Local Government and Communities Committee

Planning (Scotland) Bill

Submission from the Scottish Environmental Services Association

The Scottish Environmental Services Association (SESA) is the trade body representing Scotland’s waste and secondary resource industry, which is leading the transformation of how Scotland’s waste is managed. Our Members want to make Scotland’s economy and environment more sustainable by significantly increasing the recycling of resources contained in waste. In fact the services delivered by SESA’s Members are vital to ensure Scotland’s compliance with EU waste law and can help Scotland to lead the fight against climate change, while also realising the Scottish Government’s objectives for a Circular Economy.

The planning system has a key role to play in meeting these objectives and should facilitate the delivery of new recycling and waste treatment facilities in time and in the right location and which also affords the industry with the flexibility to adapt to changing and evolving businesses environments. In brief, the planning system should enable the waste industry to deliver a network of integrated waste management facilities in which collected waste may be bulked up or recycled in one location, recyclates processed at another, or residues treated or disposed of elsewhere.

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 delivery of sustainable development should be at the heart of the planning system, one which meets the needs of communities while offering relevant protection to the natural and built environments. Waste management infrastructure is clearly an essential component of sustainable development, enabling more of Scotland’s waste to be returned back into the economy as recycled material and using the remaining, residual waste for the generation of low carbon energy.

To date, there has been little evidence to suggest that the planning system has successfully delivered vital waste management infrastructure: quite simply the rate of (planned) landfill closures is accelerating faster than the delivery of replacement waste treatment facilities (capable of diverting waste away from landfill) as evidenced by a number of recent reports which consistently point to a pressing capacity gap opening up in our sector. While there are of course a number of factors at play which have contributed to this impending capacity gap (securing finance; commodity prices; and exports markets) obtaining planning permission nonetheless remains the single biggest barrier to the timely delivery of this infrastructure.
There is little evidence to suggest that sustainable development has been incorporated into the heart of the planning system and it can therefore be an uphill struggle to convince planning authorities of the "sustainability" merits of a proposed waste management development. Developers are often bogged down in protracted discussions with an authority in justifying the development on the basis of “need” (despite the need having likely been established within national policy).

In principle, the Bill, taken as a whole, should indeed be capable of securing sustainable development. However, its strategic objectives are unlikely to be achieved without a corresponding improvement in the planning culture within many authorities and, crucially, provisions within the Bill is rather light in this respect (seemingly largely focused instead on the role of elected Members only (section 24)).

The culture within many planning authorities towards planning for waste management can often be somewhat outdated. Skills and training within planning authorities would therefore benefit from review.

Scotland’s transition from its reliance on landfill for the disposal of waste to more sustainable and innovative solutions for the recycling and recovery of our society’s waste has been a remarkable success story, more so given how rapid this change has been. However, in many respects the local authority development management regime has lagged behind and with a strict control culture continuing to prevail.

Such an approach undoubtedly has its roots within the “landfill era” where the remit of planners was to regulate the supply of landfill capacity and to control the daily operations of consented sites through detailed and prescriptive conditions.

Of course, modern waste recycling and treatment facilities now tend to resemble “mainstream” industrial processes and should therefore face no greater operational restrictions than those imposed on any other business occupying industrial premises. In fact, if anything, planning authorities should take comfort in that the operations of consented waste management facilities are subject to an additional layer of control through SEPA’s environmental permitting regime.

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 comment.

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?
The regional planning tier has effectively been removed with the decision to abolish strategic development plans, which is largely consistent with the prevailing trend of recent years to empower more decision making at the local level. At the other end, large scale (national development) projects benefit from the clarity offered by the National Planning Framework (NPF).

However, planning for waste management does not tend to sit too comfortably within this structure. The majority of waste management planning applications, those that must be delivered by planning authorities (and the Scottish Government) to meet national (and EU) recycling targets, tend to be “larger than local” but too small to merit inclusion within the list of national development projects and therefore sit somewhat awkwardly in between. This is further hampered by a lack of cohesive policy at the regional level, and with little meaningful incentive for local authorities to engage in strategic planning beyond their administrative areas.

A mechanism would therefore be welcome within the Bill requiring neighbouring authorities (or clusters of authorities) to work more collaboratively on cross-border, strategic planning issues (including planning for waste management).

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?

From a waste management planning perspective, ‘good quality’ local development plans could be delivered by stronger consideration towards the following provisions:

- recognition of waste management development’s contribution to wider (Scottish Government) economic and environmental strategic objectives
- meeting the identified need for the management of all waste streams (not just household wastes)
- the proximity and self-sufficiency principles should promote the development of an integrated network of waste facilities, and not used to block movement of waste across administrative boundaries
- recognition that a positive approach to energy from waste is entirely compatible with efforts to improve recycling rates
- assessment of ‘need’ should be limited to those development proposals inconsistent with the local development plan and tested against ‘operational’ capacity only
- a flexible approach towards the waste hierarchy with provision made for waste management infrastructure throughout the waste hierarchy
- flexibility to adopt site specific allocations or a criteria-based approach towards the provision of new waste management facilities to suit local circumstances
- plan for waste as a resource
- plan for continuing, albeit declining landfill capacity
- better understanding of the locational needs of waste management development

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

No comment.

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?

While Local Place Plans may indeed help empower local communities to engage in the planning process, there is of course potential for introducing an additional layer of complexity as local authorities seek to ensure a close fit with their own local development plans (and also managing communities’ expectations accordingly). As above, we see greater benefit in resources to encourage a more joined up approach between authorities at the regional level to address pressing cross-boundary, ‘larger than local’ planning issues.

If the Scottish Government in fact sees a role for local place plans, the Bill should be quite explicit that such should support the strategic development needs set out in the local development plan.

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?

No comment.

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?

Quite simply, we are not convinced that the Community Infrastructure Levy (CIL) in England has been effective in making a significant contribution towards funding the
infrastructure gap. Many local authorities have failed to co-ordinate the preparation of local plans with a strategy for the delivery of essential infrastructure within those plans to be funded by CIL. There can frequently be a disconnect between planning for wider infrastructure needs and considering the funding of infrastructure for an individual development project. It has also proved challenging to strike a balance between funding the delivery of infrastructure while seeking to maintain the economic viability of a development proposal.

Total CIL income has been lower than expected and the CIL process is overly complicated and not always capable of providing sufficient funds to deliver the required infrastructure on time. We are not convinced that recent amendments to the regulations in England to allow CIL funds to be earmarked for neighbourhood planning has helped increase support among local communities for new development.

In 2017 DCLG commissioned a review of the effectiveness of CIL and which recommended an entirely new approach to developer contributions. We strongly urge the Scottish Government to carefully review ‘lessons learnt’ from the English experience of CIL before considering a similar approach in Scotland. In particular, this should aim to clarify the types of development within scope of the levy; transparency on the infrastructure projects to have benefited from monies raised; and the overlap between the proposed levy and the existing system of planning obligations.

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?

Yes, for the same reasons as outlined in our response to question 1 above. In fact, we have long called for such measures as outlined in section 24 of the Bill to be adopted. From our experience, understanding and awareness among elected Members of the positive role of sustainable waste management development to national and EU objectives is rather low. In many instances planning committees overturn planning officer recommendations for approval, leaving the costly and burdensome appeal process as the only option to gain consent.

We therefore welcome proposals for a more formal approach to training and would be delighted to assist in this process.

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

SESA welcomes recognition within the Bill of the important role of the planning system in delivering and supporting the Scottish Government policies and to this end we agree that a robust monitoring process is required. SESA suggests the following
indicators are used to report on the progress of local authorities’ functions in facilitating new waste infrastructure:

(a) new waste management capacity, by type and by local authority.
(b) amount of municipal waste arising and managed by:
   (i) management type; and,
   (ii) the percentage each management type represents of the total waste managed; by local authority.
(c) amount of commercial and industrial waste arising and managed by:
   (i) management type; and,
   (ii) the percentage each management type represents of the total waste managed; by local authority.
(d) amount of construction and demolition waste arising and managed by:
   (i) management type; and,
   (ii) the percentage each management type represents of the total waste managed; by local authority.

Planning authorities should also collect information on:
- the waste management capacity lost each year; and
- the take up of sites allocated in development plans;

The Scottish Government must clearly define new waste management capacity. SESA suggests this should be defined as:
- received planning permission; and received a PPC permit/waste management licence.

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?

SESA objects to provisions in the Bill which potentially paves the way for the introduction of fees for planning appeals.

In circumstances where a planning application is refused – and against planning officers’ recommendations - the appeal route is often the only process by which planning applications are approved. It would therefore be unfair to effectively levy a ‘double-charge’ on developers (in paying a fee for appeal) for what has proved overall to be a slow, cumbersome and unpredictable process of determination.

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

No further comment.