
NORTH AYRSHIRE COUNCIL

10 March 2022

Planning Committee

Title: Local development planning – regulations and guidance: consultation

Purpose: To provide the Committee with an update on the implementation of the Planning (Scotland) Act in respect to the preparation of local development plans and seek delegated authority to respond to the consultation on proposed regulations and guidance.

Recommendation: Delegated authority is granted to the Chief Planning Officer to complete and submit a detailed response to the consultation on Local Development Plan regulations and guidance.

1. Executive Summary

- 1.1 Proposals for regulations and guidance on all aspects of implementing the future local development plan system have been published for consultation. The Planning (Scotland) Act 2019, the cornerstone of a programme of planning reform, makes significant changes to development planning aimed at creating strong and flexible development plans. The proposed regulations and draft guidance seek to deliver a new type of Local Development Plan (LDP) that is more delivery-focused, placed-based and people-centred.
- 1.2 Having adopted LDP2 in November 2019, the intention is to prepare North Ayrshire's next Local Development Plan (LDP3) under the new provisions of the Planning Act for development planning. The proposed regulations and draft guidance are therefore welcomed in that, notwithstanding they are subject to potential change following the consultation, they begin to provide clarity as to what will be expected and required, both in terms of the how LDP3 is prepared and its form and content.
- 1.3 The proposed regulations and draft guidance highlight that preparing LDP3 will be significant undertaking, given the breadth of issues it is expected to address; the evidence and information required, and the level of engagement and consultation expected. Resourcing both the preparation and delivery of Local Development Plans remains a key issue which is brought into focus by the consultation. The renewed emphasis on delivery and promoting an infrastructure first approach to development underlines the essential need for a cross-service, corporate approach to preparing and delivering LDP3 alongside North Ayrshire Council's priorities and financial investment in the area's infrastructure and places.

2. Background

- 2.1 Planning in Scotland is undergoing a substantial transformation. Following an independent review carried out in 2015, the Scottish Government has embarked on a programme of reform to simplify and strengthen the planning system. The Planning (Scotland) Act 2019 was enacted in July 2019, with updates on the key changes reported to the Planning Committee in September and December 2019. The work programme and transitional arrangements to implement the Act, determining when parts of it come into force, has inevitably been impacted by the pandemic but continues to progress, reaching a major landmark with the publication and concurrent consultations on Draft National Planning Framework 4 (NPF4); local development planning regulations and guidance and provisions for Open Space Strategies and Play Sufficiency Assessments.
- 2.2 While significant changes to development planning were made by the 2019 Act aimed at creating strong and flexible development plans, the planning system in Scotland will remain plan-led. This means decisions on planning applications are to be made in accordance with the Development Plan, unless material considerations indicate otherwise. When NPF4 is adopted by the Scottish Parliament it will form part of the statutory Development Plan for North Ayrshire, alongside the Local Development Plan.
- 2.3 Planning reform, including the provisions of the 2019 Act, seek a new approach to preparing plans that will result in new style plans that support the management and use of land in the long-term public interest; refocuses plans on the outcomes that they will deliver for people and places, rather than the processes of preparing them; and be informed by consultation and collaboration so that they are relevant, accessible and interest people.

Proposals for Development Planning Regulations

- 2.5 Secondary legislation is needed to provide more detail to the requirements set out in the 2019 Act and implement the new Local Development Plan system. The proposed approach is based on the principle that regulations are kept to the minimum necessary, given the amount of change and the fact many procedures are already set out in the Act. Scottish Government consider that much of the detail of Scottish Ministers' expectations for implementation of the 2019 Act should be set out in guidance as this will provide for maximum flexibility and resilience, allowing experience from implementing the new system to be incorporated into updated guidance as it emerges.
- 2.6 In line with this approach, only limited amendments to the existing Town and Country Planning (Development Planning) (Scotland) Regulations 2008 are proposed. Predominately the proposed amendments are to reflect changes brought about by the primary legislation, for example removing or updating references to stages, documents or stakeholders within the system. New regulations relating to the new Evidence Report and gate check stage are included, which are closely aligned with current provisions for the examination of Proposed Plans.

Draft Guidance on Local Development Planning

- 2.7 As intimated above, much of the substantive detail of how Local Development Plans should be prepared under the 'new' system is set out in the draft guidance. The guidance sets out the aims and expectations for new style plans, providing an indication of what they should be like in the future; the process of how to achieve a new style plan, covering the legislative requirements, how these are met and responsibilities; and detailed thematic guidance on how new style LDPs are expected to implement the National Planning Framework 4 (NPF4) policies for the development and use of land.
- 2.8 Development planning is required by law to manage the development and use of land in the long-term public interest. It does this by setting out how our places will change into the future, including where development should and shouldn't happen. Development plans consider where new homes and workplaces will be built, how services and facilities will be provided, such as education and travel, and identify places that are valued and should be protected. LDPs also have a role in co-ordinating and aligning many different sectors and interests to achieve the desired change for places and communities.
- 2.9 The Draft Guidance highlights LDPs should be:
- **Delivery Focused:** LDPs should be a toolkit to support the delivery of development that meets people's needs and aspirations in the long-term public interest. They should embed an 'infrastructure-first' approach which is clear about what is sustainable, desirable and achievable and which identifies priorities and supports investment decisions.
 - **Place Based:** LDPs should play a leadership role in putting the Place Principle into practice, achieving joined-up and collaborative approaches to decisions about a place's assets and services, to overcome organisational and sectoral boundaries.
 - **People Centred:** developed through collaboration with a wide range of stakeholders, identifying and understanding the differing needs and aspirations of all people in society.
- 2.10 The guidance also envisages that LDPs will be prepared in a different way, look different and be used differently to before, moving away text-based plans with detailed policies towards being presented as a collation of site briefs and masterplans, with minimal policy wording, indicating how places will develop over a period of 20 years. In this context North Ayrshire Council's LDP2 is referenced by the Scottish Government, as an example of an LDP which is a place-based plan, with its *"illustrative, place-based content that is highlighted as good practice"*.
- 2.11 New-style Local Development Plan must be prepared at intervals of no more than 10 years, rather than the current five-year period. However, the draft guidance is clear that an LDP should not take 10 years to prepare. Rather, it is expected that plan preparation should take around 3-4 years. The process for preparing an LDP is set out in the draft guidance, with the importance of early evidence gathering and later implementation of the policies and proposals highlighted as also contributing to achieving the intended outcomes, alongside plan preparation itself.

- 2.12 The major change to note in the process for preparing an LDP is the removal of the 'Main Issues Report' stage at the start of the process which is replaced with the preparation of an Evidence Report which will undergo a gate-check. A robust Evidence Report should make it easier to prepare a strong, place based, people focused and deliverable LDP that is rooted in an Infrastructure First approach. Front loading the work and use of evidence will clearly inform what to plan for, before the Proposed Plan looks at where development should take place. While there is no requirement to consult on the Evidence Report, it should be informed by the views of those who are anticipated to be affected by the plan and involved in its implementation. In particular, Evidence Reports should include information about the lived experience of those who live and work in a place.
- 2.13 When the Evidence Report is completed and approved by the full Council (as required by the legislation) it will be submitted to the Scottish Government for an independent assessment of whether the planning authority has sufficient information to prepare an LDP, known as a 'gate check'. The gate check will be carried out by a person appointed by Scottish Ministers, usually a Reporter from the Directorate for Planning and Environmental Appeals. Where they are not satisfied that there is sufficient information, the appointed person must prepare an 'assessment report' which sets out the reasons for not being satisfied and recommendations for improving the Evidence Report.
- 2.14 Where a Reporter decides there is sufficient information contained within the Evidence Report, the authority may then move to prepare and publish their Proposed Plan. From this point onwards, the process for preparing the Local Development is largely unchanged. Once approved, again by the full Council, the Proposed Plan is published for a consultation of no fewer than 12 weeks. After the consultation period has ended, the planning authority can modify the Proposed Plan, taking account of representations made to them, any matters arising from consultation with key agencies and Scottish Ministers, and any minor drafting or technical matters. If modifications are made, the planning authority must prepare a Modification Report setting out the modifications and the reasons for making them.
- 2.15 Where representations have not been resolved, the planning authority is, when submitting the Proposed Plan to the Scottish Ministers, to request that the Scottish Ministers appoint a person to examine the Proposed Plan, who will make a recommendation as to whether or not a modification should be made to the Proposed Plan. Following receipt of the Examination Report, the planning authority may progress to adopt the Local Development Plan, modifying the Proposed Plan as required.
- 2.16 Guidance on process is also provided for the Development Plan Scheme and, in line with the aspiration that local development planning is more delivery focused, the Delivery Programme. The Development Plan Scheme is prepared annually and is identified as key to supporting deliverable and people-focussed plans by letting stakeholders know when and how they can get involved in the plan and keep them informed of progress and therefore is both an important communications and project management tool. The Delivery Programme replaces the current Action Programme and is noted as being instrumental to achieving an outcomes focussed approach to development planning. Setting out how the Council proposes to implement its LDP, Scottish Government envisages that Delivery Programmes will incorporate documents which project manage the timing of the authority's financial investment for the delivery

of the plan, and any coordination with private or other funding identified as being required.

- 2.17 The final section of the draft guidance provides thematic policy guidance for the three key documents of the plan making process – the Evidence Report, Proposed Plan and Delivery Programme – providing a bridge between the guidance on ‘process’ and NPF4, aligned with the policy themes of the NPF: sustainable, liveable, productive and distinctive Places. The guidance illustrates the significant breadth of issues that Local Development Plans are expected to address, both in respect to providing information at the Evidence Report stage and planning for in the Local Development Plan.

Key Observations

- 2.18 Having adopted LDP2 in November 2019, the intention is to prepare North Ayrshire’s next Local Development Plan (LDP3) under the new provisions of the Planning Act for development planning. The proposed regulations and draft guidance are therefore welcomed in that, notwithstanding they are subject to potential change following the consultation, they begin to provide clarity as to what will be expected and required, both in terms of the how LDP3 is prepared and its form and content.
- 2.19 What is clear from the proposed regulations and draft guidance is that preparing a Local Development Plan will be significant undertaking, given the breadth of issues it is expected to address; the evidence and information required to inform an LDP and the level of engagement and consultation expected. The Planning Act introduced a number of unfunded additional duties on planning authorities, many of which fall within the scope of development planning. Resourcing the preparation of Local Development Plans therefore remains a key issue.
- 2.20 The introduction of a requirement to prepare an Evidence Report and early gate check stage at the start of the process of preparing a Local Development Plan is the most significant change. The Draft Guidance notes that a significant amount of evidence informs the preparation of plans but authorities should take a proportionate approach to the preparation of the Evidence Report. Overall, it is considered that the proposed regulations and draft guidance published for consultation lack detail on how, at the gate check stage, Evidence Reports will be determined to have “sufficient information” to all local planning authorities to progress with the preparation of the LDP.
- 2.21 Finally, the emphasis on an ‘infrastructure first’ approach to development and focus on delivery is welcomed and acknowledged as a key element of planning reform. In some respects, this represents a significant change in the way infrastructure providers, local authorities and the Scottish Government must approach new development, how it is facilitated and in particular any required financial investment. This underlines the essential need for a cross-service, corporate approach to preparing and delivering LDP3 alongside North Ayrshire Council’s priorities and financial investment in the area’s infrastructure and places.

3. Proposals

- 3.1 It is recommended that the Planning Committee delegates authority to the Chief Planning Officer to complete and submit a detailed response to the consultation on Local Development Plan regulations and guidance.

4. Implications/Socio-economic Duty

Financial

4.1 The main costs arising from the preparation of a Local Development Plan relate to evidence gathering, including any requirement for specialist assessments and studies; facilitating consultation; and the examination. The proposed regulations and draft guidance will enable Planning to consider the cost and staff requirement of preparing LDP3 against the available resources. The implementation of the Local Development Plan is also a key factor. A Delivery Programme will accompany the LDP3 and should become a corporate document which project manages the timing of the authority's financial investment for the delivery of the plan.

Human Resources

4.2 See above.

Legal

4.3 The proposals for Development Planning Regulations, alongside the primary legislation, will form the legal framework which once enacted will govern how Local Development Plans should be prepared.

Equality/Socio-economic

4.4 There are a number of different assessments which must be undertaken to support the preparation of an LDP. These assessments – including a Strategic Environmental Assessment, Public Sector Equality Duty Assessment, Fairer Scotland Duty Assessment and Islands Communities Impact Assessment – are an integral part of the plan making process and should inform and be informed by the plan as it is prepared.

Environmental and Sustainability

4.5 See above.

Key Priorities

4.6 The proposed guidance highlights the corporate role of the Local Development Plan and that ongoing close collaboration between Planning and other Council services is essential in its preparation and delivery. As such, the Local Development Plan plays a key role in delivering the Council's key priorities, particularly those relating to the development and use of land and buildings, including new homes, but also in relation to climate change, the environment and promoting a wellbeing economy.

Community Wealth Building

4.7 The guidance notes there is an opportunity for LDPs to address community wealth building priorities by reflecting a people-centred approach to local economic development, addressing economic disadvantage and inequality, and providing added social value.

5. Consultation

- 5.1 This paper seeks delegated authority for the Chief Planning Officer to respond to a Scottish Government consultation on proposals for regulations and draft guidance on local development planning. The consultation is open until 31 March 2022. To inform a response to the consultation, the Planning Service will continue to engage with other planning authorities via Heads of Planning Scotland.
- 5.2 Consultation and engagement is a key element of preparing a Local Development Plan and the Scottish Government are expected to publish further guidance on this matter which will inform North Ayrshire's Participation Statement for LDP3.

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For further information please contact **Alistair Gemmell, Strategic Planning Manager**, on **01294 324021**.

Background Papers

[Local development planning - regulations and guidance: consultation - Scottish Government - Citizen Space](#)