



SHEPHERD+ WEDDERBURN

**AFTER THE PLANNING BILL - A STRATEGIC VISION FOR  
DEVELOPMENT IN SCOTLAND**

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**Introduction**

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Shepherd and Wedderburn is delighted to sponsor today's event. Homes for Scotland has become an effective voice for the house building industry. The industry is a particularly important one for Scotland and covers the whole country. The industry in Scotland comprises a range of commercial organisations from small private organisation to large plcs. The industry is almost unique in Scotland in having a full representation of the different types of business structures.

I propose this afternoon to examine the key provisions of the Planning etc. (Scotland) Act 2006 and in particular to examine the changed policy formulation process and also the procedures for implementing and processing planning applications. The house building industry has had significant problems with both these aspects in relation to the current system. I will then go on to consider the implications for Homes for Scotland arising from the new Planning Act and finally to examine the challenges for the house building industry itself.

Before going on to look at the future it is sometimes helpful to look at the past :-

"We have made far reaching proposals which, we believe, will go a long way towards avoiding the mistakes of the past. The housing developments of the past 25 years, which we have seen all over the region, fall tragically short of the standards we have in mind, both in respect of community planning and of architecture. The implementing of the proposals which we have made will undoubtedly require vision and a high degree of skill, and above all, collaboration on the part of all the authorities concerned. It will be only by doing that that this great

replacement of the slums of yesterday and today will not become a problem even greater still, for the future to resolve."

These are comments which were made about the Clyde Valley not in 2006, but in 1946. The Clyde Valley Regional Plan was a comprehensive examination of the Clyde Valley and recognised many of the problems which still persist today. It is interesting to note that even back in 1946 there was a recognition that the lack of a coherent national strategy made it almost impossible for regional planners to plan effectively. It appears that many of the issues that are faced by the planning system today have been considered in the past. I now turn to the future.

## **The Planning etc (Scotland) Act 2006**

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### **National Planning Framework**

The 2006 Act makes statutory provision for the National Planning Framework. It is stated to be a strategy for spatial development and is stated that it will be in broad terms. The Scottish Executive is currently consulting on the National Planning Framework and the issues that it has identified of critical concern include the following:-

- Economy
- Connectivity
- Sustainability
- Communities

Indeed a recent communication from the Executive invited responses whereby the above factors were ranked in importance. It seems almost inevitable that most of them are in some way interconnected. The key issue for the National Planning Framework is the extent to which it properly sets out policy framework. The original planning framework was very broad in terms and lacked any form of prescription which required particular authorities to act in any particular way. The current framework will identify national development which require to be implemented in the national interest. These clearly will have to be reflected in policy and indeed in terms of the legislation there will be a statutory presumption in their favour arising from the new Act. I consider that the key question for the National Planning Framework is whether it provides the proper leadership which central Government should provide. There is a long history in Scotland of central decision makers not being prescriptive with planning authorities and not providing mandatory direction. There is a strong political sensitivity arising from the relationship between the Scottish Parliament and Local Government which makes

such leadership difficult. Indeed during the consultation on the planning legislation the enshrinement of the National Planning Framework was characterised in the press as a national power grab. I believe that if the National Planning Framework is to be truly successful it requires to have a harder edge and to provide a clearer direction. This in my opinion is one of the critical tests of whether or not the document can genuinely be seen as providing the necessary leadership.

## **Sustainable Development**

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The Act provides that planning functions must be exercised with the objective of contributing to sustainable development. It provides that the Scottish Ministers will issue guidance in this respect. The planning system has a long history of significant policy swings. Effectively a national policy may suggest a particular course of action is approved of. This is then implemented in a manner which is usually a swing too far. A good example is provided in relation to the promotion of brownfield development. Everyone agrees that this is a sensible course of action and something which should be promoted by planning policy. Many planning authorities have endorsed the concept wholeheartedly and as a result tried to exclude almost all greenfield development. The consequence for this has been a restriction in the range and choice of housing provided and at the same time pinning the delivery of housing entirely within more difficult brownfield sites. This of course has implications for the number of units that can be delivered within a particular timescale. I fear that a similar response may be provoked by the move towards sustainable development. It may well be seen as an opportunity to further swing policy to make development more difficult and more complex. It is important to note that sustainability is about balancing the social and economic needs against environmental objectives. I would suggest that the failure to provide sufficient housing is the antithesis of sustainability.

## **Development Plans**

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The new Act overhauls the current development plan system. There will be four city regions where there will be strategic development plans and also subsequently local development plans. In all other areas of Scotland there will be a single unitary plan known as the Local Development Plan. The Act provides for mandatory examination of representations into both Strategic and Local Development Plans. I believe this is significant given that there has been very limited scrutiny of Structure Plans over the past 20 years. Furthermore, the development plans will be accompanied by action programmes. Again it is absolutely essential that if plans are to come to fruition that necessary

infrastructure associated with the development is identified and planned for. A new area of statutory policy is provided by the fact that supplementary guidance associated with development plans will in the future be given the same statutory presumption as the development plan. This is a very significant step given that in many instances supplementary guidance is often rushed through without adequate consultation. I would suggest this is another key element of the new planning regime and one which could have significant implications for the house building industry.

### **Planning Applications, Implementation and Process**

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The Act has changed the terms for processing applications from development control to development management. The idea is that "development control" as a concept has influenced the approach to the processing of planning applications. I will return to this later but the issue of cultural change is a very important one for this process.

The Act introduces classification of planning applications and the formal designations or delineations of these will be delivered through supplemental planning guidance. The classifications are National, Major and Local. It is unlikely that any housing applications will be of national importance and that the distinction between major and local will only occur in relation to significant housing allocations. In terms of the legislation there are processes which apply to major applications including potential processing agreements and community consultation. In relation to local developments it is likely that a significant proportion of these will be delegated to the decision of an individual officer through schemes of delegation. The appeal from the decision of that individual officer will be to members of the same Council. The only way of challenging the appeal decision of the Councillors will be through judicial review. I believe this may in some circumstances cause significant problems to the industry.

The idea behind the reforms is that this may well be an opportunity of removing many of the current householder applications from the system altogether, thus freeing up planners to deal with more significant applications. Delegated legislation will provide rules regarding applications including community consultation and the ability to enter into processing agreements. It is hoped that even though the processing agreements might only in the first instance apply to major developments the approach and content may well come to represent best practice in dealing with all applications. The Act also imposes further obligations on applicants to include design and disabled access statements.

This is also likely to be combined with further requirements arising from the assessment of whether or not the individual applications are promoting sustainable development (sustainability appraisals).

In terms of the process, one significant change is that Councils will be responsible for neighbour notification as opposed to developers. This in my opinion is a retrograde step and I am not aware of there being any significant abuse of the current process. This will be a very significant burden on planning authorities and suggest that they are not the best placed to take the risk in this regard. This may well result in delays in the application process.

### **Planning Applications/Good Neighbour Agreements**

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There are very radical proposals to change what were formerly known as Section 75 Agreements. They will now be known as Planning Obligations and can be offered unilaterally by the developer or alternatively negotiated through an agreement. This makes the Scottish system very similar to that which currently exists in England and this certainly offers greater flexibility in the delivery of appropriate planning contributions. There are appeal provisions introduced for the first time relating to the refusal of a Council to subsequently vary or discharge the obligations. This is something which was lacking from the current system and provides some sort of negotiating position that developers will have with the Council in relation to the preparation of planning agreements.

The Act also provides provision for a new concept of good neighbour agreements. This is an agreement entered into between the developer and a neighbouring community body. It is likely that these were introduced in circumstances where a potential development might have an impact on a community and conditions relating to the operation of the particular development would make the development acceptable. Good neighbour agreements are designed to give community confidence that such conditions will be implemented appropriately. There are provisions relating to appeal and discharge in relation to the variation of these agreements.

### **The Big Argument**

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What is the Role of House Building in Scotland?

I consider that the key issue for the industry at the current time is to try to force policy makers to recognise that it is necessary to identify the role of house building in Scotland. At the current time the need for housing is largely identified on an ad hoc local basis. There is no consistency throughout

Scotland as to the basis on which the number and type of houses required is assessed. It also seems that the provision of new housing is not high up the political agenda. It is clear that the need for housing is a matter which is of very significant importance to a lot of younger people in Scotland struggling to get onto the housing ladder. Yet these people are obviously not registering which is a significant political issue. One of the benefits of the Scottish Parliament is that politicians are more accessible. Having been involved in seeking to influence policy in fishing, I am aware of how easy it is to get access to MSPs. I also have a positive view that many MSPs are receptive to listening to arguments and information. Unless house building can get its profile up the political agenda I do not see any significant procedural policy changes influencing what I describe as "the big argument".

There is no doubt a range of factors which should be taken into account in assessing what the role of house building might be in Scotland. I believe the following topics are all potentially of relevance –

- Need - it is clear that there is a need for new housing arising from demographics, migration and the need for affordable housing. At no stage is this assessed on a consistent national basis.
- Aspiration – should the housing system not also be considering where and how people want to live? Is that not something which would influence the policy?
- Contribution to economic development – I know that Homes for Scotland has undertaken research and has statistics available to support the view that the house building industry makes a very significant contribution to Scotland's economy. That is, however, not reflected in the approach of the planning system to house building in Scotland. Indeed many planners do not recognise this value at all.
- Sustainable development – In relation to policy maker's assessment to what we want from the house building industry. Modern houses are more energy efficient and that view alone may well provide environmental benefits to replacing or providing alternatives to much of the poor quality existing stock.
- Regeneration – house building is absolutely key to almost every regeneration project in Scotland.
- Individual economic benefit – it is clear that there are employment issues arising directly and indirectly from the house building industry. Whilst this is linked to the ultimate economic development it is also a social benefit arising from the industry. Furthermore, much of the

employment created requires specialist skills which are not only of benefit to the industry itself but to the wider construction industry.

In my opinion it is only by a proper evaluation of all these factors at a national level that clear strategic thinking will emerge as to the value of house building in Scotland and the role it should play. It is interesting to note that in England the issue of the role of house building is being analysed extensively. The Barker Reviews have carefully analysed the industry and emerging policy. It also appears that in England the issue is higher up the political agenda and is one which is being debated. Another example of recent English research includes a government sponsored report from John Hills of the London School of Economics into the future role of social housing in England. His report was published in February of this year and highlights many of the complexities associated with housing. For example he illustrated some of the anomalies of the current benefit system; a couple with two children paying a private rent of £120 per week with support from housing benefit would only gain £23 if their earnings rose from £100 to £400 per week. The gain if they were in social rented accommodation costing £60 a week would be £55. There are very complex issues associated with affordable housing and, in part, current system may be acting as a barrier to progress. John Hills concludes that there are four directions which require further examination in housing policy; (1) Inclusion of attention given to existing stock and existing tenant population; (2) Supporting more of an income mix within existing communities; (3) Supporting the livelihoods of tenants and others in housing need and (4) Offering a more varied menu for both prospective and existing tenants.

Hills' report highlighted that the allocation of social housing on the basis of need results in a polarisation of disadvantaged households. He also recognised that one cannot look at housing alone and the importance of relating it to improving the economic conditions of those in housing need.

I consider that until we have an acceptance that the current policy matrix is not serving Scotland well it will be very hard to look to the future to see what the role for house building actually is. This in my opinion is the critical issue which the house building industry requires to seek to influence.

### **Implications for Homes for Scotland**

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In terms of planning policy the new framework will potentially increase the number of opportunities which Homes for Scotland will have to influence policy. I highlight below a number of the direct policy

provisions arising from the Act. Each and every one of them will potentially require appropriate representations for Homes for Scotland. The organisation already has extensive experience in making such representations but it may well be that the work load actually increases despite the decrease in the number of plans.

- The National Planning Framework
- Development Plans
- Supplemental Guidance
- Action Programmes

I consider that the industry cannot just rely on the officers of Homes for Scotland in promoting the issues associated with the house building industry. Each and every member has a responsibility to support the need for a proper debate and a proper formulation of what is required. In this respect many of the members will have concrete examples of the employment they create and the implications this has. Some of the most powerful political arguments can be advanced by using real scenarios or indeed involving people who work directly in the industry.

## **Design**

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The Scottish Executive has published extensive policy relating to the issue of design. I would stress that in the concept of design I refer not only to the design of actual buildings but how they fit within their surroundings. The Executive does not believe that the house building industry is rising to the design challenge and it is anticipated that further guidance will be provided. I consider that unless the industry addresses this issue it is likely that planning applications will continue to take the period of time and indeed many may in fact be refused. The Executive has placed a great deal of time and commitment to the changes in the new system. It is going to try and make plan making more effective and more up to date but it does want to see changes by the house building industry as well. This is one of the issues where I believe that the industry has to change unless there is going to be continued conflict in the development management system.

## **Sustainability**

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It is clear that the issue of sustainability is high up on the political agenda. There is hardly a day goes by without a further climate change initiative being announced. I would suggest that it is in the industry's interests to respond to these issues and to drive the agenda. I recognise that it is going to



be very difficult for the industry to operate where there may be numerous different building standards operating throughout Scotland. Again there does not appear to be a national will to drive housing standards and the Executive appear to be prepared to allow individual Councils to set the agenda. This agenda is often set without any proper understanding of the implications they may have for the house building industry as a whole. I therefore consider that a fairly urgent response is required from the industry on this issue. I also consider that in looking at sustainability the issue of transportation is likely to be under increasing focus. The current policies suggesting that development is sustainable because it is within a particular walking distance of a bus stop is unlikely to prevail to the future. I believe our analysis of transportation issues will become more sophisticated and it will become a key component of deciding where development is going to take place in the future.

## **Culture Change**

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At the beginning of this week I attended a seminar organised by the Scottish Executive in relation to culture change. The Executive recognises that attitudes which have built up over many years are a hindrance to the implementation of the planning system they wish to see. The Executive has recognised that there are many institutional problems within the planning service at a Local Government level and it is looking to change them. However not all the problems with the planning system arise from the perceptions or attitudes within planning authorities. It also has implications for the industry. I believe that one of the changes that the industry could implement is providing better quality planning applications. I have on numerous occasions seen planning authority files and from these it is clear that the piecemeal submission of supporting information is administratively burdensome. I appreciate this often arises from requests from the planning authority itself, but I believe that the quality of planning applications could be improved. If the new planning system is to become more effective and responsive I believe that attitudes within the industry have to change. I would suggest also that the changes introduced by the new system should be embraced by the industry as opposed to being adopted in a half-hearted manner. For example, if community consultation is required do it well and properly. There are many other industries who now use community consultation effectively. A good example is the windfarm industry which has a long history of genuine community consultation before planning applications are finally formulated. There are many instances of windfarm projects being modified arising from comments made by the community. Effective windfarm companies undertake effective community consultation, not just community consultation for the sake of it. Also, there may be a role for Homes for Scotland in promoting good

practice guidance in relation to community consultation and for example the practice and workings of good neighbour agreements. An example of this type of approach was adopted by the telecommunications industry which previously had significant planning issues. They have adopted voluntary industry standards which have improved their relationship with communities and planning authorities. The result has been a much lower level of conflict both with community and with the planning system.

## **Conclusions**

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*"Be the change you wish to see in the world" Gandhi.*

It is clear that the current planning system has failed to deliver both to the house building industry and in a wider sense. The Executive has recognised these failures and is keen to introduce new systems and procedures which they believe will address some of the shortcomings which have existed. Some of the new requirements have been driven not by planners or developers and have been heavily influenced by the "community" lobby. The Executive has sought to strike a balance between the various interests. I believe that the most important response to these changes is the manner in which the industry acts. Unless the industry is prepared to embrace the changes then it is likely that the current conflicts and delays will continue.