

Planning and Architecture Division, The Scottish Government

Places, people and planning

Response by:

Kilmarnock Community Council

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Response to:

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The Scottish Government,

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By: G MacLellan, Chairman

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Proposal 1. Aligning community planning with spatial planning. (Spatial planning seems to be wider area or national planning based on strategic priorities). Community planning should drive development (or in some cases prevention of development). It will be hard for communities to take the lead though and planning bodies (whether Councils or in our case LLTNP) need to provide both facilitation and expert advice. We already have spatial planning via the National Park and generally the community is supportive of the stated aims of the National Park.

The question was how to align community views with national or regional strategy and this is hard to do: basically, not many communities are likely to offer to prioritise their land for new housing or industry or new roads, even if these are strategically desirable and supported by elected bodies. But it could drive necessary development, say where communities identify brown field sites on their patch that are ripe for affordable housing development but are owned by supermarkets or developers and used as a land bank – they are only interested in maximising their own profits which may well conflict with community views. This is not currently relevant in Kilmarnock CC area but there is evidence that it constrains welcome development in the Vale of Leven, our nearest conurbation.

Proposal 1 : Aligning community planning & spatial planning

Much about Development Plans (DP's) and how they can be improved to concentrate on delivery outcomes. Getting DP's right with better input from wider group of stakeholders at an earlier stage with local community input and approval – possibly statutory.

There is a potential for planners to take over and lead development so early community involvement has to be effective.

Proposal 2: Regional partnership working

Presently Strategic Plans are approved by Scottish Ministers but are not followed up enough so these are proposed to be removed and National Planning Framework (NPF) with Regional planning priorities specified.

Local Authorities (LA's) to drive the regional priorities – feedback / views are invited on this specific matter during this consultation.

If infrastructure can come first then it can drive development. Investment programmes and funding coordination is necessary to support strategies that will drive development/growth

Proposal 3 : Improving national spatial planning and policy

Regarding the NPF including policies on transport, energy, climate change, digital strategy, architecture, land use, economy etc.

Proposals to extend the review cycle (allowing interim updates).

Proposal 4 : Stronger local DP's

“Main Issues Report” to be replaced with “Draft Plan” with ideas on how these will be reviewed, finalized and adopted.

Sets out provisions for updates during the plan's life cycle, one place for everyone to find information.

Examination of plans after publication prove inefficient. Proposal to front load plans with independent early scrutiny or "Gate Checks" so that problems don't slip through leading to project failure or unwanted developments.

DP's will define local involvement.

Stronger project management a priority

Proposal 5 : Making Plans that Deliver

Some present practices undermine DP's which reduces certainty that development will be delivered

Inclusion of sites in DP's should be meaningful as an indication that delivery will be supported.

Consideration of "Planning Permission in Principle" should be attached to certain sites. This is contentious and needs feedback in this consultation. Benefits need to be weighed against time and complexity of process. This is a kind of Zoning approach and the use of Simplified Planning Zones could be improved – this is further discussed in section 3 though.

Community consultation will be essential for these proposals – calling on additional time and resources of those involved. Additional training/guidance could be provided for dealing with a change of "Action Programmes" to "Delivery Programmes"

1. Do you agree that local development plans should be required to take account of community planning?

Yes where Community early concept development plans are formally produced and approved by the wider community. Detailed mature development plans require professional expertise provided by experts.

2. Do you agree that strategic development plans should be replaced by improved regional partnership working?

The body with the best professional expertise should be the lead organisation.

2(a) How can planning add greatest value at a regional scale?

KCC is subject to LLNP plans, we have no choice, no option.

2(b) Which activities should be carried out at the national and regional levels?

Matters of National importance, such as transport, energy generation, environment and defence where expertise is required.

2(c) Should regional activities take the form of duties or discretionary powers?

Duties when in National interest.

2(d) What is your view on the scale and geography of regional partnerships?

Additional complexity is not needed, partnerships often fail to deliver due to added complexity, delays and failure of leadership. Clear professional leadership is desired.

2(e) What role and responsibilities should Scottish Government, agencies, partners and stakeholders have within regional partnership working?

Quality control, ethical control, best procedures based on international expertise, standards of best practice.

3. Should the National Planning Framework (NPF), Scottish Planning Policy (SPP) or both be given more weight in decision making?

Yes on matters of National interest, Yes on implementing procedures and process.

3(a) Do you agree with our proposals to update the way in which the National Planning Framework (NPF) is prepared?

yes

4. Do you agree with our proposals to simplify the preparation of development plans?

Yes, but make the process more defined, more Gate Control, in accordance with best project procedure.

4(a) Should the plan review cycle be lengthened to 10 years?

yes

4(b) Should there be scope to review the plan between review cycles?

Not unless there are new economic circumstances, discoveries or inventions

4(c) Should we remove supplementary guidance?

No, increase it.

5. Do you agree that local development plan examinations should be retained?

yes

5(a) Should an early gatecheck be added to the process?

Yes, GateControls and reviews are an essential part of controlled development

5(b) Who should be involved?

Relative to complexity, a minimum of professional advisors on a grading scale, independents required.

5(c) What matters should the gatecheck look at?

Compliance with Plans, economic benefit, strategic benefit, taxpayer return on investment.

5(d) What matters should be the final examination look at?

Compliance with Plans, economic benefit, strategic benefit

5(e) Could professional mediation support the process of allocating land?

Yes, selection criteria, benefit metrics, decision criteria

Proposal 6 : Giving People an Opportunity to Plan Their Own Place

While local people care about where they live they do not generally understand the processes behind the planning system.

Empowering people to have a say should not just lead to protectionism

Key ingredients :

- Allow local communities to prepare local plans
- Place a duty on planning authorities to adopt these plans

Local community resources need to be improved

Community councils to play a stronger role – support is available via various resources – agencies and funding

Proposal 7 : Getting More People Involved in Planning

LA's & CC's can do more

Encourage a child/youth focus – possibly legislated that inclusion is compulsory – maybe one of the “Gate Checks” to ensure child/youth consultation

Proposal 8 : Improving Public Trust

Propose requiring CC involvement in the preparation of DP's

Developers to plan with communities early on in the process =>

- Improve and clarify statutory requirements for Pre-Application consultations
- Strengthen requirements for community involvement

Improve training of development sector in community involvement

To reduce public frustration with repeat or revised applications :

- Apply a fee to Repeat Applications
- Increase fees for retrospective planning consent

Integrity depends on effective enforcement of decisions or unauthorized developments being dealt with appropriately. To help with this, fees & fines should be introduced to recover costs and deter breaches

Proposal 9 : Keeping Decisions Local – Rights of Appeal

Despite calls for 3rd party rights of appeal – it is not proposed to introduce these. Reasoning is that this kind of appeal is normally an intervention at the end of the planning process which is against the aims of the future system preferring to resolve planning issues up front.

Views are still sought on this as it is a contentious issue to be resolved.

Local Review Bodies (LRB's) are proposed which will be allowed decision making powers currently residing with Scottish Ministers.

For this to work, detailed knowledge of planning principles and policies is needed at local (LRB) level. Training therefore is proposed – the level of which is to be subject of consultation too.

An appeals fee for anything falling under LRB review would recover costs of reviews.

6. Do you agree that an allocated site in a local development plan should not be afforded planning permission in principle?

No

Proposal 6 – planning our own space. The proposals say “we do not want to promote unreasonable protectionism” but that will be hard to achieve. A good objective would be to have a meaningful dialogue between Local Authorities (in our case LLTNP too) and Community councils where a shared strategic plan can be developed.

It would be great to imagine that instead of planning outcomes being entirely Developer-led, the tables could be turned and instead Community Councils could identify sites for development and effectively tender the opportunity so that any development would have to meet local objectives, eg proportion of housing that is inexpensive and for local family needs rather than “executive” which is primarily aimed at developer profit; also specifying sustainability, play areas, contribution to requisite expansion of infrastructure, local schools, that sort of thing. Community Councils need to be more than just consulted on the strategic plans: their views need to be at the forefront of what's agreed.

There are some real benefits in putting together a Local Place Plan although to some extent this already exists in the form of our Community Action Plan.

7. Do you agree that plans could be strengthened by the following measures:

7(a) Setting out the information required to accompany proposed allocations

Yes, guidelines should cover this with check lists and defined minimum criteria.

7(b) Requiring information on the feasibility of the site to be provided

yes including Environmental Impact Assessments (and Social impact where relevant).

7(c) Increasing requirements for consultation for applications relating to non-allocated sites

Yes at Preplanning concept stage where compliant with approved Plans.

7(d) Working with the 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

Yes including Community Councils

8. Do you agree that stronger delivery programmes could be used to drive delivery of development?

Yes, efficient, ethical, professional processes and robust standard procedures are required. Consideration of business or investor viability should be included. Expecting development with a scenario that is not investor friendly will result in no development – as demonstrated in LLNP.

8(a) What should they include?

Strategic infrastructure developments

Enforcement 2.36____ It is important that development receives appropriate consent and that unauthorised development is minimised. People lose confidence in the system where unauthorised development is undertaken whilst the vast majority respect due process.

2.37____ The integrity of the development management process depends on the ability of planning authorities to take effective enforcement action where necessary. Public trust can be undermined where unauthorised development, which is unacceptable in planning terms, is allowed to go ahead without intervention. Research into planning enforcement in Scotland shows that the overwhelming majority of enforcement cases are resolved informally and flexibly. As a result, much of the enforcement activity carried out by authorities may go unrecorded in national data. Nevertheless, appropriate powers must be available to deal with

Enforcement is weak due to skills and confidence limitations by enforcing party. Certain developers are able to take advantage of grey areas and Enforcement is not applied. Enforcers should be better

In favour of stronger and more effective enforcement. This seems to be seriously under-funded and usually requires complaints, ie not pro-active by Planning authorities. Enforcement needs more resources and stronger powers. This would help restore trust in the planning system.

Planning fees: it seems that in Scotland the fees are substantially lower than England, and do not come close to covering the cost of administering the Planning departments. This is not acceptable. Fees should be proportionate to the profit the developer expects.

Planning fees could be reduced where affordable housing is enforced to encourage applications.

2.43____ Apart from the cases that are currently handled by local review bodies, all other appeals are submitted to Ministers and most are decided by an independent reporter. If fewer appeals are determined centrally, this would allow Ministers to make more decisions themselves, rather than delegating most decisions to reporters. We would welcome views on whether this would help to

ensure there is democratic accountability at all levels. In all cases, a professional planning view would still be needed, and that view would need to be taken into account when making decisions.

Where can an appeal go beyond Ministers, which upper House – an appeal can be taken to the House of Lords.

2.52 ____ We are aware that a well-functioning planning system is vital for the business activities of Scotland's farmers and rural communities. We will be examining a number of planning issues, such as permitted development rights, which could potentially contribute to the development of economic activity in rural Scotland. We will also be examining what measures need to be taken to increase the supply of affordable housing available for retiring tenant farmers.

The affordable housing system is preventing small scale country developments which could provide housing at fair cost. The requirement for affordable housing should only apply to projects of considerable size. Housing for retiring farmers can be subsidised by Scottish Government when necessary.

Proposal 8 Improving Trust.

This is about developers engaging with local community before submitting plans. It would be more efficient if local disagreements could be resolved prior to submission of plans and not aired for the first time in an intimidating public hearing. We have recent experience in Kilmarnock of a developer engaging with the Planning Dept to agree some aspects of his plans prior to submission. In the view of the community, that undermined trust in the system: how could a proposal be (apparently) almost signed off as acceptable before the Community Council was even aware of any proposals? Whenever a developer enters into pre-application negotiations or advice of some kind with Planning, that the statutory consultees are also informed at that point and have opportunity to take part in the pre-application stage.

Repeat applications: it would be much more efficient and less stressful to communities if a refused application could not be followed up with a similar plan after a few months. Get the application right first time or you need to wait for 5 years or until the Plan changes.

Retrospective applications. We often seem to see retrospective applications getting a nod through with little scrutiny, a developer will just go ahead with the work and assume it will get approved; but the planners are reluctant to tell developers they need to take down their walls and restore the original site or building.

9. Should communities be given an opportunity to prepare their own local place plans?

Yes at concept stage as part of contribution to Regional Plan (or NP plan in our case).

9(a) Should these plans inform, or be informed by, the development requirements specified in the statutory development plan?

Both.

9(b) Does Figure 1 cover all of the relevant considerations?

Add:

Proper evaluation of benefit should include:

Employment benefits, essential services benefits, economic benefit, return on investment for funding source, sufficiency of finance for project lifetime.

Proposal 10 : Being Clear About How Much Housing Land is Required

Housing is needed

Existing communities have a role in acceptance of development

Urgent action on housing is required – changes in practice will deliver quicker than statutory amendments

National targets need to be regionally consistent

Housing requirements to be captured and agreed within the development plans

Housing land availability to be monitored

Proposal 11 : Closing the Gap Between Planning Consent and Delivery of Homes

Calls for more investment for housing and particularly affordable housing

Rural Housing Fund and Housing Infrastructure Fund

Land allocated in DP'd to have evidence of deliverability

Utilise powers to free up blocked development sites

Actively seek deliverability options

Community ownership encouraged where it will lead to development (Scottish Land Fund)

Potential land tax for sites being withheld from development for better future returns

Proposal 12 : Releasing More 'Development Ready' Land for Housing

Currently piloting the use of zoning via Simplified Planning Zones (SPZ's)

No consent being required for development within SPZ's - rebranding such SPZ's to "Ready Planned" or "Consented Development" zones

Alternatively, LA's could designate "Key Sites" which have a "General" consent

While not all the above 12 proposals need full scrutiny at CC level the remaining 8 probably don't apply at all as they deal with infrastructure provision and then reskilling, services, performance, resources and digitisation of the planning system. For completion the key question is listed below...

10. Should local authorities be given a new duty to consult community councils on preparing the statutory development plan?

Yes

10(a) Should local authorities be required to involve communities in the preparation of the Development Plan Scheme?

Yes as at present.

11. How can we ensure more people are involved?

Reduce frequency of plans.

Offer opportunities for micro developers by assisting with planning process. Include developers in pre concept discussions. Avoid plans that have no chance of success.

Consider that getting the right and representative people is equally important – most people are busy working or afraid to participate. Those interested in development and with skills are often not active in Community Councils. Most people participate are NIMBYs.

11(a) Should planning authorities be required to use methods to support children and young people in planning?

Not at cost to their education. It is doubtful that under 18 are sufficiently aware of the details. No children have attended KCC meetings or special meetings recently.

12. Should requirements for pre-application consultation with communities be enhanced? Please explain your answer(s).

Yes, certainly. Early communication will encourage open dialogue and prevent surprises which inevitable are negative. Pre Planning communication should be improved.

12(a) What would be the most effective means of improving this part of the process?

Issue copies of preplanning documents/discussions to CCs.

Issuing notice of pre application discussions where possible and not compromising the parties.

12(b) Are there procedural aspects relating to pre-application consultation (PAC) that should be clarified?

They should extend beyond immediate neighbours for notification. Neighbour notification is often not sufficient to communicate a PAC.

12(c) Are the circumstances in which PAC is required still appropriate?

Yes most where any third party is involved.

12(d) Should the period from the serving of the Proposal of Application Notice for PAC to the submission of the application have a maximum time-limit?

Yes if robust communication methods and notification are implemented. Note KCC meet every 8 weeks.

13. Do you agree that the provision for a second planning application to be made at no cost following a refusal should be removed?

Not always – people do make mistakes! Be reasonable. If the PAC process is robust this should not be necessary.

Proposal 9: Right of Appeal.

There is Government resistance to allowing a third party right of appeal, due to fear of vexatious appeals (eg Adsa will appeal about Tesco getting to develop a new site) and because it will slow down the process and add bureaucracy. This is understandable but unfair. Since the developer can appeal about a refusal it is unfair that Statutory Consultees cannot appeal an unwanted development. The rules need to be clear – and appeals need to be on substantive grounds, (eg a genuine mistake, changed circumstances, not taking account of something important) but not permitted just because someone doesn't like the decision.

14. Should enforcement powers be strengthened by increasing penalties for non-compliance with enforcement action?

Yes, KCC has seen weakness in the LLNP enforcement process legally, technically, and not understanding the design detail or technical compliance and when notified took no action. We lack confidence in the enforcement service.

Enforcement should be fair, resourced and effective relative to the detail of the Plan.

15. Should current appeal and review arrangements be revised: 15(a) for more decisions to be made by local review bodies?

Not when in National interest such as infrastructure, utilities, services public or private.

15(b) to introduce fees for appeals and reviews?

Not for the applicant. An appeal is due to the failure of the earlier PAC process or poor clarity by the regulator.

15(c) for training of elected members involved in a planning committee or local review body to be mandatory?

Yes, should only be professionals with confirmed impartial interest

15(d) Do you agree that Ministers, rather than reporters, should make decisions more often?

No, this brings political influence.

16. What changes to the planning system are required to reflect the particular challenges and opportunities of island communities?

No comment from KCC.

Proposal 18: A new approach to improving performance 4.17 ____ Higher fees must be accompanied by a much improved service. Whilst planning authorities' performance has improved in recent years, we fully understand the concerns of the development industry that fee increases need to be accompanied by strong performance in every authority. We agree with the independent panel that monitoring is important and that we need to provide better support for authorities to help them improve and learn from each other.

Improved services are required, continual improvement is essential for National interest. Cost should reduce if the process is made more efficient. Improved support of developers and direction is desirable. Better understanding of non urban developments are required by all parties.

Proposal 19: Making better use of resources: efficient decision making 4.22 ____ We want to simplify, streamline and clarify procedures so that planners can focus on activities that add most value

Agree 100% as this will assist developers, make a clear Gate control process.

26. What measures can we take to improve leadership of the Scottish planning profession?

Include more technically qualified independent professionals and pay the going rate for consultations.

27. What are the priorities for developing skills in the planning profession?

Reduce frequency of new plans. Make Gate controls clear, clear check lists, repeatability, transparency.

Maintain consistency

Use internationally/UK recognised technical methods, measure and procedures in a local context.

28. Are there ways in which we can support stronger multidisciplinary working between built environment professions?

Encourage processes and Gate Control procedures that are simple, robust and can be improved.

Make the circular economy more visible – for example do not demand construction methods that have environmental impact or waste problems. Avoid repetition of Asbestos problem.

29. How can we better support planning authorities to improve their performance as well as the performance of others involved in the process?

Set KPIs

Benchmarks with Rest of UK

Adopt Gate Control with standard checklist guidelines.

30. Do you agree that we should focus more on monitoring outcomes from planning (e.g. how places have changed)?

Yes and learn by what has not happened, – failure of affordable housing policy in rural areas.

30(a) Do you have any ideas on how this could be achieved?

Improved investigation before plans are issued. In LLNP we have plan limitations that are simply not attractive to developers – we have a loose loose plan.

31. Do you have any comments on our early proposals for restructuring of planning fees?

n/a

32. What types of development would be suitable for extended permitted development rights?

Housing.

33. What targeted improvements should be made to further simplify and clarify development management procedures? ,

Gate review process, standard checklists,

33(a) Should we make provisions on the duration of planning permission in principle more flexible by introducing powers to amend the duration after permission has been granted? How can existing provisions be simplified?

No.

33(b) Currently developers can apply for a new planning permission with different conditions to those attached to an existing permission for the same development. Can these procedures be improved?

This should not occur if the PAC process works. Get the PAC correct.

33(c) What changes, if any, would you like to see to arrangements for public consultation of applications for approvals of detail required by a condition on a planning permission in principle?

Early communication of PAC s will identify public concerns before applications.

33(d) Do you have any views on the requirements for pre-determination hearings and determination of applications by full council?

Standardisation of approval procedures to be published.

34. What scope is there for digitally enabling the transformation of the planning service

Consider that Scotland has very poor Broadband and this media has limitations until improved.

Publication of Gate controls and Checklists used by approvers.

35. Do you think any of the proposals set out in this consultation will have an impact, positive or negative, on equalities as set out above? If so, what impact do you think that will be?

No they over specify and add cost, professionals should apply inclusive solutions based on relative need using quality data. Is only apply when quality data suggest need – this will deliver the right equality needs are delivered.

36. What implications (including potential costs) will there be for business and public sector delivery organisations from these proposals?

Delays, project failure, funding failure, competition from other places/countries.

37. Do you think any of these proposals will have an impact, positive or negative, on children's rights? If so, what impact do you think that will be?

No.

38. Do you have any early views on whether these proposals will generate significant environmental effects? Please explain your answer.

Should improve the built environment.

The Natural environment should be considered globally – we should not push our NIMBY problems overseas (to less regulated countries) to suit ourselves – eg sourcing Ethanol.

End of response.

1 April