

PLANNING ETC. (SCOTLAND) ACT 2006

The Planning etc. (Scotland) Act has now received Royal Assent. The Key elements of the Act are that:

- It will introduce a hierarchy where planning applications will be dealt with differently, depending on whether they are defined as developments of national, major, local or minor significance
- It proposes changes with the aim of ensuring that the next National Planning Framework can better deliver developments of national importance
- It introduces new measures with the aim of quicker and more reliable processing of major developments
- Decision making and appeals will be devolved to a local level in identified cases
- The Act will introduce a statutory duty for development plans to be updated every five years

- It introduces a range of measures to promote opportunities for communities to participate in both development planning and planning applications, and to ensure that that process is transparent and inclusive (see separate article below)
- It sets out new measures to ensure that planning authorities can deal more effectively with breaches of planning control (enforcement)

The secondary legislation which will establish the practical workings of the new system will be consulted on in due course.

Should you require further information on the Planning Act please contact GL Hearn on 0141 226 8200

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PLANNING WITH PEOPLE

A key feature of the Planning etc. (Scotland) Act, which received Royal Assent on 20 December 2006, is the implementation of a range of measures which promote opportunities for communities to participate in the planning process.

The Scottish Executive are currently preparing a Planning Advice Note (PAN) entitled 'Community Engagement-Planning with People.' The draft PAN was published for consultation until 13 October 2006, prior to the Planning etc. (Scotland) Act receiving assent, and the approved PAN is expected to be published in the near future. The publication of this PAN is significant as

it is the first time that the Scottish Executive has issued specific advice to Local Authorities and developers on how communities should engage in the planning process.

The draft PAN identifies that the Scottish Executive seeks to promote early and broad based engagement in the formulation of planning policy and in the determination of planning applications. Pre-application consultation with the community will become a legal requirement.

The key changes that are likely to be introduced include the preparation and publication of a 'Participation Statement,'

the publication of a main issues report for early targeted consultation and the notification of owners and neighbours of new site specific proposals being promoted and/or considered through the development plan process. Another likely feature of the new proposals for community engagement is the assessment, by a Reporter or Scottish Ministers, of the extent to which communities have been involved in the Development Plan process within the context of the Participation Statement.

Developers need to be aware of these forthcoming consultation requirements in order to factor the necessary time implications into development programmes for sites.

DRAFT SPP6: RENEWABLE ENERGY: CONSULTATION DRAFT

The draft guidance builds on the experience gained in the six years since the publication of the revised NPPG in 2000, since which time there has been a marked increase in renewable energy proposals, most notably onshore windfarm proposals, on which the policy focuses.

The key point emerging is continued, strong policy support for renewable energy development, which was to be expected given the Executive's ongoing backing of energy production through renewable means. There is also an acknowledgement of the economic benefit that a thriving renewables industry brings to Scotland.

There is a move toward developing locational guidance for windfarm proposals, with Local Authorities formulating, through the Local Plan process, the 'local contribution' to the Executive's target. The danger with this being that councils may, once the 'local contribution' is met, make a presumption against future proposals. This is not the intention of the policy. Also, care must be taken to ensure that there is an overview of the local contributions, as leaving the determination of these at a purely local level could potentially lead to skewed figures.

This locational approach is to be delivered through the development plan system and taking into account a number of factors, differing from the NPPG in terms of including specific reference to distance from communities - a separation of 1.5km is suggested; wind resource - which the policy acknowledges requires to be done in consultation with the industry; cumulative issues - an increasingly debated point in windfarm proposals and also grid capacity - a complex and technical issue.

The development of locational guidance is one which has had cautious industry support, although of concern in the draft policy is the requirement that Development Plans identify not only areas of search but areas where windfarm development should be avoided. A criteria based approach to assessment outwith preferred areas would be preferable to a presumption against. Care will be required at development plan stage to ensure that the process undertaken by local authorities to define broad areas of search is robust and that large areas of land are not sterilised as areas to be avoided.



A few questions are posed in the draft SPP, one of which is the proposed reduction in large scale windfarms to 20 megawatts. The appropriate distance from communities, an often discussed issue and one which many consider is not suited to an arbitrary figure but decided on a case by case basis, is also identified for consideration.

The draft policy moves from the strategic to the detailed, with reference made to whether the economic benefits of proposals could be secured by planning condition or agreement, a change which could be potentially problematic on a practical level. There is also a focus on decommissioning and the requirement for finance to be set aside for this, an issue of increasing concern to local authorities.

There is also draft policy on micro-renewables, with a suggestion of a 10% minimum renewable energy generation requirement applying to certain kinds of developments. We are aware the Scottish Councils are already formulating policies in relation to this and development plans and supplementary guidance will require to be monitored in relation to this issue.

The draft policy also refers to biomass, with encouragement that the development plan process be used to identify appropriate sites.

The final version of SPP6 is expected soon.

PLANNING GAIN SUPPLEMENT

Planning Gain Supplement (PGS), a tax on the uplift in the value of land upon grant of planning permission, remains under consideration by the government. As a tax, PGS is being brought through by HM Revenues & Customs, who are currently seeking comments on three consultation papers relating to the proposals. Two of these papers pertain to the mechanisms that might apply to

valuation and payment processes that would be associated with PGS whilst the third applies only to England and concerns the related matter of 'planning obligations'. If PGS does receive formal government approval it now seems unlikely that it will be brought forward until 2009.

Notwithstanding the fact that there is a clear correlation between PGS and

planning gain, as it is currently understood, and although there is an ongoing consultation in England with regards to planning obligations, there is no current information coming out of the Executive about how processes and mechanisms associated with planning gain might change in Scotland with the advent of PGS. It is not expected that any information directly related to this will be issued until after the elections in May.

THE NATIONAL PLANNING FRAMEWORK FOR SCOTLAND

The National Planning Framework (NPF) for Scotland was published by the Scottish Executive in April 2004 as a non-statutory Scotland-wide planning policy document and sets out a strategy to guide the spatial development of Scotland to 2025. The NPF was not intended to be a prescriptive blueprint, but was to be a material consideration in framing planning policy and making decisions on planning applications and appeals.

Since The Planning etc (Scotland) Act was passed in December 2006 it introduced new mechanisms for adoption of the NPF which will elevate it to statutory status for the first time. The new legislation will place a duty on Ministers to exercise their functions in preparing the framework with the objective of contributing to sustainable development. The Framework must include a strategy of Scotland's spatial development and a statement of what the Scottish Ministers consider to be priorities for development.

The Statutory provisions of the Act will allow the Ministers to identify specific developments and, where appropriate, designate a development or a class of developments as "a national development".

The formulation of planning policy will have to take any 'national development' into account.

The Framework will be kept under regular review and within five years of publishing the NPF, the Scottish Ministers will be under a statutory duty to either revise the framework or publish an explanation of why they have decided not to revisit it.

The process will involve the preparation and publication of an account, stating when and with whom consultation on the revised NPF is to take place. The Act does not identify key stakeholders with whom consultation will be mandatory. Once the consultation period ends, the revised NPF will be laid before the Parliament for a minimum period of 60 days. The Scottish Ministers must take any resolution or reports of the Scottish Parliament or Parliamentary committee arising from the consultation period into account when finalising revisions to the NPF.

The NPF Monitoring Report was published in September 2006 and it is intended that this informs the review and revision process. It highlights trends and policy developments and examines progress in relation to economic, social and environmental

objectives, in particular relative to the 10 key elements of the spatial strategy set out in the NPF.

EMERGING THEMES INCLUDE:

- To support the development of Scotland's cities as the main drivers of the economy;
- To spread the benefits of economic activity by promoting environmental quality and connectivity
- To enable the most disadvantaged communities to benefit from growth and opportunity;
- To strengthen external links;
- To invest in water and drainage infrastructure to support development.

The revised National Planning Framework (NPF2) will be published in 2008, providing a strategy for sustainable spatial development in the period to 2030. It will set out the Executive's strategic development priorities and it will play a key role in ensuring the sustained co-ordination of policies with a spatial dimension, integrating and aligning strategic investment priorities and indicating where inter-regional choices need to be made. It will place more emphasis on implementation than its predecessor. There will also be close links to the Executives Infrastructure Plan and the investment programmes of public agencies and infrastructure providers. Monitoring will be required, particularly given that the revised NPF will have statutory status. This will afford certainty to large scale developments, but arguably at the expense of local democracy.

AFFORDABLE HOUSING

Requests for and provision of affordable housing continues to be beset with inconsistency across local authority areas, and even in some instances within the same authority.

The Executive recently commissioned a review of the allocation of land for affordable housing through the planning system and the findings were published in November 2006. Although the research was primarily focussed on assessing the effectiveness of specifically allocating land in development plans for the purposes of affordable housing development, it also looks at issues pertaining to policies requiring percentage provision of affordable housing through mainstream private residential development.

It acknowledges that the forthcoming PGS will impact on the regime/s that affect the provision of 'planning gain', and that this will include affordable housing. However, it confirms that the reforms to S.106 (S.75 in Scotland) are likely to reduce the scope

of 'planning gain' to matters immediately affecting the site and the provision of affordable housing, and that PGS revenues will be used to fund broader infrastructure such as schools, health provision, bus services etc.

The conclusions from the research include a recognition that there are problems securing sites for affordable housing in areas of economic growth (i.e. Edinburgh and Aberdeen), throughout rural Scotland and within two local authority areas adjacent to Glasgow with a high proportion of high value housing. Reasons given for this situation are that local authority land banks have been exhausted and quota policies for the delivery of affordable housing are dependant on the rate of new housebuilding coming forward. Although it does not explicitly recommend this, the research does suggest that consideration might be given to retrospective application of quota requirements being placed on sites already allocated in development plans but which have not yet been developed.

There are a lengthy series of recommendations put forward for consideration. Amongst these are a suggestion that a monitoring system needs to be put in place in those authorities who have formal policies in place aimed at securing the delivery of affordable housing. One identified problem is the immaturity of the quota delivery mechanism and the fact that a significant proportion of affordable housing is expected to be delivered on strategic sites which by their very nature have lengthy delivery timeframes, and also which tend to deliver affordable housing at the back end once infrastructure expenditure has been recouped. The reports supports the quota system and concludes that in order to speed up delivery of strategic sites there is a need to improve the local plan system, streamline the negotiation processes associated with planning gain and that careful consideration be given to the implications of the potential introduction of PGS. The research also suggests that the Executive give consideration to the feasibility of a land bank/delivery body, with Highland Housing Alliance identified as an example of this.

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