

Better Planning

By Robert Sutherland, Advocate

“the plan isn't working because we aren't working the plan”

– Ernest Agyemang Yeboah

In September 2015 Alex Neil MSP (then Cabinet Secretary for Social Justice, Communities and Pensioners' Rights) announced that there would be an independent review of the Scottish planning system, which would consider the strengths and weaknesses of the planning system following on from Planning etc (Scotland) Act 2006 and make recommendations for future reform. The independent panel's report was published on May 2016. The report is structured around the six key areas which formed the framework of the panel's remit: development planning; housing delivery; planning for infrastructure; streamlining development management; leadership, resources and skill; and public engagement.

Development Planning

Development plans should be retained at the centre of the system, focussing on outcomes rather than policy and procedure. However strategic development plans should be replaced by an enhanced National Planning Framework (NPF), produced by the Scottish Government and strategic development planning authorities. This would allow long term city-region development and infrastructure issues to be addressed more fully. The NPF should be integrated with other strategic plans, such as National Transport Strategy, the Land Use Strategy, and the climate change programme. Consideration should be given to integrating the Scottish Planning Policy (SPP) with the NPF. The SPP itself should be expanded so that local development plans (LDPs) would only set out variations to policies in order to reflect local circumstances. The preparation of development plans should be simplified, removing the main issues report stage, whilst maintaining a commitment with early engagement with communities. The benefit provided by the statutory assessment process is questionable. The amount of supplementary guidance should also be reduced. The LDP should move from a 5 year to a 10 yearly cycle, with scope for updating the whole or part of the plan within that period. Preparation of the LDP would be over 2 years, with delivery over the next 8 years, with that cycle being repeated in the following 10 years. The LDP should be integrated with community planning, which should be made a statutory duty. Plan preparation should be frontloaded so that key aspects are agreed at an early stage, with longer locally-driven discussion on place and development sites only taking place after that.

There should be greater use of co-ordinated IT systems to make development plans more accessible and responsive to 'live' information. Co-ordinated investment in this technology should begin now. Island authorities should be given more flexibility where the context of their island setting makes this appropriate.

Housing Delivery

The NPF should set regional housing targets which would then be the basis for setting housing land requirements in the LDP. Projections of need and demand should be more closely linked with deliverability, and local authority housing strategies should have a more prominent role in the production of the LDP. The panel identified an issue with how effective housing land is determined, so defining what makes effective housing land needs to be clearer, which will require an open book approach by developers. The panel recommendations include greater use of Simplified Planning Zones (SPZs), and that current restrictions (such as the prohibition on SPZs on schemes requiring an Environmental Impact Assessment) are removed. Priority should be given to increasing the powers of local authorities to assemble land. The panel also identified a need for affordable housing, and meeting the housing needs of disabled people and a growing elderly population as priorities. Innovative housing delivery should be progressed in a way which is fully aligned with LDPs. At the same time support for those priority sectors should not inadvertently provide opportunities for building mainstream housing instead. Where special measures were used to meet those needs in the private rented sector, there needs to be an assurance that properties would be retained for this use in perpetuity.

Planning for Infrastructure

Infrastructure planning should be put front and centre of the planning process. The panel recommend that a new agency or working group is created to provide a national overview of planning and infrastructure provision, and to look at the strategic business case for front-funding infrastructure as a specific element of planning. Because of the limitations on the effectiveness of Section 75 agreements, consideration should be given to establishing an infrastructure levy at national or regional level. The scope for a fund that would have a redistributive role should be considered. There should be a development delivery infrastructure fund partly resourced by a mechanism to capture land value uplift. Greater integration of the work of transport agencies and the Scottish Futures Trust for future school building into the development planning process. Section 75 agreements should be retained, but they should be standardised more and their role reduced. More work requires to be done by planning authorities to make sure that the planning system is innovative and leads

the way in embedding new infrastructure into development so as to meet climate change targets.

Streamlining Development Management

The development management process needs to be efficient, fair and transparent. The panel made 10 recommendations aimed at achieving consistency, transparency and predictability. Timescales for decision making should remain, with planning authorities given power to remove inactive old applications from the system. The certainty which is provided by the development plan should be strengthened by giving allocated sites planning permission in principle, with possible exemption from pre-application consultation and given fast-track appeals. Non-allocated sites could require fuller consultation or a mediation exercise. The quality and effectiveness of pre-application discussions ought to be improved, and there ought to be national minimum requirements for validation. There are concerns about planning authorities not taking enforcement action and the Scottish Government should work with local authorities to identify and remove barriers to the use of enforcement powers. At the same time there is significant scope for removing uncontroversial minor developments from the system by extending permitted development rights. The potential for combined consents involving planning and other licensing or permitting regimes has been looked at, and further study into the scope for combined consents (particularly roads and drainage) is required. As with development planning, IT changes which provide 'live' information could have a significant impact. The scope of powers of the Cairngorms National Park Authority should be reviewed. The appeals system should be revised so that there is a mechanism whereby Planning Reporters are required to address the collective community perspective. Greater consistency in the operation of local review bodies is also required.

Leadership, Resources and Skill

Planning should be viewed as a central function of a local authority. Chief Executives ought to sign-off the LDP before it is approved by the full council. The leading and co-ordinating role of planning and architecture ought to be recognised by the Scottish Government, and it should be adequately resourced to reflect this. The service should move towards full cost recovery, with substantial increases in fees for major applications. The scope for further discretionary charging, such as for pre-application processes, should be considered further. Negative behaviour ought to be penalised, and productive working methods incentivised. Where there is poor performance by a planning authority there should be other methods developed, possibly using external bodies or persons, to provide solutions.

Skills development is required in a number of priority areas. This applies to all involved in planning, including key agencies, developers and their agents, as well as local authority planners. Training of elected members should be mandatory, monitored and enforced. Training in community engagement for the development sector should be rolled out. Arrangements for shared services should be actively pursued, particularly in those specialist areas where it is unrealistic to expect all local authorities to maintain a high level of expertise in-house. There should be an intern programme for planning graduates.

Public Engagement

Practice in engaging communities in the planning system needs to be improved. Communities should be able to bring forward their own proposals which should form part of the LDP. Community councils should be given a statutory right to be consulted on the development plan, but this should bring with it a responsibility to demonstrate that the wider community have been involved. Improved resourcing of community councils is required. Third party rights of appeal should not be introduced; time and resources should focus on improved early engagement which would provide greater benefits. A working group should be established to identify barriers to greater involvement in planning, taking account of measures in the Community Empowerment (Scotland) Act 2015 and the land reform legislation. There is little evidence that disabled people, young people, minority ethnic groups or disadvantaged communities are being effectively and routinely involved in the planning system. A short life working group should be established to identify how engagement can be broadened and diverse groups more fully included. A new statutory right for young people to be consulted on the development plan should be introduced. Planning should have a place in the school curriculum and young people's involvement in community councils should be a requirement rather than an exception. There ought to be a mechanism for direct engagement between young people and elected members which focusses on place. Training and measures for monitoring of inclusion will be required.

Commentary

The independent panel's review provides an ambitious vision for how the planning system ought to work, and puts that system at the forefront of public life. It is founded on the principle that you create a plan led system (which can be changed if needed) which has widespread public support; and once you have that you stick with the plan. The report recommends a shift in how the system works so as to create stronger and better integrated strategic plans at a higher level, with local development plans being focussed on identifying and implementing specific development opportunities. What is not clear is how the

enhanced National Planning Framework might operate. In particular, how will disputes between the Scottish Government and local authorities be resolved, and what is scope for the public to influence this important strategic decision making? The proposal could create a risk of distancing communities from the system, but is balanced out by promoting greater public involvement at an early stage in the local development plan process. Some of the recommendations are quite specific and set out clear proposals for change. Whilst some proposals could be implemented quickly, others will require new measures to be developed in order to implement them. A number of recommendations are aspirational, and while a problem is identified the particular solution is not. How the supply of effective housing land is determined, and how the housing needs of priority sectors are met, already provoke considerable discussion. Engagement of communities in the whole planning system in a way which is practical and meaningful, and which provides the degree of transparency and public confidence which the report is looking for, will be challenging. Resourcing this change at all the different levels identified would be complex at the best of times. The panel recognises that its proposals are set at a strategic level. Assuming that the Scottish Government accepts the vision put forward, it will take time to develop how strategy can be put into effect. For the panel's vision is to be fully achieved will require a change in mind set on many levels, which requires to be underpinned by many other changes in order to achieve that outcome. If it happened these changes could be transformational not just in the sphere of development planning but in society as a whole. There are many questions which are raised by the report, but it is a plan for the future of planning.