

## **EAST AYRSHIRE COUNCIL**

### **DEVELOPMENT SERVICES COMMITTEE - 8 MARCH 2006**

#### **PLANNING ETC. (SCOTLAND) BILL**

##### **Report by Executive Director of Development and Property Services**

### **1. PURPOSE OF REPORT**

- 1.1 To advise the committee of the contents of the Planning etc. (Scotland) as laid before the Scottish Parliament and to homologate the comments submitted to the Parliament's Communities Committee.

### **2. BACKGROUND**

- 2.1 The white paper entitled 'Modernising the Planning System' was published in June 2005 and brought together the Scottish Executive's final proposals for the modernisation of the planning system in a single document. A report outlining the content of the white paper and providing comments was submitted and approved by committee in August 2005. The purpose of the Planning etc. (Scotland) Bill is to amend existing planning legislation to implement the proposals in the white paper which require changes to primary legislation.
- 2.2 The Bill is being scrutinised by the Communities Committee of the Scottish Parliament. That committee has issued a call for evidence to be submitted by 6 March 2006. Evidence based on the comments below has been submitted to the Committee.

### **3. SUMMARY**

- 3.1 The contents of the Bill are summarised below.

Part 1 of the Bill makes provision for the National Planning Framework (NPF). This part enhances the role and status of the NPF to make it a more powerful instrument for securing delivery of national policies and projects.

Part 2 of the Bill is designed to replace the existing provisions of the 1997 Town and Country Planning (Scotland) Act (the '97 Act) as it relates to development planning. The central policy objective of the Bill is to reinforce the primacy of development plans and ensure that they are kept up to date and relevant to local needs. New arrangements to ensure public involvement and consultation are outlined as well as a simplified process for public examination of the plan. There is also a greater focus on ensuring delivery of the plan and that outcomes are measured.

Part 3 of the Bill amends selectively the part III of the '97 Act relating to development control (promotion) to improve the efficiency of the process so that applications are not unduly delayed and are considered at the correct level.

Part 4 deals with improvements to planning enforcement and part 5 to Tree Preservation Orders. Part 6 deals with the correction of errors in planning decisions.

Part 7 introduces new powers to enable the Scottish Executive to audit performance of local planning authorities and gives Ministers the discretion and power to investigate planning decisions if there are concerns over the basis and rationale for them.

Part 8 makes provision for modernising various aspects of the financial provisions of the '97 Act.

Part 9 introduces the concept of Business Improvement Districts. First championed in the United States these allow local businesses to collectively invest in areas that they operate in whilst ensuring that they take account of plans agreed by the local authority.

Finally part 10 sets out amendments to various miscellaneous and general provisions set out in the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 or s45 and s130 of the '97 Act.

- 3.2 A full copy of the Bill and associated documents released when the Bill was introduced in the Scottish Parliament on 19 December 2005 has been placed in the members information point.

#### **4. PARTS 1 AND 2 OF THE PLANNING BILL AND COMMENT**

- 4.1 Of necessity much of the content of the Bill is technical in nature and generally follows closely the contents of the white paper. However there are a number of issues that should nevertheless be highlighted in relation to part 1 and 2 and the committee is invited to consider the comments below for submission to the Communities Committee. Specific comments on the Bill are highlighted in bold.

##### National Planning Framework

- 4.2 The Scottish Executive proposes to publish the second National Planning Framework (NPF) in 2008. In comparison to the first and non statutory NPF it will set out on a statutory footing the Executive's strategic development and investment priorities in relation to nationally important developments such as trunk roads and new railway lines. It will indicate where inter-regional choices need to be made and will identify responsibilities and outputs for locally delivered services and facilities in key policy areas such as health, education, affordable housing and waste management. As such it will provide the national context for development plans.
- 4.3 It is proposed that the NPF is prepared, published, kept under review and revised 'from time to time' by Scottish Ministers. The Scottish Ministers would be obliged to 'consult such persons and bodies as they consider appropriate in preparing or revising the framework' and are to lay the proposed NPF before the Scottish Parliament to enable it to be considered over a 40 day period.

***Given the importance of the NPF to development plans it is considered that new section 3A (8) should be amended to specifically include Planning Authorities as consultees.***

#### Strategic Planning Authorities and Strategic Development Plans

- 4.4 Under new section 4 Scottish Ministers will be given the power to designate a group of planning authorities as authorities which are jointly to prepare a strategic development plan and when acting jointly as the strategic development planning authority. Although the white paper indicated that it was the intention to request that new style strategic development plans are prepared only for the 4 main city regions it is only the financial memorandum to the Bill that this view is repeated. Conceivably therefore under the proposals as they stand it would be possible for Scottish Ministers to designate the 3 Ayrshire planning authorities as a strategic planning authority. It is considered that clarity on this issue is required but the opportunity for the Council to re-state its case for Ayrshire being so designated is still available.
- 4.5 Even if Ayrshire is not designated a strategic planning authority it is nevertheless important that the Council is consulted for its views on any strategic development plan under preparation for the Glasgow conurbation given that it is likely to be contiguous to it. Under new section 9 4(b) the strategic development planning authority is obliged when preparing its “main issues report” to seek the views of, and have regard to any views expressed by “each planning authority the district of which is contiguous with the strategic development plan area”. When the plan has been prepared following consideration of responses made and is published there is an opportunity for anyone to make representations. However although the strategic planning authority is obliged to send a copy of the proposed strategic plan to “key agencies” there is no such obligation to send a copy to local planning authorities contiguous to the strategic development plan area or to be consulted on the proposed plan. The only requirement is to notify those who made representations to the main issues report that the document is available for inspection and to “consult ...the key agencies and such persons as may be prescribed”.

***The omission of local planning authorities that are contiguous to the strategic plan area being sent a copy of the proposed strategic development plan and being consulted on the plan should be rectified.***

#### Local Development Plans

- 4.6 New section 15 of the Bill describes the form and content for Local Development Plans (LDP). The LDP is to be a spatial strategy setting out a vision for the area under consideration, the matters that might be expected to affect development in the future and the policies and proposals for development and use of land in the area. New section 16 1(b) obligates planning authorities to prepare LDP at intervals of no more than 5 years.

- 4.7 As with strategic development plans the LDP must take into consideration the National Planning Framework and be based upon a “main issues report” which should set out general proposals for development, the location of proposed development as well as general proposals which set out a “reasonable alternative(s)”. In compiling the issues report the planning authority must seek the views of key agencies and any others prescribed by Scottish Ministers. The main issues report must be published and presented in a manner that it can be “readily understood by those persons who may be expected to desire an opportunity of making representations to the authority”.
- 4.8 Following consideration of any representations the planning authority should prepare the LDP and an action programme showing how the plan is to be implemented, send a copy of the plan and action programme to each key agency and consult them, and notify any who made representations to the main issues report. A period must be set aside to allow for representations to be made. The LDP must also include a schedule of land in the ownership of the planning authority and how it is affected by the policies and proposals set out in the LDP. If following the receipt of representations the planning authority consider that substantial modifications which “would change the underlying aims of the strategy of the proposed plan” are requisite they cannot modify it but are to prepare and publish a new proposed LDP.
- 4.9 New section 16 (5) would enable “Two (or more) planning authorities [to] prepare a joint LDP extending to parts of each (or all) of their districts”. In other words it would be possible if the Councils so agreed to have one LDP covering Ayrshire.
- 4.10 Following the consideration of any representations to the proposed LDP and modifications a copy of the plan and action programme must be sent to Scottish Ministers with a report “as to the extent to which the authority’s actions with regard to consultation have conformed with (or have gone beyond the requirements of) the authority’s current consultation statement”. The submission should request that Scottish Ministers appoint a person to examine the plan if there are outstanding representations to the proposed LDP.
- 4.11 On appointment the person examining the plan must firstly examine the extent of the authority’s consultation arrangements. If the appointed person is not satisfied with the extent of consultation the authority may be requested by Scottish Ministers to take whatever steps they feel are required to ensure proper and adequate consultation of the LDP. Where such a direction is received the appointed person is prohibited from proceeding with the examination of the plan.  
The form that the examination is to take (whether it should be in public or whether persons who have made representations are to be heard or are to present written representations) is to be at the discretion of the appointed person. On completing the examination the appointed person is to publish a report setting out and giving reasons for the conclusions drawn and recommendations made. The planning authority is obliged to make the modifications to the plan as recommended, carry out an environmental assessment and to do so within 3 months of receiving the report. However the ability of a planning authority to deviate from the reports recommendations are to be prescribed but the grounds upon which an authority can decline to implement a recommendation of the appointed person have yet to be published.

- 4.12 Under new section 20B each planning authority must prepare a “development plan scheme” that sets out the programme for preparing and reviewing the local development plan. The scheme must include a proposed timetable for each stage of the process, details of what is likely to be involved in each stage of preparation and an account of when consultation is likely to take place.
- 4.13 Under new section 22 Supplementary Planning Guidance is to be given statutory force. Any guidance will require to be published and representations invited. Before adopting any guidance a planning authority must send a copy to Scottish Ministers who can direct that modifications are undertaken.
- 4.14 New section 23B provides default powers for Scottish Ministers to enable them to either direct an authority to prepare a LDP (or Strategic Development Plan) or prepare it themselves with costs being chargeable to the authority.
- 4.15 The status to be given to LDP and supplementary guidance is detailed in new section 24 and provides as at present that any determination under the planning acts regard must be made in accord with the development plan or NPF unless material considerations indicate otherwise. It is however important to note that in regard to any incompatibility between a LDP and the NPF “whichever of them is the later date is to prevail”.

***As indicated above most of the procedural changes to the local planning process were flagged in the white paper and can generally be supported. However it is considered that it is entirely unacceptable that the grounds for departing from the recommendations of the person appointed to examine a proposed LDP have not yet been published by Scottish Ministers and that they should be published as soon as is practicable. Only when the grounds are available can Councils respond properly to the proposal. As such the proposal removes authority to decide on the content of the LDP from a democratically elected Council to an unelected official. This is not considered acceptable. Notwithstanding the ability of the person appointed to determine the format of the inquiry is supported particularly if this will make the process quicker and more meaningful for members of the public.***

***It is also unacceptable that details as to what planning authorities will be required to do to publish the plan and make “persons ... aware that they are entitled to make representations” are not provided but are to be “prescribed”. If this means that householders are to be individually notified of proposals in the main issues report and LDP by the authority then it should be stated as such.***

***The increased status given to supplementary planning guidance is welcomed as it would enable detailed development management (promotion) policies to be separately considered reducing the size and complexity of LDP. It should make it easier to prepare more focused and readable planning documents and enable the Council to keep LDP up to date.***

***Whilst the need for publishing a development plan scheme is supported the need to allow for review ( but subject to ensuring that updated LDP are prepared every 5 years) should be more explicitly stated in new section 20B.***

### Development Management

4.16 “Development Management” is the terminology now being used with reference to the Development Control or, in East Ayrshire, Development Promotion function. The Bill introduces new, or adds to existing, sections of the ‘97 Act.

4.17 By alteration to Section 26, the introduction of mezzanine floors within existing retail or other buildings becomes “development” and subject to planning control.

***This is a welcomed additional control addressing a growing retailing trend.***

4.18 New section 26A allows for Regulations to be introduced that define the classes of development that will be considered to fall within the categories of “national”, “major” or “local” development. Such categories form part of the intended hierarchy of development classes that will determine by what means and subject to what procedures an application is considered. During the development management process, different categories of development will be subject to different procedures for submission, processing and determination with a view to streamlining the system and enabling a more proportionate allocation of resources.

***This is generally welcomed but much will depend on which development types are allocated to which category.***

4.19 The introduction of Initiation and Completion of Development Notices will strengthen the enforcement process by alerting the Council to key stages in the development process and any consequent implications for the submission of details, (and failure to do so).

***This is a welcome additional requirement, however, there will be a consequent administrative burden in respect of handling the Notices, processing any outstanding conditions relative to the programming of development and, potentially, arising from additional enforcement activity brought about by a greater awareness of what development is being undertaken.***

4.20 Powers within the Bill will allow for the introduction of standardised application forms across Scotland that will aid the submission of applications and speed the initial validation stages following receipt of an application. In addition, specified applications will require to be accompanied by a statement on access for the disabled.

4.21 Procedures for variation of applications following receipt are put on a statutory footing by revisions to section 32.

***The above two measures are welcomed.***

4.22 With a further view to strengthening the enforcement system, where a request is made to an applicant to seek planning consent in respect of a development already undertaken, under alterations to Section 33, that request will have the status of an enforcement notice and failure to submit an application would be a breach of that notice.

***This alteration removes a long standing public concern that retrospective applications are not necessarily addressed as rigorously as those submitted prior to development commencing.***

4.23 By amendments to Section 34 of the Act, the process whereby neighbours are notified of planning applications is transferred to the Planning Authority and will be detailed within separate regulations.

***The Scottish Ministers have indicated that the additional administrative burden of this process would be addressed by an increase in planning application fees.***

4.24 New Section 35A places an obligation on prospective applicants, within certain classes of development to be prescribed by regulations, to comply with certain pre-application consultation procedures. These classes will include major developments, those where an Environmental Impact Assessment is required and large scale bad neighbour developments being a departure from the development plan. An applicant may also serve a "Proposal of Application Notice" on the Planning Authority to determine if their development falls within the prescribed classes requiring them to undertake pre-application consultations. The Authority will have 21 days to respond; failure to do so will mean that no such pre-application consultations can be required. Section 35C requires applications to be accompanied by a "pre-application consultation report" where such consultations have been required.

***It would be hoped that applicants considering submission of such significant proposals would in any case undertake consultations with key consultees. However, where that is not the case and should applicants be hopeful that consultation will be a process exercising the planning authority rather than them, it can be anticipated that Proposal of Application Notices will be received and will create an additional workload for the Division.***

4.25 Changes to Section 36 of the Act continue the requirement to maintain a register of applications received within which additionally must be recorded variations of applications (Section 42 above), any proposal of application notices (Section 35A above) and any pre-application consultation reports (Section 35C above). The register is to be updated weekly (or at such intervals as may be prescribed) and its availability shall be periodically advertised in the local press.

4.26 In order to address concerns about how a decision was reached and what views and material considerations played a role in determining how an application was decided, the register will also require to be revised to include information about documents, and the material considerations, to which regard was had. Furthermore, the register is to include information on planning obligations, (see 4.36 below).

- 4.27 Furthermore, provisions in the Bill include a requirement to publish decision notices including the terms of the decision, any planning conditions and the reasons behind the decision and any conditions imposed. The decision notices shall be placed on the planning register.

***The above three paragraphs promote greater transparency and allow for wider understanding relative to the planning system. This is welcomed, however, it represents an additional administrative burden.***

- 4.28 With a view to strengthening public participation in the planning system, new section 38A allows for the introduction of regulations requiring that, in relation to certain classes of development, (*major and local development significantly contrary to the development plan, applications requiring an Environmental Impact Assessment and large scale bad-neighbour developments*), the applicant and any person so prescribed, will have the opportunity of a hearing before a committee of the Authority.

***Whilst East Ayrshire currently operates a hearing system at Committees, this is a hearing into objections and for that reason has a different focus to that proposed in the Bill where there need not be objectors wishing to speak in order for there to be a hearing. It would be sufficient for the applicant to wish to address the Committee in respect of their application being within a specified class. Potentially the Local Planning Committees could be entertaining additional hearings; although this may be offset by recent reviews of the scheme of delegation or such future measures as may result from the implementation of new Section 43A below.***

- 4.29 Section 39 of the Act is amended to widen the circumstances whereby a Planning Authority may decline to determine repeat applications.

***This provision now allows Planning Authorities to decline to determine applications where more than one previous similar application has been refused by it, within two years, and there have been no changes to the development plan or material considerations. Previously this ability became available only after an appeal or call in by the Scottish Ministers.***

- 4.30 Alterations to Section 43 of the Act allow the Scottish Ministers, in circumstances where an application has been referred to them by the Planning Authority, to impose conditions on a consent or prevent issue of a decision until the Planning Authority has satisfied the Ministers that it has taken necessary steps to comply with a direction. At present the Scottish Ministers cannot impose conditions without calling the application in, holding a hearing, going through a public inquiry or written submissions.

***This measure would potentially speed up the process, but could result in the imposition of conditions not agreed by the Planning Authority.***

4.31 New Section 43A allows for the prescription, through regulations, of the form, content and procedures for adopting, including frequency, a Scheme of Delegation. Planning Authorities will be required to submit proposed schemes of delegation to the Scottish Ministers before the Council agrees the scheme. Applications falling outside the delegated scheme will be determined at committee. Decisions taken by officers on a delegated basis will potentially be subject to review where required by the applicant and where an application is refused, approved subject to conditions or no decision is taken within a prescribed period. This is presented as an efficiency measure, removing involvement of the Scottish Executive Inquiry Reporters Unit (SEIRU) and placing responsibility for considering appeals in respect of local developments before a local review body of the planning authority. Regulations will indicate the time period within which the review body is to arrive at its decision on the application. Failure of the review body to arrive at a decision within a prescribed period will amount to a deemed refusal of the application against which the applicant may appeal to the Scottish Ministers.

***The intention here is to provide an accelerated route for determination of small scale, non-controversial, policy compliant applications. However, the Planning Authority already has a detailed scheme of delegation which sets out to balance speed of decision making against accessibility and accountability. The Bill will require the Council's scheme of delegation to be arrived at and drafted in accordance with set procedures. The clearly stated requirement that Councils submit proposed schemes of delegation to the Scottish Ministers sits uncomfortably against the White Paper's (Modernising the Planning System) assertion that "the details of each delegation scheme will be for the planning authority to determine". This needs to be clarified to establish the purpose behind any submission to the Scottish Ministers.***

***The proposed review body will in essence determine "appeals" (reviews) in respect of decisions on local development. It is notable that the legislation is so drafted that the initial consideration of the "local" application is undertaken on behalf of the planning authority "by a person appointed by them for the purposes of this section instead of by them". This wording within the Bill would not appear to make it mandatory that the appointed person in terms of implementing delegated decision making is an officer of the Council. There is also the prospect that any efficiencies in extending officer delegation may be offset by an increase in applications.***

4.32 Various Sections of the Act are proposed for amendment to allow the Scottish Ministers to determine the most appropriate route for consideration of a planning appeal dependent on the case and its circumstances; be it public local inquiry, a hearing or written submissions.

***Currently, appellants or Planning Authority can insist on the right to a hearing at a public local inquiry. The proposal to have the determination route selected by the Scottish Ministers is supported in that a mechanism consistent with the scale of and issues in the appeal is more likely to result than in circumstances where an applicant wishes to advance a potentially minor appeal through the PLI process.***

- 4.33 In respect of appeals determined by the Scottish Ministers, Section 47 of the Act is extended to clarify that the matters to be considered at appeal are only to be those that were before the planning authority when it took its decision; other than in exceptional circumstances.
- 4.34 The current five year period within which to commence an approved development, (planning permission and listed building consent), is reduced to three years by alterations to Section 58 of the Act.

***This proposal is supported in that it retains some measure of flexibility for developers whilst reducing the uncertainty that arises from a period of five years.***

- 4.35 A new Section 59 redrafts the provisions relative to outline planning permission, describing this process as seeking “planning permission in principle”. This is part of measures to modernise the system clarifying that what is sought is agreement in principle to a development. As a result of different planning authorities adopting different approaches to agreeing what currently are called “reserved matters” and not always affording the public an opportunity to comment on the details of the development, the Bill establishes one new procedure whereby the need for consultation and neighbour notification are clearly laid out at the detailed stage.

***East Ayrshire Council has consistently followed an approach whereby applications for reserved matters where subject to the same consultation and neighbour notification processes as the preceding Outline Consent. The new sect 59 is therefore supported.***

- 4.36 Planning Agreements under Section 75 of the Act are a voluntary arrangement, tied to the land, so that the use of land can be regulated or restricted in circumstances where planning conditions are not applicable. In order to address criticisms that the use of such agreements is neither open nor transparent, the Bill requires that all planning obligations are recorded in the planning register, (see 4.26 above). Additionally, it will be made possible, for example during appeal hearings, for developers to bring forward “unilateral” obligations enabling provision or improvement of necessary infrastructure.
- 4.37 Useful clarity is provided by additional clauses to sect 75. These confirm the role of such legal agreements and clarify that the agreement may be conditional or subject to conditions and, in the event of a breach of a legal requirement in respect of operations, its provisions can be undertaken by the Council with expenditure recovered together with costs.
- 4.38 New Section 75A makes it possible for a developer to apply to the planning authority to modify or discharge a Section 75 agreement. Regulations will provide for the form and content of any such application, the publicity to be undertaken, the procedures to be followed when considering any such application and the time period within which such applications shall be determined. The applicants may appeal to the Scottish Ministers against a decision reached in respect of their application to modify the agreement, or once the prescribed period for determining their application has expired.

***Whilst the clarity and transparency arising from these measures is welcomed, they will place an additional burden on the planning authority in terms of the deadlines to be met, procedures to be undertaken and registers to be maintained.***

- 4.39 New Section 75D introduces “Good neighbour agreements” which are seen as a means of allowing the developer and the community to engage on how a development is carried out. GNAs are seen as complementing existing provisions for safeguarding community interests through the planning process, but they should not extend beyond reasonable considerations or duplicate provisions separately enforceable by the planning authority and are specifically not to require the payment of money.

***The White Paper suggested GNAs would potentially allow developers to commit themselves, to community groups or community councils, to matters such as hours of operation, patterns and frequency of vehicle movements and provision of more general information on environmental performance.***

***The Bill points to the value of GNAs being that the community would itself be able to enforce the agreement against successors in title, presumably having concerns that the planning authority may not be similarly inclined to enforce similar obligations that it might have seen fit to encompass within a Section 75 initiated by the Council to secure the same ends on behalf of the community. In the event that the community body and the applicant subsequently try, but fail, to reach an agreed modification of the GNA, either may appeal to the planning authority, [Section 75E(2)]. Should the planning authority fail to timeously consider such appeal or determine that the GNA should remain as originally drafted, the applicant can appeal to the Scottish Ministers.***

***The role of GNAs is not fully supported for the following reasons:-***

- ***their role appears very limited if they are not to intrude into areas already capably addressed by planning conditions or legal agreements involving the planning authority,***
- ***their use presupposes that the community will be more likely to pursue and secure by agreement certain obligations than the planning authority,***
- ***their use presupposes the planning authority would not be persuaded to seek the same obligations that the GNA would secure, through any Section 75 agreement that it might pursue,***
- ***because the planning authority could in any case be involved as an appeal arbiter in any dispute about the modification of the GNA.***

- 4.40 New Section 144B allows for planning authorities to serve “temporary stop notices” without having to serve an associated enforcement notice. Such notices would have immediate effect and could replace the requirement otherwise to consider Interdict through the Courts. They would have effect for 28 days only and are applicable subject to certain limitations such as use of a building as a dwellinghouse.

***This is a very welcome measure which will quickly and effectively enhance the enforcement function.***

- 4.41 New Section 158A introduces “Enforcement Charters” which are a mechanism whereby a planning authority will set out its enforcement policies, advising the public on how to draw apparent breaches to the attention of the planning authority and how thereafter it will pursue the complaint received.

***This is a useful requirement to improve public confidence in the planning system in general and the enforcement process in particular. It is welcomed.***

## **5. PART 5 OF THE PLANNING BILL AND COMMENT**

- 5.1 Part 5 deals with Trees. As with the previous section comments are provided in bold. Under new section 26 for the first time Tree Preservation Orders (TPO) can be made exclusively for trees, groups of trees and woodlands that have cultural or historic significance rather than for amenity value. The section also provides for statutory undertakers to notify the planning authority when carrying out works to trees that are subject to a TPO and for TPO to take effect on the date specified on the order rather than on confirmation by a planning authority removing the need for provisional TPO as at present.

***All the proposed changes are worthy of support.***

## **6. PART 7 OF THE PLANNING BILL AND COMMENT**

- 6.1 Part 7 introduces new powers to enable the Scottish Executive to audit performance of local planning authorities and gives Ministers the discretion and power to investigate planning decisions if there are concerns over the basis and rationale for them.

***These formalised powers could erode what is left of local decision making by a planning authority.***

## **7. PART 9 OF THE PLANNING BILL AND COMMENT**

- 7.1 Procedures for the introduction and implementation of Business Improvement Districts (BIDS) are provided in part 9. Comments are provided in bold.
- 7.2 BIDS are a means to regulate and co-ordinate privately funded town centre improvements. At present private sector funding is voluntary and makes it difficult for projects to be undertaken on a consistent and sustainable basis. Over a dozen BID projects have been established in England which has provided a strong evidence base to demonstrate the type of benefits that can be secured from BID projects.
- 7.3 BID can only be created following a ballot of non domestic rate payers within the proposed boundary. The ballot will provide an opportunity for BID proposals to be agreed or otherwise. If agreed (certain conditions are specified) the local authority will be required to make the necessary “BID arrangements” that will specify the projects to be carried out. Once in force the authority must comply with BID arrangements in place however the authority has a power to veto BID proposals and prevent the ballot from taking place. If approved by ballot the BID arrangements will have effect for a maximum of 5 years.

***The Council has requested the Scottish Executive consider it for one of the pilot BID projects to be set up this year following the recently approved Kilmarnock Town Centre Strategy.***

## **8. PART 10 OF THE PLANNING BILL AND COMMENT**

- 8.1 Part 10 deals with various miscellaneous and general provisions mostly technical in nature. Comments are again provided in bold. Of note is that controls over demolition works in conservation areas are to be tightened and to widen the scope for investing in conservation areas by ending the requirement to classify conservation areas as being “outstanding” for conservation purposes.

***Both proposals are considered worthy of support.***

## **9. FINANCIAL AND PERSONNEL IMPLICATIONS**

- 9.1 As previously intimated to committee when it considered the report on the white paper a number of the proposals would involve significant operational costs to the Council. The Scottish Executive has commissioned two research papers into the implications entitled “Resources for Planning” and “Planning Reforms: An Impact Assessment”. The main findings are that;

- The planning service in Scotland has not been given the resource priority it has needed in recent years
- If local authorities were to achieve 100% cost recovery of fee related development control activities this would have resulted in an increase of 34% in fees in 2004-05
- There is an overall shortage of qualified planning staff across Scotland and there are concerns about the future supply of graduates particularly in the West of Scotland
- In 2003 there were 84 full time equivalent vacancies
- The reform proposals are estimated to have an effect of increasing costs by about £261,000 per planning authority
- Many of the reform measures will allow the system to be operated more efficiently and expeditiously but the cost saving will be offset by the increased regularity of plan reviews and performance improvements in determining applications which will require additional resources

***These research papers will inform any changes in fee structures and it is critical that full provision is made by the Scottish Executive in addressing the financial and personnel implications.***

## **10. LEGAL/AUTHORITY IMPLICATIONS**

- 10.1 Much of the Bill will require the Council to amend current procedures and operational practices. In addition new responsibilities will be placed on the Council to which the Council will be subject to legal challenge. Close working will be required with the Council’s legal and administrative divisions.

## **11. COMMUNITY PLAN IMPLICATIONS**

11.1 The planning system is an important mechanism through which key actions contained within the themed Community Plan Action Plans are delivered and it is critical that the revised planning system is able to respond to the challenges posed by the Community Plan. It is considered that the comments provided in sections 4 to 9 above will assist in achieving the objectives contained in the East Ayrshire Community Plan.

## **12. RECOMMENDATIONS**

12.1 It is recommended that the committee agree to:

- (i) note the content of this report;
- (ii) note the comments under each part of the Planning Bill are forwarded to the Communities Committee of the Scottish Parliament;
- (iii) homologate the response based on the above report already forwarded to the Communities Committee.

**James Lavery**  
**Executive Director of Development and Property Services**  
23 February 2006  
(KD/SA) - FV

### **LIST OF BACKGROUND PAPERS**

1. Previous Committee Reports.
2. White Paper on Modernising the Planning System 2005.
3. The Planning (etc) Scotland Bill.
4. Scottish Executive Research on Resources for Planning.
5. Scottish Executive Research on Planning Reforms; and Impact Assessment

Anyone wishing to inspect the above papers please contact Karl Doroszenko on (01563) 576751.

Implementation Officer: Karl Doroszenko