

Planning Committee

10am, Thursday, 7 August 2014

Strategic Development Plan Supplementary Guidance on Housing Land

Item number	5.1
Report number	
Executive/routine	Executive
Wards	All

Executive summary

When Scottish Ministers approved the Strategic Development Plan on 27 June 2013 they included a requirement that, within 12 months, SESplan prepare supplementary guidance on housing land. The finalised guidance was submitted to Scottish Ministers on 21 May for a 28 day ministerial consideration period. The Ministers have given notice that the Supplementary Guidance should be modified before it is adopted.

The purpose of this report is to invite the Committee to:

- ratify the decision by the SESplan Joint Committee to approve the modification of the Supplementary Guidance, as directed by Scottish Ministers; and
- agree to adopt the Guidance as modified.

Links

Coalition pledges	P8 , P15 , P17 , P18
Council outcomes	CO7 , CO8 , CO16 , CO18 , CO19 , CO22 , CO23
Single Outcome Agreement	SO1 , SO4

Strategic Development Plan Supplementary Guidance on Housing Land

Recommendations

- 1.1 It is recommended that the Committee:
 - 1 ratifies the decision of the SESplan Joint Committee to approve the modification of the Supplementary Guidance on Housing Land as directed by Scottish Ministers as set out in Appendix 1 of this report; and
 - 2 agrees to adopt the Supplementary Guidance as modified by Scottish Ministers.

Background

- 2.1 SESplan is the Strategic Development Planning Authority for Edinburgh and South East Scotland. It covers the council areas of the City of Edinburgh, East Lothian, Fife (part), Midlothian, Scottish Borders and West Lothian. The Town and Country Planning (Scotland) Act 1997, as amended, requires these councils to work together to prepare and keep under review a Strategic Development Plan (SDP) for the Edinburgh city region.
- 2.2 The first SDP was approved by Scottish Ministers on 27 June 2013. In approving the plan, they modified Policy 5 to require SESplan to prepare supplementary guidance (SG) on housing land. This was to provide further detailed information for Local Development Plans (LDPs) on how much of the overall housing land requirement should be met in each of the six member authority areas in the period to 2024.
- 2.3 The finalised SG was approved with minor modifications by the SESplan Joint Committee on 10 March 2014. Following the ratification of this decision by the six councils, the SG was submitted to Scottish Ministers for a 28 day ministerial consideration period on 21 May 2014.

Main report

- 3.1 The Scottish Ministers have considered the SG and issued a letter to SESplan on 18 June 2014 (see Appendix 1). In that letter Scottish Ministers have given notice under Section 22(8) of the Town and Country Planning (Scotland) Act

1997 that before the SG is adopted it must be modified to remove the second sentence of paragraph 3.13. The text of that sentence states, “Member Authorities will base their calculation of the five year land supply on the period 2009-2024, taking into consideration housing completions.”

- 3.2 The Scottish Ministers note that while it may be considered useful to provide information or detail, the inclusion of this sentence gives rise to a potential inconsistency between the approved SDP and the SG. Scottish Ministers consider that the inclusion of this sentence does not comply with Regulation 27(2) of the Town and Country Planning (Development Planning) (Scotland) Regulations 2008. This regulation requires that for a matter that will form part of the development plan to be included in SG it must be ‘expressly identified in a statement contained in the plan as matters which are to be dealt with in supplementary guidance’. Ministers therefore consider that the sentence should be removed.
- 3.3 SESplan disagrees with the proposed change and the reasoning behind it. The SESplan manager’s report is attached at Appendix 1. SESplan considers the approach set out in the SG is reasonable, pragmatic and consistent with the SDP. However, although it is open to SESplan to challenge the Scottish Ministers decision, it is of the view that the most pragmatic option is to implement the suggested change. SESplan considers that the alternative courses of action would result in further uncertainty and delay to the preparation of LDPs and SDP2 and therefore should not be pursued.
- 3.4 The implications of removing the sentence is to create uncertainty, both for local authorities and the development industry, in terms of how the five-year housing land supply should be calculated. SESplan has committed to investigating the development of a consistent approach to the calculation of the five-year land supply and a further report will be submitted to the Joint Committee in due course.

Measures of success

- 4.1 The proposed actions will be measured as follows: when adopted, the SG guides the content of the second proposed Local Development Plan.

Financial impact

- 5.1 There are no financial impacts arising from this report.

Risk, policy, compliance and governance impact

- 6.1 The adoption of the SG sets the context for the Council's second Proposed Local Development Plan, as the LDP has to be consistent with the SDP and the SG. The second Proposed Local Development Plan was approved by the Planning Committee on 19 June 2014.
- 6.2 Failure to agree the recommendations of this report will result in the SG not being adopted, and introduces the risk of planning by appeal as Edinburgh's housing land requirement will not have been defined. It would also result in an unusual situation where the Proposed LDP had been approved in advance of the housing land requirement being defined and adopted.
- 6.3 The report does not raise any health and safety, governance, compliance or regulatory issues other than those set out above.

Equalities impact

- 7.1 An Equalities Impact Assessment was prepared and subsequently updated by SESplan as part of the process of preparing the SDP. It reported that there were mostly neutral impacts. Details are available at <http://sesplan-consult.objective.co.uk/portal/sg/hsgland?tab=files>
- 7.2 The SG is required to provide further information in support of approved SDP Policy 5 (Housing Land). As such there are no changes to the underlying Vision and Aims of the approved SDP which have already been subject to an assessment.

Sustainability impact

- 8.1 The SG was subject to Strategic Environmental Assessment. The Environmental Report (placed in Group Rooms and available at www.sesplan.gov.uk) identifies, describes and evaluates the likely significant effects of the Supplementary Guidance. The SDP itself was also supported by an environmental report.
- 8.2 The impacts of this report in relation to the three elements of the Climate Change (Scotland) Act 2009 Public Bodies Duties have been considered, and the outcomes are summarised below. Relevant Council sustainable development policies have been taken into account.
 - The proposals in this report will increase carbon emissions and this impact will be addressed by measures such as locating development in places accessible to sustainable transport, and including measures to encourage high public transport mode share in LDPs.
 - The proposals in this report will increase the city's resilience to climate change impacts because the SG seeks to focus development in the first

instance in Strategic Development Areas which are more accessible locations, which in turn reduce the need to travel.

- The proposals in this report will help achieve a sustainable Edinburgh because they seek to provide additional housing to meet Edinburgh's growing housing requirement in sustainable locations with good access to sustainable transport options.

Consultation and engagement

- 9.1 SESplan published the draft supplementary guidance for a six-week consultation period from 11 November to 20 December 2013.

Background reading / external references

Report to Planning Committee – 23 October 2013 – Strategic Development Plan
Supplementary Guidance on Housing Land

Report to Planning Committee – 15 May 2014 – Strategic Development Plan
Supplementary Guidance on Housing Land

John Bury

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Links

Coalition pledges	P8 Make sure the city's people are well-housed, including encouraging developers to built residential communities, starting with brownfield sites
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	<p>P15 Work with public organisations, the private sector and social enterprise to promote Edinburgh to investors</p> <p>P17 Continue efforts to develop the city's gap sites and encourage regeneration</p> <p>P18 Complete the tram project in accordance with current plans</p>
Council outcomes	<p>CO7 Edinburgh draws in new investment in development and regeneration</p> <p>CO8 Edinburgh's economy creates and sustains job opportunities</p> <p>CO16 Well-housed – People live in a good quality home that is affordable and meets their needs in a well-managed neighbourhood</p> <p>CO18 Green – We reduce the local environmental impact of our consumption and production</p> <p>CO19 Attractive Places and Well Maintained – Edinburgh remains an attractive city through the development of high quality buildings and places and the delivery of high standards and maintenance of infrastructure and public realm</p> <p>CO22 Moving efficiently – Edinburgh has transport system that improves connectivity and is green, healthy and accessible</p> <p>CO23 Well engaged and well informed – Communities and individuals are empowered and supported to improve local outcomes and foster a sense of community</p>
Single Outcome Agreement	<p>SO1 Edinburgh's economy delivers increased investment, jobs and opportunities for all</p> <p>SO4 Edinburgh's communities are safer and have improved physical and social fabric</p>
Appendices	<p>Appendix 1: SDP Manager's report to 30 June 2014</p>
*	<p>SESplan Joint Committee</p>

For Decision	✓
For Information	

ITEM 5 – SUPPLEMENTARY GUIDANCE HOUSING LAND

Report by: Ian Angus, SDP Manager

PURPOSE

This Report has been prepared to provide an update to the SESplan Joint Committee on the adoption of the Supplementary Guidance on Housing Land.

RECOMMENDATIONS

It is recommended that the SESplan Joint Committee:

1. Approve the modification to the Supplementary Guidance on Housing Land as directed by Scottish Ministers as set out in Appendix A to this Report;
2. Request that the Member Authorities ratify the decision at Recommendation 1 and adopt the Supplementary Guidance on Housing Land as modified by Ministers.

RESOURCE IMPLICATIONS

As set out below.

LEGAL AND RISK IMPLICATIONS

All risks are detailed in the SESplan Risk Register and reported to Joint Committee on an annual basis.

POLICY AND IMPACT ASSESSMENT

No separate impact assessment is required.

1. BACKGROUND

- 1.1 In approving the Strategic Development Plan (SDP) on the 27 June 2013, Scottish Ministers made modifications to Policy 5 (Housing Land).
- 1.2 The modifications required Supplementary Guidance to be prepared to set out how much of the overall housing land requirement should be met in each of the six member authority areas in the periods 2009 - 2019 and 2019 - 2024. This would inform LDP preparation. Scottish Ministers expected the Supplementary Guidance to be adopted within one year from the date of approval of the SDP (27 June 2013).

2. SCOTTISH MINISTERS DIRECTION

- 2.1 At its meeting on the 10 March 2014 the SESplan Joint Committee:
 - Noted the summaries of the consultation responses received and main issues raised through the consultation on the draft Supplementary Guidance;
 - Approved the editorial changes of a non-policy nature to the draft Supplementary Guidance;
 - Approved the draft Supplementary Guidance subject to minor editorial changes for submission to Scottish Ministers; and
 - Requested that the Member Authorities ratify the minor editorial changes and the decision to submit to Scottish Ministers and adopt the Supplementary Guidance at the expiration of the 28 day Ministerial consideration period unless Scottish Ministers direct otherwise.
- 2.2 The Supplementary Guidance was submitted to Scottish Ministers on 21 May 2014. The 28 day Ministerial consideration period ran to the 18 June 2014. Following comments on the matter being submitted to the Scottish Government by the development industry, the Scottish Government asked SESplan for a justification for the approach to the calculation of the five year land supply set out in second sentence of paragraph 3.13. This reads:

'Member Authorities will base their calculation of the five year land supply on the period 2009 – 2024, taking into consideration housing completions.'

- 2.3 SESplan responded to this request setting out the reasoning for the approach, having prepared the response in consultation with the member authorities. The Scottish Government issued the Ministerial determination in a letter to SESplan on the 18 June 2014 (Appendix A). In that letter Scottish Ministers have given notice under Section 22 (8) of the Town and Country Planning (Scotland) Act 1997 that, before the Supplementary Guidance is adopted, it must be modified to remove the second sentence of paragraph 3.13¹.
- 2.4 The determination notes that while it may be considered to provide useful further information or detail, the inclusion of this sentence also gives rise to a potential inconsistency between the approved SDP and the Supplementary Guidance. Scottish Ministers consider that the inclusion of this sentence does not comply with Regulation 27 (2) of the Town and Country Planning (Development Planning) (Scotland) Regulations 2008. This requires that for a matter to be included in Supplementary Guidance that will form part of the development plan it must be *'expressly identified in a statement contained in the plan as matters which are to be dealt with in supplementary guidance'*. Ministers therefore consider that to avoid such inconsistency, to ensure compliance with the legislation and to avoid potential further delays in the process, that the sentence be removed.
- 2.5 The determination and the reasoning which underpins the determination is contrary to the approach to this matter which SESplan and the member authorities considered reasonable, pragmatic and consistent with the SDP.

¹ The submission Supplementary Guidance is available to view at <http://www.sesplan.gov.uk/strategic-development-plan/housing-land-supplementary-guidance>

3. NEXT STEPS

- 3.1 Legal advice has been sought and three options have been identified:
- A. Modify the Supplementary Guidance as directed and adopt it as modified;
 - B. Do not adopt the Supplementary Guidance and start the process again; or
 - C. Raise a legal challenge against the direction made by Ministers.
- 3.2 Whilst SESplan officers disagree with the Ministers' decision and reasoning, options B and C are not considered appropriate courses of action. Both of these would create further uncertainty and cause significant delay to the preparation of Local Development Plans (LDP) and SDP2. In addition, a judicial challenge would be highly sensitive and carry significant financial and reputational risks to SESplan. It should, however, be noted that for the reasons set out in Para 4.1 the modification itself will create further uncertainty.
- 3.3 It is therefore recommended that Supplementary Guidance is modified as directed by Scottish Ministers and that the Joint Committee approves the modified Guidance. Legal advice has also confirmed that this decision will require to be ratified by each of the Member Authorities. The Joint Committee has no powers to adopt Supplementary Guidance. Subject to approval of the modified Supplementary Guidance by SESplan Joint Committee, it is anticipated that the process of ratification will take longer than the usual 4 – 6 week period due to the Summer Recess period and the scheduling of Council meetings. On this basis the Supplementary Guidance is expected to be formally adopted by all Member Authorities around the end of September 2014. Details of the relevant member authority committees are being identified. A report on the ratification of the Supplementary Guidance including the modification will be brought to a future meeting of the Joint Committee.

4. CALCULATING THE HOUSING LAND SUPPLY

- 4.1 The implications of removing the sentence on calculating five year housing land supply, in terms of its role in providing clarity to both the local planning authorities and the development industry, are significant. In particular, in making the modification, the Minister has not provided guidance on how the land supply would be calculated for periods bridging the two periods for which the Supplementary Guidance sets requirements. SESplan and the member authorities will investigate the development of a consistent approach to the calculation of the five year land supply to provide this clarity. Such a procedure will not however form part of the development plan. A further report on this will be brought to a future meeting of the Joint Committee.

Appendices

- A** Scottish Government Letter on Adopting Supplementary Guidance

Report Contact

Report Agreed By: Ian Angus, SDP Manager

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Author Job Title: Lead Officer, Planner

APPENDIX A

Ian Angus
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In 2014 Scotland Welcomes the World



Our ref: POL/10193
18 June 2014

Dear Ian

**TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997
TOWN AND COUNTRY PLANNING (DEVELOPMENT PLANNING) (SCOTLAND)
REGULATIONS 2008**

**NOTICE OF INTENTION TO ADOPT SESPLAN SUPPLEMENTARY GUIDANCE ON
HOUSING LAND**

I refer to Graeme Marsden's email of 21 May 2014 certifying notice of SESplan's intention to adopt the above supplementary guidance in association with the approved SESplan.

Under S22(8) of the Town And Country Planning (Scotland) Act 1997, the Scottish Ministers give notice that before adopting the Supplementary Guidance on Housing Land, it must be modified to remove the 2nd sentence of paragraph 3.13 of the guidance which reads: 'Member authorities will base their calculation of the five year land supply on the period 2009-2024, taking into consideration housing completions.'

Regulation 27(2) of the Town And Country Planning (Development Planning) (Scotland) Regulations 2008 requires that for a matter to be included in supplementary guidance that will form part of the development plan it must be 'expressly identified in a statement contained in the plan as matters which are to be dealt with in supplementary guidance'. It is not considered that the inclusion of the 2nd sentence of paragraph 3.13 complies with this requirement. While it may be considered to provide useful further information or detail, the inclusion of this also gives rise to a potential inconsistency between SESplan itself and the supplementary guidance. Ministers therefore consider that to avoid such inconsistency, to ensure compliance with the legislation and to avoid potential further delays in the process, that the relevant sentence be removed.

Yours sincerely



Rosie Leven
Principal Planner

Copy to Craig McCorrison - craig.mccorrison@westlothian.gov.uk