
**LOCAL GOVERNMENT AND COMMUNITIES COMMITTEE:
CALL FOR EVIDENCE ON THE PLANNING (SCOTLAND) BILL
RESPONSE BY HOMES FOR SCOTLAND**

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?**
 - 1.1 Homes for Scotland supports the Scottish Government's aim to achieve the right development in the right location. The Bill as drafted can help ensure the inherent balances the planning system must find are the right ones, particularly in its focus on collaboration rather than finding new opportunities for conflict. It could however be amended in places to better embed this positive change. 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.
 - 1.2 The intent behind 10-year Development Plans is also understood; to avoid the constant treadmill of plan preparation and allow a greater focus on delivery. However, in an ever-changing world, that timeframe could be too long and plans should not be allowed to linger without responding to changing local circumstances. There is therefore a need for Development Plan review triggers to be clearly defined to allow such changes to be responded to timeously.
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?**
 - 2.1 The current Planning Review set out to increase the supply of homes in Scotland. Standing in isolation this Bill can cannot deliver on that objective. Success will be heavily reliant on the secondary legislation, guidance and updated national policy that will follow. The Bill has purposely and rightly avoided reforms which could have further restricted or hampered the supply of new homes.
 - 2.2 To ensure the Bill does what is intended, we believe several clarificatory and strengthening amendments are required. We are of course concerned that the Bill should have maximum positive influence on the delivery of enough new homes to meet all of Scotland's housing needs, but we believe these amendments would have a broader benefit in terms of the coherence and effectiveness of the planning system. These amendments would include:
 - Making it an obligation within the proposed new Section 3AA(2) to the 1997 Act¹ that information on housing needs and education capacity are included as matters to be taken into consideration in the formulation of the National Planning Framework. Section 15(5) of 1997 Act would need to be similarly amended in relation to the formulation of Local Development Plans. This must be supported by a critical policy update where the Scottish Government bring forward an unambiguous methodology (to be developed in collaboration with planning authorities and Homes for Scotland) for setting housing supply targets and monitoring how these can and will be met.
 - Making stakeholder engagement a statutory requirement in the production of the new Local Development Plan Evidence Reports to ensure proper scrutiny is achieved. Collaboration on plan making is a corner-stone of the changes being sought and support for engagement at that stage in plan preparation is essential if this new 'Gate Check' in development plan making is to be the game-changer it is intended to be. As a minimum, the Bill must mirror the depth of engagement sought as part of the production of the proposed Local Development Plan (as referred to at present within Section 18 of the 1997 Act) to ensure that plan preparation starts with as full an understanding of the context for delivering new development as possible and not then left to chance. Ideally the Evidence Report would be a recognised and agreed product of genuine collaboration with all key stakeholders, including those who will be relied upon to deliver the plan

¹ The Town and Country Planning (Scotland) Act 1997 (as amended)

and, like the proposed Local Development Plan and Delivery programme, ought to be agreed by Full Council.

- A commitment to bring forward Regulations that define what circumstances would trigger an amendment or full review of the Local Development Plan (e.g. failure to maintain an effective land supply / meet Housing Supply Targets) through amendments to proposed Section 20AA(6) of the Bill. In the interests of clarity and confidence the Bill itself should signpost the possible use of secondary legislation to ensure Local Development Plans are kept fresh and relevant where circumstances require it.

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?

3.1 The removal of Strategic Development Plans is supported by Homes for Scotland. Strategic Development Plans have not been effective in ensuring the delivery of enough new homes and it removes a resource-intensive aspect of the system. Regional spatial strategies and Housing Supply Targets / Housing Land Requirements (which were contained in Strategic Development Plans where they existed) do however play a critical role in the planning system and should be key features of the National Policy Framework once that assumes its new Development Plan status. Local Development Plans will need to do a better job of striving to deliver on these strategies and targets and be held to account where they do not.

3.2 It is fully understood that the ethos behind the Planning Bill is to not prescribe what regional activity should replace Strategic Development Plan production. However, the omission of any detail on this is a missed opportunity to set a default expectation within the Bill that regional working through Regional Partnerships will be an important component of the system and that it must be resourced. The Bill should be amended as follows to establish that default position:

- Having the Bill refer to input from Regional Partnerships throughout Scotland to Development Plan preparation within the proposed new Section 3AA(2) of the Planning Act and through further revisions to the existing Section 15(5) of the Planning Act.
- Ensuring the National Planning Framework sets regional Housing Supply Targets (which to be effective and supported should be the product of regional collaboration between local authorities and their stakeholders).
- Indicating that the Ministerial powers to direct local authorities to work together (as proposed within the new Section 3AA(1) to the Planning Act) would be enacted only where Regional Partnerships are not established voluntarily.
- Requiring the involvement of relevant stakeholders (such as infrastructure providers, community representatives and delivery-focussed national bodies including Homes for Scotland) in Regional Partnerships.

3.3 Whilst guidance, advice and expectations can be set out in other documentation, the Bill itself should make Regional Partnerships a requirement and not an assumption. Without Regional Partnerships having a statutory locus the priority given to them by planning authorities is likely to be diminished as budgets become more focused on statutory functions.

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?

4.1 The change in status of the National Planning Framework necessitates a change in how this informs Local Development Plans. There is a need to reflect the respective function of each component of the Development Plan and must be a statutory requirement for the Local Development Plan to be consistent with the National Planning Framework (as per the current requirement for it to be consistent with the Strategic Development Plan – see Section 16(6) of the 1997 Act). Without this, the Bill will effect a loosening of the expectation that Local Development Plans must deliver regional and national

objectives (including targets on housing delivery). To succeed in increasing delivery that expectation of compliance needs to be strengthened, not weakened.

- 4.2 This is further exacerbated by the apparent acceptance within the Bill that Local Development Plans can be incompatible with the National Planning Framework. This arises from the wording of the proposed revisions to Section 24 of the 1997 Act. Any incompatibility would fundamentally undermine the intended improvements in the effectiveness of, and trust in, the Development Plan system. With both parts of the Development Plan being closely linked (one consistent with and supportive of the other) significant investment decisions can be agreed in principle at the National Planning Framework stage and details then developed through the Local Development Plan thereafter. To allow one part of the Development Plan to deviate from the other runs counter to the principle of delivering greater certainty through plan making and is likely to simply generate conflict within the planning system.
- 4.3 The Bill's requirement for Local Place Plans and Local Development Plans "to have regard to" one another is a reasonable default position so long as the Local Place Plan is not part of the Development Plan. We agree that if a Local Place Plan is to be incorporated into a Local Development Plan at a later date then the relationship test must be that the Local Place Plan is consistent with the rest of the Development Plan.
- 4.4 The requirement for the Local Development Plan and the Delivery Programme to be endorsed by a Full Council (proposed changes to Sections 18 & 21 of the Planning Act) can only help elevate plan making and plan delivery within the planning authority priorities, as well as achieve better alignment between the Development Plan and capital budgets, and a such is a positive move. For these reasons, we would wish this requirement to be extended to the Evidence Report stages as well.

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

- 5.1 Homes for Scotland recognises that the opportunity offered to designate a Simplified Development Zone is positive in allowing development to potentially be delivered in a more expedient manner. The proposed extension of the range of permissions that can be delivered through a Simplified Development Zone is therefore a further positive.
- 5.2 Nevertheless, the very fact that such Zones are perceived to be necessary suggests that the 'everyday' planning system may not currently be able to deliver enough new homes or appropriate new commercial development. The reality is that delays can be often related to mis-functions within the planning system, but planning is not the only constraint on delivery. Whilst a Simplified Development Zone can tackle some obstacles it may struggle to overcome a misalignment between allocated land and market demand, make utility capacity available or overcome any infrastructure constraints that make development unviable. Care will need to be taken that these zones are not relied on too heavily in instances where other approaches, or ultimately other land, could bear more fruit.
- 5.3 Fundamentally, Simplified Development Zones will not be an alternative to a properly functioning planning system and will only be a supplement to the functions of a pro-active planning authority.

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?

- 6.1 Improving community engagement in Development Plan preparation and introducing Local Place Plans is the right approach to providing communities with a more effective avenue to engage. Local Place Plans can provide communities with a positive opportunity to contribute to the policy landscape.
- 6.2 Homes for Scotland is of the view that delivering better opportunities to engage in the planning system, and to positively influence outcomes, is an important objective to pursue and we support the Scottish Government in such aspirations. There is an equal necessity to ensure engagement with all relevant stakeholders but for Development Plans to be fully fit for purpose, achieving an outcome where communities can recognise their involvement and engagement in Plan making is essential.
- 6.3 The inevitable challenge to that objective is ensuring that 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. If Local Development Plans make more adequate and realistic provision for development in appropriate locations, then communities (and utility and infrastructure providers) can be more confident it can, and will, be delivered. There ought to be less need for developers to bring forward alternative development solutions to fill gaps in new home provision that are so often misinterpreted as departures from the Plan.

- 6.4 The new Local Place Plans present a positive opportunity for communities to show how they wish to see an area grow and develop and to consider what is needed to support that. It's a new chance for them to demonstrate how they can positively support the future development of their areas. However, to "do" Local Place Planning properly will need time, training and funding to ensure that community participation is effective, inclusive and informed. This will certainly be essential if a Local Place Plan is to be incorporated into a Local Development Plan in due course. It is right though to give local communities this new and recognised means of creating a positive role for themselves in planning.
- 6.5 Whilst much of the way better stakeholder engagement as a whole will be achieved will be progressed through secondary legislation and guidance, as a minimum, the Planning Bill must be amended to be explicit that collaborative stakeholder engagement is an essential element of the Evidence Report production and appraisal.

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?

- 7.1 Homes for Scotland has no comments on this aspect of the Bill.

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?

- 8.1 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 recognise the 'hook' the draft Bill provisions provide for bringing a Levy in if a workable model can be agreed. However, significant further work is required, and 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. This would remove a problematic and distracting area of uncertainty and concern without significantly upsetting or delaying planning reform, given wider work and engagement on a levy approach and infrastructure delivery remains at a very nebulous stage. Homes for Scotland is fully committed to working with the Scottish Government and others to resolve issues relating to developer contributions and infrastructure and it always be fully recognised that developers are committed to paying what is due as part of the delivery of the new development where this is justified and necessary to support the development in question.
- 8.2 The process put in place to deliver any Levy will rely on transparency and fairness in the system and viability considerations will be paramount not only to its success but in ensuring a levy itself does not present significant barriers to development. Ensuring monies collected are spent on infrastructure required in consequence of development, and that other measures are in place to fully fund and deliver that infrastructure are also essential. A Levy must not be a tax on development, it must continue to be related to the infrastructure investment need created by the development proposed, linked to a properly funded forward investment programme by infrastructure providers, paid in line with a development being delivered and used locally to address associated infrastructure investment needs. Proposed Sections 9 and 14 of Schedule 1 of the Planning Bill therefore, at the very least, must be deleted.
- 8.3 Experience from the Communities Infrastructure Levy in England & Wales has identified issues such as the need for the Levy to support infrastructure investment and not be a replacement for capital investment in infrastructure from infrastructure providers. It has also been noted that the Levy must only be used to support the delivery of the infrastructure required because of development growth, not to address existing deficiencies in infrastructure provision. The Levy must also be a replacement to

planning obligations rather than additional to these. We understand difficulties have emerged in England & Wales in ensuring unpredictable additional development contribution requirements do not continue to emerge once a Community Infrastructure Levy is in place. If this happens the clarity and certainty benefit is clearly lost.

- 8.4 There remains the important challenge that any Infrastructure Levy does not undermine the competitiveness and attractiveness of Scotland as a location within which to invest in home-building.
- 8.5 Homes for Scotland notes the proposed expansion of remit for Planning Obligations under proposed changes to Section 75 of the Planning Act. Such changes may allow for greater flexibility in what Section 75 Agreements can be used to pay for. However, any expectations must be fully and clearly justified and appropriately evidenced through local planning policy and there must continue to be a clear and unambiguous link between a development and the contributions sought from it.
- 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?**
- 9.1 Homes for Scotland supports appropriate and proportionate training for all elected members who are dealing with planning matters and would gladly assist in the delivery of appropriate training for councillors. There is an extensive library of legal statutes, statutory instruments and planning policies that those working with the planning system must consider. Therefore, to ensure that all planning decisions are robust, those making the decision must understand how the planning system works, what it is intended to achieve (in terms of the sustainable economic growth of Scotland) and the role of various parties within the system including stakeholders such as Homes for Scotland.
- 10. Will the proposals in the Bill aimed at monitoring and improving the performance of planning authorities help drive performance improvements?**
- 10.1 Planning authorities currently complete a voluntary annual Planning Performance Framework response administered by Heads of Planning Scotland. The effect of the proposed new Part 12A to the Planning Act is to formalise that process and Homes for Scotland supports the principle of this approach. The added powers to assess performance and report on that assessment must have a primary function to allow for both good practice to be identified and promoted as well as issues of concern to be formally acknowledged and remediation measures progressed. Homes for Scotland believes performance monitoring and reporting should be an expedient and inclusive process and we would support delegated powers being used to ensure peers and national agencies are involved in this process as a matter of course
- 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?**
- 11.1 Performance relies on how much a local authority invests in its planning service. Planning fees provide an income stream which can contribute to the planning service's budget. Home builders are prepared to pay for a good quality planning service and the fees system enables them to make fair contribution. However, other beneficiaries need to contribute as well and sufficient public funding is necessary for the system to function properly.
- 11.2 Between 2014 and 2017 Scotland's planners dealt with between 230 to 300 major planning applications² each year compared to 28,700 to 30,300 "other" applications³. Hoping to secure full cost recovery through increased fees for major applications would be flawed and unfair. Over reliance on fees in general to resource the planning system is also at odds with the fact the planning system does not solely benefit applicants for planning permission. It exists in the wider public interest and is should not rely unduly on those applicants (who are essential to plan delivery) to resource all of it.
- 11.3 A wholesale stock-take is needed of all planning fees. This should be undertaken before further fee rises or new fees are introduced. In the meantime, planning fees should continue to be consistent

² This includes sites over 2 ha in size or developments of 50 houses or more.

³ This also includes Applications affecting Tree Preservation Orders, Listed Building Consent Applications and Conservation Area Consent Applications

across Scotland rather than a patchwork of different structures. Planning fees are not a form of tax and it is time for tangible efforts to be made to ensure local authorities are capable of responding in kind to fee increases by providing better services that support delivery.

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

- 12.1 Homes for Scotland is generally comfortable with the package of measures presented in this Bill, recognising it is part of a much wider programme of reform. The amendments we have suggested are intended to help ensure the Bill achieves its intended role without leaving too many important details to chance.
- 12.2 Homes for Scotland fully supports the current statutory provisions on appeal rights and we welcome the fact the Planning Bill preserves the status quo. We have consistently supported the view that a third party right of appeal would not be a positive addition to the planning system. It would present a new opportunity for conflict, disunity and delay. The Bill takes the right approach to improving community engagement by focussing on development planning (and we have suggested helpful amendments to better enshrine the spirit and practice of collaboration).
- 12.3 We must avoid reducing Scotland's competitive advantage and attractiveness as a place to invest in home building, and the economic impact of a third party rights of appeal (including the costs to the planning authority) must be fully explored if this comes forward as a proposed amendment or future proposal.
- 12.4 Retaining an applicant's existing right of appeal is also essential. Public interest is rightly considered through the local democratic process including the planning decisions made by local planning authorities. An applicant's rights are only protected through the appeal process. It ensures opportunities for sustainable development and plan delivery are not missed and allows critical shortfalls in the delivery of new homes to be reduced. It is as important a part of the planning system as ever.
- 12.5 Further reasoning for the right of appeal was succinctly set out at paragraph 2.4 of the Scottish Government's consultation paper of 2004 on the Rights of Appeal in Planning⁴ as: "*This existing right of appeal should be seen in the context of the introduction of the current system of planning legislation in 1947 which, in effect, had the potential to restrict a property owner's "right" to develop their land. The appeal provision formed part of the planning process to provide appropriate scrutiny of the denial of that right to develop.*" That reason remains valid.
- 12.6 It is acknowledged that there appears to be some loss of public trust in the planning system. Achieving more effective collaboration with communities in Development Plan preparation is the right and most positive method to address this rather than waiting to engage at the decision stage.
- 12.7 The planning system has a function of enabling the delivery of the development that each part of Scotland needs. It is responsible for ensuring that enough new homes are capable of being built and the right forms of other development are brought forward. A properly functioning planning system that embraces stakeholders at the stage where they can be most effective is an essential pre-requisite to ensure that the new development Scotland needs will come forward in the timescales, volume and locations needed to deliver tangible sustainable economic growth. Our views and proposed amendments are intended to help achieve this broad outcome.

⁴ This also includes Applications affecting Tree Preservation Orders, Listed Building Consent Applications and Conservation Area