



Scottish Council for National Parks

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Dear Sirs

WHITE PAPER: MODERNISING THE PLANNING SYSTEM

Preface

The Scottish Council for National Parks (SCNP) was formed originally in 1943 and operated until 1967, when it was stood down as a result of the setting up of the Countryside Commission for Scotland. It was reconstituted in 1990 following the publication of the CCS's report on the 'Mountain Areas of Scotland' for Government, which recommended the creation of National Parks in Scotland. The SCNP's primary aim is to promote the protection, enhancement and enjoyment of nationally outstanding areas that are National Parks, or are appropriate to be designated as such, or are of sufficient merit to warrant special protection. This is manifest in our support for good stewardship of the country's best environmental assets and encouragement of sustainable methods of development, particularly within areas of national park potential. SCNP is a recognised Scottish Charity.

Introduction

SCNP welcomes the opportunity to respond to the White Paper consultation. Much has changed since the first introduction of Town and Country Planning legislation in Scotland and as such this effort to modernise the system, into which a great deal of work has clearly gone, is to be commended.

The earliest planning legislation sprang from concerns about public health in an environment of virtually uncontrolled land use change and development. The philosophy remained, however, that development should be allowed unless there was some over-riding reason in the public interest why it should be refused.

We have now moved on to a situation where the pace of change which can be brought about by modern technology and equipment is such that irreversible harm can be done in a very short space of time unless proposals can be properly examined with EIAs etc., to show the long term impacts on our built and natural environment. In other words, all major development has to be sustainable and hopefully contribute to the future well being of the public at large. We are clearly a long way from achieving such an aim.

Another major change in the planning system since the earliest legislation, has been the right of the public to be consulted and this has often resulted



in conflict between the development industry and the wider public. Public opposition to some development can be of the 'not in my backyard' type which is sometimes just self interest, but often it is occasioned by people wishing to see the authorities stand by their avowed policies and only permit development which can be sustainable in the long term.

The new approach

04: Development Control or Development Management?

Anyone who has had contact with the planning system over the years knows what Development Control means. To change it to Development Management will merely confuse the lay public and add not a jot to the quality of the process. It will, however, incur significant costs in a cash strapped service, as Personnel Departments (sorry, Human Resources) rewrite job descriptions, ask everyone to re-apply for their jobs, new notepaper, business cards, compliments slips, etc are printed and reception areas, office doors etc., get new signs. Surely, we are too busy for this kind of window dressing!

The aim of the White Paper is to bring about a modern planning system which is:

Fit for purpose; Efficient; More inclusive and Sustainable.

These are all laudable aims but there are potential conflicts built in. SCNP has considered whether the system proposed will address these issues or possibly introduce changes which could conflict with one or other of the four aims.

SCNP welcomes the recognition that planning is at the heart of promoting sustainable economic growth, plays other vital roles in the communities and is a key contributor to environmental quality and pursuing the case for high quality design throughout the built and natural environment.

Over the last decade or so, virtually every local government planning department in Scotland has been split up and absorbed into other multi purpose departments responsible to managers often without planning experience or expertise. This has resulted in planning being increasingly sidelined by those who seem to wish to promote development at all costs. Sadly, the latter have included government departments and government funded agencies who have sometimes behaved as though Government policy guidance and the approved policies in development plans did not apply to them.

Good Planning Authorities operating a modernised system which is fit for purpose, efficient, more inclusive and sustainable will not achieve the desired end product alone. It is fundamental that all the other public sector bodies and skills have to be applied to the same end.

SCNP wishes to see that greater efficiency is more concerned with quality of decision making rather than merely speed of decision making. This desirable aim is obvious to the public but does not feature as it should in the White Paper.

5.1.1 Hierarchy for Planning

One of the strengths of the current planning system in Scotland is that the vast majority of planning applications are handled by local planning authorities where the public has access, as of right, to the professional advice which is given to the elected members to aid them coming to a decision. It is clearly very important that if this system is to be radically changed, whatever takes its place should be even more open and transparent at all levels.



Scottish Council for National Parks

Currently, where a local planning authority proposes to take a decision on a planning application contrary to the policy set down in the approved development plan, the Scottish Executive has to be given the opportunity to step in and address the issue at the highest level of the system.

Where there is a dispute either through the appeal process or the call-in procedure there is an opportunity for a public local inquiry overseen by a professionally qualified reporter from the Scottish Executive's Inquiry Reporters Unit. Whilst there have been occasional expressions of concern about decisions arrived at by reporters, their integrity and independence has never been in doubt. They have to give a reasoned explanation for decisions delegated to them and for the advice they give to Scottish Ministers. Whilst there is a legal framework to their conclusions, the basic arguments are addressed on planning grounds. It is important that any new system that is introduced should be at least as clear and preferably better, than that currently in place.

SCNP generally welcomes the proposal which would see planning decisions taken at the appropriate level but has some concerns about the possible working arrangements for the hierarchy for planning set out in the White Paper. **It should be recognised that the hierarchy proposed represents a considerable centralisation of power and decision taking beyond anything so far experienced.**

5.1.2 National Developments

It is not clear from the White Paper how decisions will be arrived at as to which developments are of national importance. When some former Regional Councils prior to 1996 had powers to call in planning applications from their district councils, the reasons for call-in were clearly spelt out, were in the public domain and had to be justified in relation to approved policy in the structure plan. Will there be a similar arrangement in justifying what is a national development and why?

Whilst the White Paper says that the need for certain national developments will be decided at the national level by Scottish Ministers and with the full involvement of Parliament, there is the danger that these decisions will be taken for political rather than more objective planning reasons. In such circumstances, it is very important that the professional planning advice given to Scottish Ministers by the Scottish Executive should be in the public domain and make clear the factual information upon which that advice has been prepared. This will ensure that as far as possible, the public will have access to the reasoning in exactly the same way as occurred prior to 1996 in relation to development proposals which were regarded as being of strategic significance in terms of structure plan policy.

SCNP is concerned that when a decision is made by Scottish Ministers, the only appeal route left would be via the courts because clearly Ministers cannot be judge and jury. This means, however, that any challenge to a decision would be restricted to legal grounds i.e., that the decision is ultra vires. This would mean that there would be no opportunity to challenge the planning thinking behind the decision and its relationship to approved policy. There have been court decisions made in the past which have supported the legality of a decision but left the public totally frustrated that the planning issues had not been addressed. The other matter of concern is that very few members of the public have the financial resources or the skills to challenge Scottish Ministers through the courts. If people feel they have no hope of challenging Scottish Ministers, they will quickly write the process off as without meaning.



Scottish Council for National Parks

Notwithstanding the words of the White Paper, central government whether it be Whitehall or the Scottish Parliament, does not have a good track record in openness and transparency and something needs to be built into the new system to reassure the public that their legitimate concerns will be seriously addressed.

5.1.3 Major Developments

SCNP welcomes the proposal that full details and supporting material should be provided at the submissions stage so that the public can engage on the basis of realistic and fully worked-up plans. In this context, we also welcome the idea of new procedures that ensure that an appeal is a review of the decision taken in the light of the information submitted thus limiting the right to introduce new evidence to support the appeal. This practice of introducing new material widely used in recent years, seriously disadvantages third parties who are opposed to a particular scheme at a public inquiry.

5.1.4 Local developments

The planning system throughout the UK generally has had a good reputation for the professionalism of the advice given to elected members. SCNP is therefore, concerned about the proposal to have appeals against decisions delegated to officers, being heard by a local review body of elected members. This is unlikely to produce better and more consistent decisions than that produced by the professional consideration by the Scottish Executive Inquiry Reporters Unit. Local elected members are put under enormous pressure by lobbyists and local vested interests to take decisions which bear little relationship to planning responsibilities and approved policy in the development plan. It would be a diminution in the quality of the system to have decisions which are currently taken by professional reporters taken by lay people subject to local pressure.

5.1.5 Minor Developments

Minor developments can often be of great concern between neighbours, for example and SCNP is concerned that the only redress for an aggrieved party would be through the courts. This seems like a sledgehammer to crack a nut and most people would be unable to pursue such a course.

5.2 Efficiency

5.2.1 Modernising Development Plans

SCNP welcomes the intention to reinforce the primacy of development plans. We accept that development plans must take a long-term view but there are clearly dangers in trying to build in long-term assessments of land supply needs in a world whose needs change so rapidly. It will be vital that the new development plans are regularly monitored and updated so that they can remain 'ahead of the game' in providing a proper balance between development pressures and the need to maintain a sustainable future.

SCNP does not accept that strategic planning is only required in the four largest city regions. Strategies for infrastructure, transport, minerals, waste disposal, energy etc are important in predominantly rural areas also.

Similarly, there should be a strategy for National Parks, land based, marine and coastal, across Scotland.

The consultation statement - listening to local people.



Scottish Council for National Parks

One of the problems currently faced by those wishing to engage in the development plan process is that many local authorities are charging substantial sums of money for printed copy of a plan - figures of £50 are not uncommon - when did you last buy a book costing £50? If the new system is to be more inclusive it should be made clear to planning authorities that members of the public wishing to have a copy of the document should be supplied as of right. It is clearly helpful to have plans available in local libraries and to be able to obtain DVDs, CDs etc but not all people have access to computers and it is notoriously difficult to study complex issues on small electronic screens.

Mandatory examination of all plans

SCNP welcomes the proposed mandatory examination of all plans by officials from the Scottish Executive Inquiry Reporters Unit.

Adoption Mechanisms

These seem reasonable.

Action Programmes

These seem desirable.

'Approval in Principle' in development plans.

This seems sensible provided the development plans are up-to-date. There are examples of sites in approved development plans which are subject to regular flooding for example. It seems inappropriate to require developers to prepare detailed plans at considerable cost if their confidence is based on out of date material.

Development Control (Management) Efficiency.

E-Planning Is clearly a valuable tool which must be developed as fully as possible. However, access to computers and the internet is far from universal and it is important not to exclude anybody from the planning process because they do not have access to new technology.

Standard application forms.

This seems sensible and is to be welcomed.

Reduced time period for appeals from 6 months to 3 months.

This was tried in England and Wales with very unfortunate consequences. It caused people to submit planning appeals almost as a reflex action to a refusal and clogged up the system. They have now reverted to the previous system of allowing 6 months for the appeal to be submitted. We should be willing to learn from that experience.

Power to decline to determine applications.

This seems sensible and is to be welcomed.

Duration of planning permissions.

This seems sensible and is to be welcomed.



Mezzanine floors.

This seemed sensible and this to be welcomed. It will no doubt be a surprise to many that existing legislation has been deemed not to cover a situation which might result in a massive increase in floorspace!

Managing change in the historic environment.

The list of historic buildings and potential conservation areas can never be fully up-to-date. In such circumstances, it is possible for a non-listed building which is worthy of special protection, to be the subject of a planning application for demolition and redevelopment. The current practice of not being willing to list the building whilst it is the subject of a planning application, is detrimental to the proper consideration of the need to protect our built heritage. In England and Wales spot listing to provide a breathing space for proper consideration of the threat to a non-listed but important building, has long been a feature of the planning process and appears to work well. It should be adopted in Scotland.

5.3.3 Our proposals.

There is a great deal in the section which is worthy of support and all efforts to make the process more inclusive and balanced are to be welcomed. If we are not to be accused of naivety, we should recognise that major developers are not constrained professionally in the way that planning authorities and to some extent the Scottish Executive is. Developers only put forward proposals for commercial gain - this is not a criticism, merely a statement of fact - and they already do all in their power to convince people of the desirability of their scheme. Large numbers of jobs are promised which influences local people and their elected representatives. These claims have often proved to be exaggerated but the claimed economic benefit is sometimes seen as a reason to override approved policy. Beware of Greeks bearing gifts!

Equality

This seems reasonable and is to be supported. However there is one glaring anomaly and that is the absence of any third party rights of appeal. Whilst SCNP fully understands that the planning system could be "gridlocked" by an untrammelled right of appeal against any planning decision that an individual disliked, there is a balance that needs to be struck whereby third parties do have a right of appeal in circumstances where decisions have been taken contrary to approved policies and contrary to the professional advice which the decision takers have received. This is another reason why it is important that decisions taken at the highest level by Scottish Ministers and the Scottish Parliament should be seen to be open and transparent by having the advice given by the Scottish Executive planning professionals in the public domain.

Information/Accessibility.

This seems reasonable and is to be supported.

Transparency/Fairness.

This seems reasonable and there is much in this section which could bring about improvements in the process.

Enforcement. Enforcement is a very difficult area in the planning process and over the years has been very much the Cinderella of the system. It is too easy for those with a cavalier attitude to the planning system to get away with



Scottish Council for National Parks

unapproved and undesirable development. Planning authorities have all too often lacked the required courage and firmness in pursuing enforcement and once a weakness is recognised, it is taken advantage of. The ideas put forward in the White Paper should improve the process if adequately resourced and pursued by the planning authorities.

5.3.4 Rights of appeal in planning.

SCNP does not agree with the views expressed in the White Paper. If the planning authority refuses a planning application the developer has a right of appeal. If the planning authority approves an application contrary to the development plan, informs Scottish ministers who decide to take no action, it is only right that objectors should have a right of appeal if the process is to be seen to be balanced and fair. Over the years, there have been a number of decisions to approve applications contrary to the development plan which government has seen fit not to call in. The decision not to get involved has often been seen by the public as a political decision rather than a policy led decision. If the system is to be seen to be fair then the situation could be addressed by having a third party rights of appeal in those cases where there is a conflict with established approved policy.

06 Sustainable Development.

SCNP considers that the Bruntland report of 1983 still offers the best definition of sustainable development and it should be used and be seen to be used in government documents on the subject in order to avoid confusion in the interpretation of the meaning of sustainable development. There are so many plans and reports available many of which seem to think that if they use the word sustainable often enough, it will be sufficient to gain approval. Sustainable development is absolutely fundamental to our future well-being and it should not be trivialised by this kind of abuse and potential for misunderstanding.

Appendix 2: planning and public policy.

SCNP welcomes the proposed review of planning policy on renewable energy and particularly the need for a spatial framework for wind energy. This is a clear example of where up to now, decisions on major developments have been taken by a Scottish Executive department which appears unqualified for the task and clearly considers itself to be not subject the same constraints as others who are willing to take advice on design and environmental issues. The end product has been the energy industry putting a lot of abortive effort into developing proposals for sites which should never even be considered, for example in or adjoining National and Regional Parks, National Scenic Areas and similar very sensitive landscapes. All of this was avoidable with a little forethought and we would urge Scottish Ministers to review the matter with some urgency before any more serious damage is done.

SCNP has put forward these comments with the aim of making a constructive contribution to what eventually goes into the Planning Bill, based on a White Paper that contains much which is deserving of public support provided the implementation genuinely respects the public's right to know and right to be heard.

Yours sincerely

Robert Maund,

Chairman, for SCNP