

# **East Lothian Council**

**Environment Department  
Planning & Building  
Standards**

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## **STATUTORY GUIDANCE ON PLANNING AND SUSTAINABLE DEVELOPMENT**

**Comments on a  
consultation from the  
Scottish Executive**

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**East Lothian Council  
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# **EAST LoTHIAN COUNCIL RESPONSE TO SCOTTISH EXECUTIVE CONSULTATION PAPER**

Statutory Guidance on Planning & Sustainable Development (March 2007)

## **1.0 INTRODUCTION**

1.1 This response has been prepared with reference to your recent consultation document 'Statutory Guidance on Planning & Sustainable Development'. East Lothian Council (ELC) welcomes the opportunity to comment on the draft guidance, which is to be allied to the Planning (Scotland) Act 2006.

## **2.0 GENERAL COMMENTS**

2.1 In general terms, the Guidance seems to summarise what planners are required to do already, being essentially an easy read synopsis of the existing NPPG and SPP series. It does not appear to take the issue of planning and sustainable development significantly further forward.

2.2 Depending on the weight to be attached to the finalised document in decision making, there needs to be consistency between it and the series of SPP's / NPPG's and PAN's. NPPG's and SPP's set out national policy on how and where planners should direct development, and also to ensure appropriate management and maintenance regimes and remediation and restoration measures are procured where necessary, consistent with the aim of sustainable development. In that context the draft guidance provides a useful overview of these, perhaps targeted at non-professionals. Planners and developers will themselves continue to look to NPPG's and SPP's as the context against which to inform, justify and seek to influence sustainable policy direction and decision making at the local level. The real value in the guidance, therefore, seems to be that it offers a more accessible commentary than the existing volume of national policy and advice.

## **3.0 SPECIFIC COMMENTS**

### **Introduction**

3.1 Paragraph 1 states that the document is intended as guidance, and paragraph 2 suggests that it will 'sit alongside the SPP series'. The implication of this is that it will carry the same weight as an SPP in decision-making. ELC would welcome greater clarity on this point in the document.

## **Sustainable Development**

- 3.2 Paragraph 5 states that to be sustainable a policy must respect all five principles listed. However, in certain circumstances there may be a need to promote and take decisions on development at a national level, for example, which may affect a person's perception of equality in the application of these principles at the local level, where that development is to be implemented. There may therefore need to be some recognition that in certain circumstances there could be a public interest in accepting local dis-benefits in favour of procuring a more beneficial and sustainable national situation. There may also be a need throughout the document to highlight competing relationships such as these that present themselves in decision-making. The need for such pragmatism is recognised in paragraph 12 of the document for example, and ELC would welcome a similar approach at the front end.
- 3.3 Paragraph 10 sets out some key objectives for the planning system on climate change mitigation and adaptation. While ELC agrees with these general aspirations, it feels that greater recognition needs to be given to the fact that the planning system is one administrative function that can contribute towards meeting these aims. The Building Standards in particular are another tool the Executive and Ministers could use to procure mitigation and adaptation measures in new building design, as identified at paragraph 18 of the draft paper. Indeed, these may be more capable of securing adaptation of buildings to a wetter climate than the planning system: this should be more explicitly recognised.
- 3.4 Already there is overlap between these regulatory functions brought about through SPP6. This causes ELC some concern - can planners and the planning system be used to maximise benefits in CO2 reduction when this is to be assessed against a bar set by a separate regulatory function with its own professional expertise? The information required for assessment is not normally available or worked up by developers until such time as a planning permission has been procured by them.

## **PLANNING AND SUSTAINABLE DEVELOPMENT**

### **General principles**

- 3.5 Paragraph 21 addresses what it believes is the fundamental principle of sustainable development. It is perhaps worth recognising that *'ensuring the promotion and implementation of development in the right place and of the right design and quality'* has been the main purpose of land use planning since its inception. As far as land use planning is concerned, sustainable development may be a new name but it is not an entirely new philosophy.

## **Planning and Transport**

- 3.6 Paragraph 23 suggests that integrating land use and transport is crucial when considering the sustainability merits of development. This key point is omitted from the five principles set out at paragraph 5, yet this section reads as if it is one of them; should it not be included as part of the 'Living within Environmental Limits' section? It should also be noted that, when discussing the relationship between planning and transport, this paragraph suggests that the principles set out in SPP15 on rural development ought to be outweighed by transportation considerations alone. It states that in effect, development in rural areas will not be sustainable unless this is the only feasible location for it. This runs contrary to the approach set out in SPP15. The Executive should be clear about priorities: is rural policy as described in SPP15 about, as it seems to be, pandering to lifestyle choices to live in the countryside, or is it seeking to promote the countryside for sound social or economic reasons? If the former, then there is a serious issue about sustainable transport. If the latter, then some degree of compromise on sustainable transport modes may be justified.
- 3.7 The last sentence of paragraph 23 seems to rather complicate a matter that might be better described in terms of "not all development can be truly sustainable" but there may be good reasons to allow it.

## **Achieving a Sustainable Economy**

- 3.8 The last sentence of paragraph 28 is little more than a pious hope. In practice, many planning decisions are required to trade one policy objective off against others. That is why the planning process is one where the difficult decisions recognised in this paragraph often have to be made.

## **Using Sound Science Responsibly**

- 3.9 Paragraph 30 suggests that planning authorities should ensure they can obtain access to and use scientific information responsibly. ELC has experience of using independent scientific research reports (in relation to density and urban form) and presenting these to Inquiry. This was contested by objectors on the basis that the work was commissioned by the then ODPM and not by the Scottish Executive. There are situations where planning authorities as well as others will wish to draw on a basis of scientific evidence not yet available in Scotland and to use this as a context against which to demonstrate a particular policy position, where it is consistent with national policy objectives. ELC would welcome a position statement in the guidance setting out how evidence from the scientific community ought to be used and admitted to forums such as EIP's and PLI's, as well as on when such evidence is to be excluded from them. The Executive should perhaps also recognise that good scientific advice does not come cheap.

## **PLANNING'S CONTRIBUTION**

- 3.10 Paragraph 32 suggests that the planning and building standards regimes should seek to complement not duplicate each other. ELC would appreciate some guidance from the Executive on how such duplication can / should be avoided, without using cumbersome and expensive Section 75 Legal Agreements and suspensive planning conditions. The information required for such assessment against the building regulations is not normally available or worked up by developers until such time as a planning permission has been procured by them. How then can the planning authority ensure CO<sub>2</sub> reduction without burdening the implementation of a planning permission until such time as the CO<sub>2</sub> reduction has been confirmed by the applicant to the planning authority following receipt of the Building Warrant? There may be further issues in that the CO<sub>2</sub> reduction measures conditionally approved in a planning permission may then be deemed unsuitable by Building Control, with alternative measures suggested. These could constitute a material variation from the original planning permission, on grounds of visual amenity, for example, requiring a further planning application to regularise amendments.
- 3.11 The Council is also concerned about ensuring the long-term management and maintenance of CO<sub>2</sub> reduction measures / equipment as well as enforcing the sustained use of these in perpetuity. As the final sentence of paragraph 38 of the draft guidance refers, it is for individual property owners / occupiers to ensure adequate measures for the management and maintenance of buildings, and hence not for the local planning authority. The "*close association with building standards departments*" suggests that these should perhaps become a statutory consultee, and this should be clarified.

### **Location of New Development**

- 3.12 The first bullet point of paragraph 35 ignores the issue that, while necessary development has to go somewhere, many third parties will argue that it should not go near them. The third bullet point ignores the issue, raised previously in para 3.6, of what development is needed/justified to support rural communities and what is pandering to lifestyle choices.
- 3.13 As a more general comment, most of the bullet points under paragraph 35 simply restate existing general advice in even more general terms than in NPPGs and SSPs. There appears to be little point in this. Indeed, under "Water efficiency" the reader is left wondering what the planning system is meant to do here.
- 3.14 Under "Manage waste effectively" there is reference to the SEA for the development plan being the vehicle for exploring the various environmental impacts of waste management. This Council would

suggest that the Area Waste Plan, not the development plan, would be the more appropriate vehicle for this SEA. On a related issue, the last sentence under “Conserve air quality” refers to the SEA of development plans specifically testing the impact of the plan on air quality conditions. This Council has concerns about the level of assessment required here and the costs and time required to undertake it.

- 3.15 Under the last sentence of “Lifestyles” the use of the phrase “*Development should be encouraged*” is of little use in giving Councils any significant planning influence over resource consumption. Similarly with the phrase “*In some case it could be made a requirement*” under “Building materials and performance” in respect of re-use.

### **Design and Layout of Buildings**

- 3.16 Under “Energy efficiency” in paragraph 37 there should be a recognition that, while layout can help, the planning authority cannot countenance row after row of east/west aligned housing. This would conflict with the principles of good layout as championed in Designing Places, etc. Again, this perhaps illustrates the need to recognise trade-offs in decision-making.

### **Supplementary Planning Guidance**

- 3.17 Paragraph 45 suggests that there should be adequate publicity and lead-in time for the introduction of supplementary planning guidance (SPG), presumably to allow the industry time to comment, react and adapt to a shift in policy emphasis and deliver on the resultant requirements. ELC is aware of this, but it seems there is a dichotomy here as SPP1 states that SPG allows planning authorities to react quickly to emerging issues before incorporating related policies into the Development Plan if and when appropriate. Additionally, provided the three tests in SPP1 are satisfied – these being a cross reference to the SPG in the Development Plan, appropriate consultation on the SPG being undertaken and approval of the SPG by the Council – SPG can carry significant weight as a material consideration in decision making. ELC would therefore welcome further advice on what ‘period’ of lead-in time would satisfy this provision of the guidance, as well as on the status of SPG if adopted in accordance with SPP1 tests.
- 3.18 Paragraph 51 highlights the importance of integrated working and alludes to the full range of players who are involved in delivering sustainable economic growth through the planning system, including those involved in ensuring co-ordinated investment in development and infrastructure. ELC support this statement and acknowledges that this is pivotal to ensuring that the right development of the right quality is achieved on time in the right place.

- 3.19 However, co-ordinating funding streams and investment programmes in such projects is not always in the gift of the planning authority, and there may be a need to ensure that, wherever possible, public funds as well as agreement on the method of gathering developer contributions is identified and achieved early in the Development Plan making process wherever possible. This would be to ensure that the range of fiscal measures necessary for delivery are agreed and committed to delivering the development strategy, and hence bring greater certainty to the achievement of proposed planning outcomes. Such 'business planning' should become a central part of the planning process and is one model that is already in the early stages of operation in English Growth Areas, such as Milton Keynes. Perhaps this method merits further consideration in Scotland.

**Director of Environment  
East Lothian Council  
Haddington  
20 June 2007**

## RESPONDEE INFORMATION FORM

Please complete the details below and attach it with your response. This will help ensure we handle your response appropriately:

Name: Ian Glen

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Consultation title: **STATUTORY GUIDANCE ON PLANNING AND SUSTAINABLE DEVELOPMENT: DRAFT FOR CONSULTATION**

1. Are you responding as: (please tick one box)

- (a) an individual  (go to 2a/b)  
(b) **on behalf of** a group or organisation  (go to 3)

2a. **INDIVIDUALS:** Do you agree to your response being made available to the public (in SE library and/or on SE website)?

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