



The Strategic Development Planning Authority
for Edinburgh and South East Scotland

HOUSING LAND POSITION STATEMENT IN LIGHT OF MINISTERS REJECTION OF PROPOSED SDP2

1.0 Introduction

1.1 On 16 May 2019 Scottish Ministers issued their decision to reject SDP2. In light of this decision, SESplan has prepared a position statement on how it and the SESplan member authorities will respond to planning applications for residential development, which are contrary to the development plan.

2.0 Legislative Background

2.1 The Town and Country Planning (Scotland) Act 1997 requires planning applications to be determined in accordance with the development plan unless material considerations indicate otherwise.

2.2 The content of Scottish Planning Policy (SPP) is a material consideration that carries significant weight, though it is for the decision-maker to determine the appropriate weight in each case. Relevant sections of SPP are set out below:

Paragraph 32 of SPP states that the presumption in favour of sustainable development does not change the statutory status of the development plan as the starting point for decision-making. Proposals that accord with up-to-date plans should be considered acceptable in principle and consideration should focus on the detailed matters arising. For proposals that do not accord with up-to-date development plans, the primacy of the plan is maintained and this SPP and the presumption in favour of development that contributes to sustainable development will be material considerations.

Paragraph 33 of SPP states that where relevant policies in a development plan are out-of-date²² or the plan does not contain policies relevant to the proposal, then the presumption in favour of development that contributes to sustainable development will be a significant material consideration. Decision-makers should also take into account any adverse impacts which would significantly and demonstrably outweigh the benefits when assessed against the wider policies in this SPP. The same principle should be applied where a development plan is more than five years old.

Paragraph 34 states that where a plan is under review, it may be appropriate in some circumstances to consider whether granting planning permission would prejudice the

emerging plan. Such circumstances are only likely to apply where the development proposed is so substantial, or its cumulative effect would be so significant, that to grant permission would undermine the plan-making process by predetermining decisions about the scale, location or phasing of new developments that are central to the emerging plan. Prematurity will be more relevant as a consideration the closer the plan is to adoption or approval.

Paragraph 35 states that in order to support the efficient and transparent handling of planning applications by planning authorities and consultees, applicants should provide good quality and timely supporting information that describes the economic, environmental and social implications of the proposal. In the spirit of planning reform, this should be proportionate to the scale of the application and planning authorities should avoid asking for additional impact appraisals, unless necessary to enable a decision to be made. Clarity on the information needed and the timetable for determining proposals can be assisted by good communication and project management, for example, use of processing agreements setting out the information required and covering the whole process including planning obligations.

Paragraph 119 of SPP requires that local development plans in city regions should allocate a range of sites, which are effective or expected to become effective in the plan period to meet the housing land requirement of the strategic development plan up to year 10 from the expected year of adoption. They should provide for a minimum of 5 years effective land supply at all times. In allocating sites, planning authorities should be confident that land can be brought forward for development within the plan period and that the range of sites allocated will enable the housing supply target to be met.

Paragraph 125 of SPP states that where a shortfall in the 5-year effective housing land supply emerges, development plan policies for the supply of housing land will not be considered up-to-date, and paragraphs 32-35 will be relevant.

2.4 SDP1 is approaching five years old. Once the SDP is over 5 years old, under the terms of SPP its policies can be considered to be out of date, including the housing figures contained within the Plan.

3.0 Strategic Development Plan 1 (SDP1)

3.1 SESplan (SDP1) approved in June 2013 and associated Housing Land Supplementary Guidance adopted in October 2014, remains the extant development plan for the South East of Scotland until such time as new planning legislation comes into force, albeit that SDP1 will be out of date before the new legislation comes fully into force. The Planning (Scotland) Act 2019 received Royal Assent in July 2019. The new Act removes requirements to prepare strategic development plans and requires the preparation of Regional Spatial Strategies. Transitional arrangements will require to be published together with further secondary legislation setting out in more detail the requirements arising from the Planning (Scotland) Act 2019 particularly in relation to the preparation of regional spatial strategies.

3.2 The spatial strategy of SDP1 and the housing land requirement from 2019 to 2024 together with the associated LDP housing allocations provide the basis on which planning applications can be determined and any resulting appeals defended until such time as SDP1 is replaced, although other material considerations, specifically SPP requirements as set out above, must also inform this. Beyond 2024 it is anticipated that a revised rolling housing land requirement will be put in place and published via a revised National Planning Framework (NPF4) and/or the preparation of an agreed Regional Spatial Strategy (RSS) per the recently enacted Planning (Scotland) Act 2019.

3.3 In advance of this and given that SESplan 1 will be considered 'out of date' by November 2019 it should be noted that there will not be a 5-year housing land supply target to assess housing supply against (post 2024). Constituent authorities will therefore be required to apply material weight to the content of SESplan 2 Housing Background Paper (Housing Need and Demand Assessment 2, 2015) – that having been declared as 'robust and credible' by decision makers in the preparation of SESplan 2. Other material factors include those matters set out below.

4.0 SDP2 Decision Letter

4.1 The Scottish Ministers decision letter on SDP2, dated 16 May 2019 sets out three reasons for rejection of SDP2:

- 1) The Scottish Ministers were not satisfied that the plan has been informed by an adequate and timely transport appraisal;
- 2) The plan does not take sufficient account of the relationship between land use and transport; and
- 3) The Scottish Ministers do not support the use of supplementary guidance to resolve this issue.

4.2 The Minister found that the requirements of Scottish Planning Policy (SPP), specifically paragraphs 272-275 had not been met and, therefore, the plan was deficient. The Ministers' decision does not specifically reject the housing requirements set out in SDP2 Proposed Plan and subsequent recommendations in the Examination Report. Rejection of SDP2 by the Minister does, however, result in the current SDP (SDP1) remaining the adopted strategic development plan, but being out of date.

5.0 Local Development Plans

5.1 QC opinion on whether or not the SESplan member authorities have an out of date development plan has been sought. QC opinion is that Paragraph 33 of SPP is not particularly helpful as to how to apply the 5 year rule when there are different plans forming part of the overall development plan and considers that a definitive answer cannot be given in this regard. QC opinion suggests that it is likely that in development management decisions the more important factors will be the age of the relevant LDP and, if appropriate, the presence or absence of a 5-year housing land supply.

5.2 All of the SESplan member authorities have adopted Local Development Plans in place, which have been prepared within the context of SDP1. All of the LDPs are less than five years old. Currently, Scottish Government requires that LDPs must be adopted within five years of the previous plan. Given this current legislative requirement, this places some of the SESplan member authorities at risk given the date of adoption of their current LDP. However, the Planning (Scotland) Act 2019 requires the preparation of LDPs every 10 years. Transitional arrangements are required to clarify the impact of this on extant LDPs. Table 1 provides details of current LDPs within the SESplan area.

Table 1: SESplan Member Authorities Local Development Plan Position

LDP	DATE OF ADOPTION
City of Edinburgh	24 November 2016
East Lothian	27 September 2018
Fife	21 September 2017
Midlothian	7 November 2017
Scottish Borders	12 May 2016
West Lothian	4 September 2018

5.3 In the absence of an up to date SDP, SDP1 and associated LDPs provide the basis of approved/adopted policy on which to determine planning applications, until such time as they are replaced.

5.4 QC opinion is that all of the following documents can also be taken into account as a material consideration in the determination of Planning Applications:

- a) the policies of proposed SDP2 with the exception of those policies relating to transport infrastructure
- (b) the supporting material prepared in respect of SESplan2
- (c) Housing Need and Demand Assessment 2
- (d) General Register Office Predictions on population growth
- (e) Housing Land Audits
- (f) the material contained within the Reporter’s examination report

5.5 The issue, however, is the weight that can be applied to each of these and interpretation given by individual Reporters from the DPEA.

5.6 In summary, it is concluded that in determining planning applications consideration should be given to the terms of the extant development plan and the matters raised at (a)-(f) above until such time as the development plan is replaced.

6.0 Housing Land Supply

6.1 It is noted that the Minister’s decision to reject SDP2 relates to concerns over a lack of an adequate and timely Transport Appraisal and the relationship between land use and

transport. No specific dissatisfaction has been expressed about the approach taken to housing numbers and the evidence base that underpins it.

6.2 SPP expects that at least a 5-year supply of effective housing land should be provided at all times. SPP explains that it is the housing land audit that is critical to assessing effective housing land supply. PAN 2/2010, Affordable Housing and Housing land Audits indicate that an audit has two functions:

1. to demonstrate the availability of sufficient land to meet the requirement for a continuous 5-year supply; and
2. to provide a snapshot of the amount of land available for the construction of housing at any particular time.

6.3 SPP and PAN 2/2010 indicate that the housing land audit should be treated as the most up to date evidence on which to monitor housing land supply. This has a particular bearing on assessing proposals against the terms of policy 7 of SDP1.

6.4 The most recent Housing Land Audits covering the SESplan area date from 2018. All have been agreed by Homes for Scotland and inform the 5 year effective supply position. These are a material consideration in determining planning applications for residential and mixed use developments.

6.5 Table 2 provides details of the Housing Land Audits for each of the SESplan member Authorities.

Table 2: Housing Land Audits/Effective Housing Land Supply

SESplan Member Authority	Housing Land Audit	No. of Years Supply	5 Year Effective Supply*
City of Edinburgh	2018 Housing Land Audit agreed TBC	5.3	Yes
East Lothian	2018 Housing Land Audit agreed October 2018	5.05	Yes
Fife	2018 Housing Land Audit agreed (1 site disputed) December 2018	Affordable 6.4 Market 9.6	Yes**
Midlothian	2018 Housing Land Audit agreed December 2018	5.9	Yes
Scottish Borders	2018 Housing Land Audit	5.11 to 13 years	Yes
West Lothian	2018 Housing Land Audit agreed May 2019	5.5	Yes

*methodology differs across the member authorities; e.g. WLC ignores shortfall; SBC methodology is set out in LDP and was supported by Reporter at Examination (13 years supply figure).

** HLA2018 looked to SDP2 as it was considered of primary relevance given that the report into SDP2 Examination was published in July 2018.

6.6 SDP1 sets out in detail the housing land requirement for the period 2009-2024. In some instances the LDPs prepared by the SESplan member authorities provide for housing allocations up to 2024. Housing Land Audits set out in detail the housing land supply to 2024/25 except Fife where this is identified as a single figure, post 2023.

6.7 The assessed housing requirement in SDP1 from 2024 to 2032 is not split by local authority area and in any event is likely to be superseded by a revised housing supply target when NPF4 is published (anticipated by the end of 2021) and more details of the first Regional Spatial Framework/Regional Spatial Strategy for the SESplan area (a requirement of the Planning (Scotland) Act 2019 and NPF4) emerge. Therefore, by 2024 the development plan landscape for the SESplan area may have changed considerably giving rise to increased uncertainty over the validity of the SDP1 requirements for the period 2024 - 2032, particularly in light of HNDA2 and any subsequent assessments and the terms of how this would be distributed across the constituent authorities of the SESplan area.

7.0 Housing Need and Demand Assessment (HNDA2)

7.1 QC opinion is that the Housing Need and Demand Assessment (HNDA2) prepared for SDP2 and confirmed as robust and credible by the Scottish Government in a letter from the Centre for Housing Market Analysis dated 27th March 2015, can be taken into account in preparing emerging LDPs. HNDA2 is at present the most up to date and therefore reliable assessment of housing demand and need in the SESplan area. However, it is simply a technical exercise and its content does not translate directly into housing land requirements or supply targets. Although SDP2 was rejected by the Scottish Government its housing figures provide details of potential requirements and targets which take into account environmental and economic issues, as is required by SPP.

7.2 HNDA2 set out three alternative futures;

1. Steady Recovery
2. Wealth distribution
3. Strong Economic

7.3 The SDP Reporters discounted the 'strong economic' scenario as '*for such a scenario to be achievable, there would need to be growth in UK exports and an end to public sector funding restrictions, neither of which is supported by evidence.*' (para. 7, page 236 of the SDP2 Report of Examination). The SDP Reporter concluded (para 13, page 237) that '*I am satisfied that the use of the Wealth Distribution outcome to derive the housing supply targets was justified*'.

7.4 The SDP Reporters concluded '*The HNDA has been certified as robust and credible. It took account of evidence that was not available to earlier assessments of need and demand. This clearly points to the demand for market housing in the future being significantly lower than was built during the years before the recession. No convincing evidence has been provided to undermine the findings of the HNDA*' (para 21, page 238).

7.5 The SDP Reporters further found *‘that analysing performance against SDP1 requirements is of little assistance to an assessment of the extent of the actual housing supply backlog. This is because SDP1 targets were based on an earlier HNDA that no longer provides the most up to date and reliable picture of housing need and demand’*(at para 36, page 240).

7.6 SPP paragraph 113 states that *‘where the Scottish Government is satisfied that the HNDA is robust and credible, the approach used will not normally be considered further at a development plan examination.’* A HNDA that has been certified by Scottish Government as being ‘robust and credible’ therefore carries significant weight as a technical background document to the consideration of future housing land requirements. It should also be noted that the robust and credible status does not confer any judgement on the suitability of the HNDAs need and demand figures. It relates to the assumptions and methodology used in the HNDA process.

8.0 Infrastructure Requirements

8.1 Infrastructure is a material consideration in the determination of planning applications. QC opinion is that where proposals raise strategic infrastructure issues that cannot be mitigated, there are grounds for refusal of planning applications.

9.0 SDP1 Policies

9.1 Where a five-year effective supply does not exist, policy 7 of SDP1 is triggered. The terms of Policy 7 are set out below:

Policy 7 Maintaining a Five Year Housing Land Supply

Sites for greenfield housing development proposals either within or outwith the identified Strategic Development Areas may be allocated in Local Development Plans or granted planning permission to maintain a five years’ effective housing land supply, subject to satisfying each of the following criteria:

- a) The development will be in keeping with the character of the settlement and local area;
- b) The development will not undermine green belt objectives; and
- c) Any additional infrastructure required as a result of the development is either committed or to be funded by the developer.

9.2 Other relevant policies are policies 8 and 9 with regard to infrastructure provision. The terms of these policies are set out below:

Policy 8 –Transportation

The Local Planning Authorities in collaboration with Transport Scotland and SEStran will support and promote the development of a sustainable transport network. Local Development Plans will:

- a) Ensure that development likely to generate significant travel demand is directed to locations that support travel by public transport, foot and cycle;
- b) Ensure that new development minimises the generation of additional car traffic, including through the application of mode share targets and car parking standards that relate to public transport accessibility;
- c) Relate density and type of development to public transport accessibility;
- d) Consider the need for additional rail freight facilities and when considering sites for development that would generate significant freight movements, require the potential for rail freight to be investigated;
- e) Consider the potential for expanded port capacity in the Firth of Forth and the cross-boundary implications this may have;
- f) Take account of the cross-boundary transport implications of all policies and proposals including implications for the transport network outwith the SESplan area;
- g) Ensure that the design and layout of new development demonstrably promotes non-car modes of travel; and
- h) Consider the merits of protecting existing and potential traffic-free cycle and walking routes such as disused railways affected by any development proposal.

Policy 9 Infrastructure

The Strategic Development Plan identifies in Figure 2 and through its Action Programme infrastructure, including transportation infrastructure, required to deliver the development of the Strategy. Local Development Plans will:

- a) Safeguard land to accommodate the necessary infrastructure required to deliver the Strategic Development Plan as set out on Figure 2 and in the accompanying Action Programme;
- b) Provide policy guidance that will require sufficient infrastructure to be available, or its provision to be committed, before development can proceed. Particular emphasis is to be placed on delivery of the strategic infrastructure requirements that are set out in Figure 2 and in the Action Programme; and
- c) Pursue the delivery of infrastructure through developer contributions, funding from infrastructure providers or other appropriate means, including the promotion of alternative delivery mechanisms. Particular emphasis is to be placed on delivery of the strategic infrastructure requirements that are set out in Figure 2 and in the Action Programme.

10.0 SESplan Position

10.1 In light of the above, when assessing development proposals for sites not allocated for development in the development plan SESplan member authorities can have regard to the following:

1. the provisions and requirements of SDP1, particularly 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. the policies of SDP2 Proposed Plan with the exception of those policies relating to transport infrastructure;
4. SDP2 Examination Report;
5. updated information from the latest Housing Land Audit,;
6. the Housing Needs and Demand Assessment 2015 (HNDA2) and
7. SDP2 Proposed Plan Housing Background Paper (October 2016).

10.2 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.

10.3 As NPF4 progresses and Regional Spatial Framework/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.

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