

Information

Planning etc. (Scotland) Act 2006

1. Introduction

The long awaited overhaul of the Scottish Planning system will now commence in earnest following the grant of Royal Assent to the Planning etc (Scotland) Act 2006 (“the Act”) on 20th December 2006. The Act introduces the most fundamental changes to the Scottish Planning system since 1947, although much of the detailed amendments will follow in extensive secondary legislation, codes of guidance, circulars and planning advice notes. We understand that this further detail will start to appear in draft form from the middle of 2007 onwards with implementation generally taking place towards the middle/latter part of 2008.

The Act aims to meet the ambitious commitment set out in the Partnership Agreement of 2003 (the agreement between the leaders of the Scottish Labour Party and the Scottish Liberal Democrats) to “improve the planning system to strengthen involvement of communities, speed up decisions, reflect local views better, and allow quicker investment decisions” Given the sweeping coverage and detail of the Act it is not intended here to provide an exhaustive summary of all the Act’s terms. What follows in Section 3 of this Briefing Note is an introductory guide to selected key areas of interest.

2. Third Party Rights of Appeal?

Although a limited third party right of appeal formed part of the Liberal Democrats’ manifesto for the 2003 Holyrood election and third party rights of appeal were extensively

debated and proposed during the Planning Bill's passage through Parliament, there is **no provision for even limited third party rights of appeal in the Act.**

The non inclusion of third party appeal rights was widely anticipated and does not come as a surprise given that the Scottish Executive's 2005 White Paper entitled "Modernising the Planning System" categorically stated that the Scottish Cabinet was not proposing a third party right of appeal. This move has been welcomed by developers but has been heavily criticised by community and special interest groups. However, while there are no third party rights of appeal, the Scottish Executive has indicated that the Act provides the public with the opportunity for greater involvement in developments that affect their local neighbourhood as discussed at 3.4 below.

3. The Reforms

3.1 The Planning Hierarchy

The Act introduces a new tiered hierarchy into the planning system classifying proposed developments as being of national, major, local or minor significance - planning applications will be dealt with differently depending on where they fall in this hierarchy. Taking each level in turn:-

- national developments e.g. water treatment installations or strategically important transport links such as the M74 extension will be identified in a document called The National Planning Framework ("NPF") and decided at a national level by the Scottish Ministers. The NPF will be a spatial plan for Scotland setting out in broad terms how the Scottish Ministers consider that development and use of land could and should occur. In preparing the NPF the Scottish Ministers are bound to (i) consult with the Scottish Parliament and (ii) aim to contribute to sustainable development;
- major developments e.g. business parks and large housing developments will benefit from greater priority from planning authorities and from "processing agreements" in terms of which applicants and the planning authority would agree on a realistic timetable for the processing of planning applications. The detail of these changes will follow in regulations;
- local developments e.g. small-scale alterations to commercial buildings will benefit from clear, expedited processes with planning officers being empowered to take decisions without reference to any planning committee; and
- minor developments e.g. householder developments would be facilitated with an enhanced role for the permitted development regime, in terms of which planning permission is deemed to be granted for a range of specified activities.

3.2 Development Plans

The Act introduces the key requirement to update development plans every five years. Up to date development plans are essential if what is a plan led system is to be as smooth, predictable and non contentious as possible. The Scottish Executive had previously highlighted findings that 70% of local plans were more than 5 years old.

The existing two-tier system of development plans in most areas will be discontinued and replaced with a local development plan. For certain areas (it is anticipated these will be specified as the City Regions of Glasgow, Edinburgh, Aberdeen and Dundee) the proposal is that Strategic Development Plans will be issued to co-exist with local plans.

3.3 Improvements to Enhance Efficiency

The following amendments are or will be introduced with a view to enhancing the efficiency of the planning process:-

- potential applicants would have only 3 months, not 6 months as at present, to submit an appeal following refusal of a planning application. This will be introduced by Secondary legislation;
- standard, more user-friendly, application forms will be introduced;
- greater use of “e-planning” will be encouraged to allow tracking of progress of applications, find information about development plans or lodge planning applications;
- an improved framework for planning agreements, re-stating their permitted scope will be introduced; and
- weekly lists of planning applications will be published by planning authorities allowing local residents to more easily monitor developments in their area.

3.4 Participation in the Planning System

The Scottish Executive states its objective to be “focusing public involvement in planning at the front end of the process”. The following are proposed:-

- statutory requirements for pre-application consultation with local people for classes of development to be specified in Regulations. It is anticipated that these will include (i) major developments departing significantly from the relevant development plan; (ii) proposals subject to the Environmental Impact Assessment Regulations; and (iii) larger scale “bad neighbour developments”

such as waste disposal installations and casinos where these depart from the development plan;

- greater and more consistent use to be made of hearings to allow objectors and other interested parties to voice their views, with there being a statutory requirement for hearings in relation to classes of developments to be specified in Regulations (most likely the same or similar classes to those outlined above);
- new procedures transferring responsibility for neighbour notification to planning authorities – currently responsibility for carrying out notification rests with the applicant. In addition the period allowed for objecting to planning applications following neighbour notification will be extended – the new period has yet to be prescribed;
- the extension of neighbour notification to classes of people (to be specified in regulations) who might be affected by site specific proposals in local development plans to allow individuals most directly affected by development proposals to be given the opportunity to make representations at as early a stage as possible;
- the introduction of processes for the more rapid determination of appeals that are poorly founded e.g. appeals failing to address the reasons why the original planning application was rejected or involving proposals clearly departing from the development plan;
- the addition of new procedures to ensure that appeals are restricted to a review of the decision which was taken in the light of the information submitted e.g. rights to introduce new evidence to support an appeal will be curtailed;
- the introduction of a new requirement for planning authorities to give reasons for their decisions; and
- the introduction of a provision to make good neighbour agreements (namely agreements entered into between developers and a community body as to how a development is carried out) enforceable by community bodies against successors in title – it is not envisaged that such agreements will extend beyond reasonable planning considerations but they will assist communities in “engaging” with developers.

3.5 Miscellaneous

- **Tree Preservation Orders (“TPOs”)**. The Act aims to improve the protection of trees by (i) requiring planning authorities to review and monitor TPOs (ii) allowing trees to be protected under TPOs where they are of low amenity but high cultural or historical significance and (iii) allowing local authority officers

immediate entry to conspicuously affix a copy of the TPO to any trees under immediate threat.

- **National Scenic Areas (“NSAs”)** There are currently 40 NSAs in Scotland, covering a total land area of 1,020,500 ha and a marine area of 357,900 ha. The power to designate areas as NSAs was repealed in 1991 but the Act re-introduces the power in favour of the Scottish Ministers to allow the Scottish Ministers to designate new NSAs. Given that for NSAs there is a statutory requirement in the exercise of planning functions to pay special attention to the desirability of preserving or enhancing character or appearance, this is an important reform.
- **Marine Fish Farming.** Marine fish farming is brought within the scope of the planning regime.

4. Conclusions

The Act overhauls the planning system as we know it and there will be significant changes in the coming years in the method of dealing with planning applications. It is too early to assess the extent to which the Act will satisfy the commitments set out in the Partnership Agreement but there will undoubtedly be interesting times ahead as the implementing legislation evolves. The success of the reforms and the extent to which they can bring about a more positive planning system may depend in part on the extent to which planning authorities can secure additional funding to allow them to finance the carrying out of their new responsibilities.

The decision not to include a third party right of appeal is controversial - for community and special interest groups who see that non inclusion as a “sorely missed opportunity” the focus is now likely to be on the extent to which the evolving detailed legislation to enhance public participation can be strengthened. Developers will be keen to resist this. Other reforms, such as the proposed requirement to update development plans on a five yearly basis, are likely to attract widespread support for the part they can play in making the planning system more positive and in enhancing predictability.

Turcan Connell
January 2007

This note is intended as a brief summary of selected features of the Planning etc. (Scotland) Act 2006. No responsibility can be accepted for any action taken in reliance of this note and specialist advice should be taken in every case. Turcan Connell would be happy to provide such advice. If you do not wish to receive further briefing notes and similar information from us please write to us at the address given above requesting that your name be deleted from our database.

© Turcan Connell 2007