

Response ID ANON-XWFX-2A8Y-H

Submitted to **Planning system - promotion and mediation: draft guidance - consultation**

Submitted on **2021-03-12 11:35:45**

Questions

1 Have we got the range of areas to which the mediation guidance should cover right?

Yes

Please comment on your answer (particularly if you do not agree):

The SPF contributed to the early debate supporting collaborative forms of planning, especially in relation to the development plan process. We therefore continue to be of the view that mediation should be used at an early stage of the planning process where key decisions of principle are made in terms of the spatial distribution of land uses.

A major concern in the early debate was that mediation may be proposed to be included in assisting the determination of planning applications. It is a fundamental tenet of the planning system that the determination of planning applications should be either by professional officers using delegated powers or for democratically elected planning committees to consider, on the advice of officers and evidence put before them. Mediation is simply a process of addressing concerns and not an adjudication procedure itself. It should be made clear that mediation, cannot and should not, be legally binding in these circumstances. In addition, mediation should not impact the timescales for the determination of a planning application.

2 Do you agree with the suggestion to maintain policy support for the use of mediation in National Planning Framework 4?

Yes

Please comment on your answer (particularly if you do not agree):

The SPF supports a collaborative approach to the planning system, with constructive early engagement.

Our members support promotion of a plan-led, effective, and supported planning system. It is therefore important that communities have access to and are engaged in plan making as well as planning applications.

The SPF is keen to move away from adversarial planning disputes and is firmly of the view that the strengthening of the Local Development Plan, and the introduction of Local Place Plans should assist communities in ensuring that their points of view are properly considered early in the process. Mediation could potentially be used as part of the process of formulating these plans. These measures will hopefully go a long way to improving public trust in the planning system, and what gets built and where.

3 Please tell us about your experience of using mediation including any financial / non-financial costs incurred. Please set out also how any costs were shared between the parties.

Please explain your view:

No Comment

4 Do you agree with the proposal that the Scottish Government's guidance on Development Plan Schemes should reference the use of mediation as one of a range of innovative techniques and activities for engaging stakeholders to be considered in the planning authority's participation statement?

Yes

Please comment on your answer (particularly if you do not agree):

As previously stated, the SPF is keen to move away from adversarial planning disputes and supports promotion of a plan-led, effective, and supported planning system. It is therefore important that communities have access to and are engaged in plan making at the earliest possible stage. Cognisance also needs to be given to the fact that development proposals are often finely balanced, and views are also considered in the recommendation provided by planning officers to members who determine applications.

5 Do you agree with the proposal that planning authorities should consider the use of mediation when preparing the participation statement element of their Development Plan Schemes?

Yes

Please comment on your answer (particularly if you do not agree):

SPF agrees that LPA's should consider the use of mediation when preparing the participation statement element of their Development Plan Scheme, as part of a process of ensuring that representative groups from across an area participate in development planning. As previously stated, we continue to be of the view that mediation should be used as early as possible in the planning process.

6 Do you agree that the Scottish Government should further investigate the potential role of mediation at the gatecheckstage?

Not Answered

Please comment on your answer (particularly if you do not agree):

We have been unable to answer this question fully as it is not entirely clear how the Gate Check process will work, however, if there are fundamental conflicts about key issues such as housing land numbers, a mediation process could be used to try and structure a resolution, in a similar manner to the way the 'housing round table' discussions used to work as part of local plan inquiries.

Our members are firmly of the view that the Gate Check stage should not lead into examination of the merits of particular individual site allocations and there should not be a requirement to mediate around site specific objections at this stage, especially if there is potential to have to do so again later in the planning process.

7 Do you agree with the proposal that the Scottish Government guidance should encourage the use of mediation between parties in advance of the development plan examination stage?

Yes

Please comment on your answer (particularly if you do not agree):

The 2019 Act is clear that 'mediation' includes any means of exploring, resolving, or reducing disagreement between persons involving an impartial person. However, it is critical to the process that the introduction and encouragement of mediation in the planning system should not be interpreted as intervention in a 'dispute' to resolve it, or arbitration. There is potential for a facilitated discussion, akin to a hearing to allow views to be expressed to assist a Reporter in findings in relation to site specific allocations. A formal mediation with a binding outcome will not be appropriate in such circumstances.

Given the vast range of issues that are typically covered in Schedule 4's, our members are concerned about the likely timescales that could be incurred in trying to resolve contested issues through mediation prior to the independent examination process of the Development Plan Examination. Whilst mediation could help in reducing the overall number of conflicting issues, if this is to form a key part of the development plan process, then we recommend that a set timeframe should be included within which any mediation can take place. Following this timeframe, any remaining unresolved issues would be carried forward to the Development Plan Examination. This would avoid undue delays in the Examination process starting and ultimately the adoption of a local development plan.

8 Do you agree with the proposal that the Scottish Government guidance should amend its guidance on Proposal of Application Notices to encourage the use of mediation between parties in any additional consultation activity attached to Pre-Application Consultation?

Yes

Please comment on your answer (particularly if you do not agree):

However, to make mediation work effectively and avoid unacceptable delays, clear guidance on the process in the planning system will be key, including adequate controls particularly around timing. Our members are firmly of the view that it should not be possible to enter into mediation at the local development plan stage, and again at the PAC stage of an application, unless there is a demonstrable deviation from the plan. Allocated sites should not require mediation at the PAC stage.

The guidance also needs to be clear that it should not be possible to enter into mediation on a specific project on the grounds of environmental impact, for example, and then separately undergo the process to examine the impact on infrastructure, schools etc.

- Our members consider additional consultation activity at the PAC stage (as recommended in the Proposed Changes to Pre-Application Consultation Requirements in Planning) will naturally foster more engagement with the community but it can also raise expectations, which can lead to more objections. The guidance on what would be the intended process and outcome will have to be very clear – circumstances where people disagree fundamentally in terms of a proposed land use are common in planning and whilst mediation may promote a shared understanding, it will often not resolve fundamental objections/support to a proposed development. This will not automatically mean that it is not a suitable proposed land use worthy of being granted planning permission. Planning decisions are often finely balanced.

9 Do you agree with the proposal that the Scottish Government should provide guidance encouraging the use of mediation between parties in Pre-Application Consultation?

Yes

Please comment on your answer (particularly if you do not agree):

However, the agreement is tempered, as in the answer to the question above, by the need to be very clear what is expected in terms of mediation. It would need to be clear whether it will be a facilitated discussion, whether the parties will be the applicant and the community council, which has a statutory role in planning, or whether the suggestion is that the discussion is widened to other bodies or groups.

To make mediation work effectively clear guidance on the process in the planning system will therefore be key, including adequate controls around timing. It will need to be clear that people who have made representations should only be permitted one shot at it, to avoid unacceptable delays. It should not be possible to enter into mediation at the local development plan stage and again at application stage, unless there is a demonstrable deviation from the plan.

Mediation should not be required for allocated sites in an adopted plan. The guidance also needs to be clear that it should not be possible to enter into mediation on a specific project on the grounds of environmental impact, for example, and then separately undergo the process to examine the impact on infrastructure,

schools etc.

10 Please give us any views you have on the content of these partial assessments.

Please explain your view.:

No comment

11 Do you have or can you direct us to any information that would assist in finalising these assessments?

Please explain your view.:

No comment

12 Please give us your views on the Island Communities Impact, the Fairer Scotland Duty and Strategic Environmental Assessment screening documents and our conclusion that full assessments are not required.

Please explain your view.:

No comment

13 If you consider that full assessments are required, please suggest any information sources that could help inform these assessments?

Please explain your view.:

No comment

About you

What is your name?

Name:

Mandy Catterall

What is your email address?

Email:

mcatterall@bpf.org.uk

Are you responding as an individual or an organisation?

Organisation

What is your organisation?

Organisation:

Scottish Property Federation

The Scottish Government would like your permission to publish your consultation response. Please indicate your publishing preference:

Publish response with name

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?

Yes

I confirm that I have read the privacy policy and consent to the data I provide being used as set out in the policy.

I consent

Evaluation

Please help us improve our consultations by answering the questions below. (Responses to the evaluation will not be published.)

Matrix 1 - How satisfied were you with this consultation?:

Slightly dissatisfied

Please enter comments here.:

The Scottish Property Federation (SPF) is a voice for the real estate 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. The design, format and functionality of the consultation makes it very challenging to gather comments from our members and offer an industry view. An editable template would make it easier to consult and offer a collective response from our membership.

Matrix 1 - How would you rate your satisfaction with using this platform (Citizen Space) to respond to this consultation?:

Slightly dissatisfied

Please enter comments here.:

Please see our comments above.