

Written Evidence

Planning (Scotland) Bill, Stage 1

Local Government and Communities Committee

Friends of the Earth Scotland welcomes the opportunity to contribute to the Local Government and Communities Committee's Stage 1 inquiry into the Planning (Scotland) Bill.

FoES is a member of Scottish Environment LINK and Stop Climate Chaos Scotland, and endorses the written submissions of those coalitions in addition to this evidence.

Summary

Friends of the Earth Scotland shares the objectives, set out in the Policy Memorandum, that the Planning Bill should “focus planning, and planners, on delivering the development that communities need... empower people and communities to get more involved and have a real influence... [and improve] accountability and trust in planning processes,” but we are concerned that the Bill in its present form does not deliver on these ambitions.

Areas in which the Bill should be improved during its passage through Parliament include:

- Giving planning the explicit purpose of delivering sustainable development and, in particular, meeting our greenhouse gas emission targets.
- Aligning the planning system with our efforts to tackle climate change, including by requiring that the National Planning Framework is consistent with the Climate Change Plan.
- Introducing an Equal Right of Appeal so that those affected by a proposed development, not just the developer, have recourse to challenge damaging decisions.
- Democratising the planning process by maximising the opportunities for meaningful public engagement, and requiring parliamentary approval for the National Planning Framework.

Sustainable development and climate change

The purpose of the planning system

“Planning can nurture our places, our environment and our communities, and guide future change so that it benefits everyone,” as the Scottish Government correctly says¹ While there is no doubt that planning can do these things, it is not its explicit purpose to do these things. Neither the existing planning system, nor the one envisaged by the Planning Bill as introduced, has an explicit purpose at all.

The existing legislation does require Ministers and planning authorities to exercise their functions in the creation of National Planning Framework and Local Development Plans, respectively, with the “objective of contributing to sustainable development.” However, this does not make sustainable development a primary or directing purpose of planning, and this clause applies only to the making of those documents, not to other planning functions such as development management and enforcement.

¹ Kevin Stewart MSP, Minister for Local Government and Housing, *Places, People and Planning: A consultation of the future of the Scottish Planning System*, 10 January 2017. <http://www.gov.scot/Publications/2017/01/3486/1>

This Bill is an opportunity to correct this. Friends of the Earth Scotland believe that the Bill should include a statement of purpose that makes explicit the mission of the planning system to deliver sustainable development, including by meeting our statutory climate change targets.

Planning's contribution to fighting climate change

The planning system is essential to our national efforts to reduce our greenhouse gas emissions, and to adapt to the effects of climate change. It is only through wise planning that we can make the medium and long term changes that will ensure naturally low-carbon and resilient places that deliver sustainable wellbeing for all.

The Planning Bill can contribute to this goal by requiring that the National Planning Framework (NPF) is consistent with, and facilitates the execution of, the Climate Change Plan. The Bill should also require that Ministers request advice from a relevant body (for example, the UK Committee on Climate Change) on the compatibility of their draft NPF with our statutory emissions targets.

At local level, the Bill should make mitigation of, and adaptation to, climate change a strategic priority for Local Development Plans, and require that all major developments are subject to a whole-life greenhouse gas emissions assessment, taking into account the climate change impact of both their construction and use, including induced emissions such as increased road traffic.

Revenue from the proposed Infrastructure Levy should be made available for investment in Green Infrastructure, which is defined in Scottish Planning Policy and includes assets such as woodlands, wetlands and community food-growing spaces that are not included in the definition of infrastructure used in the Bill as introduced.

Democratising the planning process

The best way to ensure that communities get the development they need is for those communities - whether national or local - to be able to play a full and integral part in the planning process.

Through both the United Kingdom and the European Union, Scotland is part of the United Nations' Aarhus Convention, which commits its parties to facilitating meaningful public inclusion in decisions that will affect their environment² – including, of course, spatial planning.

Fulfilling the spirit of Aarhus requires that we ensure the Bill does not weaken or limit the scope for public participation, and that instead it deepens and strengthens the role of communities and individuals.

Meaningful engagement in local planning

The proposed change from 5-year cycles for National Planning Frameworks and Local Development Plans to 10-year cycles inevitably reduces the frequency of opportunities for public engagement with planning.

The Bill's proposals for Local Development Plans not only reduce their frequency to one per decade, they also reduce the major opportunities for public engagement in each plan by half, by abolishing the Main Issues Report.

As well as offering fewer opportunities for public engagement, this means public engagement will be focused on the detailed Proposed Plan, when the process is already at an advanced stage. Presented with such a consultation, people are likely to feel that the local authority's proposals are already a fait accompli, undermining public motivation to take part and harming trust.

² **“Article 7: Public participation concerning plans, programmes and policies relating to the environment.**

Each Party shall make appropriate practical and/or other provisions for the public to participate during the preparation of plans and programmes relating to the environment, within a transparent and fair framework, having provided the necessary information to the public.” The United Nations Economic Commission for Europe, *Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters*, 25 June 1998. <http://www.unece.org/fileadmin/DAM/env/pp/documents/cep43e.pdf>

The Bill at present offers very little to mitigate these effects. Increasing the period allowed for public comment from 28 days to 8 weeks is welcome but will not, on its own, ensure public engagement is either widespread or meaningful.

It is far from clear that the case for lengthening planning cycles has been made, and abolishing the Main Issues Report in that context is particularly difficult to justify. Friends of the Earth Scotland recommends that the Committee critically consider both of these proposals.

It is essential that the Bill takes every opportunity to maintain and advance meaningful public participation in the planning process, particularly if these retrograde changes go ahead. There is little in the Bill at present that achieves this.

In particular, the concept of participatory neighbourhood planning has tremendous potential that is not fulfilled by the proposed Local Place Plans in their current form. There is no assurance that there will be resources available to facilitate communities in producing these, and their status once complete will be little more than suggestions which the Bill only requires planning authorities to have regard to.

We hope that the Committee will be able to find ways to significantly strengthen the opportunities for, and resourcing of, public engagement in local planning, and its effectiveness in terms of meaningfully shaping the process and its eventual outcomes.

Parliament's role in the National Planning Framework

At the national level, the Bill as introduced does not propose to strengthen the Scottish Parliament's role in the production of the National Planning Framework. The Scottish Government's description of the NPF as "the spatial expression of the Government Economic Strategy,"³ is no understatement, and such a fundamental document deserves more parliamentary involvement than simply being laid in Parliament for comment.

The Bill will require that Local Development Plans be approved by the relevant full council meeting; Friends of the Earth Scotland believes that the National Planning Framework should similarly require the consent of the Scottish Parliament. The Parliament, including its committees, should also be included in the development of the NPF from an early stage, perhaps in a similar way and certainly for similar reasons as the early involvement in Budget-setting recommended by the Budget Process Review Group⁴.

Equal Right of Appeal

A particular obstacle to realising a truly fair and democratic planning system is the one-sided nature of the existing right of appeal. It is plainly unfair that communities and other affected parties have no right of appeal against a decision to grant planning permission, while applicants are able to appeal against a decision to deny it.

This inequality undermines trust in the planning system, reduces the influence local communities have on the future of their area, and produces weaker planning decisions. It introduces a perverse incentive into the system, placing pressure on planning authorities to err on the side of granting permission even where the evidence is weak, knowing that a decision to refuse permission can be appealed but a decision to grant it cannot.

This imbalance is exacerbated by the ability of developers to make repeat applications, draining the capacity of planning authorities and wearing down any community concern or opposition. The Bill should be amended to include measures to prevent this tactic.

³ Derek Mackay MSP, *Minister for Local Government and Planning, Ambition, Opportunity, Place: Scotland's Third National Planning Framework*, 23 June 2014. <http://www.gov.scot/Publications/2014/06/3539/1>

⁴ Budget Process Review Group, *Final Report*, 30 June 2017. http://www.parliament.scot/S5_Finance/Reports/BPRG_-_Final_Report_30.06.17.pdf

Unbalanced planning processes encourage developers and authorities to pursue or allow inappropriate development, and contribute to the “lack of trust, respect and confidence in the system” identified by the Scottish Government-commissioned research study *Barriers to community engagement in planning*.⁵

The recent survey by the National Trust for Scotland confirms this public concern, and also finds that 90% of respondents “want local communities to have the same rights of appeal in the planning system as enjoyed by developers.”⁶

In its 2012 report *Right to Appeal*, the Scottish Committee of the Administrative Justice and Tribunal Council highlighted the appellate deficit in planning decisions, noting that “unless there are compelling reasons to the contrary, citizens should be able to challenge administrative decisions using an appropriate and accessible set of procedures”.⁷

Friends of the Earth Scotland urges the Parliament to grant local people the right to challenge planning decisions in certain circumstances (for example where the decision runs contrary to a Local Development Plan, where there is a conflict of interest, or on applications which are accompanied by an environmental assessment). This would make planning fairer and more democratic, improve trust in the system and encourage community participation in the creation of Local Development Plans, and the credible threat of community appeals would incentivise better planning processes, applications and decisions.

⁵ The Scottish Government, *Barriers to community engagement in planning – a research study*, 22 May 2017. <https://beta.gov.scot/publications/barriers-to-community-engagement-in-planning-research/>

⁶ National Trust for Scotland press release, *Planning without the people*, 8 November 2017. <https://www.nts.org.uk/What-we-do/News/Planning-without-the-people>

⁷ Administrative Justice and Tribunals Council, *Right to Appeal: A review of decisions made by Scottish public bodies where there is no right of appeal or where the appeal procedure is inaccessible or inappropriate*, August 2012.