

Planning Committee

2.00pm, Wednesday, 23 February 2022

Scottish Government Local Development Planning Regulations and Guidance consultation - City of Edinburgh Response

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| Executive/routine | Executive |
| Wards | All |
| Council Commitments | 1, 2, 4, 10, 11, 12, 18, 26 |

1. Recommendations

- 1.1 It is recommended that Committee agrees the proposed response to the consultation on Local Development Planning Regulations and Guidance as set out in Appendix 1 and that it be submitted to the Scottish Government by 31 March 2022.

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Report

Scottish Government Local Development Planning Regulations and Guidance consultation - City of Edinburgh Response

2. Executive Summary

- 2.1 The purpose of this report is to seek approval for a response to the Scottish Government's consultation on Local Development Planning Regulations and Guidance as set out in Appendix 1.

3. Background

- 3.1 The Planning (Scotland) Act 2019 set out changes to the planning system, including changes to the process for making local development plans. This will require secondary legislation to be passed to bring it into operation and to add further detail to how the process will operate.
- 3.2 The main changes to the local development plan process are to replace the Main Issues Report stage with an Evidence Report and to introduce a 'gate check' stage so that the Evidence Report is assessed by a person appointed by Scottish Ministers before it progresses to the Proposed Plan stage.

4. Main report

- 4.1 Draft regulations and guidance were published on 17 December 2021 and the Scottish Government seeks comment on these. Interim Impact Assessments and a guide to the consultation were published alongside the drafts.
- 4.2 The draft Guidance is comprised of three sections and annexes with examples of good practice.
- 4.2.1 Section 1 sets out the aims and expectations for new style plans. It provides an indication of what they should be like in the future;
- 4.2.2 Section 2 sets out the process of how to achieve a new style plan. It covers the legislative requirements, how these are met and responsibilities;

- 4.2.3 Section 3 sets out detailed thematic guidance on how new style plans are expected to implement the draft National Planning Framework 4 (NPF4) policies for the development and use of land; and
- 4.2.4 The guidance is intended to assist and support planning authorities and others with an interest in Local Development Plans (LDPs), rather than to create additional requirements. Authorities are expected to consider how the guidance can be applied in a proportionate and place-based way and to use their discretion in establishing the components of the advice which are relevant to their plan preparation.
- 4.3 The consultation sets out that a key principle of implementing these changes will be that regulations be kept to the minimum necessary, that a Circular will not be prepared for them and that more detail will be provided in guidance and kept updated.
- 4.4 The principle that new style development plans be implemented more by guidance than by regulation is intended to provide greater flexibility for change in the future. The proposed response from the Council suggests that this must be considered carefully. The development plan process is often subject to challenge and, whilst flexibility can be useful, it is also important that the process is robust. It is likely that the use of changing guidance rather than regulation through secondary legislation would be less robust to challenge. As set out in the proposed response in Appendix 1, there are critical parts of the process where regulation should be used so as to have a robust process as possible.
- 4.5 The consultation also notes that the Scottish Government does not intend to commence Section 20AA of the 2019 Act which introduced the ability to amend LDPs but will consider regulations and guidance once the new development planning system is in place.
- 4.6 The guidance is, in general, clear and helpful in setting out how to make a LDP in the context of NPF4 and, whilst it will need to be revised subject to any changes to draft NPF4, its provisions on what a new style plan should be like, how it should be made, and what it should contain, are largely appropriate where directly related to a primary or secondary legislative provision. Some amendments to wording are proposed in Appendix 1 for further clarification and emphasis. Recommendations on guidance that should instead be covered by regulation is also given.
- 4.7 Matters where the Scottish Government is of the view that guidance rather than regulation be used, but which it is recommended in Appendix 1 should be regulated for include:
 - 4.7.1 Who should be involved in the consultation process on the Evidence Report, over what is prescribed in the 2019 Act;
 - 4.7.2 What should be in the Evidence Report to inform a new LDP, other than as prescribed in the 2019 Act;
 - 4.7.3 Minimum evidence requirements for appointed persons to assess in Evidence Reports; and

- 4.7.4 Who should be consulted on the Proposed Plan stage, other than as set out in the 2019 Act.
- 4.8 Regulation rather than guidance is important for these considerations as any inconsistencies in these parts of the process between LDPs, or perceived omissions where there is not a clear statutory requirement could be used as the basis of legal challenge.
- 4.9 Matters where the Scottish Government does propose to make regulations relate to the detail of carrying forward the processes set out for new style development plans, including transitional arrangements for existing plans in progress. The regulations proposed on these matters are assessed as being appropriate for their purpose as set out in Appendix 1. The draft Regulations also include some minor changes to update on references to other amendments in legislation, regulation and planning documents and these are accepted without comment. Transitional arrangements allow that where a Planning Authority has published a Proposed Plan prior to June 2022, they will be able to proceed to adoption of that plan. The proposed regulations provide for this and would allow Proposed City Plan 2030 to continue to progress under the existing legislation (2006 Act) rather than require a change to working under the provisions of the 2019 Act.
- 4.10 The interim Impact Assessments cover a range of matters. It is recommended that the interim Business and Regulatory Impact Assessment consider the risk to plans of legal challenge should important matters of process as set out above be dealt with by guidance rather than regulation if the recommended changes are not made. No further comments are recommended on the Assessments.
- 4.11 Separate consultations are to take place on providing definitions of Gypsy/Traveller status and on assessment of play opportunities for children.
- 4.12 The proposed response in Appendix 1 includes commentary on where it is recommended that changes be made to guidance and regulations. Overall, the proposals are considered to be appropriate to the new style local development plans and respond appropriately to the 2019 Act other than as noted. Therefore, it is recommended the draft regulations and guidance should be supported subject to the proposed amendments.

5. Next Steps

- 5.1 Subject to approval of the proposed response this will be submitted to the Scottish Government as the Council's formal response on this consultation. Officers will continue to promote these principles to the Government, including through any post-consultation process which follows.

6. Financial impact

- 6.1 This report has no direct financial impacts, being a consultation response on proposed regulations and guidance.

7. Stakeholder/Community Impact

- 7.1 The content of the draft regulations and guidance has been shaped by consultation and engagement with stakeholders in 2021 and the Government now seeks comment on it.
- 7.2 The Scottish Government's proposals are clearly set out and communicated, allowing all stakeholders the opportunity to comment further.
- 7.3 There are no direct sustainability impacts arising from this report.
- 7.4 Any required assessment of impacts would be addressed by the Scottish Government.

8. Background reading/external references

- 8.1 [Planning Act 2019](#)
- 8.2 [Local Development Planning Regulations & Guidance Consultation: Part A Introduction](#)
- 8.3 [Local Development Planning Regulations & Guidance Consultation: Part B Proposals for Development Planning Regulations](#)
- 8.4 [Local Development Planning Regulations & Guidance Consultation: Part C Draft Guidance on Local Development Planning](#)
- 8.5 [Local Development Planning Regulations & Guidance Consultation: Part D Interim Impact Assessments](#)

9. Appendices

- 9.1 Appendix 1 – Response to Scottish Government consultation on Development Planning Regulations and Guidance.

Appendix 1

Scottish Government Local Development Planning Regulations and Guidance consultation - City of Edinburgh Response

Background

The consultation paper on Local Development Planning (LDPs) has the following parts:

- Part A – Introduction;
- Part B - Proposals for Development Planning Regulations;
- Part C - Draft Guidance on Local Development Planning, and
- Part D - Interim Impact Assessments.

The regulations and guidance are part of wider Scottish Government work on planning reform and implementing the Planning (Scotland) Act 2019 (the 2019 Act). Significant changes to development planning were made by the 2019 Act. To guide implementation of these changes, the following documents above have been prepared and the Scottish Government is now inviting views on these proposals.

Collaboration has informed the preparation of this consultation. It follows on from the extensive engagement undertaken prior to the Planning (Scotland) Bill being considered by the Scottish Parliament.

Regulations and guidance

The government advises that regulation is necessary to provide additional detail to the requirements set out in primary legislation and that new regulations will be prepared for the implementation of the new LDP system. The proposals are set out in Part B of the consultation. The Scottish Government is of the view that given the amount of change, there is benefit in regulations being kept to the minimum necessary and that much of the detail of implementation of the 2019 Act should be set out in guidance to provide for maximum flexibility and resilience. That would allow experience from implementing the new system to be incorporated into updated guidance as it emerges.

Question 1: Do you agree with the principle that regulations be kept to the minimum necessary and that more detail be provided in guidance and kept updated?

Yes / No / No View: Yes, on the point of principle but the question should be asked as to whether what is proposed is the minimum necessary.

Please explain why you agree or disagree: There are a number of points proposed to be dealt with by guidance which are more appropriate to be dealt with by regulation, in that they are points which are sensitive to potential legal challenge and therefore should be prescriptive and have the status of regulation. These points are made in further answers.

Interim Impact Assessments

The consultation paper is accompanied by interim impact assessments, the outcomes of which are in Part D of the consultation:

- Business and Regulatory Impact
- Equalities Impact Assessment, combining human rights considerations
- Child Rights and Wellbeing Impact
- Island Communities Impact

Question 2 i): Do you have any views on the content of the interim assessments?

Yes / No: No

Please explain your views: The interim assessments seem adequate.

Question 2 ii): Do you have or can you direct us to any information that would assist in finalising these assessments?

Yes / No: No

Initial Screening Assessments

The consultation paper is accompanied by initial screening assessments regarding the requirements to undertake assessments on the Fairer Scotland Duty and Strategic Environmental Assessment.

Question 3 i): Do you have any views on the Fairer Scotland Duty and Strategic Environmental Assessment screening documents?

Yes / No: No.

Please explain your views: The screening assessments seem adequate.

Question 3 ii): If you consider that full assessments are required, please suggest any information sources that could help inform these assessments.

Provisions for Regulations under the Town and Country Planning (Scotland) Act 1997, as amended by the 2019 Act.

Section 15 – Form and content of local development plans (LDPs)

There are no proposals to amend or add to the existing regulations on the form and content of LDPs.

Question 4: Do you agree with the proposals for regulations relating to the form and content of LDPs?

Yes / No / No View: Yes

Please explain why you agree or disagree. These are considered to be satisfactory

Section 16 - Preparation and monitoring of local development plans: general

The proposed amendments relate only to the updating of references to other regulations which have changes and to planning terminology and documents that have been updated.

Question 5: Do you agree with the proposals for regulations relating to the preparation and monitoring of LDPs?

Yes / No / No View: Yes

Please explain why you agree or disagree: The updating proposed is required and the regulations are otherwise satisfactory.

Section 16 - Preparation and monitoring of local development plans: additional information

Views are sought as to whether or not issues which have become more prominent such as climate change, community planning and health and wellbeing should be added to those already subject to regulation.

Question 6: Do you have views on additional information and considerations to have regard to when preparing and monitoring LDPs?

Yes / No / No View: Yes

Please explain your views: Climate change has become an increasingly important factor in terms of planning outcomes and carbon emissions; community planning and health are more overtly planning related than they have been in the past. Whilst the evidence base for change is not a short term one, it can be assessed in plans through a measurement and comparison of emission scenarios, health scenarios and likely impacts on climate/health changes

Section 16B - Evidence report for preparation of local development plan

It is proposed that what is set out in the 2019 Act as to whose views the planning authority should seek to inform the new Evidence Report stage of the LDP be added to by guidance to be flexible, rather than by regulation.

It is also proposed to address what the Evidence Report is to set out in guidance rather than add to through regulation, to maintain flexibility.

This approach is also proposed in respect of any minimum evidence requirements for the report, partly for flexibility going forward and partly to allow for flexibility according to the circumstances of the local authority area.

New regulations are proposed for the procedures for the new gateway check process in terms of: notification of the appointed person to consider it; further representation or information; and expenses of assessment.

Guidance is proposed on the schedule for the format for submitting unresolved representations to Examination

It is proposed to hold a separate consultation on the definition of Gypsies and Travellers.

Question 7: Do you agree with the proposals for regulations relating to the Evidence Report?

Yes / No / No View: No

Please explain why you agree or disagree: The proposal that: whose views to seek in informing Evidence Reports; what it is to set out in them; and what the minimum evidence requirement for them is, should be set by guidance rather than by regulation is not considered appropriate. Each of these is an area where consistency will be essential to ensure that LDPs are as robust as possible against legal challenge. Variance between what is used as the evidence base for an LDP needs to be consistent so the minimum level of prescription through regulation is high. Use of guidance would lead to greater scope for interpretation as to what is needed in which particular case. Whilst the desire for flexibility is understood it is the robustness of the process which underpins the plan led system and guidance would not give this.

Section 16D – Play sufficiency assessment

Requirements relating to the assessment of play opportunities for children. A separate consultation on this is taking place alongside this LDP consultation.

Section 18 – Preparation and publication of proposed local development plan

It is proposed to update regulations in reference to outdated parts of primary legislation and to update references to parts of the LDP process.

As for the evidence report stage of the LDP it is proposed that the stakeholders to be consulted on the proposed plan stage be added to by way of guidance rather than regulation.

It is not proposed to amend the current regulations requiring direct notification of proposed sites and proposals to neighbours on a similar basis to the notification of planning applications.

Question 8: Do you agree with the proposals for regulations relating to the preparation and publication of the LDP?

Yes / No / No View: No

Please explain why you agree or disagree: The stakeholders who require to be consulted on the proposed plan should be subject to regulation rather than guidance for the same reasons of consistency and robustness as set out in the response to question 7, to avoid opening up potential for legal challenge.

Section 19 – Examination of proposed Local Development Plan

The proposal here is to update the wording of the regulations to reflect the removal of Strategic Development Plans from the process by the 2019 Act.

Question 9: Do you agree with the proposals for regulations relating to the examination of the LDP?

Yes / No / No View: Yes

Please explain why you agree or disagree: It is an appropriate update and not contentious.

Section 20A – Publication of and publicity for local development plan

It is proposed to update the regulations in respect of the requirements on a recommended modifications statement and a report of modifications be published in the prescribed manner.

The 2019 Act introduces provisions for the amendment of LDPs. The introduction to this consultation (Part A) explains that we will consider this in regulations and guidance once the new development planning system is in place.

Question 10: Are there matters you wish to highlight relating to amendment of the LDP which may have bearing on the proposals for regulations being consulted on in this document?

Yes / No / No View: No

Please explain your view: The recommended update is appropriate for regulatory purposes and, as it will be some years before the mechanisms for amendment will be required, there is time to consider this aspect more fully.

Section 20B – Development Plan Schemes

The regulations are proposed to be amended to replace out of date references to stages of the LDP process. The Scottish Government wants to see more specific timetabling for when an LDP is expected to be adopted, or the tracking of any changes to the original timescales and for an explanation to be provided for any changes.

Question 11: Do you agree with the proposals for regulations relating to Development Plan Schemes?

Yes / No / No View: Yes

Please explain why you agree or disagree: It is reasonable to require a Development Plan Scheme to be transparent as to any shift in timescales.

Section 21 – Delivery Programmes

It is proposed to replace outdated references to Action Programmes, as they were formerly known, and to remove references to Strategic Development Planning Authorities.

Question 12: Do you agree with the proposals for regulations relating to Delivery Programmes?

Yes / No / No View: Yes

Please explain why you agree or disagree: These are minor updates required by other legislative changes.

Section 23D – Meaning of “key agency”

It is proposed to amend the regulations to update the names of key agencies whose names have changed.

Question 13: Do you agree with the proposals for regulations relating to the meaning of 'key agency'?

Yes / No / No View: Yes

Please explain why you agree or disagree: These are minor factual updates.

Transitional Provisions

Draft guidance sets out that where a planning authority has published its proposed LDP before June 2022, they will be able to proceed to adoption under the existing provisions and procedures in the 1997 Act (introduced by the 2006 Act). Emerging LDPs which have not reached the stage of a published proposed plan before June 2022 will be subject to all the new process introduced by the 2019 Act. It is proposed to give effect to this in separate regulations making saving and transitional provisions.

For LDPs and supplementary guidance that proceed to adoption under the provisions and procedures introduced by the 2006 Act, the existing regulations will need to be continued. It is therefore proposed to enable this through the replacement regulations.

Question 14: Do you agree with the proposals for regulations relating to transitional provisions?

Yes / No / No View: Yes

Please explain why you agree or disagree: The proposal appropriate to previous consultation on transitional arrangements.