

Local Government and Communities Committee Call for Evidence on the Planning (Scotland) Bill

Response from the Scottish Environment LINK Planning Group

Date: 2nd February 2018



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. Its member bodies represent a wide community of environmental interest, sharing the common goal of contributing to a more sustainable society. LINK provides a forum for these organizations, enabling informed debate, assisting co-operation within the voluntary sector, and acting as a strong voice for the environment.

Acting at local, national and international levels, LINK aims to ensure that the environmental community participates in the development of policy and legislation affecting Scotland. LINK works mainly through groups of members working together on topics of mutual interest, exploring the issues and developing advocacy to promote sustainable development, respecting environmental limits. LINK members are regularly involved in planning matters and therefore welcome the opportunity to comment on this consultation.

We have responded to the questions posed by the Committee in the attached annexe.

Summary

As currently presented, the Bill would fail to deliver a more sustainable future for Scotland and would significantly reduce opportunities for engagement and environmental scrutiny.

The Scottish Government proposals intend to strengthen the plan led system, which is welcome. However, the loss of the Main Issues Report stage and shift from a 5 year to a 10 year development plan cycle would severely reduce opportunities for public involvement in shaping their local places. This will be compounded by the removal of Strategic Development Plans and Supplementary Planning Guidance, which often dealt with important topics such as environmental protection at regional and local levels. Similarly, while an increased period of parliamentary scrutiny for the National Planning Framework is welcome, this is completely overshadowed by the shift from a 5 year to a 10 year plan cycle, which would severely reduce opportunities for public involvement in shaping the strategic development of Scotland. In addition, there is still no requirement for parliamentary approval of the Framework, a critically important national document but which the Scottish Government has almost full control over.

Simplified Development Zones could result in planning permission being automatically granted, without the need for a developer to submit a planning application or to consult with communities. This could include development in highly sensitive areas including SSSIs, National Scenic Areas, Conservation Areas and green belts.

While some parts of the Bill and accompanying documentation hint towards new engagement mechanisms, these are not clearly articulated and seem highly unlikely to be equal to those lost. To make these reduced engagement opportunities even more concerning, even though the planning system should be about making Scotland better for everyone, the Scottish Government has insisted that while developers should continue to be provided with two chances to gain planning permission if their first application is refused, through an

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appeal process, no other interested individuals or organisations will be allowed any similar, or equal, right of appeal.

This response was compiled on behalf of LINK Planning Group and is supported by:

Association for the Protection of Rural Scotland

Badenoch & Strathspey Conservation Group

Friends of the Earth Scotland

Froglife

Planning Democracy

Ramblers Scotland

RSPB Scotland

Scottish Campaign for National Parks

SCAPE Trust

Scottish Wild Land Group

Scottish Wildlife Trust

Woodland Trust Scotland

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1. Do you think the Bill, taken as a whole, will produce a planning system for Scotland that balances the need to secure the appropriate development with the views of communities and protection of the built and natural environment?

No. Unfortunately, the Bill does not reflect the concerns previously raised by Scottish Environment LINK in the planning review process. LINK's overarching concern is that the priority of the Bill and wider planning reform is to streamline planning by making for a faster development consenting process by reducing consultation opportunities and further de-regulating planning rather than producing a system that genuinely prioritises engagement and creating better places for all of Scotland. We attempt to highlight some measures here which may help rebalance this.

An overarching purpose of planning – to achieve Sustainable Development

The lack of consideration given to sustainable development is a major concern. The need to achieve sustainable development is more urgent than ever. This has been recognised internationally through the development of the UN Sustainable Development Goals (SDGs). The Scottish Government has been an enthusiastic supporter of the SDGs, making it all the more disappointing that the opportunity hasn't been taken to further these ambitions through this Bill. The duties set out in current Planning legislation for development plans and the National Planning Framework to contribute to sustainable development were welcome when introduced but should now be extended and strengthened so that achieving sustainable development is an overarching purpose of the planning system, which also specifically applies to development management and to enforcement.

Climate Change

The Bill is also light on measures to deal with climate change given the critical role the planning system will need to play in both mitigating and adapting to climate change. The Climate Change (Scotland) Act 2009 puts a general duty on public bodies to act in a way that supports the delivery of emissions reductions targets – this should be translated into a more specific duty on planning authorities in developing plans and determining applications.

Protected areas

The Bill as presented will do little to prevent developments occurring in environmentally sensitive, protected areas or greenfield sites and possibly represents a greater threat to the environment through loss of Supplementary Planning Guidance, reduced consultation opportunities and the widening of the definition of areas that can be made into Simplified Development Zones, including designated sites, where scrutiny of development proposals could be significantly reduced. There is a high likelihood that this could result in additional frustration and conflict where proposals are controversial.

Biodiversity

Our obligations to stop the loss of biodiversity by 2020 are extremely challenging and it is important that the planning system plays its part in helping achieve them by preventing any additional net harm and creating additional habitat and other enhancement to replace that which has already been lost whenever possible.

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The mitigation hierarchy is an approach designed to achieve a net gain of biodiversity, firstly through avoidance of impacts, then if impacts can exceptionally be justified, through mitigation or minimisation of impacts and finally, as a last resort only in very limited circumstances, through habitat restoration or compensation.

Protected areas are by their nature particularly sensitive and are already given additional protection. They will rarely, if ever, be suitable for development but the hierarchy would provide a simple framework to aid development in other areas. A mitigation hierarchy is articulated in England's 2012 'National Planning Policy Framework' (NPPF) 'when determining planning applications, local planning authorities should aim to conserve and enhance biodiversity by applying the following principles: if significant harm resulting from a development cannot be avoided (through locating on an alternative site with less harmful impacts), adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused.' However, in Scotland a mitigation hierarchy has yet to be embedded in planning legislation or policy, and we consider the Planning (Scotland) Bill should take the opportunity to do this in Section 1. This approach could be effectively progressed in association with a National Ecological Network for Scotland.

Parliamentary scrutiny and approval of National Planning Framework

The National Planning Framework 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 national planning framework 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 just impose their vision, there should be a requirement for parliamentary scrutiny *and* approval of the NPF.

Equal Rights of Appeal

The planning system should be about creating better places for everyone in Scotland. LINK strongly believes that there should also be an overarching objective of achieving sustainable development. However, it is impossible to see how this could be achieved in a fair and equal manner whilst applicants for planning permission are able to challenge planning decisions but no one else with an interest in Scotland's places has an equivalent right to challenge decisions. This Bill is an opportunity to finally sort this long-standing injustice by ensuring communities of place and interest have a fair and equal right to appeal planning decisions. We believe this will create a level playing field to ensure meaningful public engagement; strengthen the plan-led system; enhance public trust; and improve plans and decisions by ensuring that complex and often highly contentious decisions to grant permission are subject to the same level of scrutiny as decisions to refuse permission.

There is a huge lack of public confidence in planning and planning decisions. The Government's own Barriers to Engagement¹ research demonstrated this. The issue of appeals is raised consistently by members and supporters of LINK member organisations and was raised throughout the planning review. A recent National Trust for Scotland survey of the general Scottish public concluded that "90% want local communities to have the same

¹ <https://beta.gov.scot/publications/barriers-to-community-engagement-in-planning-research/>

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rights of appeal in the planning system as enjoyed by developers, indicating dissatisfaction with the balance of power in the system at present.”²

Public confidence in the planning system will always be limited whilst this intrinsic inequality remains.

2. To what extent will the proposals in the Bill result in higher levels of new house building? If not, what changes could be made to help further increase house building?

The proposals may lead to an increase in the allocation of land for new house-building in development plans and the granting of planning consent for housing sites. However, this will not necessarily lead to an increase in house building itself since the delivery of housing is largely market rather than needs or planning process driven. Similarly it is not clear that the proposals will result in delivery of the type and quality of housing required to efficiently and effectively meet actual housing need.

The extent to which perceived planning constraints have really been a significant factor in restricting housing development is questionable. Many others have commented in detail on the relatively limited role that planning actually plays in restricting housing delivery. A recent example was published by the Scottish Land Commission³.

Relying largely on speculative private sector led developments to deliver and fund affordable housing and infrastructure, including from s75 contributions, means that new housing comes forward on sites that are currently considered ‘deliverable’ or most profitable rather than in the most sustainable places. This is an inefficient means of addressing the real needs of society and can result in serious conflict when sites chosen are environmentally or socially inappropriate. New-build housing quality in Scotland also does not compare to the space standards, environmental performance or wider place quality achieved elsewhere in Europe. However, the planning system is only a small part of the reason for this. Planning can, and should, take a more proactive role in identifying the most suitable, sustainable locations for the housing that is required to make Scotland a sustainable place. However, there is a need for a wider investigation into how these sites can be delivered.

3. Do the proposals in the Bill create a sufficiently robust structure to maintain planning at a regional level following the ending of Strategic Development Plans and, if not, what needs to be done to improve regional planning?

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.

There is also a need to ensure there is join up between regional planning, regional land use strategies and regional marine plans. The Bill should require that the NPF set out regional planning priorities which should be linked to the Land Use Strategy and its regional implementation and consider priorities across all land uses. A stronger duty for regional partnerships to collaborate on certain issues is also required in the Bill. This should include the duty to plan for the creation, protection and enhancement of green infrastructure and associated development. Regional partnerships should be made up of planning authorities, alongside a range of statutory and non-statutory bodies. Green infrastructure should be added to the list of matters at 3AA 2(d). This would

² <https://www.nts.org.uk/What-we-do/News/Planning-without-the-people>

³ <https://landcommission.gov.scot/pub/land-lines-the-housing-land-market-in-scotland-a-discussion-paper/>

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help public bodies meet their biodiversity duty under the Nature Conservation (Scotland) Act and help to deliver the work set out in Scotland's Biodiversity: a route map to 2020. Cumulative pressures and potential compensation sites for impacts on designated sites should also be considered at a regional level.

4. Will the changes in the Bill to the content and process for producing Local Development Plans achieve the aims of creating plans that are focussed on delivery, complement other local authority priorities and meet the needs of developers and communities? If not, what other changes would you like to see introduced?

Plans for a 10 year review cycle are of potential concern. Communities and others will have less opportunity to input. This will be exacerbated by the proposed loss of the main issues report. There could also be a reduction in community engagement and environmental assessment as a result of the changes to the LDP process proposed in section 3 of the Bill. We are concerned that the removal of the main issues report (MIR) stage in particular could reduce effective engagement and early debate in the plan making and SEA process.

The MIR stage was one of the key changes introduced to support 'frontloaded' public participation in local development plans in the 2006 Act. The intention was to enable real 'engagement' in the early identification of key issues rather than just consultation on a draft plan. By dropping the MIR the Bill proposes a significant move away from this approach and a reduction of opportunities for front-loaded public participation.

We accept that the MIR has often struggled to function effectively but this is more a question of resources and practice than principle. It would be preferable to retain the MIR and its associated consultation opportunities in addition to a draft plan, particularly if the proposed move to a 10 year plan cycle does progress. The move towards a ten-year plan review cycle, with potential for ad-hoc reviews as required will also make the plan production process less transparent and less predictable for communities who already struggle to understand when and how they can influence the LDP. The statutory 5 year plan period introduced as part of the 2006 Act was in response to a perception that plans older than 5 years were out of date. It is therefore not entirely clear how a move to a 10 year cycle will not be a step backwards in this regard.

If the move to a 10 year cycle is confirmed, but with opportunities for revision, there will also be a need for wide ranging publicity around any proposed changes. The shift to a 10 year cycle would also mean a critical role for Strategic Environmental Assessment (SEA) and Habitats Regulations Assessment (HRA). SEA and HRA will both need to be an essential integrated part of the preparation of plans, which will be in place for a significantly longer period during which environmental effects could become more significant and environmental baselines could change substantially. It is not clear what consideration has been given to this in preparation of the Bill. We consider delivery could be compromised if the evidence base is not correct and currently there is a lack of stakeholder consultation and engagement proposed at this early stage in the LDP process. There may also be issues if environmental assessment is not robust at an early stage in the LDP process and if HRA is deferred to project level instead of being undertaken at plan level. We would like to see a requirement to better integrate SEA outputs into the LDP, with clearer justification for the inclusion of environmentally damaging projects being required, and for HRA to be undertaken at a strategic, as well as project level for those projects/allocations where a reasonable amount of information is available in order to do this.

5. Would Simplified Development Zones balance the need to enable development with enough safeguards for community and environmental interests?

No. The proposed powers are extremely broad and are explicitly underpinned by a perception that lighter regulation, bypassing community and environmental interests, will lead to more and faster development. The general failure of existing SPZs to deliver anticipated development also suggests they are unlikely to be successful.

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If the proposals progress, it is, however, imperative that SDZs are produced through a robust and transparent process, ensuring full public engagement in their designation and planning, and compliance with the highest environmental standards.

It is particularly surprising, and potentially concerning that the report 'Research on the Use of Simplified Planning Zones and Equivalent Mechanisms Used Outwith Scotland' (Ryden, August 2017) commissioned by the Scottish Government to inform this element of the Bill does not appear to discuss the merits of removing the restriction on 'environmentally protected areas' and in fact specifically states that these areas should continue to be excluded from SPZs. Given the strict requirements for the assessment of likely environmental effects at each stage of the development consenting process will, quite rightly, continue regardless of these proposals, it is difficult to see how Simplified Development Zones will be appropriate for designated sites or what the Scottish Government seeks to achieve from including protected areas within the scope of SDZs. We would like to either see all protected areas removed from the scope of SDZs or else significant new safeguards introduced to ensure that SDZs cannot be used to enable environmental harm.

*6. Does the Bill provide more effective avenues for community involvement in the development of plans and decisions that affect their area? **Will the proposed Local Place Plans** enable communities to influence local development plans and does the Bill ensure adequate financial and technical support for community bodies wishing to develop local place plans? If not, what more needs to be done?*

As discussed above in relation to the loss of SDPs and changes to the LDP process, we feel the Bill undermines the claims of the Scottish Government to encourage the 'frontloading' of engagement at the earliest possible stage in the process by weakening existing opportunities.

Local Place Plans are a potentially worthwhile means of enabling more proactive engagement in the formulation of planning policy. However, the decision to exclude these from the statutory development plan reduces their likely influence over decision-making. Given the time and effort that will be required of even the most well-prepared communities to prepare LPPs, the current proposals would seem unlikely to encourage significant additional community engagement.

There is also a worrying lack of detail or intention to provide support for communities and local authorities to ensure that LPPs are effective. It is unclear, for example, how communities would be provided with access to necessary specialist expertise in environmental impact assessment.

7. Will the proposed changes to enforcement (such as increased level of fines and recovery of expenses) promote better compliance with planning control and, if not, how these could provisions be improved?

Compliance is an issue of concern to many of our member organisations and the proposed changes are broadly welcome. However, improved enforcement does not necessarily require legislative change but it does require improved resourcing and skills. In our experience, monitoring is also a critical but frequently under resourced area. Perhaps the highest profile example in recent years was the failure to adequately monitor open cast coal mines and the bonds and other financial mechanisms intended to deliver mine restoration, with disastrous consequences for many communities and local environments.

8. Is the proposed Infrastructure Levy the best way to secure investment in new infrastructure from developers, how might it impact on levels of development? Are there any other ways (to the proposed Levy) that could raise funds for infrastructure provision in order to provide services and amenities to support land development? Are there lessons that can be learned from the Infrastructure Levy as it operates in England?

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We are aware that in England and Wales, contributions required through the Community Infrastructure Levy (CIL) mechanism are not ring-fenced for particular mitigation measures and instead the destination of those funds is at the discretion of the local authority – so could be spent on entirely different infrastructure such as roads. The CIL Regulations have severely restricted the ability of planning authorities to require ‘pooled contributions’ (i.e. contributions from more than one development towards strategic mitigation) other than through the CIL. In addition, contributions towards indirect but essential ecological mitigation measures that are not ‘infrastructure’ (such as education or provision of advice) cannot be obtained through the CIL. The CIL system has therefore made securing ecological mitigation more complicated and less certain in England and Wales (see for example www.ashfords.co.uk/article/pooling-contributions-regulation-123-of-the-community-infrastructure-levy-regulations-2010).

It is important that the provisions for a new infrastructure levy in Scotland do not make ecological mitigation and compensation measures less certain or more difficult to secure. Equally, it is important that strategic ecological mitigation does not ‘fall through the gap’ between the new infrastructure levy and the existing/amended Section 75 provisions.

We consider it essential to extend the definition of infrastructure in the Bill to encompass green infrastructure.

9. Do you support the requirement for local government councillors to be trained in planning matters prior to becoming involved in planning decision making? If not, why not?

Training is already provided for councillors and we support funding for additional training being made available. This must include SEA, EIA, HRA and wider environmental issues. However, it is vital that the content of any training that is provided is open to scrutiny and is not simply dictated from central government or delivered from a preferred provider with a limited viewpoint.

10. Will the proposals in the Bill aimed at monitoring and improving the performance of planning authorities help drive performance improvements?

Existing performance frameworks primarily measure processing speed. Efficiency indicators rather than quality of outcome indicators predominate. This is frustrating and of limited value in measuring progress towards a more sustainable Scotland. There is currently no meaningful measurement of quality of outcomes or public engagement, or how effective this is. A much wider debate is required about what constitutes good performance and how it should be measured.

11. Will the changes in the Bill to enable flexibility in the fees charged by councils and the Scottish Government (such as charging for or waiving fees for some services) provide enough funding for local authority planning departments to deliver the high –performing planning system the Scottish Government wants? If not, what needs to change?

It is vital that planning departments and statutory advisors are adequately funded and resourced to ensure planning delivers sustainable development. We therefore support the potential to increase fee income if it results in better quality process and outcomes. It is vital that this includes improved resourcing for expert advisors within planning authorities and the key agencies.

12. Are there any other comments you would like to make about the Bill?

This response covers the headline concerns LINK Planning Group has with the Bill and we will make further detailed comment in due course.

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