

Planning Bill Stage 1 Briefing

Scottish Environment LINK members believe that the Planning Bill must:

- 1) Introduce a statement of purpose for planning**
- 2) Require that the National Planning Framework (NPF) is approved by the Scottish Parliament**
- 3) Ensure that NPF provisions enhance policy coherence and consistency**
- 4) Introduce references to green and blue infrastructure in the NPF infrastructure provisions**
- 5) Retain requirement to prepare strategic development plans, to ensure regional issues are adequately addressed and as a mechanism to implement the Scottish Land Use Strategy**
- 6) Introduce consultation requirement in the context of the evidence report**
- 7) Create explicit link between the evidence report and relevant Local Place Plans (LPPs)**
- 8) Retain key elements of the Main Issues Report (MIR)**
- 9) Introduce a requirement to consult on both a draft and a modified proposed Local Development Plan (LDP)**
- 10) Introduce a notification register managed by local authorities to actively notify interested individuals and organisations of key development plan activity**
- 11) Retain supplementary planning guidance**
- 12) Introduce restrictions to Simplified Development Zones (SDZs) in protected areas**
- 13) Ensure that SDZ designation is possible only through the LDP development process**
- 14) Introduce biodiversity and green infrastructure safeguards**
- 15) Introduce a fee for planning appeals**
- 16) Introduce a limited right of appeal**
- 17) Limit rights of appeal for applicants**
- 18) Lengthen timescales for the submission of repeat applications**

INTRODUCTION

Scottish Environment LINK is the forum for Scotland's voluntary environment community, with over 35-member bodies representing a broad spectrum of environmental interests with the common goal of contributing to a more environmentally sustainable society.

The planning system plays a crucial part in determining the sort of places we live in, how we get about, whether we breathe clean air, if we can access the services we need, how our green spaces thrive and how sociable our communities are. But unsustainable developments, exacerbate inequalities and damage our environment. What is more, confidence in the planning system is at an all-time low, with a recent survey¹ finding that most people feel they have no influence in planning decisions that impact on their day-to-day lives and environment.

¹ NTS survey results: <https://www.nts.org.uk/stories/planning-without-the-people> & Scottish Government Barriers to Community Engagement research: <https://beta.gov.scot/publications/barriers-to-community-engagement-in-planning-research/>

To ensure that planning delivers for our communities and the environment, Scottish Environment LINK members support the following changes to the Planning Bill:

1) Introduce a statement of purpose for planning

It is important that the Bill articulates the purpose of planning. As indicated by the Minister for Local Government and Housing, Kevin Stewart, planning is key to inclusive and sustainable growth, addressing climate change and building well-functioning communities². These aspirations need to be codified in law to ensure that our planning system delivers against them and that processes can be held accountable in accordance with these goals.

Indeed, there are existing pieces of legislation from Denmark, Finland, Norway, the Netherlands, France, and Germany³ that all clearly define the purposes of planning. From these examples, there appears to be some consensus on key goals which planning should deliver: the protection of natural and cultural heritage; conservation of valued landscapes; ensuring public participation in planning processes; safe and healthy environments; and ensuring the best use of natural and agricultural resources.

LINK members support a purpose for planning that requires planning to aim to achieve sustainable development that enhances the quality of places and the lives people can lead within them, valuing inclusiveness and equality. A reference to sustainable development would enhance current planning legislation provisions which require that development plans and the National Planning Framework (NPF) are prepared with the objective of contributing to sustainable development. It would also reflect the welcome commitments already made by the First Minister in signing Scotland up to the UN Sustainable Development Goals.

2) Require that the National Planning Framework (NPF) is approved by the Scottish Parliament

The National Planning Framework (NPF) is one of Scotland's most important policy documents. It sets a long-term vision for how Scotland will change over the next 20 to 30 years. It can identify nationally important infrastructure projects, which are sometimes needed but are almost always highly controversial, and it can have huge impacts on the economy, communities and the environment.

The reforms proposed in the Bill will make it an even more powerful document, with more detail on what should happen at a regional level and an opportunity for full revision only every 10 years. Yet, despite the importance of the NPF for all of us in Scotland, Scottish Ministers only have to "have regard" to the views of the Scottish Parliament on the Framework. For such a critically important document, this is inadequate scrutiny. It should not be possible for Scottish Ministers to impose their vision, there should be a requirement for parliamentary scrutiny and approval of the NPF.

LINK members believe that the Scottish Parliament's endorsement must be required through a vote on the NPF, thereby enhancing its democratic accountability and credentials and maximising cross-party support for its provisions. While an increase in the Parliamentary scrutiny period of the NPF from 60 days to 90 days is welcome, given the enhanced role of the NPF and the fact that it would only be brought forward every 10 years rather than every five years, the Scottish Parliament should be given 120 days to scrutinise the NPF. LINK supports amendments that would take forward such proposals.

What is more, while we support the need for a long-term spatial vision, we believe that it is important to ensure that the NPF is on track to deliver against its provisions. One way of ensuring this is to provide for regular "health

² Speech, December 2017: <https://news.gov.scot/speeches-and-briefings/introduction-of-planning-scotland-bill>

³ 2007 Planning Act (Denmark), 2003 Land Use and Building Act (Finland), 2005 Building and Planning Act (Norway), 2016 Environment and Planning Act (The Netherlands), 2018 Code of Urbanism (France) and 2009 Federal Regional Planning Act (Germany)

checks”: if on a 10-year cycle, the NPF should be given a statutory fitness check on a 5-year basis. This would not require any legislative change as the existing text requires either a revision or explanation about why a revision is not required every 5 years. LINK therefore proposes that the intent to only fully revise the NPF every 10 years is carried forward through a policy commitment rather than legislative change, with the Government required to explain why a revision might not be required after 5 years.

3) Ensure NPF provisions enhance policy coherence and consistency

The NPF is described as the spatial expression of the Government Economic Strategy and infrastructure investment plan; it identifies national developments and other strategically important development opportunities in Scotland. As such its proposals need to respect and work in tandem with wider key Scottish policy objectives. Since all policy has spatial implications, the NPF must provide for a strategic means of coordinating those. At the moment, there is a requirement for the NPF to be prepared with the objective of contributing to sustainable development; however, there needs to be an explicit link to strategically important policy priorities such as climate change and the circular economy, as well as those policies that have spatial implications such as the Land Use Strategy and Marine Plan. In conjunction, the National Planning Framework, Land Use Strategy and Marine Plan have the potential to be world-leading in ensuring sustainable resource use and meeting ambitious climate change targets.

LINK support amendments that would introduce an explicit link between the NPF and these other key Scottish policy priorities thereby strengthening the role of the NPF in coordinating the spatial impacts of national policy.

4) Introduce references to green and blue infrastructure in the NPF infrastructure provision

LINK supports that green and blue infrastructure should be added to the list of matters included in the interpretation of ‘infrastructure’ in Section 29 relating to the NPF as a further way of enhancing policy links. This would help public bodies meet their biodiversity duties help deliver Scotland’s Biodiversity Strategy, and also help the Bill better reflect the Strategic Environmental Assessment Environmental Report⁴ carried out by Scottish Government as part of their wider environmental assessment and preparation for the Bill which specifically refers to the multiple benefits of green infrastructure.

As Scottish Planning Policy recognises (paragraph 219): ‘Green infrastructure and improved access to open space can help to build stronger, healthier communities. It is an essential part of our long-term environmental performance and climate resilience. Improving the quality of our places and spaces through integrated green infrastructure networks can also encourage investment and development’.

5) Retain requirement to prepare strategic development plans, to ensure regional issues are adequately addressed and as a mechanism to aid policy coherence, in particular, through regional implementation of the Scottish Land Use Strategy

To enable greater policy coherence between planning and other national priorities, it is important to ensure that both central government and local authorities work towards those common objectives. At national level, a requirement for policy coherence in the NPF should be accompanied at regional level with a requirement introducing a statutory obligation to produce regional, strategic land use plans (SLUPs).

There is an existing policy obligation to develop such plans under the Land Use Strategy but there has been little progress towards rolling such plans out. In line with the requirements of the Land Use Strategy, these plans would identify and attempt to reconcile wider land use priorities and potential conflicts for a region, including development, energy, transport, woodland expansion, agriculture, ecological networks, facilitating better join up

⁴ https://consult.gov.scot/planning-architecture/places-people-and-planning-position-statement/supporting_documents/A18245998_FINAL.pdf?_ga=2.136693427.2028561810.1525178474-530774437.1522187347

and coordination between the urban and rural land uses. This will enable strategic decisions to be made to maximise the delivery of multi-use public benefit from land and minimise negative impacts that delivery of one strategic priority may have on another. The consideration of non-development within planning is not new as forestry and planning have historically been more closely integrated through indicative forestry strategies, which were introduced in response to reduce conflict between forestry planting and other land uses. Development of these plans will require establishment of regional partners and early stakeholder engagement to secure buy-in on regional land use priorities.

LINK members support retaining strategic development plans and in addition, linking them with regional land use plans mandated under the Land Use Strategy to attempt better strategic land use policy coherence.

6) Introduce consultation requirement in the context of the evidence report

The introduction of a requirement for planning authorities to prepare an evidence report, to be agreed before local authorities can start preparing a local development plan, is welcome. It should help to ensure that development plans are based on sound evidence and are of a good quality, as noted in the Policy Memorandum (paragraph 48). However, the Bill does not include any requirement for consultation or public engagement on the evidence report. Various stakeholders including the general public will have valuable information and expertise that should inform the evidence report. Evidence should include both qualitative and quantitative sources of evidence about places, how they are changing and what people's aspirations are. Without consultation, there is a greater risk that evidence reports may be inaccurate or incomplete, and the development planning process would not be 'collaborative from an early stage' as claimed in the Policy Memorandum (paragraph 48).

LINK supports an amendment introducing a requirement for the planning authority to hold, and have regard to the results from, public consultation; this amendment should name key stakeholder categories that would need to be consulted, including communities of places and interest.

7) Create explicit link between the evidence report and relevant Local Place Plans (LPPs)

The evidence report should refer to any draft or finalised Local Place Plans (LPPs) to ensure that the aims and objectives of local communities inform the evidence report and ultimately the Local Development Plan (LDP) itself. This would help ensure that LPPs are part of an iterative LDP process and not treated as an afterthought. The aims and objectives of the local community as set out in draft (or finalised) LPPs should be taken into account and used to inform decisions on what evidence is collected.

LINK supports an amendment that binds local planning authorities to address LPPs in the context of the evidence report.

8) Retain key elements of the Main Issues Report (MIR)

The requirement to produce a "main issues report" (MIR) is being removed by the Bill and as such the opportunity to seek views on different policy and development options that could be included in the LDP is lost. This is a critical step in the development of an LDP and as such needs to be retained in the context of the new process being put forward. Removal of the MIR would mean that stakeholders may not be aware of and are less able to meaningfully consider and comment on, alternative options for policy approaches and development locations. What is more, the removal of the MIR would also appear to remove a requirement for consideration of significant environmental effects through consultation on a strategic environmental assessment (SEA) environmental report issued alongside the MIR.

The removal of the MIR stage would mean that the Proposed Plan would be the first time that a planning authority is required to publicly present and 'test the water' on their proposals in relation to strategy, policies and site allocations. This could result in more objections to the Proposed Plan, compared to the current situation

where the planning authorities are able to prepare their Proposed Plan in the knowledge of stakeholders' opinions on potential policy and site options. In other words, it will likely often be too late at the draft plan stage for the local authority to meaningfully consider concerns or alternative options raised by the community. It is inevitable that this would increase conflict and distrust in the system. If the plan cycle moves from a 5 year to a 10 year cycle, there seems very little justification for this change in terms of reducing workload for local planning authorities.

LINK supports retaining the MIR stage to ensure effective engagement and early debate in the process.

9) Introduce a requirement to consult on both a draft and a modified proposed LDP

Under the Bill's provisions, planning authorities would be able to modify the proposed LDP and submit it to Scottish Ministers without being required to consult the public on a modified plan. The respondents including the public to the original proposed plan would not have an opportunity to comment on the modifications and whether those modifications have addressed their concerns. There are risks that planning authorities may misinterpret representations (and modifications sought by them) and may incorrectly consider that a modification takes account of/resolves a particular representation (in terms of Section 19, subsection (2) of the Act), and then that representation is not considered in the examination of the proposed plan.

LINK supports amendments that would require that planning authorities consult on a draft proposed plan, and then prepare and consult on a version that has been modified to take account of representations and consultation responses on the draft. This would give interested stakeholders an opportunity to comment on all modifications made by the planning authority, other than those relating to minor drafting matters.

The amendments would also ensure compliance with Strategic Environmental Assessment legislation which requires a revised report to be prepared and consulted on where any amendments result in additional significant environmental effects.

10) Introduce a notification register managed by local authorities to actively notify interested individuals and organisations of key development plan activity

A key obstacle to keeping communities and individuals engaged is public awareness and understanding of the opportunities and implications for engagement on development plans. In addition to maintaining current public notification requirements, awareness can be increased by formalising a notification register to disseminate information about the stages of the local development plan preparation, including evidence gathering, main issues (if kept) proposed plan, among others, would enhance the existing examination process, as well as development plan scheme requirements and improve updates thus enhancing engagement and participation. This low-cost option would improve current notification requirements, particularly in terms of engaging with young people. For example, to notify people nowadays by placing an advert in a local paper (many of which are not read widely) is a minimalistic approach to consultation. **LINK supports a requirement for local authorities to set up and manage such an opt in register to keep communities of place and interest informed of consultations and updates on development plans and planning applications.**

11) Retain Supplementary Planning Guidance

Local authorities often produce supplementary guidance on matters such as local nature conservation sites; detailed design guidance for specific types of development; and development frameworks and masterplans for particular developments or local areas. The removal of statutory supplementary guidance may make development plans less flexible, and may mean that the main body of the plan is much more detailed, complex and lengthy. It is also likely to increase the timescales involved in preparing the LDP. Alternatively it may deter planning authorities from preparing such detailed and useful guidance, or encourage them to provide such guidance in non-statutory planning advice that is subject to even less scrutiny and public engagement.

LINK, however, shares concerns that a very high level of reliance on supplementary guidance could raise questions about the transparency of the supplementary guidance and undermine the wider plan. There should be clearer guidance setting out what matters can, and what matters cannot, be covered in supplementary guidance – and the scope and remit of supplementary guidance for each LDP could also be discussed and established as part of the early ‘gate check’ at the LDP formulation stage. It should also remain a requirement that supplementary guidance should be limited to further information or detail to expand on policies in the main body of the local development plan, which expressly identifies matters to be dealt in supplementary guidance.

12) Introduce restrictions to Simplified Development Zones (SDZs) in protected areas

There is an existing restriction which prevents the establishment of Simplified Planning Zones (SPZs) in Sites of Scientific Interest (SSSIs) and other important environmental areas. It has previously been suggested by the Scottish Government that this restriction could be lifted for the Simplified Development Zones (SDZs) to be created under the Planning (Scotland) Bill, despite Scottish Government commissioned expert advice indicating that the protection should be maintained⁵.

Sites designated for their nature conservation interest are generally not suitable for development on a scale which would warrant SDZ designation. LINK members would have serious concerns over the establishment of SDZs in Special Protection Areas (SPAs), Special Areas of Conservations (SACs), Ramsar sites and National Nature Reserves, and indeed this may contravene international obligations

LINK supports the introduction of similar restrictions to SDZ and recognition that if land becomes designated for nature conservation, then it will no longer be suitable to be included in an SDZ scheme.

13) Ensure that SDZ designation is possible only through the LDP development process

The SDZ designation process should be tied to the LDP preparation process, rather than permitted at any time, as this would allow for efficiencies in consultation and assessment, particularly Strategic Environmental Assessment and Habitat Regulations Appraisal. It would also reduce uncertainty for communities who may have taken part in a lengthy LDP consultation process and then face the prospect of further consultation on an SDZ scheme or schemes.

14) Introduce biodiversity and green infrastructure safeguards

At present, there is no consistent statutory mechanism for delivering compensation for, or offsetting, biodiversity losses from development occurring outside of protected nature sites; as a result, the cumulative impacts of planned development on biodiversity are not being mitigated. **LINK therefore supports introducing a requirement that planning contributes to ‘Net Gain for Biodiversity’.** The UK Government is already investigating how to achieve biodiversity ‘net gain’ in England through the 25 Year Environment Plan.

‘Net Gain’ is defined as development that leaves biodiversity in a better state than before. The Scottish Government should place this principle at the heart of the planning system; this would contribute significantly to international and national obligations and targets relating to biodiversity, such as the National Ecological Network (NEN). The NEN was a key commitment in the last National Planning Framework (NPF 2014) and a key action in the Scottish Biodiversity Route Map. Although Scottish Natural Heritage is engaged in ongoing discussions with stakeholders about this issue, little progress has been made on the ground. A [briefing](#) by Scottish Environment LINK highlights the importance of the NEN for not only tackling biodiversity loss, but benefits across a whole range of Scottish Government policy, including public health, climate change, local communities, water management and spatial planning.

⁵ <https://beta.gov.scot/publications/simplified-planning-zones-equivalent-mechanisms-outwith-scotland-research-report/>

The first step to achieving 'Net Gain' is to introduce a statutory 'mitigation hierarchy' within the planning system – an approach designed to achieve, at a minimum, 'No Net Loss of biodiversity'. The mitigation hierarchy in England's National Planning Policy Framework (2012) provides a good working example.

The second step would be to reinforce and strengthen the mitigation hierarchy approach by introducing a requirement for developers to achieve 'Net Gain for biodiversity' for all major development. This would mean that - outside of designated sites where there is already a more robust statutory framework – developers would be required to compensate for, or offset, any biodiversity losses, as a last resort where impacts cannot be avoided. It is critical that this approach is underpinned by the mitigation hierarchy to ensure that the emphasis is on avoidance and mitigation in the first instance, and that offsetting is only used for unavoidable or residual impacts.

15) Introduce a fee for planning appeals

Under the current planning system, applicants can seek to appeal a planning decision and instigate a review process at no additional cost. Given that our planning system is already favourably predisposed to granting permission for development, with over 90% of developments being approved, and the administration costs required to manage appeals, it would seem appropriate to introduce a fee. This would allow public services to recoup some of the costs associated with the appeals process. The fee should reflect the scale of the development and the fee associated with the original planning application.

16) Introduce a limited right of appeal

The introduction of a limited right of appeal for other parties with an interest in a planning decision will help deliver a more balanced system of decision-making, leading to better decisions, empowering local authorities, encouraging early community engagement and supporting a more plan-led process whilst restoring public confidence in planning.

Efforts to frontload community engagement are critical to ensuring a fairer planning system and supported by LINK. However, despite the best front-loading efforts, clearly unjust decisions may still occasionally be made. It is therefore only reasonable if communities and other parties with an interest in the outcome of a decision are given a right to review decisions in some circumstances, such as where there is a clear departure from the local development plan, as applicants for planning permission have already.

A limited right to appeal could also be enabled in the following circumstances to further enhance public confidence in decision-making and address environmental concerns:

- If a decision relates to land the planning authority owns or in which it has an interest;
- The application for planning permission has been subject to an environmental impact assessment, which has concluded that the project is likely to give rise to significant residual environmental effects; or
- The application is subject to an unresolved objection by a statutory consultee.

Such a right of appeal would only be available to a party that has already made a representation on the application to encourage engagement and resolution of issues at as early a stage as possible.

17) Limit rights of appeal for applicants

The fact that applicants alone have a right to appeal a planning decision under any circumstance is one of the most pronounced imbalances of the current planning system. As confirmed by the planning review and stakeholder evidence collected by the Local Government and Communities Committee, there is clear

stakeholder consensus on the primacy of the development plan⁶. If prepared in a robust and inclusive way, plans can gain widespread community approval. The expectation is that planning decisions will reflect the development plan as prescribed by local authorities' and Scottish government commitment to a plan-led process.

However, this plan-led process and overall public confidence in planning is undermined when planning decisions vary significantly from the development plan. Applicants could be encouraged to make applications in accordance with plans, by removing their right to appeal decisions that are contrary to the development plan. Such a restriction would also empower local authority decision-making as local planning authorities would not be constantly worried about the threat of a decision being taken out of their hands.

In order to support the development plan, which has been adopted after extensive consultation and engagement of all stakeholders, LINK supports limiting applicants' right to appeal a planning decision if granting the planning application would lead to a clear deviation from the development plan.

18) Lengthen timescales for the submission of repeat applications

Existing legislation provisions do not adequately address the issue of repeat applications, where proposals can be resubmitted without significant change despite being previously refused. As a result, communities and local authorities can be worn down by developers putting in repeated applications for inappropriate developments, particularly as the discretionary right for local authorities to refuse to determine an application only applies if they have already refused at least two similar applications within the previous 2 years.

By lengthening the period of time during which local authorities can decline to determine a substantially similar application on a site from 2 to 10 years (or until such time as the local development plan is reviewed), fewer resources would be spent determining repeat, or very similar applications for developments that have already been found fundamentally inappropriate

This Parliamentary Briefing is supported by the following Scottish Environment LINK members:

Association for the Protection of Rural Scotland
Froglife Scotland
Planning Democracy
Ramblers Scotland
RSPB Scotland
Woodland Trust Scotland
Scottish Wild Land Group

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⁶ The planning review report includes a recommendation on the "primacy of the development plan" and also states that "*Aligning with community planning, development plans should be recognised as a central and powerful driver of the place agenda.*" Link: <https://beta.gov.scot/publications/empowering-planning-to-deliver-great-places/Empowering%20Planning%20to%20Deliver%20Great%20Places.%2031%20May%202016.pdf?inline=true>

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