parties, such as Scottish Natural Heritage, SEPA, utility companies etc. The process would utilise valuable Council’s resources.

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?

In its current form the opportunity for communities to engage in the planning system does not exist until the Proposed Plan is published. Communities, and developers, need to be involved in stakeholder engagement when the Evidence Report is being prepared. Failure to involve parties at this stage will not encourage future engagement.

As with LDPs Local Place Plans will require to be promoted to residents, organisations and businesses within and adjacent to the LPP boundary. We are concerned that not all communities will have the time or money to promote LPPs adequately in order to ensure that the final LPP is both inclusive and robust. The cost for Council’s to provide technical support to communities has not been quantified and could detract from financial or resource savings elsewhere. Whilst funding could be available to communities through Community Planning this is often through an application process and we are concerned that less affluent areas may not have the resources to engage fully in the new process.

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?

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?

The infrastructure levy was identified as one of six potential key changes to the planning system in a Scottish Government paper in December 2017. The illustration detailing how it could work is very simplistic and will cause issues when negotiating the purchase of land. Both the seller and purchaser will seek to limit their liability for payment of a levy when finalising the terms of a sale. Landowners would seek to
ensure that they obtain the maximum value for the land whilst the developer will seek to ensure that their forecast margin (profit) is obtained once the development is completed. The initial methodology suggests that this would be difficult to calculate and ultimately agree.

A potential Infrastructure Levy cannot be applied across the entire country or potentially even full Council areas. Development pressures vary across Scotland and what might work for one Council might not work for another. Whilst sectors within the development industry continue to show green shoots of recovery post recession any additional costs may make some sites unviable and blight them in the longer term. The existing Section 75 legal agreement parameters ensure that developments contribute towards mitigating site specific impacts and that developers are not held to ransom by Councils seeking contributions for wider infrastructure unrelated to the development.

It is also prudent to highlight that the impact of Brexit is not yet known and placing an additional tax/cost on developing in Scotland may place us at a disadvantage when trying to attract international investment.

Within our response to the Finance and Constitution Committee we suggested that other funding mechanisms should be explored, such as a modest ‘tourist tax’. This could deliver substantial income across the country to be spent enhancing infrastructure and tourism in the areas that it is generated. Such taxes are in place across Europe and present an opportunity as tourism continues to be a growth industry in Scotland. Visit Scotland figures have identified that in 2016\(^1\) there were over 60 million overnight stays in Scotland. Even if a modest charge of £1 per stay at a location, rather than per night, was levied a substantial income could be generated annually.

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. This will raise the status of Planning within Local Authorities and ensure that all Councillors are aware of the wider development strategy.

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

No, we do not believe so. After being reviewed by an assessor Councils are not obliged to adopt the suggested improvements. To make a real difference an assessor should be able to set mandatory improvement requirements as well as suggestions.

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?**
Only Councils can comment fully on what resources they need to deliver the system. However, there is a difference between meeting legislative requirements to deliver the system and delivering a high performing system.

It is our understanding that there is no requirement to ‘ring fence’ income from planning fees (which were increased in 2017) to support the planning function. There is therefore no certainty that the performance of planning departments will improve if fees are increased and unless Planning Departments have adequate resources to fulfil their function the proposed changes within the Bill are unlikely to deliver the improvements envisaged.

We would advocate a fee structure which includes a fast track option where the Council could charge a higher fee providing they determine the application in the set period. Conversely, if they fail to meet the set time period the difference between the fast-tracked and normal fee would be refunded to the applicant. This would incentivise swift planning decisions. This, in our view, would also encourage Council’s to adequately resource their planning function in order to deliver an improved system.

Further changes to permitted development rights may also result in savings for Councils. Previous research identified that the time spent determining householder and non-major planning applications is disproportionate and costs Councils more to process than major applications. The fee for smaller applications should either be increased to address this shortfall or permitted development rights increased to remove minor proposals from planning officer workloads.

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

We welcome the Bill’s proposals to largely retain the current appeals process. As stated above greater certainty over the time period associated with gaining a planning consent assists in delivering development. Changes to the appeals system, such as the previously mooted third party rights of appeal, would reduce this certainty and delay development until the period for a potential appeal had expired. The time and costs associated with defending any appeal would be particularly prejudicial to self or small builders. Many smaller builders have not returned to the market post-recession.

References: