Local Government and Communities Committee

Conference on the Planning (Scotland) Bill

Monday 26 February, Forth Valley College

Session 1: Parts 1 and 2

MSP: Bob Doris MSP

Part 1: Development Planning and Local Place Plans

The discussion started with one attendee giving a quick run through some of their thoughts on part 1 of the Bill, including the following on the National Planning Framework (NPF):

- The content of the next NPF (NPF4) should be informed by a national conversation
- Current parliamentary scrutiny arrangements for the NPF will be inadequate for NPF4, which will incorporate the content of the Scottish Planning Policy
- The fact the NPF will have a 10-year lifespan means there needs to be some element of flexibility in the system, allowing it to be updated to reflect changing circumstances during that time

Discussion moved quickly to Local Place Plans (LPPs), with the main concern being about resources, particularly:

- Limited resources available to local authorities to support community bodies in drafting LPPs
- Lack of resources (people, money and planning expertise) available to community groups wanting to draft an LPP
- The possibility that affluent communities may have the resources to produce an LPP, while deprived communities may not – further entrenching both advantage and deprivation

A number of other issues were raised about LPPs, which can be summarised as follows:

- LPPs could be a charter for NIMBYism, driven by a small minority of engaged citizens. This could best be countered by engagement with the wider community – “the silent majority”.
- There is a lack of clarity on the LPP drafting and adoption process
- There is a lack of clarity on the relationship between and LPP and the statutory development plan - particularly those LPPs produced during the 10 year lifespan of a statutory plan
• It is important that resources aimed at engagement in the statutory development plan making process are not diverted to LPPs
• It is not clear which organisation(s) will be responsible for delivering the vision set out in an LPP
• More detail on LPPs needs to be set out on the face of the Bill, rather than in secondary legislation
• What happens when policies or proposals set out in an LPPs are at odds with national, regional or local planning policy
• There may be a role for mediation training for those developing, and participating in, the development of an LPP

The focus of the conversation then switched to proposed changes to development planning. Several attendees raised high level issues regarding public attitudes to development and the role of the planning system in fostering positive change, including:

• There is a need for a culture change in planning, with the focus shifting from a process driven regulatory system to one that is positive and creative, which aims to deliver high quality places
• There is a general feeling that communities view development as inherently “bad” while the views of those communities are inherently “good”, missing the fact that the right development, in the right place is generally a positive
• While the aim of increasing public engagement is laudable, the proposals in the Bill do not take account of the difficulty, and resource implications, of actually getting people to engage with development planning and that the Bill is simply “tinkering at the edges” in fostering true public engagement
• Developers are losing faith in the development planning process and are choosing to disengage from it
• The development of windfall sites (i.e. sites which become available for development unexpectedly and are not included as allocated land in a development plan) can reduce public confidence in the development plan, particularly where they impact on community facilities or green infrastructure
• The Bill is almost solely focussed on housing delivery, there needs to be greater linkages with climate change

In addition to these high level issues, a number of more practical concerns were raised, as summarised below:

• The extent and quality of public engagement carried out by a planning authority in setting priorities for a development plan should be a consideration for the Reporter conducting the gatecheck exercise
• Where a Reporter conducting an Examination in Public finds a development plan has insufficient sites to meet housing targets, they should have the ability to identify additional sites to meet that shortfall
• Who will be responsible for setting housing targets and where will they be established, following the removal of Strategic Development Plans
- Is there a role for “neighbour notification” of proposals in a draft development plan, allowing those potentially affected to engage at the appropriate point in the plan making process
- Communities need feedback from consultation exercises, both those related to development plans and pre-application consultation
- Is there potential for local authorities, or an independent third-party, to undertake pre-application consultation
- How can best practice in community engagement be spread amongst developers

**Part 2: Simplified Development Zones**

Generally, attendees were not particularly supportive of the proposed introduction of SDZs. The reasons they gave for this scepticism are summarised below:

- The policy intention behind SDZs is not clear, are they meant to facilitate development on already viable sites, or are they a tool to allow planning authorities to encourage development of less commercially attractive areas?
- The creation of a SDZ is liable to be very resource intensive for a planning authority, but they will receive no fee income from development within an SDZ. This could be a particular issue for protection of the historic environment, such as archaeological investigations prior to development
- Experience of SPZs from SE England in the 1980s/1990s show that they produced low quality development, much of which is now itself being replaced
- SDZs run contrary to the notion that the planning system is a tool for place making. They are based on an assumption that the planning system is a barrier to development and are an attempt to get the planning system out of the way of development
- One alternative to SDZs is partnership working between developers and planning authorities to deliver viable sites and high quality places
- Research is needed into the effectiveness of previous Scottish Urban Regeneration Companies to establish whether this would be a preferable model to SDZs
- SDZs are unlikely to be suitable for residential areas
- If introduced, SDZs are unlikely to be widely used – as has happened with SPZs

**What else would you like to see introduced or removed from the Bill?**

Attendees were given a chance to suggest possible additions or deletions to any part of the Bill. The following suggestions were made:

- There should be a statutory “right to be heard” in the planning system
- There is a role for the use of mediation, or mediation skills, in the planning system – particularly as part of the gatecheck exercise and prior to going to judicial review of planning decisions
• There should be a statutory purpose for the planning system set out in the Bill
• There should be stronger links between development planning and community planning
• There should be a statutory duty for planning authorities to consult young people
• Parliamentary scrutiny of the NPF should be enhanced – possibly using an expert “assessor” as allowed under Private Bill procedures
• There should be a mandatory review of the NPF every five years
• There should be less focus on housing delivery
• There should be a Planning Commissioner – focused on establishing and promoting best practice amongst planning stakeholders
Session 2: Parts 3, 4 and 5

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This discussion was held with a different group to that of Parts 1 and 2.

Part 3: Development Management

Attendees were generally content with the proposals in Part 3, stressing that this was conditional on the proposals in Parts 1 and 2 working as intended. Attendees did make a number of more general points about development management, which are set out below:

- Developers and planning authorities should begin community engagement at the earliest possible point when developing proposals, polices or plans – as even pre-application consultation can be too late for meaningful engagement, as developers and authorities often have firm plans about what they intend to take forward at that stage
- Formal pre-application consultation is often just a tick-box exercise for developers and authorities
- Pre-application consultation on windfall sites is particularly important for communities, as their development has not been considered as part of the development plan making process.
- Members of Local Review Bodies should receive suitable training before taking up their role, which involves performing a quasi-judicial function. This is particularly important given the proposed extension of the role of LRBs
- There were questions as to whether Local Review Bodies should be able to decide on applications involving applications in which their authority has an interest
- Concerns were raised about safeguards against developers lobbying planning officials, particularly given the proposed extensions of devolved decision making under schemes of delegation
- Concerns were also raised about repeat applications, which are intended to grind down opposition to development proposals

Part 4: Other Matters

As with Part 3, attendees were generally happy with the proposals in Part 4, although they did make a number of points on related matters, which are summarised below:

- Planning fee income must be ring-fenced for the provision of the planning service
- Planning departments need better resourcing
• Planning departments should operate on a full cost recovery basis, possibly including funding for advice supplied by other public sector agencies such as SNH
• Concerns were raised that the ability to reduce or waive planning fees could impact on the ability of planning authorities to adequately scrutinise applications, with a resultant reduction in the quality of developments
• Any financial penalties arising from enforcement action should act as a meaningful deterrent to breaches of planning control, which may require
• Planners need time and resources to attend CPD events and keep skills up-to-date
• Current and proposed measurements of planning authority performance are very process based and do not capture outcomes, principally the quality of the places created and how well authorities have managed to deliver the objectives of their development plans
• A statutory purpose for the planning system, linked to outcome agreements, who help I the measurement of performance

Part 5: Infrastructure Levy

A minority of attendees opposed the principle of the proposed infrastructure levy, arguing that:

• The proposed levy could discourage development
• The proposed levy would have an undue impact on smaller developers and more marginal developments in rural areas
• The proposed levy would break the link between a proposed development and local infrastructure improvements

Other attendees, while not opposed to the introduction of the levy, did raise a number of practical concerns:

• There is a lack of detail about the proposed levy on the face of the Bill
• The definition of “infrastructure” is too narrow and should be extended to include green and blue infrastructure, cultural and other community facilities
• It is unclear how the proposed levy would operate alongside the current Section 75 (planning obligation) system
• The levy would be collected locally and could be paid to Scottish Ministers for re-distribution. Attendees were concerned about how this power may be used, particularly if areas chose not to raise a levy yet still benefited from monies raised by the levy elsewhere

There was also some discussion as to whether a review of the current planning obligation arrangements or the creation of some other mechanism to capture a proportion of the land value uplift from the granting of planning permission could be an alternative to the proposed levy.
What else would you like to see introduced or removed from the Bill?

Attendees were given a chance to suggest possible additions or deletions to any part of the Bill. The following comments and suggestions were made:

- The Bill places no emphasis on outcomes, including the quality of places created by planning decisions and their impact on health and wellbeing
- It is unclear how the expanded NPF would link with other Scottish Government strategies, e.g. the Land Use Strategy, Economic Strategy and the National Marine Plan
- There should be a statutory purpose for the planning system set out in the Bill – link to the achievement of sustainable development
- The proposals in the Bill would reduce opportunities for public engagement in the planning system, by removing Strategic Development Plans, Main Issues Reports and the creation of SDZs
- The Bill would centralise more power in the hands of Scottish Ministers – mainly through the abolition of Strategic Development Plans and expanding of the NPF and the ability of Ministers to require the creation of SDZs
- The gatecheck exercise should be expanded to involve communities

There was also a short discussion of third party rights of appeal. Some attendees thought this was essential to balance the rights of developers and communities, while others thought it was unnecessary and that more emphasis should be placed on front-loading public engagement.