



82

LOCAL AUTHORITY INTEREST
DEVELOPMENTS

PLANING



SCOTTISH EXECUTIVE
Development Department

Planning Advice Note

PAN 82

Local Authority Interest Developments

PLANNING SERIES:

- **Scottish Planning Policies (SPPs)** provide statements of Scottish Executive policy on nationally important land use issues and other planning matters, supported where appropriate by a locational framework.
- **Circulars**, which also provide statements of Scottish Executive 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 Scottish Executive policy contained in SPPs and Circulars may be material considerations to be taken into account in development plan preparation and development management.

Existing National Planning Policy Guidelines (NPPGs) have continued relevance to decision making, until such time as they are replaced by a SPP. The term SPP should be interpreted as including NPPGs.

Statements of Scottish Executive location specific planning policy, for example the West Edinburgh Planning Framework, have the same status in decision making as SPPs.

The National Planning Framework sets out the strategy for Scotland's long-term spatial development. It has the same status as SPPs and provides a national context for development plans and planning decisions and the ongoing programmes of the Scottish Executive, public agencies and local government.

Important Note: In the interests of brevity and conciseness, Scottish Planning Policies do NOT repeat policy across thematic boundaries. Each SPP takes as read the general policy in SPP1, and highlights the other SPPs where links to other related policy will be found. The whole series of SPPs should be taken as an integral policy suite and read together.

CONTENTS

	Paragraph
Introduction	1
Multiple roles and responsibilities of local authorities	5
When does a local authority have an interest?	7
Public Private Partnership (PPP) projects	11
Local authority interest in Development Plan land allocations	12
Effective public consultation	15
Planning assessments – distancing planning consideration from the corporate view	18
Separation of staff responsibilities	20
Notification to Scottish Ministers	21
Understanding the notification requirement	25
Prior consultation with objectors	36
Scottish Ministers’ role and approach to call-in	40
Conclusions	44
Enquiries	47

mail

INTRODUCTION

1. Local authorities are the planning authorities for their areas. As such, they are charged with delivering sustainable development needed by their communities, ensuring development is of the best possible quality, and directing it to the most appropriate locations. They must also protect their areas from inappropriate development. This can involve making some difficult, and sometimes unpopular, decisions; but doing so with clear reasons in the interests of the wider community.
2. Sometimes though, as well as carrying out their statutory role as planning authorities, local authorities also find themselves with a further interest in a development proposal, and perhaps with something to gain as an organisation from the development proceeding. This can lead to a potential conflict of interests.
3. This Planning Advice Note offers advice to planning authorities, and also to other interested parties, on the expected standards of assessment and scrutiny of development proposals where the local authority has an interest. It also explains the procedures to be followed, where relevant, and discusses the situations where Scottish Ministers may consider it necessary to become involved in decision-making.
4. In some circumstances, a National Park Authority takes the responsibilities of the planning authority for its area. Where this occurs, the advice in this note is equally relevant.

MULTIPLE ROLES AND RESPONSIBILITIES OF LOCAL AUTHORITIES

5. Local authorities must carry out a range of developments themselves, or perhaps support other developments, in the exercise of their duties. A number of these developments may be promoted as a result of the discussion and agreement in community planning partnerships. Local authorities also own large areas of land within their boundaries, and sometimes it will be appropriate or necessary to release some of that land for development by others.
6. It is almost inevitable that conflicts of interests can sometimes be perceived to arise when a planning authority is considering future development. That is simply a normal consequence of being a local authority with a range of duties and responsibilities, and having been elected to act in the best interests of their communities. The key to resolving any possible or perceived conflict of interests in future development comes down to ensuring that a full, thorough and open planning assessment is carried out in the same way as it would be for any other private development proposal.

WHEN DOES A LOCAL AUTHORITY HAVE AN INTEREST?

7. There are different ways in which local authorities might have an “interest” in a development, and therefore stand to benefit in some way from development proceeding. For example:
 - Where the council, as well as being the planning authority, is also the developer.¹
 - Where the council is the landowner, and so would gain a capital receipt for sale or lease of its land.
 - Where the authority is working in partnership with other bodies.
 - Where the authority is likely, in future, to enter into a contract or be a future operator in relation to the development.
 - Where the developer is financially supported or sponsored by the local authority.
8. Sometimes a local authority can obtain some benefit through planning gain as part of the terms of a planning permission. For example, this might be the case in circumstances where necessary infrastructure improvements (for example to roads, sewerage, educational facilities etc.) are provided or paid for by the applicant. It can be reasonable that such benefits are secured by local authorities where the need for new or improved facilities are a necessary and direct consequence of the proposed development and where they are proportionate to the scale and impact of the development. In general, situations like this are unlikely to lead to any conflict of interests at the planning authority and the achievement of such forms of gain need not necessarily mean that the development should be treated as a local authority interest case for the purposes of the notification arrangements set out later in this note.
9. However, any planning gain on offer should only be considered if essential to enable the development to proceed, and should not be excessive in terms of the scale or impact of the development. Otherwise, this might carry the appearance to some people of an attempt to secure planning permission by offering some benefit to the local authority. In circumstances such as these, planning authorities will need to consider whether they might be viewed as having an interest in the development proceeding.
10. Not all developments require to be the subject of planning applications. Some have the benefit of ‘permitted development rights’ – which grant a general planning permission for certain developments across Scotland, removing the need for a planning application – and some of these rights will apply to local authority interest developments. The advice in this note is not relevant to proposals which carry permitted development rights.

¹ The *Town and Country Planning (Development by Planning Authorities) (Scotland) Regulations 1981* were revoked in April 2007, thereby discontinuing the Notice of Intention to Develop procedure previously followed where the planning authority was also the developer. See SEDD Planning Circular 3/2007.

PUBLIC PRIVATE PARTNERSHIP (PPP) PROJECTS

11. By their very nature, developments proposed as part of PPP schemes (where the local authority is the public partner procuring the development) will fall within the definition of a local authority interest development and the local authority will therefore need to follow the advice and procedures set out in this PAN. Further advice, specific to handling PPP schemes through the planning system, is available in PAN 55: *The Private Finance Initiative and the Planning Process*.

LOCAL AUTHORITY INTEREST IN DEVELOPMENT PLAN LAND ALLOCATIONS

12. Planning legislation requires that planning decisions are made in accordance with the development plan, unless material considerations indicate otherwise. It is important therefore that, where a local authority intends to pursue or support particular development projects in the future, staff responsible for promoting such developments fully engage with their planning colleagues during the preparation of the development plan to allow their requirements to be considered through the emerging plan. This will ensure that the authority's intentions are clearly known from the outset, allowing for any necessary public debate and scrutiny of local authority proposals as part of the wider considerations of the future planning of the area.
13. Local authorities own significant areas of land within their boundaries, and it is not unreasonable that some of that land will be proposed for development. But as planning authorities, it is essential that any choices they make in selecting sites for future development through the development plan process must be based on the best interests of the planning of the area. Decisions should not be influenced by any possible conflict of interests or gain to the authority through the sale of its land to developers. The site selection process must be rigorous and transparent, so that it can be clearly demonstrated that choices have been made solely in the interests of proper planning.
14. As part of the modernisation of the planning system, all local development plans that allocate local authority-owned land for development will need to include a schedule of land ownership. This will ensure that the selection of council-owned sites, perhaps in preference to alternative sites, can be subject to full independent scrutiny in the preparation and adoption of local development plans. In addition, planning legislation already requires all planning applications to include information on land and property ownership and, as a result, detailed proposals for development on local authority land can be flagged up for extra scrutiny.

EFFECTIVE PUBLIC CONSULTATION

15. There are a number of ways in which the statutory planning system requires publicity to be given to development proposals. For example, immediate neighbours to any proposed development must be notified when planning applications are lodged, and community councils are advised of all applications within their areas. In addition, certain types of development must be advertised through public notice in a local newspaper, as must all proposals which would constitute a departure from the development plan. These statutory requirements all relate to actions to be carried out after plans have been drawn up and a planning application has been lodged.
16. In addition, and as a key element of the modernisation of the planning system, new procedures are being introduced to ensure effective pre-application consultations in certain circumstances, such as where an Environmental Impact Assessment is necessary or where the development would be significantly contrary to the development plan. Where relevant, these new procedures will apply to local authority interest developments. Further advice on effective public consultation is given in PAN 81: *Community Engagement – Planning with People*.
17. These statutory consultation requirements should be seen as the minimum level of local consultation. Proposals where the local authority has some involvement in the development, but is also the decision-maker, can naturally lead to some suspicion or scepticism by local people. Therefore it is particularly important that people have an understanding of what is being proposed, and why. The quality of local consultation will be a factor Scottish Ministers will consider when deliberating over planning applications that have been notified to them (see paragraphs 40 to 43).

PLANNING ASSESSMENTS – DISTANCING PLANNING CONSIDERATION FROM THE CORPORATE VIEW

18. In performing their wide range of functions and representing their communities, it is normal and reasonable that local authorities sometimes find themselves in a position where they both support development and must make a judgement on it as planning authority. It is essential that these respective functions are handled entirely separately, by different parts of the council. Local authorities, like any developer, can select their preferred site for a particular development and draw up plans that best suit their circumstances. It is also reasonable, and indeed advisable, in preparing plans for development, that the relevant department of the local authority engage in pre-application discussions with planning staff at the earliest opportunity, to discuss the proposal's prospects for securing planning permission, how it might be altered or improved if necessary to make it acceptable and what the likely timetable would be for reaching a decision. This is no different from best practice for any private development.

19. While the council, as a whole, may have reached a corporate view to propose or support a particular development, the planning authority must still carry out its statutory planning functions without interference. So once a planning application has been lodged, it is a matter for the council's planning officials and planning committee alone to carry out a thorough planning assessment – following all necessary procedures - and reach a decision in accordance with the development plan, unless material considerations indicate otherwise. The authority's corporate decision to support development must not take precedence over the need for a proper and fair planning assessment; nor should the authority's wish to proceed to a certain timetable.

SEPARATION OF STAFF RESPONSIBILITIES

20. In line with this need to respect the differing interests that can exist within the council, it is essential that, not only should there be an actual and clear separation between council officials sponsoring the development and planning staff considering the application, but also that the council's handling is transparent and that the separation of interests is clearly seen and recognised. The developing/sponsoring department might want to seek professional planning representation, in a consultancy capacity, to help take the proposal forward; and it could make sense to obtain this professional expertise by appointing planning staff already employed by the council. But where this happens, any planning staff involved in promoting development should be removed entirely from any contact and involvement in the planning department's assessment and decision on the application. Maintaining a clear barrier for planning staff processing applications, from other council interests, will be an important factor in ensuring public confidence in the system and in the council's actions.

NOTIFICATION TO SCOTTISH MINISTERS

21. The *Town and Country Planning (Notification of Applications) (Scotland) Direction 2007* (see *Scottish Executive Development Department Planning Circular 5/2007*) sets out circumstances in which planning authorities must notify Scottish Ministers where they intend to grant planning permission. This allows Scottish Ministers to consider whether there are reasons for them to intervene by calling in planning applications for their own determination. In relation to local authority interest developments, before granting consent planning authorities must notify Ministers where the proposed development:
- would be contrary to the development plan for the area; or
 - has been the subject of a substantial body of objections.

22. The notification requirement is structured in such a way so that only in certain circumstances will planning authorities need to notify local authority interest developments to Scottish Ministers. The main purpose of this process is to allow Ministers to consider whether any possible conflict of interests may have unduly influenced the planning authority, or have made it difficult for the authority to retain an impartial view of the merits of the proposed development. In such circumstances, Ministers will give serious thought to whether they should call in applications for their own determination. Proposals that do not fall within the criteria noted above are unlikely to require Ministerial intervention. It is for this reason that not all local authority interest developments should be notified to Ministers.
23. The terms of the Notification Direction, therefore, require a degree of interpretation as to how the Direction applies to individual planning applications. Local authorities, as the planning authorities for their areas, are best placed to judge whether a particular proposal is a departure from the development plan, or whether the body of objections has been substantial. The judgement on whether to notify will always be influenced by the individual circumstances and characteristics of the case. As such, it would not be appropriate to set absolute definitions to fit all circumstances.
24. In most cases, it will be clear whether an application should or should not be notified to Ministers. But there will be borderline cases where the need to notify is less certain. There have been times in the past when applications have not been passed to Scottish Ministers which perhaps should have been; sometimes to the disappointment of objectors who expected an opportunity to pursue their case with Ministers. On the other hand, there have also been many occasions where planning authorities have taken an extra-cautious approach and have notified Ministers unnecessarily; serving only to delay the consent process. The following paragraphs are intended to assist with the interpretation of the notification requirement, both to guide planning authorities on the matter and also to aid other people's understanding of why an application has, or has not, followed this notification procedure.

UNDERSTANDING THE NOTIFICATION REQUIREMENT

"Contrary to the development plan for the area"

25. Planning legislation places a statutory duty, when deciding a planning application, to make that decision in accordance with the development plan for the area, unless material considerations indicate otherwise. This duty ensures that development plans are firmly at the heart of the planning system, and are central to a planning authority's assessment of any application. In carrying out that assessment, the authority must identify all aspects of the development plan which are relevant to the proposed development, interpret them carefully taking account of the wider aims and objectives of the plan as well as the detailed wording of stated policies, and then reach a decision as to whether or not the proposal is in accordance with the development plan.

26. In many cases, deciding whether or not a proposed development is in accordance with the plan will be straightforward. It will clearly be out of accord with the plan if the development conflicts with a specific land allocation or designation. But it might not be so certain where a proposal is being assessed against more general or criteria-based policies, or where it is actively supported by some policies of the development plan but perhaps does not sit perfectly with other policies.
27. The planning authority is best placed to balance the range of policies and proposals and decide whether a proposal does or does not accord with the development plan, and is obliged to do so as part of its assessment of any planning application. In terms of this criterion for notifying Ministers, the only judgement to be made is whether or not the proposal constitutes a departure from the development plan; it should not be influenced by material considerations.

“Substantial body of objections”

28. There is evidence that, in the past, planning authorities have interpreted this term in different ways. It has sometimes raised questions over whether a “substantial body” should be determined by the number of objections alone, or whether it should also take into account the nature or relevance of the grounds of objection, or how the objections have been presented. The following paragraphs set out Ministers’ intentions in relation to local authorities determining whether or not a body of objections is indeed “substantial” for the purposes of the notification requirement.

Scottish Ministers should be notified where the planning authority considers the strength of opposition is a significant material consideration, taking account of all of the following factors:

- (a) the number of representations against the proposal, in the context of the locality;
- (b) where objections are from a group or organisation, the extent to which it may be representative of the community; and
- (c) the relevance, in planning terms, of those representations

Number of representations

29. The views of local people and the strength of public feeling will always be important factors in planning decisions. In terms of numbers of objections or objectors, what might constitute “substantial” will not be the same in all cases; much depends on the particular circumstances and nature of the area. For example, 10 objections may not be considered substantial in a built-up urban area; but it might be in a small rural settlement. For this reason, it would not be appropriate for Scottish Ministers to set a threshold over which notification would always be necessary. The planning authority should be much better

placed to reach a conclusion on whether the number of objections might be considered substantial; taking account of how the number and location of objectors relates to the local and wider population that could legitimately claim to be affected by the development.

Multiple objections and representative groups

30. There can be many different ways in which objections are presented; not all objectors write individual letters to the planning authority. Sometimes objections are lodged in the form of petitions or of standard/template letters to which people add their names and contact details. It cannot be assumed that those signatories feel any less strongly about the proposed development, although an individually considered expression of views might legitimately be seen as a clearer confirmation of the strength of those views. Sometimes a single group or organisation (e.g. a community council or a local action group) acts on behalf of a larger group of people when making representations. In these cases, a judgement will need to be made about how representative these groups or organisations, and their views, may be of the local population. Where such groups regularly engage proactively in the planning process and are normally very measured in their views of future development of their areas, but on a specific proposal have raised clear objections, that in itself might reasonably be treated as a substantial body of objection.
31. For the purposes of considering this requirement to notify Ministers, the level of public support for the proposed development, whilst in itself an important consideration, should not be used to offset the strength of opposition.

Relevance of grounds of objection

32. As stated above, planning decisions are made on the basis of the terms of the development plan and other relevant planning issues. While it is essential that legitimate local concerns are fully and fairly considered, the planning process should not be manipulated by a well-organised or well-resourced minority without a strong case to state against a particular development; public opinion cannot always be measured by the intensity by which some people pursue their arguments or campaigns.
33. The number of objections or objectors cannot be the sole deciding factor as to whether the body of objections has been “substantial”, but **the quality and relevance of the arguments presented will be paramount.**

The decision whether to notify Scottish Ministers

34. In deciding whether an application “does not accord with the development plan” or has attracted a “substantial body of objections” – and should therefore be notified to Ministers – planning authorities will need to contemplate all of these issues and make a judgement drawing on their knowledge of their areas and of the relevant issues. To carry out the notification procedure where there is no need to do so will lead to unnecessary delays to development, causing

frustration to some parties; and it may also give a degree of false hope to people who have lodged objections. Planning authorities should not therefore adopt a blanket approach to notifying local authority interest developments to Ministers without considering these relevant factors. But as a general rule, if having considered this advice planning authorities are unsure whether any particular application falls within the criteria, it would be best to err on the side of caution and notify Ministers, to ensure there is no doubt about there having been an appropriate level of scrutiny.

35. It is good practice for a planning authority to provide a clear explanation why it has concluded that a local authority interest development should or should not be notified to Scottish Ministers. This can generally be explained in the report to the council's relevant committee.

PRIOR CONSULTATION WITH OBJECTORS

36. The *Town and Country Planning (Notification of Applications) (Scotland) Direction 2007* introduces a new requirement for prior consultation with objectors on local authority interest developments. Its purpose is to enhance the scrutiny of such developments and the manner in which any objections have been considered to ensure confidence in a transparent decision-making process. This consultation should be carried out only where a planning application falls within the requirement to be notified to Scottish Ministers as a local authority interest development, as set out above, and should occur:

after the planning authority has resolved to grant planning permission; and
before Scottish Ministers are notified of the intended decision.

37. The planning authority must inform all objectors of its decision to grant planning permission and provide them with a statement of reasons for that decision. Those objectors must be afforded an opportunity to provide comments to the planning authority on that statement of reasons, and also to make representations to the planning authority and to Scottish Ministers if they consider that their earlier representations have not been properly dealt with by the authority. Objectors must be given a minimum of 14 days to lodge any further representations in respect of these matters. It is important that the planning authority clearly explains to objectors why they are being consulted at this stage, the basis on which further representations are being invited and what will happen to any further representations they make.
38. Following the receipt of any further comments as a result of this consultation, the planning authority must consider whether it remains minded to grant planning permission. If so, then at that stage the authority should notify Scottish Ministers as set out in the *Town and Country Planning (Notification of Applications) (Scotland) Direction 2007*.
39. *SEDD Planning Circular 5/2007* provides guidance to planning authorities on the submission of the relevant information to Scottish Ministers.

SCOTTISH MINISTERS' ROLE AND APPROACH TO CALL-IN

40. There can be a number of reasons why Scottish Ministers will intervene by calling in a planning application for their own determination. Ministers' general approach to doing so is explained in *SEDD Planning Circular 5/2007*. Local authority interest developments, notified to Scottish Ministers in the circumstances set out above, can also raise some procedural or handling issues which might lead Ministers to conclude that they should call in an application to decide it themselves. This is explained further below.
41. In considering what action to take, Scottish Ministers will continue to respect the role of local authorities as the planning authorities for their areas. Even where the authority has an interest in a development, it is not Ministers' intention to remove the decision-making responsibility for planning matters from local authorities where the decision should clearly be taken at a local level and where the council's proposed decision is reasonable. For this reason, it is not appropriate for Scottish Ministers to call in and decide every planning application where the local authority has an interest. However, Scottish Ministers have a responsibility for the statutory land use planning system, and they are determined that the system's reputation for fairness and impartial decision-making is maintained.
42. The manner of the planning authority's handling of local authority interest applications and the quality of its assessments will be important factors. In considering these notified applications, Scottish Ministers will want to be satisfied that a thorough planning assessment has been carried out and recorded, that the development plan and all material considerations have been reasonably applied, that local consultation has been sufficient and that all relevant views expressed have been suitably taken into account, and that the council's decision appears to be a logical conclusion on the basis of all relevant issues. If these matters do not appear to Ministers to have been appropriately dealt with, it could potentially lead to a conclusion that the local authority's conflict of interests may have unduly influenced its assessment and decision. This could certainly lead to Scottish Ministers calling in the planning application for their own determination. In exceptional circumstances, where Scottish Ministers consider that the level of financial (or any other) gain on offer to the local authority or any of its members would make it impossible for the authority to reach an impartial view, a planning application might be called in for that reason alone to ensure there is fair and transparent scrutiny of the proposed development.
43. In reaching a decision whether or not to call in an application where they have some concerns along the lines of the issues noted above, Scottish Ministers may also take account of the extent or severity of any possible failure of process, alongside the likely prospects for the application to ultimately be

approved, and perhaps also the need or urgency for the proposed development to be carried out. It would not be appropriate for Ministers to call in an application for what appeared to them to be a reasonable or necessary development, simply to close what might be perceived as a minor gap in process. Doing so might be an inappropriate use of public funds and an unnecessary delay to development.

CONCLUSIONS

44. It is not inappropriate for a local authority to have an interest in a development, and also to make a decision on a planning application for that development. However, any conflict of interests that might arise from having this dual role must not influence the authority's handling or planning decision.
45. Planning authorities should seek to treat any local authority interest development in the same manner that it would any other private development proposal. Scottish Ministers expect the highest standard of scrutiny, including a demonstration that such proposals have been subject to an adequate level of consultation. The planning authority's handling of these planning applications must also be transparent, showing that a full and proper planning assessment has been carried out and a reasonable and logical decision has been reached.
46. Ministers will not routinely intervene in local planning matters, simply because the local authority has some interest. But they will be more likely to do so if they have reason to believe that any conflict of interests at the authority may have had some undue bearing on the authority's consideration of a proposal. The procedures set out in this Planning Advice Note will ensure fair and proper scrutiny of local authority interest developments and help to increase public confidence in the council's role as planning authority.

ENQUIRIES

47. Enquiries about the content of this Planning Advice Note should be addressed to Andy Kinnaird, Scottish Executive Development Department, Planning Division, Area 2-H, Victoria Quay, Edinburgh, EH6 6QQ (0131 244 7079) or by e-mail to: Andy.Kinnaird@scotland.gsi.gov.uk. Further copies may be obtained by telephoning 0131 244 7543. A copy of this PAN is also available on the Scottish Executive planning website at www.scotland.gov.uk/Topics/Planning.



ISBN 978-0-7559-6612-7



9 780755 966127