

## Scottish Government Review of the Planning System

### Submission on Behalf of Felsham Planning and Development

November 2015

This submission is made on behalf of this practice and draws on the Directors' combined experience of almost 50 years working in the Scottish Planning system. We understand that this is to be a *game changing review*. For this to be effective it requires frank answers to the questions posed. We have sought to give frank answers to the questions that most concern us as property consultants working daily within the planning system.

#### Development planning

**Do we need development plans?** Yes, in a plan led system. Plans should be revised and simplified. We advocate a system of Principle Planning Policies setting out a series of criteria to judge development and dealing with requirements that will apply to all developments. Any further detail should be contained in supplementary planning guidance, to be treated as material considerations.

Allocations should be limited to strategic scale development. Any proposal for development within the urban area should be considered against the criteria set out in Principle Planning Policy for that particular land use. There should be a Principle Planning Policy for considering development in the countryside. This needs to make clear that some development in the countryside is inevitable and give clear criteria to judge such development.

**Is the current system of development plans fit for purpose or do we need to simplify or redesign it?** No. It needs to be simplified and clarified. The relationship between the development plan and material considerations must be clarified and it should be made clear that material considerations are expected to be afforded their proper weight in the planning system.

**Should the primacy of the development plan be retained as a fundamental principle of the Scottish planning system?** The development plan should be the starting point and a place of reference. The primacy of the development plan has led in many cases to unwillingness to consider wider issues involved in decision making. It should be made clear that planning authorities must demonstrate that they have had regard to the 5 step process in determining a planning application laid down by the House of Lords, as follows:

1. Identify any provisions of the Development Plan that are relevant to the decision.
2. Interpret them carefully looking at the aims and objectives of the plan as well as the detailed wording of policies.
3. Consider whether or not the proposal accords with the Development Plan.
4. Identify and consider relevant material considerations for and against the proposal.
5. Assess whether these considerations warrant a departure from the Development Plan.

Following this process will automatically mean that wider consideration than simply the development plan will be given and the planning authority will need to justify its position if it simply seeks to rest on the development plan

**How can relationships between tiers of plans work better?** It is not the relationship between the tiers that is the problem. For those authorities outside the four main cities the only development plan is the local development plan. The issue is the efficiency of plan preparation and the use of the plan, once adopted in decision making.

**Could a different approach to development plans be quicker and more effective?** Yes. We advocate a system of Principal Planning Policies supported by supplementary planning guidance covering a planning authority area on a topic basis. The SPGs would have the status of material considerations not policy and would be produced and reviewed separately. All that would be required for the development plan is to have an effective set of Principal Planning Policies and to make decisions on specific allocations.

Secondly, planning authorities identifying strategic sites, or those promoting such sites, should be required to demonstrate that the site is effective. This should be done through completion of a checklist supplemented by evidence to support the answers. To ensure consistency we recommend a standard checklist should be produced by the Scottish Government.

**Can we improve development plan examinations?** Yes. By focusing on the main issues and actually having examinations. Examinations should be mandatory not at the Reporter's discretion. Despite repeated requests to DPEA from the development industry there was no examination on the Falkirk LDP housing land supply. Issues have now arisen with it that could have been addressed if there had been an Examination. The development industry was not allowed a forum to put its case. As we predicted, and made clear to DPEA, the development plan system as it applies to Falkirk is now critically undermined because sites were accepted as effective without actually checking that was the case.

**Can development plans be more flexible?** Yes. We advocate a system of principal planning policies supported by supplementary planning guidance covering a planning authority area on a topic basis. We have explained above how this would work.

## Development management

**What are the barriers to timely decision making within the development management service and how can they be overcome?** Lack of resources and an apparent inability to use resources effectively. This is not helped by practices such as job share, part time working or the requirement to book a call to be made from a planning officer at a specified time, a practice which is often then ignored by the planning authority with no sanction against the authority

**Which aspects of the development management process need to change?** There needs to be transparency. The system of Local Review Bodies determining appeals into delegated decisions is not equitable and needs to be changed. Having made a decision the planning authority then review whether it was right to have made that decision. This is contrary to any concept of natural justice. The Human Rights Act guarantees a fair and impartial tribunal. This cannot happen when the same authority reviews its own decision. If the Local Review Body system is to remain each body should be made up by members who are not members of the planning authority that made the original decision

There should be a fast track system for considering certain types of development. This should apply to the nature and type of development and should not simply be applied to development considered to be simple or straightforward. There should be a presumption in favour of development that results from other legislation or regulatory process, subject to considering site specific matters. The planning system should consider the local consequences of implementing the development envisaged, not revisit the principle. An example is development as a result of DECC PEDL licences.

There is a big issue with DPEA and quality. Reporters are drawn from too narrow a pool, which tends to be mid ranking local government officials. As a result the breadth of their knowledge and experience that they apply to decision making is limited. There is a danger that their training and career experience leads to an over emphasis on viewing a case from the planning authority's perspective. We advocate replacing Reporters with *magistrates*, who would be learned people drawn from local business and public service background. A similar system operates in children and family law in Scotland, where the Reporters are not professionals within that discipline but learned lay people.

**Should we extend permitted development rights further? If so, what for?** Yes. The Use Classes Order should be reviewed and the need to seek planning permission for certain changes should be removed.

**Is there scope to strengthen development plans to streamline decision making?** The development plan system has been a block on effective decision making since the first Planning Act. The emphasis on development plans should be reduced in favour of review of developments on a case by case basis against a set of guiding policy principles. Policy details should be contained in a series of supplementary planning guidance produced by the planning authority and periodically reviewed. These SPGs should set out the authority's policy position on certain issues and should be treated as a material consideration in determining a planning application. In this way the efficiency of the planning policy system in a particular area would be maintained by reference to key principles which could be properly reviewed through a mandatory examination of only those issues concerned. The efficiency of the system would not be undermined by waiting for minor policy details to be examined before the development plan could be adopted.

**Should authorities share development management expertise?** Yes. Particularly for specialised skills such as financial appraisal and viability assessment.

**How well is the development hierarchy working? Can / should it be taken further?** – in principle the change is good. In practice it is flawed because of the system of local review bodies hearing appeals. It is against the principles of natural justice that the same organisation that made the original decision should hear the appeal. There must be independence in the appeal process. This is lacking.

**Should opportunities for repeat planning applications (i.e. for substantially the same development on the same site) be limited?** No. It is an important principle that each application is considered *de novo* on its merits. Removing the right to repeat applications assumes the planning authority's decision was right in the first place. The ability to make a repeat application is often the most effective way to challenge a decision. Secondly, repeat applications allow lessons to be learned from past failures. A refusal can often act as a development brief that guides the applicant in how to submit a revised application that will be successful by addressing outstanding issues and minor differences between the applicant and the planning authority.

The planning system is a *nationalisation* of the right of a land owner to use their land as they see fit. The removal of these rights is accepted and is in the public interest. In return for these controls it is only right that a land owner or other interested party should be free to submit a planning application whenever and wherever they wish.

**Are there issues with planning enforcement that need to be addressed?** Yes. The right to challenge an enforcement notice on the grounds that the alleged breach has not occurred should be maintained as a sacrosanct part of the appeal process.

**Should we revisit notification and call-in arrangements?** Yes. There should be delegated authority for a council to sell its land with planning permission without reference to Scottish Ministers subject to specified value thresholds. Secondly, an applicant should have the right to request a call in for Ministers to determine their application. This is important because the current appeals system of fewer public inquiries and local review bodies has undermined confidence in the appeal process.

**Should Historic Environment Scotland policies and procedures for listing buildings be reviewed and listed building consents be speeded up?** Yes. There should be a presumption in favour of beneficial use of a listed building. By their nature such buildings change over time and may have several uses or the use may become redundant. The key consideration should be to allow a building to remain in beneficial use.

**Is there a need to change the role of key agencies in development management?** No but there is a need for key agencies to be efficient, responsive and consistent.

#### Leadership, Resourcing and Skills

**Are planners equipped to provide strong and skilled leadership within planning authorities?** No. The issues are increasingly complex and require a multi-disciplinary approach. Many planners, even at a senior level, approach matters from a purely policy basis, without consideration of the wider issues. There is an over reliance on policy at the expense of rigorous analysis.

**Should planning fees be increased to better resource the planning system?** No. Planning is a retail transaction between an applicant, who pays a fee, and a planning authority who determines the application. The current system is not value for money due to, inter alia:

- Lack of responsiveness
- Unwillingness to deal quickly with responses made by the applicant
- Inability to recognise the applicant as a customer and to respond to and treat them accordingly
- Lack of willingness to take a corporate approach to advice given, meaning that if officers change the new officer will often not accept the advice previously given by their colleague and revisit matters that have already been agreed

There needs to be a culture change in local government to address certain attitudes that would not be acceptable in the private sector or in any other industry where a fee is paid for a service. Increasing the fee will not address these issues.

**Should we make provision for better resourcing of the pre-application stages, particularly for larger projects?** Yes. The pre-application stage is vital. We advise our clients that a planning application is submitted approximately two thirds the way along the process from inception of the scheme to gaining planning consent. That does not seem to be recognised by many planning authorities who do not direct resources to the pre-application stage. Time spent in preparation is time saved in determination. Efficiency targets would be more likely to be met if planning authorities recognised the importance of the pre-application stage and gave it the necessary resources.

**What is the role of the penalty clause in the Regulatory Reform Act?** - There is no truly effective sanction on underperforming planning authorities. As noted above, an applicant pays a fee and expects a minimum level of service. At a number of planning authorities staff seem to be unaware of the requirement to provide proper customer service.

**What skills and resources are currently lacking?** Ability to understand development appraisals; to understand the role of values and viability and the need to achieve an acceptable level of profit for the developer; the implications of changes sought by planning officers, often with little real merit, on the viability of a development

**What skills will be in most demand in the future?** Financial appraisal; project management.

**Is there a case for more shared services or exchange of expertise?** Yes. The skills identified in the previous two responses are critical but may not be needed daily. There should be a pool of specialist labour to cover these skills available on request at a regional level.

**Is there a need for more training of elected members?** Yes. This is essential. The quality of elected members is very varied. Many members seem not to grasp basic concepts and show a lack of understanding of how the planning system should operate. There are still examples of decisions clearly being made on the basis of a party whip or a failure of the members to grasp the issues. This is unacceptable.

**Can planning authorities be better equipped to actively enable development?** No. Planning authorities are not discharging their existing functions effectively, hence this review. The role of public sector enabler of development should be given to reconstituted local development agencies or a national development agency. This function is partly being undertaken by Scottish Futures Trust. It should be expanded and given to other agencies. Consideration should be given to reforming the Scottish Development Agency

**What are the long term prospects for the planning profession in Scotland?** On the whole good, provided there is change. The changes described in this response will require skills other than those taught at planning schools. This should give a broader base to the profession and a more flexible and open approach. In turn there should be greater efficiency and a higher status and profile for the planning profession.

The prospects for the planning professional in the system are less clear. Currently the *thought leadership* on many of the big questions facing the planning system (affordable housing, infrastructure provision, energy, water and waste, food production) are not coming from planning professionals. Unless there is a cultural change the vocationally trained planning officer may increasingly be replaced by professionals from other backgrounds who will give a broader view on the role of the planning officer and may help to redefine that role to be more dynamic, less reactive, and better able to identify and shape issues.

## Community engagement

**Are the provisions for front loaded engagement in development plans working?** Yes. It engages communities; enables issues to be identified; enables real dialogue and schemes to be amended in accordance with community wishes; and reduces the number of objections when an application is made because misconceptions and misunderstandings have already been addressed

**How can we build on existing models of engagement (such as participatory design including 'charrettes') to encourage active participation in planning?** A prescriptive approach should not be encouraged. Many organisations have a very though approach to consultation that works well. For consultation to work it must be bespoke and designed for a specific scheme in a specific community. Simply holding a charrette does not make for good consultation. Meeting the community, understanding their needs and wants and designing a scheme that, as far as possible, addresses the aspirations of the community is very effective. Such an approach will use many tools. These may include a charrette but it is not essential. The key is to learn from best practice. A Planning Advice Note (PAN) prepared in consultation with organisations that regularly carry out public consultation or who must do as part of their regulation, such as utilities companies, would be a useful tool to give guidance and case studies. This must be prepared by people who use the system on a daily basis, not by civil servants.

**Do we need to change the system to ensure everyone has a fair hearing in plan and decision making?** No. There is ample provision for everyone to have a fair hearing. The many layers of consultation at plan making and determination of planning applications is one of the chief reasons for the inefficiencies this review seeks to address. The challenge is to remove layers of consultation whilst still making the system efficient and fair. The statutory requirement for consultation on major applications has removed any suggestions that communities are not being properly consulted. There is no need to go further and introduce other measures.

**Does mediation have a role to play in resolving conflict in the system?** Planning is a statutory process and the interests of all parties need to be protected by having a transparent and easily understood process. Mediation works when there are the interests of only two conflicting parties to resolve. The danger of mediation is that it will exclude parties who are central to the process resulting in the increased possibility of legal challenge. Past reviews of the planning system have sought to remove lawyers from the system. This has been a failure. The involvement of the bar and the use of public inquiries resulted in better quality and clearer decision making.

**Should the statutory role of community councils be extended – for example to development planning?** No. There is ample provision for everyone to have a fair hearing. The many layers of consultation at plan making and determination of planning applications is one of the chief reasons for the inefficiencies this review seeks to address. The challenge is to remove layers of consultation whilst still making the system efficient and fair. The statutory requirement for consultation on major applications has removed any suggestions that communities are not being properly consulted. There is no need to go further and introduce other measures.

**Is it possible to improve public perceptions of the planning system?** In part, but only in part. Planning is a regulatory system that impacts on people's lives in varying ways. The system needs to be made for effective, responsive, and quick. However, its role in society means that planning is likely to always be intrinsically unpopular because it approves development where it is not wanted and refuses development against the wishes of the applicant.