Local Government and Communities Committee

Planning (Scotland) Bill

Key Themes Arising from Written Evidence

Introduction

On Friday 15 December 2017, the Local Government and Communities Committee issued a call for written evidence on the Planning (Scotland) Bill. The closing date for submissions was Friday 2 February 2018. A limited number of organisations were granted short extensions to this deadline, principally to allow responses to work their way through organisational sign-off procedures.

Understanding this Analysis

There are a number of issues that should be considered when reading this analysis:

- **Respondees were self-selecting**: Generally, only people and organisations with an existing interest in the Scottish planning system will have responded to the call for views, although Parliament officials have encouraged responses from a wide range of participants. This means that the views expressed may not match those of the population as a whole and should not be read as such.

- **Complexity**: The Bill proposes amendments to an already complex system of legislation. This complexity may have acted as a barrier to responses from individuals and civil society groups that do not have access to planning expertise. SPICe produced a series of briefings on the proposals, but these may not have been seen by many respondents.

- **Stakeholders**: The planning system involves a wide range of stakeholders, with often competing priorities and views. Unanimity of views on any issue is unlikely, which is reflected in the analysis.

- **Timescales**: The timescales available for the call for views and for the subsequent analysis has limited the detail and complexity of some responses and this analysis.

**What are “key themes”?”**

This analysis aims to highlight key issues and concerns about the proposals in the Planning (Scotland) Bill raised by multiple respondents to the call for written views. It is not intended to be a comprehensive summary of every issue raised, although it includes a short section outlining some less commonly raised matters that may be of particular interest to the members of the Local Government and Communities Committee.
It is worth noting that Committee members have been supplied with copies of all written responses, in addition to this summary. Also, this is only one of many strands of evidence gathering on the Planning (Scotland) Bill being undertaken by the Committee, with views also being heard through community meetings, a stakeholder conference, online survey, online discussion forum and oral evidence sessions.

Agent of Change Principle

The Music Venue Trust has, since 2014, been campaigning to shift the duty for the installation of measures to mitigate noise impacts on new residential developments built close to existing live music venues from venue owners to the developers of the new properties – known as the “agent of change” principle. The driving force behind this campaign being that the costs or practicalities of installing such measures can ultimately lead to the closure of such venues. This campaign has focussed on introducing the agent of change principle into planning legislation and policy across the UK.

Although not included within the Planning (Scotland) Bill or the Committee’s call for views, the Committee received thirty substantive written responses on the agent of change principle, principally from music industry bodies and businesses. The Committee also received over 1200 written submissions from individuals asking that the agent of change principle be included in the Scottish Planning Policy, to protect Scotland’s music venues.

The Scottish Government’s Chief Planner sent a letter to senior local authority planners on 16 February 2018, stating:

“…we now intend to include explicit policy guidance in the next National Planning Framework (NPF) and the SPP, implementing the Agent of Change principle in recognising the need to support our live music venues.

This will be taken forward after the Planning (Scotland) Bill has completed its passage through the Scottish Parliament. You will be aware that the Scottish Government’s intention through the Bill is that the NPF will in future incorporate the SPP and the new format will be brought within the statutory development plan. This combined NPF/SPP will be subject to thorough public consultation and parliamentary scrutiny before being finalised.”

The Committee took oral evidence on the agent of change principle from the Music Venues Trust and UK Music at its meeting of 28 February 2018.

Who responded to the Committee’s call for views?

At the time of writing this summary, the Committee received 254 substantive responses to the call for written evidence, excluding those related to the agent of
change principle. The following table provides a breakdown of the submissions by the type of responder:

<table>
<thead>
<tr>
<th>Main group</th>
<th>Sub-Groups</th>
<th>Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>Civil society</td>
<td>Unaffiliated individual&lt;br&gt;Community Council&lt;br&gt;Civic Group&lt;br&gt;Political Groups</td>
<td>148</td>
</tr>
<tr>
<td>Policy and planning</td>
<td>Related Professional&lt;br&gt;Local Authority/SDPA/National Park&lt;br&gt;Regional/National/Government Agency&lt;br&gt;Transport Authority</td>
<td>55</td>
</tr>
<tr>
<td>Business</td>
<td>Small Business&lt;br&gt;Large corporation&lt;br&gt;Business Association/Group&lt;br&gt;Infrastructure Provider etc</td>
<td>22</td>
</tr>
<tr>
<td>Development industry</td>
<td>Housing Association&lt;br&gt;House builder&lt;br&gt;Construction firm&lt;br&gt;Developer (other than housing)&lt;br&gt;Landowner/manager&lt;br&gt;Consultants and Agents</td>
<td>29</td>
</tr>
<tr>
<td><strong>Total</strong></td>
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<td>254</td>
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58% respondents were from civil society groups and individuals. 22% of responses were from policy and planning groups and individual professionals. The business sector provided 9% of responses and the development industry submitted 11% of replies. It is worth noting that many of these responses were submitted by representative organisations, meaning a single response is likely to be based on the views of an organisation’s membership, which may have been collated through internal consultation within that organisation.

**Key issues raised in written submissions**

The following sections summarise the following 13 key issues and concerns about the proposals in the Planning (Scotland) Bill raised in written submissions.

- Centralisation of planning powers
- Housing delivery
- Consultation during the proposed “gatecheck” exercise
- The future of supplementary guidance
- Planning authority performance
- Reliance on Secondary Legislation, guidance and updated policy
- Local Place Plans
- Resourcing of planning departments
- The future of regional planning
- The role and effectiveness of Simplified Development Zones
- The likely role of the proposed Infrastructure Levy in funding essential infrastructure
- Equal Right of Appeal (also known as third-party right of appeal)
- Purpose of the Planning System

The issues are listed below in no particular order.

**Centralisation of planning powers**

The Bill includes a number of proposals that would increase the significance of Scottish Government planning policy in planning decisions, including making the National Planning Framework a part of the development plan for every area and granting Scottish Ministers new powers to intervene in local planning matters, e.g. Ministers would have the power to require Councils to prepare Simplified Development Zone schemes.

A number of local authorities have raised concerns about this apparent centralisation of planning powers by the Scottish Government, e.g. South Lanarkshire Council:

“…is concerned that a number of the proposals may lead to the control of some planning matters pass from Councils to the Scottish Government. These include the preparation and approval regional strategies through the National Planning Framework, the increased role of Scottish Planning Policy in setting policies formerly set out in Council approved LDPs; and the opportunity for Ministers to require Councils to prepare Simplified Development Zone schemes, and to direct how performance improvements are to be made by Councils.”

While Aberdeenshire Council highlights:

“…concern that there appears to be centralisation of many aspects of the planning process, not least with the removal of Strategic Development Plans and introduction of the National Planning Framework into the Development Plan process. The likely role for local authorities in the preparation of the National Planning Framework is not clear.”

The City of Edinburgh Council states:

“There remains a concern about increasing the role of Scottish Planning Policy (SPP) in local decision making, with the transference of policy from the local to national levels resulting in undemocratic centralisation lacking transparency.”

Concern about a possible centralisation of control over planning matters at a national level is not restricted to local authorities. Many community organisations have also raised concerns, particularly that centralisation of powers could reduce opportunities
for people to engage in planning for their areas, e.g. Canobie and District Residents Association considers that the:

“Bill is highly centralising, will reduce already limited opportunities for community engagement and is likely to further marginalise and disenfranchise local people.”

While Stockbridge and Inverleith Community Council state that:

“The Bill in its present form appears designed to make the system faster. It is centralising and will make, on the whole, the community less involved. Speeding up the system and thus giving more consents may well have an adverse effect and in particular it may slow down the building of much needed affordable housing by encouraging developers to focus on land speculation and pressuring for consents for luxury housing on protected urban green spaces or historic sites.”

Housing Delivery

Housing delivery was one of the six key themes Ministers asked the Independent Review of the Scottish Planning System to consider and it remains a key driver of the planning reform agenda, featuring in the Minister for Local Government and Housing’s statement to Parliament on Planning and Inclusive Growth, made on 5 December 2017.

A wide range of respondees commented on the likelihood of the proposals in the Bill to meet the Government’s housing ambitions. Generally, these fell into three broad categories.

Several local authorities stressed the fact that planning legislation, and the planning system more generally, is only one factor in housing delivery, an argument neatly summarised by Angus Council, which has:

“...consistently asserted that the planning system is not the primary factor for the lack of housing delivery in recent years. A range of factors have contributed to a reduction in house building activity, stemming largely from the impacts of the economic recession, continued restriction on development finance, lack of construction labour, reduction in the number of small and medium housebuilding and in some cases, the reluctance of landowners and developers to release land or commence development until local market conditions improve.”

This view is not restricted to local authorities and is shared by other organisations such as Architecture and Design Scotland, which considers that:
“Levels of housebuilding are affected by factors with a bigger controlling influence than the planning system itself – including, for example land ownership and assembly, provision of infrastructure and availability of finance. We believe the proposals set out in the Bill will not in themselves influence higher levels of new house building.”

Generally, developers and others involved in house building stressed that increasing housing delivery involves far more than legislative change, with Homes for Scotland arguing that:

“The current Planning Review set out to increase the supply of homes in Scotland. Standing in isolation this Bill cannot deliver on that objective. Success will be heavily reliant on the secondary legislation, guidance and updated national policy that will follow.”

Some house builders were also keen to stress that delivering more homes was not really dependent on legislative or policy change – rather it would require a culture change towards development within policy and political circles, e.g. Stewart Milne Homes stated that:

“We remain to be convinced that this Bill, or any variant of this Bill, in itself will result in an increase in housebuilding. Legislative changes through the Planning etc (Scotland) Act 2006 failed to deliver this and we are of the opinion that this Bill still will not deliver homes, unless there is a major change in the mindset of policy makers and decision takers including the Scottish Government and the Reporters’ Unit.”

Finally, a number of respondees highlighted what they see as fundamental problems with the operation of the current system of land purchase and house building, suggesting possible solutions based on experience elsewhere in Europe, e.g. the Centre for Progressive Capitalism considered that:

“If the Scottish government wishes to increase the level of housebuilding then it will have to reform the land market to remove the speculative element of bidding for land at very high costs upfront. In our view this will require the 1963 Land Compensation Act (Scotland) to be amended to remove prospective planning permission from the compensation arrangements. It is this clause that generates the incentives to speculative in land given the potentially very high profits. Residential land in Edinburgh is estimated to be valued at around £3.2m per hectare versus £800k for industrial land and £18k for agricultural land. Acquiring residential land at such high prices and which requires firms to manage the risk of these assets through the business cycle remains at the core of the issue.”

With these factors in mind, the Scottish Federation of Housing Associations called for the Planning Bill:
“…to make provision for the transfer of land at existing use value in order to increase the supply of affordable housing.

We are also calling on Land Value Capture (LVC) from land granted planning permission for housing to be used to ensure the increased delivery of affordable housing, the funding of infrastructure and the development of better places.”

These calls were echoed by architect Malcolm Fraser who suggested:

“reform of the Land Compensation (Scotland) Act 1963 so that Local Authorities can buy redesignated land at existing use value (or, maybe, a modest multiple, say x1.2 or x1.5, if some order of landowner profit is still desired), with the consequent major rise in value borrowed-against to pay for the infrastructure ready for developers to build homes. The result would remove the volume housebuilders major block on development, allowing early, public-led infrastructure progress without the current, contested drip of “Section 75s” and similar Infrastructure alternatives…[and]… introduce Compulsory Sales Orders for undeveloped and/or land-banked sites with the Local Authority compelling the sites to a public auction which would establish a lower, developable market value with consequent immediate economic activity.”

Consultation during the proposed “gatecheck” exercise

The Bill would require a planning authority to produce an "evidence report" setting out the evidence to be used in drafting the local development plan is introduced. These reports must be submitted to Scottish Ministers. The evidence report will be the subject of a "gatecheck" by an independent planning reporter appointed by Ministers. The Reporter may decide the evidence base is sufficient or that further evidence needs to be gathered. If further evidence is needed, then the authority will be required to gather and re-submit the evidence report to Ministers for further consideration.

A broad range of respondees highlighted concerns about an apparent lack of opportunity for stakeholder involvement in the proposed “gatecheck” exercise, e.g. the Royal Town Planning Institute (RTPI) Scotland:

“…is concerned by the narrow scope of the new evidence report to be introduced to the LDP process. To ensure that all stakeholders are engaged with the development planning process right from the beginning is it imperative that they are able to input to the evidence report.”

This concern is shared by the Planning Consultants Forum, which states:
“The Bill does not make the provision for consultation during the evidence “gate check” stage. This will further reduce the opportunity for other stakeholders to comment on a number of key policy areas, such as establishing the appropriate housing supply targets and housing land requirements to be delivered within local authority areas.”

These concerns are not limited to professional planning organisations. Community and environmental groups have also raised this issue, e.g. Greenspace Scotland states that:

“We can achieve much better, quality engagement in local development plans if a new mechanism to involve communities in the gate-checking process is introduced (as was suggested earlier in the review process).”

While the development industry is also concerned, e.g. commercial lawyers Burness Paull state that:

“…it is not clear the extent to which developers and landowners will be able to have an input to the gatecheck process as the detailed procedures, including consultation requirements, are to be set out in regulations. If key decisions on matters such as the amount of housing land required are to be made at the gatecheck stage, it is important that all stakeholders are consulted and the given the opportunity to participate fully in the process of giving evidence to the reporter.”

Several local authorities have also raised concerns that the gatecheck may not significantly streamline the development plan examinations, e.g. Falkirk Council states that:

“The new early gatecheck procedure may to some extent negate other time savings achieved by the new process. It is by no means clear that this procedure will achieve its aim of significantly reducing debate at the final examination stage.”

In addition, East Ayrshire Council questions how the gatecheck exercise will work in practice, arguing that:

“The Council finds it difficult to understand how an independent Reporter can determine whether the evidence provided at the start of the plan making process is sufficient if the issues that the plan needs to tackle are not fully known or the approach the plan will take to tackle them is sufficiently developed.”
The Future of Supplementary Guidance

Councils can prepare supplementary guidance in connection with strategic or local development plans. The plan must mention the supplementary guidance, which may only deal with the provision of further information or detail on the policies or proposals in that plan. Supplementary guidance has the same weight as the development plan in decisions on applications or planning permission.

Supplementary guidance generally includes the following:

- **Development briefs or master plans**: which provide a detailed explanation of how the council would like to see particular sites or small areas develop.
- **Strategies or frameworks on specific issues**: for example, guidance on the location of large wind farms.
- **Detailed policies**: for example on the design of new development.

Supplementary guidance must be the subject of public consultation and notified to Scottish Ministers before adoption - primarily to ensure that the principles of good public involvement and a proper connection with the strategic or local development plan have been achieved consistently, as opposed to detailed policy content.

The Bill proposes removing the current provisions for creating statutory supplementary guidance. Several local authorities have raised concerns that this proposal may result in development plans becoming more complex, the opposite of what the Scottish Government hopes to achieve, e.g. South Lanarkshire Council:

“…has found that the option of being able to prepare and consult on statutory supplementary guidance is an effective means of clearly establishing detailed policy guidance directly relevant to our particular local circumstances and environment. This has been especially relevant to guidance on both minerals and renewable energy proposals – particularly onshore windfarms. It is considered that the removal of this option will add considerably to the ‘complexity’ of the LDP itself and that both communities and developers will not have the advantage of being able to access a document which comprehensively addresses these kinds of planning issues.”

Aberdeenshire Council agrees with this view, highlighting that:

“…”There is concern that removing supplementary guidance would have the effect of potentially significantly increasing the size of the local development plan which goes against the aim of producing a leaner and clearer plan.”

While East Lothian Council also considers it will do little to reduce the creation of non-statutory guidance, stating:
“The removal of the provision for statutory Supplementary Guidance would reduce the weight afforded to guidance but would do little to reduce the resources required by Planning Authorities to produce it.”

These are not solely local authority concerns, e.g. planning consultants Aurora Planning Ltd highlight the possible reduction in flexibility in development plan production, indicating that:

“…we are concerned that the removal of statutory supplementary guidance will also remove the opportunity for and local flexibility in the application of national policies and the inclusion of locally specific policies in Local Development Plans. Again, the Bill does not provide sufficient detail on proposed non-statutory supplementary guidance to reassure us that it will be an adequate substitute.”

The Built Environment Forum Scotland (BEFS) raise concerns about a lack of clarity in the likely impact of this proposal, asking:

“…the Scottish Government to clearly set out its understanding of what is Supplementary Guidance of a statutory nature, and what is local planning guidance that is a material consideration in the planning process, to ensure clarity in understanding the full implications of the proposal.”

Planning Authority Performance

The Bill proposes three key measures aimed at improving the performance of planning authorities:

- There would be a statutory requirement for every planning authority to produce an annual performance report
- Scottish Ministers would have the power to appointment a national planning performance co-ordinator
- Scottish Ministers would have the power to appoint a person to conduct assessments of one, or more, planning authorities’ performance, to report on their findings with recommendations and grant Scottish Ministers powers to pursue those recommended improvements

The Accounts Commission raised a technical concern about how these performance functions would work alongside existing legislation, stating:

“…in the Accounts Commission’s most recent Statutory Performance Information Direction published in 2015 (available here), we emphasise instead that councils need to use their responsibilities in public performance reporting to report comprehensively; reflecting local improvement priorities, and being consistent with the Local Government Benchmarking Framework. This Framework contains some indicators pertaining to the cost and average
time per planning application planning, available here. We would welcome further clarification as to how the requirements set out in the Bill will fit with these existing statutory requirements.”

However, a broad range of respondents raised a more fundamental point as to what constitutes good performance by a planning authority, e.g. BEFS asked:

"Is performance, in the sense of speed and percentage of approvals, the correct standard? The quality of places for all our citizens, with: appropriate infrastructure; sustainable economic growth; high environmental standards; affordability across housing tenures; and high-quality, shared, build standards; would be a more fitting measure.”

A view shared by Moray Council, which stated:

“This depends on how “performance” is to be defined. The current emphasis upon timescales and numbers has to be expanded/reviewed to include quality and outcomes which will include forward planning and alignment of infrastructure, engagement, delivery and quality placemaking.”

Local authorities were generally quite critical of the proposals, with North Ayrshire Council highlighting the effectiveness of current arrangements:

“The Planning Performance Framework was introduced by the Heads of Planning Scotland as a means of demonstrating high levels of performance at a local level, rather than the purely statistical return on the time to decide an application. A statutory requirement, with a national performance co-ordinator with possible powers to penalise Authorities is unnecessary and unwelcome.”

While South Ayrshire Council argued that the proposals would not tackle the root cause of any performance issues as:

“It is not considered that the proposals within the Bill will help drive performance improvements as such proposals do not address resource issues within planning authorities. In addition, the monitoring and performance is aimed at the time in which decisions are taken and not the quality of the decisions.”

Some developers were also dismissive of the proposals, but for different reasons than local authorities, e.g. Walker Group Scotland argued that:

“So long as monitoring and assessment of performance is carried out by the planning authorities themselves and in a manner which is not transparent, the provisions of the Bill will not itself drive performance improvements. There is a fundamental failure to recognise poor productivity and to mask performance statistics by way of clock stopping.”
Reliance on Secondary Legislation, guidance and updated policy

A number of respondees, particularly legal organisations, raised concerns that scrutiny of the Bill and its likely impacts was difficult due to a heavy reliance on secondary legislation, especially where major changes to the system were proposed, such as the Infrastructure Levy, e.g. the Law Society of Scotland comments that:

“The Bill is of a skeletal nature with much detail to be set out in regulations. This makes it difficult to understand the full impacts of what is proposed by the Bill. In key areas of the Bill, particularly the scope of the gatecheck provisions, the relationship between the National Planning Framework (NPF) and Local Development Plans (LDPs), and the structure of the proposed infrastructure levy, there is insufficient clarity on how the new system will operate. We consider that this lack of clarity may be a disincentive to investors and developments.”

This is a view shared by Shepherd and Wedderburn LLP, which is:

“…concerned that in many places the Bill is extremely vague on how the planning system will operate in future and that some elements of the new system may in fact involve less engagement on critical matters, such as the type and scale of development, than currently exist.”

Homes for Scotland raise some practical concerns about the impact of this apparent lack of detail in the Bill, stating:

“There is significant reliance on secondary legislation, guidance, policy and voluntary action to fully enshrine the wider planning review. Some matters, such as collaboration in early plan-making and consistency within Development Plans, are too important to leave to trust. Other more radical matters such the potential Infrastructure Levy are perhaps too nebulous at this stage to be significantly delegated to secondary legislation and not fully scrutinised by parliament.”

While East Dunbartonshire Council are concerned about the discretionary nature of some of these broad powers established in the Bill, highlighting that:

“There are a number of provisions in the Bill which give Ministers powers to create secondary legislation without necessarily committing the Ministers to taking forward the regulations. This detail and further clarity will be absolutely essential in ensuring the new system functions as effectively and efficiently as possible.”
Local Place Plans

Local Place Plans (LPPs) would be a new feature of the Scottish planning system. A Community Council or other community body (as defined in Section 19 of the Community Empowerment (Scotland) Act 2015) would have the power to produce a LPP. A completed LPP can be submitted to the relevant planning authority, which must have regard to its contents when preparing or reviewing the relevant local development plan.

The proposals for LPPs are at an early stage, with most of the detail to be set out at a later date. However, the Bill requires an LPP to have regard to:

- any relevant local development plan
- the National Planning Framework
- any other matters prescribed by the Scottish Government

The Scottish Government will also have the powers to set out the:

- required content and form of an LPP
- steps to be taken by the Community Council/body before developing an LPP
- steps that must be taken by a Community Council/body before submitting an LPP to the planning authority
- documentation that must be submitted by the Community Council/body to the planning authority alongside an LPP

Many community groups have raised concerns about their ability to produce an LPP without access to substantial additional resources and planning expertise, e.g. Ballantrae Community Council considers that:

“The Local Place Plan initiative is set to fail and increase inequalities unless communities themselves are given funds and access to experts to produce their own plan.”

This view is also shared by RTPI Scotland, which:

“…remains concerned that if local place plans are introduced without the necessary dedicated support for implementation, many communities will continue to be excluded from participation in decision making.”

Heads of Planning Scotland (HOPS) share this concern about resources and implications for entrenching disadvantage in some communities, but also raise some practical questions about how LPPs would integrate with other local authority plans, stating:

“We need to integrate and simplify not complicate and clutter and our concerns are,
o how the critical links with community planning and Locality Plans would work in practice
o how we would support communities which would most benefit from LPP but perhaps don’t have the capacity or resources to undertake such a project
o that councils would inevitably be expected to support or fund LPP and LPAs do not have the budgets to facilitate LPPs. The resource implications need clarified, managing expectations.”

A number of local authorities go further, questioning whether LPPs are the best way to engage local communities in the development planning process, e.g. Moray Council considers that:

“The Bill should focus on further integration of early and continuing engagement, rather than introduce another layer of plans and further complications to the system.”

While West Lothian Council questions how effective LPPs may be given that they need to be in alignment with a raft of other planning policies, stating:

“If Local Place Plans (LPP) need to be compliant with the LDP then it is unclear how much difference this will, or indeed can, make to influencing LDPs.”

Views amongst developers about the role and usefulness of LPPs are mixed. There is a concern that LPPs could be used to block development and that communities are unlikely to have the knowledge and expertise required to produce a coherent development plan. Homes for Scotland takes a cautiously optimistic view on the proposal, but only when:

“…communities have a real opportunity to understand and accept the need for and benefit of new development and the need for a balance to be struck between different needs and aspirations”.

Other developers are less keen, e.g. Barratt North Scotland state that:

“We do not support the proposal to prepare ‘Local Place Plans’ as we are concerned that this will slow down the planning process, from LDP preparation and adoption, to consultations to decision making and delivery of housing.”
Resourcing of Planning Departments

Organisations and individuals representing the full range of stakeholders that responded to the call for views raised concerns that planning departments are currently under resourced.

What this means in practice is set out in the responses from those organisations representing frontline planners. Trade union UNISON indicated that:

“Planners tell us that they are overwhelmed by the volume and complexity of their workloads. They are also extremely stressed by the personal interaction that they often experience with clients. Good planning doesn’t require yet another reform programme. Improvement will come through adequate funding and staffing levels and empowering staff and giving them the time to do their work, reflect, learn and implement change. It is resources they need not reorganisation.”

While RTPI Scotland state that:

“between 2009 and 2016 local authorities on average lost 23% of planning staff, while over the same period planning service budgets were cut by an average of 32.5%. These figures illustrate the resource pressure that local authority planning services are experiencing.”

HOPS raise concerns about the robustness of the financial memorandum and future financing of planning, stating:

“HOPS submitted a formal response to the Finance and Constitution Committee on the Financial Memorandum highlighting concerns about the costs and estimates set out, the lack of detail and certainty, and the confusion between cash costs and productivity costs. HOPS has consistently campaigned for a comprehensive review of planning fees and resources towards a full cost recovery model.”

This call for better resourcing and ring fencing is not limited to planning organisations, e.g. Scottish Land and Estates:

“…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.”

A view also shared by Persimmon Homes, which states:
“It is our understanding that there is no requirement to ‘ring fence’ income from planning fees (which were increased in 2017) to support the planning function. There is therefore no certainty that the performance of planning departments will improve if fees are increased and unless Planning Departments have adequate resources to fulfil their function the proposed changes within the Bill are unlikely to deliver the improvements envisaged.”

The Accounts Commission offers a more positive view, indicating that:

“Given the pressures that we have reported on councils' finances, we welcome the commitment by the Scottish Government to further consultation on moving towards full cost recovery by planning authorities of decision-making aspects of the process. We welcome the provisions in the Bill towards enabling discretionary charging.”

The future of regional planning

Strategic development plans set out a vision for the long term development of Scotland’s four main city regions (these are regions centred on Aberdeen, Dundee, Edinburgh and Glasgow), focusing on cross-boundary issues such as the amount and areas for housing, major business and retail developments, infrastructure provision and green belts/networks. A strategic development plan is drafted by a Strategic Development Planning Authority (SDPA), the membership of which is defined in statutory designation orders.

The Bill proposes the removal of the requirement to produce strategic development plans for Scotland's four main city regions. The Scottish Government intends to enhance the regional content of future National Planning Frameworks, with a looser partnership working arrangement between local authorities to deal with cross-boundary planning matters.

Views on the removal of Strategic Development Plans are mixed. Opponents of the proposals included organisations such as Clydeplan, which with its predecessor organisations have developed strategic plans for the Glasgow city-region for 70 years, who argued that:

“To remove Strategic Development Plans in Scotland would run counter to the prevailing best practice in planning internationally, particularly in Europe, where there has been a shift to planning at the scale of integrated functional regions reflecting housing markets, travel to work and economic catchments areas, in pursuit of the ambition to delivering sustainable economic growth.”

However, many respondees were neutral on the proposals or offered cautious support – which was generally dependent on further refinement of the proposed replacement system, a view neatly summarised by Scottish Environment LINK, which stated:
“We are broadly neutral on the proposal to incorporate regional planning into the NPF however we do strongly believe that some form of regional planning is necessary in order to help manage environmental issues at the regional scale. The failure of some of the Strategic Development Plans (SDPs) to tackle these issues is partly why their value has been questioned by some but it is not clear from the current Bill proposals how these regional spatial issues will be addressed.”

How regional planning will be handled in future was a common concern amongst a broad range of stakeholders. Some community groups shared the concerns of Cramond and Barnton Community Council:

“…that regional planning priorities will be set at national level or by regional partnerships without adequate engagement and scrutiny by, or accountability to, the communities directly affected by such priorities.”

HOPS also questioned how the proposed new arrangements would work in practice, stating that:

“HOPS has previously expressed concerns that the replacement of SDPs with a regional partnership approach, requires clearer evidence to justify the case for change, clarification of the actual expectations for the new arrangements, and clarification of how these objectives are to be delivered. Unfortunately given the lack of evidence and specification around the future arrangements, these matters remain concerns and emphasis the need for clear transitional arrangements to avoid a vacuum.”

More specific concerns about resolving cross-border planning disputes are raised by RTPI Scotland, which:

“…supports the principle behind voluntary regional partnership working, and agrees that local authorities are best placed to decide the geography of such partnerships. However, we believe that without a statutory requirement for agreement on outcomes of cross-border issues, there is potential for deadlock.”

Similar to a concern raised by the Law Society of Scotland, that:

"We note that in terms of the regional partnership model, there is a duty placed by Section 1 of the Bill upon key agencies to co-operate with the preparation of the NPF however we are not convinced that this will ensure efficient working of the partnerships.”

Aberdeen City Council, which currently works with Aberdeenshire Council to produce a strategic development plan,
“…strongly encourage the Government to consider retaining a mechanism via secondary legislation to allow strategic planning to be undertaken locally (within regions), should Authorities wish to opt-in, moving forward.”

The role and effectiveness of Simplified Development Zones

The proposed Simplified Development Zones (SDZs) would extend the types of permission automatically deemed to have been granted in a Simplified Planning Zone\(^1\), for developments that comply with the SDZ scheme, to include:

- Road construction consent (needed to create new roads within a development)
- Listed building consent (needed to alter a listed building)
- Conservation area consent (needed for demolition of buildings within conservation areas)

Developers would still be required to obtain other consents including Building Warrant and any licenses (where applicable) through the usual processes. Planning legislation currently prevents SPZs from being designated on land:

- in a conservation area
- in a National Scenic Area
- forming part of a green belt
- in a site of special scientific interest in respect of which a nature conservation order or land management order made under Part 2 of the Nature Conservation (Scotland) Act 2004 has been made

The Bill would remove these restrictions and allow Scottish Ministers to make regulations setting out new restrictions on land that cannot form part of a SDZ.

Views on the likely uptake, effectiveness and impact of SDZs are mixed, e.g. RICS considers that:

“…whilst SPZs could increase availability of land, and with that house building starts, they may not necessary support the creation of “place”. In considering SPZs, this Committee needs to consider whether they could tip the balance between quality and quantity of housing.”

This concern about the impact of SDZs on the quality of the built environment is shared by a number of organisations, e.g. BEFS considers that:

\(^1\) A simplified planning zone (SPZ) is an area where the need to apply for planning permission is removed for certain types of development.
“...SDZs may undermine existing protection. If SDZs are not brought forward through a plan-led system they could threaten Scotland’s natural and built heritage due to a bypassing of scrutiny.”

Some community organisations take a more robust view on their likely impact on the built environment, e.g. Jackton and Thorntonhall Community Council state that:

“Simplified Development Zones are a developer’s wet dream and should be removed from the Bill”.

A number of local authorities raise concerns about the cost associated with developing an SDZ scheme and the loss of planning fee income and democratic control over development in such areas, as set out by Highland Council:

“How the potential loss of planning fees in such areas will be accommodated is not clear and this is a major concern for the Council, since the same degree of assessment will be required up front rather than through the formal consideration of planning applications. There are also concerns about loss of local democratic involvement in the development of such areas, particularly where these are adjacent to or within local communities.”

This concern about the impact of costs and lack of fees is also shared by some private sector respondees, e.g. GVA Grimley Ltd consider:

“The production of SDZs and associated development briefs and detailed guidance is likely to be of significant time and cost to local authority resources. We therefore have some reservations as to whether they will be widely taken up by many LPAs, particularly at a time when resources continue to be stretched.

Ultimately, HOPS consider that:

“The take up of SPZs across Scotland has been extremely poor and it is not certain whether SDZs will fare any better as they are discretionary. HOPS view is that they will not be widely used.”

The likely role of the proposed Infrastructure Levy in funding essential infrastructure

The Bill would give Scottish Ministers the power to establish an infrastructure levy although further work is ongoing by the Scottish Government to define the model. Details of the levy scheme would be set out in regulations, which would be subject to parliamentary scrutiny, under the affirmative procedure, separate from the Bill.

The Bill defines the infrastructure levy as one which:
- Is payable to a local authority
- Relates to development wholly, or partly, within the authority’s area
- Will be invested in infrastructure projects by the local authority

The Bill defines “infrastructure” as follows:

- communications, transport, drainage, sewerage and flood-defence systems
- systems for the supply of water and energy
- educational and medical facilities
- facilities and other places for recreation

Scottish Ministers would have the power to vary this definition, through regulations. Schedule 1 of the Bill sets out a framework for any future infrastructure levy regulations.

Generally, developers are at best lukewarm to the proposals and many are concerned about the lack of detail about any levy set out in the Bill. This view is well summarised by Homes for Scotland, which considers that:

“Whilst a Levy approach has the potential to provide more certainty and clarity than the current approach to securing developer contributions, it has yet to be proven whether a Levy could be effective enough in the wider sense of fully funding infrastructure (acknowledging the need to preserve development viability) and of delivering it...we are not fully convinced it is appropriate to enable the strategic and detailed thinking on this to be undertaken out with the full Parliamentary scrutiny afforded to primary legislation. It would therefore be more logical to see the enabling powers entirely removed from the Bill.

The impact of any levy on the viability of more marginal developments is shared by most in the development industry, e.g. Wallace Land Investments states that:

“Any introduction of an infrastructure levy in Scotland must be carefully considered at the local level as further taxation could lead to a reduction of land available on the market for development, which would lead to fewer house completions and thus a reduction in delivery across Scotland. Also, marginal market areas and brownfield sites that are earmarked for regeneration could be mothballed by the introduction of further taxation on sites that are already struggling to deliver, so development viability must remain the most important consideration when assessing whether or not a development can withstand a level on top of existing taxation and S.75 contributions.”

It is important to remember that development is not just housebuilding. The Mineral Products Association Scotland highlights that:
“Ultimately, the application of an infrastructure levy on the minerals industry in Scotland may open the market for cheaper imports. This would be detrimental to the Scottish economy, impact rural employment and arguably have a negative outcome in terms of global climate change objectives.”

Concerns about the levy are not limited to developers, HOPS considers that:

“…cognisance needs to be taken of the limitations to revenue generation by means of a levy, the resource implications for planning authorities, impact on development viability and consequently the delivery of development”

While Comhairle nan Eilean Siar raise particular concerns about island and remote rural communities, stating:

“Given the lack of volume house builders in the Outer Hebrides, a high incidence of individual self-build on windfall sites, and additional island building costs, any infrastructure levy would impact negatively on the rate of house building.”

COSLA, while supportive of the principle of an infrastructure levy, asks that it meets certain principles, namely that is should be:

“…fair and easy to understand; be efficient to collect; avoid de-stabilising the underlying tax base; should be determined locally including any exemptions; and should empower local authorities to raise local funding for local priorities.”

Finally, the ability of the levy to raise the significant funds needed for infrastructure development is highlighted by several respondents, e.g. Common Weal outlines that:

“The levy is unlikely to bring in sufficient funds to make a sizeable difference to the cost of Scottish Government infrastructure for housing provision. The Scottish Government study which proposed the levy (2017) found that a progressive form of the levy would raise £75m annually, while a flat-rate policy would raise just £39m annually. The same study estimates that the total annual infrastructure investment needed for dwellings is £7.5bn, meaning the infrastructure levy would raise maximum 1% of required infrastructure costs.”

**Equal Right of Appeal (also known as third-party right of appeal)**

Currently, after consideration of a planning application, a planning authority can decide to:

- grant permission unconditionally
- grant permission subject to certain conditions being met
- refuse permission
Where planning permission is granted subject to conditions or is refused, the applicant has the right to appeal that decision to either a local review body (for decisions on local developments made by a planning officer) or Scottish Ministers (for all other decisions).

The 'first party' to a planning application is the applicant, the 'second party' is the planning authority and the 'third party' is anyone else. The role of any third party in the development management process is limited to making representations to the planning authority, which are considered by the authority during the decision making process. A third party right of appeal, in the form called for by campaigners, would grant certain categories of objector to a planning application a limited right to appeal against the award of planning permission for certain types of development, e.g. when the development is a departure from the policies and proposals in an adopted development plan.

Third party rights of appeal are sometimes also referred to as "equal rights of appeal". Some people also propose that appeal rights could be “equalised" by removing the right of the applicant to appeal in some circumstances, for example when the development is a departure from the development plan.

Views on third party rights of appeal expressed in written evidence are clearly split between:

- individuals, community groups and environmental organisations – who are strongly in favour of third party rights of appeal
- developers, professional planning organisations and planning authorities – who are strongly against third party rights of appeal

Planning Democracy has been leading a long-running campaign for the introduction of a limited third-party right of appeal. They argue that:

“Equal Rights of Appeal (ERA) can strengthen a democratic, plan-led system with:

a) The introduction of a right of appeal when the decision goes against the provisions of the development plan.
b) The restriction of existing appeal rights to cases when planning permission is refused even though the development plan indicates permission should be granted.

This would effectively restrict appeals to decisions that depart from the logic of the plan. In addition, far from undermining the goal of engaging people ‘upfront’ (as is often erroneously argued), right of appeals for communities would create a powerful incentive for individuals, community groups and developers to get involved in the production of plans to make sure they reflect their aspirations.”
Friends of Craighouse, which opposed a major housing development on a site subject to multiple planning designations - that was granted permission, argues that:

“The fact that communities have no ultimate legal recourse in the form of Equal/Community Right of Appeal leads to a situation where the planning system cares less about upholding its processes and policies and more about developers’ legal threats or the fear of decisions being overturned by government reporters and the resultant monetary penalty for Councils. So there is no incentive for Councils to uphold the planning system, policies, processes or listen to communities when the pressure on them is so one-sided.”

Mary Gordon highlights concerns about the judicial review process, currently the only option available to individuals or community groups wishing to challenge a planning decision (although only on a point of law):

“…as there is no provision for 3rd party appeal on planning decisions it’s a punch in the face for local groups and people. As far as I know only one local group has managed to bring a judicial review of a planning decision in the whole of Scotland. It was regarding the India Buildings Development in Edinburgh - they had to raise £27,000 to do so. This is an ENORMOUS sum which most groups cannot do. It means that unsympathetic developers and councils always have the upper hand.”

The views of those opposed to third party rights of appeal are clearly set out by Taylor Wimpey, which

“…strongly believe that TPRoA will add additional delay and uncertainty to a system that is already slow and unresponsive. It will undermine democracy; will divert investment way from Scotland and would add in significant additional cost and pressure on a Local Authority resource that is already under overwhelming pressure. TPRoA will not deliver essential housing, infrastructure or investment, will be costly through the courts and does not increase collaborative working.”

Views reiterated by CALA Group Ltd:

“We support Scottish Government’s position that it is not appropriate to introduce third party rights of Appeal. This would inevitably result in inappropriate delays in the planning system and could result in Appeals being taken by people with vested interests in frustrating sustainable economic development, rather than encouraging it."
Purpose of the Planning System

The Scottish Planning system currently has no specific purpose established in legislation. A number of respondents call for such a purpose to be set out in the Bill, with the John Muir Trust stating:

“The Trust believes there should be a Purpose for Planning Statement within the Bill, identifying the overarching aims of the planning policy and process. That Purpose should explain how the process will achieve protection and enhancement of the natural and cultural environment.”

While Planning Democracy argues that:

“A statutory purpose for planning would provide clarity about the public interest outcomes the system should both work towards and be assessed against, moving away from process-dominated debates about planning being a regulatory burden towards a positive focus on creating high quality places.”

PAS “…also believes that a statement of the purpose of Scotland’s planning system must be set out in the Bill. This will act as a framework for positive and informed engagement of varied stakeholders with the system.”

The Royal Incorporation of Architects in Scotland (RIAS) goes further, calling for the purpose to:

“…align the planning system with international obligations, specifically the United Nations’ Sustainable Development Goals (SDG) which provide a global definitive statement on what sustainable development means and present a clear, unified message.”

Other Issues

- North Ayrshire Council raised concerns that the Bill contains no island specific proposals, such as island proofing LDP policies, simplifying planning policies for rural and edge of settlement housing on islands and new duties on stakeholders to deliver key worker housing on islands
- Edinburgh and Fife Councils asked that the Bill be amended to simplify the process for protecting trees in conservation areas affected by development proposals
- South Ayrshire Council asked that Local Review Bodies be renamed Local Appeal Bodies, to better reflect their role
- The Law Society of Scotland raised concerns about the scrutiny of the NPF, given its enhanced role, stating “There is no public examination process and it is questionable as to whether 90 days of Parliamentary scrutiny is an effective substitute”
• Brodies LLP queried whether it is appropriate to include certificates of lawfulness within the jurisdiction of local review bodies, as these often involve complex legal issues which they consider are better dealt with by planning professionals, i.e. reporters appointed by the Scottish Ministers

• Scottish Environment LINK asked that a specific duty to act in a way that supports emission reductions targets be placed on planning authorities, when drafting development plans and taking planning decisions

• The Campaign for Real Ale (CAMRA) asked that “the planning loophole” which allows non-listed pubs and those outside conservation areas to be demolished without planning permission be removed, as it prevents communities from objecting to such plans

• Dr Richard Humble asks that the ability of local healthcare services to cope with the impact of new residential development be a consideration in the development management process

• Richard and Catherine Lye asked that the distance for neighbour notification of planning applications in rural areas be increased from 20m to 90m, or other immediately adjacent properties

• Spokes asked that permitted development rights be extended to cover cycle storage in domestic gardens