

Comments on Draft Planning Advice Note: Community Engagement, October 2006

Introduction

Scottish Environment LINK's member bodies have considerable experience of working within the planning system, with the objective of ensuring environmental considerations are taken into account when decisions are made concerning plans and developments. In this respect we consider environmental NGOs represent a key body of interest, collectively representing almost half a million concerned members of the public. Whilst working alongside communities at a local level we have directly experienced the challenges of the existing system. This is not simply a case of failure to secure our preferred outcomes but a genuine concern that on too many occasions the process of community involvement is undermined by:

- Opaque decision making that often lacks transparency and accountability
- Consultation exercises which appear to legitimise decisions, rather than fostering participation
- Limited interest by developers and planning authorities to use the process to modify the nature of the final proposal
- Confusion between notification and information sharing and genuine participation

Not surprisingly, given the occurrence of the above, public attitudes to the planning system are typified by disinterest, lack of confidence and cynicism. For these reasons we welcome consultation on the Planning Advice Note (PAN) on Community Engagement: Planning with People. We support the aspirations and general intention of these proposals but feel that the following modifications would help to improve the clarity and likely delivery of aspirations.

P.1 Introduction (paragraphs 1-5)

The sidebar to this section is succinct and hugely welcome. In contrast, the five introductory paragraphs are lengthy and not, perhaps, an easy introduction for those unfamiliar with the form and content of traditional planning documents. We would strongly recommend that the following sentence be given greater prominence:

“Scottish Ministers are determined to make the planning system more inclusive and accessible to everyone with greater openness and accountability in the decision making process.”

In particular, paragraph five states that the PAN is aimed at a wide range of users and we understand that trying to address such a large audience presents significant challenges. **We therefore recommend that there may be merit in redrafting it purely to reflect what communities should expect from the planning system and conversely what support planners should provide and the standards that should be set.** As it stands, the document reflects the Scottish Executive's standard

house style for SPPs and PANs and understandably feels like a document by planners for planners, rather than for communities or other stakeholders.

Section 1: Community engagement (paragraph 6-10)

While LINK supports many of the key points set out in this section, especially in relation to meaningful participation, we believe this section could be more succinctly presented using bullet points. In this respect, the sidebar opposite paragraphs 6 – 7 (below) should be given prominence within the main text body.

“People can expect a high quality service that is consistent, open, fair and responsive.”

This aspiration seems to be what the PAN should be seeking to achieve and what the efforts of planners should be measured against, particularly in relation to consistency, openness (transparency) and responsiveness. Quite simply the PAN should be clear that decisions should reflect and that they should take account of the evidence provided by those who participate.

Section 2: Roles and Responsibilities (P.3 – 16)

The Scottish Executive (paragraph 13-16)

The National Planning Framework (NPF) (paragraph 13-14)

The nature and level of consultation concerning the NPF clearly remains ambiguous, which is understandable at this stage given that the enabling legislation is yet to be approved by the Scottish Parliament. This will hopefully, be fleshed out in the participation statement. We note that there is no indication of the scope or principles underpinning the participation statement, which is a worrying omission, can this be addressed?

The PAN recognises that much of what will be consulted on will be high level or strategic and that the relevance to communities will be difficult to communicate and hence participation could be poor. The PAN should provide assurances that the participation statement will ensure that any communities potentially affected by national developments will be fully consulted. This is mentioned in the text box after Para. 41 and we would welcome its inclusion in this section.

National Planning Guidance (paragraph 15)

We note that national planning guidance is routinely consulted on, although this tends to target key stakeholders and does not always translate well or filter through to communities, despite its influence on development plans. It is arguable that this diminishes opportunities for the public to influence decisions at a local level.

Local Authorities (paragraph 17-25))

We respect the honest admission that the checklist on page 5 is subject to change by parliament and this will influence the finalised PAN. However, this does cause problems in relation to responding to the consultation.

We note that the key changes focus upon the production of the participation statement and new neighbour notification statements. The quality and scope of the participation statements will therefore be critical. This issue is not explored in the PAN, but reference is made to further regulation and guidance. Whilst these

regulations/guidance may be consulted on, it is again unhelpful that this issue is not an integral part of the PAN. The lack of detail on participation statements makes it impossible to judge whether this part of the PAN will be effective.

We also note that there is no distinction made between the arrangements for the new city region plans and local plans. While this delivers a consistent approach it fails to explore or address the challenges posed by multi-authority city region plans. This highlights a wider problem concerning the failure to explain the interrelated nature of different levels of the system and the 'chain of consultation' that participants must be able to understand and engage with.

A major concern is how useful the PAN will be in assisting SERIU in determining whether consultation has been adequate (paragraph 22). Will this simply be confined to judging whether the local authority has carried out what it promised in its participation statement? If so what happens if participation is simply low and there is evidence indicating that the either the Councils approach was wrong from the outset or simply ineffective when put into practice?

What happens if particular sections of the community decide that their particular needs have not been met, or their views inaccurately documented. In this respect the PAN, even in its latter sections (p14 – 17) offers little guidance either for Local Authorities or SEIRU to judge whether the chosen approach to consultation is adequate. Without clear guidance/criteria both will be vulnerable to challenge by developers and communities alike. Later in the response we make some suggestions on how this might be achieved and urge that this area is prioritised in the redraft.

Community engagement with development management (paragraph 26 – 31)

We note that the PAN says that this stage provides the opportunity to influence the form of the development with the principle having been established through the development plan (para. 26), however this is not the case where the proposal is a departure from the plan. Therefore, there may be considerable problems in delivering this element of the PAN until such time as all plans are up to date, an issue which is relevant to the effectiveness of the whole package of reforms.

Our consideration of the package of measures against the current system suggests that the main changes relate to pre-application consultation, determination hearings, provision of more time to comment and better information on decisions. Of these changes, the pre-application consultation by developers would appear to be the most difficult to secure across the board. Unfortunately, the PAN does not tackle this tricky issue. The PAN does not set out what is expected of developers nor the basis upon which the planning authority checks whether consultation has been adequate (para. 28). There are no details on how the pre-hearings system should operate, although there are again more promises of further regulations and guidance, which should ideally be contained in the draft PAN.

We note the change to 21 days for consultation which is to be welcomed but wish clarification on whether this is a minimum and how this affects bodies such as community councils.

We note that this section does not set out details of how the revised call-in procedure concerning local authority interest cases or development plan departures will operate - nor is this covered in the section on the role and responsibility of Scottish Ministers on page 3 or 4. We find this omission surprising and hope it will be addressed in the

redraft, as this is an important stage of public the participation process, especially in relation to the most controversial cases.

We do however warmly welcome requirements to provide better information on planning decisions, especially notifying people who have made representations of the reason for the decision.

Enforcement (paragraph 32-36)

Whilst we welcome the prospect of a charter and believe the concept of temporary stop notices is a sound one we remain concerned about how this will operate in practice. Firstly, the PAN does not set the minimum expected standards that enforcement charters should address. Secondly, public confidence will not improve until the wider issues concerning the effectiveness of enforcement are addressed. Start notices, completion notices and progress notices are however welcome and should be added to the planning register for public inspection.

The Role of Applicants and Their Agents (paragraph 37-40)

We welcome good quality consultation by developers but have concerns about how this might be delivered in practice. In some cases this is already best practice pursued by some developers. However, on other occasions it can be a PR exercise to diminish opposition rather than to genuinely engage with community.

Given that it is a statutory requirement and will apply to all developers it is clear there will be great variance in the approach and overall quality of consultation. The role of local authorities as gate keepers will be critical in ensuring consultation is adequate, yet the PAN does not set out in any depth what is expected of developers in terms of best practice. As it stands the pre-application checklist is remarkably imprecise using the phrase: *"tailored and appropriate approaches to engage with the public"*, which will clearly mean different things in the case of different developers and communities.

When specifying the requirements for pre-consultation we recommend the PAN should focus on centre on outcomes, such as securing appropriate levels of engagement, and not the process to avoid the development of a minimal tick box approach. Applicants should be obliged to demonstrate they have taken all reasonable steps to achieve adequate levels of participation that involve key stakeholders and reflect best practice.

We are also unclear what opportunities, if any, the public will have to respond and comment on the pre-application report so they can verify that the developer has conveyed their views correctly. We are also not clear whether it will be legitimate for the planning authority to refuse registration of an application where a developer fails to make certain amendments in light of discussions or whether this will be a material consideration when determining the application. Clarification of this point is vital if communities are to be convinced participation in pre-consultation is a worthwhile use of their time.

Good neighbour agreements (paragraph 40)

We welcome moves towards good neighbour agreements to facilitate dialogue between communities and developers, but again wish clarification on whether the presence of such agreements will be a material consideration. Further to this point it is important that the developer has actually drawn up the terms of the agreement and gained provisional support from the community at the pre-consultation stage. It should be made clear that it would unacceptable for a developer to simply commit to negotiating and securing an agreement after the granting of planning permission on the assumption that the community will buy into it. Such a prejudgement, without

evidence gathered via pre-consultation, would clearly be unacceptable in the context of meaningful public participation.

What communities can expect from the planning process (paragraph 41 + checklist)

This section summarises and consolidates much of what is already covered in the PAN. This might prove more useful at the front of the document providing a clear overview, before providing explanation later. In this respect we note an inconsistency in relation to the NPF, where a commitment is made to consult on national developments, something we welcome (see previous comment), although the omission at the front end of the document (paragraph 14) should be addressed.

We note from the overview the ability to influence planning decisions reduces over time, because failure of communities to engage with the system from the outset means critical opportunities being lost. A prime example is national developments, which will be agreed in principle well before they are proposed at a local plan level or an actual application is submitted and an Environmental Impact Assessment undertaken. Failure by members of the public to engage at an early stage could therefore create a domino effect where communities become increasingly disillusioned with the scope they have to influence decisions at a local level. We see particular problems where a local plan is finalised and is effectively revised shortly afterwards via proposals brought forward in a new NPF.

A more general point concerns consultation fatigue and confusion with the sheer number of opportunities that individuals now have to engage with the planning system. Not only must communities have capacity in terms of skills, knowledge and time to make use of these opportunities but planning authorities must have the capacity to respond. We question whether this inclusive approach will be feasible without a massive increase in resources to facilitate it alongside the aim of speeding up the system.

How to achieve effective community engagement in land use planning (paragraphs 42-54)

This is perhaps the most useful part of document and is very much aimed at planning authorities and perhaps developers undertaking pre-consultation. The guiding principles set out in the PAN, borrowed from the National Standards for Community Engagement, are helpful but obviously generic.

We strongly recommend a more focused approach explaining how these principles should be applied at different stages of the process, acting as a more practical guide for communities, planning authorities and developers. For instance, the PAN could set out different types of venues for community consultation events and different tools/systems/approaches, which could be used. It would also be helpful to identify methods that are ineffective and no longer considered best practice.

Support for community engagement (paragraphs 55-65)

This section sets out the assistance that is currently available and does little more than that. It provides no indication of additional resources or services, focused either on delivering the PAN, or the wider planning reforms designed to improve participation. On this note, it should at least provide an indication of the level of resources that planning authorities should be setting aside to deliver community engagement. In addition, some of the services provided are only available to certain groups in certain circumstances, for instance the 'Community Voices Programme'. This means there will be considerable pressure on Planning Aid in particular.

Environmental NGOs may also face increased demands for communities and will not be able to respond without more resources.

We welcome the targeting of Planning Development Programme (PDP) resources on skills development. As a minimum all planners developing plans including the NPF should have undergone basic consultation training before undertaking community engagement. This should be delivered by a variety of practitioners including those from outwith the planning system.

Looking forward (paragraph 66)

This restates the aspirations previously expressed in the document and as such adds little value to the document. A much more focused expression of the specific outcomes that should be delivered by the PAN such as those highlighted in the sidebar text boxes would be welcome. The PAN needs to be clear and consistent on its aspirations and outcomes setting standards against which progress can be measured both locally and across the system as a whole.

Annex – Examples of community engagement

These should be reviewed and only retained where there has been some form of evaluation and verifiable evidence demonstrating each example represents best practice, based on the experience of users of the system and increased levels of participation. We welcome the idea that these will be a web-based resource which can be updated and would be delighted to contribute practical examples as we come across them.

Additional Comments

Minimum standards for participation statements

As previously stated we would welcome further details as to how planning authorities, and for that matter the Scottish Executive, will construct effective Participation Statements. We argue, as a minimum the advice on Participation Statements must cover:

1. Commitment to undertake a broad stakeholder analysis, assessing both who should be involved and how best to involve them, taking account of abilities and motivation.
2. An evaluation methodology to determine at what point the consultation can be judged to have suitably engaged the community.
3. A commitment to clarity of purpose outlining the limitations of the consultation and the scope participants will have to influence any final decisions.
4. A statement on accountability, setting out how the authority will use the information to make decisions and how when these decisions will be made and communicated.
5. Details of how participants can seek redress where they are unsatisfied with the process, including internal procedures, elected representatives and ombudsmen.

Evaluation

We also strongly advise that until best practice is established that the Scottish Executive puts in place measures to allow the independent auditing of stakeholders satisfaction with both local authority and developer led consultation. This can be measured on five levels:

- Both overall numbers and diversity of participants;

- Whether the key stakeholder e.g. those most affected by the development were involved;
- The quality of the participants experiences in terms of their perceptions of the process;
- The depth of the consultation and the actual scope that participants had to influence the plan or development; and
- The extent which engaging the community has altered or influenced the nature of the developers finalised application.

Status of the PAN

We believe that this document should be revised and enhanced to reflect its importance and therefore should be given the status of Scottish Planning Policy. Quite simply participants in the system should be sent a clear message that this is what is expected of them and that this is not simply an advisory note.

Conclusions

The ultimate measure of effective consultation is seeing substantive changes in plans and major applications in response to the views of stakeholders. Quite simply individuals and communities will not participate unless they genuinely believe their views will carefully considered and, if appropriate, reflected in modifications to proposals, a basic point that must be fully recognised when revising this document. Effective community engagement is both a dynamic and challenging process, not a method of legitimising decisions. This means strengthening the role of communities and shifting power away from developers towards communities. The PAN is therefore far from the finished article which has yet to set out stakeholders' rights to fair participation in decision-making and lacking detail on critical areas such participation statements. Once the PAN is revised we also strongly recommend an all-encompassing review of its resource implications and the current capacity of communities and planning authorities to engage with the new framework.

Finally it is worth noting that how far the PAN changes, in light of responses to this consultation, will be the first acid-test of whether the Scottish Executive is serious about culture change, something LINK will monitor with interest. There is an overriding imperative to ensure that these participation measures work or the reformed planning system's credibility will be undermined from the outset.

Scottish Environment LINK Planning Task Force