Local Government and Communities Committee
Planning (Scotland) Bill
Submission from Scottish Land and Estates

Introduction

Scottish Land & Estates (SLE) is a member organisation that uniquely represents the interests of both land managers and land-based businesses in rural Scotland. Scottish Land & Estates has members with interests in a great variety of land uses. We recognise the critical role that planning can and should play in developing Scotland’s rural communities and businesses, both in terms of housing provision and opportunities for business growth and infrastructure development, and we therefore hope that this can be realised in the Planning (Scotland) Bill.

General response:

SLE would like to see a fundamental re-balancing of the planning system to address what we see as an overly urban-centric system that does not meet the needs of rural Scotland. At the core of this vision rural development would be given a central role in Scottish Planning Policy (SPP). We would like to see this taken forward in the development of the proposed combined National Planning Framework (NPF) and SPP.

We are of the view that one of the overarching principles of the planning Bill should be ring-fencing all fees and expenses to the planning service to enable the system to invest in resources and up-skilling. We believe this is crucial if we are to overcome some of the blockages currently being played out within the system.

SLE considers that the Bill represents an opportunity to get things right for engagement and for delivery in the planning system – however, as it stands, the Bill does not meet those aspirations. In terms of frontloading community involvement, we feel the outcome of gatecheck process should be binding and that it should be strongly linked with a preceding consultation process to ensure the greatest possible opportunity for participation. As it stands there is only one real opportunity to participate in the consultation process on the plan preparation side.

With the Local Place Plan (LPP), we feel there should be more guidance to inform communities on how to make a plan. While community councils and other active groups might be familiar with the planning process in general, the point of this provision is to attract new people who will not necessarily know much about the process.

It is our view that the most consistent blockages to delivery in the planning system has not been adequately addressed, namely resources within the system and infrastructure providers. There needs to be more buy-in from infrastructure providers to plans from the outset, for example, if a plan has been produced that meets the housing requirements, there could be a duty on relevant key agencies to commit to the delivery programme for that plan.
Additionally, we cannot support the infrastructure levy proposal as it stands. SLE is concerned that the levy could, in effect, become a land tax which *may* be spent on infrastructure at some stage somewhere in Scotland. If the levy is to proceed, it should be based on the Net Development Receipt not the Gross Development Value.

**Response to specific questions**

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

   Overall, SLE is of the view that the Bill does not yet adequately balance the need for appropriate development with the views of communities and protection of the built and natural environment or improve delivery of development. There are areas which we feel need to be strengthened in order for this to be realised.

   If the ‘gatecheck’ is accompanied by appropriate consultation, its findings should be binding. While we welcome the intention of the ‘gatecheck’ this provision currently reads like a missed opportunity in terms of getting views of the community – especially with the Main Issues Report (MIR) being removed from the process.

   SLE considers that guidance for the LPPs should be more tightly defined than at present. Without specific guidance on how to create an LPP, less well-informed community groups will likely not feel empowered to engage. Without appropriate guidance/regulation we are concerned that this part of the legislation could also lead to frequent judicial review and therefore considerable delay in the process. We agree that the LPP should not undermine the LDP.

   We note that the Bill does not create further provisions to protect the built or natural environment, indeed, there are questions over the extent to which provisions for the Simplified Development Zones (SDZs) may impact on conservation areas.

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?**

   The success of many of the proposals will depend on whether fees are ring-fenced to increase resources and skill-up those already in place within planning services. Planning authorities must be empowered to adequately resource the plan making side of the process. For example, if all fees for one large development (up to £125,000) are ring-fenced, there would be enough salary for three extra full-time planning officers. A possible outcome of ring-fencing fees would be to create a statutory chief planning officer role in every local authority who could oversee the process, helping identify logjams and buying in specialists to solve problems. This idea is referred to in the RTPIs recent Thinkpiece¹ which emphasises a leadership role that other departments and bodies involved in the planning process must adhere
to. For example, where a problem is identified with flooding or drainage, a hydrologist could be brought in under the direction of the chief planning officer.

It is our members experience that infrastructure providers often delay the process through lack of available resources. In terms of deliverability, the Bill still does not adequately address the issue of infrastructure providers causing delay in the process. Development plan provisions in the Bill place duties on key agencies to participate in the preparation and consideration of the development plan. While this is welcome, more could be done. We would welcome a duty on relevant key agencies to commit to the delivery programme, but this would depend on achieving plans that meet housing requirements. This would enable infrastructure providers to assess deliverability early on and identify areas where they will need more resources at the plan-making stage. Ring-fenced fees could then be used to fill these resource gaps. Additionally, the proposed National Planning Performance Co-ordinator could have powers to intervene and address logjams where they occur – including with infrastructure providers (similar to the idea of a chief planning officer).

The idea of a 10-year cycle in plan making is perhaps too long. In order to engender confidence for deliverability as well as flexibility in the system, a 7-year cycle with the potential for 'long sites' being allocated for development in the longer term (which are operated in Moray) would be preferred.

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?

It is our view that regional partnerships should be more defined and binding if they are to operate effectively. As it stands they are quite loose and open to different interpretation from different councils. We feel that in reality they could result in local authorities jostling for power to get what they want rather than working effectively together to deliver.

There needs to be more clarity on how exactly more information will be incorporated into the NPF before we can adequately answer this question. Currently, the wording of the Bill suggests that there is no duty, only a suggestion for Ministers to direct a planning authority for further information (3AA (1)). This does not adequately replace the statutory duty to prepare an SDP.

Given that there is no statutory requirement for strategic regional plans, there seems to be little incentive for local authorities to spend resources on regional level partnership working when they do not have to. SLE therefore believes that Regional Partnerships would perform better if placed on a statutory footing.

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?
This very much depends on the success or otherwise of the previous stages of the plan process such as the ‘gatecheck’ and LPPs. It would seem that while the consultation period will be extended for the Draft Plan stage, this only represents one opportunity, at the very last stage, for people to make their views known (whereas previously there were MIR and Proposed Plan consultations). Therefore, SLE would argue that this could in fact reduce the ability of communities and developers to influence the development plan, which will ultimately have a bearing on its success.

There remains the question of the extent to which the housing requirement will be distributed at NPF level as opposed to LDP level. Our feedback has been that Local Authorities tend to change housing requirements in LDPs as they see fit, for example, by reducing the housing allocation based on a previous year’s inability to deliver. We would like to see fixed figures distributed to each council area rather than a non-specific range.

There is continued mention of ‘savings’ quoted in the financial memorandum, yet our understanding of the Bill is that it is not to save money but to put money back into the planning system and ensure that plans are delivered. If the intention is to make savings then where does that leave the resources for improved delivery? Any money saved should be reinvested into local authority resources to enable delivery.

If fees are used to increase resources, SLE would welcome the idea of a planning gain officer in the local authority’s delivery team. This officer could inform applicants what the council need as a contribution to a particular application at an early stage. Quite often, in our members experience, applicants will not be informed of the costs and requirements of contributions until very late in the process.

Broadly, we believe local authorities should embrace the ethos that high employment needs should be complemented with high housing delivery and not one or the other as is often the case.

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

It is difficult to see how giving deemed planning permission for sites that include conservation areas and listed buildings will achieve the desired balance. SLE envisages that much more preparatory work and resources will be needed to achieve this. We also believe that the widespread use of SDZs will still be constrained by the difficulty in specifying what the market needs will be at time of delivery.

6. Does the Bill provide more effective avenues for community involvement in the development of plans and decisions the 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 believe that this idea could provide for a more effective avenue, however, it will only be effective if communities have the skills, knowledge and resources to complete an LPP. The detail of how LPPs would work remains too loosely defined. It is our view that community groups should be given more direct guidance on how to prepare an LPP. This will inspire and importantly empower people to get involved. SLE believes the provision as it stands represents a missed opportunity.

LPPs should feed into the ‘gatecheck’ process to ensure that community aspirations and relevant community assets are identified at an early stage and considered as part of the process. The financial memorandum quotes average costs of £13,000 for each LPP – we feel that as an average, this is too low. For example, recent charrettes have cost substantially more\(^2\). This low figure could unduly raise community expectations.

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?

SLE reiterates the point about any fees being ring-fenced, therefore enabling local authorities to better enforce their policies.

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.

We are concerned that the levy is essentially a land tax and cannot support it in its current form. The monies collected may not be spent on infrastructure at all or they may be spent on construction of infrastructure that is not connected to the development. This demonstrates a willingness to react to a development rather than planning for infrastructure – which runs contrary to the idea of a plan-led system. We also have concerns that the levy will become the beginning of individuals/developers/communities paying for more facilities etc., that were previously funded centrally. This is a move which we do not see as enabling delivery.

As noted previously, if the levy is to proceed then it should be based on the Net Development Receipt not the Gross Development Value. We would also highlight the fact that there is still a lack of detail on how the levy will be implemented and how it will coexist with planning obligations and section 75 agreements. SLE would prefer to see the regulation included in the passage of the Bill.

We have spoken to colleagues at our sister organisation CLA in England, who have highlighted cases where the Community Infrastructure Levy (CIL) has been so high that it has prevented development of agricultural buildings, for example. In one instance, a farmer near London was granted planning permission for two new livestock buildings to replace two obsolete ones. This has seen him facing two CIL
charges for more than £50,000 for each building. Development of the buildings has stalled because the farmer could not afford £100,000 extra as a CIL charge.

If the infrastructure levy is to be implemented, SLE believes there is a case for agricultural, forestry and horticultural buildings to be exempt. Forestry, agricultural, horticultural as well as small-scale rural developments could be seriously impacted if urban-focused development charges are implemented in these areas. The setting of inappropriate rates for rural economic development, and some forms of rural housing, will have the long-term effect of constraining all forms of land-based development and farm-based diversification development opportunities. This will have consequential impacts on the long-term sustainability of the rural economy and jobs, rural communities and ultimately on the goods and services, both environmental and food-related, that are delivered by SLE members.

Furthermore, a UK Government report highlighted further issues with CIL including, preparation costs, varying degrees of effectiveness and a low impact on housing delivery.

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 agree with this proposal. However, planning officers should always lead on development. Given the provision for the LDP to be approved by full council, we would suggest that members not part of the delegated committee should also have a basic level of mandatory training.

SLE would like any training (but particularly for those on the committee) to include input from different sectors – private sector / statutory consultees etc. We are of the view that this will give members a valuable insight into how practitioners experience the system that they may not have been exposed to before.

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

Key to planning performance remains the ring-fencing of fees to invest in the service. It is our belief that speed of planning decisions, increased housing delivery etc., will only be achieved if the planning system is appropriately resourced.

We agree with the proposal for a national planning performance co-ordinator to focus on delivery, looking for resource gaps etc. We would also like to see their remit include oversight of infrastructure providers. This role should also enable the sharing of good practice.

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?
Once more, we reiterate that any new fee structure must be ring-fenced in order to deliver the high-performing planning system that everyone involved wants. SLE would welcome further details on these proposals.

It is worth pointing out that the accumulation of planning application fees; section 75 fees etc. are becoming difficult to manage for some who use the system. We do not want to get into a position where people are marginalised from the planning process because of high costs as this will certainly not enable delivery.

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

SLE is aware of how recent landslips affecting infrastructure have prompted calls for agriculture and forestry to be included in the planning system in some way. We disagree with this suggestion. In order to maintain crucial flexibility within the rural sector, we welcome the continued exclusion of agriculture and forestry from the planning system. It is for those that are making the calls for change to demonstrate that the small number of cases in a few locations justifies changing the treatment of farming and forestry in the planning system across the whole country. We believe that there are existing mechanisms that can be used to deal with potential problem sites. For example, the Scottish Government has developed its Land Use Strategy and has proposed developing Regional Land Use Partnerships. These could potentially be used as a mechanism for highlighting and dealing with issues. However, there is perhaps greater opportunity in the payments for ecosystem services approach where infrastructure providers identify threats such as landslips and work with land managers to mitigate those risks. Infrastructure providers could potentially save money in clear-up costs by paying for sympathetic land management that would reduce the risks and ultimately costs over the long-term. The solution to the problem does not need to be a change to legislation.

We are aware that some are proposing the introduction of ‘Third Party Right of Appeal’ or ‘Equal Right of Appeal’. This will not achieve improved delivery in the planning system – a fundamental aim of this Bill. It is our view that ‘Third Party Right of Appeal’ will cause significant delay and disruption to delivery, increase costs unnecessarily, and will ultimately affect the planning systems ability to deliver its place making agenda. As it stands, communities, individuals and developers who have invested substantial amounts of money in promoting a site, are rightly given a chance to appeal a decision which has gone against that investment. Equally, the current system allows objectors the option to pay to take a decision to a judicial review. SLE is of the view that this is the right approach. As is the intention of the Bill, the focus should be on empowering communities to engage at the front end of the system not the other way around.

SLE is aware of proposals for communities that prepare LPPs to be given powers to compulsory purchase land that was designated for particular uses but where delivering those uses had not been acted on within 3 years of the plan being adopted. We do not agree with this proposal. Compulsory purchase legislation is an expensive method of last resort. There are many barriers to development such as lack of resources in the planning system and infrastructure provision, we have
outlined in our response how to go about addressing these constraints in order to enable delivery. None of these issues would be addressed by compulsory purchase.

Our members would like to see an online planning public access system which is more consistent. At the moment, some local authorities are good at providing full up-to-date information on current and previous planning applications, while others are not.

¹http://www.rtpi.org.uk/media/2332914/A%20statutory%20Chief%20Planning%20Officer%20in%20local%20authorities.pdf
