

Consultation on the Future of the Scottish Planning System Shelter Scotland's Response

April 2017

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INTRODUCTION

Shelter Scotland welcomes the opportunity to respond to the Scottish Government's consultation on the future of the Scottish planning system.

Considering Shelter Scotland's emphasis on the issue of poor housing and homelessness across Scotland, our comments generally focus on the planning system's role in the delivery of affordable housing. Shelter Scotland's response therefore concentrates on the Key Questions and Section 3 of the consultation paper, along with Questions 2 and 11.

The planning system plays a vital part in the delivery of affordable housing. While the statistical bulletin that tracked the information regarding affordable housing delivered partly through the planning system was discontinued after 2011/12, it demonstrated that a third of all affordable housing units that were granted consent between 2007/08 and 2011/12 involved a contribution from the planning system.¹

More recently, the Quarterly Housing Statistics showed that, while social sector home starts were up 17 per cent in 2016 compared to 2015, social housing completions were down by 9 per cent.² Affordable housing supply completions for the year to end December 2016 were 6,741 – a reduction of 6 per cent compared to the previous year.³ The Scottish Government has committed to building 50,000 affordable homes between May 2016 to May 2021.⁴ Yet, research by Shelter Scotland, the Chartered Institute for Housing (CIH) Scotland and the Scottish Federation of Housing Association (SFHA) found that Scotland needs to build a minimum of 12,000 new affordable homes a year to tackle the current housing crisis across Scotland.⁵ Clearly, Scotland's need for good quality affordable housing is currently not being met.

Shelter Scotland therefore welcomes the Scottish Government's focus on a much-needed reform of the planning system. Ensuring that the planning system is adequately geared up to facilitate the delivery of good quality affordable housing across Scotland needs to be a vital aim of this reform.

¹ Scottish Government (2012), [Statistical Bulletin: Planning Series: Affordable Housing Securing Planning Consent 2011/12](#).

² Scottish Government (2017), [People, Communities and Places: Housing Statistics for Scotland Quarterly Update \(published 14 March 2017\)](#).

³ *Ibid.*

⁴ Scottish Government (2017), [Affordable Housing Supply Programme](#).

⁵ Powell, R., *et al.* (2015), [Affordable Housing Need – Final Report September 2015](#), SFHA, CIH Scotland and Shelter Scotland.

MAKING PLANS FOR THE FUTURE

Shelter Scotland is responding to this consultation in its capacity as a national housing and homelessness organisation. As detailed in the Introduction, Shelter Scotland has not responded to all questions and instead focused on the ones which cover the issues faced by our service users and the people we represent. Its response to Section 1, which focuses on 'making plans for the future,' is therefore limited to Questions A and 2.

Question A: Do you agree that our proposed package of reforms will improve development planning? Please explain your answer.

Shelter Scotland welcomes the Scottish Government's commitment to reform the planning system and its emphasis on increasing delivery and simplifying the planning process.

However, the right balance needs to be achieved between creating a planning system, which is as efficient and least time-consuming as possible, and ensuring that the process allows for meaningful stakeholder participation. Considering that many of the proposed reforms don't currently go into great detail regarding their precise regulation, Shelter Scotland believes that it cannot accurately assess the likely impact of some of the reforms on development planning.

Moreover, it is important to recognise that the delivery of development isn't solely reliant on the planning process. Finance, the wider economy and the ability of the market to support different types of developments need to be taken into consideration when aiming to improve the delivery of homes across Scotland, especially good quality affordable homes. Considering the immense insecurities Scotland's economy currently faces, in particular in relation to the outcome of Brexit and its impact on the economy, the planning system needs to work as efficiently as possible in order to secure the development needs of the Scottish population.

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

In its response to the call for evidence on the independent review of planning in Scotland, Shelter Scotland clearly stated its belief that "development plans should remain a lynchpin of the planning system."⁶ Strategic development plans enable local authorities to set out their long-term aims, including objectives related to housing. Nevertheless, Shelter Scotland recognises that development plans have their limitations. To ensure that they are successful, they need to be accompanied by clear policies that address the need for good quality affordable housing.

While Shelter Scotland supports increased co-ordination and regional partnerships, it believes that strategic development plans play a vital role in the planning system. However, this should not be seen as a rejection of other proposals included in relation to regional partnership working, including co-ordinating funding of infrastructure projects.

⁶ Shelter Scotland (2015), [Response to the call for evidence on the independent review of the planning system](#).

PEOPLE MAKE THE SYSTEM WORK

Shelter Scotland's response to Section 2 of the consultation, which looks at 'People make the system work', is restricted to Questions B and 11.

Question B: Do you agree that our proposed package of reforms will increase community involvement in planning? Please explain your answer.

Shelter Scotland strongly welcomes and supports the Scottish Government's commitment to increasing the involvement of communities and people in the planning process.

While Shelter Scotland believes that this increased focus will result in an increase of community involvement in planning, it would like to stress that meaningful participation of people that will be affected by the proposed developments must entail considerable resources in terms of funding, staff and time in order to be successful. This means that the package of reforms will have to strike the right balance between creating an efficient system, which addresses the current long delays, and the fact that meaningful participation from communities will take some time. This is especially the case, as more people with no prior knowledge of the planning system and people who, for example, are not involved in community councils should be encouraged to participate.

In this regard, Shelter Scotland would like to see a greater emphasis put on engaging a diverse range of people, especially by going beyond the involvement of community councils, whose membership may not be wholly representative of the communities they seek to represent.

Question 11: How can we ensure more people are involved?

Shelter Scotland supports the Scottish Government's assessment that planning authorities and organisations can and should do more to actively involve communities and people. The commissioned research to identify factors that potentially limit such involvement in the current planning system is therefore very important.

While Shelter Scotland believes that this must include the involvement of existing community bodies, such as community councils, it needs to be ensured that a wide variety of bodies and people get involved in the planning system. Otherwise, this type of community involvement often ends up being dominated by the same small group of engaged people, who don't necessarily reflect the wider demographics, experiences and views of the local community.

To ensure widespread participation, local authorities and organisations will have to come up with innovative ways of engaging people that empower the voices within the community and create a mutually beneficial form of participation centred around the needs and desires of the individuals, their community and wider society. Such an approach needs to consider the everyday lives and obligations of the people it tries to engage. This, for instance, should entail providing engagement opportunities that are adapted to the situation and schedules of people, who have full-time work or caring responsibilities.

In this regard, Shelter Scotland would like to point towards the Scottish Government's decision to take a human rights-based approach to a wide variety of issues, including land rights and responsibilities. As the Scottish Human Rights Commission has stated, a human rights-based approach entails placing people's rights at the centre of practices

and policies through, for example, participation and empowerment based on non-discrimination.⁷ This must entail that people are involved in the decision-making, are aware of their rights and have their voices heard and that all types of discrimination are eliminated and prohibited.⁸

Shelter Scotland knows that gaining support for development projects, which are needed for society but might be unpopular among the members of the community where the project is planned, can be very difficult. Unfortunately, homeless people and other excluded people often attract negative stereotypes and when a new service, such as temporary accommodation, is planned for a particular area, opposition can quickly arise. The same local resistance is often present when it comes to mainstream affordable and social housing being developed in areas where such housing has previously not been located. However, homeless people or people requiring access to cheaper accommodation are not different from many of us. As Shelter Scotland has argued for almost 50 years and is emphasising through our 'Far From Fixed' campaign, anyone can become homeless.⁹ It is up to the national and local governments, community leaders, planners and providers of accommodation to reduce local tension and get it right.

In 2007, Shelter Scotland therefore developed the 'But why here? Engaging communities in the development of accommodation for socially excluded people' pack, which is aimed at helping local authority staff, registered social landlords, voluntary organisations and providers of commercial services, including developers, to generate more productive and positive relationships with communities.¹⁰ Shelter Scotland also held accompanying training sessions. The Scottish Government and local authorities should build on this work in an effort to improve community engagement in the planning process. It needs to be recognised that developments will be highly unlikely to succeed unless they have the support of local people. To get this support, the developer and other stakeholders involved need to understand the people, win them over and work together with them. As Shelter's work on a template proposal to deliver a garden city in Medway demonstrates, this can involve a considerable amount of research through bespoke polling and in-depth qualitative analysis, segmenting the audience and devising targeted campaign strategies and co-producing a model that involves the local people directly and fosters community ownership.¹¹

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

Shelter Scotland supports the suggestion that planning authorities should be required to use methods to support children and young people in planning. As explained in the consultation paper, this follows the national and local governments' obligation to ensure that children and young people can actively participate in decision-making that will affect them.

The Scottish Government has stated its commitment to reducing child poverty across Scotland and specifically mentioned the important impact communities have on children, including on their experience of living in poverty.¹² Planning plays a key role in nurturing and developing supporting communities where children feel safe, have amenities that foster their development and access to vital services. Moreover, housing itself has an immense impact not only on the current wellbeing of children but also on their prospects later in life. As numerous research has illustrated, children who grow up in bad housing

⁷ Scottish Human Rights Commission (2017), [PANEL principles](#).

⁸ *Ibid.*

⁹ Shelter Scotland (2017), [Homelessness: Far From Fixed](#).

¹⁰ Shelter Scotland (2007), [But why here? Engaging communities in the development of accommodation for socially excluded people](#).

¹¹ Shelter in collaboration with PRP (2014), [Report: Wolfson Economics Prize 2014](#).

¹² Scottish Government (2016), [Consultation on a Child Poverty Bill for Scotland](#).

are more likely to become sick, not finish school and live in poverty as adults.¹³ Considering the significance that planning has on children and young adults, it is vital that their opinions on planning developments are heard.

By directly engaging children and young adults, Scotland can ensure that their priorities, needs and desires are considered. It is vital that they have a say in shaping the communities and developments that will be part of their lives for decades to come. This will increase the likelihood of the development of child friendly, more inclusive and supportive communities. It will also ensure that children and young adults gain practical knowledge of the planning system – something which hopefully will create increased participation and interest in planning and foster planning skills development among future generations. Crucially, this means that both central and local government must work towards the common goal that everyone in Scotland has equal access to well-planned developments, so that all communities have access to ‘good planning’. In some instances, this will mean ensuring that developer contributions to affordable housing are delivered on site, particularly in high pressure housing market areas.

¹³ Shelter (2006), [*Chance of a lifetime: The impact of bad housing on children's lives*](#).

BUILDING MORE HOMES AND DELIVERING INFRASTRUCTURE

Based on the issues faced by the people we represent, Shelter Scotland's response to Section 3 of the consultation, which looks at 'Building more homes and delivering infrastructure', is restricted to Questions C, 19, 23 and 24.

Question C: Will these proposals help to deliver more homes and the infrastructure we need? Please explain your answer.

Aiding and advancing the delivery of more homes and infrastructure is a significant concern for Shelter Scotland. Research commissioned by Shelter Scotland, the Chartered Institute of Housing Scotland and the Scottish Federation of Housing Associations found that a minimum of 12,000 affordable homes need to be built per year to meet the current and future demand of the Scottish population.¹⁴ While the Scottish Government has committed to building 50,000 affordable homes between May 2016 to May 2021,¹⁵ this is 10,000 homes short of the 60,000 affordable homes that are needed. Moreover, affordable housing supply completions totalled 6,741 in 2016 – a reduction of 6 per cent compared to the previous year.¹⁶ It is evident that the need for affordable housing across Scotland is currently not being met. Moreover, the delivery of more homes and infrastructure must also accommodate other needs besides affordability, especially in relation to accessibility.

Shelter Scotland hopes that some of the proposals will help to deliver more homes and infrastructure. However, this will often depend on the further regulations and more detailed plans related to the individual proposals. In this regard, Shelter Scotland finds that several of the proposals lack more detailed information which would help to determine their impact on the delivery of homes, especially affordable homes, and infrastructure.

While proposal 10, which focuses on 'being clear about how much housing land is required,' is important, Shelter Scotland disagrees that there is too much focus on the precise numbers of houses needed. Precise numbers are important to help focus national and local policies and to monitor ongoing progress. However, Shelter Scotland recognises that one of the biggest issues in terms of developing homes has been the access to land not just across pressured areas but across Scotland, including in rural and regeneration areas.

Shelter Scotland further agrees with the proposal of the independent panel for housing targets to be set at a national level. Local authorities, on the other hand, need to have significant control, so that their sense of ownership is fostered. These needs must be balanced appropriately to ensure that local situations and implementation both inform and are influenced by the national targets. In this regard, a bottom-up approach to identifying and meeting local need should be linked to national targets. The right balance should then help to improve the delivery of homes.

Shelter Scotland further believes that the development and use of the HNDA Tool, including the possibility of using the HNDA Tool to estimate housing need under a variety of scenarios, and the publication of a housing sites register online should aid in the development of homes across Scotland – including the right types of homes in places

¹⁴ Powell, R., *et al.* (2015), *op.cit.*

¹⁵ Scottish Government (2017), [Affordable Housing Supply Programme](#), *op.cit.*

¹⁶ Scottish Government (2017). [People, Communities and Places: Housing Statistics for Scotland Quarterly Update \(published 14 March 2017\)](#), *op.cit.*

where they are needed. However, it should be noted that the accuracy and success of this will depend on the scenarios chosen and the specific assumptions made, including about the economy, population growth and a variety of household projections. This concern also needs to be considered in relation to proposed improvement to defining how much housing land should be allocated in development plans.

Shelter Scotland supports proposal 11, which looks at 'closing the gap between planning consent and delivery of homes', and shares the concern of the Scottish Government that the gap between planning consent and the delivery of homes is of particular concern. Land banking by some developers needs to be addressed, including understanding the underlying reasons for developer behaviour such as this. As the host of the Scottish Empty Homes Partnership, Shelter Scotland runs a Scottish Empty Homes Officer Network. We have repeatedly heard from members of this network that existing enforcement mechanisms regarding vacant and empty property are generally not fit for purpose, time-consuming and costly. Shelter Scotland therefore strongly supports the Land Reform Review Group's recommendation that local authorities should have the power to issue Compulsory Sales Orders.

Shelter Scotland further welcomes the recognition of the importance of infrastructure, which proposal 13 on 'embedding an infrastructure first approach', proposal 14 on 'creating a fairer and more transparent approach to funding infrastructure' and proposal 15 on 'innovative infrastructure planning' focus on. The challenges involved in securing the funding for and delivery of good infrastructure is often seen as a significant barrier to development. Frequently, more information is needed to assess the infrastructure requirement in specific areas and for specific sites. As detailed in its response to Question 24, while Shelter Scotland supports the concept and principle of a community infrastructure levy in the sense that communities share benefit of planning gain, it has several concerns. Thought also needs to be given to where Section 75 agreements are placed alongside the infrastructure levy. As stated below in relation to Question 24(a), Shelter Scotland suggests that priority is given to Section 75 affordable housing requirements due to the extent of the need for affordable housing delivery in housing markets areas across Scotland.

As this response demonstrates, the delivery of homes and infrastructure is a complex issue that will need a complex solution that adequately addresses the wide variety of factors that impact this delivery. There has been an increase discussion surrounding the impact of AirBnB and other short term accommodation has on the use of existing housing, which will impact on the need for more new homes. Furthermore, Brexit, in particular the uncertainty surrounding it and its effect on the economy, will undoubtedly affect the delivery of homes and infrastructure. The planning system therefore needs to be strong and resilient enough to address these complex issues.

Question 19: Do you agree that planning can help to diversify the ways we deliver homes?

Yes.

Question 19(a): What practical tools can be used to achieve this?

As the above discussion in relation to Compulsory Sales Order demonstrates, different mechanisms can be used to help diversify the ways we deliver homes. However, the planning system needs to be flexible enough to adapt to local needs and allow for alternative ways of delivering homes, which currently might not be as recognised in Scotland as they, for example, are in other areas of Europe. Such alternative ways to delivering homes can include more community land ownership, which the Scottish

Government has supported to some degree through the Community Empowerment Act,¹⁷ and co-housing options, such as the Older Women's Co-housing in London.¹⁸ These developments should be encouraged, as Scottish housing has to address the diversity of needs and desires of our diverse population.

Question 23: Should the ability to modify or discharge Section 75 planning obligations (Section 75A) be restricted?

Shelter Scotland supports the restriction of the ability to modify and discharge terms of planning obligations introduced by the 2006 Planning Act to ensure that commitments, which were made when planning permission was granted, are respected by those who entered into the obligation and those who acquire the land.

The consultation paper mentions that the Scottish Government will consider changes to clarify the scope of current Section 75 provisions. In this regard, Shelter Scotland would like to stress that it strongly believes that, for example, affordable housing contributions on Build to Rent developments should not be scrapped.¹⁹ While it can be seen as unfair that certain types of residential developments, such as student accommodation, don't have affordable housing contributions attached to them, this should not be used as a justification to scrap affordable housing contributions. Rather, the system of developer contributions should be reviewed as a whole and a more structured approach to providing infrastructure is needed.

In addition, Shelter Scotland is of the view that local authorities should be given greater discretion to ask for and enforce affordable housing obligations on housing for the elderly and students through the planning system. Often, these types of developments are situated in areas with a high level of need for affordable housing. In general, Shelter Scotland's research has found that to meet current and future need for affordable housing 64% of new build housing should be affordable housing.²⁰

Moreover, in order to inform this process Shelter Scotland recommends that the Scottish Government commissions a review to assess the impact Section 75 obligations have on the delivery of affordable housing. The relevant statistical bulletin showed that a third of all affordable housing units that were granted consent between 2007/08 and 2011/12 involved a contribution from the planning system.²¹ However, this bulletin has since been discontinued, making it more difficult to track information regarding affordable housing contributions through Section 75 obligations.

Question 24: Do you agree that future legislation should include new powers for an infrastructure levy?

Shelter Scotland supports the concept of an infrastructure levy, especially the principle that communities share the benefit of planning gain. However, Shelter Scotland's support for any proposed infrastructure levy will depend on the exact proposal at hand. In any case, the levy proposal will have to articulate a clear risk management strategy to protect the delivery of affordable homes across Scotland.

¹⁷ Scottish Government (2015), [Community Empowerment \(Scotland\) Act 2015](#).

¹⁸ Older Women's Co-housing (2017), [Who are we?](#)

¹⁹ James Battye (2017), [Getting build to rent off the ground shouldn't mean ditching affordable housing requirements](#), Shelter Scotland's policy blog.

²⁰ Shelter Scotland (2015), [Affordable Housing Need in Scotland – Summary Report September 2015](#).

²¹ Scottish Government (2012), [Statistical Bulletin: Planning Series: Affordable Housing Securing Planning Consent 2011/12](#).

It will be vital for Scotland to look at the experiences with the Community Infrastructure Levy south of the border, where its success has been very patchy. While this doesn't necessarily mean that such a levy should not be applied in Scotland, it means that Scotland needs to learn from the mistakes and successes made in England.

Question 24(a): If so, at what scale should it be applied?

Any scale must give consideration to how it may affect the type and quality of the future housing stock. As such, it needs to be considered how the levy will likely impact quality, price and size of the housing to be built and how this compares to the needs of the households that are supposed to live in this housing. Shelter, for instance, expressed concern regarding the possible impact of the Community Infrastructure Levy in England on the size of housing, as it feared it would result in a reduction of space standards.²² This worry stemmed from the fact that the proposed Community Infrastructure Charge was based on a metric of pounds per square metre of development. Shelter argued that this would risk providing an incentive to build smaller homes despite the fact that 565,000 households at the time lived in overcrowded housing in England.²³ It is vital that homes provide the households with adequate space for all members to flourish and have opportunities of privacy and peace, especially if they are intended for families. In particular, children need to have enough space for study and play and family households need to be able to access storage for toys, pushchairs etc. Moreover, this example again demonstrates the need for more detailed information in order to assess the proposals' advantages, disadvantages and likely outcomes.

In addition, Shelter Scotland would like to see the need for affordable housing through Section 75 obligations to be given a priority ahead of the infrastructure levy in terms of developer contributions given the extent of need for affordable housing across Scotland.

Question 24(b): If so, to what type of development should it apply?

Shelter Scotland strongly suggests that affordable housing should be exempt from any infrastructure levy.

Rather than this exemption applying to the type of developer, Shelter Scotland recommends that it should apply to the type of housing. This would mean that private developers are exempt from the levy for the affordable homes that are built as part of the development scheme, while they pay the levy for any regular market homes. Otherwise, house builders may feel like they are paying twice in situations where they are obliged to develop affordable homes and then also pay the levy on those homes. Furthermore, it will ensure that no competitive advantages are given to specific exempt parties, such as housing associations with charitable status.

Shelter Scotland believes that any exemptions to the infrastructure levy should be applied nationally. Local authorities should not be given the discretion whether to apply this exemption. It is Shelter Scotland's hope that this will provide certainty and more predictability for developers, thereby securing the delivery of more much-needed affordable homes.

Question 24(c): Who should be responsible for administering it?

Shelter Scotland believes that a clear framework for the infrastructure levy charges and the exemptions should be set at a national level. A common approach across local authorities should also be encouraged to provide developers with clarity. However, Shelter Scotland recognises the need to give local authorities some discretion so as to adapt any possible levy to the regional circumstances and to foster a sense of ownership among local authorities.

²² Shelter (2009), [Response – Community Infrastructure Levy](#).

²³ *Ibid.*

Question 24(d): What type of infrastructure should it be used for?

Shelter Scotland believes that it is important that the levy can be used for affordable housing. While it can be argued that affordable housing, just like any type of housing, creates infrastructure needs. Shelter Scotland is of the opinion that affordable housing is itself community infrastructure. This inclusion would ensure that local authorities can utilise infrastructure levy funds for affordable housing, thereby helping to meet the clear demand for affordable housing.

STRONGER LEADERSHIP AND SMARTER RESOURCING

Shelter Scotland's response to Section 4 of the consultation, examines 'stronger leadership and smarter resourcing', is restricted to Question D.

Question D: Do you agree the measures set out here will improve the way that the planning service is resourced? Please explain your answer.

Shelter Scotland supports the aim of increasing planning skills development, investing in a better planning service, improving overall performance, making the best use of available resources and using innovation and especially digital resources to improve planning services.

Through the Scottish Property Tax Reform, a network of organisations and individuals interested in issues related to planning and property tax,²⁴ Shelter Scotland has repeatedly heard that local authorities lack sufficient resources, in particular enough staff with planning expertise. While local authorities are generally enthusiastic, they often simply don't have the resources and capacity to get more involved. In particular, research that Shelter Scotland carried out into 'Planning to meet the need' in 2014 illustrated that the "delivery of affordable housing through the planning system is a specialised and complex area, and a relatively small number of practitioners have the knowledge and experience to negotiate with developers and to make it work effectively."²⁵ Shelter Scotland would therefore like to see training made available to negotiate developer contributions through Section 75 requirements.

Shelter Scotland believes that adequate funding is a key concern that the new planning system must address. Furthermore, there needs to be improved collaboration between local authority departments within the same local authorities, between different local authorities and between local authorities and outside stakeholders, including the Scottish Government, developers and other organisations.

²⁴ Scottish Property Tax Reform (2017), [About](#).

²⁵ Shiel, L. and Battye, J. (2014), [Planning to meet the need: Delivering affordable housing through the planning system in Scotland](#), Shelter Scotland.

Shelter Scotland helps over half a million people every year struggling with bad housing or homelessness through our advice, support and legal services. And we campaign to make sure that, one day, no one will have to turn to us for help.

We're here so no one has to fight bad housing or homelessness on their own.

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