

Planning Democracy Briefing on the 2016 Planning Review

Introduction

In October 2015 an independent panel was set up by the Scottish Government to deliver a 'game-changing' [review](#) of land-use planning in Scotland. The panel's report has 48 wide-ranging recommendations that, if fully implemented, could lead to a substantial reorientation of the system. However, some of the challenges of balancing fundamentally competing interests in the use and development of land have been underestimated and remain unaddressed.

The Government's initial response to the review, published on 11th of July, identifies ten immediate actions. Meanwhile, over the summer there is to be more detailed work on other recommendations.

Planning Democracy wishes to be part of the collaborative alliance that the Government suggests. We seek to build support and understanding of a progressive reform agenda, designed to make the planning system fairer and more inclusive.

This briefing highlights recommendations in the review that PD believes could be further developed.

Summary

We believe that public trust in planning can be rebuilt if two key issues are addressed. These are, firstly, to **make community engagement meaningful** by:

- setting up a working group to investigate public engagement with proper community representation on it
- investigating why frontloading isn't currently working as identified by the review panel,
- developing the community planning process and incorporate it into the land use planning system
- equalising the appeal system and
- addressing inadequate and ultimately unfair spatial planning in rural areas.

Secondly, to **create more certainty for communities and to regulate development industry behaviour**, so that there can be a more positive relationship between communities, the development industry and decision makers. This can be done by giving due consideration to some of the panel's recommendations including; capturing land value, strengthening the plan led system, tackling repeat applications and poor enforcement.

A: Making community engagement meaningful

The panel recognises the widespread sense that public engagement is not working effectively and that people across Scotland continue to feel that they are not listened to, whilst developers and local authorities feel stuck in an adversarial battle to win acceptance for development. There is a welcome commitment to engaging traditionally-marginalised groups in society, however, there is no recognition from the panel that problems stem from deep-seated inequalities of power and influence, resulting in a danger that the suggested reforms will do little to improve community engagement.

What we are asking for

1. Set the right terms for a working group on public involvement

Recommendation 47 suggests the need for a working group to be set up to identify barriers to greater involvement in planning. *It is vitally important, that*

- *the membership of such a group should include at least 50% community representation*

- *works in an inclusive and deliberative fashion: a ‘citizens’ jury’ taking evidence from all sides,*
- *has a commitment to a full government response and debate in parliament on their findings*

2. Investigate ‘frontloading’

The review falls back on ‘frontloading’ as the solution to problems of public engagement, despite a complete lack of hard evidence that it is working (and with substantial anecdotal evidence from communities, local authorities and developers that it is not). Better engagement has been consistently promised since the Skeffington Report was published in 1969, but has never actually been realised. Meanwhile the highly discretionary decision-making process in Scotland means that even when people do actively engage in the production of plans they can still find themselves fighting applications for unwanted development further down the line.

There is an urgent need for an independent evaluation of the role and effectiveness of frontloading public engagement in both development planning and development management.

We ask for an evidence-based inquiry into the strengths and limitations of current approaches and how they can be addressed.

3. Incorporate properly developed, inclusive, community-led plans into Local Development Plans

We welcome recommendation 44 of the review which proposes the introduction of new statutory, community-led plans that would be incorporated into the development plan for their local area.

However, there are many ways to draw up community plans and many ways *not to* as the wealth of discussion on neighbourhood plans in England has demonstrated.

Community-led plans should be introduced following an in-depth review of how such activity can be effectively and fairly introduced (with a particular concern to ensure that resources are in place to support less-equipped communities).

4. Equalise Appeal Rights

In arguing for frontloading, the review rejects the case for equalising appeal rights at the end of the planning process. This perpetuates a fundamental inequality at the heart of the planning system. Developers can appeal when an application is rejected, but there is no mechanism to challenge the more than 90% of planning applications that are approved, even where decisions are made that are contrary to an agreed development plan. The review cites ‘evidence’ that any such move would lead to delays in decision-making. This amounts to little more than the anxieties and special pleading of the development industry (whilst ignoring the equally substantial number of community and third sector respondents who backed the idea). The review repeats concerns that ERA will be centralising since appeals are mainly determined by the Department for Environmental Appeals. Yet, it does not see this objection as cause to remove developers’ existing appeal rights.

The dismissal of ERA pre-empts any work that the group set up as part of recommendation 47 “to examine barriers to greater involvement”. What if such a group were to find that entrenched inequalities are a chief barrier to fair and inclusive engagement and strongly recommend ERA as part of a rebalancing effort? Or if community-led plans are introduced but those involved then find that local planning authorities are granting permissions contrary to those plans? In such cases the introduction of limited third party appeals would seem both just and sensible as a means of enabling people to defend plans they have committed time and energy to develop.

We believe that *the remit of any working group on improving public engagement in planning must consider evidence and arguments on both frontloading and rights of appeal at the end of the planning process.*

Planning Democracy advocates a limited equal right of appeal in cases where a decision is one or more of the following:

1. Contrary to the provisions of an agreed development plan;
2. Where the decision-maker has an interest in the decision
3. When a decision is made against an officer's recommendation or
4. For major applications.
5. Where the site in question has not been allocated for any use, as well as for a different use.

The definition of who would be able to appeal requires more debate, however we believe that communities of interest should also be able to appeal decisions. Not for profit organisations often work in the interest of future communities who do not yet exist as geographic communities.

PD also advocates the use of more creative forms of appeal hearings, to ensure that appeals on major developments are not only determined centrally by government appointed reporters.

5. Tackle inequalities for rural communities

An issue which needs further consideration is how planning applications for large industrial developments are dealt with in rural and remote areas. Such areas are not subject to detailed spatial planning at the strategic or Local Development Plan stage. This means that generally communities and individuals are only likely to become involved at the individual planning application stage. Such groups should not be penalised by a presumption that major issues have been or should have been raised at an early pre-application stage

B: Getting the development industry we want and need

Addressing the issues above could help to make the planning system fairer and more inclusive but we urgently need to ask questions about the kind of development industry we want and need in Scotland.

For too long now the planning system has been ruled by a belief that any constraint to 'the market' is a bad thing and that facilitating development should be the prime task of the system. This has led to a situation where development is often seen as synonymous with the public interest, a kind of 'regulatory capture' where the planning system has been progressively reshaped in the interests of the powerful development lobbies it is meant to regulate.

Good development can and should go ahead and does contribute to the public interest (and there are examples of good developers in Scotland). The planning system exists to shape market-responses to ensure that development meets democratically determined aspirations. When we grant planning permission we effectively grant a social license to develop, because as a community we believe there is a public benefit to a proposed development going ahead. The granting of that social license brings considerable certainty to developers that helps to guarantee their profits. It should also come with clear responsibilities and expectations about the kind of behaviour communities can expect. Too often, however, we hear stories about communities being let down or feeling bullied by developers who aggressively pursue speculative development even where it is clearly opposed to democratically agreed plans and policies. To really transform how communities engage in planning it is also therefore necessary to transform the adversarial approach of many parts of the development industry.

What we are asking for

1. Capture land value

Recommendations 15 and 24 of the review discuss the need to reconsider how land values are captured and used. Betterment is the increase in land value that typically accompanies planning permission. At present some of this is captured to pay for public infrastructure through 'section 75 agreements', however much of this publicly determined windfall is just handed back to developers and added to their bottom line. *By introducing better mechanisms to capture this value, for example by enabling public authorities and communities to buy land at existing use value and sell it on to prospective developers at higher use values, we could transform how we develop our cities, reducing existing incentives for speculative development on unallocated sites and funding the provision of higher quality infrastructure and services.*

2. Strengthen the plan-led system

Recommendation 27 of the review suggests that development plans should effectively be able to grant planning permission in principle for certain types of development. This could help to close the gap between what's in the plan and the subsequent decision which communities often find deeply confusing and frustrating. But this will only work if development plans are transformed into much more detailed documents that *genuinely engage communities* in their preparation. *Any such mechanism should also penalise developers who seek speculative profits on unallocated sites. A presumption **against** development that goes against an agreed development plan and a community right of appeal against any development on unallocated land would help to disincentivise such behaviour.*

3. Introduce proper mechanisms to prevent repeat applications

The review agreed repeat applications are a problem. Planning permission by attrition should not be an option in Scotland and *much stronger rules should be introduced to limit the rights of developers to submit repeat applications except where they can prove a material change in circumstance.* Our suggestions include

- 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 of a proposed development should be placed in register of decision notices. Future development plan reviews should take into account this register. This** could help capture community input to decision making and help prevent repetition of debate
- Increased application fees should be imposed in cases of repeat applications, removing the 'free go' for applications following the first refusal

4. Ensure Local Authorities have the power to properly implement current enforcement rules

A further powerful example of the need to ensure that the social license to develop is taken seriously surrounds enforcement. **We agree with the planning review that barriers to enforcement must be removed. We believe there needs to be a mechanism to trigger investigation and a real response (with time limits and certain expectations re outcomes). Currently the system is too discretionary.** *We believe that it is crucial that Authorities must be able to be more confident that enforcing the rules will not lead them into unnecessary legal disputes with developers.*