

Helensburgh Study Group

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The Scottish Government's Development Management Consultation Paper

The Helensburgh Study Group (referred to below as the Study Group) welcomes the consultation on development management. We agree with much of its content and recognise that it contains some advances in local community engagement in planning.

The Study Group has worked with the Helensburgh Community Council (HCC) in preparing the HCC's submission which addresses the consultation paper's **set questions**. We wish it to be recorded that **the Study Group supports the HCC representations** and does not repeat them here. The Study Group addresses below related issues not directly covered in the set questions. We trust that our observations will be treated no less seriously for going beyond those set questions.

1. **Need to define some terms used.** We commend the inclusion of an "Interpretation" section in Part 1 of the draft regulations, but we consider that it needs to be extended. We also support paragraph 1.1 of the explanation which makes clear that "development management" refers to processing planning applications, but we suggest that it should also be included in the regulation's section 2 of Part 1 on Interpretation.

We consider that other terms require clarification. Below we identify some and suggest definitions.

(a) **The word "local".** Loose use of the word "local" in planning and other governmental documents needs to be replaced by more precise definition. The contrast between a "local authority" (large area) and a "local community" (small area) is causing confusion. The Introduction (section 2.2) of Annex D refers to involvement of "local people". That raises the question : are these "local" to a local authority or "local" to a local community ? Presumably the latter, but it needs to be made clear. If not, the people of Helensburgh would be involved in decisions about Mull, which is self-evident nonsense.

Another example appears in section 2 (Interpretation) of the draft regulations where there are references to "local advertisement" and "local newspaper". See also section 8(2)(b) and section 26(2) of the draft regulations. **"Local" should refer to a local community – see 1(b) below.**

Further, national developments may be local in their main effects, but could be relevant nationally. We suggest that these should be advertised in both the local and the national press.

(b) **"Community" and "local community".** The word "community" cannot be defined satisfactorily as PAN 81 rightly indicated. **The word "community" on its own should therefore not be used in any planning documents at all.** For regrettable examples, see, the consultation paper, paras. 6.10 and 7.13; in Annex D, paras. 3.13, 3.15, 3.17, 3.19, 3.23, 7.6; and "Step One" of Annex E. However, "local community" should be both defined and used. It might be defined in law as **"those people living within the territory designated for a community council"**. (Where there is no community council or no delineated territory, we understand that the Wheatley Commission had a formula based on parishes.)

It is important to be clear what "local community" means in the Consultation Paper's statements such as "pre-application consultation with local communities" (para. 2.3), "informing the local community" (para. 7.10), "awareness more widely in the local community" (para. 12.1), "consultation with local communities" (Annex D, para. 5.14). The concept of "local community" is integral to the 2005 White Paper, to much of the thinking behind the 2006 Planning Act and to various SPPs and PANs. With our definition, these prescriptions have much more meaning.

Yet the term "local community" does not appear at all (as far as we can see) **in the draft regulations on Development Management**. It seems that in legal terms local community involvement is being sidelined apart from community councils. We guess that this is for either of two reasons : first because "local community" has not been defined, but above we have offered a definition which has its basis in law (the 1973 Local Government (Scotland) Act). Secondly, it may be because the Scottish Government only wants to *talk* about local community involvement without giving it status or legal recognition. By excluding local communities from the law, a major and important policy is seriously diminished. Local community engagement should be integral to the regulations.

The Study Group recognises that, appropriately, community councils do get attention in the draft regulations. But that is no substitute for wider local community involvement in planning by other local organisations (see para. 30 of PAN 82) and by individual residents who may wish to be engaged. Thus, it is crucial that "local community" is defined and is then included in the regulations to give effect to Scottish Government policy of local community engagement in planning.

Further, planning authorities might develop and amend annually a list of local community consultee groups which do meet the description in para. 30 of PAN 82, with appeal to the Scottish Government on unfair exclusion.

(c) **Efficiency** is repeatedly referred to as one of the aims of the Act. But the word "efficiency" may get used merely as an excuse for doing things faster to the detriment of other valid aims. It is important to define efficiency. We suggest : **"effectiveness with least unjustified delay"**. The emphasis should be on **effectiveness** which includes all the aims in the 2005 White Paper. Those aims should not be discounted on the grounds of undefined "efficiency".

(d) **Stakeholders** are, according to stakeholder theory, those with a stake in an enterprise who should have a say in that enterprise but do not necessarily make final decisions. Thus local residents / communities are key stakeholders because they must live with the consequences of planning decisions. However, the Scottish planning system seems to limit the term to those organisations it selects for involvement – perhaps because they have power, status or money. If true, we see the latter as an unhelpful distortion of the proper use of the term.

(e) **Consultation, involvement and engagement**. In our view, planning documents to date have not distinguished adequately between these three terms, though the issue is touched on in paragraph 11 of PAN 81 which regards consultation and engagement as interchangeable terms for the purposes of that PAN. However, we suggest that more precise meanings have a bearing on development management and we regard it as important have clarity. We suggest :

Consultation	=	invited response from one party to others about proposals from that party; it is reactive and often late in the process.
Involvement	=	early, interactive and meaningful participation between two or more parties to develop proposals jointly.
Engagement	=	overarching term to embrace both involvement and consultation.

Without certainty about differences between these terms, policy about local community engagement becomes confused. Assuming that confusion is not the intention, then definition is essential.

2. **Landscape.** Paragraphs 185 and 186 of the National Planning Framework 2 (2008) make reference to the European Landscape Convention and to the Scottish Landscape Forum's excellent report *Scotland's Living Landscapes : Places for People*. But the issue of landscape, as defined in these sources (in effect the whole environment around us), has been given insufficient attention in the consultation paper or the draft regulations. We are not referring here just to scenes of outstanding beauty. We are referring to the whole visual environment in which people live. As the SLF report argues, this is fundamental to both human and economic welfare.

Section 6 of the consultation paper refers to design and access, but it omits visual amenity in regard to planning applications. To facilitate inclusion of landscape, it might be introduced as a sub-set of "design" in the regulations, but it would be better if it were to be given a separate section in the regulations. The matter could also be included in Planning Permission in Principle (section 4) so that landscape as a totality (as distinguished from 'landscaping' which is more limited) would be part of PPP, but statutory consultees and local organisations which meet the criteria of para. 30 of PAN 82 should be involved.

3. **Planning control, civic conscience and the delegation of tension.** The essence of the planning system seems to us to be one of bringing balance and fairness to the multiple forces at work. That requires both a sense of civic conscience and a degree of control. Control is not wrong if it is used in pursuit of civic conscience (agreed standards and fairness) in our view.

Some of the most powerful forces in planning are concerned with money, often large sums, both intrinsic and planning gain. This risks diluting civic conscience and people seeking gain within the system. These require control. They also create tensions. Decentralisation can amount to a delegation of these tensions. There needs to be a central civic conscience to which to refer.

Civic conscience includes not only the broad elements of economic advance, sustainability and fairness (see the 2005 White Paper), but also more detailed matters of good design, landscape considerations, and sensitivity to setting, local characteristics and local community needs and wishes. Because these either cost money or do not make money in the short term (even if they bring benefits in the long term) they tend sometimes to be diminished in local decision-making.

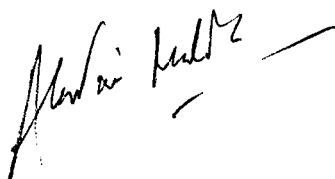
In such circumstances, it is important that the regulations have robust mechanisms for referring to a higher authority matters which conflict with civic conscience. That takes time and will be portrayed as "inefficient". But if efficiency is effectiveness with least unjustified delay (see above) then referral on grounds of civic conscience is necessary.

The upshot is that the regulations need to include stronger powers of referral than they contain at present and (since community / second party right of appeal has been refused) they require a reduction in developers' right of appeal as well.

Might there also be merit in reviewing the RTP1 Code of Professional Conduct to increase civic conscience ? We recognise that this is not a matter for the Scottish Government, but the changes in planning resulting from the new legislation might warrant assessing the issue.

4. **Summary of main points :**

- greater precision is needed in the use of words;
- there should be fuller reference *in the regulations* to 'local community' involvement;
- landscape (in its broad sense) should be included in the regulations as a key facet;
- stronger mechanisms of civic conscience (including local community referral to Scottish Ministers) are needed to ensure fairness and balance in the system.



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