

CONSULTATION ON DEVELOPMENT PLAN EXAMINATIONS

RESPONDENT INFORMATION FORM

Please Note this form **must** be returned with your response to ensure that we handle your response appropriately

1. Name/Organisation

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3. Permissions - I am responding as...

Individual

/

Group/Organisation

Please tick as appropriate

(a) Do you agree to your response being made available to the public (in Scottish Government library and/or on the Scottish Government web site)?

Please tick as appropriate Yes No

(b) Where confidentiality is not requested, we will make your responses available to the public on the following basis
Please tick ONE of the following boxes

Yes, make my response, name and address all available

or

Yes, make my response available, but not my name and address

or

Yes, make my response and name available, but not my address

(c) The name and address of your organisation **will be** made available to the public (in the Scottish Government library and/or on the Scottish Government web site).

Are you content for your **response** to be made available?

Please tick as appropriate Yes No

(d) 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?

Please tick as appropriate

Yes

No

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CONSULTATION QUESTIONS

Question 1: How well do you think the examination process is functioning and should any changes be made to the process at this stage?

Homes for Scotland members are generally content that the Examination system is working well. It has achieved most of the outcomes set by the 2006 reform, in terms of becoming:

- Shorter
- More focussed on key issues
- Reporter-led
- Allowing sufficient opportunity for objectors to submit and justify their cases
- More certain through binding Reporter recommendations
- More proportionate in time and cost

Some concerns remain. Some landowners/developers feel they are excluded from supporting their own proposals against objections, although there is no reason why a Council could not have a representative of a site proposal in attendance. Nonetheless there are some concerns over the consistency with which reporters decide on appropriate attendees at hearings. There are concerns over the lack of explanatory detail in some Reporters' findings. There is concern that the Reporters' remit is not to ensure the best possible plan, but a lesser remit of ensuring that the plan is soundly-based and conforms to national policy.

The consultation paper does appear to be driven disproportionately by exceptional cases, the examinations of the East Dunbartonshire and North Lanarkshire Local Plans. The paper acknowledges that most Examinations have been much shorter than before, with reasonable levels of costs. It recognises the reasons why some Examinations have taken longer – failure to conform with Government policy and /or strategic plans, and the poor quality of plans. These are clearly not failings of the Examination system but failures of the plan-making process. Homes for Scotland considers that the credibility and reputation of the planning system is not damaged by an Examination trying to remedy such flaws, but by the process which allowed these flaws to remain in the development plans in the first place. How this might be resolved is discussed further under Question 3.

Binding Reporters' recommendations were widely supported in pursuit of the objective of certainty. Again, the issues now raised result from poor plan preparation or unclear strategic policy. Reporters have had to look at additional land allocations where plans have failed to conform to guidance on having a 5-year effective supply (in some cases failing to understand how to calculate a 5-year supply), failing to have a "generous" land supply and failing to carry out an adequate assessment of options. The lack of the latter, in particular, has driven Reporters to carry out basic background technical work themselves which Homes for Scotland would agree is inappropriate. The failing lies with those Authorities who did not carry out an adequate plan preparation process, not with the Examination system. In the case of East Dunbartonshire, the problems arose from a Structure Plan which gave little clarity over the housing requirement at a Council

level, preferring to work largely at the level of housing market areas and hence not identifying a figure for a calculation of a 5 year land supply requirement.

The democratic arguments against binding recommendations are, in Homes for Scotland's view, spurious; if an adequate and competent plan preparation was not carried out and therefore local stakeholders and local elected members were not given appropriate information on which to base decisions, then the Reporters are obliged to correct such flaws.

In the case of the Edinburgh Local Plan prepared under the previous Act, the legal ramifications of the Newcraighall land allocations resulted from Reporters' findings not being binding, and the Council choosing to pursue a course of action which failed the legal tests.

The independent nature of the examination scrutiny is crucial to stakeholder confidence. Early engagement and consultation is important in the plan-preparation process, but there is no guarantee at that stage that planning authorities will accept stakeholder views or proposals. It is right that the development plan should be determined via a process of local democracy and decision-making, but that has to be within the context of conformity to national policy and guidance. It is notable that the Localism debate in England has crystallised into clear guidance in the National Planning Framework that necessary levels of development must be delivered – the local discretion comes in how and where, not if, development is to be delivered. But that discretion has to be exercised in a competent and appropriate manner, and safeguards built in to ensure it. Early evidence from England suggests that Inspectors are having to reject plans with inadequate land supplies, or grant appeals where insufficient land is available. Local democracy has to be exercised with responsibility, and there has to be a safeguard to prevent Councils disregarding or misunderstanding their obligations.

Homes for Scotland considers, therefore, that the Examination process is not the source of any difficulties which have resulted from individual Examinations. The major issues lie within the plan-making process. Very few development plans have completed the full cycle under the 2006 Act – it is far too soon to make judgements about major changes.

Question 2: If you think changes are needed which option do you support, and why?

Option 1

Homes for Scotland considers that most of the changes required fall in the plan-making process, albeit there could be minor improvements to the Examination process. Therefore Option 1 discusses the right range of issues.

Homes for Scotland agrees with the premise that adjustments to the plan-making process would assist; agrees that more pace and dynamism is needed in that process, and that the Reporters should not be expected to remedy major failings in submitted plans.

The first requirement is therefore to ensure that submitted plans are competent, and measures within the plan-making process are discussed under Question 3. Homes for Scotland is uncomfortable with the suggestion that a development plan

could be adopted in part, with further work to be carried out on any aspects which Reporters find deficient. Past experience of this approach has not been encouraging. For instance the South Ayrshire Local Plan, adopted in 2007, proposed an affordable housing policy which was rejected by the Reporters, who recommended an interim policy while further work was carried out to justify a final policy. However, the Council never completed this work and continue to rely on the interim policy. Any approach which allows for partial adoption of plans therefore needs to contain a clear and binding requirement to achieve full adoption of the remaining issues within a specified timescale. There would also need to be provision for further objections and examination if required.

In terms of Reporters allocating additional sites in a plan, it is the duty of the planning authority to have identified a range of options and justified their choice of options. The technical assessment of those options should be sufficient for the Reporters to understand the reasons for the choices made, and the assessment information along with objectors' evidence should be sufficient to allow Reporters to make adjustments to site allocations. A plan should not be submitted without adequate assessment of site options, but where it is it should be returned to the authority to complete adequate assessment before submission. Again, changes to the plan-making process should prevent such inadequate plans being submitted in the first place.

Option 2

Option 2 is a retrograde step. Homes for Scotland firmly supports the binding nature of Reporters' findings as offering clarity and impartiality. Past experience has shown that Councils can choose to reject Reporters' recommendations for apparently perverse or illogical reasons, in some cases resulting in lengthy legal disputes which certainly bring the planning system into disrepute. The binding nature of findings also leads to a much faster adoption process.

The suggestion that this option gives Councils more control over the plan is spurious. The intention of the 2006 Act is clearly in line with the Local Government Concordat – planning authorities have local discretion to decide how to deliver national outcomes. To do so, they must conform to Government policy and strategic frameworks, but thereafter have local discretion to decide how to achieve these. To revert to a past approach would change that balance of national outcomes delivered through local solutions. Changing legislation to achieve an outcome contrary to current Government thinking on the relationship between Central and Local Government would be perverse.

Option 3

Option 3 represents a further weakening of the aims of the 2006 Act in relation to the Concordat. It would remove further layers of independent scrutiny of the extent to which a plan was delivering national and strategic outcomes and policy. The Reporters are currently charged with defining the unresolved issues in a plan, including conformity with national policy, and there has been little criticism from the development industry of the way in which the scope of any Examination has been defined. Again, there is no argument for changing legislation to achieve a poorer outcome.

Option 4

This is entirely unacceptable. To remove all independent scrutiny simply re-opens

the potential for Councils to make perverse and illogical decisions, possibly for reasons unrelated to good planning practice. There is no doubt that such an option would erode confidence in planning, and lead to greater recourse to the Courts to decide planning issues. There may already be legal challenges emerging to LDP's; with no scrutiny there is little doubt that the number would increase. Had the North Lanarkshire plan been adopted unchanged, there is little doubt that it would have been challenged either legally or through multiple applications and appeals.

This option appears to imply that the development plan is the sole preserve of the local planning authority. It removes or seriously diminishes the interests and roles of a wide range of stakeholders, including the development industry which is also a key delivery agent of the plan. It diminishes the legitimate rights of developers and others as local employers and in many cases residents. Developers, in particular, commit significant resources to "front-load" the planning system and to ensure that their objections are supported by adequate detailed justification. They expect fair and independent consideration of their cases in return.

Experience in the past does not encourage Homes for Scotland to believe that planning authorities would provide clear, comprehensive and cogent reasons for rejecting representations. Objectors have reasoned positions and views which need to be considered fairly and impartially. Under this option, the inclination of planning authorities to react defensively to opposing views would be exaggerated and given more reign. Independent scrutiny by reporters adds objectivity to the process, and a means of ensuring that national policy is properly reflected in plans.

Changing legislation to achieve a far worse outcome than the present is not sensible.

Question 3: Are there other ways in which we might reduce the period taken to complete the plan-making process without removing stakeholder confidence?

The paper on Next Steps discusses options for improving the development plan, with greater participation and involvement leading to earlier identification of issues. The idea of an informal review process is raised, and Homes for Scotland considers that this idea should be developed.

As discussed, the main issue bringing the planning system into disrepute is the poor quality of some plans, and the need for remedies to be sought by Reporters. This is far too late in the process. Flaws and potential remedies have to be dealt with during plan preparation. For instance, the North Lanarkshire Local Plan could have been improved had objections to the inadequacy of the housing land demand/supply analysis been acted on before submission of the plan. Likewise, the changes made by Reporters to the Glasgow and Clyde Valley SDP did no more than ensure that the plan was in a form compliant with SPP, matters raised by objectors at both the MIR and Proposed Plan stages.

Homes for Scotland has argued that this should be the role of the Government planners. After the introduction of the 2006 Act, the Chief Planner assured parties that the territorial planners in his service would become more involved in giving advice during plan preparation, and this was welcomed. However, it is not clear how that process has resulted in better plans. There appears to have been a reluctance to insist on changes to emerging plans to ensure their basic conformity to Government policy or to insist on basic technical competence.

In that respect, an "informal" review process is not sufficient. Why would

representatives of the development sector, Planning Aid or any other organisation take part in such a process if there was no guarantee that it would result in better-quality plans being submitted? Homes for Scotland believes that, in the first instance, it is the role of Scottish Government planners to ensure that submitted plans are competent. We would be happy to participate in a review process provided there was a guarantee that the Government would act on clear cases where improvements to emerging plans were needed. However, we would not support such a process if it were to replace entirely the independent professional scrutiny by Reporters and the binding nature of their recommendations.

Question 4: Do you think any of the options would have an impact on particular sections of Scottish society?

Options 2, 3 and 4 would have increasingly-detrimental effects on the development industry in particular. The presumption in favour of development contained within the Planning Act does not in practice result in the speedy planning decisions intended. The impacts of Options 2 – 4 would make it progressively more difficult to secure positive promotional development plans and decisions driven by economic and social considerations rather than narrow local political ones.

Slowing down development is not in the interests of Scotland as a nation.