Local Government and Communities Committee

Planning (Scotland) Bill

Submission from Pollokshields Community Council, Pollokshields Heritage and the Pollokshields Trust

In November 2016, Pollokshields Community Council, with support from our MSP, MP, local councillors, and agreement from Glasgow City Council, secured funding under the SSCI Charrette Mainstreaming Programme to hold the ‘Make Your Mark’ East Pollokshields and Port Eglinton Charrette – the first community led charrette in Glasgow. Having recruited a consultant team led by Collective Architects, the charrette was held in February 2016 and the report, with foreword by Nicola Sturgeon MSP, delivered to Glasgow City Council and the Scottish Government in June 2016. Since then the Pollokshields Trust has been established as a community development trust to take the charrette vision forward and the community council has been invited to take part in the Planning Review where we contributed to the Development Management working group. Having learnt from these experiences we now take the opportunity to submit our representation in the Planning (Scotland) Bill and are doing so as a joint submission on behalf of Pollokshields Community Council, Pollokshields Heritage and the Pollokshields Trust as the three main community bodies interested in planning and built environment issues within our neighbourhood. We also take this opportunity to thank the committee members for this call for evidence.

Before proceeding to set out our responses to each of the questions posed we also want to take the opportunity to express our disappointment in the presentation of the Planning (Scotland) Bill. Unfortunately, the format of the draft Bill makes it difficult to read particularly as much of the text refers to suggested amendments to the Town and Country Planning (Scotland) Act 1997 and assumes prior detailed knowledge of the Act. The legislative language is not easy to follow and off putting. As such there is a risk that the good will, collaborative spirit and sense of shared endeavour which emerged from the positive discussions at the Planning Review will be lost in translation which would be most unfortunate. As a consultation it would have been better and less opaque for both ordinary people and professionals, and to improve the impact and reach of the proposed Planning (Scotland) Bill, if the legislative language had been dropped in favour of Plain English and easily legible diagrams rather than something geared to lawyers. To draw an analogy, it is like logging on to a website and being forced to scroll through and interpret the source code when what you really want to see is an easy to view homepage.

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?

PCC/PH/PT response: No. If the aim of the Bill is to ensure that Scotland has better quality buildings and places which promote the wellbeing, health, happiness and positive outcomes for the nation’s communities and peoples in Scotland’s diverse settlements then the Bill does not achieve this in its current form.
Instead, there is an inference that planning is somehow a nuisance which gets in the way of development. This could not be further from the truth. Rather, planning is vital for securing good outcomes for our population and environment and is a cornerstone of our democratic society. If what happened during the era of comprehensive development in Glasgow - with its consequent impact on the health of the city’s population - tells us anything it is this!

Our concern is the Bill is still putting too much emphasis on quantitative outcomes and delivery of numbers of housing units rather than qualitative ones including the creation of worthwhile places which people will treasure, value and love – this is key to sustainability as the New Urban Agenda makes clear. The two need to be in balance and Placemaking needs to be put at the heart of the planning process. This outcome – a desire to ensure good places - should be the statutory purpose and core direction of the planning system.

Nevertheless, we welcome certain innovations within the Bill as will become apparent from our answers to follow.

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?

PCC/PH/PT response: This question, and that it is being asked, sums up the point we are making in our response to question one as it assumes that the planning system is somehow a barrier to new house building. This is to entirely misunderstand the overarching objective of the planning system which should be the creation of good and sustainable places as per the New Urban Agenda.

Of course, the planning system should help deliver an adequate supply of housing to suit the variable needs of Scotland’s population be that family housing, housing to cater to those who want to live in our city centres, mid-market rent, affordable housing to buy or rent; accommodation for disabled and older people and accommodation for homeless people and rough sleepers; however, it is not there to solely serve the private house building industry which has a role in the delivery of good places and assisting towards the supply of housing but is only one facet in a larger whole.

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?

PCC/PH/PT response: No. Within the Glasgow city region – Scotland’s only genuine metropolitan region, development proposals need to be properly co-ordinated. There should be a statutory requirement for the various councils in the city region to work together and co-operate towards this end. The example of Greater Manchester Strategy which was co-ordinated amongst its ten constituent local authorities as a combined authority springs to mind.

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?

PCC/PH/PT response: **Yes and No.** As community bodies we have consistently engaged in the process of Local Development Plans having been involved in the last three iterations of the plan for Glasgow i.e, the City Plan, City Plan 2 and the City Development Plan. The consultation processes in each have been complex and taxing though it has become less adversarial over time; however, the removal of the planning inquiry during the consultation on the last plan, while it may have streamlined the process, also added to confusion as there is now too much of a remove from the examining Reporter. This meant that the process felt rather disconnected and we are unsure if it will lead to an increase in community engagement. As the requirement for the drafting of the Local Development Plan is shifting to a ten-year cycle, it seems to us that there is now more time to get the plan right and therefore elements, such as the planning inquiry, which had been removed to streamline the process, should perhaps be re-introduced.

Nevertheless, we welcome the dropping of the Main Issues Report, and its replacement with the draft Local Development Plan. In the process towards the drafting of Glasgow’s City Development Plan we found the Main Issues Report to be a source of confusion as elements within it, which we supported, were then dropped, without any discussions, from the proposed plan. This resulted in real uncertainty when we initially reviewed the published plan as it was substantially different and, unfortunately, resulted in a feeling of having been misled.

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

PCC/PH/PT response: **A qualified yes.** Though this was barely discussed at the Planning Review (except in a separate session amongst selected participants) we broadly welcome the idea of Simplified Development Zones though with four caveats:

Firstly, having read through the Bill and the explanatory notes we can see plenty of reference to Scottish Ministers and the occasional reference to planning authorities but no mention of community input into the designation of Simplified Development Zones – a major flaw which appears to be contrary to the Community Empowerment Act. **This must be rectified in the Bill.**

Secondly, that there should be no relaxation of the requirement for listed building consent and, until the success of Simplified Development Zones has been properly evaluated, the Bill should refrain from suggesting the application of them for conservation areas as this risks too much potential for damage to our built heritage;

Thirdly, that Paragraph 1 of new schedule 5A is too vague where it sets out that ‘a scheme must include a map, a written statement, and any other graphic material, diagrams etc. that the planning authority consider appropriate for illustrating the scheme’s provisions’ Instead this paragraph must stress the need for a design code as a core requirement for any Simplified Development Zone and that this code come
about through consultation and agreement of the community, stakeholders and partners; and,

Fourth, as a check and balance any proposal coming forward under a Simplified Development Zone must be evaluated for compliance with the zone’s design code and aesthetic standards by a City or Town Architect or a member of their office so as to ensure good Placemaking outcomes.

Our qualified support for Simplified Development Zones comes via an understanding that our neighbourhood, Pollokshields, like much development in Scotland from the late Georgian period to the First World War, came about through the requirements of the feu superior, efficiently set out in writing in title deeds often amounting to no more than two sides of A4.

Combined with good stewardship and oversight (in our instance the landowners, the Maxwell family, who had a keen interest in architecture and urbanism, steered development of the neighbourhood across six decades) these simple documents determined what was to be built on any site and how it was to be built and appear.

The genius of this simple system gave rise to wonderful harmonious neighbourhoods of villas, townhouses and tenements. And yet despite the replacement of this system with sophisticated and complex planning documents of inordinate length we have somehow failed to rise to the same heights of urbanism and placemaking which the previous system achieved without such effort. The question is how can we now do likewise?

Having explored this via the ‘Make Your Mark’ East Pollokshields and Port Eglinton Charrette, we feel that the answer may lie in design codes. In the Charrette Report we set out a simple, two sides of A4, design code to help inform developers of how to best achieve contextually sympathetic developments on the large brownfield sites that lay between Pollokshields and the city centre in such a way that they would harmonise with and extend the urbanism of the East Pollokshields Conservation Area.

The design code comprised a series of bullet points through which we tried to encapsulate what was special about the neighbouring conservation area and what we thought the architects of the new developments should seek to emulate in order to achieve an harmonious example of Placemaking.

The bullet points included advice about building heights, the need for eyes on the street, a clear sense of front and back, the inclusion of two metre front gardens to provide privacy and soften the architecture, appropriate materials (bearing in mind budget, land values and urban location) and construction techniques (to encourage pattern and texture), window proportions reflecting local traditions, how to highlight close entrances through judiciously applied ornament to understated effect, that corners needed to be celebrated and the locations of services so they wouldn’t spoil the architecture.

The bullet points were then augmented by images of local precedents from the East Pollokshields Conservation Area supplemented by images of contemporary
precedents from the Laurieston development in Glasgow, a Saltire award winning late 1990s Elder & Cannon tenement in Govanhill, and various other new tenement examples from across Europe. The idea was to give a clear steer to developers of the design standard we were seeking.

The idea of the design code is not as prescriptive as the German Bebauungspläne (B-Plan) but similar to an American Form Based Code in terms of regulating development by showing what is desirable and appropriate on a particular site.

In the post Charette period we have done our utmost to engage with developers carrying out pre-application consultation on these sites. We have encouraged them to voluntarily take onboard the design code in their proposals so as to ensure better quality outcomes for placemaking while simultaneously seeking to build the new homes our neighbourhood needs to house its growing population.

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?

PCC/PH/PT response: Yes and no. We very much welcome proposed Local Place Plans with the thrust of the idea behind community led charrettes encouraged during the 2015 round of the SSCI Charrette Mainstreaming Programme having now been re-branded as such. Through our work towards the ‘Make Your Mark’ East Pollokshields and Port Eglinton Charrette our community has been something of a pioneer in this regard. Nevertheless, we have run into problems due to the disconnection between community plans or charrettes and with the development plan system which reveals something of the issues the Bill has to overcome.

Currently, how to get community led charrettes adopted into policy by councils so they sit under and inform the development plan does seem to be the Achilles heel of the process. There is a risk this could thwart community enthusiasm which could descend into cynicism and distrust - something sadly flagged up by the survey results for Barriers to Community Engagement in Planning. This could undermine the efforts of the Scottish Government towards the promotion of Local Place Plans as a tool for getting communities engaged in the planning process and for building capacity.

In our case, the finalised Charrette report, which was carefully framed to take cognisance of the policies in Glasgow’s proposed City Development Plan, was lodged with Glasgow City Council for their consideration in June 2016. Since then, despite plenty of effort including the setting up of the Pollokshields Trust as a community anchor organisation to steer the vision forwards, repeated pre-application engagement with developers of the large brownfield sites which blight the area to encourage them to take on board the charrette’s design code in their new developments, to our frustration adoption by Glasgow City Council has still to occur.

The Council have been at pains to stress that this is due to a lack of resource; however, there is also a perception that they are not comfortable with an empowered
community seeking to shape its own environment for fear that this will undermine or
distract from their own efforts elsewhere in the city when the two approaches should be complementary.

We can appreciate that the Council has issues with resources and, given severe pockets of deprivation within Glasgow, has to be careful in where it allocates those resources; however, our neighbourhood’s problem is that it falls between two stools.

East Pollokshields is the most multi-cultural area in Scotland with a BME population share of 52%. Between 2001-2013 the population rose by 16%. More than a quarter of households are overcrowded, 33% of children live in poverty, 93.5% of people live within 500m of vacant or derelict land, there is an under provision of greenspace for amenity while East Pollokshields has one of the lowest SIMD ranks in Scotland.

In addition, though it became a conservation area in 1973 the Victorian tenements of East Pollokshields are aging and difficult to heat, while the mix of tenures and refuse issues means problems which resulted in the creation of the ‘Enhanced Enforcement Area’ in neighbouring Govanhill, also occur here.

Unfortunately, by choosing not to attend the Charrette (despite being invited), and only paying lip service to its outcomes thereafter, there is a perception locally that the Council were actually seeking to starve our nascent efforts by not providing the financial and technical resource required to support them. There were fears this was an attempt to paint East Pollokshields as a ‘pour encourager les autres’ example to other communities in Glasgow who might also desire to plough their own furrow.

Nevertheless, having argued for a plan for our area for a decade we have continued to pursue the Council for a response. Therefore, we welcome a positive overture from the Council, at a November 2017 meeting hosted by Nicola Sturgeon MSP, that they want to work collaboratively with us and the Scottish Government on a pilot scheme to ensure that community led charrettes can slot into the development plan process – something that could inform the Bill.

We are unsure how this will work in practice given that the Charrette Report was already tailored to align with the policies in the Council’s City Development Plan as per what is outlined in the Bill, so this will be a case of suck it and see. Bearing this in mind, we are very concerned to see within the Bill the phrase that ‘where a planning authority are preparing their local development plan, they must have regard [our emphasis] to any local place plans within their district’ i.e. planning authorities only have to contemplate a local place plan, they don’t have to act on them and, having contemplated the plan could even chose to disregard it.

The use of the word ‘regard’ in this context is too vague and lacking in responsibility as it could let the Council off the hook and entirely undermine the community’s efforts. Therefore, we strongly object to this. It would be preferable if the Bill put more onus on a duty to embrace and assist community proposals in a more positive collaborative way which could free the Council’s planners to do what they do best – plan.
This also means that financial and technical resources from Councils must be directed towards assisting communities in drawing up Local Place Plans and ensuring that capacity is grown within the community to do so. How this will work given the impact of austerity remains unclear and is something we flagged up repeatedly at the Planning Review.

Therefore, we remind the Scottish Government that community councils are voluntary groups of limited means. Not every community council has the capacity or resource to handle and service the complex engagement processes which arise out of drafting a Local Place Plan. A mentoring or training service to help increase capacity is one avenue which the Bill could explore.

Alternatively, Glasgow City Council’s Thriving Places scheme - a collaborative approach with Community Planning Partners to make better use of the existing resources and assets embedded within a community and to focus on building capacity, skills and the strengths of the community - could be worth exploring as a model to roll out nationally.

Nevertheless, in seeking to increase community engagement in the planning process the Scottish Government must be mindful of consultation fatigue as community council volunteers only have so much time available and there is a risk they could feel overwhelmed and switch off - thus undoing what the Bill seeks to achieve.

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?

PCC/PH/PT response: While we welcome the proposed increases in fines and recovery of expenses, unfortunately, these are meaningless when Councils do not have the resources to tackle enforcement problems in the first place.

Enforcement is important as the stick to ensure good quality planning outcomes and that applicants do not deviate from the consent granted. In our four contiguous conservation areas there are numerous breaches of planning and listed building which cumulatively erode the quality and character of the conservation areas.

Most of these breaches stem from unconsented installation of uPVC windows by installers who know replacing traditional timber sash and case windows with uPVC windows is contrary to policy within Glasgow’s conservation areas but, allegedly, advise their clients – who are unlikely to be aware of the implications and lack the resources these companies have - that the council will never enforce. Currently, responsibility for the breach lies with the owner of the property; however, consideration should be given within the Bill as to how handle this scenario to also penalise the installer. This would hopefully act as a deterrent in future.

Where there are occasional breaches of a more serious nature, the problem we have is that despite the reporting of these the enforcement team’s response rarely adheres to the Council’s enforcement charter. In the worst case in our area, having applied for one consent, the owner of one villa within the West Pollokshields Conservation Area built something else entirely, scooping out his entire front garden on a steeply sloping
site, to install a six-car super garage tucked in front of a one and a half storey retaining wall all without consent. Though this was reported to enforcement in September 2015; however, it took officers until June 2016 to visit site and advise the owner to seek a planning consent to regularise the works but to cease operations in the meanwhile. By this point the works were well advanced and the damage done.

The problem is this flouting of planning results in a perception that it doesn’t matter and leads to a vicious circle and the erosion of places that people value. If the enforcement service had been properly resourced in the first place the problem could have been nipped in the bud and a lot of grief avoided. To assist this, any additional monies raised by the increased level of fines and recovery of expenses should be ring fenced to supply additional resource for enforcement so that the service can be properly carried out. The Bill should be amended to ensure this.

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?

PCC/PH/PT response: A qualified yes. We are interested in the utilisation of land value uplift and how this is used in both the Netherlands and Germany to help capture the significant increase in value of newly consented land in order to fund the infrastructure which will then allow sites to be developed. Could this be linked to the new Scottish National Investment Bank in order to assist with financing of infrastructure provision?

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?

PCC/PH/PT response: Yes. We whole heartedly endorse this requirement. As a result of Glasgow’s scheme of delegation, the bulk of planning applications are dealt with by planning officers, therefore, only the largest and most disputed applications go before the Planning Applications Committee. This makes the process both democratic and quasi-judicial. As such, the councillors on the committee often must face planning issues of public interest which are complex and will have to weigh up and attempt to balance conflicting occasionally unreconcilable views. Therefore, providing councillors with training in the purpose and aim of the planning system and development management, and giving them a grounding in urban design and architecture, should be a prerequisite of any system that seeks to achieve good placemaking and will help improve their performance. Such training and advice must be as objective and impartial as possible.

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

PCC/PH/PT response: A qualified yes. We agree with the principle of monitoring, as feedback can be helpful for improving performance. Nevertheless, we refer back to
our answer to question 1: that there is too much focus in the Bill on quantitative rather than qualitative outcomes. A balance needs to be struck between the requirements of development and those of communities and the environment. This is especially true if the aim of the planning system is to secure good Placemaking outcomes as a public good. The measurement of performance should be adjusted to this end.

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?

PCC/PH/PT response: No. The key problem remains the under-resourcing of Planning Departments. As part of the Development Management working group at the Planning Review we welcomed the recent raising of planning fees on the basis that the monies raised would be ring fenced for resourcing council planning departments. It is our understanding that the ring fencing was objected to by COSLA and then abandoned – defeating the whole point of the exercise. The Scottish Government well never secure the high-performing planning system it seeks unless it begins to address this.

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

PCC/PH/PT response: Yes, there are three other points we wish to raise.

First, we do not agree with the dropping of Supplementary Guidance which appears to us to be a regressive step. For instance, our three community bodies cover four conservation areas which are contiguous across the Southside of Glasgow. When considering any planning application, we need to assess it against the pertinent Conservation Area Appraisal as we are conscious that the planning officer must pay cognisance to these documents as having a material bearing when considering an application. The loss of these as supplementary guidance would seriously weaken our ability to respond to poor planning applications and encourage good Placemaking. We ask that this be reconsidered as we fear it is a major flaw in the Bill.

Secondly, because of the legislative language of the explanatory notes and the Bill, it is not clear to us if the Pre-application consultation process is being altered to take cognisance of the suggestions which were put forward by the Development Management working group namely that there should be two pre-application consultation events, one at the outset of the process so as to set out initial ideas and then a second one at the end of the process so the final ideas can be presented to the community so that it is clear if their suggestions have been taken onboard or rejected. If they have been rejected the onus is on the applicant to make clear why this is the case. We seek confirmation that this refinement has been taken onboard and now forms part of the Bill.

Third, the issue of Equal Rights of Appeal was taken off the table for discussion during the Planning Review and, unsurprisingly has now been omitted from the Bill. We believe this omission is a major flaw as the lack of a right of appeal for
communities can be unfair and there may be certain circumstances where it is beneficial.

For instance, having undertaken a community led charrette and prepared a charrette report including a design code to steer development on the brownfield site bordering our neighbourhood, we feel quite strongly that if a developer decides to depart from the design code, and produces a scheme contrary to its intentions, they should do so bearing in mind that they risk an appeal from the community council in the event the application is approved.

Our thinking is that this could be a stick whereby it is clearly in a developer’s interest to engage with a community in the development of a Local Place Plan if it impacts on a site they own and want to develop. Not to have such a check risks undermining the community’s efforts and could lead to disillusionment in the process and undermining the Scottish Government’s efforts towards Community Empowerment.

We also feel there are other areas where an Equal Rights of Appeal could strengthen the planning system and overcome potential for abuse for instance:

1. Where a decision goes against what is set out in the development plan;
2. Where a decision by elected representatives goes against the recommendation of planning officers;
3. Where the decision-making authority has a direct financial interest in the land or development in question; and,
4. Where the decision for a development requires an environmental impact assessment.

In conclusion we think Equal Rights of Appeal is something the Bill could re-visit.

Yours faithfully,

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Vice Chair
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