

By email - spphousingconsultation@gov.scot
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SPF COMMENTS ON SCOTTISH PLANNING POLICY AND HOUSING: TECHNICAL CONSULTATION ON PROPOSED POLICY AMENDMENTS

Introduction

1. The Scottish Property Federation (SPF) is the voice for the property industry in Scotland. We include among our members: property investors, including major institutional pension and life funds; developers; landlords of commercial and residential property; and professional property consultants and advisers.
2. The SPF welcomes the opportunity to offer comments on the proposals to address the presumption in favour of development that contributes to sustainable development and the five-year effective housing land supply. The SPF's top priority is securing economic recovery and jobs, and our members consider that it is vital to establish key priorities for investment in both infrastructure and other development, that will underpin long term sustainable economic and private sector growth, in the wake of the COVID-19 pandemic.

Key Concerns

- Our members have strong concerns about the negative impact and far reaching unintended consequences on the whole of the planning system by the removal of the presumption in favour of development that contributes to sustainable development (the Presumption).
- They are firmly of the view that there would be insufficient flexibility in the SPP to support unanticipated development proposals.
- A presumption in favour of sustainable development is one of the most effective ways to stimulate sustainable economic growth. This does not mean building anywhere at any price – but it does send a strong signal to investment decision-makers about the intentions of the planning system to facilitate economic development.
- If the Government fails to encourage sustainable economic growth and recovery, then Scotland will potentially be at a competitive disadvantage in relation to key investment thus missing out on the delivery of housing, jobs, and prosperity.

General Overview

3. The consultation indicates that it has been produced in part to respond to the Court decision in the Gladman Quarrier's case. However, our members are firmly of the view that the difference between the decision in the Gladman case and the Scottish Government in relation to the Presumption is not as significant as the consultation document suggests. The decision does not result in "development at any cost" – the Court stressed that the Presumption and tilted balance was a matter of planning judgment. If there is a need for housing (i.e. a shortfall) then that is on one side of the scales, with adverse impacts on the other. As the Court highlighted, this includes considering development plan policies.

4. It is the firm view of the SPF that the case does not result in “open season” for new housing or other forms of development. At best, it provides developers with a policy basis to take forward schemes in areas where there is a need and have that need placed in the centre of the decision-making process. The Court decision clarified when in the assessment process the Presumption should be applied and does not dilute the development plan. Fundamentally, the Presumption does not make a bad site good.
5. The SPF’s detailed comments and responses to the specific questions raised in the consultation are set out below:

Removal of the Presumption

Question 1 - What is your view on our proposal to remove ‘the presumption’ from the SPP, through the changes set out?

Question 4 - Do you agree that the proposed amendments will not directly impact on other (non-housing) types of development?

Economic Recovery

6. Our members are concerned about the negative impact and far reaching unintended consequences of removing the Presumption. They are firmly of the view that the SPP should be worded to ensure that development plans contribute to sustainable development, and that the Presumption is core to the policy within all development plans. This goes beyond housing and impacts on commercial and infrastructure developments.
7. As stated above, the SPF’s top priority is securing economic recovery and jobs, and our members consider that it is vital to establish key priorities for investment in both infrastructure and other development, that will underpin long term sustainable economic and private sector growth, in the wake of the COVID-19 pandemic.
8. It is vital to show that Scotland is open to investment, which is acutely important to support the economic recovery post-coronavirus. It is also important in the context of a competitive and restricted development finance market.
9. If the aim of the change is to cut controversy and get more housing and infrastructure on the ground faster, it is difficult to see how the changes will make that happen. Removing the Presumption also seems to undermine the proposed green recovery from COVID-19 and the commitments made in the response to the Advisory Group on Economic Recovery.
10. Removing the Presumption and the five-year period also means there is no remedy to development plans that are under performing and/or out of date. There would be no policy basis for Scottish Ministers to require Councils to address under delivery or an out of date local plan.
11. Including more supportive text in the SPP to promote sustainable economic development shifts the emphasis in planning decision making to one which is more supportive of sustainable development, and will also send a positive signal to investors that the Scottish planning system is supportive of economic development proposals in general.

Sustainability and Green Recovery

12. The Scottish Government's position in the Gladman case was that the Presumption is a "Key Principle" of the planning system. That is not controversial and fully supported by the industry. Deleting the Presumption, however, sends out a confusing and harmful message to all development sectors.
13. The removal of the Presumption is being referenced by those opposing development. It has been raised by those in the renewables sector as cutting across the wider policy support for sustainable development and presents a confusing picture.
14. To delete a policy that's purpose is expressly stated as being to support sustainable development would seem to be at odds with the Green Recovery.

Development Delivery

15. The Presumption has become a central part of the decision-making framework, especially where development plans are absent or silent and unable to form the core determinant in any particular application. Its introduction has had a positive impact and it has been used in decision-making by planning authorities, Reporters and Ministers.
16. Our members are of the view that the absence of the Presumption and its focus on sustainable development may create a wider void between policy and decision-making and an increased likelihood of appeals and judicial reviews. Some of our members have suggested that a statement could confirm that it is not the intention of Ministers to apply a 'tilted balance', but rather that Section 25 of the Act prevails and the presumption is a 'material consideration' to be weighed in the decision-making balance with all other material considerations.
17. Our members are not aware of sites that have been approved via SPP since the introduction of the Presumption in 2014 that are considered to be "poor" or undermine the development plan. However, removing the Presumption will mean that sites like those delivered via SPP will not be able to come forward.
18. There are examples that highlight that the Presumption in SPP helps delivery, but it is not an open door. There are numerous cases since 2014 of SPP being applied where development has been consented, but also refused. None of the decisions were legally challenged, and the Gladman Quarrier's decision would not mean those refused would be approved.
19. There have been a number of appeal decisions for major residential development proposals since the Court of Session decision in the *Gladman* case and publication of the SPP consultation document. These demonstrate that Reporters appear to have no difficulty in applying SPP in the manner outlined by the Court. Significantly, given comments in the consultation document, of the 4 decisions where the SPP presumption was applied, two appeals were approved and two were refused. In the schemes that were approved, there is no evidence that the Reporters felt compelled to approve schemes that they considered unsustainable.
20. The DPEA website is rich with cases since the Gladman decision evidencing that the Reporters know how to apply the tilted balance. The following links to decisions on the DPEA website, demonstrate that the Presumption does not automatically lead to permissions being

granted. Copies of the decisions are also attached for ease of reference. They demonstrate that where adverse impacts outweigh benefits permission will be refused. Equally SPP also enables sites to come forward to help address shortfalls in the 5-year housing land supply. The West Lothian decision is an example of where the Presumption (and established approach to the calculation of housing land supply) was used to secure planning permission for redevelopment of a vacant brownfield site. Had SPP been amended as proposed there would not have been the same policy support to justify the grant of permission.

- [West Dunbartonshire - PPA-160-2030](#) – PPP for up to 99 dwellings
- [West Lothian – PPA-400-2109](#) – PPP for residential and class1 retail
- [City of Edinburgh – PPA-230 – 2294](#) and [PPA-230-2295](#) – Major residential and mixed-use schemes

Development Plan Process

21. The “new interim” SPP would be in place until at least late 2022. If the Presumption is removed our members have questioned how the Scottish Government can ensure development takes place in those local authorities who have an out of date development plan and/or an unmet need for development, including housing.
22. The consultation document assumes the Presumption undermines the development plan process. The SPF is not aware of any cases where a consent has been granted under SPP that could be said to undermine the development plan. Indeed, the opposite has been the case, with sites approved via SPP being included in emerging development plans, in some instances with the support of the local authority. The SPF would be happy to provide examples of this.
23. There are 1,000s of new homes that have been consented since 2014 via SPP. If a need for housing or any other form of development emerges that is not accommodated in the development plan, then the removal of para 33 of SPP means there will be no mechanism available to let that happen.
24. SPP formed the policy basis for Scottish Ministers decision to approve Edinburgh Garden District. Without the policy there would not have been a policy basis to grant permission because the proposal was still contrary to the development plan.
25. Removing the presumption and the five-year period, means there would be no remedy to development plans that are under performing and/or out of date. There would be no policy basis for applicants of Scottish Ministers to require Councils to address under delivery or an out of date local plan.
26. By deleting the Presumption and the 5 year time period on development plans, Ministers are removing the lever Councils and Ministers have to grant permissions that are acceptable, but not reflected in the development plan because that plan is not delivering and/or is out of date.
27. If there is a need for development that meets the tests for sustainable development and is otherwise considered acceptable, it should be allowed to come forward, not made to wait for the next LDP review.
28. Some of our members have suggested that the period before a development plan is considered out of date could be extended from 5 to 7 years. Likewise, if lockdown produces artificially low

delivery rates, these can be discounted or adjusted for when assessing the position in a local authority area. These are more proportionate and straightforward measures in the interim rather than deleting one of the key purposes of the planning process.

Changes to the 5-Year Effective Housing Land Supply

Question 2 - What is your view on the proposed changes set out and our aim of clarifying the definition of the 5-year effective housing land supply to reflect the currently exceptional market circumstances?

Question 3 - What is your view on the proposed changes to paragraph 125, including (a) the proposed calculation to establish the scale of the 5 year effective land supply in relation to alternatives and (b) the proposed approach to assessing proposals where a shortfall emerges?

29. We support the aim of clarifying the definition of the 5-year effective housing land supply to reflect the current exceptional market circumstances. However, we do not think that the specific proposals achieve that clarity.
30. The changes proposed in the consultation paper would dilute the delivery-focus of the planning system. Housing Land Audits would lose their usefulness as reliable indicators of when additional land may need to be released through planning decisions.
31. Our members also have strong concerns about the proposed changes to the measurement of effective land. It is a fundamental tenet that Councils make plans to meet housing need and demand. Where they choose not to do so, there must be a remedy. Our members have questioned the requirement to alter the rules across Scotland to address issues as a result of a failure to plan.
32. Our members are of the view that the changes will have the following negative consequences:
 - Make the concept of effective land something theoretical rather than practical, resulting in audits ceasing to be a useful tool for forecasting housing delivery and the planning of key infrastructure and utility provision to facilitate it.
 - Impose a provision of housing land methodology that disregards any shortfalls that arise in delivery against target as a development plan period unfolds and an undersupply of affordable housing.

Impacts of the Proposed Amendments

Question 5 - Do you agree that fuller impact assessments are not required?

33. Our members are firmly of the view that fuller impact assessments are required including a Business and Regulatory Impact Assessment. It is disappointing that there appears to be insufficient supporting impact assessments to underpin the proposals in the consultation.
34. Our members are concerned at an apparent deviation from the provisions set out in the Planning (Scotland) Act 2019. They are also concerned about the divergence from the purpose of planning during the interim period, ahead of the adoption of National Planning Framework 4 (NPF4) in 2022, when SPP will be fully replaced.

35. Our members are also firmly of the view that the removal of the Presumption in the interim is a backwards step in policy, which is not focused on delivery of sustainable places or meeting housing targets.
36. Positive policy is required to set out the role that Planning Authorities and Statutory Consultees must have in supporting economic activity, particularly in the wake of the COVID emergency.
37. The presumption should be a significant material consideration in all development management decisions, not just situations where the plan is out-of-date or does not contain policy relevant to the proposal.
38. An adaptable and delivery focused planning service is a key opportunity to unlock development and deliver the much-needed infrastructure for our growing population and business needs. If we are to drive local economic growth, jobs and investment we must have an efficient, aspirational and delivery-focused planning service.

Contact: Mandy Catterall
Government Relations Manager
Scottish Property Federation
Tel 0131 220 6304
E-mail: mcatterall@bpf.org.uk