

By E-Mail

Scottish Planning Policy Review
Scottish Government
Planning & Architecture Division
Area 2-J South
Victoria Quay



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FEDERATION**

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SCOTTISH PLANNING POLICY REVIEW COMMENTS FROM THE SCOTTISH PROPERTY FEDERATION

1. The Scottish Property Federation (SPF) is a voice for the property industry in Scotland. We include among our members; property investors, developers, landlords of commercial and residential property, and professional property consultants and advisers.
2. We welcome the opportunity to contribute to preparation of the revised Scottish Planning Policy (SPP) and we are also happy for the Scottish Government to publish our comments and share our views with other public authorities. We set out our views on the aspects of the policy on the attached proforma.
3. At the outset we should confirm our support for the principle of having an up-to-date and comprehensive SPP. The SPF supports strongly the Scottish Government's purpose for the review to recognise the economic downturn and focus on sustainable economic growth, ensuring the policy gives appropriate weight to the viability and delivery of development. Other more general concerns of our membership in relation to Planning Policy are as follows:
 - The status of the SPP warrants some clarification. Increasingly it is the experience of our members that the SPP is disregarded by Local Authorities.
 - The general lack of development due to a collapse of economic and fiscal confidence in the wider economy is holding back growth and planning policy must support and facilitate appropriate development.
 - The system of planning obligations needs to be made to work better.
 - An earlier involvement in planning applications by planning authorities with major applications is required.

Scottish Planning Policy Status

4. Increasingly it is the experience of our members that the Scottish Planning Policy (SPP) is disregarded by Planning Authorities. As a material consideration the weight attributed

to it is left to the decision maker (the planning authority) due to its aspirational and general nature. Some members have suggested that it should be given the same status as the NPF or indeed the two documents could be merged into one. However, members recognise the difficulties surrounding such a review process. Members do, however, strongly believe that there needs to be more linkage between SPP and NPF and a preference for SPP to be statutory guidance. Members have also suggested that it could usefully be given the same status that supplementary guidance now has which would create a much more effective tool and one essential to engage with for planning authorities.

Economic and Fiscal Confidence

5. The current general lack of development is clearly a result of a collapse of economic and fiscal confidence in the wider economy. Many businesses remain seriously over leveraged and debt finance is now extremely difficult to secure. Traditional sources of finance from the banks are also becoming increasingly regulated from both international and UK authorities.

Planning Obligations

6. We are aware that a revised Planning Circular on planning obligations has been published recently. However, our members are of the view that the policy tests set out in the current draft should be added to the SPP document itself.
7. Swift decisions by planning authorities can provide certainty to developers; but they need to be properly considered. Realistic, proportionate and relevant planning obligations can support rather than undermine development viability, but policies and demands need to be clear and timely.
8. Developers should not be 'forced' to enter into a planning obligation – in practice they have little option other than to enter into the agreement to release the planning consent. Members have reported an example of a Council recommending refusal of a development for failure to pay a contribution to a strategic fund. The application of a formulaic approach, in a strategic fund, means that the planning authority are able to say that permission can only be granted if the contribution is made, rather than looking at what improvements, or other facilities, are actually required for that development, then considering whether suspensive conditions could be used, before resorting to legal agreements. The SPF thinks that the purpose for which the contribution is required for example should be tied to identification of the particular piece of infrastructure or facility, and not just payment into a fund.
9. Our members believe that cumulative impact needs greater detail as authorities are using it to justify contributions towards improvements far removed from the development. To what extent should cumulative impact be considered? The STF has been devised based on the cumulative impact of all housing in the Strategic Plan. In another area of Scotland a further development was delayed as a requirement to contribute to a roundabout some 20 miles distant is another example of cumulative assessment (in this case by an Agency). We can understand that a cumulative

approach works where 2 or 3 developments in a settlement require the same new roundabout etc, but the wider you stretch “cumulative”, means the further away we get from showing that the contribution is related to the development.

10. There has been a culture of ‘shopping list’ demands made by planning authorities of the development sector. There needs to be better co-ordination within local authority departments in relation to expectations of development proposals. It can no longer be expected that developers are simply expected to pay for ‘nice to have’ policies such as public artworks or cemeteries; demands need to be proportionate and directly relevant. In addition calls for planning obligations should not ‘hold up’ planning consent and greater transparency would also be helpful. There have been occasional concerns raised by developers who are not certain that contributions have necessarily been allocated towards their intended purpose and this does not lend itself to improving confidence and trust in the system.

Earlier Involvement and Leadership

11. An earlier involvement in major planning applications by planning authorities is required. An efficient and effective planning system can play a vital role in supporting economic recovery and sustainable economic growth. This requires a higher level of engagement between Planning Authorities and interested parties, a phased approach to the timing of payments, earlier political engagement and a more pragmatic approach on the levels of financial payments being sought. Where feasible an early indication or interest from elected members, would assist developers with their applications.
12. The SPF would be pleased to discuss our comments at the Scottish Government’s convenience.

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SPP Review - Priorities for Change

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Policy Ideas

The review is of the SPP as a whole – please consider connections and tensions between policy subjects

Policy Subject/s : Economic Development

What works?

Members have noted that policy on sustainable economic development is set out within the existing SPP. However, this review provides an opportunity to increase the emphasis on economic considerations in the planning process. More positive policy could be provided to set out the role that Planning Authorities and Statutory Consultees have in supporting economic activity, particularly during the current economic climate.

Our members think that a pragmatic approach to place making with a practical focus on use, incorporating mixed used aspirations but being flexible enough to support good development where it is needed.

What doesn't work?

Members have argued for many years that the Development Plan should highlight the infrastructure need for a development to proceed. Members find that it is done in a very generic way i.e. may need education provision, may need health provision, may need road improvements. The SPF understood that under the revised approach to Development Plans and the introduction of Action programming, the local authorities and statutory providers would have been able to indicate what is required and when. In fact, what members have found is that the local authority knows what infrastructure is needed to serve the entirety of the LDP releases, but has no concept of the phased provision of the infrastructure. It then falls to the developer of a site to demonstrate how many units can be provided before certain things occur.

Why?

Place making is vital around a good infrastructure with access to mixed development in particular, but it is equally important to be able to bring forward new development to galvanise the economy and meet a variety of needs for individuals and communities in terms of both employment and accommodation.

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Whilst we need to understand the issues, we ask that comments focus on the possible solutions.

What changes and/or solutions could be made to the policy to focus it on sustainable economic growth and to emphasise place making?

The identification of private sector growth areas. Our members would like to see buildings with flexible, viable and cost effective designs that can be adapted to suit changing aspirations and fluid markets in the current economic environment. Place making is vital around a good infrastructure (particularly transport) with access to a mixture of property uses including retail outlets, employment, leisure and ideally residential uses. They are of the view that this is important for both commercial and residential development with similar aspirations applying to both. The key will be to associate transport and development correctly. Mixed development of residential and commercial centres can also help (thus minimising private transport use).

The National Planning Policy Framework in England emphasises the presumption in favour of sustainable development, indeed the presumption is the focus or “golden thread” of the entire NPPF. More supportive text in the SPP could shift the emphasis in planning decision making to one which is more supportive of sustainable economic development.

The Development Plan should highlight the infrastructure needs for a development to proceed. Specific issues such as water supply and drainage should not perhaps act as a sudden constraint to planned development and developers should not be forced into paying for studies at the pre-application stage to confirm what the local authority is already aware of.

There is also the potential for a more flexible approach to the provision of infrastructure so as to reduce upfront pressures on developers to make contributions towards infrastructure, for example a relaxation of the ‘no net detriment’ policy in relation to roads. Measures such as the phasing of developer contributions would be helpful and where possible the support of public sector covenants for development purposes would also help. However, we do recognise that this will not always be feasible.

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Policy Ideas

The review is of the SPP as a whole – please consider connections and tensions between policy subjects

Policy Subject/s : Town Centres and Retailing

What works?

SPF supports the policy requirement for Planning Authorities to identify a network of centres and welcomes the town centre first principle within the current SPP. Any future policy should maintain the requirement for Planning Authorities to identify a network of centres and encourage a pragmatic approach when town centre boundaries are reviewed in the context of the Local Development Plan. Members' view is that the town centre first approach should be maintained in any future policy, although policy should make it clear that town centre sites are not always suitable and available for retail proposals. Policy should also encourage Planning Authorities to take a realistic approach to retail proposals and balance the need to promote town centres first with the commercial realities of retail development. Some edge of centre locations with strong connections to town centres can be more suitable locations for retail developments. There also needs to be an acknowledgement that town centres sites can be complex to develop, require more resources and result in greater risk to investors – policy on this could help ensure Planning Authorities take cognisance of the economic challenges associated with bring forward retail developments.

Some members have reported that there are few examples of Planning Authorities completing health checks as promoted in paragraph 59 of the SPP. Nevertheless members consider that this approach should be supported in any future policy. The vitality and viability indicators are used for assessments by companies and on occasions retail planning consultants have used these indicators when providing information to support a planning application, although we suggest the removal of prime rental values and commercial yield as suggested indicators for vitality and viability as in many centres, particularly outside city centres, there is insufficient churn in owners and/or tenants to provide the sufficient market rental and yield information.

Members also consider that the sequential approach is an established and accepted part of retail planning policy and should be maintained in any future policy. A significant change in the policy would undermine existing practices, add complexity to the planning process and increase investment risk.

While it is accepted that a planning authority should take into account the size of a proposed development and the type and range of goods being sold, it should continue to be the case that the identity of the proposed operator is not a relevant consideration in the planning process. Any shift in policy to look at the identity of the operator in the planning process would be a fundamental and inappropriate alteration to the basis of planning in not just Scotland, but the UK as a whole.

What doesn't work?

Paragraph 55 of the SPP mentions an assessment of need. Some members report that 'Need' has been used in the past in the consideration of retail planning applications, but retail policy across the UK has shifted away from any 'Needs Test'. Members therefore are of the view that any new policy should

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avoid the mention of need and instead maintain the approach of assessing impacts on town centres. Any additional tests or hurdles in retail planning policy could result in complexity, increase the risk for developers and deter investment – this is a particularly salient issue in the current economic climate.

Policy should encourage Planning Authorities to take a proactive approach to attracting and securing investment in town centres. At the same time authorities need to be realistic about the prospect of securing retail or leisure investment in marginal locations, or where town centres are in decline, and seek to encourage alternative uses that can address concerns around high vacancy rates and ensure the development of gap sites. Planning Authorities could do more to address the challenges facing town centres such as assessing whether the existing retail unit sizes are suitable, addressing whether servicing restrictions are holding back development, effectively managing parking regimes and improving the shopping environment.

The policy tests set out in paragraph 64 of the SPP currently applies to retail and commercial leisure developments that are contrary to the development plan. In practice the policy tests are applied to all retail applications and not constrained to those identified as being contrary to the development, it is therefore suggested that the reference to 'contrary to the development plan' is removed from any future retail policy. It is also recommended that the sequential test applies to public as well as commercial leisure developments.

In the third bullet point of paragraph 64 of the SPP it states that proposals should meet a qualitative and quantitative deficiency as identified in the development plan. The inclusion of this text in the extant SPP was a shift in policy from SPP8 which allowed for developers to identify qualitative and quantitative deficiencies. In practice the assessment of deficiencies is usually considered in the development management process. However, the retail assessments undertaken to identify deficiencies are often subjective in nature and vary considerably in their methodologies. As a consequence it is often difficult to accurately understand the extent of the qualitative and quantitative deficiencies, which can lead to confusion on the part of decision makers.

Why?

Members' view is that retailing is only one part of what makes for a strong and vibrant town centre. Any future policy should recognise this trend and support retail impact assessments of town centres as a whole, rather than focusing only on retail land uses.

Policy needs to acknowledge the structural changes taking place in the retail sector. There is a move away from large format stores as sales of comparison items migrate online. This process is predicted to continue and will have a significant effect on the nature of retail proposals coming through the planning process and on the character of town centres. Policy should recognise the changes in town centres and that they are principally caused by modifications in shopper behaviour as a whole rather than out of centre retailing. Policy should also recognise the new formats associated with the migration of retailing online, such as click and collect units.

Whilst we need to understand the issues, we ask that comments focus on the possible solutions.

What changes and/or solutions could be made to the policy to focus it on sustainable economic growth and to emphasise place making?

Members have suggested that a simpler approach to retail planning policy would be to focus on the two principal retail planning policy areas, namely the sequential test and the assessment of town centre impacts. These two retail planning policy considerations can be properly and objectively tested through the planning process, and their meaning is understood by practitioners and decision makers. Removing

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the assessment of qualitative and quantitative deficiencies from the development management process would still allow Planning Authorities to assess for these deficiencies as part of the development plan process or by the adoption of supplementary planning guidance. However, where a Planning Authority is silent on the matter or where a developer/retailer is seeking a new store in a town then a simplified approach would allow for an appropriate consideration of retail policy matters by means of the sequential test and assessment of town centre impacts.

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Policy Ideas

The review is of the SPP as a whole – please consider connections and tensions between policy subjects

Policy Subject/s : Housing

What works?

There needs to be more support for build to let and mix of tenure can offer choice for households as well as greater flexibility.

What doesn't work?

The current narrow definition of affordable homes. The previous Chief Planner openly called for greater flexibility and this needs to be implemented (see below).

Why?

There will be a growing generation of people who will be unwilling or unable to enter the home ownership market as early as the previous generation because of the changes to the availability of finance. The point is that there is now a growing body of people without access to home ownership, social housing or traditional mid-market rent.

Whilst we need to understand the issues, we ask that comments focus on the possible solutions.

What changes and/or solutions could be made to the policy to focus it on sustainable economic growth and to emphasise place making?

Our members have suggested that one measure that could be undertaken is for a more flexible approach to the constitution of affordable housing to enable more mid-market rental or indeed near market rental. The SPF feels there is a good reason for this extension of the definition of affordable housing as there is a growing body of people without access to home ownership, social housing or traditional mid-market rent.

Our members are also of the view that Scottish Government needs to ensure it sets the right policy framework for large scale investment which appeals to landlords as well as consumers. This could be in terms of planning policy in relation to new build or incentives to revitalise unwanted residential blocks. Without improved supply then no matter what the demand the consumer is unlikely to have the choice of provision of private rented housing that the government envisage.

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Policy Subject/s : Historic Environment

What works?

Good community engagement that is responded to by developers. For example the current Mountgrange applications in Edinburgh (former Heriot Watt Campus).

What doesn't work?

Long delays due to objections.

Why?

Time is money and investors will not be able to allow proposals to drag on with allocated funds being unable to achieve their required return.

Whilst we need to understand the issues, we ask that comments focus on the possible solutions.

What changes and/or solutions could be made to the policy to focus it on sustainable economic growth and to emphasise place making?

It is important for planning policy to recognise that sometimes historic buildings need to be adapted to fit modern requirements and standards.

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Policy Ideas

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Policy Subject/s : Transport

What works?

What doesn't work?

We are concerned that the application of a formulaic approach to planning obligations, such as the Strategic Transport Fund, means that a local authority is able to say that permission can only be granted if the contribution is made, rather than looking at what road improvements, or other facilities, are actually required for that development, then considering whether suspensive conditions could be used, before resorting to legal agreements. The SPF thinks that the purpose for which the contribution is required should be tied to identification of the particular piece of infrastructure, and not just payment into a fund.

Our members recognise a need for innovative funding mechanisms for infrastructure delivery.

Why?

Whilst we need to understand the issues, we ask that comments focus on the possible solutions.

What changes and/or solutions could be made to the policy to focus it on sustainable economic growth and to emphasise place making?

Our members believe that cumulative impact needs greater detail as authorities are using it to justify contributions towards improvements far removed from the development. The STF has been devised based on the cumulative impact of all housing in the Strategic Plan. In another area of Scotland a further development was delayed as a requirement to contribute to a roundabout some 20 miles distant

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is another example of cumulative assessment (in this case by an Agency). We can understand that a cumulative approach works where 2 or 3 developments in a settlement require the same new roundabout etc, but the wider you stretch "cumulative", means the further away we get from showing that the contribution is related to the development.

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Policy Subject/s : Renewable Energy

What works?

What doesn't work?

Renewable energy will not always be the most cost effective source and grid connections are an issue.

The UK and Scotland remain firmly in recession and cost is understandably a markedly more important factor in considering renewable or energy efficiency building improvements than perhaps would have been the case previously. Therefore our members question the continued escalation of energy-related building standards. There must come a point when ever-higher standards act to deter investment in energy efficiency in new buildings.

Why?

There is an increasing demand on the appeals system.

Whilst we need to understand the issues, we ask that comments focus on the possible solutions.

What changes and/or solutions could be made to the policy to focus it on sustainable economic growth and to emphasise place making?

It is difficult in to see how businesses and property investors/landlords will be able to finance significant energy efficiency related building improvements without some form of fiscal stimulus. There comes a point when developers will simply be unable to make the numbers stack up in order to justify new construction and in the long term this will undermine rather than support the energy efficiency action plan as it relates to the built environment.

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Policy Subject/s : Flooding and Drainage

What works?

We agree with the overarching aims of raising awareness, predicting future flood risk and managing it in a sustainable manner. We appreciate that flooding is a crucial issue when determining land uses and development proposals. The clearest relationship of SPF members to flooding management is the control of development in areas deemed prone to flooding risk. The current SPP outlines the government's expectation of the responsibilities of both the developer and the planning authority in assessing flooding risk. For the developer these responsibilities run from the initial flood risk assessment to consideration of insurance issues for prospective tenants or owners.

At the higher level of risk assessment SPP presumes against development. But there should also be due consideration given to techniques for overcoming flooding issues where the risk assessment allows this. 'Land-raising' is recognised in the SPP as one such technique and so long as there are not negative consequences for flooding management in related areas this should continue to support planning applications that are made in areas with a certain level of risk assessment.

What doesn't work?

Changes in risk impact on insurance arrangements and have a material effect on site value possibly causing economic hardship to investors who may have done their checks with due diligence only to see the flooding risk mapping change and bring their land into a new definition of risk assessment for flooding purposes.

SPP Review - Priorities for Change

Why?

Flooding risk assessment will have consequences for the owners and investors of any property in a high risk area and areas can create blight areas.

Whilst we need to understand the issues, we ask that comments focus on the possible solutions.

What changes and/or solutions could be made to the policy to focus it on sustainable economic growth and to emphasise place making?

The SPF believes that the SPP should consider the position of land may be blighted through changing flooding risk assessments and criteria and should balance severe flooding issues with managing risk. Whether this is a job for those responsible for drawing up the risk assessment is a question that should be raised as this would offer a first opportunity to consider the economic consequences of changing assessments who may have taken sites with a view to development only to find that subsequently the site become considered for flooding management infrastructure. This will have a material effect on site value and could cause economic hardship to investors who may have done their checks with due diligence only to see the flooding risk mapping change and bring their land into a new definition of risk assessment for flooding purposes.