



Law Society  
of Scotland

# Consultation Response

Places, people and planning: Scottish Government  
Position Statement

August 2017



## Introduction

---

The Law Society of Scotland is the professional body for over 11,000 Scottish solicitors. With our overarching objective of leading legal excellence, we strive to excel and to be a world-class professional body, understanding and serving the needs of our members and the public. We set and uphold standards to ensure the provision of excellent legal services and ensure the public can have confidence in Scotland's solicitor profession.

We have a statutory duty to work in the public interest, a duty which we are strongly committed to achieving through our work to promote a strong, varied and effective solicitor profession working in the interests of the public and protecting and promoting the rule of law. We seek to influence the creation of a fairer and more just society through our active engagement with the Scottish and United Kingdom Governments, Parliaments, wider stakeholders and our membership.

The Society's Planning Law Sub-committee welcomes the opportunity to consider and respond to the Scottish Governments consultation on the Places, People and Planning Position Statement of June 2017.

## General Remarks

---

This paper builds on our previous consultation response on the future of the Scottish Planning system in April 2017.<sup>1</sup>

We consider that a number of the 20 proposals are somewhat lacking in detail, particularly around some of the more radical ideas that will require legislation.

The Sub-committee has the following comments to put forward for consideration regarding the proposals, as now reported in the Position Statement.

<sup>1</sup> <https://www.lawscot.org.uk/for-the-public/law-reform-consultations-and-bills/consultations-2017/planning-law/>

## Response to questions

---

**Question 1: Do you have any views on the proposals contained within the position statement? There is no need to restate views already expressed in relation to Places, People and Planning as these have been, and will continue to be, taken into account as we move towards finalising the actions to be taken.**

### **MAKING PLANS FOR THE FUTURE**

#### **1. Aligning Community Planning & Spatial Planning**

We welcome the creation of the statutory link between Development Planning and Community Planning and would support the proposal for having chief executives of local authorities “sign off” local development plans. This would provide the plan with additional buy-in across local authorities’ multi-layered roles, responsibilities and duties.

#### **2. Regional Partnership Working**

Whilst we have no particular difficulty with the removal of strategic plans, we consider it essential that the regional partnerships (which will, in substance, perform a strategic planning role) have a formal structure, powers and duties that would be best achieved through legislation. It is understood that one of the principal issues behind the abolition of strategic development plans was delays caused in constituent planning authorities reaching agreements on important planning matters (eg housing allocation). In the absence of a statutory framework for regional partnership working, there is clearly the potential for disagreement where there may be no formal mechanism to resolve deadlocks. The difficulties of reaching agreement on cross-boundary issues will be, in our view, exacerbated should the National Planning Framework not set regional targets for housing.

#### **3. Improving National Spatial Planning & Policy**

We welcome the potential for the National Planning Framework and Scottish Planning Policy to be given enhanced status, with the effect of local plans to be streamlined and to make their main focus on places and development delivery. We observe that this would require policies to be set out in much greater detail and clarity than exists in the current NPF3 and Scottish Planning Policy.

#### **4. Stronger Local Development Plans**

We support an accelerated process of development plan preparation (2-3 years) as set out on the diagram. We also support the provisions for reviews of development plans if they are to have a 10 year timescale, as

it is almost inevitable that circumstances will change within that period such as to require a review. The Position Statement is unclear as to what the proposed processes would be for such a review and we seek clarity on this matter. The other matter we consider critical is where the reporter at the examination stage finds that a new site requires to be allocated. As the Scottish Government will be aware this has caused issues in the past in terms of a reporter being faced with the dilemma of either rejecting a finalised local plan or alternatively including a new site which would be subject to some “informal” consultation exercise. This is clearly unsatisfactory and clarity is sought from Scottish Government on how situations such as this are to be avoided. Clearly the provision of a gate-check at the early stage would reduce the risk of this but the risk remains nonetheless. The diagram set out for the proposed process is helpful, however, this assumes that all matters proceed according to plan, which is not the case in practice. We also seek further clarification of the scope of the examination and the powers of the reporter. For example is it still intended to be the case that the reporter’s recommendations would be binding on the planning authority?

## **5. Making Plans that Deliver**

We would broadly welcome the setting of a minimum level of information to be provided alongside development proposals in the local development plan, together with greater leadership from planning authorities and a stronger commitment from key agencies to reduce the likelihood of rejections arising at the consenting stage. At a general level we also support the principle that there should be enhanced consultation for the development of sites which have not been allocated in the local development plan and also that there should be scope for reduced consultation in the case of sites which are part of the plan.

At the moment major development and national development cannot proceed without the submission of proposals of application notice which requires advertisement and minimum consultation activity. A planning application cannot be lodged within a period of 12 weeks. For allocated sites we would support reducing this 12 week period to eg 6 weeks. Conversely, for non-allocated sites a greater amount of consultation activity could be required (eg the requirement to hold at least two public meetings) and retaining the 12 week period. The Position Statement also identifies strong support for a “Plan Led” system which we would endorse. The Position Statement indicates that where allocations are not being delivered over time pressures can increase for sites to be de-allocated in favour of more effective land allocations. It is unclear what mechanism the Scottish Government is proposing in this regard and whether this would be some form of formal de-allocation process or if it would be a matter to be addressed in a review of an adopted local development plan.

## **PEOPLE MAKE THE SYSTEM WORK**

### **6. Giving People the Opportunity to Plan their own Place**

While supporting the broad principle of creating Local Place Plans we are unsure what the Scottish Government proposals actually are. We welcome the inclusion in the Planning Bill provision that local place

plans are to be consistent with local development plans. However, it remains to be explained how local place plans are to be incorporated into the local development plan through an update and what the mechanism for this is. We agree that there is a need to ensure that local place plans are used to promote appropriate development rather than as a vehicle to prevent it. There are uncertainties regarding the relationship with the wider development plan that must be clarified. In particular, it is not clear if the local place plans will actually allocate development.

## **7. Getting more People Involved in Planning**

We welcome targeted changes to the existing requirements for engagement to ensure that children and young people are specifically encouraged to become more involved in planning.

## **8. Improving Public Trust**

We are uncertain as to what Scottish Government's proposals are for providing feedback to communities following the engagement. For example, is this intended to be an opportunity for the community at large to comment on the application consultation report? If so we have no difficulty with this, provided the time to respond is short (ie 14 days).

We oppose the removal of the "free go" for applicants to submit a revised or repeat application at no cost if an application is refused, withdrawn or is an appeal is dismissed. The "free go" is well embedded in the planning system and provides a cost-efficient opportunity for the applicant to adjust a development proposal to bring it into line with what is acceptable in planning terms. The removal must also be considered in the light of the recent significant increase in planning fees.

Reference is made to measures to strengthen enforcement although there is no detail provided, which is disappointing at this stage.

## **9. Keeping Decisions Local – Rights of Appeal**

We welcome the Scottish Government's proposal not to extend the jurisdiction of local review bodies to major development and note that an opportunity is being explored for advertisement consent appeals to be handled through local review bodies which seems reasonable. Given the concerns that have been expressed in regard to the operation of local review bodies and the varied local schemes of delegation across all planning authorities it would be sensible for these to be aligned. Clearer guidance and sharing of good practice in this regard are to be welcomed. We also consider there would be merit in reviewing the effectiveness of local review bodies and to explore lessons learned, share issues and solutions and identify scope for future improvement. We support mandatory training for elected members serving on planning committees or local review bodies.

We welcome the Scottish Government's decision not to introduce third party rights of appeal and consider that the stronger early engagement measures proposed are a more constructive way of dealing with this issue.

## **BUILDING MORE HOMES AND DELIVERING INFRASTRUCTURE**

### **10. Being Clear About How Much Housing Land is Required**

It was originally proposed that more could be done nationally through the National Planning Framework to guide the level of housing and land required in local development plans. The position statement is unclear as to whether Scottish Government will indeed include this proposal. As set out above we consider it important that these housing figures are set in the National Planning Framework at a regional level particularly in circumstances should regional partnerships be put in place to replace strategic development plans and without statutory powers.

### **11. Closing the Gap Between Planning Consent and Delivery of Homes**

We welcome the Scottish Government's proposals, particularly further use of local authority compulsory purchase powers to facilitate development. We are aware that local authorities can often be persuaded to exercise their compulsory purchase powers for major strategic schemes (eg St James Centre in Edinburgh) but on the whole are reluctant to become involved in smaller developments which are frequently frustrated by third party ownerships (ransom strips). Further encouragement to local authorities could be key to unlocking smaller development opportunities and enable development to take place faster. We welcome revised guidance for the operation of existing CPO powers particularly to address this issue.

### **12. Releasing more "Development Ready" Land for Housing**

We welcome the proposals for enhanced simplified planning zones and consider that they have a role to play in the delivery of new developments. In terms of the relative scale we are unconvinced on the evidence that such proposals could do enough to make a significant contribution to development (and in particular housing) delivery.

### **13. Embedding an Infrastructure First Approach**

We note that the Scottish Government in the short term does not wish to propose a new national infrastructure body but will turn to Scottish Futures Trust to take forward support for significant sites in combination with the ongoing brokerage of the chief planner. Whilst a task based approach may well have the greatest impact in the shortest time we would not wish the Scottish Government to abandon the

possibility of a national infrastructure body with statutory powers. The arguments we have made with regard to regional partnerships (where they may lack the necessary impetus and ability to resolve issues where there are informal structures) apply in relation to the proposed informal arrangements.

#### **14. Creating a Fairer and more Transparent to Funding Structure**

We note that the Scottish Government appears to be leaning towards the adoption of an infrastructure levy in order to deliver a strategic infrastructure. We offer qualified support for this proposal with concerns in regard to the issues, delays and tensions that have arisen with the community infrastructure levy in England and the outcome of the UK Government's recent report into this area. Such a proposal would clearly require legislation and supporting guidance to set out what can and cannot be included in the section 75 agreement - which we understand would have a role simply to deliver site-specific as opposed to regional infrastructure. We caution that the introduction of such a levy - at whatever scale - is a considerable task which will require significant resources and constant monitoring. There is also the issue of potential abatements for developments that are particularly costly to deliver (e.g. contaminated sites) and the extent to which such sites should benefit from an abatement or reduction in the levy.

We welcome the retention of the right of a developer/landowner to make an application under section 75A of the Planning Act to modify or discharge the section 75 agreement with rights of appeal under Section 75B of the Planning Act. We consider this operates as an important counter balance to the imposition of planning obligations. Provided planning authorities have complied with the five policy tests in circular 3/2012, their concerns in regard to the perceived uncertainty the appeal brings should not be an issue.

#### **15. Innovative Infrastructure Planning**

We welcome the continued focus on education infrastructure planning which is a particular issue for housing developments.

We note that it is no longer the intention of Scottish Government to repeal Section 3F of the Town and Country Planning (Scotland) Act 1997, Act despite the fact that there was general support for this. We note particularly the recent findings of the Scottish Government's independent study which found no evidence that there is any added value from this requirement – instead building standards are driving down emissions.

We set out below the terms of section 3F:

“A planning authority, in any local development plan prepared by them, must include policies requiring all developments in the local development plan area to be designed so as to ensure that all new buildings

avoid a specified and rising proportion of the projected greenhouse gas emissions from their use, calculated on the basis of the approved design and plans for the specific development, through the installation and operation of low and zero-carbon generating technologies”.<sup>2</sup>

We consider that at a practical level it is often difficult for proposals to be properly assessed against policies derived from the section above on the basis that the required detail of the proposals at the point that they are being considered for planning permission is not available. That may explain why the Scottish Government’s independent study considered that such matters were more for detail at the building regulations stage of development.

## **STRONGER LEADERSHIP AND SMARTER RESOURCING**

### **16. Developing skills to deliver outcomes**

We welcome this proposal.

### **17. Investing in a better service**

We note the Scottish Government’s intention to include in the planning bill additional enabling powers that provide scope to widen discretionary charging and to extend the range of services for which fees can be charged. We are unable to comment in any detail on this matter until it is explained in detail.

### **18. A new approach to improve performance**

We support this approach.

### **19. Making better use of resources: efficient decision making**

We welcome, as a matter of principle, the broadening of the scope of permitted development rights but remain to be convinced that these could play a significant role in improving the system. Furthermore reference is made to a range of improvements to the development management procedures but these are not set out in any detail.

<sup>2</sup>See <http://www.legislation.gov.uk/ukpga/1997/8>



## **20. Innovation design for the future and the digital transformation of the planning service**

We note and welcome this proposal.

### **Questions 2-4**

We have no comments on these questions.

**For further information, please contact:**

Carolyn Thurston Smith

Policy team

Law Society of Scotland

DD: 0131476 8205

[carolynthurstonsmith@lawscot.org.uk](mailto:carolynthurstonsmith@lawscot.org.uk)