

Scottish Planning Policy

Finalised Amendments

December 2020

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1. BACKGROUND

On 17 July 2020 the Scottish Government published a consultation paper setting out proposed interim changes to the Scottish Planning Policy (SPP) (2014).ⁱ The consultation period closed on 9 October 2020.

The Scottish Ministers have since reflected on the responses to the consultation, including evidence highlighted by respondents and gathered during the consultation period. This paper:

- Summarises the key issues arising from responses to the consultation. A fuller analysis is set out in an independent report.ⁱⁱ
- Reflects on available evidence.
- Sets out the Scottish Government's response, in light of the comments and evidence received.
- Sets out our finalised interim policy position including revised text of the relevant sections of the Scottish Planning Policy 2014.

Enabling the delivery of good quality development is an important objective for the Scottish Government. The Scottish Ministers wish to see homes and other essential developments delivered in a way that respects and is consistent with development plans that have been drawn up with input from local communities and other interests.

Our final policy position reflects our view that the planning system requires co-operation from all parties to work together effectively to deliver good quality development. It is clear that there are many different views on how that can best be achieved, and that this is a key issue for the wider review of national planning policies to consider further.

The amended interim policy is intended to make the system more transparent, fairer and more consistent with these objectives, ahead of National Planning Framework 4 being adopted in 2022.

The consultation process

We considered the consultation to be necessary, as a result of recent litigation and complexity arising from certain parts of the Scottish Planning Policy. Some of the proposed changes also aimed to respond to the impact of COVID-19 on the planning system and housing developments. Overall, views on the proposals were divided, with some supporting the changes and others opposing them.

Some responses expressed concern about the consultation process, its timing and the lack of a transition period, forewarning or scope for earlier involvement. Issues included the scale and significance of the changes proposed (with suggestions that the paper's title and assessments underplay its impacts), a perceived lack of supporting evidence and impact assessments, the accessibility / language used in the consultation paper and presentation of the proposals as relating only to housing matters rather than wider development proposals. In response to these views:

- **There was a good level and range of responses to the consultation.** We received 244 responses by the deadline from a wide range of stakeholders including public and private sector organisations, community groups and individuals, as set out in the independent consultation analysis report. This number and range exceeds the response from the consultation undertaken when the presumption was introduced in the 2014 version of the Scottish Planning Policy (160 responses).
- **There is no evidence to suggest there was widespread or universal dissatisfaction with the consultation process.** In response to a specific question on the Citizen Space platform, a minority of respondents (28) who expressed a view felt dissatisfied with the consultation, a majority (83) were satisfied, and the remainder did not express a view or a preference either way.
- **The title of the consultation was not intended to minimise its importance.** This is undoubtedly a complex area of planning, the paper was titled as a 'technical consultation' to accurately describe its content, rather than as an attempt to minimise its significance. We fully appreciate the importance of the issues and this is reflected in our decision to formally consult on the proposals.
- **We provided extra support to a range of stakeholders.** To help stakeholders understand the proposals, we offered support to a range of representative organisations by meeting with them to answer their questions and clarify issues.
- **Sufficient time was allowed for responses.** The consultation period was of sufficient length to allow respondents to submit their views in a timely manner.
- **Overall this has been a meaningful and effective consultation.** Whilst we recognise that this is a difficult topic for some people to engage with, taking into account the number and range of responses we have received, we do not agree with assertions that this consultation has been underplayed or that people have not had an opportunity to express their views as a result.

2. THE PRESUMPTION IN FAVOUR OF DEVELOPMENT THAT CONTRIBUTES TO SUSTAINABLE DEVELOPMENT

- Question 1 in the consultation paper focused on the presumption in favour of development that contributes to sustainable development.
- We proposed removing the statement that *“This SPP introduces a presumption in favour of development that contributes to sustainable development.”*
- We also proposed removing paragraphs 32 and 33 of the SPP which explain how the presumption should be applied in development management. Paragraph 32 states that the presumption will be a material consideration for proposals that do not accord with up-to-date development plans. Paragraph 33 states that where relevant policies in a development plan are out-of-date the presumption will be a significant material consideration. Paragraph 33 also gives significant weight to the presumption if there is not enough ‘effective’ land available for housing development. A minor adjustment to the wording of paragraph 30 was also proposed for cross-referencing.
- The consultation paper did not propose changes to paragraph 29 of the SPP which sets out the principles of sustainable development in more detail.

Views

As set out in our consultation analysis report there was both support for, and opposition to, these proposals. In summary, the analysis of responses showed that there are strong and contrasting views on a number of issues:

- A large majority of individual respondents supported the proposals as did all members of the community and third sector groups and local authorities who indicated a clear view. In contrast, all energy and housing developers and all but one planning consultancy opposed the proposals. Representative bodies were evenly divided, with their position reflecting the sectors of their members.
- Many respondents supported the proposal to remove the overall wording on the presumption because:
 - the proposed changes were considered consistent with a plan led system;
 - considerable resources are spent on calculating and debating the 5 year effective housing land supply;
 - there is concern about the impact of Court decisions on encouraging speculative / unsustainable development;
 - there is doubt about the benefit of the presumption in addressing a shortfall in housing;

- there is agreement that there is no provision for a ‘tilted balance’ in the SPP; and
 - it was recognised that the principles supporting sustainable development would remain in place.
- Many respondents also broadly agreed with changes to address the issue of plans being considered out-of-date (paragraph 33) but felt that clarification would still be required for handling of proposals where there are no relevant policies.
 - Many respondents, largely energy and housing developers, opposed the proposal on the basis that:
 - The presumption is important for housing delivery in responding to failures to provide sufficient land for housing development.
 - The presumption is also relevant to non-housing developments.
 - The presumption was considered to be clear and consistent with a plan-led approach.
 - The Court’s views on a number of recent statutory appeals clarifies the application of the SPP.
 - The proposals would be more than a clarification or a technical change and so the matter should be addressed in National Planning Framework 4 rather than an interim policy.
 - There is wide support for sustainable development and the changes would send out mixed messages on this.
 - The presumption does not bring forward ‘bad’ or unsustainable development.
 - The presumption ensures that development can come forward where plans are out of date or not explicit.
 - Paragraphs 32/33 play an essential role in keeping plans up to date.
 - The changes would exacerbate the impacts of the pandemic on the housing supply.

Evidence

The following evidence has been taken into account in reaching our final policy position.

The need to clarify the policy

The extent of recent litigationⁱⁱⁱ demonstrates that there are different interpretations of the existing policy. Legal cases, including *Gladman vs The Scottish Ministers*, have shown that the policy as currently drafted alters or tilts the balance of decision making.

The Scottish Planning Policy aims to achieve the right development in the right place; it is not to allow development at any cost. The presumption as part of this sought to support development which is sustainable. A 'tilted balance', which has the potential to alter the assessment on sustainability of development that would be inconsistent with our broader understanding of sustainable development, was not an intended feature of our policy. The *Gladman* case established that the assessment of whether development is sustainable involves the use of the tilted balance. It also brings out that, where paragraph 33 of the current policy is engaged, it is sufficient that development "contributes" to sustainable development for the tilted balance to apply.

In addition, the information we have gathered on the application of the presumption to date (see below) demonstrates the complexity of the policy as it stands.

The impact of the COVID-19 pandemic on housebuilding and development planning

It is clear that the restrictions arising from COVID-19 have impacted on the construction sector. Stakeholders reported to us that there were high levels of applications to the job retention scheme and furloughing of employees, at least in the initial period where restrictions applied, and business confidence earlier in 2020 was reported to be low.

In terms of available evidence, data set out by the Construction Leadership Forum^{iv} notes that output in the Scottish construction sector contracted by 28.6% in June 2020 compared to June 2019. The Scottish Housing Market Review (July – September 2020)^v shows a significant fall in residential property sales (down by 63.5%) during the second quarter of 2020 and a subsequent strong recovery during July and August.

Figures relating to the housing supply (i.e. all sector new build completions) in 2020 are not yet available, but the affordable housing supply programme shows a significant fall in completions (by 84%). The extent to which the recent recovery signs arise from a catching up with activity that stalled during lockdown and will be sustained is not known at this point in time. However, Homes for Scotland gave evidence on the impact of COVID-19 to the Scottish Parliament's Economy, Energy and Fair Work Committee in May 2020.^{vi} This set out that the prospects for long term recovery of the housing market are very uncertain and that it may be 2 to 3 years before construction rates return to 'anything like' pre-COVID levels. Homes for

Scotland submitted evidence to the Advisory Group on Economic Recovery (AGER) which stated *that “even on best case scenarios...we may expect a reduction in completions for the year of around 30 to 40% from where they would otherwise have been”* and referred to low levels of consumer confidence being expected *‘for a while’*. Homes for Scotland also produced a Recovery Plan^{vii} which sets out the continuing impact of restrictions on capacity and the longer timescales required to complete homes.

Earlier this year we published advice on COVID-19 and development planning consultation and engagement.^{viii} This aimed to balance the limitations on engagement arising from a ban on public gatherings and the need for physical distancing with the need to keep plans up to date as far as possible. It also took into account concerns expressed by industry representatives about their limited capacity to engage in development planning and housing land audits at that time. The advice acknowledges that some delays to development plan timescales would be unavoidable and this conclusion informed comments on this in the paper.

We have since noted evidence provided by some respondents which suggests that COVID-19 is not the primary reason for several plans becoming out of date. We have also taken into account information we gathered to inform the preparation of transitional arrangements for development planning which have since been published.^{ix} Delays are likely to arise in the coming months for a number of reasons, including the revised NPF4 timescales, planning reform and the ongoing work to shape new style development plans, resources, and the ability of planning authorities to engage effectively with stakeholders and the public during the pandemic.

Application of the presumption to date

It is not possible to identify every case where the presumption has been applied or to ascertain whether or not it has been the determining consideration in granting approval. In responses to the consultation, examples were provided of the presumption having led to developments being approved. Some of these examples aimed to illustrate a point that the presumption is necessary to ensure the need and demand for homes can be met. Other examples were provided of the presumption being used to support homes without sufficient infrastructure or which were counter to community views about the future of their areas.

Since the consultation paper was published, we have considered a sample of appeal cases to assess the current impact of the presumption on delivering homes. This shows that the presumption is generally only referred to in appeal decisions relating to larger developments. In appeal cases, where the presumption has been applied prior to the *Gladman* case, an initial judgement has generally been made by the Reporter as to whether the proposal was sustainable development. Where applicable (i.e. there was a shortfall in housing land available or the development plan policies were out of date), the presumption was then subsequently applied by Reporters. In terms of the scale of the application of the presumption to appeal cases to date:

- 275 decisions were issued for appeals relating to 10 or more homes between April 2015 and August 2020. Of these 101 were allowed.

- 78 appeals related to proposals for development outwith an urban area (exceptional release sites) to address a housing land shortfall and 26 cases were allowed.
- Approximately 5500 houses were granted planning permission in such cases. Whilst it is not possible to say whether these consents were entirely driven by the presumption, we do know that it was a consideration in the decision.

This evidence suggests that the presumption has been of less direct relevance to individual decisions than may be thought to be the case by some stakeholders.

We reviewed the Homes for Scotland evidence on the scale of cases approved as a result of the presumption, drawing conclusions on the number of homes that it has delivered. We consider this to be an over-estimate when compared with our own analysis. Whilst no data can provide a complete picture, our estimate is that since 2015, 5500 units (rather than 8000 suggested by Homes for Scotland) have been approved on the basis of the presumption. The role of the presumption in determining these applications cannot be fully determined. Our research also shows that a smaller proportion of these consents has been built to date (around 1000 homes over 5 years).

Implications of Gladman vs Scottish Ministers on the application of the presumption

We accept that some of these types of proposals may have different outcomes in light of the Court's decision. This is supported by some responses – for example an example of a recent appeal decision where the Reporter indicated that had the policy changes been made, his decision would have been different.

The Court's decision suggests that rather than the approach generally taken by Reporters to date:

- The decision-maker should first identify whether or not there is a shortfall, based on the housing land requirement and comparing this with the amount of effective land included in the 5 year programme in the latest Housing Land Audit to determine the scale of any shortfall.
- Where a shortfall is identified, this shortage becomes a significant material consideration in favour of granting planning permission. The scale of the shortfall should determine the angle of the 'tilt' in the tilted balance.
- To refuse planning permission, the adverse impacts must significantly and demonstrably outweigh the benefits of reducing the shortfall (i.e. the tilted balance applies).
- Identifying the scale of the shortfall is important because it sets the angle of "tilt". The greater the shortfall the greater the weight should be attached to helping reduce the shortfall and so the harder it should be to refuse planning permission. Helping address a housing shortfall is of itself almost inevitably a contribution to sustainable development.

Applying this approach, in the same sample of cases we reviewed the presumption would become a significant material consideration, before assessing whether or not the proposed development met the principles set out under paragraph 29.

Following the *Gladman* decision, more applicants may seek to argue the case for more exceptional releases of housing land. However, the influence of the presumption and the outcome of decisions cannot be predicted with any confidence. The Scottish Planning Policy should be read and applied as a whole. The planning judgement, and outcome, would remain variable given the breadth of considerations that would still need to be taken into account.

Key points

We have therefore concluded that:

- The presumption has some influence on decisions, but this appears to be limited and cannot be fully gauged.
- Appeal decisions show that because the presumption is complex and tends to be contested in large scale housing cases, it does take considerable time and resources to engage with it.
- Litigation, together with the polarised responses to this consultation demonstrate the range of interpretations of its meaning and application.
- The SPP presumption aimed to support sustainable development, not development at any price or in any location. Appeal decisions to date have generally focused first on ensuring proposals are sustainable in line with this intention.
- However the interpretation of the policy as established by the *Gladman* case and so the use of a strongly ‘tilted balance’, has the potential to mean that developments that may otherwise (i.e. without the use of a tilted balance) be judged to be unsustainable may be granted consent where there is a shortfall in the housing land supply.
- The pandemic is creating uncertainty. The proposal to remove the presumption was not primarily driven by the pandemic – but it did inform our consideration of paragraphs 123 and 125 (see below) as we expect that it will impact on the overall rate of housebuilding this year. Fuller data on the impact of COVID-19 will take some time to emerge but it is clear that this is a challenging period for construction including housebuilding, and that there is uncertainty about the timescale of future recovery. Available evidence shows that there will be an impact on the rate of homes constructed during the time when site restrictions were in place.
- We are aware from general practice that there is confusion / a range of interpretations about when plans (or the relevant policies) are, or are not, considered to be ‘up-to-date’. More plans may become older than 5 years in the coming months for a range of reasons, but may well still contain relevant policies. A wide range of factors can influence whether local authorities review

their development plans – including COVID-19, resourcing and the revised NPF4 timescale.

- Sustainable development remains a key objective of the Scottish Planning Policy. The UN Sustainable Development Goals are embedded across our national outcomes^x. Section 3E of the 1997 Act applies to planning authorities exercising functions under Part 2 of the 1997 Act, and under section 3E(3) the Scottish Ministers may issue guidance for the purposes of section 3E. This is addressed by the Scottish Planning Policy including paragraphs 28, 29 and 30.
- We also accept that plans cannot include policies covering every eventuality and that although the development plan has primacy in all cases, some flexibility is needed.
- In response to these issues, section 7 sets out our final policy amendments.

3. DEFINITION OF EFFECTIVE HOUSING LAND

- Question 2 in the consultation paper focused on making the definition of effective housing land as set out in paragraph 123 and associated glossary definitions more flexible.
- Sites currently need to be proven to be 'effective' when assessed against a range of criteria set out in planning advice. This is important because, as explained in Section 2, if there is not enough effective housing land available, then it is more likely that sites that are not in a local development plan could be brought forward for planning permission.
- We were aiming to reduce disagreement about whether sites are, or are not, suitable for housing development and whether these sites are effective. We also wanted to reflect the fact that the programming of sites (i.e. when they are built out) is determined by a range of wider factors and is subject to change.
- We were of the view that the potential impact of COVID-19 could mean that sites which might normally be considered 'effective' are not counted as part of the land supply.
- The changes we proposed in the consultation paper would mean that land that is technically suitable for housing could still form part of the 5 year effective land supply, regardless of changes to programming or subjective views on marketability in a changing context.

Views

As set out in our consultation analysis report there was both support, and opposition, to these proposals. In summary, the analysis of responses showed that there are strong and contrasting views on a number of issues:

- Amongst respondents who supported and opposed changes, there was, to a degree, a shared recognition of and support for agreeing a methodology.
- Those respondents who supported the proposal to revise the definition of effective land, did so on the basis that:
 - There is concern about uncertainty and different interpretations of the existing wording of the SPP - clarity is needed to make the system easier to follow and transparent.
 - There is a need to address disputes about the 5 year effective land supply and in particular programming assumptions.
 - Communities reported damage to their area owing to the presumption.
 - Calculations can conflate the matter of available land and the rate of programming of its build.

- There was support for clarification that ownership should include reference to a 'willing seller' as this is often a source of dispute.
- Alternatives were suggested including differentiating between the land supply and the delivery programme or judgements, a fuller definition and an approved source of evidence on completions. More detailed wording was also suggested for both the policy wording and the glossary. It was suggested that communities should be involved in Housing Land Audits.
- Other respondents opposed the proposal to revise the definition of effective land because:
 - They would not clarify the situation and would have a significant impact.
 - There is a lack of evidence to support the reasons.
 - This should be considered within the context of NPF4 rather than interim policy changes.
 - There is agreement on the importance of Housing Land Audits, although also some views on shortcomings and inaccuracies / as well as views that their figures are 'manipulated'. Nevertheless there was concern that the changes would undermine their role, leading to more confusion.
 - Programming is considered essential including for action programmes and infrastructure providers.
 - A more useful change would be to require sites to be in the hands of a developer to be considered effective.
 - Exclusion of 'marketability' was considered irrational.
- Further alternatives suggested by those opposing the change included retaining the policy and the advice, or issuing informal advice on how planning authorities should adjust their approach to take into account the temporary / short term impacts of the pandemic.
- There was concern about removal of section 2 of PAN 2/2010^{xi} given the need for clarity, although reasons for this vary.
- Stakeholders who supported and opposed the changes raised questions about the proposed reference to 'normal market circumstances'. Examples were provided of varying circumstances. Those who opposed the changes highlighted their view that demand in the market is currently strong and that there is therefore an urgent need for delivery to address this and assist with recovery from the pandemic through supply.

Evidence

The following evidence has been taken into account in reaching our final policy position.

Accuracy of information on site programming

Housing Land Audits play a key role in monitoring the availability and build-out of sites and so many of the responses focused on their role in the system. The responses included examples of current practice in undertaking Housing Land Audits and it was reported that programming within them is often inaccurate:

- Some examples were given of programming assumptions leading to a requirement to allocate further land, despite the fact that sufficient land was allocated at the point of plan adoption.
- Others reported that the audit process is 'largely harmonious' with limited disputes and Homes for Scotland stated that their members have not withdrawn sites from the effective land supply as a result of COVID-19.

We have previously undertaken research on Housing Land Audits including most recently work to inform our ongoing work on planning reform^{xii} as well as work in 2008 which assessed current practice at that time. The later research established that around 60% of audits were disputed, although the number of individual sites which are contested was low. Difficulties were identified in establishing completions and future site programming. Wider research reported by the Scottish Land Commission also highlights the role of the market absorption rate in defining build-out programmes.^{xiii}

To further establish an evidence base to inform our consideration of the proposed changes, we built on this work by examining examples of Housing Land Audits. This work shows that:

- There are continuing difficulties in establishing completions and future site programming within Housing Land Audits, as a result of natural uncertainties and changing circumstances.
- Some audits overestimate completions in relation to their programme, whilst others underestimate them.
- Their findings with regard to the availability of housing land at any given point in time should be treated with caution.

Key points

We have therefore concluded that:

- We recognise that maintaining a land supply is important and should be more than a theoretical exercise.

- However, there is variation and uncertainty within Housing Land Audits and limitations on the extent to which the programming assumptions provide a reliable source of evidence.
- It is reasonable to expect that numbers of homes delivered during 2020 will be impacted by the closure of construction sites earlier this year and ongoing requirements for operational adjustments.
- We were also concerned about the exclusion of sites on the basis of marketability, and its impact on the ability of authorities to maintain a supply of effective housing land. To some extent industry reports and evidence of a more buoyant housing market emerging following the initial lockdown period allay these concerns.
- We also recognise views that our proposals could generate further confusion and are therefore not minded to remove PAN 2/210 at this time.
- Section 7 sets out our final policy amendments, taking into account these issues.

4. CALCULATING THE EXTENT OF THE 5 YEAR EFFECTIVE HOUSING LAND SUPPLY

- Question 3 in the consultation paper focused on changes to paragraph 125 of the Scottish Planning Policy.
- Different views on the best calculation to use have caused considerable debate. We wanted the approach to this calculation to be clearer and more consistent.
- We proposed that the 'housing supply target' is averaged out over the life of the plan to provide a broad guide on how many homes should be expected over 5 years. The extent of land available for housing at any given time would then be compared with that number.
- Our view was that this would be more appropriate, as well as easier to understand and apply consistently, than more complex and detailed calculations that take into account any shortfall in the number of homes built.

Views

As set out in our consultation analysis report there was both support, and opposition to, these proposals. In summary, the analysis of responses showed that there are strong and contrasting views on a number of issues:

- There was wide, but not unanimous, agreement that a clearer approach to calculating the extent of the 5 year land supply would be beneficial for all.
- Many respondents supported the proposal because:
 - An agreed approach would help to reduce disputes and debates, if robust and straightforward.
 - It would be helpful to planning authorities in defending their local development plan and making balanced planning judgements.
 - It was viewed as consistent with the approach taken to Housing Land Audits and the planning performance frameworks.
 - It would be helpful if decisions were based on the most recently adopted Housing Land Audits, rather than ad-hoc assessments on a case by case basis.
 - The proposed approach is flexible where a shortfall arises as it allows for programming and delivery to vary over the life of the plan.
 - The residual approach was not supported given its reliance on inaccurate figures on completions.

- They support an approach for proposals where a shortfall in the supply emerges, but different views on the steps that should be taken to address this including that it should not be ‘determinative’.
- There were broader concerns about the role of this calculation.
- Detailed further amendments were suggested by those who supported the proposed changes to the policy including: clarification of the roles of the housing land requirement and housing supply target; a clearer definition of the effective housing land supply; clarification of the role of the programme as opposed to land supply; the timescale for the land supply (whether it should be for 5 years or the plan period); clarification of the base date for the calculation; a tenure-based approach; sub-market area calculations; and prioritisation of brownfield development over greenfield.
- Those who supported the approach also raised concerns that where build out rates are achieved early in a plan’s lifetime there may still be a need to identify further land.
- Many respondents opposed the proposal because:
 - The proposed methodology allows authorities to ‘write-off’ shortfalls in housing delivery. This is critical and should be a material consideration.
 - The proposals do not reflect the approach taken by Reporters and the Court.
 - Plans should over-provide for housing in the first place, and it is important that there is flexibility to respond to emerging shortfalls.
 - The pandemic is not a reasonable basis for using the average methodology, given that shortfalls were arising before this.
 - The problem is of supply rather than demand and there is a significant backlog in affordable housing.
 - The residual approach is needed to establish whether the land requirement will be met.
 - The average approach will lead to thousands of new homes not being delivered.
 - The proposals remove accountability from the system and does not encourage local authorities to work with others to deliver homes.
 - The changes would cause difficulties in infrastructure provision.
 - The proposed approach to addressing the shortfall would in fact be a type of tilted balance.

- Alternatives were suggested including; a universal, plain-English methodology for planning authorities (prepared and proposed by Homes for Scotland); limiting changes to clarify that the housing supply target forms the basis of calculations; requiring a shortfall to be recovered by the end of the plan period, rather than within 5 years.

Evidence

The following evidence has been taken into account in reaching our final policy position.

Current approaches to calculating the 5 year effective housing land supply

Some respondents suggested that decision-makers, including Reporters, routinely apply the residual approach, and that there is no need for the proposed clarification. However, our analysis of a sample of appeal cases shows that whilst the residual approach has been recognised in many cases, other methods have also been taken into account. Whilst a reliable conclusion can generally be made that a shortfall exists, Reporters have often come to a view that it is not possible to quantify its scale whilst there is no single methodology to refer to.

Examples referred to in responses showed that where the pace of delivery is being factored into housing land calculations, in some areas it would be extremely difficult for a planning authority to sustain a 5 year effective land supply, particularly in the latter years of a plan period where delivery has been lower than originally programmed. This may be the case despite the fact that there is arguably sufficient land and consents available which are not being built out quickly enough for a range of reasons.

Heads of Planning Scotland has produced evidence on the availability of housing land across all local authorities in Scotland, from planning performance reporting.^{xiv} Whilst the data may be approximate and is not complete, this shows that:

- There was an established housing land supply in 2018-19 for more than 390,000 homes to be built across Scotland.
- The approximate / estimated **requirement** for the same period is for 110,000 homes – 22,000 homes per year over 5 years.
- **Planning permission** was granted for around 36,000 homes in 2018-19.
- In 2018-19 around 160,000 homes were **programmed** to be built over the next 5 years – around 32,000 per year.
- **Previous completions** (based on analysis of historic information) have been around 86,000 over the last five years or 17,200 per year.
- The **highest annual completions** in recent years for Scotland was approximately 26,000 in 2007-8.

Reasons for a shortfall in homes delivered emerging

Whilst we acknowledge that the figures provided by planning authorities are likely to be approximate, we suggest that it shows that lower levels of completions than programmed (i.e. an emerging shortfall) are unlikely to have arisen as a result of the availability of land or in securing planning permission for proposals.

This is supported by evidence we received outlining the reasons for a shortfall arising including:

- the capacity of the industry;
- the market absorption rate;
- access to finance by purchasers;
- delays in the planning system / protracted consenting processes;
- refusal of applications contrary to officer recommendations;
- land controlled by non-developers;
- plans not including sufficient or effective housing land for housing.

It is clear that there are multiple reasons perhaps including, but not limited to, the availability of land for a shortfall in the number of homes being built. Housing delivery is a complex issue that we are seeking to address in the fuller review of policy in NPF4. In the meantime, the evidence suggests the need for a cautious approach when considering whether or not releasing additional land or development is justified in specific cases. A shortfall in homes delivered is unlikely to be substantially resolved by exceptional releases of housing land, potentially on sites that are not sustainable and with no guarantee that they will progress to construction as programmed.

Strengths and weaknesses of the average and residual methodologies

We have undertaken analysis of land supply assessments applying the residual and average approaches, focusing on the local authorities which experience the greatest number of planning appeals for the exceptional release of housing land. This shows that:

- During times in which completions are low (for a range of reasons, as set out above) the residual method often leads to a substantial uplift in the number of homes to be achieved in meeting the land supply – for example, in one area (West Lothian) the annual requirement would be more than three times average completion rates since 2011.
- This issue can become very acute towards the end of a plan period when more homes have to be delivered in fewer years.

- This methodology can lead to an adjusted 5 year effective housing supply target which appears to be unrealistic when taking into account data on completions to date.
- A shortfall demonstrated by the residual approach does not necessarily arise as a result of a lack of available land but can be due to the programming assumptions of developers which are subject to change.
- Therefore, this approach may not lead to an accurate conclusion about the sufficiency of the land supply.

In comparison the average method:

- Tends to require a lower number of units to be met to achieve the 5 year effective land supply.¹ This is considered to be realistic for the period between now and NPF4 being adopted, given that it is broadly similar to past levels of completions.
- Is not re-adjusted to account for actual delivery rates and is therefore less responsive and flexible.
- If applied, is likely to require planning authorities to maintain a supply of land which is similar to a rolling average of completions.
- For the plan areas where the presumption is triggered most often, would still require previous completion rates to be exceeded and therefore remains ambitious.

We accept that neither approach is perfect, but our view is that the arguments against the average method, and for the residual method, may be overstated. This, together with the inaccuracy of data involved in audits, the subjectivity associated with the effectiveness of housing land, and the externalities affecting programming suggests that calculations on the land supply should not be the determining factor in planning decisions to the extent that it outweighs other factors required to make a development sustainable.

Key points

We have therefore concluded that:

- There is a wide range of views on the approach to calculating the 5 year effective land supply. In our view, there is no perfect methodology and data on land and programming should be interpreted with caution.
- Planning authority statistics suggest that there is, overall, more than enough land allocated than is required.
- The benefits of the residual method are, in our view, overstated. It conflates land availability with the rate at which homes are being built-out. The latter is

¹ It should be noted that if plans are being delivered as intended or progress exceeds expectations, a higher figure would be required by this method.

influenced by many different factors including, but not only, the availability of effective land. Sites may be suitable for development, and land may be available, but a technical 'shortfall' could still arise based on the residual calculation. This can lead to undeliverable requirements that cannot be recovered by planning authorities when the delivery rate is shaped by many other factors.

- It is not in the public interest to recommend a methodology which leads to conclusions that there is insufficient land available when completions are influenced by a variety of different factors.
- We recognise that the average method also has weaknesses and may be viewed as less precise and inflexible as it does not factor in emerging shortfalls in the number of homes being delivered. However, we are reassured that it is reasonable and realistic as an interim approach, as it is broadly similar to levels of completion that have been achieved in recent years. As a result, we believe that it has a valid role as a consistent benchmark to inform decision making.
- The housing land requirement is applicable when the development plan is being prepared to ensure that it includes a generous supply of land. We initially proposed that the housing supply target, which does not include an allowance for generosity, should form the basis of this calculation. However, we also recognise the importance of a positive approach to planning which aspires to deliver a generous supply of land for homes to meet our future needs. We have therefore decided that the housing land requirement, which includes an additional percentage for generosity (generally between 10 and 20 per cent), should form the basis of this calculation.
- The disputed nature of the evidence and unreliability of data in housing land audits suggests that the calculated 5 year land supply should only ever be used as an indicative number. Whether or not further land should be released for development should be a matter for planning judgement taking into account the facts and circumstances of each case.
- There should still be scope to support applications where it is clear that there is unmet demand for housing and this could be achieved by retaining a simpler and clearer version of the presumption. A clearer policy on this has been set out in the final policy amendments in Section 7.

5. IMPACTS ON DEVELOPMENT OTHER THAN HOUSING

- Question 4 in the consultation paper focused on this.
- The consultation paper aimed to address issues arising from planning for housing. However we invited views and evidence to establish whether it would affect other types of development.

Views

Some agreed that the proposals would impact on housing, rather than other types of development, recognising that the key changes focused on procedures relating to the housing land supply and associated development management decisions.

Others considered it would have wider impacts:

- It was noted that many housing developments may be part of a mixed-use proposal or include infrastructure improvements.
- Responses pointed out that development plans cannot include policies to cover every potential type of development.
- Several respondents felt the presumption has an important role to play in supporting proposals for renewable energy development as well as grid infrastructure. The renewable energy sector called for the presumption to be retained, or if removed to be replaced by an alternative that carries the same level of weight supporting sustainable development. It was also noted that electricity consents have a different relationship with the development plan and so changes that aim to rebalance this have no relevance to the sector.
- Other types of development raised in responses included mixed use sites, essential infrastructure, waste infrastructure, tourism development, business expansion or restructuring.

Evidence

The following evidence has been taken into account in reaching our final policy position.

Application of the presumption to non-housing applications

Examples were given of wind farm cases where the presumption has been viewed as a relevant consideration.

To inform our consideration of this matter, we have reviewed a sample of renewable energy appeal cases, including those considered under planning as well as projects considered under section 36 of the Electricity Act 1989. Nearly all of the cases we reviewed referred to the presumption, but it was only a significant material consideration in 3 of 15 cases on the basis of the plan being viewed as 'out-of-date'. However, in all cases, a balanced judgement was made taking into account the principles set out under paragraph 29.

The wider policies (e.g. paragraph 33) that we proposed changing, would not change that assessment.

Taking into account these cases, we recognise that the balance in decision-making for other types of development could be altered, and that there is potential for changes to the policy to affect the outcomes of decisions. As with housing, however, given the role of planning judgement in each case and taking into account the application of wider policies within the SPP, it is not possible to determine with any degree of confidence the extent of impacts from either the initial proposals or our final policy position.

Key points

- The presumption is not usually a determining factor in non-housing applications. However, we accept there is potential for the *Gladman* decision to change the outcome in some instances for non-housing developments.
- We recognise that there could be benefit in retaining an overarching presumption and that decisions can continue to be made in a way that supports sustainable development where there are no relevant plan policies in place.
- The effect of our revised amendments on non-housing types of development is expected to be limited.
- In response to these issues, section 7 sets out our final policy amendments.

6. IMPACT ASSESSMENTS

- Question 5 in the consultation paper focused on this.
- We did not consider that the changes would have significant impacts on the environment, business, equalities and children's rights and wellbeing, and therefore our view when preparing the consultation paper was that fuller impact assessments were not required.
- However, we invited views and evidence on this.

Views

A majority of respondents (61% of all responses) agreed with our conclusion that full impact assessments are not required, given the procedural and technical changes, their lack of significance, their role in clarifying processes and their temporary lifespan ahead of NPF4 being published.

Others (39% of all responses) disagreed with our conclusion because:

- They considered the proposals to have significant effects, potentially impacting on national outcomes.
- The intent is to change the way that planning decisions are taken.
- They considered that further assessment is needed to ensure the consultation is valid.

In terms of the specific assessments, some respondents suggested that a strategic environmental assessment (SEA) was required to assess the impacts on net zero emissions, and to take into account the impact on providing renewable energy schemes, energy efficient homes, green infrastructure, and the reuse of vacant and derelict land.

Some responses suggested that equalities and human rights could be affected by the impact on affordability for those on low incomes, and that health could also be affected. Similarly, some respondents considered there may be wellbeing or health impacts arising from the economic impact on the housebuilding industry, construction sector and supply chain.

A BRIA was considered necessary by some, given their views on the potential impacts on businesses and the economy. Evidence was presented which has been considered in more detail in the following section.

Detailed comments received

Strategic Environmental Assessment

Housing developers and their representatives considered that the changes would result in lost opportunities for sustainable development, with effects on the housing supply, green networks, open space, vacant and derelict land and unproductive

sites. Renewable energy providers also wanted to see an assessment of the impact on meeting net zero targets.

Equality Impact Assessment and Child Rights and Wellbeing Assessment

It was suggested that fuller assessments were necessary, given the potential impact of the changes on housing affordability. It was suggested that health could be affected, and that unemployment and hardship in the housebuilding sector would also lead to impacts.

Business and Regulatory Impact assessment

It was contended that, based on a series of assumptions about the income generated from each house, the removal of the presumption would mean that more than 10,000 jobs, £13.3 million of 'local spend' and £40 million to the local economy would be lost.

Key points

- Our initial assessments assumed the changes will not affect decisions directly – our view was that the proposed changes would maintain the original policy intention.
- We recognise that the Court's decision could change how the policy is applied, and that amendments may therefore lead to different decisions being made.
- However, the evidence shows that the role of the presumption is neither clear cut nor determinative. The impact, in terms of numbers of homes built or other developments affected cannot be accurately predicted. However the impact on number of homes delivered could reasonably be expected to be neutral given the continuing role of planning judgement in decision-making and taking into account the revised amendments we are now proposing. The effect of changes on other sectors is also expected to be limited.
- We do not accept the evidence submitted by Homes for Scotland as referred to above, because this assumes that without the presumption, all exceptions sites would be refused planning permission, with 2,667 homes not being built as they would depend on the presumption in favour of development that contributes to sustainable development. Our review of the evidence suggests that this is an over-estimate. It is not reliable to conclude that all proposals that may have been approved would be refused permission. This is particularly the case when the amended policy changes set out in Section 7, and the application of planning judgement in each case, are taken into account.
- Nevertheless, we have given further consideration to the likely impacts of the changes, taking into account all of the views and evidence received and in light of the revised proposals. We have published new screening reports which conclude that fuller assessments are not required.

7. CONCLUSION – POLICY CHANGES

Taking into account the views and evidence received and summarised above, we have decided to:

- 1. Retain, but reword the presumption in favour of development that contributes to sustainable development so that it can be applied in a more straightforward way.**

We acknowledge that, overall, the planning system has a vital role in helping to deliver the homes that we need. However, the challenges around delivering housing are complex and not wholly attributable to the extent of effective housing land available. This requires further consideration to inform our fuller review of national planning policies in National Planning Framework 4.

In the meantime, we want to ensure that the existing system is flexible and able to operate effectively within the context of COVID-19 and economic uncertainties in the coming months.

In our view, taking into account views and available evidence, the role of the presumption in decision-making to date may be overstated. However, we recognise the concerns raised by respondents about the broad and positive role of ‘the presumption’ in the SPP as a confirmation of our commitment to supporting sustainable development. We are concerned that, if the current policy remains un-amended, its application may now lead to approval of some development proposals which are not sustainable. The presumption was never intended to be used to support development which is not sustainable development and the changes we make will make it clear that the policy is to support development that is sustainable development rather than development that contributes to sustainable development.

We are therefore amending the policy so that it more clearly supports sustainable development. It will now provide that there is ‘a presumption in favour of sustainable development.’

- 2. Remove references to plans being ‘out of date’ and the direct link with calculating the land supply to the presumption and replace them with a more straightforward policy.**

Ideally housing should be built on sites allocated in the plan, and the plan and its policies should be kept up-to-date. However, we accept that plans cannot foresee every eventuality. In addition, whilst planning authorities should strive to keep their plans up-to-date, in the months ahead this may not be feasible in some cases, as a result of the constraints arising from the pandemic, the limitations on people who may wish to be involved, as well as the significant changes to the system and NPF4 that will be coming forward in 2021-22.

A shortfall in the land supply should not be the sole or overriding factor in determining whether or not a planning consent should be granted. In the first instance wider policies within development plans can still apply to assess whether developments are sustainable.

In the absence of such policies, reworded paragraphs 32 and 33 would provide decision-makers with more clarity on how the amended presumption should be taken into account.

3. Undertake further work to inform an updated approach to housing land audits within the new system.

We recognise that the proposed amended paragraph 123 and definitions may not provide sufficient clarity and that removal of PAN 2/2010 may generate further confusion. It is clear that there is scope for improvement, but also that there are different views on the best way forward.

We are not proposing to take forward changes to paragraph 123 of the SPP.

We consider that a more fundamental review of this aspect of the system is needed, as part of the development of a new policy approach for National Planning Framework 4, and will take this forward in the months ahead. In the meantime PAN 2/2010 was prepared prior to SPP (2014) and this should be taken into account when applying it.

4. Support the use of the average method to determine whether or not there is a 5 year land supply as a reasonable benchmark to be taken into account in assessing applications.

A single methodology for calculating the 5 year land supply is needed to make the system clearer and more consistent. However, as this is a methodological and operational matter, we have decided to set this out in associated advice rather than in the policy itself.

We accept that any methodology has limitations. Whilst the residual approach takes into account any emerging shortfall in the number of homes being built out, it can lead to unrealistic revised targets. The average approach is more straightforward and predictable, but it is not responsive to variations in the number of homes that are delivered. We recognise that there is an important question about how planning policies can better support delivery, and this will be addressed in National Planning Framework 4.

In the meantime, in our view the average method provides the most appropriate methodology at a time when external factors, including COVID-19 restrictions, market uncertainty, and economic challenges are more likely to influence housing delivery than the availability of land in the planning system. We consider this to be reasonable, taking into account evidence on the land supply across Scotland as a whole. We have also decided to base the calculation on the housing land requirement set out in the development plan, so that the calculation is based on an assumption that we should be planning for a generous supply of land.

The approach will apply between now and a new policy in National Planning Framework 4 being adopted in summer 2022.

5. Monitor decisions to establish how the revised policy is being applied, and consider calling in applications where Ministers consider it would be necessary.

We will commit to monitoring the impact of the revised policy to establish its application in practice and would be willing to intervene by considering the need to call in decisions, should any unintended consequences of this policy arise.

The amended text and new advice is set out below.

Scottish Planning Policy – 2014 – Amendments²

Policy Principles

This SPP introduces a presumption in favour of sustainable development.

28. The planning system should support economically, environmentally and socially sustainable places by enabling development that balances the costs and benefits of a proposal over the longer term. The aim is to achieve the right development in the right place; it is not to allow development at any cost.

29. Planning policies and decisions should support sustainable development. For the purposes of this policy, to assess whether a policy or proposal supports sustainable development, the following principles should be taken into account:

- giving due weight to net economic benefit;
- responding to economic issues, challenges and opportunities, as outlined in local economic strategies;
- supporting good design and the six qualities of successful places;
- making efficient use of existing capacities of land, buildings and infrastructure including supporting town centre and regeneration priorities;
- supporting delivery of accessible housing, business, retailing and leisure development;
- supporting delivery of infrastructure, for example transport, education, energy, digital and water;
- supporting climate change mitigation and adaptation including taking account of flood risk;
- improving health and well-being by offering opportunities for social interaction and physical activity, including sport and recreation;
- having regard to the principles for sustainable land use set out in the Land Use Strategy;
- protecting, enhancing and promoting access to cultural heritage, including the historic environment;
- protecting, enhancing and promoting access to natural heritage, including green infrastructure, landscape and the wider environment;
- reducing waste, facilitating its management and promoting resource recovery; and
- avoiding over-development, protecting the amenity of new and existing development and considering the implications of development for water, air and soil quality.

Delivery

² new / replacement text is shown as underlined

Development Planning

30. Development plans should:

- be consistent with the policies set out in this SPP including the presumption in favour of sustainable development;
- positively seek opportunities to meet the development needs of the plan area in a way which is flexible enough to adapt to changing circumstances over time;
- support existing business sectors, taking account of whether they are expanding or contracting and, where possible, identify and plan for new or emerging sectors likely to locate in their area;
- be up-to-date, place-based and enabling with a spatial strategy that is implemented through policies and proposals; and
- set out a spatial strategy which is both sustainable and deliverable, providing confidence to stakeholders that the outcomes can be achieved.

Development Management

32. The presumption in favour of sustainable development does not change the statutory status of the development plan as the starting point for decision-making. The 1997 Act requires planning applications to be determined in accordance with the development plan unless material considerations indicate otherwise. Proposals that accord with development plans should be considered acceptable in principle and the consideration should focus on the detailed matters arising.

33. Proposals that do not accord with the development plan should not be considered acceptable unless material considerations indicate otherwise. Where a proposal is for sustainable development, the presumption in favour of sustainable development is a material consideration in favour of the proposal. Whether a proposed development is sustainable development should be assessed according to the principles set out in paragraph 29.

Maintaining an effective housing land supply

125. Planning authorities, developers, service providers and other partners in housing provision should work together to ensure a continuing supply of effective land and to deliver housing, taking a flexible and realistic approach. Proposals that do not accord with the development plan should not be considered acceptable unless material considerations indicate otherwise. Where a proposal for housing development is for sustainable development and the decision-maker establishes that there is a shortfall in the housing land supply in accordance with Planning Advice Note 1/2020, the shortfall is a material consideration in favour of the proposal. Whilst the weight to be afforded to it is a matter for decision-makers to determine, the contribution of the proposal to addressing the shortfall within a five year period should be taken into account to inform this judgement. Whether a proposed development is sustainable development should be assessed according to the principles set out in paragraph 29.

Planning Advice Note 1/2020

ASSESSING THE EXTENT OF THE 5 YEAR SUPPLY OF EFFECTIVE HOUSING LAND

To calculate the 5 year supply of effective housing land required, the housing land requirement set out in the adopted development plan should be divided by the plan projection period (i.e. the plan period) (years), in order to identify an annual figure.

This annual figure should then be multiplied by 5.

5 year supply of effective land requirement =

(development plan housing land requirement / plan period) x 5

This figure should then be compared with the 5 year supply of effective housing land, based on information collected as part of the housing land audit process, to establish whether or not there is a shortfall or surplus.

REFERENCES

- ⁱ Scottish Government, 2020, Scottish Planning Policy and Housing: Technical Consultation on Proposed Policy Amendments <https://www.gov.scot/publications/scottish-planning-policy-housing-technical-consultation-proposed-policy-amendments/pages/4/>
- ⁱⁱ Scottish Government, 2020, Scottish Planning Policy and Housing: Technical Consultation: Analysis <https://www.gov.scot/publications/scottish-planning-policy-housing-technical-consultation-proposed-policy-amendments-analysis-consultation-responses/>
- ⁱⁱⁱ <https://www.scotcourts.gov.uk/search-judgments/court-of-session>
- ^{iv} Scottish Construction Leadership Forum, 2020, Approved Recovery Plan: October 2020 <https://www.constructionforum.scot/recovery-plan/#covid-19-construction>
- ^v Scottish Government, 2020, Scottish Housing Market Review, July – September 2020, <https://www.gov.scot/binaries/content/documents/govscot/publications/advice-and-guidance/2020/03/scottish-housing-market-review-2020/documents/scottish-housing-market-review-q3-2020/scottish-housing-market-review-q3-2020/govscot%3Adocument/Scottish%2BHousing%2BMarket%2BReview%2B-%2BQ3%2B2020%2B-%2BFinal.pdf>
- ^{vi} Homes for Scotland, 2020, Submission to the Economy, Energy and Fair Work Committee of the Scottish Parliament, COVID-19 – impact on Scotland’s businesses, workers and economy. https://www.parliament.scot/S5_EconomyJobsFairWork/Inquiries/EEFW-S5-20-COVID-39-HomesforScotland.pdf
- ^{vii} Homes for Scotland, 2020, The Role of Home Building in Scotland’s Recovery <https://homesforscotland.com/our-work/>
- ^{viii} Scottish Government, 2020, COVID-19: development planning consultation and engagement advice <https://www.gov.scot/publications/coronavirus-covid-19-development-planning-consultation-and-engagement-advice---may-2020/>
- ^{ix} Scottish Government, 2020, The Planning (Scotland) Act 2019, Development Planning – Transitional Guidance <https://www.transformingplanning.scot/media/2122/development-planning-transitional-arrangements-guidance-transforming-planning-20112020.pdf>
- ^x Scottish Government National Performance Framework <https://nationalperformance.gov.scot/what-it>
- ^{xi} Scottish Government, 2010, Planning Advice Note 2/2010: Affordable Housing and Housing Land Audits <https://www.gov.scot/publications/planning-advice-note-2-2010-affordable-housing-housing-land-audits/>
- ^{xii} Scottish Government, 2019, Housing land audits: research project <https://www.gov.scot/publications/research-project-housing-land-audits-january-2019/>
- ^{xiii} Scottish Land Commission, 2020 <https://landcommission.gov.scot/news-events/news-blog/land-for-housing-and-development-time-for-change>
- ^{xiv} Heads of Planning Scotland, Planning Performance Framework, <https://hopscotland.org.uk/publications/planning-performance-framework-reports/>



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Any enquiries regarding this publication should be sent to us at

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