Call for Evidence on the Planning (Scotland) Bill

The Theatres Trust welcomes the opportunity to provide comments on the Call for Evidence on the Planning (Scotland) Bill.

The Trust believes the planning system should facilitate development and change in a way that promotes and engenders culture across Scotland. While we recognise the importance of regeneration and the delivery of housing, this should not come at the expense of Scotland’s diverse cultural mix and this review provides an opportunity to emphasise the role of culture as one of the four pillars of sustainable development, and ensure the planning system maximises the benefits of cultural activity to social well-being, local economies, and sustainable communities.

About the Theatres Trust:

The Theatres Trust is the National Advisory Body for Theatres. We were established by The Theatres Trust Act 1976 and The Theatres Trust (Scotland) Act 1978 'to promote the better protection of theatres'. These Acts apply to all theatre buildings in Scotland, England and Wales. Our 15 trustees are appointed by the Secretary of State for Culture, Media and Sport, and through the 1978 Scotland Act includes a trustee approved by Scottish Ministers.

The Theatres Trust is a statutory consultee in the planning system. The Town and Country Planning (Development Management Procedure) (Scotland) Regulation 2013, Schedule 5, Paragraph 11 requires local authorities to consult the Trust on planning applications for ‘development involving any land on which there is a theatre’. The Act defines a theatre as any building or part of a building constructed or used for the public performance of plays, and therefore applies to theatres, playhouses, arts centres, ciné-varieties or buildings converted for theatre use, old and new, in other uses or disused. Theatres are sui-generis and are therefore considered separately to Class 11 uses.

The Trust is also involved in the preparation of local development plans, and encourages the inclusion of local policies that support cultural facilities and cultural wellbeing. We identify Theatre Buildings at Risk and provide advice and assistance to empower owners and community groups to purchase, restore and/ or reuse theatre buildings to create opportunities for local cultural participation, to find sustainable new uses, and to use culture as a catalyst for wider regeneration in their communities.

We are often the only source of expert advice on theatre use, design, conservation, and planning matters available to theatre operators, local authorities and official bodies. Whilst our main objective is to safeguard and promote theatre use, or the potential for such use, we also seek to provide impartial expert advice to establish
the most viable and effective solutions for proposed, existing and former theatre buildings at the earliest possible stages of development.

**Overarching recommendation for the Planning (Scotland) Bill:**

This Bill appears to propose significant amendments to the planning system in Scotland. On the basis of the detail provided as published for comment, the Trust welcomes some aspects but is cautious about others. These views are explained more fully in our responses to individual consultation questions as set out below. The Trust considers that further detail will need to be provided across the breadth of topics within the Bill in order to make a fully informed judgement as to the relative merits and implications of each proposal. The Trust’s overall objective from this consultation is to ensure the final Bill and subsequent amendments to legislation and planning policy ensure the promotion and protection of culture and the arts as a priority within Scotland. The Trust also seeks cultural facilities to be considered as key components of Scotland’s infrastructure which can improve places and quality of life within an ‘Infrastructure First’ approach as advocated by the Scottish Government in its position statement on the ‘People, Places and Planning’ document.

Please find our responses to the consultation questions relevant to our remit below.

**Question 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?**

In principle the Trust is supportive of the proposed approach which would appear to simplify and rationalise the plan making system in Scotland by consolidating national policy into one document and make it part of the development plan, and abolish statutory supplementary development plans and regional Strategic Development Plans. The increased weight placed on national guidance provides an opportunity for matters of strategic importance, which we would seek to include culture and the arts, to be better considered in the determination of planning applications when local planning policies are silent or less developed. The lengthening of local development plan periods from five to ten years should provide greater efficiency and certainty for local people and developers, with enhanced public consultation requirements where sites are not allocated within the adopted plan providing mitigation and flexibility where circumstances change over the plan period.

We would wish though to reiterate a previous comment made during last year’s ‘People, Places and Planning’ consultation to ensure amendments to simplify the planning system and expedite delivery of housing and other development do not undermine existing cultural provision. Our particular concerns on this matter relate to Simplified Development Zones with detailed comments set out under Question 5.

**Question 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.
Question 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?

As outlined under Question 1 the Trust supports the proposed approach to the plan-making system in Scotland which, if well-implemented, can result in clear national priorities and stronger local development plans. However, we also feel that regional planning plays an important sub-national role within the planning system to deal with more ‘local’ issues that have cross-boundary implications. As such we have some concerns that regional planning would become non-statutory. If Parliament considers that statutory regional planning is not required, we would strongly recommend that the Bill is amended to require collaboration between authorities on cross-border issues, similar to the ‘Duty to Cooperate’ in place within the English planning system.

Question 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?

The Trust supports in principle the changes to the Bill with regard to the content and process for producing Local Development Plans, but as set out in our overarching comments above we recommend that support and protection of culture and the arts should be a priority of Local Development Plans underpinned by direction within the future National Planning Framework.

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

The Trust appreciates the objective of the Scottish Government to support economic development and deliver new housing as quickly and efficiently as possible by providing certainty to developers and investors through Simplified Development Zones (SDZs). However, we have major concerns with regards to current proposals for the SDZs. Primarily, this is on the basis of potentially negative impacts on existing cultural and performance buildings such as theatres, music venues and pubs. We also consider it inappropriate for authorisation of works in relation to listed buildings to be included within these Zones, and have concerns about the inclusion of conservation areas as there is potential for poorly designed development to undermine the character and significance of these areas.

With regard to the impact on existing cultural and performance buildings, the Trust would be concerned about SDZs that contain existing Class 11 uses and Sui Generis theatres unless the SDZ explicitly safeguards such uses. Where there is potential for loss, there must be a thorough assessment demonstrating a lack of need or provision of an alternative replacement facility of at least equal quality. Failure to manage any existing facilities would undermine the Trust’s statutory duty to safeguard theatre buildings for future generations as outlined in the Theatres Trust Act (Scotland) 1978. Where facilities are to be retained but new development (particularly residential) will
be delivered within close proximity, it must be ensured the SDZ specifies the appropriate design and soundproofing of the new properties and requires a noise assessment to be submitted prior to commencement. This will remove the potential for noise complaints from future residents which can impact the operation and viability of existing venues.

While the current Simplified Planning Zones (SPZs), both adopted and proposed, are comprehensive documents they are also sufficiently vague as to the final details of new development so as to be inadequate in ensuring the special architectural or historical importance of listed buildings and their settings is preserved. It is suggested that the Act is amended to either prohibit SDZs where there is a listed building within the curtilage, or ensure that development cannot commence without first obtaining Listed Building Consent where applicable. It is also strongly recommended that the Act stipulates a robust assessment of the impact of development on any listed buildings within the curtilage of the SDZ to be undertaken as part of the drafting of the SDZ, and that prior to commencement of works final plans are agreed by Historic Scotland or other such nominated heritage body.

**Question 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 Trust considers that the Bill does provide more effective avenues for community involvement, particularly through the proposed introduction of Local Place Plans. The Trust considers the introduction of Local Place Plans to provide the opportunity for local communities to introduce specific and more detailed policy and protection of facilities (including theatres) than might be the case with local development plans and national policy.

**Question 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?

The proposed increase in fines from £20,000 to £50,000 where enforcement and stop notices are not complied with is welcomed by the Trust as this should provide further disincentive to landowners and developers intending to carry out unauthorised works. The Trust’s particular interest is in relation to alterations to theatres and vacant theatre buildings (particularly where they are listed buildings) where landowners have undertaken such works and this has prejudiced and undermined attempts to return such properties back to theatre use.

**Question 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?
In principle the Trust is supportive of the introduction of an Infrastructure Levy in Scotland. We would though wish to make a number of suggestions which we would hope will be positively considered should the Levy be taken forward and associated regulations drafted. The Trust’s primary request is that the proposed Levy explicitly supports culture and the arts in Scotland, both in terms of utilising receipts from the Levy to fund new or improved facilities for community benefit such as theatres and by providing exemptions from paying the Levy where the development consists of a theatre or other such cultural and community use.

With regard to theatres in particular as per the Trust’s remit, it should be highlighted that they are Sui Generis use class due to the unique nature of their use, access requirements and construction. They make a positive contribution to the cultural infrastructure of the areas in which they operate, and help to develop a sense of place which makes communities unique and special. Along with other cultural and community facilities, they help promote well-being and improve quality of life. Participation in cultural events can contribute to social cohesion, reduce isolation and loneliness, encourage learning and the development of skills, as well as provide the entertainment and stimulation needed to develop vibrant communities and grow the economy. There is also a growing awareness of the role that the arts and culture play in attracting and retaining residents and a skilled workforce. They contribute to the vibrancy of town centres, the tourist and night time economy.

However, by their nature many theatres and other cultural and communities require some level of subsidy in order to operate; this may consist of direct funding such as grants and public funding and/or in-kind support such as peppercorn and subsidised rent. Therefore, the Trust considers the spending of Infrastructure Levy receipts on such facilities, particularly where significant investment may be required to bring a facility back to a usable state, to be entirely appropriate.

Where the proposed development is itself of a theatre it should be noted that the potential cost of the Infrastructure Levy could undermine the viability and deliverability of any such project. The Trust requests that if taken forward Infrastructure Levy regulations set either a nil rate for particular development types with community benefit such as theatres, or implements relief where the development is undertaken by charitable or incorporated community bodies. While it is noted the Bill proposes local authorities to have the power to waive or reduce the Levy, the Trust considers a national approach within the regulations would provide greater certainty and consistency.

Question 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?

The Trust is supportive of the proposed requirement for local government councillors to be trained in planning matters prior to becoming involved in planning decision making. The Trust considers that this will raise standards within the planning system and improve the quality and robustness of decision making. This in turn will hopefully minimise the risk of avoidable challenges and appeals which can be a burden on resources for applicants, local government and other interested parties. However, the Trust has some concerns that the Bill proposes transfer of powers to other planning authorities or Scottish Ministers where an authority has insufficient trained
Councillors. This could undermine local accountability to the detriment of local communities.

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

No comment.

Question 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?

The Trust considers that proposed changes to enable flexibility in fees charged will provide enough funding to deliver the high-performing planning system the Scottish Government wants. The Trust suggests that applications involving theatres and other such cultural and community uses run by charitable and community organisations are given a fee waiver or reduction to reduce the financial impact and burden on such groups, and improve viability where new facilities are proposed.

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

Overall, the Trust believes culture should be more fully reflected in planning policy, decision making and planning outcomes throughout Scotland. Culture gives communities a sense of identity, promotes inclusion, and is essential to our health and well-being. Whilst the current Scottish Planning Policy recognises the role of cultural and community facilities in town centres, the Bill as published provides no reference to culture and the arts so lacks any reference to the fundamental role culture plays in achieving economic prosperity and well-being. The Trust strongly recommends that Parliament ensures culture and the arts form a key component of the National Planning Framework when it is published, which in turn will positively influence the content of development plans and local place plans. This will ensure the promotion and protection of arts and culture as a priority in local planning and decision making to benefit communities throughout Scotland.

The Trust has significant experience of matters related to theatres and other arts and cultural uses and would welcome the opportunity to assist the Scottish Parliament, for example with the drafting of policy and legislation related to culture. We would also welcome further discussion on this representation. We otherwise look forward to being consulted on this Bill and future Planning and culture-related legislation and policy as it is developed.

Yours faithfully,

Tom Clarke
National Planning Adviser