
HOUSING LAND POSITION STATEMENT IN LIGHT OF REJECTION OF PROPOSED SESPLAN 2

Report by Service Director Regulatory Services

PLANNING & BUILDING STANDARDS COMMITTEE

2 SEPTEMBER 2019

1 PURPOSE AND SUMMARY

- 1.1 This report seeks approval of the Position Statement in Appendix C as the basis for assessing housing development proposals, for sites not allocated in the Development Plan, in light of the decision by Scottish Ministers to reject SESplan2.**
- 1.2 The decision by Scottish Minister's to reject proposed SESplan 2 (Appendix A & B) has led to uncertainty about the housing supply targets and housing land requirements for the city region as a whole and for each of the six constituent local authorities. This has the potential to increase the number of speculative applications for housing whilst undermining the basis for their assessment. It also impacts on the evidence base for the production of the next tranche of Local Development Plans within the city region.
- 1.3 In response to the rejection, the SESplan authority sought counsel's opinion on the potential to legally challenge the decision and on the policy and practical implications for handling planning applications, preparing Local Development Plans, ensuring an effective 5 year housing land supply and whether there was an obligation to provide a new Strategic Development Plan. In addition, views were sought on what material prepared to support SESplan 2 could continue to be taken into account in determining planning applications and producing Local Development Plans.
- 1.4 The Position Statement attached as Appendix C has been prepared taking into account counsel's advice and sets out what matters SESplan authorities should give regard to when assessing planning applications. Each of the SESplan authorities is being asked to endorse and adopt the Position Statement, to ensure there is a consistent and robust approach throughout the city region.

2 RECOMMENDATIONS

- 2.1 I recommend that the Committee approve the Position Statement set out in Appendix C as the basis for determining speculative applications on non-allocated housing sites in the Scottish Borders.**

3 BACKGROUND

- 3.1 On 16 May 2019 Scottish Ministers formally wrote to the SESplan authority (Appendix A & B) advising that SESplan2 had been rejected. This was principally on the grounds that the plan was inadequate and not supported by suitably robust evidence. In particular, the plan was not informed by an adequate and timely Transport Appraisal (TA). In their view, it was not appropriate to adopt a spatial strategy that did not fully identify and mitigated any impacts on the strategic transport network. Scottish Ministers did not accept that this could be resolved through the production of Supplementary Guidance.
- 3.2 Following the decision, there was extensive debate and dialogue between senior officers within the constituent authorities and with the Convenor and Vice-Convenor of the SESplan Authority. A meeting was also held with the Chief Planner, John McNairney and his officials to assess the implications of the decision and to consider what actions were available to the SESplan Authority.
- 3.3 It was agreed to seek counsel's opinion on a range of questions that arose from the decision; relating to the potential to challenge the decision, the status of the existing Strategic Development Plan and the obligation to prepare a new plan, the weight that could be applied to the supporting information lodged in connection with SESplan2 and the Reporter's suggested amendments that did not relate to the Transport Assessment.
- 3.4 Counsel's view was that the chance of success in any judicial review of the decision was limited. His advice on some of the other matters raised is rehearsed in the Position Statement. Of particular interest was his views on the key information that could be taken into account in consideration of applications and forthcoming Local Development Plans. However, he did highlight that the question of the weight that can be applied to this information is subject to interpretation by the relevant decision maker.
- 3.5 On the basis of this advice, and detailed discussion at the SESPlan Project Board, the SESplan Operation Group have prepared a Position Statement that sets out the basis on which the individual SESplan authorities should assess planning applications for unplanned housing sites. This advice has been developed to ensure there is a consistency of approach throughout the city region and that there is a robust approach to control speculative housing development.
- 3.6 Section 9 of the Position Statement (Appendix C) suggests an approach to decision making, where it states:
- "9.0... when assessing development proposals for sites not allocated for development in the development plan SESplan member authorities should have regard to the following:*
- 1. the provisions and requirements of policies 7, 8 and 9 of the approved SDP1 which address housing land supply, transport and infrastructure issues;*

2. *the level of housing provision allocated and/or safeguarded in adopted LDPs;*
3. *updated information from the latest Housing Land Audit; and*
4. *the Housing Needs and Demand Assessment 2015 (HoNDA 2015).*

9.1 *Where it is deemed to provide an appropriate context to determine the application under consideration, such matters should be referenced in decision making on planning applications deemed contrary to the development plan and in responding to Planning Appeals.*

9.2 *As NPF4 progresses and Regional Spatial Strategies emerge, the weight, which can be given to these documents, will have a bearing on the assessment of planning applications in the future."*

3.7 This report seeks agreement of this approach in considering planning applications in the Scottish Borders.

4 IMPLICATIONS

4.1 Financial

There are no costs attached to the recommendations contained in this report.

4.2 Risk and Mitigations

The report seeks approval of a Position Statement which mitigates the risks and implications of speculative applications being approved which are not planned for within the Development Plan and which would have significant impacts on local services, infrastructure, transportation and communities.

4.3 Equalities

There are no equality implications attached to the recommendations contained in this report.

4.4 Acting Sustainably

The report seeks approval of a Position Statement which sets out to control unplanned development and retain sustainability at the core of the decision making process.

4.5 Carbon Management

There are no direct effects on the Council's carbon emissions arising from the report recommendations.

4.6 Rural Proofing

There will be no adverse impacts on rural areas from implementation, rather it will provide the means to control unplanned and unsustainable development.

4.7 Changes to Scheme of Administration or Scheme of Delegation

There are no changes to be made to the Council's Scheme of Administration or Scheme of Delegation arising from this report.

5 CONSULTATION

5.1 The Chief Financial Officer, the Monitoring Officer, the Chief Legal Officer, the Chief Officer Audit and Risk, the Chief Officer HR, Communications and the Clerk to the Council have been consulted and any comments received have been incorporated into the final report.

Approved by

Brian Frater

Service Director Regulatory Services Signature

Author(s)

Name	Designation and Contact Number
Ian L Aikman	Chief Planning & Housing Officer

Background Papers:

Appendix A - letter dated 16th May 2019 from Kevin Stewart, Minister for Local Government, Housing and Planning

Appendix B - letter dated 16th May 2019 from John McNairney, Chief Planner

Appendix C - Housing Position Statement in light of Minister's Rejection of Proposed SDP2

Previous Minute Reference: None

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