

Briefing on Planning Etc. (Scotland) Bill

Summary

The Bill contains many useful proposals, but will remain a missed opportunity unless a number of omissions are addressed, in particular:

- **The absence of any opportunity for individuals or communities to challenge the National Planning Framework;**
- **The failure to meaningfully address issues surrounding public participation in the planning system, most notably the inability of third parties to appeal against the approval of particular types of development; and**
- **The absence of a clear purpose for the planning system based on sustainable development and applicable to more than simply development plans.**

Introduction

The LINK Planning Task Force recognises that the current planning system needs reform and welcomes much of the proposed legislation; in particular those measures that reinforce the plan led system through more up to date plans and facilitate more robust enforcement. However, these measures will be undermined by failures to take issues of community participation seriously.

1. National Planning Framework

Part 1 of the Bill creates a statutory National Planning Framework (NPF) to identify developments of national strategic importance, to be known as 'National Developments'. In principle, a strengthened NPF is a positive development, offering new opportunities at a national level to address important strategic issues such as waste and renewable energy. The NPF will be subject to some form of unspecified consultation, Strategic Environmental Assessment (SEA) and 40-days of unspecified Parliamentary scrutiny. These provisions are welcome but are unlikely to provide the NPF with the robust, transparent and accountable approval mechanism it requires.

Inadequate scrutiny and public involvement

For such an important strategic document the level of public involvement is insufficient because:

1. Unlike existing development plans and similar frameworks covering other parts of the UK there will be no scope for the public to object to proposals, which may affect them directly or see issues of concern considered via public inquiry.
2. There is in fact no statutory duty for the Scottish Executive to consult the public on the contents of the NPF despite the fact this is required for other development plans.
3. Parliamentary scrutiny is clearly important for a document of such strategic importance. However, it will be difficult for Parliament to effectively scrutinise the NPF in just 40 days,

less time that local authorities currently take to determine an application for a house extension. It is notable that Scottish Ministers have the benefit of a Reporter's recommendations when scrutinising other development plans, whilst the Parliament is not being offered similar expert advice to aid its deliberations.

Proper and effective scrutiny of the NPF

Genuine public participation, effective scrutiny and proper accountability can be secured by:

1. Providing an opportunity for the NPF to be considered at a 'Public Inquiry' or 'Examination in Public';
2. Ensuring the Examination is conducted by an independent professional who can hear and consider evidence and make recommendations, possibly appointed by the Parliament;
3. Emulating the successful approach adopted by most other spatial strategies in the UK, such as the City of London, Northern Ireland; and
4. Placing a statutory duty on Ministers to consult the public on the content of the NPF.

2. Public participation in planning

The Bill seeks to address the public's lack of participation through a package of measures (Part 3) but delivers very little in terms of new rights. The focus is on 'front loading' and enhanced consultation through:

1. Scrutiny of local authority consultation on development plans by reporters;
2. Pre-application consultation for certain types of development and the production of consultation reports by developers (Section 10);
3. Pre-determination hearings prior to planning decisions (Section 13);
4. The publication of the reasons for planning decisions (Section 15);
5. More effective neighbour notification (Section 9); and
6. Non-legislative measures, including a new Planning Advice Note to local authorities.

Most of these proposals are detailed in the Policy Memorandum which accompanies the Bill but do not appear on the face of the Bill itself. Details relating to the specific categories of development to which these procedures apply and those to be consulted will remain unspecified until the secondary legislation is produced.

Despite overwhelming backing from the majority of respondents (86%) to a public consultation undertaken by the Executive on appeal rights in the planning system, the Bill contains no provisions for even a **limited** Third Party Right of Appeal (TPRA). This goes against the recommendations of the Royal Commission on Environmental Pollution which stated that objectors should have scope to seek the review of decisions where:

- Approval is contrary to a development plan,
- Approval is contrary to officer recommendations,
- The application is accompanied by an Environmental Impact Assessment, or
- The Council has an interest in the development.

Limitations and inadequacies of the Bill

Essentially the Bill suggests a more formalised approach to what is already happening, offering little to address peoples' genuine frustrations with and, crucially, confidence in

planning decisions. While some of these proposals are welcome, alone they are not enough, some are of limited value and are, at worst, counter productive, because:

1. There is no guarantee that local authorities or developers will use the consultation requirement in a meaningful way to genuinely reflect on and react to the valid views of communities.
2. Pre-application consultation by good developers is already undertaken. Less scrupulous developers may exploit the duty to confuse or mislead local communities.
3. There is, as yet, no evidence or research that pre-determination hearings address community concerns in a meaningful way; many simply provide an opportunity for people to vocalise what they have already put in writing. In fact, experience to date has been overwhelmingly negative.
4. Hearings add further bureaucracy into the system creating new risks of consultation fatigue, additional costs and delay.
5. Public frustration and disillusionment may actually increase as people participate in a longer process with more consultative hoops with few formal means of redress should the decision be, for example, contrary to the agreed and up-to-date development plan.
6. Communities have no new rights to secure the review of suspect or dubious decisions apart from existing costly and often ill-suited legal remedies such as judicial review. Without even a limited TPRA the scope for bad planning decision to pass through the system unchecked remains unaddressed.
7. The Bill underestimates the real costs of genuine and effective public participation.

Ensuring the Bill actually delivers genuine and effective public participation:

Introduce a *Limited* Third Party Rights of Appeal, alongside other reforms, to ensure that:

1. Pre-application discussions and pre-determination hearings are aimed at actually resolving problems rather than merely being box-ticking exercises.
2. There is a real incentive to developers to enhance the quality of proposals, and an incentive to planning authorities to enhance the quality of both consultation and decisions.
3. The plan led system is reinforced by making sure plans are kept up-to-date, to avoid departures, which could trigger third party appeal. Developers would have to engage more with development plan preparation, or risk future challenge.

3. Sustainable Development Purpose

We welcome the explicit requirement in the Bill which requires development plans to be drawn up “*with the objective of contributing to sustainable development.*” (Part 2 Section 3D). However, we believe this Bill offers a clear opportunity to address the challenges set out in the Executive’s Sustainable Development Strategy whereby we need to move from strategy to implementation.

Why these proposals must be improved

As it currently stands this statutory requirement to contribute to sustainable development applies only to development plans, this should be extended:

1. To include development management (development control). It is unclear how the overall purpose of development plans can contribute to sustainable development if

individual decisions taken in accordance with it cannot be shown to be sustainable in some meaningful way.

2. The bill refers to the publication of guidance which could be used to consider individual applications.
3. The Executive is not required to draw up the NPF with the objective of contributing to sustainable development, given that this will be a document which provides a framework for all other development plans this is of particular concern.

4. Other issues and National Scenic Areas

The bill both covers and excludes a wide range of issues not included in this briefing note (for example there is currently no provision for a duty of care for the historic environment). We would be happy to provide advice on many of these, please contact the individuals below for more information.

In particular we understand the Scottish Executive intends to introduce new legislation for National Scenic Areas (NSAs) at Stage 2 of the Planning Bill.

Scotland's heritage of natural and cultural landscapes is renowned throughout the world. They contain the record of people who went before us, and form a key part of our national, regional and local identity. They are a principal reason why people visit Scotland, so they form the essential basis of our tourism industry, and provide attractive settings which encourage inward investment. They are therefore, of fundamental importance to our environment, society and economy.

Forty examples of our most outstanding landscapes are designated as NSAs to ensure our best scenery receives special attention when new development is proposed; NSAs are primarily regulated through the planning system. However, NSAs have been relatively ineffective in safeguarding our finest landscapes.

We would therefore like to see:

- A new statutory mechanism for designating, amending or de-designating NSAs;
- Responsibilities on all public bodies and others to safeguard NSAs; and
- A requirement for local authorities and SNH to produce, implement and review management strategies for all NSAs.

For more information contact:
**Anne McCall, Convenor LINK Planning Task Force, Tel 0131 311 6500/
anne.mccall@rspb.org.uk or**
**Jane Herbstritt, LINK Parliamentary Officer, 0131 225 4345
jane@scotlink.org**