Local Government and Communities Committee

Planning (Scotland) Bill

Submission from Professor Cliff Hague

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.

The Bill is a significant missed opportunity. The fact that this first question is posed this way implies that the main aim of the system is “balance” between development, environment and community views. This elides the fact that “balance” will always be in the “eye of the beholder”, and so condemns the planning system to another decade of the kind of skirmishes which have blighted it in recent years. This terminology is stale, and the answer to the question as posed must be “no”.

The First Minister was quick to declare that Scotland would adopt the UN’s Sustainable Development Goals (see https://news.gov.scot/news/leading-the-way-in-tackling-inequality), so why has there been no reference to the SDGs and particularly Goal 11? Targets 11.3 and 11.4 of the SDGs should be central to Scotland’s planning system: “By 2030, enhance inclusive and sustainable urbanization and capacity for participatory, integrated and sustainable human settlement planning and management in all countries” and “Strengthen efforts to protect and safeguard the world’s cultural and natural heritage“. Similarly, the Bill shows no awareness of the UN’s New Urban Agenda (2016) and the key role that it assigns to reform of urban and territorial planning to make it a powerful tool for integration and inclusion. These global commitments which the Scottish Government is bound to go well beyond the idea of “balance”, and point to a much more proactive role of urban and territorial planning to lead change within a framework of human rights including social and economic rights.

Reform of planning presented the Scottish Government with an opportunity to play a global role in showing how to make our places “safe, inclusive, resilient and sustainable” in line with SDG11, Instead of advancing the visibility and reputation of Scotland internationally, the Bill is parochial and lacks ambition.

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?

The Bill will disappoint in this respect. Quite simply, housing provision has been substantially contracted out to volume housebuilders, and their business decisions now determine the level of housebuilding. Yes awards of planning permission are a
factor in these decisions, but only one amongst many factors. Others include investor confidence, interest rates, consumer confidence and the state of the national economy, government subsidies to house buyers, supply of building labour and materials, and landowner decisions on land release. Nothing in the Bill seems likely to lead to housebuilders’ land banks and sites with long standing permissions being brought expeditiously to development.

“To increase house building” again makes presumptions about what a planning system should do. What kind of house building? Is it solely a matter of quantity? What about real affordability and quality? What about maximising the use of existing properties? To increase quality and affordability Scotland should look to what has been achieved in many north European countries, e.g. Denmark, Germany, Netherlands, Sweden, Norway. As a generalisation the plans are able to assemble development land at a fair price, masterplan the site and then pass on the development task to housing associations or private developers under contract.

3. Do the proposals in the 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. A statutory plan is being replaced by voluntary partnerships: it takes a leap of faith to interpret that as a “robust structure to maintain planning at a regional level”. Again the timing of the proposal comes when the importance of functional regions and the need for what the UN and the Europeans call “territorial planning” is widely recognised. Improving regional planning could be achieved by being more flexible about boundaries and “fuzzy” cross-boundary issues, and by creating again the kind of Research and Intelligence teams served Scotland’s Regional Councils 1975-96, a period when Scotland’s regional planning was internationally respected. Regional plans can play a key role in integrating infrastructure investment and tackling spatial inequalities. Such plans could enrich the dialogue in the preparation and delivery of the NPF, and obviate the risk that endemic in the Bill’s proposals that the NPF will get shrunken in scope and bogged down in regional detail.

The present proposals could see a coalition of development interests agreeing on a few major “regional” projects, along the lines of the emerging City Deals. Such practice does not amount to regional planning for the public good.

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?
One weakness in the community planning process is that it lacks a spatial dimension. If LDPs are to be aligned with community plans, the process should work in both directions. As to meeting the needs of developers and communities, it is difficult to see how the proposals in the Bill will resolve the endemic tensions between the two. There needs to be connections to community empowerment legislation and enhanced support for communities to become developers.

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

The idea of having zones where action will be focused is a good one, but if the answer to the question were “yes”, then surely there would be a case for making the whole of Scotland a “Simplified Planning Zone”. Simplifying the planning system could make it more equitable and expeditious, and less reliant on the time consuming appeals system. However, the SDZ proposal does not deliver such change and again misses the point that the role of the planning system is more multifaceted than just regulating development. What about “Special Place Zones” where action is to be concentrated, which would encompass innovative carbon-neutral developments, or conservation-led regeneration, or experimental housing types / tenures? In other words use the planning system to promote innovation that contributes to the SDGs, whereas what is proposed seems just a way of making it easier to deliver mediocre development.

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?**

I thought at first that the LPPs were a clone of the English Neighbourhood Plans, but now it appears that they do not even go so far, since they will not be part of the LDP. In these circumstances why should people make the effort to prepare a LPP? The LDP will have to align with the Community Plan and with the NPF and Scottish Planning Policy – there is enough top-down weight there to crush local creativity. Lest there be any doubt, the resources committed to supporting LPPs seem unlikely to be sufficient for them to do a good job. Investing in Technical Aid centres in at least some selected areas, maybe the “Special Place Zones”, might generate some real co-production, and again would put Scottish planning ahead, rather than offering a diluted version of practice from England.

The main point of weakness (and significant delay) in the planning system is in handling appeals, especially major ones where advocates have to find mutually
convenient dates in their diaries. It is here that the system is at its most inequitable. Despite the government’s resistance to calls for Equal Rights of Appeal, something could be done to make the system more simple, fair and fast. In Scandinavia in general any right of appeal is to the local council who took the initial decision, with only something like judicial review available after that. It is regrettable that we have reached the stage if a Bill without such alternatives having been fully explored: despite i.e. being a plan-led system, with participation “front-loaded”, the decision can come at the last stage, appeal, and contradict the plan. Such arrangements destroy public trust.

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?

Recovery of expenses may provide some incentive to planning authorities to take enforcement action, but while their budgets are so stretched and enforcement is discretionary, I cannot see much change. This is one area that has drained public trust from the planning system.

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?

With so many public services now privatised and so operated first and foremost for shareholder benefit, reliance on the Levy or any other means of securing private funds for public infrastructure is problematic. A system of contracts based on an agreed regional scale plan and the LDP would be a better option.

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?

In principle the idea is sound, but it needs much more detail. As there are situations where all councillors (and the Minister) may be involved in a planning matter, then do these individuals also need training. The training should be delivered and examined by an independent source so as to avoid socialising the members into the practices of a particular authority. Assessment should go beyond a multi-choice tick box exercise, and learning outcomes need to be transparent and used to structure the assessment.
10. Will the proposals in the Bill aimed at monitoring and improving the performance of planning authorities help drive performance improvements?

We need to escape from the mindset that equates paying fees for an application with being a “customer”, expecting fast service. Monitoring and performance are very important, but the indicators are what matter most. What indicators for example do we have for conservation of the built and natural environment, or for creating more gender-inclusive environments?

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?

As implied in the answer to Q.10, the charging of fees has distorted perceptions about the nature and purpose of the planning system, which needs to be a public service working for the public good. Similarly, a “high performing planning system” should not be conceived on the model of fast food. What, for example, of the issues raised in the equalities impact assessment of the bill? Performance should be about delivering on the SDGs and the New Urban Agenda: that would bring far more respect to the Scottish Government than speeding up the turn-over of planning applications.

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

No.