Local Government and Communities Committee

Planning (Scotland) Bill

Submission from RSPB Scotland

1. Do you think the Bill, taken as a whole, will produce a planning system for Scotland that balances the need to secure appropriate development with the views of communities and protection of the built and natural environment?

Whilst the Bill contains many positive proposals, it does not go far enough to ensure protection of the natural environment, to support a low carbon transition or to ensure the views of communities of place and interest are adequately considered. The lack of consideration given to sustainable development is a major concern. There is a need for a statutory purpose for planning. Specifically, the duties set out in current legislation for development plans and the National Planning Framework (NPF) to contribute to sustainable development should be extended and strengthened so that achieving sustainable development is the overarching purpose of the planning system.

A key opportunity so far missed is a requirement for planning to contribute to net gain for biodiversity. Our obligations to halt the loss of biodiversity by 2020 (under the UN Convention on Biological Diversity) are challenging and it is important that the planning system plays its part by preventing additional net harm and creating gains whenever possible. Biodiversity net gain could be delivered through a mitigation hierarchy, an approach designed to achieve, as a minimum, ‘No Net Loss’ of biodiversity. England is ahead of Scotland here as a mitigation hierarchy is already articulated in their ‘National Planning Policy Framework’. The hierarchy approach is unlikely to be suitable for existing protected areas, or for some other sensitive sites which are in any case unsuitable for development, but would provide a useful framework for ensuring net gain on non-designated development sites. The EC has also recognised the need to ensure No Net Loss and that embedding NNL across Member States will be key to achieving EU biodiversity strategy Target 2. This approach could be delivered within the framework of a National Ecological Network as set out by Scottish Environment LINK.

We welcome the increased period for parliamentary scrutiny of the NPF to 90 days but it is vital that such an important document for Scotland as the NPF, particularly if only updated every 10 years, is also approved by Parliament in order to ensure wider ‘buy-in’ to the vision set out. We also have some concerns about the move to a 10 year cycle as the environmental baseline and scientific knowledge relating to the environment could change significantly in this time period.

We note that the NPF is to remain the spatial expression of the Government Economic Strategy, but we consider that the latter should more logically be informed by and have regard to the NPF, Land Use Strategy, Climate Plan and the National

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Marine Plan, which collectively set out a vision for a future Scotland, rather than the other way around. There could be significant benefits to introducing a statutory requirement for the budget process to accord with the NPF, Land Use Strategy, Climate Plan and National Marine Plan.

Regional strategic consideration of land use priorities could be better achieved through the integration of regional planning activities, coordinated with regional land use frameworks (i.e. regional expressions of the Land Use Strategy), so that all land use priorities, not just those relating to the built environment, are considered together in a strategic way, and include the enhancement of and mitigation of impacts on designated wildlife sites and our natural heritage.

We generally welcome the continuation and strengthening of the plan-led system. However, the lack of public consultation on the gateway check/evidence base for Local Development Plans (LDPs), and the reduced extent of early engagement through removal of the Main Issues Report is concerning. Crucial environmental issues may be missed and planning authorities will be reluctant to make major changes at later stages of plan preparation.

The opportunity to ensure that the planning system delivers low carbon places, avoids high carbon pathways and links developments to positive opportunities for natural climate adaptation has so far been missed. Detailed policies for meeting Scotland’s statutory climate targets are laid out in Climate Plans and there is a need to ensure that the NPF and development plans are evaluated against the Climate Plan for compatibility. This could be achieved through a statutory requirement for Scottish Ministers and planning authorities to seek advice on whether their plans are compatible with climate targets.

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?

Whilst we appreciate there is a need to deliver new housing, particularly affordable housing, there must also be a focus on the type and quality of housing required to meet housing need in the most sustainable way. This should be in line with the Energy Strategy and the Climate Change Plan and likely future energy systems. The energy efficiency of homes is influenced not only by their individual design but by the density of developments and location in relation to workplaces. Achieving sustainable patterns of development would be supported by requiring lifecycle emissions assessments for new housing development, taking into account forecasted travel patterns of residents. Spreading workplaces, retail developments and homes over a wide area requires people to travel further and makes it more expensive to plan public transport, creating infrastructure ‘lock-in’. Homes, even if built to high environmental standards, cannot be ‘zero carbon’ if they are built where residents are likely to commute long-distances by car. It is not clear how the reforms would help address this.

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?
We do not have strong views on the retention of Strategic Development Plans (SDPs) however there must be a clear mechanism to manage environmental issues at a regional level or these could be overlooked. The NPF must set out regional planning priorities which should be linked to the Land Use Strategy and consider priorities across all land uses. We agree with providing for regionally distinctive approaches and greater freedom to work collaboratively, but we do not necessarily agree that it would be counter-productive to prescribe how regional partnerships should be formed or operate for strategic planning interests. It is currently not clear what the scope is for other plans to be produced outwith the collaborative working to produce the NPF (i.e. whether specific regional plans covering transport or green infrastructure etc can be produced).

A stronger duty for regional partnerships to collaborate on certain issues is required. This should include the duty to plan for the creation, protection and enhancement of green infrastructure as part of a national ecological network. Measures to alleviate cumulative pressures on biodiversity and identification of potential ecological compensation sites for impacts on designated sites should also be considered at a regional level through the regional partnerships. Regional partnerships should be made up of planning authorities, alongside a range of statutory and non-statutory bodies. Green infrastructure should be added to the list of matters in section 3AA 2(d). This would help public bodies meet their biodiversity duties help deliver Scotland’s Biodiversity Strategy, and also help the Bill better reflect the SEA.

The priorities for regional partnerships should also include a spatial approach to identifying the best sites for renewable energy. The RSPB’s 2050 Energy Vision\(^3\) sets out a mapping methodology which can be used to identify locations for development and infrastructure whilst taking into account ecological sensitivities (and other constraints) and could inform these spatial approaches.

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?**

No. There are a number of amendments proposed that would speed up plan preparation but, overall, there would be a concerning reduction in community consultation and environmental assessment. It appears that there would be no requirement for formal consultation on, or prior to the preparation of, the evidence report (only ‘engagement’). There would also be no opportunity for the public or other interested parties to participate in the ‘gate check’ assessment of the evidence report despite this stage covering important issues including the possibility of LDP departures from national policy (paragraph 74 of the Policy Memorandum). There must be a requirement to consult widely on the evidence report.

We are also very concerned that the removal of the main issues report (MIR) stage will reduce effective engagement and early debate in the plan making and SEA process. Under the current system (as explained in current Circular 6/2013:}

Development Planning) MIRs set out proposals for development, identifying preferred options and reasonable alternatives. They are intended to allow informed and early debate on the realistic policy options which exist, and better environmental assessment of these, at a stage when changes can be accommodated. The removal of MIRs would mean the Proposed Plan would be the first time a planning authority is required to present key proposals. This will inevitably result in more objections to Proposed Plans and yet authorities may be reluctant to make changes once proposals are have been progressed to this more advanced stage. We are not convinced that the removal of the MIR stage is desirable or necessary, particularly in the context of a shift to a 10 year plan cycle and the additional resources and capacity that should free up.

It is particularly concerning that subsections (5) to (9) of Section 18 of the Act are proposed to be repealed. We believe that these proposed changes, and a number of other changes may be contrary to the requirements and intent of the SEA Directive and are likely to make it harder for development plans to meet the requirements of Habitats Regulations Assessment under the Birds and Habitats Directives. We would like to see a duty to better integrate strategic environmental assessment (SEA) outputs into the LDP, with clearer justification for the inclusion of environmentally damaging projects in the LDP being required, and for HRA to be undertaken at a strategic (plan) level, as well as project level for those projects/allocations where a reasonable amount of information is available.

In section 2: Local Development Plans (Policy Memorandum, page 9) it states there will be “feedback” on engagement prior to the final LDP examination but it is unclear if this will be an opportunity to make further representations on an amended plan. It appears planning authorities would be able to modify the proposed LDP (including major modifications) and submit it to Scottish Ministers without being required to consult the public. This would be completely inappropriate. There are risks that planning authorities may misinterpret representations (and modifications sought) and may incorrectly consider that a modification resolves a particular representation meaning it is not considered in the examination of the proposed plan. We would welcome clarification on this as it is critical to be able to scrutinise details of the LDP (and not only significant changes to the spatial strategy) before it is submitted for examination.

The requirement to align LDPs with Local Outcome Improvement Plans should help integration with other local authority priorities. However, the needs of communities may not be met through Local Place Plans (LPPs) if these are not properly integrated and assessed as part of the LDP process.

Any amendments made to LDPs must involve proactive consultation, including with relevant non-statutory consultees as well as the wider public.

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

This depends on the detail of subsequent regulations but it seems unlikely that this change will result in any improvements in practice and may result in significant
additional complexity. We have significant concerns regarding lifting the blanket restriction on establishing Simplified Development Zones (SDZs) in designated areas. In practice, it may be extremely difficult to ensure a sufficient amount of information is available at SDZ designation stage to ensure environmental impacts are fully assessed and appropriate mitigation delivered. The inclusion of designated sites in SDZ schemes would require comprehensive assessment work and clear justification before they could be confirmed. The report ‘Research on the Use of Simplified Planning Zones and Equivalent Mechanisms Used Outwith Scotland’ (Ryden, August 2017), commissioned by the Scottish Government, effectively suggests that the restriction on including ‘environmentally protected areas’ in SDZs should continue. In practice, it is therefore difficult to see how the inclusion of protected wildlife sites in SDZs can be justified or be of practical benefit.

In terms of removing the restriction on SDZs for EIA development, we could be content with this proposed change provided appropriate procedures are in place to ensure EIA requirements are met before an SDZ is confirmed, although again it remains unclear as to how this would be achieved in practice or what meaningful benefits this change would bring as this would mean an EIA would have to be carried out as part of the SDZ creation process.

It may be more practical to bring forward SDZs as part of the LDP as it could increase efficiencies in environmental assessment and consultation. However, environmental assessment of SDZs would often still need to be very detailed and this may overburden the plan preparation process.

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?

We have concerns that, as there is to be no fixed procedure for their preparation, there could be confusion amongst communities and they may be discouraged from producing LPPs, or produce something that is ultimately not fit for purpose.

We consider LPPs should have their own evidence base/gatecheck (or be required to use the one for the LDP and remain with the LDP parameters) as communities must have access to sufficiently robust environmental information at an early stage. We welcome training for preparing LPPs but there is not enough information available at this stage to judge whether this will be enough. We welcome the fact there will be independent scrutiny of LPPs if they are adopted as an amendment to the LDP. In these circumstances, they will also likely need to be subject to SEA and HRA.

Subject to our concerns, we do see potential for LPPs to support positive community action for the natural environment and climate change, for example, where they actively encourage provision and access to green infrastructure, or local energy or sustainable food initiatives.
We are extremely disappointed that the Scottish Government remains opposed to introducing some form of equal right of appeal to address the current fundamental unfairness in the system. Whilst early engagement in the planning system is undoubtedly beneficial, it will not necessarily prevent poor planning decisions. The current imbalance in favour of applicants completely contradicts the Scottish Government’s wider objectives on fairness and equality, undermines the confidence in the entire planning system and urgently needs to be addressed. The planning system cannot be truly about creating a better more sustainable Scotland for everyone whilst only applicants for planning permission have an opportunity to challenge planning decisions.

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 could these provisions be improved?

Yes, we support these proposals. However, we also consider that monitoring needs to be enhanced and regulations requiring fees to be paid for the monitoring of complex sites (such as those introduced for surface coal mining in 2017) should be forthcoming.

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 proposed levy is welcome but infrastructure levy funds need to specifically be able to be used for strategic habitat mitigation and enhancement. This would help address cumulative impacts of developments and fulfil statutory biodiversity duties. It could also help achieve climate change and biodiversity targets, areas strongly linked to development and typically underfunded.

There are a number of shortcomings with the Community Infrastructure Levy (CIL) in England and Wales. Contributions are not ring-fenced and the use of funds is at the discretion of the authority, so can be spent on unconnected regional infrastructure such as roads. The CIL Regulations also severely restrict the ability of planning authorities to pool contributions (i.e. contributions from more than one development towards strategic mitigation) other than through the CIL. In addition, contributions towards ecological mitigation measures that are not physical infrastructure (such as education or provision of advice) cannot be obtained through the CIL. In many ways, the introduction of the CIL has therefore made securing ecological mitigation more complicated in England and Wales (see for example www.ashfords.co.uk/article/pooling-contributions-regulation-123-of-the-community-infrastructure-levy-regulations-2010).

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 broadly support the intent behind this proposal. Training would contribute to ensuring that planning decisions are better-informed, transparent, accountable and less vulnerable to challenge. However, the content and nature of the training itself must be fully consulted upon and open to scrutiny to ensure that it is not simply reiterating existing views of the authority, central government or a preferred training provider. Training must include environmental issues and associated legal and policy requirements, including the EIA and Habitats Regulations, and fulfilling duties under the Climate Change (Scotland) Act to exercise functions in a way that contributes to climate targets. However, it is unclear why this is only focused on local government councillors. We frequently encounter professional planning staff in local and central government who have had no training in environmental issues. If anything, the priority should be to ensure that a local or national planning authority as a whole has access to required appropriate specialist knowledge to enable informed decision making. This requires adequate resourcing of planning authorities and statutory consultees.

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

Broadly, yes, if coupled with additional financial support and improved training. The provisions in the Bill could also be strengthened to help ensure developments comply with the ‘polluter pays principle’ and to reduce the risk (to communities, the environment and the public purse) of developers failing to comply with long-term planning conditions regarding restoration, aftercare or mitigation, for example due to insolvency. This was a significant issue following the collapse of major open cast coal operators in 2013 which left an estimated restoration funding shortfall of £200 million, significant public expenditure and impacts on communities and designated wildlife sites. A central issue which led to this outcome was the lack of adequate and periodic compliance monitoring of sites, including periodic review of financial guarantees.

Whilst significant work was done by the Open Cast Coal Taskforce on guidance for financial guarantees, this work has not been expanded beyond coal and there is no statutory basis for requiring or monitoring financial guarantees. East Ayrshire Council responded to the open cast crisis by instituting quarterly compliance monitoring for all major developments. The reports update the Planning Committee on Compliance Monitoring of environmental projects including extraction sites, landfill, windfarms and grid infrastructure. However there has been no wider national response and there is no guarantee that such a voluntary system of good practice will continue. We recommend:

- A statutory requirement for periodic (e.g. quarterly) reporting of compliance monitoring of major developments to the Planning Committee of a Local Authority
- That reporting covers the extent to which major developments are covered by financial guarantees for significant mitigation, restoration or aftercare requirements
- A requirement for those reports to be made public to enable appropriate stakeholder scrutiny of the compliance of major developments with agreed planning conditions
There should also be improved systems for the monitoring of outcomes of planning decisions, and completed developments could be audited for their sustainability and overall quality. This could include a review of whether the mitigation hierarchy had been applied and a net gain for biodiversity had been achieved.

11. Will the changes in the Bill 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?

We agree with the move towards full cost recovery for planning authorities and enabling Ministers to charge fees if necessary. It is essential that planning authorities have sufficient resources and expertise (including environmental expertise) to fully assess proposed developments for potential impacts on the environment. Regulations allowing fees to be charged for monitoring complex developments, similar to those introduced for coal mining should also be brought forward.

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

Disappointingly, many of the environmental benefits of the Bill discussed in the SEA are not reflected in the Bill. For example, green infrastructure is not included in the Bill, yet the advantages of more, better planned and resourced green infrastructure is mentioned or inferred in the SEA. We look forward to seeing improvements to the Bill brought forward in this regard.

Aedán Smith