Local Government and Communities Committee

Planning (Scotland) Bill

Submission from Scott Hobbs Planning

1. The Planning (Scotland) Bill was introduced into Parliament by the Scottish Government on 4 December and a call for written evidence was launched on 15th December 2017. This response is submitted on behalf of Scott Hobbs Planning in relation to The Planning (Scotland) Bill call for evidence.

2. Scott Hobbs Planning is an Edinburgh based planning consultancy, established in 2004. The Directors have extensive careers in public and private sector planning in Scotland, England, Northern Ireland and Ireland. Both have experience in high profile projects influencing strategic and local policy and have extensive knowledge of various sectors including energy, commercial, retail, industrial and housing developments.

3. SHP welcomes the opportunity to comment on the Planning Bill at this stage.

Part 1 – Development Planning

4. The abolition of Strategic Development Plans has the potential to result in the loss of cross boundary/authority cohesion and this has potential to impact on the delivery of infrastructure and therefore delivery of housing. While we acknowledge the replacement of SDP’s with regional partnership working, there is no information on how this will work in practice. It is important that if SDP’s are abolished, cross boundary cohesion is maintained to ensure the delivery of infrastructure and housing.

5. We do not support the change to the National Planning Framework (NPF) and Local Development Plans requiring them to be updated every ten years instead of every five years. As there is little information available to date relating to the proposed changes to the NPF and LDP process and delivery plans, we consider this may be too long a period and may mean the NPF and LDP’s are based on out of date evidence and have out of date policies. We consider that there should be a regular formal assessment of the LDP and delivery plan every 2-3 years and measures to remedy lack of deliverability of the objectives of the Development Plan should be issued for consultation and Minister approval. Remedies could involve Variations to the LDP, changes to the delivery plans or commitment to resolving resources issues within the planning authority.
6. We welcome the requirement for evidence reports to be prepared in advance of the Local Development Plan and for these to be reviewed by Scottish Ministers. However, it appears from the legislation that there is no scope for consultation in relation to the evidence reports. If the Main Issues Report stage is to be removed from the development plan process, it is imperative that the evidence report stage is subject to consultation. The proposed changes to the LDP process appear to reduce public participation and consultation (with the exception of the new local place plans).

7. The introduction of Local Place Plans adds an additional level to community involvement. However, they do not appear to be required to conform with the Local Development Plan or national policy, only to have regard to these. In England, the National Planning Policy Framework (NPPF) requires Neighbourhood Plans to positively support local development and to support the strategic development needs set out in Local Plans. Local Place Plans should be required to be in conformity with the strategic policies of the Local Development Plan, be consistent with the NPF and demonstrate how they will achieve the objectives of the Development Plan.

Part 3 – Development Management

8. We do not agree with the extension of the scheme of delegated decisions. Although this seeks to streamline the planning process to some degree, it also removes the right to appeal to the Scottish Government (DPEA) in these cases, e.g. appeals against decisions made in relation to certificates of lawfulness. As applications for certificates of lawfulness relate to planning law rather than policy it is not appropriate for these to be delegated and to be determined by Local Review Body if refused.

9. If the scheme of delegation is extended, then the process of the Local Review Body has to be improved to ensure fairness and an impartial appeal. Councillors must also have sufficient training to determine development proposals from first principles and should be advised by impartial professional planners.

10. The use of planning conditions to specify time limits on planning permissions is welcomed as this will allow s42 applications to be used to vary the time limit, if necessary, rather than apply for a new consent.

11. We support the changes to s75a procedures to allow planning authorities and Reporters to propose alternative obligations rather than simply approving or rejecting an applicant’s proposal. This appears to allow amendments to s75 agreements to be made more efficiently.
Part 4 – Other Matters

12. We welcome the requirement for decision takers to be properly trained, however it is unclear how this will work in practice. More detail is required on “training for taking planning decisions”.

13. We welcome the monitoring of the performance of planning authorities included in Part 12A of the Bill. This introduces an element of oversight which is not currently in place.

Part 5 – Infrastructure Levy

14. The introduction of an Infrastructure Levy should not allow for multiple fees to be payable on projects where a s75 may also be required.

15. If an infrastructure levy is introduced it should be payable on the commencement of development, occupation of buildings or phased over a period of time as appropriate to the particular development concerned rather than on the granting of consent so as not to constrain development or potentially affect the viability of development projects.

Other

It is positive that third party or ‘equal rights’ of appeal have not been introduced as this would result in delays in the decision-making process and be open to abuse. Should equal rights of appeal be considered, our experience leads us to believe that this will constrain development, encouraging developers to invest in alternative locations in the UK where there are no third party right of appeal.

Questions by Local Government and Communities Committee.

Q. 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?

A. No, as the lack of consultation in regards to the evidence reports and removal of the MIR stage of the LDP process will reduce opportunities for consultation, as will the extension of the LDP timeframe from five years to ten years.

Q. 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?
A. It could be argued that the abolition of SDP’s will result in the loss of cross
boundary cohesion between local authorities and could result in infrastructure
not being delivered, including housing. The change to LDP’s, requiring them to
be published once every ten years as opposed to five years, will also result in
development plans being out of date particularly in relation to housing supply
and availability of housing land.

Q. 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?

A. No, it is not clear how planning will be maintained at a regional level following
the abolition of SDP’s.

Q. 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?

A. No, see previous comments in relation to LDP’s.

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

A. From our experience in Ireland and Northern Ireland with similar types of
processes we feel that it is unlikely that Simplified Development Zones will be
widely used.

Q. 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?

A. Communities currently have the same opportunity as developers and all
individuals to engage in the LDP process. The introduction of Local Place
Plans will allow communities to have an additional influence in the LDP
process. It is necessary to recognise that there is a requirement for LDPs to
plan for future development needs of a wider area and a wider community,
which may require local authorities to make decisions inconsistent with a particular local community’s requirements. In such circumstances, the local authority decision has to take precedence, for the benefit of its wider area, and so if Local Place Plans are introduced these should be required to be consistent with national policy and the LDP.

Q. 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?

A. No comment.

Q. 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?

A. It is considered that the introduction of an Infrastructure Levy will add an additional burden on developers in addition to the s75 agreement. We see no reason why an additional mechanism is required. Should the Infrastructure Levy be imposed, it must not result in multiple fees being required for the same improvements or duplicate the fees set out in the s75. It should also be payable upon commencement of development, occupation of buildings or phased rather than upon granting of planning permission.

Q. 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?

A. We are broadly in agreement with this although there is a lack of detail in relation to how this will work in practice.

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

A. The monitoring of performance for local authorities is welcomed but it is unclear if this will drive performance improvements at this stage.

Q. 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?

A. More detail is required to enable full consideration to be given to this question. In principle flexibility in fees may be acceptable providing any fees to be charged to any prospective applicant is reasonable and any fees accrued must be ring-fenced to resource the continued improvement of that planning authority’s planning service. The planning authority should also be charged with the duty of demonstrating that improvement has been achieved, or the fee should be refunded.

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

A. This Planning Bill process is not a ‘root and branch’ overhaul of the planning system. It represents small changes to the system which was fundamentally overhauled in 2006-2008. Many in the industry have questioned the necessity for this current process when the overall functioning of the system in Scotland is largely broken due to the significant and harmful reduction in planning authority budgets and reprioritising of local government services away from those functions that support sustainable economic growth. The Planning Bill does little to address the fundamentals in planning delivery, a properly resourced system which can rapidly respond to development pressures where they are at their most acute. The 2006 Planning Act was introduced during a prolonged period of austerity and economic decline across Scotland, and this allowed the substantial changes to the system to be gradually implemented during a period of relative stability in planning authorities, when resources were significantly less stretched that they currently are in parts of the country. Whilst the proposed amendments to the system are less wide ranging, they will divert much needed resources away from the important job of maintaining a plan led system and, most importantly, ensuring that planning applications are determined effectively and efficiently. Interest in Investing in Scotland’s cities (other than Aberdeen due to localised economic factors) is at unprecedented levels, yet planning authority positions are being cut or frozen for short-sighted, cost-saving reasons. This is counterintuitive and fails to understand the medium to long term benefits associated with development and growth - namely new homes, job creation, increased Council tax receipt and therefore increased local authority income for reinvestment in education and other critical services. It is imperative that this disconnect at senior management level in local authorities is urgently addressed, and the profile surrounding the Planning Bill represents an opportunity to highlight the macro level benefits of a properly resourced planning system.
At the micro level it is now time to follow the example set by building control in redistributing workloads from pressurised authorities to those with greater capacity. There is no reason why householder planning applications cannot be handled remotely, freeing up hard pressed staff to focus on those local and major developments which generate greatest benefit in terms of maximising investment, meeting need in all sectors, and driving the growth that the largely up-to-date plan-led system anticipates and supports. The issue of redistribution to maximise limited resources is conspicuous by its absence in the Planning Bill.