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Dear Jim

Response to Planning White Paper from Scottish Environment LINK Planning Task Force, August 2005

Introduction

Scottish Environment LINK is the forum for Scotland's voluntary environment organisations comprised of 36 member bodies representing a broad spectrum of environmental interests with the common goal of contributing to a more environmentally sustainable society.

The Planning System plays a key role in protecting and enhancing urban and rural environments. However, experience of working with the existing planning system leads us to believe that unless specific changes are made to it, it will increasingly fail to deliver for the Scottish people and their environment. We are looking for Scotland to have an efficient, fair and just planning system that enables sustainable development in line with the needs of Scotland's people. The system should be fair in how it treats different applicants and in how it balances the interests of those benefiting from development and those impacted adversely. The system should promote quality development through open, fair, participatory and accountable decision-making processes.

Key Issues:

The Scottish Executive's commitment to reforming the planning system is welcome, as are some of the specific measures within the Planning White Paper (such as the statutory provision to require development plans to be reviewed every 5 years, and the requirement for local authorities to give reasons for all of their planning decisions). We believe the White Paper seeks to re-focus the planning system on development planning, which should increase certainty and efficiency for all of those involved with, or affected by, the planning system.

However, we are particularly concerned that the White Paper provides neither a limited Third Party Right of Appeal nor a mechanism for the public to challenge the contents of the National Planning Framework (NPF), for example via a public inquiry or an examination in public.

Scottish Environment  The voice of Scotland's environment movement

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Omissions

We are concerned that there are a number of important omissions from the white paper, in addition to those identified above. These were detailed in our Planning Manifesto and include:

- **A statutory purpose for planning based on sustainable development;**
- **A limited Third Party Right of Appeal;**
- **Clarification of the criteria for Ministerial call in;**
- **The retention of strategic planning for rural areas outwith the four city regions;**
- **A duty of care for the historic environment to be placed on all public bodies;**
- **A duty to designate and maintain a list of locally designated wildlife sites and an up to date sites and monument record; and**
- **Statutory provision for protection of National Scenic Areas.**

Content of the White Paper

National Planning Framework – From the white paper it appears that the second NPF will be published in 2008 and that it will provide a ‘stronger context for development plans and planning decisions’. It will be used to identify developments of national strategic importance, to be known as ‘national developments’ for which specific provisions will be made in the bill. The NPF will be subject to extensive consultation, including SEA; a draft will be issued for public consultation. Ministers will bring forward proposals for ensuring the Parliament has the opportunity to contribute to the development of the framework. The NPF will be closely linked to the Infrastructure Investment Plan and the investment programmes of public agencies and infrastructure providers. It will also address the Executive’s commitments on environmental policy, sustainability and the Executive’s evolving position on marine spatial planning.

Comment

As a tool, the NPF is welcome and offers significant opportunities to address important issues such as waste and energy. The inclusion of national developments appears to mean that Scottish Ministers will decide the need for these developments at a national level. Details of location and design will still be subject to some level of local decision-making.

While there will be some level of consultation before the document is put to parliament we cannot identify any formal opportunity to object to or challenge the decisions it contains. The parliamentary scrutiny process has yet to be decided but the options before the parliament are limited and are unlikely to be able to include close scrutiny and robust testing of specific proposals. MSPs simply do not have the time or the technical knowledge to do so. The city region and local plans for which this will set the context are both subject to either inquiry or mandatory examination in public which is welcome. The purpose of these inquiries is to ensure that the policies and proposals being put forward are robust and necessary. Without the ability to subject nationally important decisions to public challenge, professional scrutiny and keen examination we are concerned

that whoever holds the balance of power will be handed a blank cheque to pursue damaging developments.

Solution

We believe the NPF should be subject to an 'Examination in Public' chaired by an independent professional who can hear and consider evidence and make recommendations. This has been done for other spatial strategies in the UK, for example the Spatial Development Strategy for London and the Regional Development Strategy for Northern Ireland and need be neither costly nor lengthy. The parliamentary debate after the White paper was announced indicated that a group would be set up to advise parliament of an appropriate process for scrutiny we would be keen to engage with this discussion.

Enhanced Scrutiny

We note the proposals to introduce 'enhanced scrutiny' for 3 types of planning application: applications for major and local developments which are significantly contrary to the development plan; those that require an EIA; and applications for developments defined in secondary legislation as larger-scale 'Bad-neighbours', for which specific provision has not been made in the development plan. We understand these applications would:

- Be subject to pre-application consultations;
- Be subject to mandatory public hearings at which objectors or supporters would be able to present their views
- Have any decision taken by a planning committee to grant planning permission referred to the Council as a whole; and
- Subsequently be notified to Minister, to consider whether to clear the application back to the Council or call in for determination.

Comment

The 'enhanced scrutiny' proposals would appear to be seeking to address the criticisms levelled at the system by those seeking a limited Third Party Right of Appeal. However, as they stand the package of measures amount to very little by way of new rights and may in fact cause additional problems. Pre-application consultation by good developers is already undertaken and we welcome this. However, in our experience developers can use these discussions to mislead local communities who believe that the concerns expressed during this process are taken to be a formal objection. A limited Third Party Right of Appeal serves to ensure that these discussions are aimed at resolving problems rather than a box-ticking exercise.

A number of Councils already hold hearings and experience has been generally poor with the proposal simply offering an opportunity for people to vocalise what they already put in writing – there is no obligation on the Council to take these views into account. The final two proposals frequently happen already and without clear call-in criteria for Ministers the latter is too opaque to be useful.

While the idea of a hierarchy of development types does not appear to present a problem for environmental NGOs some of the processes associated with their determination certainly serve to reduce some public rights and offer very little in the way of new powers – simply a few more opportunities to be heard.

Local Appeals

For applications that fall within the terms of the scheme of delegation, appeals will now be determined by review bodies of elected members.

Comment

Following these appeals developers will only have the option of a statutory appeal or judicial review. We are aware that this may raise issues in terms of the Aarhus Convention or Human Rights unless the review panel has some level of independence; we would welcome further information on this issue.

Making the Planning System More Efficient

There are a large number of proposals relating to efficiency in the White Paper which we welcome including:

- Cultural Change amongst all stakeholders, especially local authority managers, towards the key role of development plans;
- Development Plan Reviews – a statutory provision to require development plans to be replaced within five years of adoption;
- Strategic Development Plans – we welcome the fact that these will be subject to mandatory public examination but remain concerned about strategic planning for rural areas;
- Development Plan Scheme – an annual published programme for producing and reviewing development plans by local authorities;
- Statutory Consultees – public agencies such as SNH, SEPA, LECS and Scottish Water will be designated statutory consultees for development planning.
- Form and Content – greater prescription of the form and content of the plans and enhanced status for supplementary guidance. Model development plan policies will be developed;
- Consultation Statements – a report on public engagement will be required for each development plan, however, we are unclear how this differs from existing obligations;
- Public Examination and Adoption – development plan examinations to be carried out by SEIRU appointed reporters. Reporters' decisions to be binding subject to criteria for local authorities to seek agreement of Scottish Ministers to depart from them;
- Action Programmes – two yearly action programmes to be prepared;
- Further development of e-Planning;
- Planning Agreements – a review of their scope and transparency;
- Standard Application Forms;
- Appeal Period – to be reduced from 6 months to 3 months, this is welcome but we are aware that this has already happened in England and Wales with the result that developers are lodging automatic appeals in order to meet tighter deadlines.
- Power to Decline – to determine repeat applications within 2 years;
- Statutory Duration of planning consents to be reduced to 3 years;
- Advertising of Weekly Lists to be mandatory;
- Historic Environment – Historic Scotland to consider whether combined consent procedures workable;
- Tree Preservation Orders – enhance procedures;

We are concerned about the introduction of 'approval in principle' in development plans as we believe this would add additional pressure to develop environmentally important sites for which an Environmental Impact Assessment has yet to be completed.

Making the Planning System More Inclusive

There are a number of proposals relating to improving the inclusive nature of the planning system which we welcome, these include:

- Information Campaign – to publicise existing and future rights in planning over the next 12 months;
- Appeals Screening – early refusal process for appeals which do not address the reasons for refusal or do not comply with an up to date development plan;
- Neighbour Notification – to transfer to planning authorities and to apply to enforcement decisions;
- Development Plan Neighbour Notification – to apply to certain local development plan proposals;
- Public Local Inquiries – streamlining proposals;
- New Planning Advice Note – is proposed on community engagement;
- Community Engagement – is a material consideration in development plans and planning appeal inquiries, we welcome this but much will depend on what requirements are established for 'community engagement'.
- Reasons for Decisions – reasons for all decisions to be given.
- Schedule of Land Ownership – local authority interest to be shown in development plans;
- Local Authority Interests – 'notice of intention to develop' procedure to be discontinued, all local authority interest cases to be the subject of planning applications;
- Planning Agreements – to be recorded in a public register;
- Good Neighbour Agreements – to be a material consideration;
- Inclusive Design – a Planning Advice Note is proposed;
- Planning Aid Scotland – continued support;
- Awarding Good Practice – a Community Involvement category to be added to the Scottish Awards for Quality in Planning;
- Enforcement – the wide range of proposals are welcome but much will depend on local authorities being willing to use these powers.

We are concerned that the proposal to allow appeals to be dealt with only on the basis of the material originally supplied to the planning authority would appear to create an artificial situation for all parties. In particular, we are concerned that in the event of a delay the decision could only be taken on the basis of evidence presented at the time not contextual changes arising since

Conclusion

This White Paper contains a number of helpful proposals which we believe will serve to improve some aspects of the Scottish planning system. However, the White Paper fails to address the fundamental concerns raised by those supporting the introduction of a limited third party right of appeal. It also introduces a more robust National Planning Framework which worryingly will not

be subject to an Examination in Public or an Inquiry. Together with the omissions listed above, we hope that the Executive is willing to tackle these issues during the drafting of the Bill.

Yours sincerely

Anne McCall
On Behalf of the Scottish Environment LINK Planning Task Force