

## Planning Committee

**2.00pm, Wednesday 14 March 2018**

Dean of Guild Court Room, City Chambers, High Street, Edinburgh

## Planning Committee

Convener:	Members:	Contact:
<p>Councillor Neil Gardiner</p> 	<p>Councillor Chas Booth Councillor Maureen Child Councillor Denis Dixon Councillor Ashley Graczyk Councillor Joan Griffiths Councillor Max Mitchell Councillor Joanna Mowat Councillor Hal Osler Councillor Lewis Ritchie Councillor Alex Staniforth</p>	<p>Stephen Broughton Committee Services 0131 529 4261</p>

## The Planning (Scotland) Bill 2017

The Council submitted evidence to the [Scottish Parliament's Local Government and Communities Committee](#) on 2 February 2018. The evidence is based on set questions and focusses on a number of key issues facing Edinburgh, namely:

- Delivery of housing
- Regional and local development planning
- Simplified Development Zones
- Planning enforcement
- Funding infrastructure
- Community engagement
- Councillor training
- Performance monitoring
- Planning fees
- Tree controls

Royal Assent is anticipated in Autumn 2018 with secondary legislation and guidance to follow. The Bill is one aspect of the review of Scottish planning system with changes to working practices due as part of the review. The Council evidence is contained in Appendix 1.

### Community right of appeal

Planning Committee at its meeting on 17 August 2017 agreed to make further representations in respect of community rights of appeal and asked the Convener to raise this with Kevin Stewart, Minister responsible for planning reform.

The Minister held a meeting in Parliament in January with Cllr Neil Gardiner, Planning Convener, and David Leslie, Chief Planning Officer. The Minister listened to the explanation of the Council Commitment but made it clear that the Scottish Government had no proposals to change rights of appeal.

The Minister expressed his support for continuing to strengthen pre-application engagement and his reservations about the potential impact on the delivery of development which could result from a community right of appeal.

The review of planning in Scotland commenced in 2015, when the Scottish Government appointed an independent panel to review the planning system. The panel report '[Empowering Planning to Deliver Great Places](#)' (May 2016) made a number of recommendations. Consultation has continued, with the Council response to the 'Places, People and Planning' paper, agreed by [Planning Committee on 30 March 2017](#) and a subsequent progress report on [17 August 2017](#).

For further information contact: [David Leslie](#), Service Manager and Chief Planning Officer. Tel 0131 529 3948

[The Council Commitment 10](#) sets out that we will, "*Work with the Scottish Government to review planning policy and overhaul the planning appeal system to make it shorter, more independent and give communities the right to appeal.*"

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## Planning Information Bulletins

Planning Information Bulletins (PIBs) were introduced a number of years ago to let members of Planning Committee know about new research findings, information publications, action updates, etc that do not require a committee decision. They are published on the Council website for public access : [http://www.edinburgh.gov.uk/downloads/download/795/planning\\_information\\_bulletin](http://www.edinburgh.gov.uk/downloads/download/795/planning_information_bulletin)

Only one PIB was issued in 2017, to inform members about the designation and management arrangements for the Forth Bridge World Heritage Site.

Two new PIBs have been published as appended:

- Edinburgh's purpose-built student accommodation market (Appendix 2) which provides an update on monitoring.
- The re-use of historic buildings (Appendix 3) which provides an update on the buildings at risk register.

Members' attention is drawn to these bulletins.

For further information contact: [David Leslie](#), Service Manager and Chief Planning Officer.  
Tel 0131 529 3948

## **APPENDIX 1: Local Government and Communities Committee Call for Evidence**

### **The Planning (Scotland) Bill - Submission by the City of Edinburgh Council**

The City of Edinburgh Council welcomes the opportunity to give evidence on the Bill and will continue to actively engage in the review of the planning system. The responses to the questions are derived from the context of planning in Edinburgh, the unique challenges the city faces and the experience of a well-developed Local Development Plan Action Programme.

The submission responds to the questions set out in the call for evidence.

#### **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?**

The Bill in itself will not deliver this aspiration. The legislative framework is one part of the process to deliver an improved planning system. As an inclusive process, an improved planning system requires the collective will of all those who participate in the process.

#### **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?**

This is dependent on a range of factors, one key aspect being the delivery of infrastructure which is addressed in Questions 4, 5 and 8.

#### **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?**

This aspect of the Bill is of importance to Edinburgh where a number of benefits are derived from regional planning. Accepting that there are no defined boundaries for regional partnerships, the voluntary cooperation of those required to make a partnership effective may not always exist. The duty within the Bill extends to the provision of evidence for the National Planning Framework, which requires cooperation across planning authorities. From this authority's experience of current strategic planning arrangements, there is uncertainty as to whether this enough to ensure cooperation across the range of interests needed for effective regional planning. Accountability of regional partnerships will be key and it is not yet clear how communities, developers and stakeholders would engage with regional partnerships.

Some specific aspects requiring further consideration include:

- Defining the role, duties and powers of the regional partnerships alongside issues such as the coordination of funding for infrastructure projects and the City Region Deal
- Continuing the focus on travel to work areas and the strategic relationship between transport and land use planning – a review of the strategic transport authority is integral to addressing issues with infrastructure across the city region

- The partnership should set targets (including housing), regional priorities and spatial strategy through the National Planning Framework (NPF) and coordinate delivery with other member authorities
- The issue of ‘city growth corridors’ and the how the Edinburgh – Glasgow metropolitan region will develop in the future needs to be explored through joined-up regional planning as an input to the NPF

There remains a concern about increasing the role of Scottish Planning Policy (SPP) in local decision making, with the transference of policy from the local to national levels resulting in undemocratic centralisation lacking transparency.

**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?**

Moving from a requirement to update the plan within 10 years rather than the current 5 years raises issues of concern in relation to Edinburgh as a growing and changing city. Although the Council could decide to review and update a plan in a shorter timescale other partners, on which there is a dependency for plan preparation, may programme resources on the longer timescale. This reduces the flexibility for infrastructure requirements to be updated to reflect changing circumstances. This is also covered in response to Question 8.

In the context of Edinburgh, all types of supplementary guidance (SG) allows us to address the changing nature of growth (including delivery speed and location of new housing and other development) far more efficiently and timeously than through the development plan. If the statutory provision for SG is removed, non-statutory SG will continue to be required as a process for updating of infrastructure actions.

All SG requires consultation before it can be adopted making this a transparent process. There is a need to include sufficient detail in SG to provide clarity for developers and communities.

There is general support for the reference to “action” programmes to be replaced with “delivery” programmes to be approved by full Council. However, there could be some confusion whether they are now housing land delivery programmes, as per the Edinburgh approach, to monitoring the delivery of land and housing.

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

Whilst Edinburgh has not made use of previous Simplified Planning Zones, the proposals for Simplified Development Zones (SDZs) could support the delivery of new development and allow the Council to set delivery and infrastructure requirements in advance, with a tariff based approach. The benefit of this would reduce uncertainty in funding of infrastructure.

This authority supports a plan-led system and the opportunity to explore areas for SDZ status in the LDP process. We would advocate the use of masterplans, frameworks and design codes

to manage development in Simplified Development Zones. The resource to undertake this would require to be identified and funded.

In respect of the community and environmental interest, this Council would expect a frontloaded process as part of any designation to ensure community involvement, with it being essential that archaeological and historic environment issues are addressed and where necessary, conditions requiring environmental mitigation work.

**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?**

This Council supports the link between the development plan and community planning. Closer alignment can help to deliver wider Council outcomes with the community plan one mechanism to deliver aspects of the local development plan, albeit the local development plan retains primacy in the planning decision-making process.

The Council is developing this approach through the use of 'Locality Improvement Plans' and there are concerns that Local Place Plans could raise expectations, require additional resource (by the Council and community) and add to already complex processes.

**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?**

This Council suggests a number of changes to improve public confidence in the system, including:

Fixed penalty fines – the use of fines is not a workable enforcement tool. Fines are so low that an offender may choose to pay it to be immune from further enforcement action. A solution may be to allow the planning authority to impose repeat/increasing fines until the breach has been remedied. The Council supports any additional powers which make it easy to recoup any unpaid fines, such as imposing a charge on the land.

Planning Contravention Notices (PCN) and Section 272 notices - under existing legislation the failure to comply with PCN/s.272 notices should be referred to Procurator Fiscal but in practice this is not a realistic option as it is not seen as a serious offence. Without proper sanctions, these notices are ignored which slow down the investigation process and is a financial burden on the planning authority which has to gather the necessary information. A possible solution would be to introduce a fine that can be served quickly and easily in the same way as a parking ticket.

Retrospective applications – [Circular 10/2009](#) suggests that authorities should be seeking retrospective applications for breaches that require permission but are otherwise generally

acceptable. However there is often little value in the planning authority seeking an application given resources have been used to investigate the breach and satisfy ourselves that any harm is likely to be minimal. If the authority is to seek an application, it should be allowed to charge a higher fee for such applications in order to cover its costs. The fact that the offender has to regularise the unauthorised development (at a higher than normal fee) may also help to improve public confidence in the system.

Powers to decline to determine a retrospective application – some offenders submit retrospective applications when enforcement action is being taken. In some circumstances, the offender can play the system to prolong the unauthorised use/development. To prevent this, the planning authority should have the discretionary power to refuse to accept applications were enforcement action has been taken. The statutory means to decline to determine an application would help to improve public confidence in the system.

**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?**

This Council has concerns about whether an infrastructure levy is the best solution in the absence of details. Key considerations include:

- Levy would likely only address cross boundary or strategic infrastructure. There could be support for a levy if it were to be used for city-wide infrastructure, replacing Section 75 legal agreements
- The Elrick Decision at the Supreme Court is a significant issue – for much strategic infrastructure it is recognised that a direct relationship cannot be made. Strategic and cross boundary infrastructure in the Edinburgh City Region is required is due to historic growth. New development is expected to remain a small part of the requirement, therefore new development would not be contributing towards a significant share of the infrastructure requirement. There would still be a resultant funding gap to be found to deliver infrastructure
- It has been identified that nationally the levy could generate £75m, the expected infrastructure bill to deliver the development provided for in the Edinburgh LDP alone is £450m. A single piece of Edinburgh cross-boundary infrastructure – a renewed Sheriffhall roundabout has been estimated as costing £120m. The levy will not generate enough funding to deliver the required infrastructure
- If a tariff was generated and charged on a site by site basis the levy is expected to impact on development viability and development's ability to contribute towards infrastructure required to support the development, resulting in additional funding gaps for the Council.

A suggested way forward would be for the levy to fully replace S75 and allow the Council to develop an Infrastructure Plan for the city and strategic and cross boundary actions, based on the LDP Action Programme. This will require a full evidence base for the actions to be

developed with support from a regional transport partnership prior to adoption of the infrastructure strategy. There will need to be an interim funding mechanism to ensure that infrastructure from current development plans is funded. In the longer term the Infrastructure Plan could replace the need for Supplementary Guidance on this matter, with a flexible approach to it being updated.

**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?**

Yes, this is supported. This Council has delivered a comprehensive training programme for councillors over many years.

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

This authority has engaged in the 'planning performance framework' process and supports a cooperative approach to measuring the performance of planning authorities alongside the performance of other key players in the planning system. A high performing planning service should be measured through a range of performance criteria based on the quality of outcomes and not just one of speed by which planning applications are determined.

**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?**

Pre-application discussions add an important value to the development process for both the applicant and the community. The Bill's proposals for discretionary fees are important and must enable planning authorities to charge fees to recover costs without the risk of challenge. This authority acknowledges that charging fees should be linked to an improved level of customer service, measured as part of regular monitoring as noted in Q.10. Authorities should also retain the flexibility to increase or reduce fees for some services to act as an economic stimulus.

The high volume and complexity of enquiries from customers can add a significant burden to the delivery of a high performing planning service. In Edinburgh, the protections across the city, including conservation areas (26.4% of properties in the urban area are within a conservation area – over 66,000 residential properties), having a high concentration of listed buildings (over 30,000 separately owned listed buildings), designations such as World Heritage Site status and increased tourism-related development pressures all generate high levels of community engagement which the Planning service must resource.

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

Preservation of trees in conservation areas

In previous reviews of Tree Preservation Orders, [section 172 of the Town & Country Planning \(Scotland\) Act 1997](#), which provides protection for trees in conservation areas and

produces a greater case load for planning authorities than Tree Preservation Orders (TPOs), has not been reviewed.

Section 172 requires that 6 weeks' notice is given to the planning authority before work can be carried out on a tree in a conservation area. This period allows the authority to consider the effect and acceptability of the proposals. The authority cannot refuse consent or grant it subject to conditions. If the authority wish to prevent the work from taking place or to attach conditions to make the work acceptable (such as requiring the work accords with good practice or that there is replacement tree planting) then the authority has to make a tree preservation order.

The making of a TPO in response to what may be a one-off proposal can seem heavy-handed and there is no right of appeal against the making of an Order. This Council received over 500 such notifications for works in conservation area in 2017 and using TPOs to prevent or make otherwise unacceptable damaging tree work, even in a small percentage of cases results in significant legal and advertising costs and staff time which is unavoidable when making a TPO.

The Council consider that a change in the Act would create a more managed, efficient, proportionate and equitable way to deal with the high number of Section 172 notifications received. This would remove the requirement of having to make a costly and time-consuming TPO for each case against which there is no right of appeal.

Section 172 of the Act should be amended so that planning authorities can determine a notice of intent to carry out tree work in a conservation area within the 6-week period. If the authority considers the proposals submitted in a notification will have an unacceptable impact on amenity, could be made acceptable with some modification or by attaching conditions then the planning authority could refuse permission or grant permission subject to conditions where this is expedient in the interests of amenity. An appeal against such decisions could be introduced as it exists for an application under a TPO. If the 6-week period expires without a decision then existing provisions can remain and the work can be carried out as proposed in the notification.

Such a change would allow planning authorities to properly consider and deal with the amenity implications of tree work in conservation areas without the burden of having to make a considerable number of individual tree preservation orders. The process to apply for works to trees currently attracts no fee and we would note our response to Q.11.

*David R Leslie*  
*Chief Planning Officer*

*2 February 2018*

**APPENDIX 2 : PLANNING INFORMATION BULLETIN 1/2018**

**APPENDIX 3 : PLANNING INFORMATION BULLETIN 2/2018**