Local Government and Communities Committee

Planning (Scotland) Bill

Supplementary Written Submission from Planning Democracy

We would like to thank the committee for the opportunity to send in additional comments on the Planning Bill. Over the course of a long evidence session there were several points we felt we might have more clearly articulated and where we would like to clarify our position.

Engagement in plan preparation

Perhaps understandably, the evidence session we participated in spent a good deal of time considering Local Place Plans which are a potentially significant change that we support in principle. Given the likely technical and resource limitations and geographical of LPP coverage, however, they are unlikely to significantly transform engagement in the majority of cases.

We therefore believe it is important to maintain focus on the mechanisms through which people will be able to influence development plans. This requires questioning where “windows of opportunity” are being made available in the NPF, SDP (or successor) and LDP processes (leaving aside for the time being important questions about how such opportunities can be made to work better).

PD remain concerned that such windows of opportunity are likely to be closed down rather than opened up if the current Bill proceeds. As discussed in our session, an expanded ‘gatecheck’ process may be one avenue to address this for LDPs. However, we would like to also stress the importance of ensuring opportunities for public debate and scrutiny at the end of the plan-making process, before the formal adoption of plans.

Despite promises to increase frontloaded engagement in plan preparation, the Planning Etc (Scotland) Act 2006 actually reduced such opportunities by minimizing the use of public hearings and inquiries in the plan examination process. In practice, examinations now rely largely on written correspondence conducted at the discretion of Reporters. As John Watchman, the editor of Scottish Planning and Environmental Law has argued, this is contrary to what was proposed in discussions before the legislation was passed.

We would therefore ask that the committee consider how meaningful engagement will be brought into the local development plan examination process. PD do not believe that a frontloaded evidence gatecheck can or will provide an adequate substitute for a proper debate about the substance of proposed plans. We would therefore call for the restoration of a public right to be heard in plan examinations. We would also encourage experimentation with the form of such examinations, to
consider the adoption of new deliberative approaches rather than a reliance on formal public inquiries.

**Simplified Development Zones and Protective Designations**

We would like to take this opportunity to clarify our position with regard to SDZs and protective designations as we are concerned our response on this line of questioning was not entirely clear.

We believe that SDZs should be required to take full account of all existing and proposed protective designations.

**How Equal Rights of Appeal Might Work in Practice**

We were grateful for the opportunity to discuss our arguments for equality of appeal rights. Given time constraints, however, we were unable to probe some important issues of detail around how a restricted right of appeal might work in practice.

**i. Determining what constitutes a departure from the development plan**

We are aware there are practical concerns around determining what constitutes a departure from the development plan and that these would need to be resolved in order to ascertain when appeal rights would apply.

Pre-2006 local planning authorities were required to notify ministers of decisions that represented a departure from the plan. This suggests that this would not necessarily pose insurmountable problems.

More pertinently, existing development plans are often ambiguous, containing multiple criteria-based policies. Such plans have developed as part of a system based on discretionary development management decision-making where there is no requirement for plans to clearly indicate what is and is not acceptable on given sites.

A key part of the aspiration for planning reform, however, is to have a plan-led system where those plans provide a clearer framework for decision-making. A requirement to provide certainty on what is and is not in accordance with the plan in order to guard against unwanted appeals could be a powerful lever for delivering this change. In doing so it would bring development plans closer to practice in many other European states where they are in effect legally binding in their designations. Our proposal would be to introduce a requirement that both planning officers’ reports and decision notices clearly indicate whether they consider a given proposal to be in accordance with the development plan or not and give reasons to justify this.

Prospective appellants would then be required to apply in writing for leave to appeal, stating their reasons. A reporter or local review body could be given powers to
screen these applications and determine whether an appeal should be allowed to proceed. This would mirror the existing process of applying for leave to bring a legal challenge. A mechanism to impose costs could be introduced as a means of deterring vexatious applications. We believe that once it ‘settled in’ such a process would provide an efficient and effective means of quickly determining whether an appeal should be allowed. In time, as development plans respond to the new system this would then become much more straightforward.

ii. How appeals should be heard

We note concerns that appeals to Scottish Ministers are centralising and serve to undermine local democracy. We are sympathetic to these concerns and would like to see further consideration of various options for hearing appeals. This might include the expansion of the current Local Review Body system to cover a wider range of planning applications, ensuring that appeal decisions remain in the hands of local authorities. However, we would also encourage consideration of a role for an independent appeals board (potentially linked to proposals for an environmental court in Scotland). Independent scrutiny is an important dimension of democracy that should not be overlooked. In practice, there are also potential hybrid models that could be adopted where appeals would be heard by panels chaired by independent reporters but including local elected representatives. These various options highlight the importance of carefully considering how an appeals system can be designed to democratically realise the purposes of the planning system.

iii. Evidence considered by the Government to dismiss ERA

During the session it was claimed that the evidence on appeal rights had been extensively examined by the independent panel that advised the Government on planning reform. We continue to believe, however, that debate has been forestalled and that there has been little opportunity for nuanced debate as key actors have approached the issue with strong preconceptions.

As evidence we would like to put on the public record the results of a Freedom of Information request that have been made available to us. This asked the Scottish Government what evidence had been considered in order to arrive at their position on ERA and we believe it demonstrates a fairly low level of investigation. We would for example like to have seen some investigation of other administrations with appeal rights be fully examined, and perhaps evidence from academic papers and oral evidence obtained from those who have studied the issue such as Professors Berna Grist and Geraint Ellis.