



Ferguson Planning Response to the Consultation on the Future of the Scottish Planning System

We would begin by outlining that we are not entirely convinced that a fundamental and complete review of the Scottish Planning System is needed. Whilst there are certainly aspects of the 2006 Act that could be improved upon we are of the belief that the current planning system is only just 'bedding in'. Changes to the planning system that are extensive could lead to confusion within the industry and potentially lead to less homes being built and less infrastructure being delivered – the two fundamental principles of the current review.

The predominant issue regarding the planning system, in our mind, relates to the appropriate financing of the system and the delays by key consultees that feed into the system rather than the system itself.

Section 1. Making Plans for the Future

- Key Question A – Do you agree that our proposed package of reforms will improve development planning?

We believe that certain proposals may assist in improving development planning, such as, an agreement to better fund the system, removal of MIR from the development planning process but a lack of detail on deliverability and accountability makes it difficult to answer the question in any greater detail.

- Question 2: Do you agree that strategic development plans should be replaced by improving regional partnership working?

It is our understanding that proposals to replace SDPs with regional partnership working will empower planners to advise on spatial priorities for infrastructure investment. A regional infrastructure audit of capacity is to be completed to provide reliable evidence to inform strategic investment decisions. However, the difficulty in providing a response is that there is no defined definition as to what Regional Partnership Working is or the form that it may take. More detail is therefore needed on what is anticipated from Regional Partnership Working, what will this entail, and how will it work in practice? Without this it is hard to substantially comment on whether this is an appropriate approach.

In terms of nationally set housing figures, we can look to England for a steer on this recommendation, with particular regard to the Regional Spatial Strategies. The coalition government abolished the Regional Spatial Strategies in 2012 which set regional housing figures with advice from the national level. It was said at the time that *“Planning and housebuilding works best when it is locally led and people have more control in shaping and deciding on development in the places they live.”*

The contradiction in this instance is that the Scottish Government appear to be promoting Regional Working and nationally set housing numbers as a means of delivering homes, jobs and infrastructure. While the coalition government upheld that centrally set housing figures and regional planning policies were the very things hindering developments and were in contradiction to the principles of localism and local communities being more confident about the planning system. There is evidently a need to ensure





that the balance of localism and nationally imposed policy is struck.

Furthermore, the recent Housing White Paper in England is entitled: “*Fixing our broken housing market’s*” which is a clear indication that it wasn’t as simple as removing nationally set housing targets to rejuvenate housing development and shows that England are still figuring out how to invigorate the housing market and enable more development.

In light of this we would not be averse to the implementation of nationally set housing targets as Local Planning Authorities have a tendency to lean towards lower housing targets which could hinder the delivery of sufficient housing to meet current and future demand. We would not consider nationally set housing figures a hindering factor in residential delivery.

- Question 3: Should the National Planning Framework, Scottish Planning Policy or both be given more weight in decision making?

The consultation seeks to bring both NPF and SPP in line to provide countrywide policies. It is considered that this will enable a consistent approach to policy implementation and is therefore welcomed. The suggestion that the NPF and SPP could be given statutory powers is accepted, particularly if there is a desire to remove the Regional tier of planning policy. It is considered that an overarching policy direction for the Country would not be inappropriate, however it would be for Local Development Plans to transpose this advice into local areas. This is particularly pertinent given significantly differing local contexts across Scotland, for example national policy principles to ensure sustainable development are likely to have substantially different meaning in the Highlands and Islands than they would in Glasgow.

This tier of development plan will also be important where a local authority has a Local Development Plan that is out of date. This will be discussed further in response to Question 4 relating to the simplification of the Development Plan process.

The suggestion that NPF could also set housing targets at the national level is also accepted, however, as will be discussed in other sections of this response, it is important that these figures also reflect local circumstances.

- Question 4: Do you agree with our proposals to simplify the preparation of development plans?

The aspiration is to make the system more streamlined and resource efficient, as well as extending the life span from 5 to ten years. There appear to be a number of contradictions within the consultation document that could potential hinder the ideals of simplifying development plans.

Whilst it is important to ensure that developers and investors are afforded the comfort of certainty that is brought about within robust plans there needs to be a genuine balance between the need for flexibility not only with the application of plans but also their review.

In principle ten years may be an appropriate time scale but it is our considered opinion that there needs to be a clear function to enable the re-evaluation of plans earlier to reflect changes in the current economic climate. It is also worthy of note that the consultation states that “*many plan are considered*





to be out of date by the time they are adopted...” and “we need plans that keep pace with the way that society works today”. It is unclear how this situation will be resolved with the extension of the development plan life cycle without the implementation of a suitable mechanism for early review.

There is an aspiration in the consultation to remove the Main Issues Report as part of the Local Development Plan process. There is a fundamental concern that this will create a scenario where developers and landowners only get a single shot at getting their sites allocated. Clarification is needed on what happens to those who are not ready to promote their site at the time of plan consultation, this is particularly pertinent on the back of proposals to move plans to a 10 year cycle. This has the potential for site’s to be ‘locked out’ of the plan if no review mechanism is implemented. The application of this aspect cannot, therefore, be too rigid as flexibility will be required to reflect the realities of how the development industry works. When one reviews a lot of housing delivery research papers that feed into recent LDPs it becomes clear that many local authorities heavily rely upon windfall sites to deliver new homes. The new system should not penalise or make it harder for sustainable windfall sites to come forward. Gatecheck or no gatecheck there will never be a 100% guarantee that those allocated will be delivered within the appropriate time period. Flexibility is key rather than rigid one size all fits all types of approach.

In terms of streamlining content, again there is a difficult balance to be struck between the content of Local Development Plans and statutory Supplementary Guidance. Whilst the consultation seeks to remove lengthy plans which include a great deal of policy content, there is also a suggestion that Supplementary Guidance should be removed. We would contest that surely there needs to be some form of supplementary guidance to provide the greater detail that will be missing from the plan. This proposal may also address concerns about the lack of independent examination of Supplementary Guidance yet is likely to create uncertainty about whether non-statutory Supplementary Guidance can still be used to expand on development plan policies.

- Question 5: Do you agree that local development plan examinations should be reinstated?

There appears to be a shift away from the use of examinations and independent testing of plans and the introduction of a more front loaded system through the ‘Gatechecking’ process. This is generally welcomed as a way to potentially streamline the production of plans, however we would need to see the detail of how this will be incorporated into the process before being fully supportive of the idea.

From our understanding the gatechecking process may potentially require a considerable amount of documentation which will be needed at the front end of the system, this will be at significant cost to developers. It is therefore questioned who is best to appraise this information, are planners skilled enough and will there be proper resources to enable this information to be processed.

The aspiration for people to have a more meaningful opportunity to influence where development goes is welcome, provided this is a genuine opportunity for all representations to be taken into consideration and based on good evidence.



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It is comforting that the consultation acknowledges the credibility that comes with independent examination. Independent scrutiny can help to establish what is needed from a plan. It can also offer a pair of ‘fresh eyes’ on a plan to understand whether policies accord with the evidence gathered. There is always the risk that planners get too involved and are unwilling to change plans following consultation.

With a strengthening of links between national and local plans there *should* be less of a requirement for such in depth examinations as those currently undertaken. Where a local plan proposes a departure from National Planning Policy this may need to be independently examined to understand why this is required and whether it has been properly justified. In terms of agreeing the amount of land needed for housing and employment over the plan period for example, this could be agreed at the gatecheck stage so Council’s are certain about the targets they are aiming towards within the plan, whether these be nationally or locally set. Again, this would allow opportunities for these figures to be fine tuned to reflect local circumstances.

- Question 7: Do you agree that plans could be strengthened by:
 - A. Setting out the information required to accompany proposed allocations

We do not fundamentally oppose this suggestion. A standard list of information to accompany proposed allocations would make it easier to understand what is required at this juncture. However, the requirement for further information at this stage should be reflected at the application stage ensuring more certainty on bringing forward allocated sites.

- B. Requiring information on the feasibility of the site to be provided

This suggestion is likely to bring up more concerns that it would resolve. A Feasibility Study is constrained insofar as it can only prove viability at a specific point in time, therefore whilst the site may be feasible at the time of allocation, market conditions could change significantly between this point and approval of application, and indeed may change again before commencement of development. If assessment of feasibility is to be integrated within this stage of the process then it will need to be made clear that this is only indicative and further assessment will be required at the application stage.

- C. Increasing requirements for consultation for applications relating to non-allocated sites

Comments relating to consultation will be provided in subsequent sections of this response.

- D. Working with key agencies so that where they agree to a site being included in the plan, they do not object to the principle of an application.

If additional information is to be front loaded into the allocation of sites, then the suggestion that key agencies cannot object to the principle of development is certainly welcomed. It is understood that this process will require significant further resourcing at this point in the development process, however it could also relieve pressure at the Development Management stage.





- Further comment - Making Plans that Deliver

It is accepted that the certainty of a land allocation needs to be assured, and is welcomed that confidence should be given to these sites to proceed. However, it is important to note that there should not be an overreliance on housing allocations to the detriment of windfall sites. The role of windfall should not be undermined. Windfall sites tend to be built out by small and medium sized housebuilders and can play an important role in the delivery of housing particularly where larger sites have constraints that need to be overcome. There are a number of examples of Council areas which show completions on windfall sites make up a large proportion and are shown as contributing significantly to the Council's Housing Land Supply target within their Proposed Plan. Windfall sites should therefore not be overlooked as they perform an important function in housing delivery. This will become all the more pertinent if plans are to be assessed on a ten year cycle: what happens if a site becomes available for development at year three, will they need to wait another seven years before development can even be considered.

With the introduction of the 'Gatecheck' one considers a need of an 'Mid Check' (given the proposed 10 year lifespan) and 'End Check' that measures the success of the LDP and the delivery of associated allocations or not as the case maybe. Evidence shows that many allocated sites are not being delivered. Many thought due to infrastructure constraints on the larger allocated sites. It is important that there is a set moment of reflection on what has been previously applied to understand what is actually delivered and if immediate action is needed if falling behind in delivery targets.



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Section 2. People Make the System Work

- Question 9: Should communities be given an opportunity to prepare their own local place plans

We consider that the key phrase is contained at paragraph 2.7 *'We do not want to promote unreasonable protectionism.'* This is important as there have been instances with the English Neighbourhood Planning mechanism where this phrase would be particularly pertinent and should be looked at as us lessons on the most appropriate way to enable the Local Place Plans may be executed.

Local Place Plans should be informed by the development plan. While the theory is that policy should flow from national policy down to local plans, then neighbourhood level, there is the potential for bottlenecks to occur. The Uppingham Neighbourhood Plan, for instance, has protected a historic employment land allocation and halted residential development on the site and employment investment in other locations which would appear to be contrary to National Policy which states *'policies should avoid the long term protection of sites for employment use where is no reasonable prospect of a site being used for that purpose.'* Local Place Plans should therefore be in line with both national policy and development plans.

As Neighbourhood Plans are not examined in the same way as Local Plans (i.e. not as robust with objectively assessed housing need, economic growth projections, employment assessments, cross boundary co-operation) it is much easier for them to apply obstacles and policy restrictions. This flies in the face of the intention of the plans to be positively prepared. An example of which is the Shireoaks Neighbourhood Plan which provides no allocations for development but looks to limit development by way of impact on the landscape on the areas surrounding the settlement. This is in spite of outline planning permissions having been granted in locations, reserved matters applications are then objected to on the basis of the retroactively applied policy position. There needs to be a process to examine Local Place Plans to ensure policy consistency and remove any *'unreasonable protectionism'*.

Neighbourhood plans can be expensive meaning the more affluent communities and neighbourhoods can limit development thereby exacerbating overheated housing markets. In the long term, this could threaten services with declining household sizes associated with an aging population and younger households with children not being able to access properties at an affordable level.

There are of course the fundamental principle difficulties in establishing an appropriate neighbourhood / community area. There are examples in England of 'communities' specifically trying to exclude certain groups from inclusion within the Neighbourhood Planning Forum to try to introduce prejudice planning policies into an area i.e. anti-student policies in areas close to Universities. But this shows the need for engagement, potentially at cost to employment and education institutions in the face of an affluent, educated and self-protecting community.

There are clearly some lessons to be learned from the examples within England and their Neighbourhood Plans, most importantly we would comment that communities should be provided with housing targets for their areas that will need to be met to ensure suitable and sufficient land allocations. If an area needs 5,000 houses they must plan for them and not simply plan for the level the community



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thinks are appropriate. There should also be a sufficient process of examination to ensure that the plans are consistent with the aims of wider policy.

- Question 11: How can we ensure more people are involved?

References to getting children and young people involved is certainly welcomed. Particularly if Local Development Plans are to run on a ten year cycle as they will be most affected by any changes set out within planning policy. The IMBY and Yep projects ran by PAS are excellent examples of how this can be implemented. It is also considered that by providing education within schools, people will be more prepared to engage during consultations in the future as they will have more of an understanding of the overall process.

- Question 12: Should requirements for pre-application consultation with communities be enhanced?

Engagement should be embraced as it allows communities and people the opportunity to comment on planning applications early in this process. However, some communities are adverse to development regardless of the level of consultation. There are also communities who are either ambivalent or apathetic, so the introduction of a second community consultation at the pre-application stage would seem rather redundant.

The potential requirement for a second round of pre-application consultation could add further delays to timings and there is no comment on whether the 12 week pre-application timescale will be increased. We would appreciate further detail on this aspect. It is uncertain whether this will have the desired effect as it is often specific members of the public that get involved who generally will not alter their position, surely it would be more effective to focus on how to better communicate with the wider community. Possibly through enhancements in technology to engage with those with little time on their hands.

In addition, solutions for lack of engagement with the “silent majority” are needed as often their views do not align with the Community Councils. Although, the empowerment of communities within the Local Development Plan process should realistically require less involvement at the development management stage as they should already be aware of development likely to come forward on allocated sites.

- Question 15: Should current appeal and review arrangements be revised

We would question the widening of the remit for Local Review Bodies. The process for submitting appeals to Ministers provides a certain level of comfort to developers that an independent and impartial decision will be made on proposals. The ability of Reporters to make decisions should not be undermined by an aspiration for Ministers to make more decisions on appeals.

There is certainly an overriding perception that some decisions are made for political reasons, this is regardless of whether the proposal is heard at Planning Committee or through the Local Review Body.



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Training is certainly required as part of the process to relieve concerns about the quality of decisions made by Local Review Bodies and should indeed be mandatory for all councillors, however, the solution should not be to extend the remit of the LRB for larger, more complex applications. It should be noted that presently reporters overturn a large proportion of decisions made by Planning Committees, this further deepens feelings of discontent regarding the quality of decisions made by councillors.

The introduction of a fee for both appeals to Ministers and for a review of a decision by the Local Authority are strongly opposed. Decision makers should be confident enough in their determination of the application to not require the introduction of fees in the appeal process. It is likely that this will have the consequence of putting off small and medium sized builders from participating in the planning process.



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Section 3 – Building More Homes and Delivering Infrastructure

- Question 17: Do you agree with the proposed improvements to defining how much housing land should be allocated in the development plan?

The review establishes that planning should make sure that enough land is available for housing development and should also take on an enabling role. Proposals include, the NPF setting national and regional aspirations for housing development that are flexible enough to reflect changing market circumstances over a 10 year period, but the consultation also refers to these numbers being applied at the local level.

It is also recognised that if housing development targets are set at national or regional levels they will have little practical effect if they do not take account of local circumstances, developer priorities or commitments to invest. As is already mentioned there are potential contradictions between setting national targets and development at the local level. The review offers little by way of a solution.

The consultation outlines a need to be *'clear about how much housing land is required'* but fails to provide any detail or guidance on how best to approach this.

- Question 18: Should there be a requirement to provide evidence on the viability of major housing developments as part of information required to validate a planning application?

One of the critical points in this section of the consultation identifies that land allocated in LDPs needs to be supported by appropriate evidence, which includes the submission of a viability assessment with major applications.

The aspiration is to eliminate sites that have little chance of being developed from preventing the allocation or granting of planning permission on more viable options. The first potential issue is whether planners are equipped to deal with the potential complicated information presented within viability assessments. For most planners the answer would be no and therefore further solutions will be required. This may include;

- Making the Economic Development team a Statutory Consultee on all major developments, in the same way that EHOs deal with Noise Impact Assessments
- Training all planners to understand the complexities of viability

It is therefore likely that this level of additional information will add to the consumption of resources during the development management process thus contradicting the need to streamline the process to be more resource efficient.

It is uncertain what the implications will be for small and medium scale builders. The requirement for significant additional work is likely to be costly and thus discourage these types of developers. Small and medium sized builders play a key role in delivering new housing in Scotland. They often provide homes in areas where many larger developers are not active and benefit local communities through the use of





local trades and supply chains. It would therefore be a mistake to price these companies out of the development market.

Furthermore, it is considered that there are issues of viability and recognition that the development of housing in particular is complex and dependent on a range of factors including the developer, the current market and financial confidence.

- Question 20: What are your views on greater use of zoning to support housing delivery?

There is already provision within the Planning System for the implementation of Simplified Planning Zones, however, it is unclear why they have not been a popular choice for facilitating development. The cost implications may have potentially hindered the process. However previously implemented SPZs such as Hillington Park, which straddles East Renfrewshire and Glasgow Council boundaries, is an excellent example of how collaborative working between developer and council can bring forward a workable solution on a long standing industrial site.

The consultation talks about SPZs with regard to housing delivery and while they are largely welcomed this is only a small part of it and will often perhaps not be in locations people want to live particularly given that the initiative has to come from the local authority. Market realities are required to be taken into account and in particular detail is required on how the housing sites can be linked to developer contributions given that subsequent applications are not required once an SPZ has been approved. It will be interesting to see the outcomes from the ongoing pilot.

- Question 21: Do you agree that rather than introducing a new infrastructure agency, improved national co-ordination of development and infrastructure delivery in the short term would be more effective?

We are disappointed that the Government have decided not to set in motion the need for an Infrastructure Agency to deal with the many development bottlenecks and instead appears to be opting for a watered down talking shop. While a national infrastructure delivery group of sorts is a step in the right direction we are extremely concern with regard to the lack of true accountability to actually deliver on the ground. There is no new legislation planned for this. We would seek that the Government reconsider its position in this regard. Or is more clear as to how they intend holding the related agencies to account for non delivery.

- Question 23: Should the ability to modify or discharge Section 75 planning obligations be restricted?

The ability to modify or discharge Section 75 planning obligations should be retained otherwise there may be significant implications to viability which will ultimately lead to developments being stalled or abandoned. Section 75 obligations are invariably based on in depth viability assessments provided by developers and negotiated with planners. However, a viability assessment can only provide an indication of development viability at the time it is produced. It cannot take into account any delays to development or future changes to market conditions. Viability is one of the key considerations in



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proceeding with development and therefore developers need the option to renegotiate with the local authority on planning obligations if this is hindering development.

An improvement to the timescales for concluding S75 obligations would be appreciated, however the details of how this is to be implemented are required in order to understand whether this is a realistic prospect.

- Question 24: Do you agree that future legislation should include new powers for an infrastructure levy?

We are not opposed in principle to the proposal for the introduction of an Infrastructure Levy, however, without detail on how it will be operated it is not possible to provide a more comprehensive response.

The aspiration to not replace site specific contributions for individual developments is understood, however, any infrastructure levy payment will need to be tied to identified infrastructure needs and a detailed justification for the associated costs should be provided. It would be unfeasible for any finance raised to go to a national or regional 'pot' and not be spent on forthcoming infrastructure requirements. This will need to be intrinsically linked to examined and approved infrastructure investment programmes. Something that would have been a lot more straight forward with the parallel introduction of an Infrastructure Agency.



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Section 4. Stronger Leadership and Smarter Resourcing

- Key Question – Do you agree the measures set out here will improve the way that the planning service is resourced?

The main point of this section is the increased fees for planning applications. RTPi research shows that only around 0.63% of council budgets are spent on planning.

It should be noted that there is currently no proposal to ringfence planning fees to invest in resources in planning authorities and this is very disappointing.

It is agreed that higher fees should be accompanied by a much improved service. However past increases in fees have not increased the service or planners in the majority of councils. Indeed it is identified that on average staff numbers have decreased by 20%. The challenge will be measuring and monitoring this improvement. It is not sufficient to say that the scope for measuring performance will be, to a large extent, on the basis of the quality of places. Local Authorities should be more accountable for their failures to improve services. Measures such as penalties for not determining planning applications within prescribed timescales or in line with Processing Agreements could be considered to ensure that local planning authorities are working efficiently.

It is also considered that Customer Service accountability should be enhanced. The introduction of higher planning fees should be reflected through an improvement in consistency of high level customer service across Local Planning Authorities, as well as officers within them.

There needs to be an increase in resources particularly within local authority planning departments and give them the tools required to do their job efficiently, however it is clear that it is beyond resourcing more planners. We need a comprehensive improvement to resourcing across built environment services. Better resourcing is needed for transport, environmental and legal departments, who often are more scarcely resourced and ultimately lead to delays in application processing. Statutory Consultees can often hold up applications through delayed responses. Any increase in planning fees should also be reflected in the improvement of statutory consultees in the application process. Whilst the consultation may be looking to change the planning system and implement 'improvements' to delivery how will statutory consultees make a more meaningful contribution and ensure quicker responses to applications that currently hold up the system.



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