Local Government and Communities Committee

Planning (Scotland) Bill

Submission from South West Communities Forum

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?

Planning is a complex subject, not easily understood by the general public. We welcome the attempt to strengthen and simplify the planning system and ensure planning better serves Scotland’s communities and its economy but suggest there is scope for a more radical overhaul. Simplification of the system with more emphasis on enabling the community to influence development/no development would be very desirable. Providing resources so that people and communities are actually empowered to really influence future development would be appreciated – but we do not see that emerging from this Bill. The Bill comes across as pro-development (which is fine to a degree) but as a local authority is only expected to ‘have regard to’ the views of the community, and in any case has a remit far broader than just one community, people may ask why they should spend time and resources preparing ideas only to see them ignored. That could turn more people away from engaging in Local Place Planning and Community Involvement, the antithesis of what the Scottish Government is trying to achieve.

We welcome the objective of ‘reducing complexity’ and would support further steps in that direction however we cannot see the connection between that aim and ‘improving accountability and trust in planning processes and decision-making’ (page 2, para.5 of the Policy Memorandum (PM)).

It is not clear how the built environment would be protected under these proposals. Regarding the natural environment, we would welcome a real strengthening of protections against edge-of-town and rural development. We are after all living on an island where the edges are being eroded! Only a certain proportion of our cultivatable land can be converted into money.

On this issue, SPP2014 is weaker than previous policy documents. We would be grateful for a reinforcement of Principle C of the Scottish Land Use Strategy (‘Getting the best from our land’ – Scottish Government 2016) which reads: ‘Where land is highly suitable for a primary use (for example food production, flood management, water catchment management and carbon storage) this value should be recognised in decision-making’ and Section 2.1: ‘in support of our goals on food security, we should continue to ensure that our prime agricultural land retains its capacity for food production.’

We consider that we should be prepared for any undesirable consequences arising from Brexit. For example, if the cost of imported food rose to the point where there
was a need to produce more from within our island, we would need to retain that capability. Climate Change might work to our benefit and enable us to export foodstuffs. By ensuring food security, we will simultaneously be protecting the natural environment and encouraging reuse of brownfield sites. Land use planning should take into account not just economic benefits for the present generation but the survival of future generations thereby producing a planning system that balances the need for appropriate development with the views of communities and protection of the built and natural environment.

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?

Ensuring planning permission is in place to enable house building is only part of the housing issue. Houses have to be financed. The primary sources of funds for housebuilding come from government, developers borrowing from banks, and building societies.

The Edinburgh & Lothians Structure Plan, Joint Liaison Committee Report, Annual Housing Monitor 2010 made various pertinent observations:

- “Current economic circumstances have resulted in significantly reduced estimates by Homes for Scotland for house building on sites across Edinburgh and the Lothians.”
- “Some sites are simply impossible to progress because they are burdened with land prices reflecting pre-recession circumstances, developer contributions and expectations which are no longer affordable, consented product mixes which are not sellable, and increased building costs due to changes in the Building Regulations and Roads Guidance. A number of sites across Scotland were in the hands of builders now in administration; the sites are therefore controlled by Banks and other institutions, who are unlikely to try to bring them to the market in current conditions.”
- “Where a planning authority has a 5-year supply of effective housing land but the impediment to developing that site is the general availability of mortgages or low level of demand from purchasers, then there will be little if anything to be gained by releasing additional sites.”

It is not a lack of sites that is the reason for a shortage of housing, but the type and affordability of housing being built. This is not an issue that can be addressed by the house builders alone. They are in the business of meeting market demand, including houses for market letting, an increasingly important component of Scotland’s housing stock. The critical shortage is affordable housing, only some of which can reasonably be provided by house builders on the back of market developments. There has to be much more public funding and only if that materialises will higher levels of new housebuilding be effectively achieved. Plenty of brownfield sites are not being exploited. Current policies state that 25% of housing beyond 12 units should be ‘affordable’. But in 2011, the SESplan Housing Need and Demand Study
showed Edinburgh’s immediate requirement was for 44% of new houses to be affordable. By 2015, the SESplan2 MIR showed affordable need had jumped to 64% for social and below market rented tenures. In 2016, SESplan revised down the affordable element in their finalised Strategic Development Plan to 50% stating that ‘the targets are a realistic estimate of what might be deliverable based on a range of factors, including potential levels of funding available to support affordable housing.’

**But policies have yet to change.** The problem is that the wrong kind of houses are being built, and if anecdotal evidence is to be believed, they are being bought by investors to let, not for first steppers. So to increase the appropriate kind of house building, it has to be permanently affordable and checks need to be instituted to ensure that where houses are bought for income generation, that the rental is at a sensible economic level, with security of tenure. This might be along the lines of Council Housing or the former SSHA provision. Another route could be to encourage local authorities to purchase houses placed on the market to be rented at an economic rent.

We note the emphasis on housing in the question. But housing is only one aspect that has to be integrated into a plan-led system with schools, workplaces, open space, hospitals, transport, etc. We also need to ensure the provision and maintenance of exercise and amenity areas since some of our most pressing problems at the present time derive from the health impacts of overweight and obesity, which are linked with inactivity as well as diet.

Focussing on one requirement may lead to other aspects (including what land needs to be retained for food security, flood control, community facilities, etc.) not being given the ‘weighting’ they deserve.

**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?**

We agree that the system has to be ‘plan-led’. But the planning we see relates almost entirely to the built environment; it pays little attention to other needs such as ensuring enough farmland is retained to cover the essential requirements of our future population and minimise importing foodstuffs. This is fundamental but is barely mentioned in our planning system. The ‘front-loaded’ system proposed (PM paras.20, 22 etc.) is hardly one designed for flexibility.

Regarding Planning at the regional level – beefing up the National Planning Framework in substitution for the SDPs is certainly a simplification but it is difficult to say if this is likely to be better or worse from a regional planning perspective. What is potentially more interesting is whether a better means of forecasting housing demand/need emerges which enjoys much higher levels of public understanding and confidence.
It is not clear what is meant by ‘regional level’. The impression is that this would be even bigger than the present SDPs. As it stands, the SESplan SDP covers a large area, with counties with widely differing needs. Our preference would be to revert to Strategic Plans similar in size to the Lothians Structure Plan which were easier to comprehend and grouped areas with similar needs. To address this question, greater clarity is required over the scope of the new regional plans, with drawings showing their proposed boundaries.

**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?**

The lack of a simplified and consolidated Planning Bill makes it difficult for the layman to comprehend the changes proposed. To achieve better delivery, processes that add complexity to the system need to be simplified.

Regarding Local Development Plans – There is insufficient information to determine whether or not the new content and process will improve the effectiveness of LDPs e.g. what exactly will be addressed in the Evidence report and how will it vary from the MIRs? Certainly increasing the life of LDPs to 10 years with partial modifications at shorter intervals should be beneficial.

It is unclear what is meant by ‘other local authority priorities’ – are these related to planning or social housing, roads, policing, transport, etc.? Developers are unlikely to see many hurdles removed (negotiations over levies will not diminish) while communities will continue to feel frustrated by the lack of resources available to them. Desirable changes would include general simplification, free provision of planning advisers and expertise to Community Councils and an Equal Right of Appeal to Community organisations and the public following models that work in other countries.

We note para.66 of the Policy Memorandum changes the emphasis of ‘action programmes’ to ‘delivery programmes’. We do not see how changing wording coupled with the chief executive and full council signing off delivery programmes will ensure resources exist to enable a proposal to happen.

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

In theory a Simplified Development Zone may make for easier development in selected areas but caution is required to ensure that would not be at the expense of creating attractive places to live and work under a diluted planning regime.
It is unclear what constitutes a ‘Valid request’ and who can make it – can a Community Council make a ‘Valid request’? It appears from Schedule 5A, Part 2 – Chapter 2 para.8(1) that a developer could make such a request but there is a need for balance to ensure communities are not sidelined. Apparent unfairness could again raise demands for an **Equal Right of Appeal**.

Para. 90 of the Policy Memorandum is a real concern as it appears to favour developers and allow them to railroad projects through areas that have historic or other reasons for being protected.

Until Regulations emerge, it remains to be seen whether the environment will be protected and communities given an effective voice. If this concept encouraged master plans for brownfield sites - co-ordinating residential, workplace, community facilities and transport links, there could be benefits – providing communities were given a meaningful say. It might provide a model for overhauling and simplifying the entire planning system.

**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?

While acknowledging the desirability to ‘proactively’ support investment and quality placemaking, the Bill in its present form is unlikely to encourage community involvement any more than at present. It is difficult to see how there can be more local decision-making (desirable though that is) when Community Councils and other organisations generally comprise people with limited planning skills who are elected for just a few years. They rarely possess an executive with planning expertise and inevitably end up being reactive rather than proactive. Local Development Plans have little meaning for most people – but these volunteers will respond when planning proposals are made, vociferously when they have not featured in LDPs – a common occurrence.

Para.97 in the Policy Memorandum describes the process of ‘development management’ and concludes that ‘Communities, individuals and organisations … must have a meaningful opportunity to contribute their views, adding value to planning considerations without hindering efficient decision-making.’ This ‘top-down’ approach could have been described less bluntly. Authorities and Developers only have a passing interest in development but Communities have to live with the results. It is not a meaningful ‘opportunity’ (whatever that means) Communities require, but a meaningful ‘influence’.
Community Councils need the support of paid planning expertise but the Financial Memorandum indicates they would not receive enough monies to develop ideas. Table 1 shows a continuing reliance on volunteers.

The reference in the FM to ‘Local Place Plans’ where the ‘Monetised cost including volunteer time and practical support’ averages less than £1,000pa for each organisation, suggests that communities will not receive any benefits from this initiative. As local authorities only need ‘to have regard to’ community initiatives, it seems unlikely there will be much enthusiasm for LPPs. In short, communities will require significant ongoing funding to pay for premises and other resources, professional advice, legal protection and publicising proposals. A better use of resources would be to group say 8-10 adjacent community councils together (in urban areas), in staffed District Offices under Locality Committees.

Section 9 of the Policy Memorandum suggests that several organisations could compete, submitting their own Local Place Concepts, none of which may be incorporated in LDPs, resulting in frustration at the wasted effort and further disenchantment with the planning system. If LPPs are to be encouraged, there needs to be a single focal point within the community and Local Authorities must be obliged to ‘take account of’ rather than ‘have regard to’ local people’s desires.

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?

It is doubtful if increased fines would make much difference. But there is scope to review how the planning system is paid for. We note (FM para. 21) the claim that planning fees covered only 63% of the cost of handling applications. If planning officers identified in time sheets the time spent on individual applications (as private practice already does), then more accurate scales of cost could be devised. This may be particularly relevant to planning appeals. Councils do not regularly seek costs for dealing with failed appeals – if they did then they could afford better counsel, the public would not have to pay in these circumstances and there would be less incentive for developers to go to appeal.

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?

We agree that there is a strategic need for planners to co-ordinate the delivery of infrastructure but at the end of the day, we all pay for the infrastructure so does it not make sense for government or the Local Authority to provide it in advance? (PFIs are an example where costs to the public purse are several times greater than if the
authority had paid for it at the outset.) We think it unlikely that the proposed system will have much of an impact on levels of development.

On the ‘Infrastructure First’ principle, and in terms of visionary planning, it would be better for Local Authorities to prepare master plans and work to them. For large cleared sites, the LA would provide the infrastructure so that sites are ‘infrastructure ready’ and the developers of the sites would pay from the point of connection into their site. On sites within town (i.e. brownfield) where the basic infrastructure already exists, there would be no cost to the LA and developers would pay the same connection charges. That arrangement would benefit developers as they can be more competitive sooner, it would not mean that subsequent developers in the same ‘campus’ had to pay proportionate charges and because the businesses will be paying rates or community charges anyway, the LA will recover its costs over time.

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?

Para. 77 of the FM says that regulations will be introduced “prohibiting members of a planning authority from taking part in planning decisions unless they have undertaken specified training”. This seems sensible – but to what extent do they need training? What if they ‘fail’?! It takes longer to train a planner than the time a councillor may be in office. Councillors must therefore rely on registered planners for advice. Yes they need a basic introduction to planning but as councillors are elected to deal with all the issues that arise in a community, that training must of necessity be short. To avoid unnecessary costs, we suggest that where qualified planners are available, that training can be minimal. It is noted that proposing minimal training costs is in line with Scottish Government thinking.

There is another avenue that might be explored.

The Places, People and Planning paper introduced the concept of planning to children. Can school education courses be developed to include a basic understanding of how the planning system works, from small to large scale, and cover SDPs, LDPs, Planning applications, timescales, transportation, education and infrastructure needs, open spaces and Rights of Appeal? This would give a broad grounding to all and make it easier for those who go into public office to later refine their knowledge.

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

The proposals don’t look very encouraging to LAs faced with ever decreasing funding. The Scottish Government has to trust Local Authorities to do the job properly so if monitoring shows that Local Authorities are inadequately funded by government, then monitoring will allow government to identify what additional
resources it needs to provide. The proposals as presented suggest that government would add another bureaucratic layer while removing funding needed to improve local authorities’ performance. It is doubtful if local authorities will be able to attract high quality planning graduates when their budgets are constrained with the probability that more decisions will be delegated to under-qualified staff. The existing clamour for an Equal Right of Appeal will put even more pressure on government to accept the need to revise the appeal system to enable individuals and communities to have a proper say. While it is acknowledged that the planning system is taking far too long to process applications, government needs to ensure enough funds are provided. “Improving performance” by setting unrealistic deadlines to deal with applications can lead to poor decisions and aggrieved applicants going directly to the DPEA for decisions. The extent of savings required of Local Authorities over the next 10 years (see FM paper) will simply lead to fewer staff, planning by box ticking (applications are already being dealt with by other authorities unfamiliar with the area) and collapse of the system. To provide for the future, graduate planners must see that they can contribute to the future of Scottish planning, but if they see planning authorities are under constant pressure, they will seek opportunities elsewhere.

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?

Not enough information has been provided to know what is proposed. Worked examples would help understand what is meant under this proposal. See also answer to Qu.7 (time sheets).

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

The time allowed to respond to this Bill was too short and included the two-week Christmas break.

It is difficult to see how the complexities of the existing planning system will be improved by this Bill. It would have been easier to understand if the changes had been printed as complete paragraphs rather than exchanging individual words in an existing Act. The Explanatory Notes are helpful, but to properly understand the proposals, it is necessary to refer to several Acts.

The Bill is short on specifics and with over forty references to ‘Regulations’ in the Explanatory Notes alone, it is clear that as things stand, the Bill will go forward lacking a great deal of detail. To a degree this may be justified by the fact that new planning processes are intended, e.g. for partial amendment of the National Planning Framework or a Local Development Plan and that detailed guidance and instruction will have to be determined in the light of experience. But in a large number of other
cases, the lack of definition is attributed to the need for flexibility arising from changes in information and communications technology. In the latter case, these changes have been with us for some time and did not hitherto prevent clearer definition in the Act.

It would have been helpful to have provided a list of all the Regulations proposed and their scope. It is suggested that the Bill could be enacted in autumn 2018 but its Regulatory teeth may not be implanted for 18 months or even longer. What Regulations are proposed, what would be their scope and what period must elapse from the Act’s introduction to the Regulations being confirmed?

The reference in the Policy Memorandum para. 62 to widening the definition of key agencies ‘to include private sector organisations, such as private infrastructure providers’ is alarming, especially in the light of the overnight collapse of Carillion. We would discourage relying on private providers.

It is not clear why the period for lodging a planning application should be extended to 18 months (78 weeks) after lodging the Proposal of Application Notice (PAN). This is excessive and will lead to uncertainty over whether a proposal is likely to occur or not (and a lot of unsuspecting people will have moved house in that time). As consultation tends to be uninformative - we suggest that where PAC is required (and this should include ‘minor material changes’), it should be in sufficient detail as to be meaningful (i.e. showing roads, building blocks in relation to the environment, traffic impact, infrastructure requirements) and presented to the public between 6 and 9 weeks after being approved for consultation by the local authority. The applicant would then have between 12 and 18 weeks from the first date of public consultation to submit an application for planning permission. If no complete application were submitted within that period, the entire proposal would be discarded.

PART 3 – SECTION 16 - Schemes of Delegation - Section 43A was introduced in the 2006 Act. This is an area of concern as very few applications are now referred to the Planning Committee in Edinburgh (and probably elsewhere). This extensive section allows applicants various rights to a review of decisions but there is nothing to allow a community or a third party to make representations.

We request that aggrieved parties be allowed to submit a request for a review either through their local community council or representative body, their local councillors or their elected or a listed MSP. The review may allow a decision to be confirmed, or set aside, provided the local authority is notified within 28 days of the date of issue of its original decision.

We request that where it is stated in the Bill that schemes of delegation are to officers within that authority, that the authority is not permitted to delegate these matters to officers of another authority.
PART 4 – OTHER MATTERS – SECTION 25 - (Power to transfer functions where insufficient trained persons) – Clearly this section has been inserted owing to a lack of suitably trained planners. If this facility were deployed, it should be for a limited period not exceeding six months during which time the Local Authority must have acquired and deployed the missing skills. It should not be possible to extend this period.

Equal Right of Appeal – Para.110 of the Policy Memorandum acknowledges that there has been a long-standing request to introduce a ‘third party’ or ‘equal’ right of appeal into the planning system. The argument that it is ‘more appropriate and more constructive to have stronger early engagement’ is false as development proposals frequently arise that have not been included in a meaningful way in Local Development Plans. We request an affordable Equal Right of Appeal to ensure that Communities are given the same rights as Developers whose interests are transient. The more complex the system becomes, the more people feel disenfranchised. The Scottish Government would be seen as promoting fairness for all by recognising the need, incorporating it in the Bill and ensuring that it is implemented immediately following enactment.

PART 3 – SECTION 17 - Duration of planning permission. There is no issue regarding planning permission lasting 3 years. But this is only the starting point. Commencing work within 3 years effectively keeps the permission live in perpetuity which is nonsensical. We request that this be adjusted so that provided work is commenced within the 3-year time period that the approved scheme is completed within 10 years of commencement; any outstanding works would be deemed not to be covered by a live planning approval. Outstanding works would require a fresh application that would have to be assessed on the basis of the legislation (including the LDP) then applying. The reason for this proposal is to prevent long term planning blight and to ensure that future Development Plans are adjusted to reflect that other facilities such as infrastructure, schools provision, roads etc. can take into account the fact that the approval has lapsed. An additional planning fee would apply of course