

The Scottish Planning Policy and Housing

Technical Consultation On Proposed Policy Amendments

July 2020

Responding to this Consultation

We are inviting responses to this consultation by 23:59 on 9 October 2020.

Please respond to this consultation using the Scottish Government's consultation hub, Citizen Space (<http://consult.gov.scot>). Access the consultation online at <https://consult.gov.scot/planning-architecture/proposed-policy-amendments>. You can save and return to your responses while the consultation is still open. Please ensure that responses are submitted before the closing date of 9 October 2020.

If you are unable to respond using our consultation hub, please complete the Respondent Information Form and send it with your response by email to spphousingconsultation@gov.scot or by post to:

Planning and Architecture
Scottish Government
Area 2F South
Victoria Quay
Edinburgh
EH6 6QQ

Handling your response

If you respond using the consultation hub, you will be directed to the About You page before submitting your response. Please indicate how you wish your response to be handled and, in particular, whether you are content for your response to be published. If you ask for your response not to be published, we will regard it as confidential, and we will treat it accordingly.

All respondents should be aware that the Scottish Government is subject to the provisions of the Freedom of Information (Scotland) Act 2002 and would therefore have to consider any request made to it under the Act for information relating to responses made to this consultation exercise.

If you are unable to respond via Citizen Space, please complete and return the Respondent Information Form included in this document.

To find out how we handle your personal data, please see our privacy policy: <https://www.gov.scot/privacy/>

Next steps in the process

Where respondents have given permission for their response to be made public, and after we have checked that they contain no potentially defamatory material, responses will be made available to the public at <http://consult.gov.scot>. If you use the consultation hub to respond, you will receive a copy of your response via email.

Following the closing date, all responses will be analysed and considered along with any other available evidence to help us. Responses will be published where we have been given permission to do so. An analysis report will also be made available.

Comments and complaints

If you have any comments about how this consultation exercise has been conducted, please send them to the contact address above.

Scottish Government consultation process

Consultation is an essential part of the policymaking process. It gives us the opportunity to consider your opinion and expertise on a proposed area of work.

You can find all our consultations online: <http://consult.gov.scot>. Each consultation details the issues under consideration, as well as a way for you to give us your views, either online, by email or by post.

Responses will be analysed and used as part of the decision making process, along with a range of other available information and evidence. We will publish a report of this analysis for every consultation. Depending on the nature of the consultation exercise the responses received may:

- indicate the need for policy development or review
- inform the development of a particular policy
- help decisions to be made between alternative policy proposals
- be used to finalise legislation before it is implemented

While details of particular circumstances described in a response to a consultation exercise may usefully inform the policy process, consultation exercises cannot address individual concerns and comments, which should be directed to the relevant public body.

Title: The Scottish Planning Policy and Housing - Technical Consultation On Proposed Policy Amendments

RESPONDENT INFORMATION FORM

Please Note this form **must** be completed and returned with your response.

To find out how we handle your personal data, please see our privacy policy:
<https://www.gov.scot/privacy/>

Are you responding as an individual or an organisation?

- Individual
 Organisation

Full name or organisation's name

Phone number

Address

Postcode

Email

The Scottish Government would like your permission to publish your consultation response. Please indicate your publishing preference:

- Publish response with name
- Publish response only (without name)
- Do not publish response

Information for organisations:

The option 'Publish response only (without name)' is available for individual respondents only. If this option is selected, the organisation name will still be published.

If you choose the option 'Do not publish response', your organisation name may still be listed as having responded to the consultation in, for example, the analysis report.

We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

- Yes
- No

The Scottish Planning Policy and Housing

Technical Consultation On Proposed Policy Amendments

Overview

1. The Scottish Ministers are consulting on proposed interim changes to the Scottish Planning Policy (SPP) (2014) to clarify specific parts of the Scottish Planning Policy that relate to planning for housing.
2. The changes, once finalised, will apply over the interim period ahead of the adoption of National Planning Framework 4 (NPF4). Publication of the draft NPF4 is expected in September 2021. Following consultation and consideration by the Scottish Parliament, SPP will be fully replaced when the final version of NPF4 is published in 2022.

Why We are Consulting

3. The Scottish Government is committed to a plan-led planning system. This was comprehensively supported by a wide range of stakeholders through the review of the planning system. Development plans form the basis of planning decision-making to enable the right developments in the right locations.
4. The context for planning for housing in Scotland has changed significantly in recent months. The pandemic is having an impact on the ability of planning authorities to maintain the review cycle of local development plans within the timeframes they intended. We expect that more development plans will extend beyond five years in the coming months and are keen to support authorities in adapting to the current circumstances. The pandemic is also affecting delivery programmes and the rate of housing completions. This, coupled with revised plan timescales, has implications for the plan-led approach to development.
5. Furthermore, a recent decision by the Court of Session on an appeal by Gladman Developments Ltd raises a number of issues about the current wording of the policy that we now believe require clarification.

Introduction

6. The Scottish Ministers want the planning system to support the delivery of good quality homes in the right locations. This is of even greater importance now, as it has become even clearer that the quality of our homes can contribute a great deal to our health and wellbeing, and that housing delivery will play a key role in our future economic recovery. However, to achieve housing development in a sustainable way that works with, rather than against, the needs of communities, we need to overcome current conflict in the system, and actively address the lengthy technical debates we are seeing about the numbers of homes that we will need in

the future. This will allow us to focus more on how we can strengthen delivery and enable good quality development on the ground.

7. Taking this into account, and to ensure that our policy is clear and can be more easily and consistently applied in practice, the Scottish Ministers wish to update and clarify specific parts of the SPP to achieve the following policy objectives:

- Supporting a plan-led approach to decision-making and maintaining the legal status of the development plan as a basis for decisions in all cases.
- Removing the presumption in favour of development that contributes to sustainable development from the SPP ('the presumption') given that it is considered to have potential for conflict with a plan-led approach and has given rise to significant number of issues it has generated for decision-makers in its application.
- Providing a clearer basis for decisions on applications for housing on sites that have not been allocated in the local development plan where there is a shortfall in the effective housing land supply.
- Clarifying what is meant by a 5 year effective housing land supply and in particular preventing sites that are capable of becoming effective being excluded solely on the basis of programming assumptions.

8. This consultation paper sets out proposed policy amendments to achieve these objectives and invites views on them. The relevant policies are set out in paragraphs 28, 29, 30, 32, 33 and 123-125 of the Scottish Planning Policy.

Proposed changes

Paragraphs 28, 29, 30, 32, 33

9. The Scottish Ministers propose to remove the sentence on page 9 of the SPP that introduces the presumption.

10. The policy principles in paragraphs 28 and 29 will be maintained as they have an important role to play in ensuring the planning system enables the right development in the right place, rather than allowing development at any cost. They provide a range of factors that decision-makers should take into account as material considerations that are part of a balanced planning judgement.

11. The Scottish Ministers are minded to remove the reference to the presumption in paragraph 30, as well as paragraphs 32 and 33 in their entirety. Paragraph 30 of the SPP sets out that development plans should be consistent with the SPP policies – this part of the sentence will be maintained but the remainder of the first bullet will be removed. Paragraph 32 sets out that the presumption will be a material consideration for proposals that do not accord with up-to-date development plans. Paragraph 33 of the SPP sets out that where relevant policies in a development plan are out-of-date, the presumption will be a significant material consideration.

Current text:

Policy Principles

This SPP introduces a presumption in favour of development that contributes to sustainable development.

28. The planning system should support economically, environmentally and socially sustainable places by enabling development that balances the costs and benefits of a proposal over the longer term. The aim is to achieve the right development in the right place; it is not to allow development at any cost.

29. This means that policies and decisions should be guided by the following principles:

- giving due weight to net economic benefit;
- responding to economic issues, challenges and opportunities, as outlined in local economic strategies;
- supporting good design and the six qualities of successful places;
- making efficient use of existing capacities of land, buildings and infrastructure including supporting town centre and regeneration priorities;
- supporting delivery of accessible housing, business, retailing and leisure development;
- supporting delivery of infrastructure, for example transport, education, energy, digital and water;
- supporting climate change mitigation and adaptation including taking account of flood risk;
- improving health and well-being by offering opportunities for social interaction and physical activity, including sport and recreation;
- having regard to the principles for sustainable land use set out in the Land Use Strategy;
- protecting, enhancing and promoting access to cultural heritage, including the historic environment;
- protecting, enhancing and promoting access to natural heritage, including green infrastructure, landscape and the wider environment;
- reducing waste, facilitating its management and promoting resource recovery; and
- avoiding over-development, protecting the amenity of new and existing development and considering the implications of development for water, air and soil quality.

Delivery

Development Planning

30. Development plans should:

- be consistent with the policies set out in this SPP, including the presumption in favour of development that contributes to sustainable development;

- positively seek opportunities to meet the development needs of the plan area in a way which is flexible enough to adapt to changing circumstances over time;
- support existing business sectors, taking account of whether they are expanding or contracting and, where possible, identify and plan for new or emerging sectors likely to locate in their area;
- be up-to-date, place-based and enabling with a spatial strategy that is implemented through policies and proposals; and
- set out a spatial strategy which is both sustainable and deliverable, providing confidence to stakeholders that the outcomes can be achieved.

Development Management

32. The presumption in favour of sustainable development does not change the statutory status of the development plan as the starting point for decision-making. Proposals that accord with up-to-date plans should be considered acceptable in principle and consideration should focus on the detailed matters arising. For proposals that do not accord with up-to-date development plans, the primacy of the plan is maintained and this SPP and the presumption in favour of development that contributes to sustainable development will be material considerations.

33. Where relevant policies in a development plan are out-of-date or the plan does not contain policies relevant to the proposal, then the presumption in favour of development that contributes to sustainable development will be a significant material consideration. Decision-makers should also take into account any adverse impacts which would significantly and demonstrably outweigh the benefits when assessed against the wider policies in this SPP. The same principle should be applied where a development plan is more than five years old.

Proposed text

Policy Principles

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- protecting, enhancing and promoting access to cultural heritage, including the historic environment;
- protecting, enhancing and promoting access to natural heritage, including green infrastructure, landscape and the wider environment;
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- be up-to-date, place-based and enabling with a spatial strategy that is implemented through policies and proposals; and
- set out a spatial strategy which is both sustainable and deliverable, providing confidence to stakeholders that the outcomes can be achieved.

Reasons for the proposed change:

- This aspect of the SPP has caused considerable confusion and undermines the transparency of the system.
- We do not consider the Court's interpretation of the current wording of the presumption to be consistent with our policy intention.
- We do not wish to undermine the primacy of the statutory development plan in decision-making.

- The ‘tilted balance’ is not intended to be a feature of the Scottish planning system that overrides normal planning judgement based on the development plan and other material considerations.
- The reference to relevant policies of plans being ‘out-of-date’ has a range of interpretations, with decision-makers and applicants taking a range of positions on this.
- As a result of current restrictions and to ensure consultation can be properly undertaken, more development plans are likely to exceed five years in age in the coming months. We do not wish this to undermine a plan-led system.

Question 1: What is your view on our proposal to remove ‘the presumption’ from the SPP, through the changes set out?

Paragraph 123 and the Glossary

12. Paragraph 123 of the SPP refers to the 5 year effective housing land supply and broadly describes the type of sites that could form part of it. The Scottish Ministers are minded to amend paragraph 123 and the glossary to provide more flexibility within the description of the effective land supply at this time.

Current text:

Maintaining a 5 year effective housing land supply

123. Planning authorities should actively manage the housing land supply. They should work with housing and infrastructure providers to prepare an annual housing land audit as a tool to critically review and monitor the availability of effective housing land, the progress of sites through the planning process, and housing completions, to ensure a generous supply of land for house building is maintained and there is always enough effective land for at least five years. A site is only considered effective where it can be demonstrated that within five years it will be free of constraints and can be developed for housing. In remoter rural areas and island communities, where the housing land requirement and market activity are of a more limited scale, the housing land audit process may be adapted to suit local circumstances.

Glossary: Effective housing land supply: The part of the established housing land supply which is free or expected to be free of development constraints in the period under consideration and will therefore be available for the construction of housing.

Proposed text:

Maintaining a 5 year effective housing land supply

123. Planning authorities should actively manage the housing land supply. They should work with housing and infrastructure providers to prepare an annual housing land audit as a tool to critically review and monitor the availability of effective housing land, the progress of sites through the planning process, and housing completions to ensure a generous supply of land for house building is maintained and there is always enough effective land for at least 5 years. The definition of the effective housing land supply is set out in the glossary to this SPP (as amended). **Housing sites should not be excluded from the effective housing land supply solely due to programming assumptions included in the Housing Land Audit.** In remoter rural areas and island communities, where the housing land requirement and market activity are of a more limited scale, the housing land audit process may be adapted to suit local circumstances.

Glossary: Effective housing land supply: The part of the established housing land supply **comprising sites that are, or it can be demonstrated that they are capable of being, free of technical constraints including: ownership (i.e. a willing seller), physical constraints, contamination, deficit funding, infrastructure or land use within the period under consideration in normal economic circumstances.**

***Established housing land supply:* The total housing land supply, consisting of sites in the adopted development plan, sites with planning permission for housing development and other sites with potential for housing development.**

Reasons for the proposed change:

- A clear definition of the effective housing land supply is required that takes into account current circumstances.
- In practice the inclusion or exclusion of sites in the effective land supply is a matter of contention.
- Programming reported in Housing Land Audits can vary for a wide range of reasons beyond site availability. Programming assumptions (i.e. the number of units intended to be built-out on a site each year) are frequently subject to change.
- It is currently argued by some that sites that are technically capable of development should not be included in the effective land supply as a result of programming decisions unrelated to the planning status of a site.
- We are currently experiencing exceptional market circumstances and expect this to continue for some time. As a result, we do not wish to see the

availability of land conflated with the relevant, but separate, matter of site programming and build-out rates. The latter is based on business decisions related to changes in the market and wider economic circumstances.

- This approach would be broadly consistent with changes we proposed within the draft Housing Delivery Advice that was previously published and widely debated and consulted on but subsequently withdrawn as a result of continuing disagreement between stakeholders.

Question 2: What is your view on the proposed changes set out and our aim of clarifying the definition of the 5 year effective housing land supply to reflect the currently exceptional market circumstances?

Paragraph 125

13. Paragraph 125 of the SPP states that where a shortfall in the 5 year effective housing land supply emerges, development plan policies for the supply of housing land will not be considered up-to-date and paragraphs 32-35 will be relevant.

14. The Scottish Ministers propose to revise paragraph 125 to provide a clearer approach for decision-makers in establishing the extent of the 5 year effective housing land supply and taking this into account in decision making.

Current text:

125. Planning authorities, developers, service providers and other partners in housing provision should work together to ensure a continuing supply of effective land and to deliver housing, taking a flexible and realistic approach. Where a shortfall in the 5-year effective housing land supply emerges, development plan policies for the supply of housing land will not be considered up-to-date, and paragraphs 32-35 will be relevant.

Proposed text:

125. Planning authorities, developers, service providers and other partners in housing provision should work together to ensure a continuing supply of effective land and to deliver housing, taking a flexible and realistic approach.

The extent of the forward 5 year effective land supply should be calculated by dividing the housing supply target set out in the adopted local development plan by the plan period (to identify an annual figure) and multiplying that figure by 5. That should be compared to the 5 year effective land supply, based on information collected as part of the housing land audit process.

Where a shortfall in the forward 5 year effective housing land supply has been identified, this will be a relevant material consideration to be taken into account alongside other considerations as part of a balanced planning judgement. Whilst the weight to be afforded to it is a matter for decision-makers to determine, recognising the facts and circumstances of each case, the contribution of the proposal to addressing the shortfall (in both scale and kind) should be taken into account to inform this judgement.

Reasons for the proposed change:

- There are widely varying interpretations of this paragraph and its application in practice, generating confusion and undermining the transparency and operation of the system.
- Ministers are of the view that there is now a need to set out a standard calculation to determine the extent of the 5 year effective land supply.
- Based on previous consultation, we are aware that views on methodologies for calculating the 5 year effective housing land supply vary, and that the two main alternatives include an approach that accounts for previous completions (the residual or compound method), or a calculation based on an averaged rate of delivery over the life of the plan.
- Ministers are of the view that, despite current unprecedented circumstances, authorities should still be implementing the provisions of the development plan for new housing and working with stakeholders to make sure there is an adequate forward supply of effective land to help deliver new housing.
- Taking into account current circumstances and the impact of Covid-19, Ministers are not convinced that the residual approach will produce accurate outputs, particularly at this time where delivery rates are affected by the current pandemic. A calculation based on a more steady, average rate of build-out of the land contained within the development plan is considered more appropriate at this time.
- Ministers consider that the housing supply target (the total number of homes that will be delivered) is the appropriate basis for establishing the scale of the forward 5 year effective housing supply.
- The housing land requirement is a tool that is applied at the development planning stage. Its purpose is to help ensure that the housing supply target is achieved by including in the plan an additional allowance for generosity. It is essentially the Housing Supply Target with the addition of an agreed percentage added. The housing land requirement can be met from a range of sources, including the established land supply, sites which are already allocated, sites with planning permission and windfall sites (subject to evidence). The effective land supply is a subset of this wider land requirement. In many cases the housing land requirement relates to a different period – it may look ahead to the longer term or extend from plan base date, rather than adoption date. As a result, the housing land requirement is not directly applicable when assessing the 5 year effective housing land supply.

- The disputed matter of plans becoming ‘out-of-date’ should be removed for the reasons related to changes in plan timescales, as stated above.
- A shortfall in the housing land supply is relevant, but is not determinative, as part of a wider planning judgement, and Ministers believe this should be expressed more clearly in revised text.
- A shortfall in the supply of effective housing land may be addressed by exceptional releases of unallocated land but only if such proposals are appropriate and will meaningfully address any identified shortfall. The proposed text makes it clear that a shortfall will be a relevant material consideration. Scottish Ministers are of the view that this should now be explicitly referenced in relevant decisions.
- This provides a clearer policy to address cases where there is a shortfall in the land supply.
- Aspects of the existing guidance on this as set out in Planning Advice Note 2/2010 are out-of-date. We therefore propose that Section 2 – Housing Land Audits should be withdrawn.

Question 3: What is your view on the proposed changes to paragraph 125, including (a) the proposed calculation to establish the scale of the 5 year effective land supply in relation to alternatives and (b) the proposed approach to assessing proposals where a shortfall emerges?

Impacts of the proposed amendments

15. These proposals have been designed to address issues associated with planning for housing. We recognise that paragraphs 28, 29, 30, 32 and 33 have wider application but we do not expect that the proposed amendments will directly affect decisions relating to other types of development to the same extent as housing proposals.

Question 4: Do you agree that the proposed amendments will not directly impact on other (non-housing) types of development? If not, please provide evidence to support your view.

16. We have considered the requirements for statutory impact assessments, including by screening the proposals in relation to the criteria for Strategic Environmental Assessment, Equalities Impact Assessment, and Children’s Rights and Wellbeing Impact Assessment. Our view at this stage is that a fuller assessment is not required, given the procedural and technical nature of the proposals.

Question 5: Do you agree that fuller impact assessments are not required? If not, please provide evidence to support your view.

What happens next

17. Respondents are asked to state their view on the proposed policy revisions by answering the questions set out in this paper, and to provide reasons for their view, supported by evidence where possible. Following the consultation, we will take all responses into account, finalise the policy, and adopt and publish it as an updated version of the Scottish Planning Policy.

18. When the policy is finalised, it is proposed that Section 2, Housing Land Audits, in PAN 2/2010 will be withdrawn. This advice was prepared before SPP (2014) and certain terms have changed in meaning as practice has continued to evolve.



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