28 March 2018

Dear Bob

**Planning (Scotland) Bill**

At the Committee’s meeting on 21 February I undertook to provide additional information on a number of points. This letter follows up those points.

There was a discussion about the provision of resources to support community bodies to bring forward Local Place Plans. The Financial Memorandum estimates that the provisions in the Bill, particularly our reforms to development planning, will free up between £22.6m and £33m of local authority resources over 10 years. We expect that to be reinvested in other activities to improve the planning system, in particular supporting greater community involvement and the focus on delivery. I have also made clear that spatial planning should be intertwined with community planning, and that local authorities and community planning partners should be focusing their efforts to support the most disadvantaged communities.

In terms of Scottish Government funding, our £20m Empowering Communities Fund supports communities in a number of ways to build their capacity to decide their own priorities and develop their own solutions. Local place plans may be one of those solutions. Our Making Places Initiative has provided £300,000 to communities in 2017-18 for community-led design activities. We plan to provide similar funding in 2018-19 and to ensure this is targeted towards areas facing disadvantage. We are also increasing grant funding to PAS to allow it to offer more support for communities specifically in development and community-led planning.

On Simplified Development Zones (SDZs), Andy Wightman asked whether the power in paragraph 7(2) of schedule 5A, inserted by section 10 of the Bill, would allow regulations to restrict the kind of person who could make a request for a local authority to create a SDZ. On further consideration we do not consider that the power would allow such a restriction. However, I do not believe it is necessary to do so. As Mr Macleod mentioned, any such request would be judged on the merits of the proposal. It is then for the local authority to...
prepare the SDZ scheme, including complying with the consultation requirements set out in schedule 5A. Our early thoughts on the requirements for making a valid request include that the requester should set out their connection with the land and, if they are not the landowner, should contact the landowner and seek their views on the proposal. To put this in context, a SDZ is, in effect, an alternative way of granting planning permission, and there are no restrictions on who can submit a planning application, but the applicant must inform the landowner of the application.

Monica Lennon asked about research into the reasons for delays in planning decisions. In the past the Scottish Government has gathered information from planning authorities on cases which took more than a year to be decided. Authorities indicated that common reasons for delay included:

- The conclusion of Section 75 or other legal agreements, involving protracted negotiations on matters such as affordable housing, impact on viability and phasing of payments. Delays also included awaiting applicant action/agreement on the contents of the agreement and delays within council legal department with the drafting of the agreement;
- Further assessments/information required.
- Submission of new drawings/plans
- Issues around land ownership or land transaction being on hold.
- A delay or sisting of the application requested by the applicant, for a number of reasons, often to do with funding.
- Awaiting new development plan adoption before releasing decision.

The research now under way, specifically on delays on planning applications for housing, will seek the views of applicants on the reasons for delay as well as authorities, to provide a more balanced picture. Ironside Farrar has been appointed to undertake this research; the project inception meeting took place on 21 March and the final report is to be provided to the Scottish Government by the end of May 2018.

In terms of the criteria for monitoring planning authorities’ performance, this is currently measured through the Planning Performance Framework which was designed by Heads of Planning Scotland (HOPS). Since 2012, authorities have, on a voluntary basis, completed annual reports. The framework involves authorities’ self-assessment of a wide range of aspects of their roles and services. In addition, planning authorities also report on their performance against 15 ‘key markers’, as devised by the High Level Group on Planning Performance, co-chaired by the Scottish Government and COSLA. These annual reports are available at: https://hopscotland.org.uk/publications/planning-performance-framework-reports/

We will continue to work with the High Level Group on Planning Performance to further develop the role of the National Performance Co-ordinator and criteria for statutory reporting and assessment. I do not consider that it would be helpful to place performance criteria on the face of the Bill, as I expect the framework to continually evolve in discussion with our partners.

The Committee raised the written submission on the Bill from Engender. I am confident that the EQIA accompanying the Planning Bill meets the legal requirement to assess the equality impact of proposed legislation. However, officials have offered to meet representatives of
ENGENDER to better understand their concerns, and will undertake appropriate corrective action if that proves necessary.

Finally, Monica Lennon asked about the costs of developer appeals, and the implications for planning authorities where costs are awarded against them. Reporters have powers to make an award of expenses in relation to the expenses of parties to an appeal. However, in planning proceedings expenses are only awarded on grounds of unreasonable behaviour. Circular 6/1990 (http://www.gov.scot/Publications/1990/03/circular-6-1990) sets out how to make a claim for expenses and what might be considered unreasonable behaviour.

When a reporter, or Scottish Ministers, make an award of expense they will set out the reasons for such an award and specify what the expenses are in respect of. This can include the total cost of submitting the appeal or partial costs in respect of certain aspects of the appeal. The reporter does not determine the amount of expenses payable. Parties involved are expected to agree the amount of the award due but in cases where parties are unable to agree, this can be set by the Auditor of the Court of Session. Since DPEA started recording this information in 2014 there have been 42 awards of expenses against the planning authority and 2 against the appellant. We have no information on the sums involved.

There is no clear way of estimating how many appeals might arise from third parties if this policy was introduced. In 2016/17 there were 27,232 planning decisions made in total in Scotland. Of these, 1579 applications were refused, and there were 500 appeals to the Scottish Ministers and 550 local reviews. Figures from the Republic of Ireland indicate that 54% of their appeals are from third parties, which might suggest that numbers in Scotland could double to around 2100. As an alternative indicator, in Ireland in 2016, 6.6% of all applications were appealed, which would give a figure of 1797 for Scotland. However, in Ireland there is a fee for bringing an appeal, and certain major developments are excluded from third party appeal. The details of implementation could have a significant impact on the numbers of cases that might arise.

I hope this additional information is helpful to the Committee.

Kind regards

KEVIN STEWART