

All Heads of Planning



15 January 2015

Dear Colleague

## Development Plans – Supplementary Guidance

As you will be aware, Planning and Architecture Division was restructured earlier this year. We established a new development planning team to provide a more co-ordinated approach to our processing of plans and promote their alignment with NPF3 and SPP. This change has allowed us to gain a clearer overview of issues which are commonly arising in development planning across Scotland.

It has become increasingly apparent that planning authorities are taking different approaches to the use of supplementary guidance and their consideration of the legislative context. We have therefore been closely monitoring issues arising from the statutory supplementary guidance that has been submitted to Scottish Ministers for approval.

As a result of this work, I have three main concerns about supplementary guidance:

- **The sufficiency of the express statement regarding the guidance within the plan itself.** In order to qualify as supplementary guidance under section 22(1) of the Act, and so on adoption form part of the development plan in accordance with section 24, the guidance must meet the requirements of Regulation 27(2) of the Town and Country Planning (Development Planning) (Scotland) Regulations 2008. For supplementary guidance to be issued in connection with a local development plan, this means that the guidance may only deal with the provision of further information or detail in respect of policies or proposals set out in the local development plan and then only provided those are matters which are expressly identified in a statement contained in the plan as matters which are to be dealt with in supplementary guidance.



It is therefore essential that supplementary guidance is limited to the provision of further information or detail and that the local development plan expressly identifies the matters to be dealt with in supplementary guidance.

In the absence of the necessary statement identifying such matters, section 22(9) provides that it remains open to the planning authority to bring forward guidance in connection with a plan. This guidance does not require to be submitted to Ministers as it is not “supplementary guidance” within the meaning of the Act and it would not form part of the development plan.

- **Compliance with national policy – specifically National Planning Framework (NPF) 3 and the Scottish Planning Policy.** Whilst in some cases this is a consequence of the timing of the preparation process, in a growing number of cases this lack of compliance is less easily explained.
- **The appropriateness of the subject matter being covered by the guidance.** There is significant variation in the issues that are addressed, the level of detail and the proportionate relationship with the content of the plan itself. A very high level of reliance on supplementary guidance raises questions about the transparency of the development planning process as a whole. It may also have implications for resources as all statutory supplementary guidance must be reviewed alongside the development plan and there is no expedited route for updating or continuing it once in place.

There are practical limits to the extent to which we can make modifications to supplementary guidance that is submitted to Ministers for approval. As a result, and in the interest of transparency, I believe it would be helpful to clarify the approach we are now taking. Based on recent experience, there are four main scenarios:

1. If guidance is submitted to us which has a sufficient express statement regarding the guidance within the plan (as referred to above), which has been appropriately consulted upon and which is compliant with NPF3 and the SPP, we will aim to clear it back to you within the 28 day period.
2. If guidance is submitted to us which requires only minor modifications to comply with policy, we will endeavour to adjust it as appropriate and to return it to you within 28 days if possible.
3. If guidance is submitted which requires major modifications (involving more substantive changes that would trigger additional consultation or environmental assessment), Ministers will direct that it cannot be adopted without significant change. The supplementary guidance will require to be resubmitted to us in an acceptable form. A few legitimate exceptions may apply – for example where consultation on the guidance significantly pre-dates the adoption of the SPP. We will therefore carefully consider the specific circumstances in each case. This is likely to require extension of the 28 day timescale.
4. If there is no, or an insufficient, express statement regarding the supplementary guidance within the plan, it cannot be adopted as statutory supplementary guidance. It may be that consideration can be given to the document being non-statutory guidance. Again, delays to the process are likely.

At present, we are not taking formal action where supplementary guidance is submitted to Ministers which, in our view, deals with inappropriate content. Examples of this include information and evidence which merely supports the plan or, at the other end of the spectrum, policy which should form a core part of the development strategy and be articulated within the plan itself. However, Planning and Architecture officials will continue to work with you to identify how a better balance can be struck between the content of development plans and their associated supplementary guidance.

As we committed to at the Heads of Planning discussion in early November, we provided a clearer steer on our experiences and expectations of supplementary guidance to development plan teams at the National Development Plan Forum on 6 December. Information from that event will be available on-line. We shared examples of good practice that may be helpful for your teams during the plan preparation process.

We remain committed to a plan-led system, but that system depends on all of us continuing to aspire to have in place better, more up to date and delivery focused strategic and local development plans. We also remain committed to working with planning authorities throughout the country, to provide support and advice where required and as our resources allow. I therefore hope you find this clarification of our position helpful.

If you have any queries on this letter or in relation to development planning more generally, please do not hesitate to contact the development planning team via the [developmentplans@scotland.gsi.gov.uk](mailto:developmentplans@scotland.gsi.gov.uk)

Yours sincerely



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