

# planning democracy



## **Introduction**

Planning Democracy is a national charity, established in 2009 with the aim of strengthening democracy by promoting a stronger public voice in the Scottish land-use planning system.

Planning Democracy was established in response to a perceived democratic deficit in planning which has resulted in many people feeling dis-empowered, and unable to influence decisions. Our concern is that recent and ongoing reforms have privileged development at the expense of other public goods the planning system should promote, leading to unsustainable development that perpetuates social and environmental injustices.

Planning Democracy wants to ensure the public is fairly and equitably involved in the planning process which we believe will lead to more accountable and robust planning decisions, driven by need rather than profit.

Our supporters include community councils, individuals, community and environmental groups. As such we represent a significant proportion of the public who engage in planning. Our work includes a peer support network, conducting research and collecting case studies from throughout Scotland, holding national conferences, workshops and seminars with communities and professionals.

## **Purpose of the planning system**

### *Fundamental Issue:*

The Scottish Government's commitment to planning for 'sustainable economic growth' has resulted in a narrow focus on ensuring an efficient process for granting planning consents. As a result development is confused with sustainable economic growth which in turn is confused with the public interest.

Planning Democracy is concerned that this has focussed too much attention on process management and 'service improvement' and too little on the wider public value that the planning system should be set up to realise.

The Scottish Planning system has a legal duty to promote sustainable development. The current emphasis on sustainable economic growth has a distorting effect on the scope for broader democratic engagement and ultimately on the capacity of the planning system to deliver sustainable development. Planning Democracy believe that Scotland deserves a

planning system that democratically determines and shapes sustainable development in the public interest.

This requires a fundamental change towards a system whose performance is valued in terms of democratic process and quality of outcome.

We question the fitness for purpose of a development process in which too great a share of industry profits are realised from the public gift of increases in land values, rather than the delivery of high quality development. We believe this masks the real causes of Scotland's failure to deliver high-quality development to meet the country's needs.

### **Development Plans questions**

#### *Do we need Development Plans?*

Strong, proactive plans provide a democratic means of expressing the aspirations of communities. Good plans provide certainty about the future development of places, and provide a strong policy mechanism for achieving sustainable development. The Scottish planning system, whilst nominally plan-led is in practice highly discretionary and offers considerable flexibility. This is not good for communities who engage voluntarily in development planning processes and / or seek certainty about the likely future uses of land they care about.

However although plans are intended to guide development the reality is that we are working within a market driven system and it is too often the development sector that controls where development goes, to the frustration of communities. In order to direct development to desirable locations with adequate infrastructure we need to develop more positive planning tools, including powers of public land assembly and value capture that are widely used across Europe to ensure that preferred sites are developed and equipped with excellent infrastructure. Such mechanisms could be 'market shaping' requiring new approaches of the development industry, driving increased competition to develop better quality housing rather than trading in speculative land value increases, that too often pit windfall profits against the public interest as defined in plans (since unallocated land is frequently more profitable).

The review may consider *strengthening the plan-led system* by introducing mechanisms to increase certainty that plans will be followed. This requires limiting discretion in the development management process and involves experimentation with more fixed forms of zonal plan-making. This could help to build public confidence increase levels of interest and engagement with development plans.

Note however, that 'zoning' systems, as used in much of Europe and the USA, often face the challenge of how to ensure flexibility to take account of changes in circumstance. In the US legally binding zoning ordinances are often subject to legal challenge, so it cannot be

assumed that such a change would necessarily be faster, cheaper or more effective. Germany's planning system has legally binding plans at municipal and local levels leading to considerable development certainty. Alongside strong public powers of land assembly, this provides clear restrictions about the amount of development that can be undertaken by any one developer, leading to considerable diversity and strong market competition. This system has allowed many German municipalities to deliver exemplar sustainable developments with a diversity of affordable housing types.

Note that greater certainty from plans can mean less flexibility to adapt to changed circumstances; greater speed of preparation is likely to be traded off against securing high-levels of involvement and buy-in to a plan (which can greatly increase its effectiveness).

*Is the current system of development plans fit for purpose or do we need to simplify or redesign it?*

There is an argument for simplification by limiting the stages of plan production, which could also make the current process more user-friendly for communities. Planning Democracy believe, that the process should enable communities to be much more prominently involved in the production of plans, including actually writing policies.

We believe there is considerable unrealised potential to develop a more deliberative approach to plan-making, particularly in deciding controversial issues such as housing allocations and energy policy. This could lead to a more empowering model of engagement that involves rather than consults, using techniques such as citizens' juries that have been widely used in other areas of public policy but not as yet in land-use planning. Such approaches have been successfully introduced in Australia and British Columbia, Canada. The Canadian examples have also seen local referendums being used to allow local citizens to vote on whether the recommendations made by a more inclusive, community led committee should be adopted or not.

This requires new skills, processes and ways of working but the long term benefits would be substantial.

*Should the primacy of the development plan be retained as a fundamental principle of the Scottish planning system?*

Yes the idea of the development plan is generally well understood.

One addition could be the introduction of more formal mechanisms for community-led or neighbourhood plans to be incorporated into LDPs. The English experience of neighbourhood plans offers one example that could be studied. Whilst far from problem-free this could be a powerful means of channeling community energies into positive and proactive early engagement.

*Should we have a multi-tiered approach to development planning?*

At present the system is centrally driven with decisions cascading down from the national to the local. There is currently too little flow of engagement back up the hierarchy (as occurs in France and Scandinavia). Planning Democracy have previously argued that the NPF should be a genuine national conversation about Scotland's spatial development, including more direct engagement with those local communities likely to be directly affected by candidate national developments.

*Could a different approach to development plans be quicker and more effective?*

One further idea would be the more formal introduction of 'neighbourhood' or 'community' plans. The neighbourhood plans introduced in England under the 2011 Localism Act have shown that, even if this is not a model of best practice, a different approach is possible. Neighbourhood plans, produced entirely by local communities with minimal help from LPAs have seen a large take up.

If lessons from the English Neighbourhood Plans were to be incorporated in Scotland it may be to combine neighbourhood plans and LPA local plans. Having one document would ensure a better joint LPA/community approach and reduce mistrust.

People should be actively involved from the earliest stages in the production of plans, including by working as community researchers.

### **Development Management Questions**

*Should opportunities for repeat planning applications (i.e. for substantially the same development on the same site) be limited?*

Our concern is developers can win a war of attrition by repeatedly putting in proposals for the community and local authority to respond to.

Current legislation means local planning authorities have fairly substantial powers to refuse 'repeat' applications within a two-year period. However this does not provide communities with the necessary certainty that once they have engaged in an often-lengthy process it won't be repeated two years later.

We make the following suggestions.

- There should be a presumption against development in cases of repeat applications unless the applicant can prove material changes in the proposal or circumstances.

- Refusals based on the principle of a proposed development should lead to an automatic updating of the development plan to reflect a policy presumption against that form of development on the site in question. This would help to provide certainty and protection for communities.
- Increased application fees should be imposed in cases of repeat applications, removing the 'free go' for applications following the first refusal

*Are there issues with planning enforcement that need to be addressed?*

Good enforcement is crucial to ensure that public trust is built and people are not subjected to unwarranted levels of environmental impact:

- Greater resource and political will is needed to ensure developments comply with planning conditions and agreed environmental limits. Planning authorities need to be supported to take action, both politically and in terms of resourcing.
- Greater emphasis should be placed on monitoring of conditions
- Where people living next to a development report breaches, their evidence, own monitoring and experience should be valued and acted upon.
- Authorities must be able to be more confident that enforcing the rules will not lead them into unnecessary legal disputes with developers.
- There should be a new emphasis on viewing planning permission and building control consents as a contract between a developer/operator and a public authority that is licensing certain activities. Where this contract is breached, action should be taken.

In addition we make seven further suggestions

1. **Local authorities keep an opt-in register** of people and organisations that wish to be involved in pre-application consultations, and require developers to contact all the people on the register.
2. **Local Authorities should require developers to publish their pre-application** consultation materials on-line, and provide an opportunity for people to provide feedback on-line before the application is submitted. Applicants should be required to include all the correspondence they receive through the pre-application consultation process in the final report which should be independently verified.
3. **Access to Information:** the Scottish Government should work with partners, including community-based organisations to explore how planning application data can be made available in more user friendly and accessible formats. For example: applications could be published to RSS feeds and made available as open data or weekly lists could be made more available and in less technical language.

4. **Planning needs to become more digitally up to date.** For example some authorities have handed out DVDs as part of their regional and LDP consultation process, a format many people can no longer use – mobile friendly platforms need to become standard.
5. **Publish public comments and documents prior to a decision.** If people are to trust the planning system, there must be absolute transparency prior to the determination.
6. **Planning applications shouldn't change after the consultation process is over.** Developers can alter their application after the public consultation process has concluded, if planners agree. This causes major problems for communities having to keep track and trying to respond to changes.
7. **Keep transparent records of planning committee meetings.** The City of Edinburgh Council and Highland Council are to be congratulated for webcasting planning committee meetings. However few other local authorities do.

#### **Community Engagement questions**

*Are the provisions for front loaded engagement in development plans working?*

Planning Democracy is concerned that 'front-loading' has effectively reduced public influence in plan-making since, in the absence of a fundamental change in approach, it is unlikely that any but the most organized (and often well resourced) communities will get involved in the SDP or LDP process.

Early public engagement in development planning does not mitigate against bad decisions or decisions that are contrary to the local plan, leaving people feeling disillusioned with a process they entered into in good faith. This reflects a fundamental inequality between different participants in the process.

Planning Democracy and the communities all over Scotland that we represent feel that an Equal Right of Appeal (ERA) would be one significant step towards remedying this inequality.

Whilst, we acknowledge that there have been genuine attempts to involve people in development plans, there is little evidence that it is working. Too often we hear from communities who have spent hours of time and resources engaging while the system does not fully even acknowledge their input. We believe that the credible threat of ERA would have the effect of encouraging developers and local authorities to engage more openly in plan-making and pre-application processes.

Planning Democracy welcomes any effort to include people in the production of development plans, however, we must also recognise that the planning application stage is

the key focus of the local politics of planning and the custodians of the system have a duty to engage with the valid concerns raised at this stage.

*How can we build on existing models of engagement (eg charettes) to encourage active participation in planning?*

Techniques such as charettes need to be supplemented by greatly improved mechanisms for debating the principle of development itself (rather than design solutions for development).

There are a wide range of creative methods to generate more public interest and higher-quality deliberation over plans and policies. Improved engagement requires a real commitment to innovation and new ways of working, including experimentation with innovative deliberative techniques and new types of communication.

It is also important to recognize that many communities face a steep learning curve when it comes to engaging in planning. Existing inequalities of arms (in terms of time, access to information, expertise) need to be properly addressed if engagement is to be made more democratic. Extra resources need to be put in place to enable particularly disadvantaged communities to engage on a more equal footing.

Some examples of the issues people face include:

- Confusion over the hierarchy of plans (especially if they engage with the local plan before the regional plan)
- Difficulty in learning the language of planning (spatial planning, MIR etc)
- Misunderstanding the difference between informal consultation and written representations and the later implications
- Difficulty in understanding how and whether often hard-won representations have been considered and acted on

The timing of engagement can also be as important as the methods adopted.. There should be community engagement at the point where a developer first approaches an LPA so, together, a development proposal can be worked up. Currently most pre-application consultation is regarded with skepticism by communities. This could be improved by involving community bodies in pre-application discussions with developers. We think it should be possible to invite community councils to sit with developers and LPAs as soon as they start engaging with each other on a development proposal. More thought is needed on what consultation gets done at pre-app stage and what consultation gets done after an application is made, so the stages are clear and duplication/consultation fatigue is avoided.

The emphasis should be to involve the public as early as possible, and to drastically reduce the impression that development being negotiated behind closed doors.

*Do we need to change the system to ensure everyone has a fair hearing in plan and decision-making?*

Yes. One way of doing so would be to ensure that communities have an Equal Right of Appeal (ERA) in decision-making.

The lack of equality in appeal rights suggests that community rights are secondary to the rights of property owners in the planning system. However, there is no necessary principle underpinning the continued privileging of applicants over those of other affected parties. Quite the opposite in fact. The purpose of the planning system is to ensure sustainable development that promotes the broader public interest. If we accept that all of those affected by decisions have a right to participate in those decisions then the existing inequality in appeal rights should be seen as little more than an historical anomaly. The Scottish Government recognises that community engagement can lead to better decisions, at present however the potential for community appeals to correct 'weak' approvals is being lost. This is leading to lower quality development being granted permission without adequate scrutiny.

We note that the majority of objections to introducing ERA relate to issues of efficiency and effectiveness. However, ERA could be designed in a range of different ways to achieve different purposes. As such we would stress the potential to design a system of Equal Rights of Appeal that overcomes many of the concerns often raised, most of which seem to assume that ERA would be a rather blunt instrument.

For example, we do not see that Equal Rights of Appeal would necessarily lead to inefficiencies. Rather appeal rights could be limited on both sides so there is not a significant net resource burden on the planning system. We would be happy to outline the details of such options at greater length.

*Should the role of community councils be extended?*

Yes, the tier of democracy at the local community level has very little real influence in the planning process. There could be more formal requirement for community councils and other bodies to become more involved through neighbourhood plans. Community councils status as statutory consultee status should be more widely recognized for Local Plans and planning applications to increase the weight given to their views.

*Is it possible to improve public perception of planning?*



Public perception can definitely be improved. There are cases where officers provide excellent support to assist communities and individuals and this makes a huge difference. That is not to say that it is possible to make everybody happy all of the time. A clear and transparent system in which all parties are allowed to engage in a fair debate about where the public interest lies in the use and development of land should be the goal rather than a defensive system with a clear bias towards development.

In many cases poor public perception of the planning system is as much a product of the wider development process that the planning system seeks to (often weakly) regulate in the public interest. Less adversarial models of development and better outcomes are likely to be possible only with a radically restructured development industry. It is also time that the attitudes and behaviour of private developers were subject to the same levels of scrutiny as public authorities. We routinely hear stories of bullying tactics, misinformation and antagonistic behaviour that serve to undermine public trust and bring the goals of a democratic, plan-led system into disrepute.

Planning must be seen to produce positive outcomes, including promoting the right development and best possible design in the right place, as well as preventing the worst developments and protecting public interest. To do this the system needs to be properly resourced, less complicated and responsive to public views. The effectiveness of the system should not rely primarily on speed of decisions, but rather quality of outcomes.

The motivations for the current review of the system, coming so soon after previous, comprehensive reforms, are not entirely clear. Perhaps a better question to ask would be whether the development industry can ever be satisfied with the efficiency of the system? And in whose interests should we be seeking further change?

Planning Democracy are happy to provide further detail on any of the issues discussed in our response.