Local Government and Communities Committee

Planning (Scotland) Bill

Submission from SSE Generation Development Ltd

SSE Generation Development Ltd. welcomes the opportunity to comment on the draft Planning (Scotland) Bill, and the opportunity to engage further on the review of the National Planning Framework and Scottish Planning Policy.

SSE Generation Development Ltd. is a subsidiary of SSE plc which is one of the UK’s leading energy companies, involved in the generation, transmission, distribution and supply of electricity, and in the extraction, storage, distribution and supply of gas. Its core purpose is to provide the energy people need in a reliable and sustainable way. With 3,309MW of renewable electricity capacity within UK and Ireland, delivered through hydro, onshore and offshore wind, pumped storage and biomass, SSE Generation operates the UK’s most diverse portfolio of renewable generation.

JLL has assisted SSE Generation Development Ltd. in the development of this submission, as planning advisors.

Key points

- The timing of new climate change legislation, a new energy strategy and planning reform provides a positive opportunity to take a cross-government approach to delivering low-carbon policy ambitions.
- The proposals to streamline and simplify the planning process are welcome, especially where more cost-effective and robust planning can be achieved.
- The proposal to introduce Local Place Plans seems at odds with ambitions to streamline and simplify the planning process. Further integration of localism would be better achieved through enhanced consultation with communities.
- Any increase in planning fees could have a detrimental impact on the renewables industry, which is already seeking significant cost reductions to progress developments. Any increase in fees should lead to an improvement in planning authority performance.

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 National Planning Framework 3 (NPF) states that the Scottish planning system contributes to delivering Scotland’s 16 National Outcomes. The NPF also refers to the Scottish Government’s National Plans, Policies and Strategies, which set out how the Scottish Government intends to deliver these Outcomes. Of the eleven plans, policies and strategies, one of those strategies relates to housing, while two relate to the generation of electricity, heat and the development of a low carbon economy. Both the delivery of housing and the further deployment of renewables are development sectors that face future deployment challenges and both contribute to sustainable economic growth.
SSE Generation Development Ltd. is concerned that neither the Planning Bill, or its associated Policy Memorandum, appear to be drafted to positively assist Scotland in progressing its renewable agenda. This is particularly pertinent given the publication of the Scottish Energy Strategy and the accompanying Onshore Wind Policy Statement in December 2017. These documents set out ambitious renewable energy, electricity generation and carbon emission reduction targets – for example, the Scottish Energy Strategy sets a new 2030 target for the equivalent of 50% of the energy for Scotland’s heat, transport and electricity consumption to be supplied from renewable sources, potentially requiring c.17 GW of installed capacity. The Onshore Wind Policy Statement confirms that onshore wind will be crucial to achieving this target and that the technology’s contribution must continue to grow. The draft Climate Change Plan sets out similarly ambitious targets, ultimately aiming to reduce greenhouse gas emissions by 90% by 2050.

These documents recognise that onshore wind developers require assistance in developing viable projects in the current subsidy-free environment; streamlining the planning process for new onshore wind is key to enabling this. The Planning Bill, and subsequent reviews of the NPF and Scottish Planning Policy (SPP), provide a positive opportunity to reform the planning system and take a cross-government approach towards achieving the Scottish Government’s low carbon policy ambitions and statutory 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?

No response.

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?

SSE Generation Development Ltd. believes that the removal of Strategic Development Plans will help simplify the policy framework within which planning authorities and developers operate, and supports a more streamlined approach. Strategic Development Plans often set strategic policy requirements for a Local Development Plan (LDP), where national policy should be able to provide this direction.

The incorporation of SPP into the NPF, as proposed by the Bill, with this document receiving ‘Development Plan’ status could also support a streamlined approach to planning and could reduce the extent of regional variance in development assessment policies, if subject to clear and proportionate policy tests.

Given the enhanced status of the NPF, it will be important that the draft policy is subject to appropriate consultation, to ensure that the provisions included within it are robust and long lasting; the whole suite of policies and proposals should be fully consulted upon with all relevant stakeholders, including industry. We believe that ministers should recognise the importance of the NPF and ensure that there is a balance in policy provision so that it represents the wider Scottish public interest.
SSE Generation Development Ltd. believes that, should the NPF be subject to a statutory ten-year review cycle, then appropriate tests should determine when interim amendments should be proposed, consulted upon, scrutinised and made. A ten-year cycle is unlikely to keep pace with technological development in the renewable energy sector.

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?

SSE Generation Development Ltd. supports the Bill’s intentions to reduce time spent on preparing plans. However, SSE Generation Development Ltd. would urge the Scottish Government to ensure that each LDP receives an appropriate level of scrutiny to ensure it is founded on a robust and transparent evidence base and is fully consistent with national planning policy and priorities. Extending the timescale for the preparation of LDPs should provide greater clarity for developers, while maintaining a mechanism through secondary legislation which allows for interim amendments.

SSE Generation Development Ltd. supports the removal of the requirement for the Main Issues Report and the removal of provisions for supplementary guidance. In SSE Generation’s experience, supplementary guidance can often diverge too far from the policies set out in a Local Development Plan, and national policy, creating confusion, the potential for a greater number of disputes, delays in delivering development and additional costs in developing renewable energy and low carbon infrastructure. The lack of independent examination of supplementary guidance is also a cause for concern, in contrast to the scrutiny process which LDPs are subject to. There are examples of existing supplementary guidance, such as that relating to onshore wind energy development in Dumfries and Galloway, where the planning authority has integrated detailed landscape capacity and sensitivity studies into the LDP, despite this being inconsistent with SPP and where the overall length runs to more than 500 pages.

To ensure the needs of developers and communities are met in a balanced manner, SSE Generation Development Ltd. believes that the NPF should set a clear structure for spatial planning which LDPs should be required to adhere to. This framework should ensure that a spatial framework integrated within the LDP provides a position on development constraints that can be dealt with through design and case-by-case assessment, rather than creating binary distinctions where certain types of development are either accepted or not accepted. In addition, Local Development Plans should not be prescriptive through spatial maps on matters such as landscape, capacity studies, aviation, carbon rich soils and additional natural heritage designations, all of which are capable of being mitigated through the design of the development or are highly subjective in nature.

SSE Generation Development Ltd., as a provider of key energy infrastructure, would welcome the widening of the definition of key agencies.
SSE Generation Development Ltd. notes that Section 8 of the Bill amends the meaning of statutory development plan to include the NPF and the LDP and that, in a scenario where one diverges from another, the most recent will prevail. SSE Generation Development Ltd. firmly believes that national policy should prevail to ensure consistency in delivering nationally important priorities, such as addressing climate change. The new SPP and NPF, once in place, should prevail as the most important material matter for decision making, and local plans should reflect these.

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

The introduction of Simplified Development Zones (SDZ) is geared towards unlocking significant areas for housing development. However, the use of these zones could also assist with the decarbonisation of Scotland’s energy usage, and thus the achievement of Scotland’s energy targets. This is another example of an opportunity to take a cross-government approach to climate change. Providing greater clarity on such consenting considerations could stimulate the market by providing renewable energy generators with a greater ability to secure development approval; one of the greatest risks to the success of new projects. This increased certainty will make it easier to finance projects, for commercial and community developers alike, and help to reduce costs.

SDZs could also play a role in providing flexibility for works to be undertaken at existing generating stations that are required for operational and life extension/repowering purposes, including existing onshore wind farms. This could also be achieved through enhancing permitted development rights and providing for such rights in a similar way to the Local Development Orders which operate in England, such as for the delivery of district heating networks. Including existing thermal generation plant within SDZs could help them diversify and/or play their role in the low carbon transition.

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?

The proposal to introduce Local Place Plans (LPP) seems at odds with the wider ambitions of the Bill; namely, to streamline and simplify the process. SSE Generation Development Ltd. recognises the importance of community engagement and believes that the further integration of localism within the planning system would be best achieved through enhanced consultation with communities. Through an enhanced LDP process, local place planning objectives could be achieved without placing what could be an onerous requirement upon communities to produce a formal plan.

Similarly, the introduction of Third Party Right of Appeal (TPRA) would run contrary to the objective of frontloading the planning process and act as a disincentive for communities to engage positively at the start of the planning process (both for
Development Planning and Development Management). TPRA would inevitably result in delays to the delivery of development and could adversely impact upon sustainable economic development. There are existing mechanisms to allow for planning decisions to be reduced, for example through the judicial review process and the ability of a planning authority to overturn planning decisions. Third parties also have the right to be heard at the planning appeal stage, should a developer appeal against a refusal of planning permission. As such, SSE Generation Development Ltd. welcomes the decision to not include provisions for TPRA.

If LPPs are introduced, it will be important that LDPs have regard to them during the preparation phase or at any scheduled review point. Any greater status could have significant consequences for achieving the delivery of development in the wider public interest and in meeting Scotland’s National Outcomes. In addition, LPPs should be consistent with LDP objectives and policies.

SSE Generation Development Ltd. does not believe that the process for preparing a LPP should be ‘defined largely by the capacity and preferences of the community rather than introducing a fixed procedure’, as set out in the Policy Memorandum. A fixed procedure should help prevent LPPs from becoming a vehicle that could create further disputes within, and slow down or stop, the planning process and prevent the development of nationally important infrastructure without robust evidential reasoning. It would be useful to understand how the LPPs will work in practice, who will be eligible to draft a LPP and how to demonstrate that the identified group is representative of the local community.

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?

SSE Generation Development Ltd. would like to highlight the impact that any increase in fees could have a detrimental impact on the renewables industry, which is already seeking significant cost reductions to progress developments. In light of the Scottish Government’s Onshore Wind Policy Statement, which explicitly recognises that developers require assistance in finding a ‘route to market’ (i.e. make projects financeable in absence of a government support scheme such as the Contracts for Difference), any increase in fees would contradict this commitment. A specific fee category for onshore wind could be introduced to help overcome this challenge, and to achieve more cost-effective planning.

If the proposed changes were implemented, SSE Generation Development Ltd. would expect to see an improvement in planning authority performance. However, the ability to increase fees should be subject to the planning authority being able to demonstrate that current fees do not allow for full cost recovery. In addition, SSE Generation Development Ltd. would expect assurance that planning fees are ring-fenced for resourcing the planning service. This could be achieved through an appropriate amendment to the Bill.

SSE Generation Development Ltd. would also recommend that the Bill introduces a direct link between planning application fee payment, planning authority performance and resourcing, to ensure that developers’ proposals are properly considered by
suitably qualified staff with access to sufficient resources. Quality is important in planning and so having suitably qualified staff is essential, especially with the possibility of increased pressure through managing LPPs.

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?

SSE Generation Development Ltd. does not believe that the introduction of an Infrastructure Levy should have an impact on the development of energy projects, as these are self-enabling. The purpose of an Infrastructure Levy is to gather funds to be used to unlock common infrastructure; energy generation projects do not require common infrastructure to be unlocked to allow a development to proceed, other than radar and grid infrastructure. To date radar and grid constraints have been unlocked by bespoke commercial and regulated delivery vehicles, and SSE Generation Development Ltd. believes that this remains the best approach.

The effectiveness of the English infrastructure levy was reviewed in 2016 by an independent panel, commissioned by the UK Government. The report, submitted in October 2016, concluded that ‘CIL as currently configured is not fulfilling the original intention of providing a faster, fairer, simpler, more certain and more transparent way of ensuring that all development contributes something towards cumulative infrastructure need’.1

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?

SSE Generation Development Ltd. supports the requirement for local government councillors to be trained in planning matters prior to making any planning decisions. While SSE Generation Development Ltd. acknowledges that Scottish Ministers, or a different planning authority, can take decisions on behalf of an authority where elected members are yet to receive their mandated training, we would encourage some mitigation to be introduced to prevent any significant hiatus in planning decisions being taken, for example following local government elections.

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

SSE Generation Development Ltd. welcomes the Bill’s position on the performance management of planning authorities. However, there is no proposal to link the performance of planning authorities with the fees they are able to charge, or for enabling immediate measures for performance enhancement. SSE Generation Development Ltd. would encourage the measurement of performance to be meaningful, and not based on numbers alone. There needs to be a qualitative aspect, as consents need to be robust enough to stand up to inquiry; if they are not and costs are awarded against decision makers then action is taken to avoid recurrence.
To ensure confidence in the Scottish planning system, it may be worth considering an approach which has been taken in England. The Localism Act 2011 (England only) enables the Planning Inspectorate to determine planning applications in a scenario where they would otherwise be determined by an underperforming planning authority, until such time that performance improves to an acceptable level.

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?

SSE Generation Development Ltd. would encourage the Scottish Government to learn lessons from the Welsh and Northern Irish systems, where changes have been made but have not necessarily improved the planning systems.

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

SSE Generation Development Ltd. believes that there is a significant opportunity for the planning system to be optimised to facilitate delivery of the Scottish Energy Strategy, Onshore Wind Policy Statement, Climate Change Plan and new provisions in the draft Climate Change Bill. Such an alignment would provide developers with greater confidence in the Scottish planning system and should lead to a smoother development management process, helping renewable energy developers bring forward new projects without the certainty of an investment mechanism.

SSE Generation Development Ltd. recognises that the existing Climate Change Act and proposed Climate Change Bill place climate change obligations upon ‘public bodies’, but these obligations are often not referenced in planning decisions. As such, it is not clear as to how these obligations have been considered in the planning process. SSE Generation Development Ltd. recommends discrete amendments to the Bill in both Part 1 ‘Development Planning’ and Part 3 ‘Development Management’ to ensure that climate change and planning legislation are aligned.