



THE SCOTTISH OFFICE
Development Department

Planning Advice Note

PAN 41 Revised 1997

DEVELOPMENT PLAN
DEPARTURES



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planning series:

- National planning policy guidelines (NPPGs) provide statements of Government policy on nationally important land use and other planning matters, supported where appropriate by a locational framework.
- Circulars, which also provide statements of Government 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 Government policy contained in NPPGs and Circulars may, so far as relevant, be material considerations to be taken into account in development plan preparation and development control.

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introduction

1. In 1994, *National Planning Policy Guideline (NPPG) 1: The Planning System* was published and the status of development plans in making planning decisions was enhanced by section 18A of the Town and Country Planning (Scotland) Act 1972 (added by section 58 of the Planning and Compensation Act 1991). Since then, it has been even more important that procedures for approving applications which depart from the development plan are clearly stated and carefully observed, to ensure public confidence in the fairness of the system. These departure procedures are set out in the Town and Country Planning (Development Contrary to Development Plans) (Scotland) Direction 1996 which was issued under cover of SODD Circular 10/1996 (a copy of the Direction is at annex B). The revised Direction was issued to simplify the procedures to take account of the new structure of local government from 1 April 1996. This revised PAN updates the good practice advice in line with the simplified procedures.

2. This PAN supplements the general advice on good practice issued in *PAN 40: Development Control*. It does not affect arrangements under the Town and Country Planning (Notification of Planning Applications) (Scotland) Direction 1997¹ which consolidates previous Directions relating to the notification of applications to the Secretary of State.

Directions affecting Development Plan Departures

The **Town and Country Planning (Development Contrary to Development Plans) (Scotland) Direction 1996** (the DCDP Direction), a copy of which is at annex B, authorises planning authorities to grant planning permission for developments which do not accord with the provisions of approved structure plans or approved and adopted local plans, provided that the requirements set out in the Direction are followed.

The **Town and Country Planning (Notification of Planning Applications) (Scotland) Direction 1997** (the Notification Direction) lists the categories of application to be notified to the Secretary of State. Under paragraph 8 of the Schedule to the Direction, if applications are deemed by the planning authorities to be significant departures from an approved structure plan² and the authority is minded to approve them, they must be notified under the Notification Direction.

background to advice

3. Before NPPG 1 and the previous PAN 41 were issued, the Commissioner for Local Administration in Scotland (the Ombudsman) was concerned at the ease with which departure applications could be granted despite considerable public objection and, sometimes, contrary to the advice of planning officials. Whilst the Ombudsman accepted that authorities determining planning applications may have regard to other material considerations, he concluded that an authority should also be expected to give written

¹ Annex A to SODD Circular 411997

² Or a local plan which has been approved by the Secretary of State under section 12 (4) of the Town and Country Planning (Scotland) Act 1972.

reasons for approving all cases of development contrary to development plan policies. A failure to do so may be interpreted as maladministration.

4. Whilst NPPG 1 and the earlier version of PAN 41 have done much to minimize inconsistencies in the operation of the departure procedures, authorities should still be aware of the need for procedures relating to departures to be more explicit and more rigorously observed. This is particularly important in the light of section 18A of the Town and Country Planning (Scotland) Act 1972, as inserted by section 58 of the Planning and Compensation Act 1911, which has enhanced the status of development plans in the making of planning decisions.

5. Many planning authorities have applied effective procedures for dealing with departures and these are reflected in this revised good practice advice note.

summary of best practice

6. Five key stages of good practice are set out below and elaborated in later sections:

- ***Deciding what constitutes a departure:*** it will be easier to identify whether an application is a departure from the development plan if the plan contains clear policies, reasoning and explanation. An application for development which is not covered by a development plan should be regarded as a departure. If in doubt, the authority should treat the application as if it were a potential departure, subject to the procedures outlined in this PAN.
- ***Giving publicity to departures:*** if an application is, or could be regarded as being, contrary to the development plan, the authority should advertise it as soon as practicable after the date of receipt. See annex A.
- ***Taking account of representations:*** departure applications challenge approved policies and should be handled with particular care. Authorities should consider using their discretion to give respondents the opportunity to appear at the planning committee, or at a special hearing or delegated/sub-committee meeting.
- ***Informing respondents:*** where an authority decides to approve a departure and the consent has been issued, a copy of the statement of reasons should be sent to all those who made representations. In contentious cases authorities should consider placing a notice in the local newspaper indicating where a copy of the statement of reasons can be found, for example in a local office or library.
- ***Monitoring departures and updating plans:*** a large number of departure approvals will undermine the credibility of development plan policies and the effectiveness of development control. Systematic monitoring will help to indicate when a development plan requires to be altered.

deciding what constitutes a departure

KEY ADVICE

- ***Ensure that development plan policies are concise, precise and based on sound reasoned justification (paras 7 & 8).***
- ***If uncertain, treat application as a potential departure which is subject to the procedures in this PAN (para 9).***
- ***All departures, or potential departures, from the development plan must be advertised (para 9 & 10).***
- ***The Notification Direction 1997 requires that significant departures from an approved Structure Plan be notified to the Secretary of State (para 11).***
- ***No “significance test” is applicable under the DCDP Direction 1996 as all departures from the Development Plan must be advertised and the DCDP procedures followed (para 11).***

7. The first step for authorities in operating the DCDP direction is to decide whether a planning application which they have received is contrary to the development plan. Does it in fact constitute a departure? Problems arise where development plan policies are either too general or criteria-based or where there is no up-to-date development plan coverage. It is not helpful when non-statutory policy statements approved by Council resolution sometimes supersede and contradict statutory planning policy yet no follow-up action is taken formally to alter the development plan. It is important that development plan policies and proposals are as clear and precise as possible.

8. Advice on the wording of policies in both local and structure plans has been issued in PANS 37 (Revised 1996) and 49 on structure and local planning. Ambiguous expressions such as “generally” or “where appropriate should not be used unless the exceptions are defined in the policy. In particular, policies should not be framed to accommodate every possibility. Where applications have to be assessed against criteria-based policies, it is important that such policies are also precise and specific so enabling a departure, or potential departure, to be identified as easily as possible. A structure or local plan policy should be self-contained and not depend on other documents for interpretation.

9. Where an authority is uncertain, the planning application should be treated as a ‘potential’ departure and be advertised on receipt. Thereafter, the departure procedures as described in this PAN should be followed. Any increase in advertising and administrative costs should not be significant and should be offset by the reduction of costs of correspondence in dealing with post-decision controversy.

10. As a result of consultations and assessment of relevant policies, an authority which did not consider an application to be a departure on receipt, may conclude that it is contrary to the development plan. In such cases, it is important to begin departure procedures, even at this late stage, and to advertise the application as soon as possible. The authority should then reassess the application in the light of any representations. Whilst this may lead to some delay in a few cases, it will help to ensure adequate publicity and opportunity for representations.

Notifying Significant Departures To The Secretary of State

11. The Notification Direction 1997 (issued under cover of SODD Circular 4/1997), requires that significant departures from an approved structure plan³ must be notified to the Secretary of State. It should be clearly understood that this significance test is separate from, and additional to, the DCDP Direction 1996, which requires that all departures from the development plan must be advertised and any resulting representations considered. In this context it should be noted that paragraph 2 of the DCDP Direction provides that the Direction “does not apply to an application for planning permission to which an article 17 direction applies, during the restriction period referred to in such direction.” This means that a planning authority cannot grant permission for a departure under the powers contained in the DCDP Direction during the period in which paragraph 2 of the Notification Direction (which is ‘an article 17 direction’) prevents an authority from granting planning permission following notification of an application to the Secretary of State. This period allows him to decide what action, if any, he is going to take on an application notified to him.

12. Consistency in defining “significant” development plan departures continues to be important, although local government reorganisation raises some new issues. In areas where responsibility for structure planning rests with one authority in the new local government structure, a consistent approach can be expected. Where more than one authority is involved, authorities may wish to consider whether there would be an advantage in jointly agreeing a single view of what constitutes a significant departure from an approved structure plan. In the final analysis it is, of course, a matter for the individual authority to determine.

giving publicity to departures

KEY ADVICE

- ***Advertise a departure, or potential departure, as soon as practicable after receipt (para 13).***
- ***Ensure that those likely to be affected by the proposal are aware of its receipt (para 14 & 15).***

13. To ensure that all possible objectors are identified as early as possible, planning authorities should advertise applications which they consider to be departures, or **potential** departures, as soon as practicable after the **receipt** of the planning application by way of a notice in a local newspaper (an example of this Notice is given in annex C). Normally it is expected that the application would be advertised within 7 days of receipt (see annex A). Having advertised the application, the planning authority then has to consider any representations received within 21 days of the first publication of the notice.

14. It is important when advertising applications that planning authorities make it clear which policies are being contravened and that departure cases are advertised in a way which clearly distinguishes them from bad neighbour and other types of applications. In addition to the notice of advertisement, other forms of publicity for example leaflets, notices in libraries and weekly lists to community councils can all be used to ensure adequate publicity within the community is given to departures.

³ Or a local plan which has been approved by the Secretary of State under section 12 (4) of the Town and Country Planning (Scotland) Act 1972.

15. Before any application can be formally registered the applicant has to ensure that persons in the immediate vicinity of the proposed development have been notified and has to provide the authority with a neighbour notification certificate. This certificate can be used with information from other sources, such as the council tax register, to identify people who may have a particular interest in a potential departure. In this way, councils can ensure that those persons likely to be most affected are given the opportunity to make representations at the outset. It should also be noted that the period allowed, by article 14 of the Town & Country Planning (General Development Procedure) (Scotland) Order 1992, for submission of representations is a minimum; so authorities have scope to extend this period where they think it is appropriate.

taking account of representations

KEY ADVICE

- ***Authorities should consider whether it might be appropriate to give all those who made representations the opportunity to appear at the planning committee or at a special hearing or delegated/subcommittee meeting (paras 16 & 17).***

16. Authorities may offer respondents the opportunity, if they so request, of appearing before them to state and explain their representations. Although such an invitation remains at the discretion of the authority, selective use of the practice can lead to greater confidence by the public in the planning authority's decision. In deciding whether to exercise their discretion to allow respondents to appear, the authorities should be guided by:-

- how up-to-date the development plan is, and the relevance of the policies to the proposed development;
- the degree to which other material considerations are raised by the representations; and
- the degree of local interest and controversy.

If respondents are offered the opportunity to appear before the planning committee, applicants should similarly be allowed to appear to support their applications.

17. Attendance at committee may be a problem, for example in remote, rural areas or where the applicant does not live locally. In these circumstances, authorities should use their discretion to hold a delegated or devolved hearing in a local office or, if this is not warranted, deal with the respondents by correspondence in the usual way. A balance has to be struck between the costs of staff and delay and the benefits of confidence that arise from a decision in which interested parties have had a genuine opportunity to participate.

18. Where many departures from development plans occur, this will cause delay and affect overall development control performance. A high level of departures is clearly undesirable and authorities should review policies which are not performing effectively with a view to altering their development plans.

informing respondents

KEY ADVICE

- ***Once a consent is issued, a copy of the statement of reasons should be sent to all those who made representations on the application (para 19).***
- ***If there has been a large number of representations made, authorities should consider placing a notice in the local newspaper indicating where a copy of the statement of reasons can be found (para 20).***

19. If public confidence in development plans is to be maintained, there has to be an obligation on authorities not only to inform respondents but also to give clear reasons for the decision to breach established policy. A suggested extract of the Statement of Reasons is at annex D. A number of authorities already follow good practice in informing respondents of the reasons why permission was refused or granted. Such practice should be applied generally.

20. The benefits from reduced post-decision correspondence on disputed decisions should off-set the costs of informing respondents of the reasons for approving applications. However, where a large number of representations or petitions have been lodged it will be more appropriate to place a copy of the decision (with reasons) in a local office, or library rather than have it sent to each individual. Its location should be referred to in an advertisement in a local newspaper.

21. The need for reasons to be given to third party respondents is not affected where an authority comes to a late view on whether or not an application is a departure. For example, as the decision stage is approached, the authority may conclude that an application that has been advertised as a potential departure does, in fact, constitute a departure. On the other hand, the authority may conclude, after a full assessment, that the application does not constitute a departure after all. In both cases the authority should nevertheless issue the decision notice, whether a consent or refusal, with reasons, to those who made representations at the consultative stage.

monitoring departures and altering plans

KEY ADVICE

- ***Authorities should be aware of the number and type of departure cases they are dealing with as monitoring will indicate the need to alter or replace existing policies (para 22).***
- ***Authorities should keep a public record of departures from development plans (para 23).***

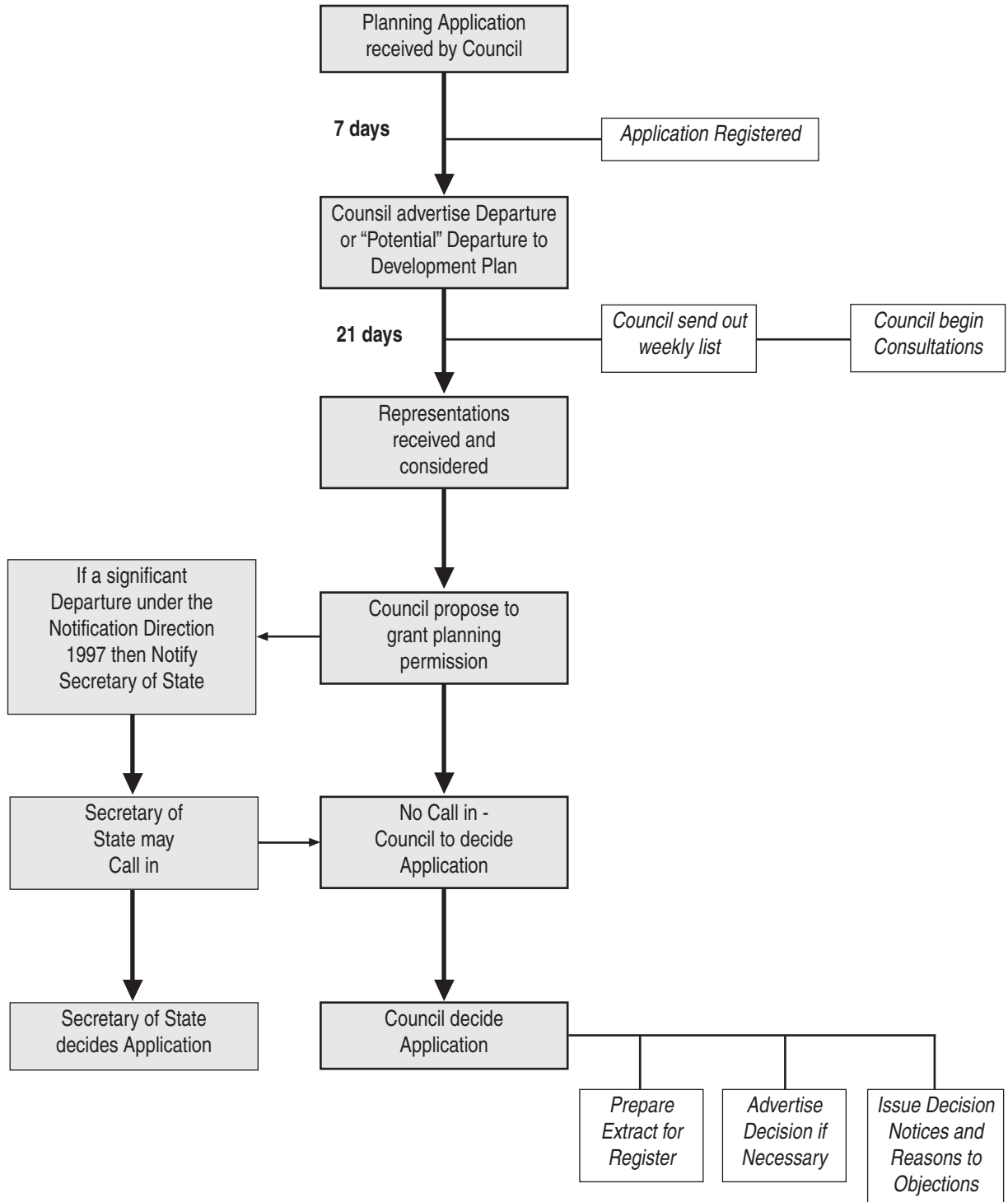
22. Local authorities should not use the departure procedure as an alternative to the public participation requirements associated with formally altering a local plan. Local plan alteration relates more to substantive and significant policy changes which could change the overall direction of the relevant development plan. However, most individual departure applications are not of this significance and the departures procedure should therefore be used as normal practice. It is important that authorities should be aware, from their own records, when they are having to cope with a relatively large number of a specific type of departure case. As the departure procedure is not a substitute for up-to-date development plans, the cumulative effect of dealing with a large number of departure applications will indicate the need to alter or replace existing policies, and it is therefore essential for authorities to monitor this.

23. NPPG 1 asks planning authorities to keep a public record of departures from structure and local plans. They are advised to reference each departure by local plan area, present it in a form easily understood by the public and publicise the existence of the record. Information on departures is collected by The Scottish Office Development Department every 6 months.

notes

24. Enquiries about the content of this advice note should be addressed to Lisa Walker (0131-244-7525). Further copies and a list of current NPPGs and PANS may be obtained from Sandra Carey, Area 2-H, Victoria Quay, Edinburgh EH6 6QQ (0131-244-7540).

annex A: diagram of good practice for applications under the DCDP Direction



See PAN 40 for general good practice advice on development control.

THE TOWN AND COUNTRY PLANNING (DEVELOPMENT CONTRARY TO DEVELOPMENT PLANS) (SCOTLAND) DIRECTION 1996

The Secretary of State in exercise of the powers conferred on him by Article 18 of the Town and Country Planning (General Development Procedure) (Scotland) Order 1992(a) and all other powers enabling him in that behalf, hereby gives the following Direction:-

Interpretation

1. In this Direction “an article 17 direction” means a direction given by the Secretary of State under article 17 of the Town and Country Planning (General Development Procedure)(Scotland) Order 1992 restricting the grant of planning permission by a planning authority and “ the restriction period referred to in such direction” is the period during which the planning authority is prevented from granting planning permission by reason of the restriction imposed by the direction.

Application

2. This Direction does not apply to an application for planning permission to which an article 17 direction applies, during the restriction period referred to in such direction.
3. Planning authorities are hereby authorised to grant planning permission for development which does not accord with the provisions of the development plan provided -
 - (a) they have published a notice in a local newspaper circulating within their district, giving details of the application and where it and any relevant plans and other

(a) S.I. 1992/224 amended by S.I.s 1992/2083, 1993/11039, 1994/2585 and 3293 and 1996/467

documents may be examined, and requesting that representations be made in writing within 21 days of the date of the first publication of the notice; and

(b) they have considered any representations so made.

4. The Town and Country Planning (Development Contrary to Development Plans) (Scotland) (No.2) Direction 1994 is hereby revoked.

5. This direction may be cited as the Town and Country Planning (Development Contrary to Development Plans) (Scotland) Direction 1996 and shall come into force on 1st April 1996.

Assistant Secretary,
The Scottish Office Development Department

Victoria Quay
Edinburgh
1 April 1996

annex C: notice of advertisement

Example of a Notice of Advertisement for Departures and Potential Departures.

(NAME OF PLANNING AUTHORITY)

The following planning applications have been lodged for determination with this authority, and are available for inspection at the Planning Department at the address below or the local library as stated. They are all departures or potential departures from the adopted/ approved development plans for the areas concerned.

Ref:	Proposal/ Site	Policies Contravened (including name of structure or local plan)	Library
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Representations about these applications should be sent in writing within 21 days from the date of this to notice to the Director of Planning (name and address of authority).

annex D: extract for third party objectors

*Suggested extract of Statement of Reasons to be sent to third party objectors.
It should be attached to the Decision Notice.*

Reference:
Office Contact

Dear Objector

TOWN AND COUNTRY PLANNING (DEVELOPMENT CONTRARY TO DEVELOPMENT
PLAN)(SCOTMND) DIRECTION 1996

Proposal Description

Address

I refer to your objection/ representation regarding the above proposal received by this office on
(date). The (name of planning authority) has decided to approve this
application as a departure to the Development Plan for the following reasons:
(2/3 sentences of reasons).

Yours faithfully

DIRECTOR

