

29/11/15

Scottish Government Review of Planning, November 2015

Representation from
The Helensburgh Community Council Strategy Plans Group
Rhu and Shandon Community Council
The Helensburgh Study Group
The Helensburgh Green Belt Group

NOTE : This representation comes from four organisations jointly. That is, per group, well below the set word limit.

Suggestions to the review panel are in blue/bold.

Structure of this joint representation

This response is in three parts :

- A. Key purposes for the planning system.
- B. A short selection of issues to consider, but far from a comprehensive list.
- C. Nature of this consultation

A. Key purposes for the planning system.

Regulation to safeguard people and environment is the main purpose of planning. That must stay. Planning also exists to facilitate improvements.

The Scottish Government's Guide to the planning system, 2009, page 2, states : "The planning system exists to regulate the use of land and buildings by granting or refusing planning permission." If the current exercise is to be, as the Scottish Government has asserted, a "root and branch" review, then **regulation is the root** – the basis, on which all else depends, in our view.

The Guide goes on to say : "The planning system balances competing demands to make sure that land is used and developed in the public's long-term interest." That is a crucial statement and **we hope that the planning review panel will adopt regulation and the public's long-term interest as its starting points. Lowering standards or watering down regulation should be resisted if those are being proposed for short-term purposes.**

The Guide continues : "The effect of the planning system's decisions should be to help increase sustainable economic growth, which is the main purpose of the Scottish Government. This means that the planning system should help build a growing economy, *but at the same time protect our environment for future generations and make sure that communities can enjoy a better quality of life.*" [Our emphasis.] That hints at tension between regulation for the protecting the environment / better quality of life for the public on the one hand and development for that ambiguous term "sustainable economic growth" on the other. **Economic growth should be within a strong regulatory system to ensure that fundamental safeguarding is not sacrificed. The two can be compatible.**

Adams and Watkins argue in their RTPI research paper number 5 (2014), that planning can validly include focusing on ends as well as means, and embracing economic, social, environmental, cultural and other outcomes as they relate to land use. (See section A7 below for more on this.) We agree, but in this submission, we are especially concerned with the fundamental perspective of planning as safeguarding. **We urge that whenever the review panel considers any proposal, it should test it against the principle of safeguarding first.**

1. Planning as protection

The planning system is beneficially protective. If every proposed development were uncontroversial and harm-free, there would be far less need for a planning system. But that is not the case, so the public needs the security of a planning system. Once a development has happened it usually cannot be undone. So protection against bad development (“potential negative externalities”, to be pedantic) is a fundamental purposes of planning.

- It protects the many from danger and degradation caused by the few
- It safeguards and enhances natural and cultural resources
- It encourages quality design in approved developments
- It guides and regulates developers to ensure essential safeguarding of the locality
- It should persuade developers to bring forward schemes that are policy-compliant
- It advises politicians regarding regulation in a spirit of professional independence
- It is about creating successful places

Scottish Planning Policy (SPP, 2014, pages 2 to 5) contains additional aims :

- Consistency of application across Scotland
- Sufficient flexibility to reflect local circumstances
- Engendering public confidence in the system
- Providing a supportive business environment
- Creating a successful country where all can flourish
- Sustainable economic growth and maximising benefits
- Decisions in a timely, transparent and fair way
- Inclusiveness, engaging all interests as early as possible
- Being proportionate and upholding the law

Although some of those are rather vague, we accept them.

We add the need to assist the public to understand planning and to be guided Planning Aid for Scotland (PAS) valuably spearheads this, including its Planning News E-bulletin. **The Review Panel might consider widening public awareness further.**

2. Balancing competing interests

The SPP refers to “balancing competing interests”. We welcome that aim. A weakness of the current system is imbalance. It favours development over safeguarding of the public in several ways.

- Developers can use “commercial confidentiality” to reduce openness
- Developers can hold confidential advance meetings with planners
- Developers can appeal if they dislike a decision, but the public cannot
- Big developers have financial and lobbying power
- Developers can hold land banks and sometimes allow neglect
- Developers can hire expensive private planners and lawyers in support, which the public generally cannot afford to do
- Enforcement is often limited and some developers take advantage

- Conditions and protective designations are sometimes breached without penalty
- **Early** engagement of the public matters but must not replace *continuing* public influence
- Developers can take months (or years) to prepare plans, but the public is time-constricted to respond

The list could be extended. **An aim of the review panel could usefully be to reduce these and any other imbalances that unfairly favour developers.**

3. *Planning expertise versus expediency*

Short-term expediency or self-interest may motivate some developers, some individuals and some political groups. The advantages of a stable planning system, based on professional understanding of research and long-term consequences of actions, can counterbalance such expediency for the common good. Thus an outcome of good planning should be to encourage the right kinds of developer and the right kinds of development.

Local groups in Helensburgh have sometimes disagreed with decisions by planners and have seen weaknesses in parts of the planning system, but we still value that system as the only protection against vested interests and malpractice. **We support a strong planning base.**

A cadre of professional planners operating the system should, in our view, should :

- be independent of party political influence prior to political decision;
- be based on long-term principles;
- be professionally up to date with research and best practice;
- be able to stand up to those with power, money and influence;
- be responsive to representations from local communities affected;
- be accountable, open and transparent;
- recognise that informed interest groups (not pressure groups) offer an accepted and valuable contribution to the democratic process;
- be prepared to contest bad practice and publicise it as well as good practice.

4. *Professional integrity*

There has been a long-running academic debate about what constitutes a profession as distinct from an occupation. Some occupations have sought professional designation to obtain enhanced pay and status. These are not criteria of professionalism.

We accept the distinction between professionalism (theory) and professionalism (practice).

We also accept the view that the main criteria of a profession are up-to-date expertise, qualification, altruistic service to the public and integrity. Although politicians may make final decisions on some issues, planners, to act professionally, should be guided in their actions and advice by research-based evidence and best practice and should resist commercial or political pressure in both development planning and development management.

We urge that whenever the review panel considers any proposal, it should keep these principles in mind and retain separation of the professional and the political functions.

5. *What is meant by “modernising” ?*

The announcements of the new review of the Scottish planning system use terms such as “game-changing” , “a quicker, more accessible and efficient planning system”, “strengthen local democracy”, “there is a lot that needs to change”, “a different, more radical and fit-for-purpose system”, and “modernisation of planning”.

But what lies behind these words? What is wrong that needs mending? Is this a prelude to unspecified aims such as greater centralisation of the system, cost-cutting, or greater developer power? We do not know.

For a system that places transparency among its “Core Values” (see page 4 of the Scottish Planning Policy), this seems to us to be a non-transparent process. Seen from the local community end, the meaning of “modernisation” is far from clear. **We hope that the review panel will inform the public what is so wrong with the current system that it requires a radical overhaul.**

6. *Need for a Consolidating Act on planning*

We feel that there is indeed a need for a Consolidating Act on planning to bring together the various bits of legislation which currently require cross-reference. This is not the same as a radical reshaping of planning. It is for purposes of cohesion and convenient public reference.

7. *Good planning should be creative as well as regulatory*

In a research-based and persuasive paper (RTPI Research Paper No. 5, 2014), Adams and Watkins discuss the importance of the creative side of planning which may be too often lost in regulation. They state : “Planning helps to create the kinds of places where people want to live, work, relax and invest – often termed ‘shaping places’. Planning is about improving places by helping them to function better economically as well as socially and environmentally. Planning is then about outcomes, not just processes.”

There is therefore a second strand to planning in addition to its fundamental protective regulatory function. As Adams and Watkins argue, the creative aspect of planning needs more emphasis. Yet that means co-ordination with personnel and departments which have prime responsibility for social, economic and other policies and to help resolve any possible land-use conflicts of interest.

Put simply, planning has two interacting functions : REGULATING and ENABLING.

8. *Is “planning” the wrong word?*

Planning is ubiquitous. Putting on a Christmas pantomime requires planning. Air strikes in Syria require planning. Introducing a new schools examinations system requires planning. Preparing the family’s weekly shopping requires planning. **But most planning, in the normal sense of the word, as the above examples illustrate, have nothing to do with the limited use of the word “planning” meaning land use.**

The fact that land use policy has acquired the label “Planning” does not mean that the so-called “planning system” can determine all social, economic or environmental policies. The focus should be on the land use aspects of those policies and ensure integration with those others whose main tasks are social, economic, environmental, military and so on. In particular, where there are conflicts of interest in land use, what is currently called the “planning system” has a part to play.

In this regard we have one proposal. This is for the Review Panel to recommend to the Scottish Government that it should abandon the label “Planning” and replace it with “Land use”.

The launch of the present review has been described as a “game-changing” and a “root and branch” assessment. If so, replacement of nomenclature should be readily considered and improved. It may cause resistance to those in the system who might grumble that the word “planning” is embedded and that there would be small costs in changing department titles, headed notepaper and other inconveniences.

However, it would provide greater clarity for the public and would remove confusion with all the mainstream planning that goes on, unconnected with land use, in every other branch of government and society as a whole.

In practical terms Scotland would then refer to the “Land Use System”, to “Scottish Land Use Policy”, to “land use departments”, to “land use applications”, to “land use permission”, and so on. Greater precision. Greater clarity. Less confusion.

B. A short selection of issues to consider, but far from a comprehensive list.

In part C below we argue that the time span of this consultation has been too short. Many voluntary organisations, personnel of which have jobs and other commitments, find it difficult to respond fully in time. If so, there may be those who accuse the public of apathy. The Helensburgh groups have also faced this difficulty and have recognised that there is no possibility of responding to all the review's long list of questions. Rather we have offered some key principles in part A above and have selected the following specific issues for comment.

1. *Scottish Planning Policies*

We support SPPs. Some years ago there were separate Scottish Planning Policy (SPP) documents for different topics. These were clearly written, informative and free from political posturing. They provided valuable reference sources for professionals and the public alike. These have been replaced with a single SPP which makes access to guidance on specific issues less easy to find and is infused with generalisations.

We urge the review panel to recommend either reverting to topic-based SPPs or, at least, to making any all-embracing SPP easier to use on practical issues.

2. *Local community right of appeal*

At present developers can appeal if the planning authority's decision displeases them, whereas those in the local area, who will live with the consequences of a planning decision, cannot appeal. This is manifestly unfair and we know that other organisations are taking up this issue.

The present arrangement is incompatible with the balancing of competing interests that the current SPP advocates. Further, fighting an appeal can be costly to a council at a time when local authorities are cash-strapped. We suppose that the prospect of a developer appeal might sway an authority towards approving an application to avoid the expense of an appeal. If that is ever happening (and we have no evidence of it) then it would add further to the unfairness already inherent in allowing one party the right of appeal while denying it to the other party.

What problems would have to be resolved in order to introduce local community right of appeal? Resistance to community right of appeal seems to be based on the following :

- Fear of a flood of local community appeals.
- Expectation of ill-founded, ill-informed appeals.
- Demands on planners' time when there are cut-backs in staffing.

A fair appeals system must meet these objections. One way would be to abolish all appeals entirely – appeals by either **developers** or **local communities**. That also would cut costs. We are inclined not to favour that solution because there are times when appeals are justified.

So how can the dilemma be resolved? We tentatively suggest the following.

- 1.1 ***Get the language right.*** This has often been called “third party right of appeal”. But if the planning authority is acting in quasi-judicial mode, then the developer is the “first party” and the community is the “second party”. But “second party right of

appeal” runs the risk of being interpreted too broadly since it could include those who would not be influenced by the decision (e.g. an unaffected community council or a cousin in Australia), **so we favour “local community”, defined as those living locally and potentially affected by the decision.** That could include those in the territories of more than one community council and even those in a neighbouring authority if they are affected (e.g. wind turbines seen across an estuary, as described in Graham Kinder’s separate submission in this review).

- 1.2 ***Limit local community appeals*** to local community groups (either statutory or voluntary) in the affected territory that have demonstrated consistent and informed concern with planning matters. Planning Advice Note 82, paragraph 30, contains useful advice on the status of representations from “a community council or local action group”. It states : ***“Where such groups regularly engage proactively in the planning process and are normally very measured in their views of future development of their area, but on a specific proposal have raised clear objections, that in itself might reasonably be treated as a substantial body of objection.”*** Since PAN 82 was limited to Local Authority Interest Developments, the Scottish Government (SG) was asked if this was a general principle that could be applied more widely. The SG’s written response (25.1.12) was :

“Paragraph 30 of PAN 82, while providing advice in terms of local authority interest cases, could be seen as a reasonable approach to adopt towards objections to any planning application. However, it would be for the relevant planning authority to determine such matters.”

We suggest that the **planning review panel** should advocate removal of the proviso in the second sentence above and **recommend the introduction of the right of appeal to responsible local community bodies (either statutory or voluntary) that have met the criteria of informed and responsible involvement in planning.** That could be compatible with advice in PAN 82. It would prevent floods of appeals.

The question then follows : who would deem a local group to be informed and responsible? Two possibilities occur to us. The first is for the **review panel** to define criteria clearly and leave it to planning authorities to apply them. This runs the risk that planning authorities, reluctant to have appeals, might withhold responsible designation. The better solution would be for an affected community council to have the power of designating local groups as responsible.

Another way to limit the number of appeals would be **only permitting appeals where the decision of the council is contrary to the development plan.** If that approach were adopted, then it is **crucial that it would apply equally and fairly to either the first party (developer) or to the second party (community).**

- 1.3 ***Limit developers’ appeals.*** The **review panel** may think of additional ways to curtail questionable developers’ appeals, but we suggest two. **The first is to prevent multiple appeals by developers based on resubmission of similar but marginally different applications. The second would be to have a neutral body (perhaps comprised of retired planners) to screen out all but the most credible appeal proposals.** What is clear is that unfettered right of appeal by developers would be unreasonable if comparable right of local community appeal is denied.

The long-standing complaint about appeals is overdue for resolution.

We have noted the paper drawn up by Planning Democracy entitled “12 ways the Government could fix planning in Scotland”. Generally we support its 12 points, but we note that its approach to “Equal right of appeal” is slightly different from ours in detail, though similar in main thrust. In its petition is raised the issue of restricting appeals and gave as examples of occasions such as : “ . . . when the Local Authority has a material interest in the development or where development clearly departs from the Development Plan; as well as restrictions on who can bring an appeal. This risk of vexatious appeals can be avoided by establishing a screening process with qualifying criteria to ensure only reasoned appeals are lodged.”

3. *“Planning gain” and “community benefit”*

Both planning gain and community benefit are positive-sounding terms with potentially negative consequences. Both have been described as “bribes” but, being legally permissible by the current system, they are not bribes. Yet they run the risk of distorting planning decisions. **We propose that the Review Panel should consider both and recommend that they be discontinued or else controlled much more tightly.** If retained, they should not influence decisions which should be on planning grounds only, and therefore restricted to post-decision stages. In theory so-called “community benefit” related to on-shore wind turbines has been required to *follow* decision-making, but wind farm developers often lead their public campaigns with “community benefit” promises, some of which would be greatly outweighed by negative impact on local communities, both social and economic.

We are aware that the Scottish Government is renewing emphasis about on-shore wind farms, unlike England, and that so-called “community benefit” might even be included as a material consideration. **Since the Review Panel is expected to think fundamentally, we urge it to recommend condemning the sometimes harmful concept of “community benefit” as a material consideration and either to discontinue it or to strictly control it as a post-planning issue.** We would be pleased to provide further evidence on this.

An option to meet both concerns might be some sort of standardised development charge payable to the local authority.

4. *The precautionary principle*

We tend to think of the precautionary principle as “if in doubt, don’t”. **We hope that the review panel will give it strong support.**

5. *Natural heritage*

Scotland’s natural heritage is one of its glories. It is of economic importance for tourism, but of even greater significance for residents. Yet threats to it multiply. We support the approach of the 2007 Scottish Landscape Forum and its preceding Council of Europe’s European Landscape Convention, to which the UK is a signatory. These have a people-centred approach which is crucial, from large-scale national parks to local green networks.

The National Planning Framework 3 and the 2014 SPP (section entitled “Valuing the Natural Environment”) both contain much of value regarding natural heritage. Not only must these not be diluted, but they require enhancement. Current designations such as wild land, green belts, local nature reserves, woodlands, green infrastructure, conservation areas, listed buildings and all means of safeguarding the built and natural heritage are of crucial value and need to be retained in any review of planning. **Each serves distinct purposes and all need to be retained and strengthened. Quasi-autonomous bodies such as Scottish Natural**

Heritage need support, and recognition should be increased for voluntary organisations such as the Association for the Protection of Rural Scotland (APRS) * at national level and counterpart local bodies. We can expand on these if required.

* NOTE. The work of the former Scottish Green Belts Alliance (which compiled the 2005 report “The Future of Green Belts in Scotland”) has now been handed over to the Association for the Protection of Rural Scotland. **We agree with others that Green Belts require stronger protective wording than the SPP (2014, paras. 49 - 53) currently provides. It is a vital safeguard.**

6. **Community councils and local community groups**

We are aware that community councils across Scotland differ from each other in style, subsidy, effectiveness and expertise. Further, each can vary over time as personnel change. Yet their role in planning can be significant. Some community councils are very effective.

We suggest that it is time to revisit chapter 6 of the 1999 McIntosh Report “Local Government and the Scottish Parliament”. Because local government had changed so much at the time of that report, it held back from advocating increasing genuine local governance. But in its chapter, entitled “The Voice of the People”, it noted (para. 155) “It could be said that Scotland today simply does not have a system of local government, in the sense in which many other countries still do.” While it did not want to turn the clock back, it did call for giving “priority to hearing the voices of the distinct communities within their areas.”

That challenge seems to face the **review panel on planning**. In considering the matter, **we urge that the panel should include discussion of the role of local voluntary groups referred to in section B1.2 above**, especially the recommendation from PAN 82 “*Where such groups regularly engage proactively in the planning process and are normally very measured in their views of future development of their area, but on a specific proposal have raised clear objections, that in itself might reasonably be treated as a substantial body of objection.*” However that just refers to objections. Such groups also carry out much constructive voluntary work protecting historic buildings, enhancing green spaces, initiating footpath networks, caring for community woodlands, assisting local nature reserves and a range of other local community tasks that relate to planning. Their contribution should be recognised.

We hope that the planning review panel might (a) advocate deletion of the word “local” from the term “local authorities” since they are patently not local; (b) give encouragement to planning authorities and community councils to work closely with other local community groups; and (c) consider how planning could become more genuinely a local matter.

7. **Enforcement**

The planning system requires strong enforcement. Our experience is that enforcement is less rigorous than it might be and at times relies on the public reporting breaches of conditions or planning designation. **We urge the planning review panel to consider this issue and to make recommendations to expand enforcement in a determined manner.**

8. **Certificate of Lawful Use or Development (CLUD)**

We suggest that the use or possible misuse of CLUDs be investigated. Although the Reporter assessing the one attempted use of a CLUD in our area supported our objection, the incident drew our attention to the potential difficulties that the CLUD element of the Town and Country Planning (Scotland) Act can cause.

9. *Development plans*

The first in the long list of questions offered by the Scottish Government regarding this review of planning is : “Do we need development plans?” **Our answer is “Yes” for a range of reasons which we can provide if requested.**

10. *Brownfield sites and vacant buildings.*

We feel that these issues deserve attention. Both represent opportunities for development which should precede construction on more environmentally precious land. **Where developers own brownfield sites or vacant buildings, it is suggested that there might be penalties for non-use, such as charges (increased rates?) by the relevant council that might be doubled each year of non-use.** That would have the twin advantages of discouraging deteriorated sites and providing income to the council (e.g. through substantially higher rates which might be increased for each year of inaction).

In particular, the deliberate neglect of buildings with restrictions (e.g. in conservation areas) needs investigation, control and reduction. **These may deteriorate and become sites of vandalism to the point that the council gives in and grants planning permission. Instead of rewarding developers in this way, we suggest that steps should be taken to discourage or prevent such eyesores and dangers.**

11. *Lower cost private and social housing.*

Although the formula of 25% of any housing estate of more than 8 houses being low-cost is useful, we question whether it is sufficient. Since the aim of more houses more quickly appears to be part of the review panel’s remit, **the issue of funding more low-cost housing deserves emphasis, distinguishing between housing for sale and those for rent.** However, that should be done with due regard to safeguarding the environment. Priority use of brownfield sites is self-evidently relevant.

12. *Final perspective*

Whether a decision is a good one or not depends upon each unique context. Careless speeding up the system or over-centralisation or radical cost cuts or politicising planning could detract from the uniqueness of each situation and lead to decisions that could adversely affect generations to come. **We hope that care for localities and the people affected by a decision, rather than simplistic but harmful changes, will characterise the review panel’s thinking. Too much is at stake.**

C. Nature of this consultation

1. Consultation period too short

The amount of time given to the public (deadline 1st December) to respond to this consultation has been brief when the topic is the whole planning system. Expecting people in the voluntary sector, low-funded and functioning in their spare time, to respond adequately is, we suggest, unreasonable.

We note that in his letter dated 25th September 2015 addressed to the Convenor of the Royal Town Planning Institute of Scotland, the Chief Planner for Scotland not only gave assurance that “there should be opportunities for all stakeholders to contribute to this review”, but also that “we will publish further details and make the process transparent . . . at every stage of the process.” To us this implies that there will be further stages and that bodies such as our own (“all stakeholders”) would be included.

The letter also states “Finally please note that this short and focused Review is the beginning of a process of reform . . .”

We would be grateful if the Review Panel could inform us, others in the voluntary sector and the general public what the follow-up stages will be and the ways by which organisations such as our own will be fully involved at each stage.

Inevitably, due to the short time-scale of this consultation, our own contribution has been limited to a few aspects only. However, we hope that they will be pursued by the **planning review panel** and that opportunities will be made for further contributions.

2. Prior consultations with, and lobbying by, power bodies

By “power bodies”, we mean those with funds and influence at national level. We ask that it be made public the extent to which, if at all, power bodies have lobbied or have been consulted prior to this public consultation, and the nature of such contacts.