



# 1

## THE PLANNING SYSTEM





SCOTTISH EXECUTIVE  
Development Department

# Scottish Planning Policy

## SPP 1

# The Planning System

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## PLANNING SERIES:

- **Scottish Planning Policies (SPPs)** provide statements of Scottish Executive policy on nationally important land use and other planning matters, supported where appropriate by a locational framework.
- **Circulars**, which also provide statements of Scottish Executive policy, contain guidance on policy implementation through legislative or procedural change.
- **Planning Advice Notes (PANs)** provide advice on good practice and other relevant information.

Statements of Scottish Executive policy contained in SPPs and Circulars may be material considerations to be taken into account in development plan preparation and development control.

Existing National Planning Policy Guidelines (NPPGs) have continued relevance to decision making, until such time as they are replaced by a SPP. The term SPP should be interpreted as including NPPGs.

Statements of Scottish Executive location-specific planning policy, for example the West Edinburgh Planning Framework, have the same status in decision making as SPPs.

This SPP summarises the Scottish Ministers' understanding of the effect of the relevant primary and secondary legislation although the summaries do not carry statutory authority in themselves and legal advice should always be taken in case of doubt.

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STOP

## INTRODUCTION

1. Scottish Planning Policies (SPPs) identify the key priorities for the planning system. This SPP provides an overview of the land use planning system in Scotland under current arrangements. It sets out the key principles and the Executive's priorities for the system to guide policy formulation and decision making towards the goal of sustainable development. It:
  - outlines the purpose of the planning system;
  - indicates how planning can contribute to the Executive's wider objectives;
  - sets out the main tasks for development planning and development control;
  - identifies the Executive's expectations for an efficient and effective planning service; and
  - specifies the performance targets that the Executive and planning authorities should aim to meet in carrying out their statutory responsibilities.

The policy in this SPP is aimed at planning authorities, the public and others with an interest in the operation of the planning system and should be considered alongside other SPPs and NPPGs when formulating policy and making decisions.

2. SPP1 is the first in a new series of planning policy documents to be issued by the Scottish Executive and updates NPPG1: The Planning System published in 2000. Existing NPPGs have continued relevance to decision making, until such time as they are replaced by a SPP. The term SPP should be interpreted as including current NPPGs. Statements of Scottish Executive location-specific planning policy, for example the West Edinburgh Planning Framework, have the same status in decision making as SPPs.
3. Planning is a devolved matter and the overall management of the system is a responsibility of the Scottish Executive. The main legislation is the Town and Country Planning (Scotland) Act 1997. In association with related primary and secondary legislation this governs the day-to-day operation of the system. The general principle under which the planning system operates in Scotland is that decisions should be taken at the most local administrative level unless there are strong reasons for taking them at a higher level. The main functions of the Executive in relation to planning are to maintain and develop the legislative framework, provide policy guidance and advice, to take decisions on structure plans, some major planning applications and appeals, and to oversee the operation of the system. Councils are usually the 'planning authority' for an area and their responsibilities include preparing development plans, deciding on most applications for planning consents and taking action against development that has been carried out without consent or in contravention of conditions. From 19 July 2002, Loch Lomond and the Trossachs National Park Authority is the planning authority for all development control and local planning matters in the park. Distribution of planning powers for the proposed Cairngorms National Park is under consideration.

## THE PURPOSE OF THE PLANNING SYSTEM

4. The planning system guides the future development and use of land in cities, towns and rural areas in the long term public interest. The aim is to ensure that development and changes in land use occur in suitable locations and are sustainable. The planning system must also provide protection from inappropriate development. Its primary objectives are:
  - to set the land use framework for promoting sustainable economic development;
  - to encourage and support regeneration; and
  - to maintain and enhance the quality of the natural heritage and built environment.

Development and conservation are not mutually exclusive objectives; the aim is to resolve conflicts between the objectives set out above and to manage change. Planning policies and decisions should not prevent or inhibit development unless there are sound reasons for doing so. The goal is a prosperous and socially just Scotland with a strong economy, homes, jobs and a good living environment for everyone.

5. The purpose of the planning system is to guide change through an efficient and effective process that respects the rights of the individual while acting in the interest of the wider community. Effective planning involves partnership working, community involvement and dialogue and negotiation with developers to enable a high quality of development on the ground. Planning is a flexible tool which is well placed to co-ordinate a wide range of activities relating to development, regeneration and the environment, both within the public sector and working with the private and voluntary sectors. Involving local communities, business interests, amenity organisations and others is essential to help shape a sustainable Scotland.

## THE PLANNING SYSTEM AND THE WIDER OBJECTIVES OF THE SCOTTISH EXECUTIVE

6. The Scottish Executive is committed to integrating the principles of sustainable development in its policy agenda. The Scottish Ministers expect the planning system to support and inform this wider policy agenda, linking principles and actions to enable sustainable development. Co-ordinated action between different programmes and priorities is essential to increase effectiveness and value.

### SUSTAINABLE DEVELOPMENT

7. Enabling sustainable development requires co-ordinated action, combining economic competitiveness and social justice with environmental quality and justice. Policies and actions of the public, private and voluntary sectors should support and encourage sustainable development. The planning system is important as a means of integrating policies and decision making through its influence over the location of development and other changes in the way land is used. In particular planning should encourage sustainable development by:
- promoting regeneration and the full and appropriate use of land, buildings and infrastructure;
  - promoting the use of previously developed land and minimising greenfield development;
  - conserving important historic and cultural assets;
  - protecting and enhancing areas for recreation and natural heritage;
  - supporting better access by foot, cycle and public transport, as well as by car;
  - encouraging energy efficiency through the layout and design of development;
  - considering the lifecycle of development from the outset; and
  - encouraging prudent use of natural resources.
8. Development plan policies should address sustainable development at the local level whilst reflecting national and international goals. Both the short-term and the long-term consequences of policies must be considered from the outset. Planning decisions should favour the most sustainable option, promoting development that safeguards and enhances the long-term needs of the economy, society and the environment. When conflicts between the objectives inevitably arise decisions should be taken in line with local priorities and needs as identified in the development plan. All relevant issues must be considered together before a decision is made, looking at long-term implications as well as short-term effects. Some types of development, such as mineral and coal workings,

**Meeting the Needs...  
Priorities, Actions  
and Targets for  
Sustainable  
Development in  
Scotland (Scottish  
Executive 2002)**

although raising significant environmental issues, are necessary and important in the national interest. In such situations every effort should be made to offset the negative impacts of the development. Sustainable development promotes the right to a healthy and safe environment. Everyone must have real opportunities to take part in the planning and decision-making that will influence their future. The Scottish Ministers published their vision for sustainable development and set out a series of indicators for sustainable development in 'Meeting the Needs: Priorities, Actions and Targets for Sustainable Development in Scotland' (April 2002).

### ECONOMIC COMPETITIVENESS

9. The Executive seeks to promote a strong, diverse and competitive economy that can create the employment and incomes that will enable people to enjoy a good quality of life. The planning system supports Scotland's prosperity by:

- identifying land of a suitable quantity and quality in the right locations to meet the need for economic development and new housing whilst minimising greenfield development;
- ensuring that land for employment is well placed in relation to the transport network and the labour force;
- promoting the improvement and maintenance of environmental quality and townscape to encourage and support investment;
- supporting development that meets the needs of rural communities;
- giving priority to regeneration and renewal;
- supporting steps to achieve the Framework for Economic Development including the provision of infrastructure and raw materials;
- giving stability and confidence that investment will not be undermined by inappropriate development; and
- ensuring that decisions are taken efficiently and consistently.

10. Continuing economic progress requires an efficient development control system. Fundamental to this are up-to-date and relevant development plans. Development plans should identify a full range of opportunities for investment while ensuring that environmental quality is enhanced and not eroded. The quality of Scotland's environment is an important factor in promoting our competitiveness and prosperity. Environmental protection and enhancement can therefore bring long-term economic benefits.

11. If development plans are to contain policies that promote Scotland's competitiveness the business community, including the enterprise network, must make a positive contribution to their preparation. This will make it possible for land allocations and priorities for infrastructure provision and improvement to reflect more accurately current and predicted future requirements. The involvement of the development industry should be sought early in the process of plan preparation to help identify issues the plan should address and to

**SPP2: Economic  
Development and  
NPPG15: Rural  
Development  
contain further  
relevant information**

**The Framework for  
Economic  
Development in  
Scotland (Scottish  
Executive 2000)**

influence policy formulation. Scottish Enterprise, Highlands and Islands Enterprise and the local enterprise companies will be key partners in implementing policies for economic development, regeneration, infrastructure investment and environmental improvement schemes.

## SOCIAL JUSTICE

12. Strong, vibrant and healthy communities, in rural and urban areas, are an essential part of the vision for a socially just Scotland. Regeneration of the physical environment alone cannot deal with poverty, inequality and social exclusion. Co-ordinated economic, social and physical action is the best way to address these deep-rooted problems. The planning system should feature as part of an integrated approach to social justice by:

- considering the diverse needs of the local communities in development plan policies;
- giving a high priority to accessibility when considering locations for jobs, houses, shops, leisure and other community facilities;
- developing closer links with transport policy at strategic and local level;
- ensuring that development plan policies positively support the provision of appropriate local facilities where they are lacking;
- promoting opportunities for the development of mixed use areas where appropriate;
- promoting the re-use of vacant and derelict land, particularly where it has a negative impact on quality of life and economic development potential; and
- aiding the creation and maintenance of pleasant, healthy, safe and crime free environments through high quality design.

13. The involvement of council planning departments in urban and rural regeneration strategies and community development is essential. The level of involvement will vary with the particular characteristics of each scheme but the input of planning through statutory and non-statutory responsibilities is nevertheless important. Particular benefits include co-ordinating actions and spending programmes of partner organisations, channelling development interest, use of site assembly and disposal powers and the prioritising of planning applications. Community involvement is an integral part of the planning system, giving the public the opportunity to influence the future development of their area through involvement in the preparation of development plans and in decision making on planning applications. Social justice requires that attention be paid to the needs of all communities and interests, including those who have little contact with the planning system and are unsure about how to get involved. In particular attention should be paid to the needs of women, ethnic minorities and vulnerable groups, including children, older people, and those with disabilities, in policy development and decision making processes. The Executive is committed to

**Social Justice... a Scotland where everyone matters (Scottish Executive 1999)**

**Getting Involved in Planning: Consultation Paper (Nov 2001) Analysis of Consultation Responses; Perceptions of the Wider Public; and Summary of Evidence Reports (Oct 2002)**

equality of opportunity for all. In June 2002 Scottish Ministers published a community regeneration statement, 'Better Communities in Scotland: Closing the Gap'. The consultation paper 'Getting Involved in Planning' considers improvements in public involvement in planning. Following consideration of the responses to this consultation paper and research findings the Executive will publish a White Paper.

14. The Race Relations (Amendment) Act 2000 prevents discrimination directly or indirectly in any functions carried out by public authorities. The equality perspective should be built into all aspects of policy and consultation, and action taken to ensure ethnic minorities have access to information and services. The Disability Discrimination Act 1995 places a duty on all those responsible for providing a service to the public not to discriminate against disabled people by providing a lower standard of service.

#### ENVIRONMENTAL QUALITY

15. Protecting and enhancing the quality of the environment, in both urban and rural areas, is a key objective of the planning system. The condition of our surroundings has a direct impact on the quality of life. Safeguarding Scotland's rich and diverse natural heritage and built environment including the wider historic and cultural landscape, improving areas through regeneration, safeguarding biodiversity, environmental improvement and restoration, encouraging efficient use of resources and enabling access to recreational opportunities and open spaces in urban and rural areas can all be supported by a proactive approach to planning. The conservation and enhancement of both the natural and built environment bring benefits to local communities and provide opportunities for economic and social progress. Environmental justice requires us to recognise the cumulative impact of environmental disbenefits and work towards ensuring people do not have to live in degraded surroundings. It also means not making unrealistic demands on the environment to absorb waste and pollution.
16. The Scottish Executive is committed to tackling climate change. Greenhouse gas emissions from burning fossil fuels are the biggest single contributor to global warming. The planning system can play a part in reducing emissions when guiding the location and design of development and the management of land use change. Specific actions include reducing the need to travel and encouraging sustainable forms of transport, and encouraging energy efficient design and appropriate choice of materials. The planning system should take the possible impacts of climate change, for example greater rainfall and increased risk of flooding, into account when taking decisions on the location of new development and other changes in land use.

#### DESIGN

17. Good design should be the aim of everyone in the planning and development process, and is important at all scales of development. Ill conceived and poorly designed development is not in the public interest, as mistakes cannot be easily

For further guidance see NPPG6: Renewable Energy Development and NPPG:14 Natural Heritage. PAN 51, PAN60 and the forthcoming PAN64: Planning and Open Space also contain further information

or cheaply rectified. An important outcome of the planning process is the quality of development on the ground. Through *Designing Places* (November 2001) Scottish Ministers have signalled the importance they attach to achieving improvements in the design and quality of new development, and bringing long-term benefits to the urban and rural environment. The architectural design, siting and setting of development in its surroundings are valid concerns of the planning system. The drive for quality should not focus solely on buildings. It should also be concerned with the way that buildings, old and new, work together and create the spaces and sense of place that have such an influence on the quality of life for communities.

18. Development plans should include broad design parameters based on a sound analysis of the character of an area. Local plans should set a framework within which developers can work, addressing issues of context and form such as scale, layout, density, massing and height. More detailed issues such as landscaping, provision of open space, parking, public art and use of materials can be dealt with in supplementary guidance. In addition, where appropriate, authorities are encouraged to produce urban design guidelines. Policies should encourage originality and innovation and also protect against poor design. Planning authorities should avoid being overly prescriptive except where appropriate in conservation areas and in relation to listed buildings. The location, design and layout of new development should also seek to contribute to achieving improvements in sustainability, for example through travel minimisation, energy efficiency and recycling provisions. Greater consideration should also be given to the lifecycle of new development and designing in adaptability.
19. Design is a material consideration when determining a planning application. A proposal may be refused, and the refusal defended at appeal, solely on design grounds. It is therefore important that planning authorities can draw on expertise with a sound understanding of the principles of design. *Designing Places* and the *Policy on Architecture for Scotland* demonstrate the Executive's commitment to a general improvement in design standards of buildings and their surroundings.

#### INTEGRATED TRANSPORT

20. The planning system is important in delivering the Executive's commitment to a more sustainable, effective, integrated transport system. Integration of land use and transport is not just an end in itself. It is essential for the economy of Scotland that the labour force has easy access to places of employment and that raw materials, components and finished products can be transported efficiently. Integrated and sustainable transport is necessary to help improve air quality, address climate change and protect environmental resources from the damage caused by pollution. The planning system can encourage more sustainable travel patterns by:
  - allocating land for development and selecting priority areas for regeneration to maximise the scope for access by foot, cycle and public transport;

Further guidance and advice is set out in NPPG17: Transport and Planning and the Addendum on Maximum Parking Standards and PAN57: Transport and Planning

- promoting an efficient transport network for the movement of freight and goods distribution, including where possible use of rail and water;
- providing direct and safe access to local facilities by a choice of transport modes;
- supporting mixed use, increased tenure choice and local service provision;
- ensuring that the layout and design of development gives priority to walking and cycling where appropriate;
- identifying priorities for investment in transport infrastructure and safeguarding land for longer term possibilities; and
- relating the level of car parking to the location and type of development through maximum parking standards.

In association with Local and Regional Transport Strategies these measures will help in promoting alternative modes of transport and in reducing the number and lengths of journeys in both urban and rural areas. The more limited transport options available in rural Scotland offer additional challenges to integrated transport which must be addressed through Local and Regional Transport Strategies and development plans.

21. Sustainable transport considerations should not be an additional factor to be taken into account in preparing development plans or in making development control decisions; they should be an integral component. Local Transport Strategies and development plans must work to a common agenda.

## EUROPEAN DIMENSION

22. European Union policy, particularly policy relating to the environment, has both direct and indirect effects on the planning system. For example, the Directive on Environmental Impact Assessment has been largely implemented through the planning system. There are a large number of EC Directives concerning the environment. Of particular relevance to planning are those dealing with Habitats and Wild Birds, Waste Management and Water Quality (including Bathing Water, Drinking Water and Urban Waste Water), Air Quality, Major Accidents Hazards, Landfill, Access to Environmental Information, Water Framework and Strategic Environmental Assessment. The obligations specified in these Directives have a number of implications for the use of land which should be recognised and reflected in development plans and development control decisions. From July 2004 it is expected that a SEA will be required for all development plans. Council Directive 96/82/EC on the control of major accident hazards involving dangerous substances, requires member states to take steps in their land use policies to meet the objectives of preventing major accidents and limiting their consequences. The Town and Country Planning (Structure and Local Plan) Regulations 1983 have been amended by the Planning (Control of Major Accident Hazards) (Scotland) Regulations 2000 to implement the Directive.
23. In addition to these Directives, the European Spatial Development Perspective (ESDP) has been developed by Member States of the European Union in co-operation with the European Commission. The ESDP is non-binding. It encourages local authorities and others to acknowledge the spatial aspects of economic development policies, to look beyond their immediate boundaries and to recognise the wider geographic dimension to opportunities and problems. Co-operation will be the key to taking forward many of these issues. The INTERREG III Community Initiative, in which a number of Scottish Councils have an interest provides a framework and mechanism for developing co-operation with partners in other parts of Europe, within the EU and beyond.
24. A significant number of development projects have been undertaken with support from the European Structural Funds. It is important that there is close liaison between planning authorities and the Programme Management Executives in East, South and West of Scotland and the Highlands and Islands. Up to date development plans should provide a locational framework for projects that seek support from the European Structural Funds and ensure that planning issues are identified and resolved early in the process, enabling decisions to be made efficiently. The underlying processes in the allocation of Structural Funds and the preparation of development plans share a number of common objectives, for example in relation to stimulating economic growth, promoting social cohesion, encouraging environmental protection and enhancement and improving quality of life. It is important, therefore, that the systems complement and support each other.

## DEVELOPMENT PLANS

25. The statutory development plan for an area currently consists of the structure plan and the local plan. The purpose of the development plan is to guide the future development of an area. Plans are not an end in themselves; they are a tool for promoting future development of the right quality in the right places. To be effective plans must contain relevant and realistic policies which can be implemented. They should contain a positive and sustainable vision of an area's future based on a thorough understanding of how the area functions, the challenges it is expected to face and community requirements and priorities. Policies should cover key land use issues including housing, transport, employment, retailing, recreation, conservation and environmental protection. It is important that these are considered together to create a spatial development strategy for the area. Development plan policies should complement and reinforce each other to help secure sustainable development.
26. The aim is to provide a land use framework within which investment and development can take place with confidence. Development plan policies should make connections to related projects and programmes which impact on land and the environment such as rural development initiatives, town centre management, local biodiversity action plans, access and recreation strategies, schemes for integrated coastal zone management and area waste plans. Plans can also be proactive in implementing policies by providing the basis for land assembly that can be essential for securing sustainable urban growth or in pursuing a co-ordinated approach to area regeneration.
27. The importance attached to the development plan makes it essential that policies:
- provide clear guidance to developers and the public on the relevant planning issues affecting an area;
  - are properly justified to explain their intention;
  - are expressed simply and unambiguously; and
  - can be easily monitored, reviewed and kept up to date.

The production of a development plan is not an end in itself; it is a tool for use in decision making. The development planning process requires sustained commitment, including the deployment of well-trained personnel and adequate resources in order to fulfil its function effectively.

28. Development plans that meet these criteria will offer a sound basis for consistent decision making which is important for maintaining public and investor confidence. In preparing them authorities must take account of national policies, specific local characteristics and the views of the development industry, amenity organisations, statutory bodies and the public. The preparation of a consultation strategy, with an emphasis on engaging all with an interest in the planning

system within an area, is advisable before the preparation or review process for development plans is started. Involvement rather than just consultation should be the goal. Those who have been involved in the process need to be confident that their views have been taken into account in preparing plans and that applications are being decided on the basis of approved or adopted plans.

29. A commitment by planning authorities to prepare, implement and keep statutory development plans under review is essential. Structure plans should be reviewed at least every 5 years, and policies formally reaffirmed or amended to reflect changing conditions and expectations. Reviews and revisions of local plans should be completed within 5 years of adoption, so that they provide an up to date basis for guiding investment and for development control decisions.
30. Following consultation on the review of strategic planning, the Conclusions and Next Steps were published in June 2002. The Executive intends to remove the requirement for structure plans covering all parts of Scotland. For the city regions of Glasgow, Dundee, Aberdeen and Edinburgh there will be strategic development plans and local development plans. For the rest of Scotland there will be a single tier development plan. For national park areas the National Park Plan will provide a strategic context for development plans. A national context for development planning will be provided in a national planning framework. This will be a non-statutory planning policy document covering the whole of Scotland. It will consider how Scotland should develop spatially over the next 25 years and how the planning system can assist in delivering the development. The national planning framework may identify locations where, in the national interest, a co-ordinated approach to planning is required, for example the West Edinburgh Planning Framework.
31. Scottish Ministers will prescribe those councils that will be required to work jointly to prepare city region plans. There will be a statutory requirement to establish a joint committee and a dedicated team to oversee the preparation of the strategic development plan. These plans will be subject to Ministerial approval. Strategic development plans will concentrate on employment, housing, transport and the environment, with a strong spatial component, over a minimum 15-year period. All development plans, including the strategic development plans, will contain an action plan that should be updated every 2 years. The aim of the action plan is to improve the level of commitment to the plans by other public and private bodies responsible for delivering much of the plan. It is not intended that action plans will be subject to Ministerial approval. The Executive is also committed to ensuring improvements in local plans. Work is underway, in partnership with local authorities, looking at the management of the preparation process. The proposals above are subject to legislative change.

**Review of Strategic Planning: Conclusions and Next Steps (Scottish Executive, 2002)**

## STRUCTURE PLANS

32. Under current arrangements structure plans should provide a long-term vision, looking forward at least 10 years, as part of an overview of an area's development requirements, considering the functions and inter-relationship of

places, expressing the settlement strategy for the area and identifying priorities for urban and rural regeneration. Policies should:

- identify the overall supply of land to meet the requirements for development;
- reflect and identify priorities for the provision of infrastructure;
- identify limitations on development;
- support and encourage sustainable patterns of travel; and
- promote the protection and enhancement of the built and natural environment.

33. Brevity, clarity and precision are key requirements. Unnecessary length can obscure the general direction of the strategy. Precision is important so that the plan has a clear focus. Structure plans must go beyond the expression of general criteria and indicate the proposed long-term nature, scale and location of change.

34. It is important to monitor and review the implementation of structure plan policies. Planning authorities and others who have been involved in the process need to know the extent to which policies have been effective. If they are not, it is important to identify the reasons. Planning authorities should specify targets for implementation; for example, using indicators such as re-use of previously developed land or the amount of retail floor space developed in town centres.

35. Authorities should aim to submit their Structure Plans for approval within 2 years from start of plan preparation. The Executive is committed to efficient handling of submitted structure plans. The aim is to give a final decision within 40 weeks of the plan being submitted, unless an Examination in Public (EIP) is necessary.

36. The basis of the structure plan is a vision which looks forward at least 10 years but which requires comprehensive review every 5 years when policies should either be reaffirmed or replaced. Full replacement is necessary when the strategy has been implemented or when it no longer reflects economic or social trends or development control decisions, or when it fails to address major new land-use issues in an area. A commitment by all planning authorities, including those in joint working arrangements, to effective management of the structure plan preparation process and implementation is essential to the continuing relevance and credibility of the statutory development plan.

### LOCAL PLANS

37. A local plan sets out detailed policies and specific proposals for the development and use of land that should guide day-to-day planning decisions. They must identify effective opportunities for development and encourage investment in an area. The aim is to exert a positive influence over land use decisions. Local plans should contain policies relating to:

**PAN37: Structure Planning provides further guidance on the preparation, review and revision of structure plans**

**Town and Country Planning (Scotland) Act 1997 sections 6-10 and the Town and Country Planning (Structure and Local Plans) Regulations 1983 set out statutory requirement relating to structure plans**

**PAN 49: Local Planning provides more detailed guidance**

- the allocation of land relating to different development types e.g. housing, business and industry, retailing, transport, leisure and recreation and mineral extraction;
- the conservation of the built, natural and cultural heritage;
- the improvement of the physical environment;
- integrated transport issues; and
- urban and rural regeneration.

Local plan policies must conform to the structure plan and be fully justified, demonstrating what is and is not acceptable in land use terms. They should describe the area to which they relate and be specific about issues in order to avoid an anonymous approach that could apply to any place. Plans should be clear about how policies will be implemented, whether through specific proposals or by applying development control criteria, and should specify where local authority action is required to make land available or co-ordinate infrastructure provision.

38. Local plans should be responsive to local needs and promote change in the wider community interest. Policies must be relevant to the circumstances of an area, with enough flexibility to accommodate some of the changes that will inevitably emerge over the lifetime of the plan. It is particularly important that local plans identify areas where major change is anticipated and indicate what is required to ensure co-ordinated action, such as the preparation of a master plan. Plans should be kept up to date and reviewed on no more than a 5-year cycle, testing for continued effectiveness and relevance, with policies either reaffirmed or replaced. Reviews should be adopted formally by planning authorities. Review mechanisms should be established whereby information collected through on-going monitoring of economic, social and environmental indicators and the implementation of individual policies and proposals is used to highlight the need for revision.

39. It is a matter of concern that many adopted local plans are more than 5 years old. Planning authorities should ensure that they have in place management arrangements that can efficiently deliver the process of preparing local plans and keeping them up to date. At the start of local plan preparation planning authorities should publish a demanding timetable of their programme of work. This should accommodate the possibility of a public local inquiry. Where a local plan inquiry is required, planning authorities should consider the appointment of a Programme Officer to manage the arrangements. The Scottish Executive Inquiry Reporter's Unit (SEIRU) has taken steps to ensure that public inquiries are arranged as quickly as possible and that Reporters submit their findings and recommendations to planning authorities within an agreed timescale. Planning authorities should aim to reach agreement with the Manager of the Local Plans Panel at SEIRU on the timescale for submission of the report of an inquiry. They should also give early consideration to the recommendations of the Reporter and publish the Reporter's report and any proposals to modify the plan. Under

**Town and Country Planning (Scotland) Act 1997 sections 11-19 and the Town and Country Planning (Structure and Local Plans) Regulations 1983 set out statutory requirement relating to local plans**

current legislation planning authorities are not obliged to accept the recommendations of the Reporter following a Local Plan Inquiry.

40. Promoting a wider sense of ownership of the local plan is essential. Local communities must have the opportunity to express their views on local needs and priorities. These views should be taken into account when formulating policies. Agencies, business interests and the voluntary sector should be encouraged to make a positive contribution to local plan preparation and planning authorities should seek to reflect their views where possible.

#### SUPPLEMENTARY GUIDANCE

41. Supplementary guidance can be useful where:
  - there is a need for an urgent policy response to an emerging issue; or
  - the level of detail is inappropriate for a development plan; for example development briefs, design guides and master plans for areas of intensive change.
42. Supplementary guidance should be used to support statutory development plans, not as an alternative. The public and other interest groups should be involved in preparing it. Statements made in supplementary guidance carry less weight than those in the development plan in determining planning applications and appeals but are likely to be material considerations. The relevance to the decision making process will also depend on the extent of public consultation on the guidance and it being kept up to date. Responses to urgent policy issues should be incorporated into statutory plans as soon as possible.
43. Development briefs and design guidance can be effective means of promoting specific opportunities for development. By highlighting the standards of development planning authorities are seeking, design guides and briefs can aid the creation of higher quality development. Master plans can be used to good effect in areas where additional planning guidance is required for major development or regeneration projects and should combine planning objectives with community aspirations and financial opportunities and constraints. They can be particularly effective where the scale and complexity of development requires a detailed framework to co-ordinate action and investment. This should result in a higher standard of development than would result from individual applications for planning permission. When preparing a master plan it is essential that the sources of funding, either public or private, be identified before proposals are set out. Implementation requires effective partnership working. It is important that, where possible, the intention to prepare such guidance is signalled in the statutory plan.

## DEVELOPMENT CONTROL

44. Development control is a key function of the planning system. In addition to determining planning applications it includes:

- advice to the public;
- pre-application discussions with applicants and agents;
- processing related applications, for example listed building, conservation area and hazardous substance consents;
- monitoring implementation of approved applications and, where appropriate, enforcement; and
- appeals.

45. Development control should be reliable, consistent, speedy and efficient. It is essentially a regulatory service, but one which aims to promote positive outcomes on the ground. Efficient development control depends largely on clear and precise development plan policies. The development control service should aim to accommodate change where appropriate and to secure investment in new development that meets the needs of the individual and the wider community, respecting the character and identity of places and safeguarding local amenity.

### DECIDING A PLANNING APPLICATION

46. Sections 25 and 37(2) of the Town and Country Planning (Scotland) Act 1997 require that planning decisions be made in accordance with the development plan unless material considerations indicate otherwise. The interpretation of this provision was clarified in a House of Lords' decision in 1998<sup>1</sup>. If a proposal accords with the development plan and there are no material considerations indicating that it should be refused, permission should be granted. Conversely, if the application does not accord with the plan, it should be refused unless there are material considerations indicating that it should be granted. Although priority must initially be given to the development plan in determining a planning application, there is a built in flexibility depending on the facts and circumstances of each case.

47. The House of Lords' judgement set out the following approach to deciding an application:

- identify any provisions of the development plan which are relevant to the decision;
- interpret them carefully, looking at the aims and objectives of the plan as well as detailed wording of policies;
- consider whether or not the proposal accords with the development plan;

Further advice is provided in PAN40: Development Control

<sup>1</sup> City of Edinburgh Council v the Secretary of State for Scotland 1998 SLT120

- identify and consider relevant material considerations, for and against the proposal; and
- assess whether these considerations warrant a departure from the development plan.

The weight to be attached to any relevant material consideration is for the judgement of the decision-maker.

48. There is an expectation that development proposals that are in accordance with the development plan will be granted planning permission. However, other considerations such as more recent expressions of policy and planning guidance may outweigh the policies of the plan, either in favour of, or against, the proposed development. Likewise, similar circumstances may apply where plans are out of date and less relevant to changed circumstances. The critical link between up-to-date and relevant plans and sound development control decisions cannot be over-emphasised. For development plans to fulfil their role of providing an effective and consistent basis for determining planning applications a systematic process of monitoring and review of policies is essential.
49. Where planning permission is refused or granted subject to conditions, the reasons must be stated in the decision notice. It is not enough to indicate that the proposal is contrary to the provisions of a development plan. Clear and intelligible reasons should be given and the relevant policies referred to explicitly. Planning authorities should also be prepared to justify the reasons for approval of an application for which there is opposition. Information on planning decisions and the reasons for them is vital to public understanding of the planning system, particularly in cases where public interest has been expressed. Individuals and organisations that have made representations about applications should be notified of the decision.

### **MATERIAL CONSIDERATIONS**

50. There are two main tests in deciding whether a consideration is material and relevant:
- it should serve or be related to the purpose of planning - it should therefore relate to the development and use of land; and
  - it should fairly and reasonably relate to the particular application.

It is for the decision-maker to assess both the weight to be attached to each material consideration and whether individually or together they are sufficient to outweigh the provisions of the development plan. Where development plan policies are not directly relevant to a development proposal or where there is no conflict with declared policy objectives, material considerations will be of particular importance. Although it is initially for the decision-maker to consider whether a consideration is material, it is ultimately a matter for the courts to decide.

51. The range of considerations which might be considered material in planning terms is, in practice, very wide and falls to be determined in the context of each case. Examples of possible material considerations include:
- Scottish Executive policy, and UK Government policy on reserved matters;
  - National Planning Policy Guidelines, Scottish Planning Policies, Planning Advice Notes and Circulars;
  - European policy, where relevant;
  - a draft structure or local plan;
  - a National Park Plan;
  - Area Waste Plans;
  - Community plans;
  - the environmental impact of the proposal;
  - the design of the proposed development and its relationship to its surroundings;
  - access, provision of infrastructure and planning history of the site;
  - views of statutory and other consultees; and
  - legitimate public concern or support expressed on relevant planning matters.
52. The planning system does not exist to protect the interests of one person or business against the activities of another, although in some cases private interests may coincide with the public interest. In distinguishing between public and private interests, the basic question is whether the proposal would unacceptably affect the amenity and existing use of land and buildings which ought to be protected in the public interest, not whether owners or occupiers of neighbouring or other existing properties would experience financial or other loss from a particular development.

#### USE OF CONDITIONS

53. Conditions imposed on a grant of planning permission can enable development proposals to proceed where it would otherwise have been necessary to refuse planning permission. While the power to impose planning conditions is very wide, it needs to be exercised in a manner which is fair, reasonable and practicable. Planning conditions should only be imposed where they are:
- relevant to planning;
  - relevant to the development to be permitted;
  - enforceable;

Further guidance on conditions is contained in Circular 4/1998 and the associated annex on Model Conditions.

- precise;
- reasonable; and
- necessary.

54. The Scottish Ministers attach great importance to these criteria being met so that unreasonable or unjustified burdens are not placed on development. Planning conditions should never be applied excessively or unthinkingly. They should be appropriate to the particular proposal and used to achieve a specific end, not to cover every eventuality.

### PLANNING AGREEMENTS

55. Planning authorities have the power to enter into an agreement with persons having an interest in land in their area for the purpose of restricting or regulating the use of that land, either permanently or during a prescribed period (Section 75 of the Town and Country Planning (Scotland) Act 1997). If considered by the planning authority to be necessary or expedient, the agreement may contain incidental or consequential provision, including financial ones. Such agreements can be enforced against successors in title. Most Section 75 planning agreements are triggered by applications for planning permission.

56. Planning agreements can be used to overcome obstacles to the grant of planning permission, but planning authorities should not use an applicant's need for planning permission to obtain a benefit which is unrelated in nature, scale or kind to the proposed development. The presence or absence of unrelated inducements or benefits should not influence the planning authority's decision. Where possible planning authorities should rely on planning conditions rather than use a planning agreement.

### OTHER LEGISLATION

57. Planning decisions should always be made on planning grounds and in the public interest. The planning system should not be used to secure objectives that are more properly achieved under other legislation. The grant of planning permission does not remove the need to seek other statutory consents nor does it imply that these consents will be forthcoming. Even where legal or administrative measures outwith the planning system may exist for controlling a particular activity, this can still be a consideration to which weight is given in reaching a planning decision. If a consideration is material in planning terms, it must be taken into account in reaching a decision. For example, the planning authority should have regard to the impact of a proposal on air or water quality although the regulation of emissions or discharges will fall to be dealt with under other legislation.

### DEVELOPMENT CONTRARY TO DEVELOPMENT PLANS

58. There are special procedures for dealing with applications that depart from policies in structure and local plans. The Town and Country Planning (Notification

**Further information on the use of planning agreements is contained in Circular 12/1996**

Further information can be found in Circular 10/1996. Good practice is set out in PAN41: Development Plan Departures

of Applications) (Scotland) Direction 1997 requires notification to the Scottish Ministers of applications the planning authority is minded to approve and which depart significantly from an approved structure plan and local plans approved by the Scottish Ministers under section 19 of the Town and Country Planning (Scotland) Act 1997. It is for authorities to decide whether an application marks a significant departure, but in general such applications should only be notified where it is inconsistent with the strategic objectives of the plan. Under the Town and Country Planning (Development Contrary to Development Plans) (Scotland) (No 2) Direction 1996, authorities can permit development that does not accord with the provisions of approved structure plans or adopted local plans, provided specific procedures are followed.

59. If the planning authority is uncertain whether an application would be a departure, it should treat the application as a potential departure and begin departure procedures. When development which does not accord with the development plan is permitted, the planning authority should inform objectors of the decision and provide them with a statement of reasons why the departure is justified. Where it is decided that an application, which the planning authority had advertised as a potential departure, is not in fact contrary to the development plan, objectors should be informed and given reasons. The Scottish Ministers expect these procedures to be used consistently to maintain public confidence in the system.

#### PUBLIC INVOLVEMENT IN DEVELOPMENT CONTROL

60. Planning authorities are legally required to consult community councils and certain statutory bodies before granting planning permission for particular classes of development. In addition the wider public has a right to view and comment to the planning authority on any application. Planning authorities should respond to comments and objections received to explain what decisions have been taken and why. Public interest in planning extends beyond those most directly affected by a proposal to the wider community. Legislation provides for registers of all planning applications to be available for public inspection. In addition, applicants for planning permission are required to notify their proposals to owners and occupiers holding an interest in neighbouring land.
61. Opposition to a proposal is not in itself a ground for refusing planning permission. The weight given to public concern as a material consideration should be based on the relevance of the planning issues raised. Planning authorities should be able to demonstrate clearly how and when the opinions of interested parties were sought and taken into account.

#### ENFORCEMENT

62. The Scottish Ministers attach great importance to effective enforcement as a means of sustaining public confidence in the planning system. It is essential that planning procedures and decisions are respected and adhered to. The Town and Country Planning (Scotland) Act 1997 provides a range of powers for enforcing

Getting Involved in Planning: Consultation Paper (Nov 2001) Analysis of Consultation Responses; Perceptions of the Wider Public; and Summary of Evidence Reports (Oct 2002)

PAN54 and Circular 4/1999 provide guidance.

planning control. Primary responsibility for exercising these powers rests with planning authorities.

63. Before considering formal enforcement action, planning authorities should consider whether the alleged breach of planning control would unacceptably affect public amenity or the use of land or buildings meriting protection in the public interest. Action should always be commensurate with the breach of planning control to which it relates. While it is for the local authority to decide what action is necessary when there is a breach of planning control, failure to take appropriate action could result in a finding of maladministration by the Ombudsman.
64. Enforcement powers are only useful if they are used effectively. A wide range of options is available to planning authorities in dealing with breaches of planning control including granting retrospective planning permission, certificates of lawful use or development, planning contravention notices, breach of condition notices, enforcement notices and stop notices. Planning authorities are encouraged to use the full range of powers available to them to ensure that enforcement action is appropriate, speedy and effective.

## THE ROLE OF THE SCOTTISH EXECUTIVE IN DEVELOPMENT CONTROL

### Planning Applications

65. The Scottish Ministers have a general power to intervene in planning applications. Since 1996 the number of planning applications notified has risen but the number of applications called in by the Scottish Ministers for determination has remained fairly static at 25-30 each year. Planning decisions are primarily a matter for planning authorities and intervention by Ministers is generally only in circumstances where a proposed development raises an issue of national importance, or where proposals represent a significant departure from the approved structure plan for an area and/or national planning guidance. Ministers may also intervene where it is considered that a planning authority has failed to give full consideration to local objection. A substantial volume of objections is not, however, in itself sufficient grounds to call-in a planning application. Similar considerations apply in relation to developments by planning authorities.

### Appeals

66. Applicants aggrieved by the decision of a planning authority to refuse planning permission or to grant planning permission subject to conditions have a right of appeal to the Scottish Ministers within 6 months of the issue of the decision notice. They may also appeal if the planning authority has failed to make a decision on a planning application within the required period (normally 2 months but 4 months where an Environmental Impact Assessment is required). Other appeals include those related to listed building consent, advertisement control and enforcement action. Responsibility for determining most appeals is delegated to the Scottish Executive Inquiry Reporters Unit (SEIRU).

**Circular 4/1997, 43/1997 and 15/1998 set out the circumstances in which planning applications should be notified to the Scottish Ministers**

67. The majority of appeals handled by SEIRU are dealt with by written submissions and a site inspection, the rest through a Public Local Inquiry or hearing. In a few cases the Scottish Ministers make the final decision. A consultation paper on Modernising Inquiries will be issued in winter 2002/03. If any party believes that unfairness or a failure to comply with any requirement of the statutory procedures prejudiced the decision, they may apply to the Court of Session within 6 weeks of the date of the decision. If the Court accepts that the decision-maker has acted unfairly, or has not complied fully with statutory requirements, it may quash the decision. It should be noted, however, that the Court does not have the right to alter a decision. It can only refer the matter back to the decision-maker to re-determine the case.
68. A planning authority experiencing high rates of sustained appeals should examine possible reasons for this, including the continuing relevance of the policy framework on which their decisions have been based.

## THE PLANNING SERVICE

69. A continuing priority of the Scottish Ministers is to support and encourage the provision of a high quality planning service by the Executive and by planning authorities. This requires clear and transparent procedures, efficient working practices and ensuring that development maintains and enhances the quality of our urban and rural areas. Effective management is essential to providing a service that is efficient, consistent, open and fair. In many councils, planning also has a key role in implementing a wide range of projects including economic development, the promotion of sustainable urban growth, area regeneration and conservation of the built and natural heritage.
70. The development industry, local communities and individuals have a right to a high quality service that is fair, open, transparent and efficient. All councils should prepare a Service Standard Statement, setting out standards and targets the planning authority seeks to achieve, so that planning staff know what is required of them and the public and others are aware of the standard of service they can expect.

### OPENNESS AND ACCOUNTABILITY

71. Openness and accountability are part of the Scottish Executive's vision for modernising Government. The planning system has a long tradition of involving the public in the preparation of development plans and providing opportunities for making representations on planning applications. The active participation of communities in decision making is an important feature of sustainable development and, for development plans, creating a sense of ownership by local communities is important for the acceptance of the policies and proposals of the plan. Planning authorities should be able to demonstrate clearly how the views of local people and local interests were heard and taken into account in policies and decisions. Planning authorities should regularly monitor the views of those affected by the service, using methods such as surveys and focus groups.

### WORKING TOGETHER

72. Working together to build a prosperous and fair Scotland is a guiding principle for the Executive. This involves working with councils, business interests, heritage and community groups and others in modernising the planning system to ensure that it is efficient, effective and fair. Efficiency involves the provision of a service that is positively managed against performance targets and which offers value for money. An effective system requires policies and decisions that support sustainable development. A fair system is one that is consistent, open and accessible with decisions taken in the wider community interest, while respecting the rights of individuals. Priority should be given to establishing partnership working as an integral part of the operation of the planning system. Partnership arrangements can be used in a variety of different situations including co-ordination of investment, infrastructure delivery, project implementation and crosscutting area regeneration. Examples of successful partnership working can be found across Scotland. Planning authorities should seek to exchange information and best practice advice to inform their own work in developing mechanisms for partnership working.

## IMPLEMENTATION

73. Planning authorities have a dual role in the implementation of objectives and specific projects:
- an enabling role; and
  - a direct action role.

The enabling role involves working to deliver change with Executive departments, agencies and organisations such as Scottish Enterprise, Highland and Islands Enterprise and the local enterprise companies, Scottish Natural Heritage, Communities Scotland, Historic Scotland, Scottish Environment Protection Agency, Scottish Water, the Forestry Commission and the private and voluntary sectors. There must be interaction and co-ordination between planning authorities, council departments and agencies in developing strategies and plans that have land use implications. Planning authorities should promote shared targets for the development of an area and close working relationships with implementation agencies. Agencies must give full consideration to the policies and proposals in the development plan and similarly planning authorities must involve these agencies from the earliest possible opportunity when developing plans. As changes occur within strategies there should be positive steps taken to co-ordinate and revise related strategies and plans. The direct action role of planning authorities is a result of the discretionary powers available in the Planning Acts, particularly for site assembly and disposal. Tools such as Compulsory Purchase Orders can be employed to secure effective implementation of agreed and shared strategies and plans.

## COMMUNITY PLANNING

74. Community planning is the process through which greater collective engagement of the public sector with communities can be secured. The purpose is to more successfully assess the needs of communities and to develop policies and deliver services which best meet these needs. In practical terms this means the local authority working in partnership with other public bodies such as police, health boards and enterprise companies, the private and voluntary sectors and communities to improve the delivery of public services and the well being of communities. Under the forthcoming Local Government in Scotland Act 2003 local authorities will have the power to promote community well being and a statutory duty to initiate and facilitate the community planning process. The main public sector bodies will have a duty to participate.
75. Community planning is essentially about providing better links between national, regional, local and neighbourhood priorities, more effective joint working and flexible solutions driven by the needs and priorities of local communities. The planning system is the main means of delivering those aspects of the Community Plan which impact on the development and use of land. Supplying sites and premises for economic development, providing land for housing, schools and other community facilities, maintaining and enhancing the natural

and built heritage to realise wider community aspirations will depend for their implementation on relevant and up-to-date development plans and on a well managed development control service.

### BEST VALUE

76. Best Value is a process through which councils work for continuous improvement in service delivery. The aim is to ensure that the cost and quality of services are of a level that is acceptable to customers. It requires councils to reflect constantly on what they are doing, to measure their successes and shortcomings and to take action to improve. The key principles are accountability, transparency, continuous improvement and ownership. Best Value promotes changes in attitude, culture and management style within councils. The process gives councils the scope to tailor their planning and management in the light of their local conditions, and should be applied to all council services, including the planning service. The Local Government in Scotland Bill will place all local authorities under a statutory duty of Best Value. The bill also proposes to place local authorities under a specific duty to publish information about finance and performance to enhance openness and public accountability. The Scottish Ministers will issue guidance in support of both these duties, supplemented by guidance from the Best Value Task Force.
77. One of the main ways in which local authorities can take forward best value is to carry out a systematic review. In carrying out such reviews councils are required to outline current organisational structures, processes and procedures. They should identify key performance indicators, the cost of the service, and the output (for example, planning applications decided in relation to performance targets, investment levered, etc). It is also important to establish customer's views on the service provided by the Council. The issue here is not about particular policies or planning decisions but whether those involved in the process are satisfied with the service offered. Comparisons with other Councils (benchmarking) and other organisations where appropriate, can be useful in highlighting different approaches and identifying best practice. Alternative methods of service delivery, ranging from modest changes in practice to contracting out all or part of the planning service where it is not offering Best Value, need to be considered. A plan of action, including a review mechanism, should also be prepared and implemented.

Further guidance on these issues is available in **Best Value: Making Choices – a guide to best value, procurement and competitiveness.** ([www.scotland.gov.uk](http://www.scotland.gov.uk))

### INFORMATION AND COMMUNICATION TECHNOLOGY

78. The Scottish Ministers believe that Information and Communication Technology (ICT) has the potential to achieve significant service improvements as part of modernising local government. Planning authorities, where appropriate in partnership with others, should explore cost-effective ways to develop ICT both internally and to provide direct customer service. Possibilities associated with the Internet now and in the future include processing applications and representations electronically and making available on the web:

- application forms and related guidance material;
- the weekly list of planning applications;
- reports, minutes of committee meetings and decisions;
- development plans and supplementary guidance;
- statistical returns to the Executive;
- full details of planning applications;
- contact details; and
- links to other sources of planning information.

Representations and responses may be submitted electronically to planning authorities.

### COUNCILLOR STANDARDS AND TRAINING

79. The Standards Commission for Scotland published a statutory code for councillors which came into effect in September 2002. The Code applies to all members of local authorities in Scotland and sets out both general and specific principles of conduct and responsibility to be followed when dealing with council business. The Convention of Scottish Local Authorities (COSLA) and the Scottish Executive had previously issued advice to cover the more specific responsibilities in relation to planning. In addition COSLA, the RTPI, the Scottish Society of Directors of Planning and the Scottish Executive have developed a training framework for councillors which relates specifically to planning.
80. At the core of the planning system is the democratic accountability of decision-making. The importance of this responsibility cannot be over-emphasised. Planning issues can be complex. It is therefore essential that councillors who take planning decisions understand the operation of the key elements of the planning system and the ethical issues underlying the handling of planning matters. These joint initiatives will help to improve the consistency of approach across Scotland and enable councillors to carry out their duties more effectively. Councils should consider offering training to members of community councils to help make their contribution to the planning process more effective.

### HUMAN RIGHTS

81. The Human Rights Act 1998 incorporated provisions of the European Convention on Human Rights (ECHR) into UK law. The general purpose of the ECHR is to protect human rights and fundamental freedoms and to maintain and promote the ideals and values of a democratic society. It sets out the basic rights of every person together with the limitations placed on these rights in order to protect the rights of others and of the wider community.
82. The planning system by its very nature respects the rights of the individual whilst

**Standards in Public Life: The Councillor's Code of Conduct (2002), Advice for Councillors dealing with planning matters (2001) and A Guide to Training in Planning for Councillors (2000)**

acting in the interest of the wider community. The specific Articles of the ECHR relevant to planning include Article 6 (Right to a fair and public trial within a reasonable time), Article 8 (Right to respect for private and family life, home and correspondence), Article 14 (Prohibition of discrimination) and Article 1 of Protocol 1 (Right to peaceful enjoyment of possessions and protection of property). The Scottish Executive issued guidance on the Human Rights Act and the ECHR to all public authorities, including planning authorities, in January 2000. Although there have been no successful legal challenges to the planning system on ECHR grounds, the case law continues to develop. All planning authorities should be aware of the possible implications of the Human Rights Act and should seek legal advice with a view to ensuring that processes and practices are compatible with the ECHR.

### OMBUDSMAN

83. The Executive is committed to ensuring that those who are dissatisfied with the administration of the planning system have their complaints dealt with timeously and effectively. Planning authorities are therefore expected to have in place proper procedures for investigating and responding to complaints about alleged failures in the delivery of the planning service.
84. It is essential for those who remain dissatisfied with any public service to have access to an impartial independent complaints system. Complaints of injustice arising from alleged maladministration by planning authorities may be referred to the Scottish Public Services Ombudsman<sup>2</sup>. Examples of maladministration of the planning service include advice given which is inaccurate or misleading, breaches of statutory procedure, inadequate consultation, poor communication and the absence of articulated reasons for decisions. The Ombudsman expects planning authorities to have regard to government policy and advice, and failure to do so may amount to maladministration. If parties consider that the law has not been properly complied with they may petition for Judicial Review.

### PERFORMANCE TARGETS

85. There is a statutory duty for planning applications to be determined in 2 months from the receipt of a valid planning application (4 months where applications require an Environmental Statement). This period can be extended with the agreement of the applicant. The two month determination period begins on the day a valid application is received by the planning authority, not on the day the authority decides it is valid. It is therefore essential that checks on the validity of applications are made as soon as possible from when they are received. The Executive recognises the importance of efficient handling of development proposals. Planning authorities are therefore expected to take action as necessary to ensure applications are dealt with efficiently. Prompt decision making should not compromise the quality of the decision.
86. The following performance targets have been set for planning authorities:
- 80% of planning applications should be determined in 2 months;

<sup>2</sup> Scottish Public Services Ombudsman, 23 Walker Street, Edinburgh, EH3 7HX 0870 011 5378 ([www.ombudsmanscotland.org.uk](http://www.ombudsmanscotland.org.uk))

- 85% of planning applications should be determined in 3 months;
- 90% of householder applications should be determined in 2 months;
- 95% of householder applications should be determined within 3 months; and
- 80% of major applications should be determined within 4 months.

For large or complex proposals, developers and planning authorities should seek to agree a timetable for handling the application. Experience has shown that well-managed pre-application discussions can help reduce the time taken to deal with a formal application. Improved efficiency of decision making should not adversely affect the quality of the decision making process or the quality of development on the ground.

87. Achieving greater efficiency in development control is not just a matter for local councils. The Executive is committed to greater efficiency in taking decisions on notified applications and appeals. The targets are:

#### **Notified Applications**

- 80% of cases notified to the Scottish Ministers for a decision on whether to call-in to be decided within 28 working days and the remainder within 2 months; and
- for called-in applications and appeals recalled for determination by the Scottish Ministers, a decision should be issued within 2 months of receipt of the report from the Scottish Executive Inquiry Reporter's Unit in 80% of cases, and the remainder within 3 months.

#### **Appeals**

- 80% of planning permission appeals involving written submissions should be determined within 20 weeks;
- 80% of enforcement notice appeals involving written submissions should be determined within 24 weeks;
- 80% of advertisement appeals involving written submissions should be determined within 17 weeks;
- 80% of planning permission appeals and enforcement notice appeals involving public local inquiries should be determined within 38 weeks; and
- 80% of appeals against refusal of planning permissions (including listed building consent appeals) for the Scottish Ministers decision should be determined within 2 months of receiving the Reporter's report, and the remainder within 3 months.

Each year, the Executive will publish details of its performance against these targets.

88. The performance targets for development plans are:

#### Structure Plans

- 100% coverage of up-to-date plans;
- plans should be submitted for approval within 2 years of plan preparation beginning; and
- the Scottish Ministers aim to approve structure plans within 40 weeks of submission, unless an EIP is necessary.

#### Local Plans

- 100% coverage of plans less than 5 years old; and
- planning authorities should take less than 3 years to prepare and adopt new or replacement plans and less than 2 years for alterations.

## CONCLUSION

89. The planning system should be responsive to social and economic changes and ensure that a policy framework is established to inform decision making in the public interest. It can play an important role in delivering sustainable development that embraces the goals of economic prosperity, social justice and environmental justice and quality. Development plans should set out a long-term vision with a clear focus, setting out the scale and direction of change. They must guide investment decisions rather than being led by them. They must identify environmental resources that require protection to meet national and international obligations, but they must also take into account local character and identity. They should address local perceptions, community aspirations and seek to identify local development opportunities. This requires a consistent approach that is inclusive rather than exclusive; that anticipates rather than reacts; and that is consistent rather than arbitrary. Development control is a key means by which these objectives and policies are delivered. Organisational and other linkages with development planning must be frequent and direct.
90. The planning system has a range of tools at its disposal for shaping a more sustainable Scotland; it must apply them positively, creatively, sensitively and fairly.

## NOTES

91. Legislation, NPPGs, SPPs, PANs and a list of planning Circulars can be viewed on the Scottish Executive web site: [www.scotland.gov.uk/planning](http://www.scotland.gov.uk/planning)
92. Enquiries about the content of this SPP should be addressed to Roger Kelly (0131 244 7526, [roger.kelly@scotland.gsi.gov.uk](mailto:roger.kelly@scotland.gsi.gov.uk)). Further copies and a list of current NPPGs, SPPs and planning Circulars can be obtained by telephoning 0131 244 7066. Planning Advice Notes can be obtained by telephoning 0131 244 7543.

## ANNEX: THE LEGISLATIVE FRAMEWORK

The main pieces of primary legislation in the field of town and country planning and their general content are: -

### **The Town and Country Planning (Scotland) Act 1997**

Defines the scope of town and country planning and sets out the general legislative framework for the preparation of structure and local plans and the administration of development control.

### **The Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997**

Sets out the special controls in respect of buildings and areas of special architectural or historic interest.

### **The Planning (Hazardous Substances) (Scotland) Act 1997**

Provides the statutory framework for regulating the storage of hazardous substances.

### **The Planning (Consequential Provisions) (Scotland) Act 1997**

Deals with the changes to other legislation as a result of the consolidation of the main planning Act e.g. the replacement of references to sections of the 1972 Act with the appropriate sections of the 1997 Act.

The main instruments of secondary planning legislation and their general content are: -

### **The Town and Country Planning (Structure and Local Plans) (Scotland) Regulations 1983**

Outline the procedures for the preparation, submission and approval or adoption of structure and local plans, and their alteration, repeal and replacement. SI 1983/1590

### **The Town and Country Planning (Use Classes) (Scotland) Order 1997**

Sets out 11 classes within which it is possible to change the use of land and buildings without the need to obtain planning permission. SI 1997/3061 amended by SI 1998/1196 and SSI 1999/1

### **The Town and Country Planning (General Permitted Development) (Scotland) Order 1992**

Grants a general planning permission for a wide range of minor developments and sets out the procedures for withdrawing these permitted development rights. SI 1992/223 amended by SI 1992/1078 and 2084, 1993/1036, 1994/1442, 2586, 2716 and 3294, 1996/252, 1266 and 3023, 1997/1871 and 3060 and 1998/1226

### **The Town and Country Planning (General Development Procedure)(Scotland) Order 1992**

Sets out the procedure to be followed in making and deciding planning applications, appeals and Certificates of Lawful Use or Development. There are separate regulations on procedures to be followed in appeal cases and for the conduct of public inquiries. SI 1992/224 amended by SI 1992/2083, 1993/1039, 1994/2585 and 3293, 1996/467 and 1997/749

**The Town and Country Planning (Simplified Planning Zones) (Scotland) Regulations 1987**

Set out the procedures for making and altering simplified planning zones. SI 1987/1532

**The Environmental Impact Assessment (Scotland) Regulations 1999**

Set out 2 scheduled categories of development:

- planning applications for Schedule 1 projects (eg nuclear power stations) must be accompanied by an environmental statement;
- for Schedule 2 projects the planning authority will require an environmental statement if it believes the development is likely to have significant effects on the environment. SSI 1999/1

**The Town and Country Planning (Development by Planning Authorities) (Scotland) Regulations 1981**

Set out the procedures which planning authorities must follow in respect of development which they propose to carry out in their area. SI 1981/829 amended by SI 1984/238

**The Planning (Hazardous Substances) (Scotland) Regulations 1993**

Set out the substances and quantities to which hazardous substances controls apply as well as the procedures relating to obtaining hazardous substances consent, enforcement procedures and forms etc. SI 1993/323 amended by SI 1996/252

**The Planning (Control of Major Accident Hazards) (Scotland) Regulations 2000**

Amend the Planning system, particularly the hazardous substances consent regime, to implement the European Directive on the Control of Major Accident Hazards Involving Dangerous Substances. SSI 2000/179

**The Town and Country Planning (Enforcement of Control) (No.2) (Scotland) Regulations 1992**

Set out the procedures for the enforcement of planning control. SI 1992/2086

**The Town and Country Planning (Development contrary to Development Plans) (Scotland) (No 2) Direction 1994**

Sets out the procedures which planning authorities must follow in dealing with applications for development contrary to development plans.

**The Town and Country Planning (Notification of Applications) (Scotland) Direction 1997**

Outlines the categories of development that should be notified to the Scottish Ministers in particular circumstances, the formal information to be submitted and the procedure to be followed.

**The Town and Country Planning (Notification of Applications) (Scotland) Amendment Direction 1997 — Notification of Planning Applications**

Amends notification requirements regarding proposals for wind generators and introduces notification requirements for proposals affecting playing fields.

**The Town and Country Planning (Notification of Applications) (Scotland) Amendment Direction 1998 — Notification of Planning Applications**

Change the floor space requirements which trigger notification of retail proposals to the Scottish Ministers from 20,000 square metres to 10,000 square metres.

**The Town and Country Planning (Notification of Applications) (Scotland) Amendment (No 2) Direction 1998**

Outlines the circumstances in which opencast coal and related mineral development proposals should be notified to the Scottish Ministers where the planning authority are minded to grant permission.

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