

Planning Reform - Next Steps

March 2012

PLANNING REFORM : NEXT STEPS

Introduction

This statement sets out the view of the Scottish Government on how planning modernisation should be consolidated and intensified. It proposes that the focus should be on further simplifying and streamlining the planning system where current practices and procedures add little or no value to the outcomes. The Government believes that quality of place should take precedence over process but our processes nevertheless need to be fit for purpose. The statement sets out a comprehensive and coherent programme of work to ensure that the modernised planning system reaches its potential in supporting economic recovery. Leadership and culture change are essential elements in this programme. While the emphasis is on non-legislative measures the Scottish Government will bring forward legislation where this is necessary.

Background

The Planning etc (Scotland) Act 2006 contained the most significant changes to the planning system in 60 years. The Act was drawn up against a commitment to make the planning system more efficient and inclusive. Secondary legislation and supporting guidance brought forward since 2007 has given planning authorities scope to implement a system that reflects local circumstances.

Delivering Planning Reform (2008) set out the Scottish Government's commitment to progress planning modernisation through culture change rather than legislation. The document set out a series of commitments through which the public and private sector could progress the modernisation of the system.

An Audit Scotland review of the new development management system in 2011 acknowledged the leadership provided by the Scottish Government and the way Government Agencies were interacting with the planning system, but pointed out that despite falling numbers of applications, few authorities were performing well on timescales for deciding applications. We appreciate that the planning system should not be judged by speed of process alone: quality of service and focus on outcomes are central to the reputation of the system.

The consensus around planning modernisation has generally been maintained but the economic context in which the reforms were drawn up has changed dramatically. There is an appetite to secure further improvements. The Scottish Government is not revisiting the structure of the system or promoting change for the sake of it. Instead we will seek to build consensus on how the system can be more efficient, effective, responsive and agile to meet the challenges ahead.

Challenges

The planning system must be responsive to and supportive of proposals that support sustainable economic growth. In the current economic climate local authorities, government agencies, the development industry and other stakeholders are all reviewing their activities so that they add value and support economic recovery.

Planning authorities must recognise the importance of providing certainty and greater predictability of outcomes for both investors and communities. Demands for information and analysis to enable robust decisions to be reached must be proportionate and there must be a clear understanding of the implications of restrictions and obligations for the viability of a

project. Where planning authorities are of the view that refusal of planning permission is a strong possibility, developers should be advised at the earliest possible stage during the pre-application discussions and they can make a judgement on whether to pursue an application.

The Scottish Government is determined to ensure that the planning system is not presented as an obstacle to sustainable economic growth. We wish to promote a problem solving approach to planning based on pace, pragmatism and proportionality. This applies equally to agencies, and the development industry must also play its role. We must make partnership a reality across Scotland.

The Scottish Government would welcome views on how economic considerations might be given more explicit recognition in the development of planning policy and decision making.

The priorities for the next stage of planning modernisation are:-

- promoting the plan-led system
- driving improved performance
- simplifying and streamlining
- delivering development.

Promoting the Plan-Led System

A key feature of the reforms has been the promotion of a plan-led system to guide actions and decisions in the long term public interest. This includes the National Planning Framework, Strategic and Local Development Plans.

National Planning Framework

Scotland's second National Planning Framework (NPF) was published in 2009 following a period of Parliamentary scrutiny. Progress in implementing the strategy set out in NPF 2 is reported annually to Parliament in June and the Monitoring Report is published today.

The NPF is a key document in setting out the Scottish Government's aspirations for the long-term development of our country. Work will commence on NPF 3 in autumn 2012 when the Participation Statement will be published. We believe that the spatial strategy in NPF 2 remains relevant and that NPF 3 should focus strongly on economic recovery and the transition to a low carbon economy. The Scottish Government is committed to ensuring effective stakeholder engagement in drawing up NPF 3 and, where new national developments are proposed, we will seek early engagement with the communities which could be affected.

Strategic Development Plans

The 2006 Act introduced Strategic Development Plans (SDPs) for the 4 largest city regions. The Scottish Government recognises the potential contribution cities and their regions make to sustainable economic growth. It wishes to ensure that the current procedural arrangements and approaches to the preparation of SDPs are fit for purpose and we will therefore review the experience with the first generation of these plans in 2013.

Local Development Plans

Local Development Plans (LDPs) provide the vision for how communities will grow and develop in the future. The intention is that they provide certainty for communities and investors alike about where development should take place and where it should not and the

supporting infrastructure required for growth. In the plan-led system that we aspire to, up to date coverage of plans is essential and the plans also need to be clear and accessible to all stakeholders. Substantial progress has been made on local planning. The first LDPs are now moving through the system with Aberdeen City LDP, the first to be adopted in February 2012. A number of other LDPs should be adopted shortly. A significant number of plans are, however, falling behind the programmes in development plan schemes and more pace is required to ensure full coverage of LDPs.

Increasingly we want development plans to be about place and people rather than policy compendia. We will identify and share best practice in development planning with Heads of Planning Scotland (HOPS).

We also want to ensure that communities are fully involved in the process. One route to greater stakeholder ownership of place-making is to adopt the highly successful design charrette method into development plan preparation, involving people and their aspirations in leading future development of places of which we can be proud. We have supported this process for developments in a number of areas including Callander, Lochgelly, Dumfries and Aberdeen. Greater community influence can also carry the benefit of strengthening the primacy of development plans. We will explore our options to adapt the charrette process in this way.

We are also attracted to the idea of more support being made available to authorities to assist and advise on managing the process of preparing new plans. This could take the form of an informal Gateway Review process whereby a small group of practitioners would advise on how timescales for plan preparation can best be met and whether the emerging form and content is fit for purpose. The practitioners could include a representative from Scottish Government Planning, the development industry and Planning Aid Scotland. Overall, more effective management of the process is required.

Development Plan Examinations

The 2006 Planning Act introduced a series of changes to the procedures for the examination of LDPs. This is bringing some significant benefits. Whereas local plan inquiries took on average 70 weeks, recent plans have taken around 24 weeks. However, the examination of some more recent plans has taken considerably longer while the costs of the process are causing concern to planning authorities at a time when budgets are under pressure.

The “binding” nature of reporter’s recommendations is proving to be a source of concern for some planning authorities who see some recommendations, particularly on housing land supply, as undermining the work they have done with stakeholders to the extent that the resultant plan is no longer seen as their plan.

We have today published a consultation paper seeking views on the future approach to development plan examinations.

Driving Improved Performance

As a result of the changed economic conditions in the past few years, the number of planning applications has declined significantly. While the percentage of decisions on minor applications taken timeously has improved, the percentage of decisions for major applications remains poor. This has attracted public criticism, although many in the development industry have indicated that clarity on process and certainty on timescale for decision is as important, if not more important, than speed. We recognise that a high quality

planning service extends beyond speed of decision making but efficient handling of planning applications remains a fundamental indicator of a high quality planning service.

Audit Scotland's review concluded that although there was a poor understanding of costs, the gap between income and expenditure was becoming unsustainable. The Scottish Government has already indicated that it is minded to increase planning fees but there must be an inextricable link to performance improvement and any increase in fees without firm assurances on improved performance is not an option.

Today we are publishing a consultation paper on a new fee regime. The key features of the consultation paper are:-

- Ensuring that fee levels more accurately reflect the resource employed in processing planning applications
- Moving towards one fee covering all aspects of processing including advertising and providing pre-application advice
- Reducing the fee for the most straightforward classes of application
- Establishing a link between performance and fees.

We are also publishing a new performance framework for planning today. This has been developed by the Heads of Planning in Scotland (HOPS). The Scottish Government commends this framework which is also supported by Homes for Scotland, Scottish Property Federation, Confederation of British Industry, the Federation of Small Businesses and the Royal Town Planning Institute. The framework captures the elements of a high performing planning service and embraces issues such as efficiency, customer relations and quality of outcomes.

While some planning authorities understand the pressures faced by businesses and individuals in the current economic climate and exemplify an "open for business" culture, there are still examples of unnecessary delays. These are often associated with requests for additional information or extended periods for concluding planning agreements. Some of the challenges lie outwith the planning service, in other council departments, but they impact on experiences of the planning service. There are also some suggestions that council committee cycles and decisions to 'continue' consideration to future meetings has an influence on planning delays.

We believe that greater use of processing agreements should be made. Processing agreements are project management tools. They should not be complex or become an end in themselves. We will work with HOPS and the development industry to produce a model template by June 2012. COSLA, Scottish Government, key agencies and authorities in proposed Enterprise Areas are supporting a protocol based on a processing agreement approach. Whilst we will promote the benefits of this approach outwith Enterprise Areas we will also consider making the offer of these agreements mandatory for major applications.

Key Agencies have responded to the challenge of delivering planning reform. Each has sought to improve performance and culture. They will continue to support the Government's agenda to modernise planning and improve performance of the system.

We are particularly keen that those entering the profession should have strong support to gain the experience and opportunities necessary to enable them to contribute positively and to develop as planning practitioners. The Scottish Government will look for new opportunities to work with Young Planners, Key Agencies, the Royal Town Planning Institute, planning authorities, developers and the Improvement Service to support the further development of skills and training for planning practitioners.

Simplifying and Streamlining

Significant changes have been made to the processes for dealing with planning applications and making planning information clearer. A hierarchy of planning applications was introduced to focus efforts on the larger proposals, which are also the most complex, as well as increasing scope for delegation of what are now termed local developments. Additional procedures such as pre-application consultation with the community on more major applications were introduced as well as greater transparency about planning decisions and how they have been arrived at. But there are areas where more can be done to improve the operation of the system. The key areas are:-

- Permitted development rights
- Pre-application consultation
- Pre-application discussions
- Supporting information and appraisals
- More effective approaches to public information
- Management of consultations
- Schemes of delegation and Local Review Bodies
- Multiple consents.

In addition we will work with stakeholders including the minerals industry, planning authorities and agencies to consider whether current arrangements for the Review of Mineral Planning Permissions provide a proportionate framework for consideration of environmental issues.

Permitted Development

Householders can now do more to their properties without the need to apply for planning permission. The Government is launching a consultation on proposed changes to non-domestic permitted development today. This proposes removal of some minor developments from planning controls in relation to the extension and alteration of existing commercial, industrial, retail and warehouse land and premises as well as more scope for local authorities and other institutions to carry out development without the need for specific planning permission. It also proposes that planning controls should be increased over hill tracks. The secondary legislation to bring the changes in to force will be laid in late summer.

Pre-Application Consultation

Effective pre-application consultation and discussion is a key feature of the modernised planning system. The Scottish Government remains committed to this but there are ways in which this can be made more effective and efficient.

An unintended consequence of the 2006 Act has been that reconsideration of relatively minor conditions attached to a planning consent for a major development cannot be progressed without the applicant going through a 12 week pre-application consultation stage. This adds delay but little value and we are committed to putting that unintended consequence right by removing this requirement in relation to applications under Section 42 of the Planning Act for a change to planning conditions.

Pre-Application Discussions

Some authorities have taken a very structured approach to pre-application discussion, for example the City of Edinburgh Council (CEC) Business Concordat and The Highland Council's pre-application service which is recognised as good practice by Homes for Scotland. In addition, CEC informs the Planning Committee about major planning

applications. The objective is not to pre-judge an application but to raise member awareness of major applications which could prove controversial and to give members the opportunity to raise issues which they feel should be addressed. We will work with HOPS, the Standards Commissioner and the development industry to identify, promote and share best practice in this area.

We believe pro-active early engagement should be standard practice across Scotland, delivering a project management framework for national and major applications. Well structured pre-application discussion should also help ensure any supporting information and appraisals are relevant and proportionate. The Key Agencies have recently issued a statement confirming their commitment to early and effective engagement for major and national developments supported by a plan-led system. The proposed new fee structure introduces a single fee to cover all elements of the development management system, including pre-application discussions.

Supporting Information and Appraisals

Decisions on planning applications need to be robust and taken against a background of sufficient information describing the impacts of development proposals. This can involve multiple appraisals and assessments to support an application for planning permission, even for permission in principle. While it is essential that environmental and other impacts are fully described in supporting appraisals the associated time and cost is a concern to the development industry, particularly when the outcome is uncertain. Moreover the methodology used in studies and appraisals may give rise to specialist assessment being commissioned by the planning authority to support their consideration of the proposal. The Key Agencies have made a commitment to ask only for information that enables a decision maker to reach a decision and to offer advice on what constitutes adequate appraisal. Overly complex technical material is less accessible to some stakeholders, including members of the public. There is considerable support among local authorities, agencies and the development industry for greater simplification and rationalisation of appraisals. The Scottish Government supports an approach where demands for information and analysis are clear, proportionate and add value to the decision and where there is no loss of rigour in the decision making process.

Considerable progress has been made in streamlining the Strategic Environmental Assessment (SEA) process. Many planning authorities are now producing Environmental Reports that have a sharper focus on significant impacts and are more relevant and engaging. We believe there are similar opportunities for improving both the proportionality and utility of Habitats Regulations Appraisals (HRA) of development plans and Environmental Impact Assessment (EIA) of projects. We are determined to rationalise wherever possible and to shift the focus from following processes to achieving better outcomes.

By the end of 2012 we will have revised our core guidance on SEA and EIA of development plans, and published targeted advice to tackle key issues in HRA. We will continue to provide practical help to planning authorities on individual cases.

Making the appraisal processes more streamlined could result in better understanding of the impact of proposals and see more resources put into better outcomes, for example more effective environmental mitigation or higher design standards.

We will work with a number of authorities, the development industry, agencies and community interests to pilot case studies over a range of development types. Options include exploring the use of accreditation, joint commissioning and procuring more focused appraisals. The pilots will be used to examine what assessments are genuinely needed to

secure planning permission and the extent of their scope, along with how those assessments might be transferable to support other consent regimes and made more accessible to the public.

More Effective Approaches to Public Information

EPlanning continues to develop successfully and the provision of electronic information has greatly increased the access that communities have to planning information. The majority of routine enquiries are now resolved through online information and almost 40% of planning applications are submitted electronically. This greatly exceeds original targets and enables more savings and efficiencies to be realised by users. We are committed to building on this success and will continue to enhance the ePlanning website and to improve systems for publishing development plans online. Support is also being provided to planning authorities to improve the quality and simplicity of websites. The Scottish Government will ensure its own websites remain up to date and relevant and are a platform for sharing good practice.

The changes to development management in 2009 led to an increase in requirements to inform communities of particular developments and for greater access to planning information. We want to ensure that interested parties can access information about proposals that affect them or their communities in the most appropriate way and without undue cost and delay being added to the process. At present there are requirements for neighbour notification, for publication of the weekly list of applications available online and addressed to community councils, and in some cases there are further requirements for newspaper advertising. We will seek the views of stakeholders on whether current methods of informing people remain appropriate and whether or not some simplification of existing requirements would be welcome.

Management of Consultations

There is scope for more effective consultations on planning applications. The practice of over consulting needs to be reversed with planning officers taking professional responsibility for identifying the key issues raised by an application and consultations focused on these issues. There has been considerable progress by planning authorities and Government agencies in this area and this needs to be maintained, but an area where there is considerable scope for further improvements is in consultation within planning authorities. We will take forward pilots with some planning authorities to explore ways to reduce the administrative burden and delays, and to promote improved methods of handling planning consultations.

Schemes of Delegation and Local Review Bodies

All planning authorities have adopted schemes of delegation which enable decisions to be taken on local developments by officers rather than awaiting a decision by committee. Current legislation gives considerable scope for planning authorities to prevent delegation to officials where the council have an interest in the application. As a consequence, minor applications where the council have an ownership or financial interest are determined by committee with consequential delay and adverse impact on performance. We think this is unnecessary and, in the consultation on changes to development management, we will be seeking views on removing this constraint on delegation of council interest cases.

Local Review Bodies (LRBs) have settled down well and recently issued best practice guidance should secure further improvements to practice – available from www.scotland.gov.uk/Topics/Built-Environment/planning/aboutappeals. We are proposing to consider extending the scope of cases which can be considered by LRBs, for example to include appeals relating to consent to display advertisements.

Multiple Consents

Although planning is regularly cited by the development industry as a source of frustration and delay, a range of other permissions and licenses may also be required before a development can get under way. These include the suite of built heritage consents; waste management, PPC and CAR licenses; road construction consents; building warrants; and European protected species licences. Not all are the responsibility of local authorities but each requires an additional investment in time and resource. Meeting the requirements of other permitting regimes can also result in planning permission having to be revisited. We want to ensure that the consenting process is fit for purpose: that it is joined up and proportionate and that it makes the most efficient use of resource by developers, planning authorities and other regulators without eroding the quality of decisions.

Administrative improvements may involve more effective alignment of existing consents, for example of planning permission, building warrant and roads construction consent – all of which are normally handled by the same authority. It may include promoting a one-door approach within local authorities, or also working with agencies in relation to their decision-making roles on non-planning consents, to provide more certainty and efficiency for applicants. We will pilot options with authorities, agencies and applicants to improve project management of developments through various consenting processes. We will establish and promote good practice in this area, including overcoming obstacles to the wider implementation of Scottish Government policy on Designing Streets, but also consider options for legislative change where this will demonstrably add value.

Legislative change may, for example, remove duplication of effort and support modernisation. At present, consents granted under the Electricity Act for energy generating development carry deemed planning permission. We will consider what opportunity exists to combine other consenting processes in that way. Examples may include the alignment of planning permission with listed building consent, with advertisement consent or, in the case of minor works, with building warrant. We would also envisage exploring the scope for simplifying processes around more complex proposals such as waste to reduce duplication of resource within licensing and planning processes.

We appreciate that this is a complex area and will work with stakeholders to ensure that different perspectives are fully recognised. Where there is potential for more integrated approaches without loss of rigour in decision-making we will promote change. We will report on the lessons learned from this work later in the year.

Delivering Development

Infrastructure

The Government recognises the impact the global recession has had on the property sector, and that in these difficult economic times, sites are struggling to come to fruition – sometimes due to infrastructure need. We have listened to the development sector and in the summer will be launching an initiative to assist sites which have stalled specifically due to the lack of enabling infrastructure. The Scottish Government will investigate these sites, and where it is appropriate, take action to enable them to take their course.

It is essential that all of those who have a role in delivering development have a sound understanding of development economics, and the factors which affect viability. From today we are pleased to launch what will become a suite of resources to support all stakeholders to better understand development economics and viability issues. In October 2012, we will focus the annual planning and economic development summit on identifying additional

innovative actions which can be taken across sectors to deliver development and sustainable economic growth.

The Government is fully aware of the financial constraints many developers are operating within, and the difficulties posed by the need to pay upfront for planning obligations. To assist with cash flow, we have been investigating the potential to introduce a development charge mechanism, which could permit developers to pay for infrastructure downstream, as units were built and/or sold. In 2011 we published findings of the research we commissioned into development charges in the Scottish planning system. And today a public consultation has been launched on development delivery.

Section 75 planning obligations play an important role in securing developer contributions towards the costs of providing essential infrastructure. Recent changes to the legislation include the introduction of a formal process for modifying or discharging obligations (including a right of appeal to Scottish Ministers) and allowing developers and landowners to enter into unilateral obligations in respect of their land. There has been some concern that these provisions could discourage parties from entering into agreements under s75 to front-fund infrastructure given the potential for subsequent modifications being made. In revising Circular 1/2010 we will clarify advice in this area.

The Scottish Government's Chief Planner has written to planning authorities emphasising Government Guidance – as set out in Circular 1/2010 - regarding the use of deferred contributions and on the use of s75 to impose occupancy restrictions. We will incorporate this into the revision of Circular 1/2010 by the end of June 2012. We will also take forward work on a pilot scheme to scope out the potential for standard templates/model obligations to assist developers and landowners to prepare unilateral s75 obligations.

Place

The Scottish Government recognises that the ultimate test of a high quality planning system is the maintenance and creation of places where people want to be – to live, to work or simply to enjoy. The Government recognises the value of investing in quality design and is committed to taking forward an agenda that focuses on collaborative place-making.

Through the Scottish Sustainable Communities Initiative (SSCI) and the subsequent design Charrette Series the Government is encouraging a new approach to place-making and design with an emphasis on community engagement and design quality which should assist efficient decision making which enhances the quality of outcomes. A further programme of charrettes will be rolled out in 2012/13.

The Government has agreed to also work with Renfrewshire Council, the Loch Lomond and Trossachs National Park Authority and South Ayrshire Council to deliver the outputs of the recent Johnstone South West, Callendar and Girvan charrettes.

In parallel the Scottish Government will lead in developing a series of events and online resources to develop masterplanning skills to encourage the greater use of graphic communication in planning. Training events will be developed for professionals and students in both these areas. Today we have launched a new website to collate examples of good housing design to promote and celebrate achievement in housing design. Projects selected range from conversions through to large scale masterplanning from a range of national and local design awards which, in the last 3 years, have either received a commendation or an award. The intention is that the website will inspire built environment professionals and operate as a 'live' resource database which, over time, will be expanded.

The Scottish Government has made a commitment to bring forward a new policy statement on Architecture and Placemaking. This will be an opportunity to reinstate the importance of design within built environment policies and for the focus on outcomes and delivery within planning to support other Government policy objectives. This will be published at the end of 2012.

Next Steps

Planning plays an important role in delivering sustainable economic growth and the Scottish Government wishes to see the planning system fulfil its potential in facilitating development of the right quality in the right place. This statement sets out our direction and specific actions to accelerate the reform of the planning system in Scotland so that it plays its full part in supporting economic recovery.

The emphasis is on culture change although legislative proposals will be brought forward where necessary to ensure consistent implementation of best practice. In any changes to legislation, existing planning powers will allow us to make some changes by secondary legislation, while some changes will require primary legislation using, for example, the Better Regulation Bill. The Public Services Reform (Scotland) Act 2010 also allows changes to be made to primary legislation, but within specified parameters. Depending on the circumstances, we may consider bringing forward a planning bill if that is needed to secure important and practical legislative changes.

The list of documents published today is set out in the attached table and we will announce our final conclusions in late summer. To inform these decisions, the next 6 months will see an intensive programme of engagement across Scotland, talking with stakeholders and carrying out a range of pilots to identify and establish best practice in efficient delivery of good quality development.

Table

Published papers
<i>Development Delivery</i> consultation
<i>Development Plan Examinations</i> consultation
<i>Amendments to Non-domestic Elements of Permitted Development</i> consultation
<i>Fees for Planning Applications</i> consultation
<i>Miscellaneous Amendments to the Modernised Planning System</i> consultation
<i>National Planning Framework Monitoring Report</i>
<i>Performance Framework</i> , Heads of Planning Scotland



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