



THE PLANNING (SCOTLAND) BILL ON REFORMS TO THE PLANNING SYSTEM

Report by Head of Communities and Economy

1 PURPOSE OF REPORT

- 1.1 The purpose of this report is to update the Committee with regard the reforms to the Planning System proposed through the Planning (Scotland) Bill.

2 BACKGROUND

- 2.1 In September 2015, an independent panel was appointed by Scottish Ministers to review the Scottish Planning System with the objective of bringing together ideas to achieve a quicker, more accessible and efficient planning system. The report of the panel “Empowering Planning to Deliver Great Places” was published 31 May 2016.
- 2.2 Scottish Ministers published their response to the report on 11 July 2016 which included a commitment to consult on a White Paper outlining proposed reforms to the Planning System with the ambition of enabling a Planning Bill to be brought forward late in 2017. At its meeting of 28 February 2017, the Committee approved a response to the White Paper on behalf of the Council.
- 2.3 The Planning (Scotland) Bill was introduced to the Scottish Parliament on 4 December 2017. The Planning Bill is currently at ‘stage 1 scrutiny’, which comprises the Parliament’s Local Government and Communities Committee considering evidence. It is anticipated that the Planning Bill (with possible amendments) will be reported back to the Scottish Parliament in June 2018.

3 SUMMARY OF PROPOSED CHANGES

- 3.1 A summary of the main changes proposed by the Planning Bill are attached as Appendix A. The main headline changes are as follows:
1. The introduction of a statutory link between development and community planning with communities having the opportunity to draft their own ‘local place plan’ which will form part of the development plan.

2. The removal of strategic plans and the introduction of regional partnerships to address cross boundary issues – planning and transportation.
 3. Regional priorities and housing numbers to be set at national level through the National Planning Framework (NPF).
 4. Introduction of an Infrastructure Levy to supplement the existing Planning Obligations developer contributions process.
 5. Local Development Plan to be adopted every 10 years rather than 5, but with scope to amend sections of the plan as circumstances change.
 6. The replacement of the Main Issues Report with a consultation draft plan.
 7. The introduction of ‘Simplified Development Zones’ aimed at improving delivery.
 8. Move towards a full cost recovery planning system by introducing changes in planning fees, with more scope for local variation.
 9. Increased financial penalties for breaches in planning control.
 10. More decisions to be made locally – with an increased remit for the Local Review Body.
 11. New requirements for Councils to produce annual performance reports and the appointment of national planning performance co-ordinator to monitor performance.
 12. Requirement for Elected Members to undergo training before being able to vote on planning decisions.
 13. Removal of zero carbon technology development plan policy requirement from the Climate Change Act (2009).
- 3.2 Note that not all of the measures outlined in the earlier White Paper are addressed by the Planning Bill, as a number of matters do not require an Act of Parliament to implement.
- 3.3 The Planning Bill sets out the principal proposed changes, but the details of implementation will be set out in secondary legislation.

4 RECOMMENDATION

- 4.1 It is recommended that the Committee note the contents of the report.

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Background Papers: The Council’s White Paper consultation response

THE PLANNING (SCOTLAND) BILL MAIN ISSUES:

Overview of the Planning System

- Purpose of planning is to guide how land should be used to meet the needs of society;
- Plan-led system which means that the statutory development plan sets out policies and proposals for how its area will develop in the future;
- Planning authorities are required to decide on planning applications in accordance with the development plan unless other material considerations indicate otherwise;
- The Bill seeks to give greater focus on delivery of development, to give improved confidence that planned development will happen;
- Despite previous reforms, development planning is too complex and an ongoing exercise in procedure, with significant effort put into continuous plan-writing and detailed policy development. This had come at the expense of implementation and achieving outcomes;
- Frustrations with planning arise from a system that seems distant from everyday lives, leading to dispute between developers, planning authorities and communities over specific proposals; and
- Different views are inherent in planning and therefore it would be beneficial to seek to address differences early in the process ('frontloading') rather than attempting resolution at the end when options are limited.

Development Plans

Current Strategic Planning Position

National Planning Framework (NPF):

The NPF sets out a long-term strategy for Scotland which identifies 'national developments' and other strategically important infrastructure requirements. The NPF is not currently part of the development plan.

Scottish Planning Policy (SPP):

The SPP sets out the Scottish Government planning policy position with regard land use planning matters. There is an expectation that Local Development Plans (LDPs) are consistent with national policy.

Strategic Development Plans (SDPs):

Regional planning is currently delivered through SDPs, which are prepared by SDP Authorities with local authorities as contributors through a regional partnership.

Local Development Plans (LDPs):

Set out a local planning authorities planning policy position against which planning applications and other development proposals are assessed.

The development plan in Midlothian comprises the Edinburgh and South East Scotland Strategic Development Plan (June 2013) and the adopted Midlothian Local Development Plan 2017 (MLDP).

Proposed Changes in the Status of Development Plans:

- The SPP is to be incorporated into the NPF.
- The Statutory development plan will consist of the NPF and Local Development Plan (LDP). Strategic Development Plans (SDP) will be abolished.
- The NPF will be enhanced to help streamline the process by removing the need for LDPs to restate national policy, making them shorter and more focused on places and delivery.
- The NPF will be reviewed every 10-years rather than every 5-years, with the aim to provide greater stability/certainty as to future direction for growth, enabling investment choices to be made with confidence.
- There will be more focus on regional planning set out in the NPF, with a duty on planning authorities to assist in preparing NPF by providing information when requested.
- Provision for Ministers to ask multiple planning authorities to co-operate in providing information for the NPF to enable cross-boundary issues to be addressed.

Changes to Local Development Plans (LDPs):

- Proposed changes are largely procedural with the aim of increasing their focus on place and delivery.
- Plans to be prepared every 10 years, rather than 5 years to reflect investment and development timescales. The aim is to redirect available resources towards implementation and avoid frequent and repetitive consultation – sections of the plan can be amended if circumstances change.
- The 'Main Issues Report (MIR)' stage of the plan process is to be replaced by a consultation draft plan known as the 'Proposed Plan'. The period for public consultation will be extended.

Public Examinations:

- The plan currently undergoes an examination undertaken by Reporters from the Department of Planning & Environmental Appeals (DPEA) of

the Scottish Government. This happens towards the end of the plan preparation process and considers issues that have been raised through representations - this is to be replaced by the Council producing an 'Evidence Report' at the start of the process setting out the evidence base for the production of the plan, which will undergo a frontloaded 'gatecheck', where a DEPA Reporter will examine the evidence. The result of this can be approval of the report or to make recommendations where further work is required. Examples of matters to be considered include establishing the need for housing land, scoping for Strategic Environmental Assessment (SEA) and information on the capacity of infrastructure of the area to accommodate development.

Supplementary Guidance (SG):

- Current legislation sets out procedures for consulting on and adopting SG. SG forms part of the development plan. These sections of the legislation are to be removed so that each local authority has a plan that can be found in a single document rather than across a number of technical documents.
- There will remain scope for local planning authorities to prepare non-statutory guidance.

Delivery Programmes:

- There is currently a requirement to prepare an Action Programme within 3 months of adopting an LDP, with reviews every 2 years. The purpose of this is to set out actions required to ensure delivery of the plan and identify those parties who are responsible for each action - these are to be replaced with Delivery Programmes that are to be agreed by full Council and signed off by the Chief Executive, in order to raise awareness and ensure corporate commitment.

Local place plans:

- Communities will be given the opportunity to prepare Local Place Plans (LPP) which will become part of the development plan. LPPs will be required to support rather than undermine the LDP.

Simplified Development Zones (SDZs):

- The Bill proposes to introduce the scope for planning authorities to grant development consent over an identified area and in doing so enable developments to come forward without or with a reduced need to apply for planning permission.
- Bill aims to make the procedures for designating SDZ straightforward and available for use in a wider range of circumstances, for example, for self-build housing development.
- Details of what will be acceptable will need to be carefully considered with front-loading of consideration of design, infrastructure and

environmental matters. This may take the form of a detailed master planning exercise.

- The SDZ process will include public consultation including pre-determination hearings by a Committee of the Council.
- Applications could be made to the planning authority to designate or amend SDZs, an appeal process will be available to applicants.

Development Management/Planning Applications:

Pre-application Consultation (PAC):

- Applicant's for major developments are still required to undertake pre-application consultation (PAC) with the local community - changes proposed in the Bill allow for minor changes to be made to the proposal without the need for a new PAC.

Scheme of Delegation and Local Review Body (LRB):

- The Scheme of Delegation sets out which applications are to be determined by officers and those to be determined by Planning Committee. This indirectly establishes the method for appeals to the Local Review Body or the DPEA - Bill proposes that more applications will be determined by planning officers with appeal to LRB. These include applications to amend consents for local development, certificates of lawful use for existing or proposed uses and applications for advertisement consent.

Duration of Planning Permission:

- Bill proposes to clarify duration of planning consents. This is due to concerns that there is confusion regarding the duration of planning consents for planning permission in principle, particularly in relation to large housing sites - by default, detailed consents will be given a 3 year duration and planning permission in principle a 5 year duration in legislation. Planning authorities will still be able to vary this by condition.

Fees for Planning Applications:

- Fees currently do not cover the full cost of the development management process. Heads of Planning Scotland (HOPS) indicate that in 2015, fees only covered 63% of handling applications - fees are set nationally with no scope for local choice. The Bill allows for changes in regulations to give more flexibility for setting fees.
- The Bill also introduces provision for the Scottish Ministers to charge fees for the planning functions that they undertake.

Councillor Training for Making Planning Decisions:

- New provisions introduced in the Bill will ensure that members on a Planning Committee or Local Review Body have been sufficiently trained in planning matters.
- Provisions introduced for either another planning authority or the Scottish Ministers to determine planning applications where a planning authority is unable to determine applications due to this requirement.

Performance of Planning Authorities:

- There is a longstanding criticism that planning is too cumbersome and overly bureaucratic. In response the Bill introduces requirements for annual performance reports and the appointment of a national planning performance co-ordinator with the power to assess planning authorities' performance and to pursue improvements.

Infrastructure Levy:

- New measure introduced by the Bill to raise the funds necessary for infrastructure provision so that land can be developed.
- Current powers under the Planning Acts for developer contributions (section 75 agreements) are limited to support infrastructure that is required as a direct consequence of the development. The levy is to support provision of infrastructure/services which benefit delivery of development across a wider area.
- Designed to capture a proportion of land uplift value, which occurs when land is either allocated or granted consent.

Planning Enforcement Fines:

- The Planning Acts set the levels of fines that can be levied by the courts where an enforcement notice has been breached. These levels have not changed since 1997 - the Bill proposes to increase the levels of fines.
- There is a new duty on the courts to consider any financial benefit accrued due to a breach of an enforcement notice when setting a fine.

Expenses under an Enforcement Notice:

- The planning authority has powers to directly enter land and rectify unauthorised work with scope to reclaim the costs from the developer/landowner. This results in financial risk for the planning authority – the Bill would introduce new power to register a land charge in the Land Register of Scotland or the Register of Sasines to ensure costs are recovered if a property is sold.

Completion Notices:

- Completion notices can be served by planning authorities on applicants where work has started on a consented development but there is little likelihood that it will be completed within a reasonable timescale. Serving a notice requires the development to be completed within a specified period. If a notice is not withdrawn by the planning authority the planning permission is cancelled – the Bill seeks to simplify the process for completion notices.