

2 February 2018

RESPONSE TO THE LOCAL GOVERNMENT AND COMMUNITIES CALL FOR EVIDENCE ON THE PLANNING (SCOTLAND) BILL

Introduction

1. The Scottish Property Federation (SPF) is a voice for the property industry in Scotland. We include among our members: property investors including major institutional funds, developers, landlords of commercial and residential property, and professional property consultants and advisers. We are happy for our comments to be published and shared within the public sector.
2. We welcome this opportunity to provide evidence on the Planning (Scotland) Bill. The Bill is a key opportunity to unlock development and deliver the much-needed infrastructure for our growing population and business needs. If we are to drive local economic growth, jobs and investment we must have strong public leadership and an efficient, aspirational and delivery-focused planning service. The planning system therefore should deliver the framework for investment by the private sector, the public sector and joint ventures. The real estate sector is a key catalyst for jobs, investment and creating places for people to live, work and enjoy and we need to work together if we are to sustain the economy and investment in Scotland.

Key Concerns

- **The SPF welcomes the focus in the Bill on delivering the development Scotland needs, with the infrastructure to support it. We also welcome the aim to change the planning process and its reputation from that of a regulator to a positive and active enabler of good quality development with appropriate early engagement.**
- **The SPF fully supports front-loaded engagement in the planning process, with procedures for development plans designed to facilitate meaningful participation at the earliest stages. We believe that ‘third party’ or ‘equal’ right of appeal would have a significantly negative impact on what is a generally positive package of proposals.**
- **Our members continue to be concerned about performance on major planning applications and the prospect of further planning fees and levies without seeing a tangible improvement in service.**
- **For any increase in fees we would expect to see an injection of additional resources to deliver a better planning service with strong leadership, that supports appropriate development and welcomes new investment in our built environment. We have yet to see full commitment by the planning authorities to use the increased planning fees, paid for by the private sector, to invest in improving delivery of planning services.**
- **Our members continue to hold major reservations over the prospect of a Scottish Infrastructure Levy and further discretionary fees. Infrastructure delivery is a key challenge under the current system and it will be a test of success for the proposals in the Bill, bearing in mind the experience of members with the Community Infrastructure Levy in England.**
- **The SPF is clear that there cannot be any notion of a duplicate development tax and s.75 obligations must therefore only account for basic community amenities fairly and reasonably related to the development.**

- **The SPF cannot give support to a planning system whereby sheriff officers/bailiffs are in the position of seizing the property of applicants for non-payment of a levy, which may have been disproportionately imposed on the development itself in the first instance. This is likely to deter much needed investment and put Scotland at a competitive disadvantage.**
3. Our response to the specific questions in the call for evidence are as follows:
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. Our members broadly welcome the Bill as introduced. Altogether it holds some promising provisions to move from a regulatory system to a positive and active enabler of good quality development, with appropriate early engagement and focus on growing the economy to secure appropriate new investment and development. However, there are some areas that still require clarification before our members can offer more detailed or positive comments. For example, planning fees, Development Land Tax and Infrastructure Levies, which are still to be fully investigated.
 - 1.2. The SPF fully supports the enhancement of the National Planning Framework and our members are of the view that streamlining and simplification of the planning process is key to successful reform. Members are also firmly of the view that the strictures of SPP should be followed more consistently by local authorities, particularly in relation to the presumption in favour of development that contributes to sustainable development. The incorporation of SPP into the NPF is therefore a welcome provision to improve the consistency and status of its implementation at local level. There should be no need for each individual Local Development Plan to repeat policies that can be set out at national level.
 - 1.3. Engagement is a fundamental tenet of an efficient and effective planning system and can play a vital role in supporting economic recovery and sustainable economic growth. Engagement must therefore be meaningful, timely and proportionate. Our members support better, early engagement by appropriate and representative community groups at the development planning stage, supported by improved community engagement by applicants at the point of major applications. Consultation needs to happen as early in the process of an application as possible to ensure that issues can be addressed effectively and demonstrated as part of any application. Local Place Plans offer a means by which communities and potentially wider stakeholders, including the development industry, can help shape the regeneration of specific areas. The SPF is happy to support further consultation on secondary regulations and guidance on how these will be prepared and assessed and how they will fit with the Local Development Plan.
 - 1.4. Our members fully support a front-loaded engagement in the planning process, with procedures for development plans designed to facilitate meaningful participation at the earliest stages. We therefore strongly agree with the recommendations of the Independent Review Panel and the Scottish Government that third party right of appeal (TPRA) or 'equal' right of

appeal does not fit and should not be included as part of the reforms contained in the Bill. The Bill introduces a comprehensive range of measures that are intended, as a cohesive package, to improve efficiencies in the planning system. Front loaded consultation with recognised community stakeholders is a key element of the package.

- 1.5. Our members are firmly of the view that widening the Appeals process to unrepresentative third parties will not improve planning efficiencies or make the Planning process more equitable. There is little doubt that the introduction of TPRA would introduce new and substantial delays into the planning system, and place further strain on local authority resources. There could also be an impact on the delivery of new housing, infrastructure and the risk of placing Scotland in a disadvantageous position compared to other parts of the UK when it comes to the location of development capital.
 - 1.6. Our members would like to see a greater understanding by the public sector of the upfront costs the private sector already pays towards delivering the planning service and the risks involved. If we are to drive local economic growth, jobs and investment we must have strong public leadership and an efficient, aspirational and delivery-focused planning service.
 - 1.7. We are conscious that the general preface to the Bill references sustainability but given the emerging Climate Change Scotland Bill we should encourage close cooperation / alignment between the two, given the implications of climate change targets / legislation and the built environment.
- 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. A fundamental tenet of good placemaking is mixed use developments that are flexible and adaptable. We would like to see buildings with flexible, viable and cost-effective designs that can be adapted to suit changing aspirations and fluid markets in the current economic environment.
 - 2.2. Placemaking is also vital around a good infrastructure (particularly transport) with access to a mixture of property uses including retail outlets, employment, leisure and residential uses. Our members are of the view that this is important for both commercial and residential development with similar aspirations applying to both.
 - 2.3. Viability analysis and a consistent basis for calculating housing land supply is important. The low level of production within the house-building sector is not just a result of a lack of available funding but a direct result of an inadequate land supply. Land prices are reduced as a result of increased land supply and housing land needs to be where people want to live. Economic value is important for location of new houses.
 - 2.4. There is a disconnect between salaries and house prices, but affordable housing should not be used to address rising costs due to lack of supply. The increase in the cost of land effectively puts the brakes on provision of affordable homes and infrastructure becomes unaffordable.

- 2.5. The basic building block, which informs our plan led system in relation to housing land supply, is the Housing Needs and Demand Assessments (HNDA). Our members are concerned that the HNDA process is not transparent and does not generate an adequate, or effective land supply, which can respond to the market place. There must be a much-improved process for preparing and updating these documents if they are to be relied upon Audits in their important role as a catalyst for LDP reviews within the 10-year lifespan. These documents will identify where there is a housing land shortfall and must therefore be the focus of effort to ensure that the information they contain is accurate and market facing. We agree that a generous margin should be added to the housing supply target to provide greater choice and flexibility and have suggested that a minimum requirement of ten years effective land supply should be adopted for housing. Our members are also concerned that there is frequently no robust analysis of employment land needs and demand.
- 2.6. There should be greater onus on Local Authorities to carry out more detailed assessment of the full range of housing tenure that can collectively meet Housing Need and Demand, and to co-ordinate such housing tenure assessment with its wider obligations to provide council housing, schools, libraries, roads, offices and other facilities.
- 2.7. Our members are of the view that Section 3 of the Bill should make information on housing needs and education constraints key matters to be taken into account in any review of the Nation Planning Framework. There should also be an opportunity to alter or trigger a review of a Local Development Plan where there is demonstrably not an effective housing land supply or a failure to meet Housing Supply Targets.
- 2.8. Housing land supply must take into account the annual production capacity of sites to avoid large releases meeting political requirements, but not actually delivering annual output. Housing land audits should be more robust and provide improved evidence of effectiveness.
- 2.9. Some LDPs are minimising identified housing requirement by separating out 'affordable' and 'private' housing requirements. Then using lack of funding for affordable housing to justify not allocating sufficient housing land to meet the total requirement. This approach is sometimes adopted in areas that are highly attractive to house-buyers and Councils that have historically suppressed housing release, and consequently have greater affordability issues, are now seeking to under-allocate on this basis.
- 2.10. Build-to-Rent (BTR) can provide the opportunity to deliver the required volume and supply of new housing quickly. The multiplier effect of new investment would bring enormous economic benefits and should, be actively encouraged and incentivised. There is a lack of understanding of this market within LAs and therefore an easy perception that it is the same as conventional housing. BTR not only offers choice and supply but can contribute to early place-making and help to form the community that makes regeneration schemes successful, with a greater rate of production of new houses.
- 2.11. BTR is delivered in a fundamentally different way to conventional housing for sale; the conventional model realises value as each unit is completed and sold, thus delivering profit. The BTR market will realise income as rent, and therefore the route to profit is taken

through long-term sustainable income as opposed to a short-term sale. As a result, there is a financial viability gap when seeking to deliver large-scale, build-to-rent housing, when compared to build-to-sell models – much lower annual rate of return compared to the traditional build-to-sell model a lower residual land value is generated when compared to build-to-sell models. This means that access to suitable sites of scale is very limited, with suitable sites likely to derive greater value for alternative uses such as conventional residential, student accommodation, or hotel use. Treating BTR differently from conventional residential would improve viability for projects and help to deliver more housing quickly.

2.12. Recent research published by colleagues in the British Property Federation (BPF) suggests that the BTR sector has almost hit a 100,000 milestone, with 95,918 homes completed, under construction or in planning across the UK. This represents an increase of almost 40 per cent compared to the first quarter of 2017, but little more than 1 per cent of this investment is being directed to Scotland. This may be partly due to some misconceptions about the sector in Scotland and not enough positive information about why Scotland is an attractive proposition for BTR. We therefore welcome recent moves by the government to address these misperception via BTR guidance, the Rental Income Guarantee Scheme and other initiatives.

3. Do the proposals in 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. Scotland is small enough in population to allow regional planning to be addressed in the NPF e.g. housing targets, key strategic infrastructure and importantly location of employment. We would, however, support the need for Regional Council groups to co-ordinate in order to contribute to an improved regional dimension to the NPF. Indeed, we believe it is imperative that we have Regional Infrastructure Plans, which would be an alternative role for SDPs. We acknowledge that the proposed Bill advocates more cross-boundary working between Planning Authorities and Key Agencies on regional infrastructure, but the form and designation of working groups remains unclear.

3.2. The Bill provides for SDPs to be removed and replaced by partnership working/planning by committee and there is a risk that this could potentially cause delay and be less efficient. Our members have concerns about the likely success of the working partnerships as the Bill allows Local Planning Authorities too much discretion over their participation. Ministers should be able to direct local authorities to work together and form Regional Planning Partnerships if required. The success of the NPF in producing housing land requirements will, to a greater extent, depend on the LPAs coming together to produce a level of information for that document to set meaningful targets.

3.3. We would also advocate the closer alignment of private capital and government to deliver infrastructure, although this will require a culture change in planning authorities in order to succeed. The recent emergence of City Deals is welcomed by the SPF and may pave the way for a much-needed greater scale of investment, but it will have to be targeted carefully throughout the regions to ensure that it is invested in areas where people want to live and work, and developers want to do business. There should be a link between Regional

Partnerships and City Deals. Attracting outside investment is going to be key to sustaining the property sector going forward.

- 3.4. A high level of engagement between the public and private sectors is therefore critical to ensure the effectiveness of funds raised and invested. City Region Deal funding provides an opportunity to create the right structures for long term regional co-operation in a form that should last beyond the lifespan of individual funding deals themselves. Regional Planning Partnerships should be required to input into Development Plan Preparation and the Bill should refer to this as a default requirement of these groups.
 - 3.5. Our members are firmly of the view that the proposals for the co-ordination of investment programmes and working with existing agencies do not go far enough and fully supports the recommendation in the Independent Planning Review Report that a new Infrastructure Agency should be introduced. Our members are of the view that a National Infrastructure Agency is important to ensure that there is an accountable fair and transparent structure in place for the full co-ordination of diverse funding sources. This would cover funding across key agencies, utility providers, local authorities as well as other public bodies and arrangements for the funding where appropriate between public and private sectors
 - 3.6. The form that Regional Working Partnerships will take has still to be clarified. Our understanding of this is that authorities will be left to work this out for themselves allowing flexibility in how they form their working groups. This initiative envisages collaborative working for a range of issues not just planning and therefore includes housing, infrastructure and economy. The expectation is that joint evidence gathering will be brought together to inform a single spatial strategy for the National Planning Framework 4 (NPF). Ultimately, Scottish Ministers will decide which proposals from the regional partnerships are taken forward into the NPF. This initiative certainly still feels like a work in progress and there is concern that it is too open-ended and the drive for maximum flexibility risks the proposal underachieving. It would appear that it is an authority's prerogative not to take part.
- 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. As stated in our response to Question 1 the SPF fully supports the enhancement of the National Planning Framework and our members are of the view that streamlining, and simplification of the planning process is key to successful reform. Members are also firmly of the view that the strictures of SPP should followed more consistently by local authorities, particularly in relation to the presumption in favour of development that contributes to sustainable development. The incorporation of SPP into the NPF is therefore a welcome provision to improve the consistency and status of its implementation at local level. There should be no need for each individual Local Development Plan to repeat policies that can be set out at national level.
 - 4.2. Interactions between the NPF, LDPs and potential Local Place Plans is unclear. All plans should be consistent with each other and this should be properly reflected in the Bill. As currently

drafted, there is the potential for different parts of the Development Plan to be at odds with each other which will cause difficulties for applicants, decision makers and the public and is likely to lead to unnecessary appeal procedures.

- 4.3. If LDPs can deviate from the housing requirements set out in NPF then developers will most likely be encouraged to appeal applications rather than seeking to engage in a potential review of the LDP. Some of our members are of the view that the wording in the Bill as advised is not robust in terms of the relationship between NPF and LDPs. We have some concerns that under current provisions there is no requirement for LDPs to comply with the NPF. The Bill uses the words 'have regard to' which implies that the LDPs can deviate with a justifiable reasoning. There is a risk that this will see local authorities take issue with the housing requirements set out for their local area and adopt their own position.
- 4.4. The SPF agrees that there should be scope for flexibility and updating local development plans within the 10-year period on the basis that the updates would be short focussed documents. Our members are concerned that additional scrutiny is proposed for non-allocated sites but changing the plan only every 10 years gives less opportunity for sites to be allocated. There may be a need for a statutory interim LDP review within five years of full LDP publication, which would provide the Planning Authority with the opportunity to refine the current LDP on a long-term strategy consistent with NPF and SPP.
- 4.5. Some of our members have suggested that there should be a greater onus on the DPEA to ensure that appeals submitted on the basis of a shortfall of housing land supply are upheld (assuming other policy matters can be satisfied). This could ensure that local authorities allocate enough effective housing land to satisfy the requirements set down by NPF. There is a risk of an increase in 'planning by appeal', which is not helpful for developers or communities.
- 4.6. Our members are firmly of the view that the Local Development Plan Examination should not turn into a lengthy re-run of the local plan process. Members are also sensitive to the reaction of Councils when an individual Reporter ends up re-writing a policy, that has been the subject of extensive local consultation, Committee debate and then finalisation. Shorter, focussed approval processes would be very welcome, but they require that the Council get the strategy right in the first place. However, equally, with an enhanced SPP and NPF then the approval process for LDPs should become shorter as a direct consequence.
- 4.7. Currently there is a statutory requirement to produce plans but no requirement to deliver on those plans. Consideration should be given to a statutory requirement upon Councils to deliver at least the planning for housing aspect of development plans and this should be reviewed consistently in terms of effective housing land supply via the delivery programme process – we accept employment land use delivery might be much more uncertain, but its viability would be improved with a focus on housing led growth.
- 4.8. We support the use of processing agreements but not if they are used as a means of drawing out already long lead-in times for development. In feedback received from members there are reports of agreements being reissued as a result of prolonged discussions on design, community empowerment agreements, s.75 etc. and then a lack of engagement by Planning Authorities. While this helps to meet targets set by the government for application determination

timescales it leads to extensive pre-application periods of up to 2 years in some cases. Guidance on processing agreements that would address these time-scale issues could be helpful.

- 4.9. As already stated the SPF fully supports front-loaded engagement in the planning process, with procedures for development plans designed to facilitate meaningful participation at the earliest stages. The proposed Bill introduces a comprehensive range of measures that are intended, as a cohesive package, to improve efficiencies in the planning system. Front loaded consultation with recognised community stakeholders is a key element of the package. Widening the Appeals process to unrepresentative third parties will not improve planning efficiencies or make the development planning process more equitable. Our members have serious concerns about the potential delays arising, the adverse impact this would have on economic growth, and the potential to undermine a previously approved development plan. There is little doubt that the introduction of a third party right of appeal would introduce new and substantial delays into the development planning process and place further strain on local authority resources, which in many cases are already beyond breaking point. There would also be an impact on the delivery of new housing and infrastructure, and the risk of placing Scotland at a competitive disadvantage to the rest of the UK as mentioned previously.
- 4.10. The SPF agrees it is essential that there should be flexibility on the provisions for duration of PPIp in view of the long-term development period that often applies to major development projects, potentially spanning economic cycles. However, the Bill provides for the duration of a planning permission to be set by the local authority that could be less than 3 years, which would cause significant problems for the developer. Our members are firmly of the view that allocated sites, in an up to date LDP, should have a preferential processing process at the development management stage.
- 4.11. Critical features of the planning process are that (i) the award of planning permission creates a legal authority for development to proceed without general compulsion on a single party, but subject to relevant technical, environmental, legal, phasing and investment criteria being met, and (ii) the planning permission relates to the whole of the planning application proposals. Planning Consents generally control the implementation of essential elements of developments through the imposition of relevant planning conditions or obligations, or by imposing requirements for the provision of legal guarantees or bonds under defined conditions, once the Planning Consent is implemented (e.g. for the delivery of public roads or amenity spaces in appropriate phases). It is essential that the proposed changes to the Completion Notice procedure, which are presumably intended to increase their use by planning authorities, do not encourage such use in inappropriate circumstances.
- 4.12. Developers rarely leave developments uncompleted without good reason. Delays are most frequently caused by funding issues, legal complications arising, or other statutory consents being delayed. A requirement to complete the development in these circumstances would serve little or no purpose, given that the planning authority should be facilitating the completion of much-needed development, not preventing it by removing the planning permission. A development may also be stalled due to market changes. For example, in relation to a housing development, there might be a shift in demand from four-bedroom to two-bedroom houses. In such a case, it would clearly not be desirable to compel the developer to build houses of a type for which there would be no demand. Another recent example is the

change in food shopping patterns, which resulted in many large supermarket developments being commenced but not completed, while operators worked out how best to respond to the market changes. This resulted in some applications being made for smaller stores. It would have been inappropriate to force the developer to complete the larger store when there was no longer any need for it.

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

- 5.1. Our members are of the view that the new SDZ mechanism will be a useful tool in enabling more development. It looks beyond planning controls to enable successful delivery of development. Landowners, developers and communities can engage early in the planning process around an inclusive vision for an area, speeding up economic activity and regeneration areas and helping to accelerate and diversify commercial and housing markets.
- 5.2. Even with sites that are fully allocated in a current and up to date Local Development Plan, there still seems to be an enormous effort required on studies, to support the submission of a detailed planning application and then to support the negotiating process. This can lead to at least a two-year period from option completion to securing planning permission, which needs to be speeded up. Simplified Development Zones (SDZs) for housing-led planning applications would be one means of addressing this alongside the concept that the LDP allocation is fully equivalent to planning permission in principle. But this would be alongside work on infrastructure delivery to ensure that this does not then delay the SDZ based development.
- 5.3. The SPF is aware that frustrations are raised by community bodies or those representing community bodies from time to time. Equally, from the developer's perspective, there can be contradictory and unconstructive input from community groups who wish to prevent development at any cost, leading to a sense of delay and uncertainty. The potential award of wider permitted development rights and SDZs when there is clear community support would encourage developers to implement robust and meaningful community engagement measures.
- 5.4. The drawback with the current process for the designation of SDZs is that the initiative must come from the local authority. The SPF therefore welcomes the provision that Scottish Ministers can direct and set out the terms if required. There are good examples of councils promoting SDZs for commercial sites but doing this for housing sites might be less attractive. There is a need for stronger direction under the new legislation to promote SDZs, which can make a significant contribution to housing growth.
- 5.5. It is SPF's understanding that there is a reluctance on the part of planning authorities to grant planning permission in principle for commercial developments as it is not always deemed possible to determine what a commercial unit may ultimately be used for. There is therefore a risk that the government's placemaking agenda and policies could be sidelined as developments would be restricted to housing, leading to a lack of flexible mixed-use developments with amenities and leisure facilities where people would like to live and work. We believe it should be feasible to award PPIP to major commercial developments based on defined planning uses.

5.6. Our members are of the view that there is potential for SDZs to help deliver commercial, Class 4, 5 and 6 developments. At present the Scottish Government seems to primarily see these as a means to getting housing built in less favourable areas by small scale builders. SPZ for Economic Growth areas have a great potential to deliver new business space through effectively removing planning risk for identified sites.

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. Community engagement is a key part of major development and should be meaningful, timely and efficient. Communities could benefit from a greater understanding of the planning process, so their engagement could be constructive and effective. They first need to be accepting of a need for change impacting on their community, e.g. Development coming forward within their locality, and embrace this in the creation of their Local Place Plans (LPP). They need to understand the strategy of current long-term development plans, the factors impacting on viability of developments and that profit is vital for developers.
- 6.2. There is a risk that groups become defined as community bodies that are focused on a single issue, which is not necessarily representative of their wider community. There is also a risk of groups possessing different objectives at odds with each other and there needs to be a robust process to deal with any such conflict of views. It is also important to consider that well intentioned policies can run the risk of being misused. There also appears to be the potential for more than one LPP. Our members are firmly of the view that the clear focus should be on the Local Development Plan as the key local process for implementing private and public development.
- 6.3. Our members support better, early engagement by appropriate and representative community groups at the development planning stage, supported by improved community engagement by applicants at the point of major applications. Consultation needs to happen as early in the application process as possible to ensure that issues can be addressed effectively and demonstrated as part of any application. Local Planning Authorities need to do more under existing powers to involve their communities in the plan making process. With the potential for Local Place Plans, Local Planning Authorities will have the opportunity to make suggestions for these in areas where communities want to become more involved in shaping their local environment.
- 6.4. It is vital to prevent undue influence on the decision-making process being given to those who are most vocal or who seek to frustrate development to serve their own purposes. We should not seek to remove decision-making from local authorities, whose role it is to balance and represent the views of all individuals and communities in their areas. A key concern is that the planning landscape may become more bureaucratic, and much less focused on delivery.

- 6.5. Our members are concerned about the proposal to remove the free second application submission, as there is a very real risk that increased appeals would be an unintended consequence. For example, applicants are unlikely to resubmit an application at a cost of circa £100K to deal with the minor points of refusal that elected Members put forward where officers have recommended approval. In this case the applicant would be more likely to appeal.
- 6.6. Some members have suggested that there should be a review of the current appeals system, given the backlog of major cases within the DPEA. They have suggested that appeals should be more in the form of “reviews” rather than the form of a Reporter considering an application afresh but with a much more limited level of public involvement that took place for the original application. However, they firmly disagree with the proposal for more decisions to be made by local review bodies as this takes away the necessary independence for such a decision. There is a risk of contradictory and unconstructive input from community groups leading to further of delay and uncertainty.
- 6.7. There is concern about the quality of decision-making by Local Review Bodies. Training can assist, but there is still a perception that some decisions are made for local political reasons, especially those relating to new housing and wind turbines. Reporters frequently overturn decisions made by councillors sitting as planning committees (the success rate of appeals is approximately 50%), which raises the question of why councillors sitting as LRBs should be given more power to have the final say on developments.
- 6.8. Our members strongly disagree with the proposal to introduce fees for appeals and reviews. Developers are required to pay substantial sums far in excess of the planning fee for a range of reports including among others: Environmental Impact Assessments, habitat studies, transport assessments, retail impact assessments and flooding/drainage capacity studies. For a major development these costs may easily run into hundreds of thousands of pounds. If the developer is already forced to pay for all of this advice, then the introduction of further fees is likely to make development even more unviable.
- 6.9. The open-ended nature of the Pre-Application Consultation (PAC) process will be closed with the introduction of an 18-month time limit on the submission of a planning application, post Proposal of Application Notice (PAN). Our members are of the view that this is currently very much a grey area and in our view, it is not unreasonable to require an application within a defined timescale from giving notice of a PAN. In addition, more than one consultation event will be required as part of the PAC process. Whilst this will offer communities a further chance to input into the design process it does add another financial burden on developers.
- 6.10. Most large-scale developments tend to have more than one event, but for smaller developments just over the ‘Major’ threshold, and where there has not been significant interest from the first event, our members are of the view that a requirement to hold two events could be overly onerous in relation to time and cost. There is also a risk of creating consultation fatigue. We would suggest that appropriate triggers and criteria are developed to determine where it is appropriate to hold an additional event, or alternatively for a greater focus in PAC reports to justify that the amount of consultation undertaken is proportionate to the scale and or complexity of the proposals, level of public interest, and attendance at earlier events. There

may be scope to encourage a variety of means of consultation for example using multiple forms of communication and media to consult, obtaining feedback and keeping communities informed. This could also be an expected component of PAC reports to demonstrate wider access to information as well as aligning with the digital taskforce agenda.

6.11. Our members have expressed concern about the sanctity of advice that is received under the existing process for pre-application meetings. Members have noted experience of advice given by a council changing following subsequent internal discussion and on some occasions a difference of opinion over what was agreed at pre-application meetings. Members have also noticed that there can be a lack of clear prior discussion within the planning authority prior to formal pre-application meetings. It is not unusual to receive conflicting advice from different parts of the same Authority.

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. The SPF has concerns about any penalties placed on poorly performing authorities as there is a risk that this could place further strain on resource strapped local authorities. We agree that a better means of addressing poor performance is by imposing statutory improvements via government or peer intervention, particularly if this means highlighting best practice across local authorities.

7.2. Our members feel that statutory enforcement powers that are already available to Planning Authorities are not currently being used as they could be. There is little evidence to show compelling reasons for increasing penalties, without firstly making use of the current powers.

7.3. The SPF has concerns with the proposal to allow charging orders to be made in the Land Register or recorded in the Register of Sasines requiring payment to be made to secure discharge on the order of the property. There are risks that such procedures could be applied across the whole extent of a Planning Permission and would impose unreasonable penalties or liabilities on third parties, such as purchasers or tenants, who have acted in good faith in the exercise of property rights granted under the Planning process.

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. The SPF recognises and supports the recommendation in the Report on Planning Review for the adoption in the Scottish Planning System of an Infrastructure First Approach as a key step to stimulating development and economic growth. Notwithstanding this support the SPF continues to hold reservations over the proposals to proceed with the introduction of the new Planning Bill in the absence of clear measures for the introduction of a viable charging mechanism. While infrastructure delivery is a key challenge under the current system, its

reform will be a key test of success for the proposals in the original consultation paper, bearing in mind the experience of members with the Community Infrastructure Levy in England.

- 8.2. Our members have particular concerns about the introduction of an enabling power for the introduction of an infrastructure levy without a clear indication of how this would work. It is impossible at this stage without that information to give a true reflection of the cost to the Scottish Administration, local authorities and other bodies, individuals and businesses. For example, the Financial Memorandum states that there would be a cost to developers when some of what is being suggested in the research published recently by the Scottish Government would result in a considerable charge to the landowner.
- 8.3. Our members have concerns about the provisions set out in Clause 9 of Schedule 1, which could have unintended consequences. The majority of land transactions, whether options or conditional contracts, are concluded on a 'subject to planning' basis. The option/contract will therefore only determine and the development proceed on the grant of planning permission. If planning permission were to be withheld until an infrastructure levy is paid, this could hamper the exercise of most land contracts and therefore prevent development from proceeding, even if there were no other obstacles to development.
- 8.4. There is likely to be a cost to the public sector, as publicly owned land is rationalised and local authorities will have a further negative impact as proposals indicate that they will be responsible for the administration of the scheme. The proposed 'land tax' would result in a reduction in land values as the cost would fall back to the land owner. This reinforces market failure as land owners are unlikely to be willing to sell and there would consequently be insufficient land to meet challenging housing targets.
- 8.5. Our members are firmly of the view that options under consideration should reflect the government's position on adopting an 'Infrastructure First Approach', as distinct from a means of raising tax on land or development. The proposals should therefore be based on quantum of development output at a viable and sustainable level, rather than value of output. The former would provide for a more evidential business case approach.
- 8.6. While the Financial Memorandum states that the introduction of the scheme would be cost neutral, there is a considerable risk that the scheme will not deliver the intended additional capital for investing in the critical infrastructure required.
- 8.7. Our members are firmly of the view that section 75A obligations must be considered alongside any future decisions on the role of a levy. While our members understand that s.75 is not in itself always sufficient to fund the level of essential infrastructure investment to adopt an Infrastructure First approach and unlock development, it is vital that the viability of projects is not compromised with duplication of planning obligations for infrastructure. The SPF is clear that there cannot be any notion of a duplicate development tax and s.75 obligations must therefore account for only basic community amenities fairly and reasonably related to the development.

- 8.8. Our members have strong concerns that there is a risk that the Infrastructure Levy could potentially turn into a blanket payment for national infrastructure and regeneration threatening the viability of development. This is further compounded by what our members sometimes see as a 'shopping list' of demands under s.75 obligations from local authorities such as junction improvements, education contributions and health facilities etc. This could potentially mean an additional burden on developers to prepare a viability submission for every development and create a significant disincentive for landowners to sell their land. Our members are firmly of the view that the link, long enshrined in the planning system, between the level of contributions and the size and scale of the development concerned should be retained.
- 8.9. Infrastructure delivery is a key challenge under the current system and will be a test of success for the proposals in the Bill. The SPF has long recognised that s.75 has its limitations, and these have been borne out by the decision of the Supreme Court in the case of *Aberdeen City & Shire SDPA v. Elsick Development Company*. The court case is extremely timely in reminding us that new legislative powers are required that act in the interests of both the development industry and wider Scottish Society in delivering healthy vibrant places, communities and business environments.
- 8.10. We have major concerns about the collection and distribution of the Infrastructure Levy being operated through local authorities. The SPF is firmly of the view that the proposals for the co-ordination of investment programmes and working with existing agencies does not go far enough and fully supports the recommendation in the independent Planning Review Report that a new Infrastructure Agency should be introduced. Our members are of the view that a National Infrastructure Agency is important to ensure that there is an accountable fair and transparent structure in place for the full co-ordination of diverse funding sources. This would cover funding across key agencies, utility providers, local authorities as well as other public bodies and arrangements for the funding where appropriate between public and private sectors.
- 8.11. Proposals in the Scottish Government research suggest the collection of the proposed levy by local authorities and a process for spreading funding to poorer areas. Creation of a 'land tax' in a general form could however create the risk of a reduction in overall land values, with the potential to reinforce market failure around housing. A sufficient number of land owners, in both the private and public sectors, must be incentivised to supply their land into the development system and could be less willing to sell if the new legislation creates undue obstacles and costs for doing so. However, the SPF supports development growth in all geographic parts and business sectors of Scotland and will look to the emerging Scottish National Investment Bank for innovative ways of encouraging development across Scotland, with the aid of a fair infrastructure charging mechanism and strong linkage to existing or emerging public-sector funds.
- 8.12. Our members have serious concerns about a number of the provisions within Schedule 1, which if unchallenged, will impact adversely upon the delivery of all forms of development across Scotland. A National Infrastructure is vital to provide reasonable, transparent and fair objectivity along with the ability to submit viability assessments.

8.13. Collection and enforcement – para 7b (of Schedule 1) allows the regulations to enable local authorities to give powers to officers of the authority or others to enter premises (apart from houses) and to seize items as part of investigating liability for the levy. Proposals to allow the local authority to charge a financial penalty (para 8), to preclude planning permission from being granted (para 9) or to stop development (para 10) could be a crippling burden on the development industry in themselves. The SPF cannot give support to a planning system whereby sheriff officers/bailiffs are in the position of seizing the property of applicants for non-payment of a levy, which may have been disproportionately imposed on the development itself in the first instance. This is likely to deter much needed investment and put Scotland at a competitive disadvantage.

8.14. Some of our members have suggested the introduction of National Infrastructure Commissioners similar to elsewhere in the UK with representatives drawn from the private sector as well as the public sector to set the vision and ambition for this essential sector. They have also suggested that the Commissioners should set the standards by which the sector should work taking a long-term vision for the country that aligns with the NPF and ensures connectivity. An Infrastructure Commission with members drawn from both the private and public sectors would provide greater confidence in the design and adoption of investment strategies for the delivery of development plans, with effective co-operation by private and public bodies.

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. Project management, development finance, mediation and information technology are of critical importance. This applies to all those involved in planning, including the key agencies, developers and their agents as well as local authority planners. Training of elected members should be mandatory, monitored and enforced.

10. Will the proposals in the Bill aimed at monitoring and improving the performance of planning authorities help drive performance improvements?

10.1. Our members feel that statutory enforcement powers that are already available to planning authorities are not currently being used as they could be. There is little evidence to show compelling reasons for increasing penalties, without making use of the current powers first.

10.2. Our members continue to be concerned about performance on major planning applications and the prospect of further planning fees and levies. For any increase in fees we would expect to see an injection of additional resources to deliver a better planning service with strong leadership, that supports appropriate development and welcomes new investment in our built environment. We have yet to see full commitment by planning authorities to use the increased planning fees, paid for by the private sector, to invest in improving delivery of planning services.

10.3. SPF members have previously indicated a willingness to pay a higher planning fee, for a tangible improvement in performance by planning authorities. However, it is important that Scotland

continues to remain competitive and the recent significantly increased planning fees must be used to deliver the critical improvements required in the planning service, such as an improvement in the speed and manner that major applications are dealt with. However, as already stated, the SPF has concerns about any penalties placed on poorly performing authorities as there is a risk that this could place further strain on resource strapped local authorities. They are of the view that a better mean of addressing poor performance is by imposing statutory improvements via government or peer intervention.

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. SPF members have previously indicated a willingness to pay a higher planning fee, for a tangible improvement in performance by planning authorities. However, it is important that Scotland continues to remain competitive and any increase in fees paid by the private sector needs to result directly in an injection of additional resources for planning services, delivering stronger leadership that supports appropriate development and encourages new investment in our built environment. Unfortunately, we have yet to see full commitment by planning authorities to tie fees to better outcomes in the way that's needed. The move to full cost recovery by local authorities should not be done at the expense of an efficient and effective planning system.

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

12.1. We have some concerns that the Bill does not offer the clarity that's needed to consider the impacts of the proposed reforms comprehensively and arguably raises further questions. Whilst the Government has a view on how a number of the key areas of planning reform will operate in practice, there is still a lot of detail which must be added and a clear path defined. We understand that the most significant details will be contained in secondary legislation, but this will not be available for some time. The SPF would be happy to engage with the Scottish Government and the Parliament to offer more comprehensive comments as these policies develop further.

12.2. Any further delays to delivering positive outcomes from the planning system will further weaken public confidence in the planning system to deliver the homes, jobs and investment Scotland needs to create successful sustainable communities.

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