

Transforming Planning in Practice Regulations and Guidance – Discussion Paper

Evidence report and Gatecheck

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1. Introduction

This paper is intended to support the sub-group in producing the outputs that will inform the drafting of the regulations and guidance associated with the new development plan system. It outlines the requirements of the 2019 Act, thinking so far and includes questions to prompt consideration and discussion by sub-group members.

The aim of the subgroup is to produce a clear description of the process to prepare an Evidence report following the Planning (Scotland) Act 2019.

The outputs of the subgroup will be:

- **Flow chart** of the process, milestones and outputs for preparing an Evidence report.
- **Description** of the individual stages, including **legal** requirements, good practice advice on **how** to meet them, identification of **responsibilities** and **timescales** for each stage.
- Suggestion for the **format / structure** of an Evidence report and how it could link to evidence that is of a significant volume.

The output should reflect the fact that a review of our national planning policies is ongoing and that current approaches may evolve – flexibility will therefore be essential.

2. Requirements of the 2019 Act

Evidence report

Section 16B of the Town and Country Planning (Scotland) Act, 1997 as amended by the 2019 Act, sets out the requirements for the evidence report in preparing a local development plan. It is set out in full in Annex A. In summary, it outlines the need to

prepare an Evidence report and the specific requirements to be included (to cover the matters set out at Section 15(5) of the Act), as well as the specific groups of people whose views are to be sought and reported on.

In preparing an Evidence report, a local authority must also assess the sufficiency of play opportunities for children, in accordance with regulations (yet to be drafted). The Evidence report must also set out:

- Summaries of the action taken to meet the housing needs of older people and disabled people, and the accommodation needs of Gypsies and Travellers, and an analysis of the extent to which that action has helped to meet those needs.
- How the authority have invited local communities to prepare local place plans, and what assistance they have provided

We are giving consideration to regulations requiring the evidence report to take into account Open Space Strategies and Forest and Woodland Strategies, which were given emphasis through the Bill process.

A key part of the rationale for the Evidence report and gatecheck is to secure a shared understanding of the outcomes to be achieved by the LDP. While planning authorities may be expected to engage widely and ensure all groups within the community are able to participate, the statutory requirements for engagement on the Evidence report are set out in Sections 16B(2) and 16(4). In summary, the planning authority needs to engage with:

- key agencies
- children and young people (particularly school pupils, youth councillors and youth parliament representatives)
- disabled persons
- Gypsies and Travellers
- Community Councils
- “the public at large”
- such other persons as may be prescribed.

Gatecheck

The statutory basis for the gatecheck, set out at Section 16B(8), is that Ministers will appoint a person (a Reporter) “to assess whether the report contains sufficient information to enable the planning authority to prepare a local development plan.”. Ministers have powers (16B(13)) to make regulations as to “what is to be assessed and matters by reference to which the assessment is to be made”.

If the Reporter is satisfied, they will notify Scottish Ministers and the authority, and the authority can proceed to prepare the Proposed Plan. If not, the Reporter will prepare an “assessment report” setting out why they are not satisfied, with recommendations for improving the Evidence report. In this case, the authority must revise and resubmit the Evidence report: they cannot prepare a Proposed Plan until they have cleared the gatecheck.

Ministers have powers to make a number of regulations in relation to the gatecheck. This framework is similar to the provisions about examination of a proposed local development plan. Scottish Government will work with the Directorate for Planning and Environmental Appeal in preparing these. The expectation is that there will be consistency across the requirements, however, any key points the sub-group wish to make should be highlighted.

3. Thinking So Far

Several matters that the regulations and guidance will need to contain in relation to LDP evidence report and gatecheck have been identified during the planning reform considerations of the last few years. The following key documents provide reference and are available either on or via the [Transforming Planning](#) web pages:

- Report of Independent Panel (May 2016)
- Places, People and Planning: Consultation Paper (January 2017)
- Independent Analysis of Consultation Responses (to January 2017 consultation)
- Places, People and Planning: Position Statement (June 2017)
- Planning Bill Policy Memorandum (December 2017)

The independent panel highlighted issues with the proportionality of supporting information for plans and noted that evidence gathering, including statutory assessment, adds time and complexity to the plan preparation process. They suggested earlier independent involvement could focus on key aspects of the plan and that only after agreement had been reached on these should a fuller discussion on place and sites take place.

In response to this it was proposed that a new gatecheck would help improve plan examination by dealing with significant issues at an early stage before a proposed plan is prepared. The gatecheck would establish whether the technical evidence is robust and sufficiently sound to prepare a deliverable spatial strategy. It would be undertaken by an appointed person, likely a Scottish Government Reporter, who could approve the report. Following this the plan would move to the next stage, or the appointed person could make recommendations for additional preparatory work.

In the documents referenced above a range of evidence was put forward as significant to the Evidence report and gatecheck – see summary list below. The range of evidence means the preparation of the Evidence report should include engagement with a range of stakeholders.

- Involvement of communities in developing proposals for change
- Links with community planning
- Identification of the key outcomes of the plan
- The amount of land needed for housing
- Required environmental assessment work, e.g. flood risk appraisal
- Transport appraisal
- The reuse of vacant and derelict land

- An audit of existing infrastructure capacity and prioritisation of necessary interventions
- Methods for further assessment once sites are considered
- Proposed departures from national policy, related to local circumstances

The proposals sought to achieve a more project managed approach to development planning, reducing risk and helping with quality assurance. They would ensure plans were based on sound evidence and enable key issues to be addressed early on in an inclusive way. Remedial action could then be taken where necessary, maximising the opportunity for a deliverable, place-based plan. The proposal sought to address problems in the current process where significant underlying issues are not addressed through a plan's preparation, resulting in limited scope for change at the end of the process. By proposing the report be agreed by the planning authority as a whole before being submitted for consideration, a more corporate approach to development planning as a whole should be supported.

Planning reform has highlighted the importance of embedding an Infrastructure First approach into Local Development Plans. Plans need to be better informed early on with regard to utilities and services, to support site selection and then delivery, so that the spatial strategy and outcomes are realised. Evidence reports can contribute to embedding the Infrastructure First approach. Consideration should be given to how infrastructure appraisal and development viability is addressed in Evidence reports to feed into developer contribution policy and approaches. Masterplan Consent Areas are a proactive place-making delivery tool and should also be considered by Planning Authorities.

Pilot Work

A Pilot Project was undertaken with Moray Council with the input of DPEA and Homes for Scotland. The project considered the process for the preparation of the Evidence report and developed a proposed structure and format. The work was undertaken prior to the completion of the Planning (Scotland) Act, 2019 so does not reflect amendments made through the later stages of the parliamentary process. However the outputs are still relevant to consider and included:

- A Process Diagram: this shows the key steps to prepare an evidence report and carry out a gatecheck.
- A Report Structure: this is designed to be flexible so authorities can title chapters to suit their circumstances but there would be key chapters expected to be seen in all reports, e.g. outcomes, stakeholder involvement, housing and infrastructure.
- Structure for Report Chapters: this suggests what a chapter of the report would look like on paper and is based on a similar format (Schedule 4s), already used in plan examinations.

The above outputs and a report of the project will be made available separately. The report highlights benefits that Moray Council achieved through preparing the evidence report. In summary, the Council identified that the process of preparing the evidence report helped to engage both other parts of the Council and external stakeholders, and improve the evidence available on key matters such as health. It

supported alignment with areas such as community planning and infrastructure, and could help to develop a more corporate and deliverable plan. It was also more transparent about the evidence underlying the plan: most of this information is already collected, but not published in an accessible way.

4. Questions

Output 1

- What are the key stages, milestones and outputs in the process of preparing an Evidence Report?
- What would be the relationship between the gatecheck and the examination of the plan? And how can we avoid duplication between them?
- What should the gatecheck focus on?

Output 2

- Who is responsible – inside and outside of local authorities - for producing the Evidence Report?
- How can stakeholder involvement take place and their views on the evidence be demonstrated? Are there other people or groups who should be specifically prescribed and/or recommended for engagement?
- What is an appropriate indicative / average timescale for preparation?
- How can the statutory requirements of the Evidence Report be met, while also meeting its broader purpose?

Output 3

- How should the Evidence Report connect with the critical evidence relating to housing and transport?
- How do we ensure this stage of plan preparation is proportionate given our aim of reducing plan preparation times to allow a greater focus on delivery?

Contextual Questions

- What might a 'how to' guide to preparing plans look like to promote a new style of plan?
- Are there key elements that should be prescribed (fixed) in regulations, where there is the power to do so, rather than covered more flexibly in guidance?

5. Background Information

Existing Regulations & Guidance

- Existing [development planning regulations](#)
- [Circular 6/2013](#)
- Gov.scot [web guidance](#)

Guidance available in other nations

- Wales - [Development plans manual](#)
- England – [Guidance on plan-making](#)

Annex A – Statutory Requirements for Evidence report and LDP

(Clauses where further details may be prescribed or where the Scottish Ministers are required to publish guidance are highlighted)

Town and Country Planning (Scotland) Act 1997, as amended by the Planning (Scotland) Act, 2019.

16B – Evidence report for preparation of local development plan

- (1) Before preparing a local development plan, a planning authority are to prepare an evidence report.
- (2) In preparing the evidence report the planning authority are to seek the views of, and have regard to any views expressed by—
 - (a) the key agencies,
 - (b) children and young people, in particular school pupils, youth councillors and youth parliament representatives,
 - (c) such other persons as may be prescribed, and**
 - (d) the public at large.
- (3) The evidence report is to—
 - (a) set out the planning authority's view on the matters listed in section 15(5) for land in the part of the authority's district to which the local development plan will relate,
 - (b) set out—
 - (i) a summary of the action taken by the planning authority to support and promote the construction and adaptation of housing to meet the housing needs of older people and disabled people in the authority's area,
 - (ii) an analysis of the extent to which the action has helped to meet those needs,
 - (c) set out—
 - (i) a summary of the action taken by the planning authority to meet the accommodation needs of Gypsies and Travellers in the authority's area,
 - (ii) an analysis of the extent to which the action has helped to meet those needs,
 - (d) set out—
 - (i) how the planning authority have invited local communities in their district to prepare local place plans in accordance with schedule 19,
 - (ii) the assistance provided to local communities to assist them to prepare local place plans,
 - (e) include such other matters as are prescribed.**

- (4) The evidence report is also to include a statement on—
- (a) the steps taken by the planning authority in preparing the report to seek the views of the public at large, including in particular the views of—
 - (i) disabled persons,
 - (ii) Gypsies and Travellers, and
 - (iii) children and young people, and
 - (b) the steps taken by the planning authority in preparing the report to seek the views of community councils, and
 - (c) the extent to which the views expressed under paragraphs (a) and (aa) have been taken into account in the report.

15 – Form and content of local development plans

- 15(1) A local development plan is a plan in which is set out, for land in the part of the district to which it relates—
- (a) a spatial strategy, being a detailed statement of the planning authority's policies and proposals as to the development and use of the land taking account of the matters mentioned in subsection (5),
 - (b) such other matters as may be prescribed, and**
 - (c) any other matter which the planning authority consider it appropriate to include.
- (1A) The local development plan must also include targets for meeting the housing needs of people living in the part of the district to which it relates.
- (2A) A local development plan is to include a statement of the planning authority's policies and proposals as to the provision of public conveniences.
- (2B) A local development plan is to include a statement of the planning authority's policies and proposals as to the provision of water refill locations.
- ...
- (5) The matters referred to in subsection (1)(a) are—
- (a) the principal physical, cultural, economic, social, built heritage and environmental characteristics of the district,
 - (b) the principal purposes for which the land is used,
 - (c) the size, composition, health and distribution of the population of the district,
 - (ca) the housing needs of the population of the area, including, in particular, the needs of persons undertaking further and higher education, older people and disabled people,
 - (cb) the availability of land in the district for housing, including for older people and disabled people,
 - (cc) the desirability of allocating land for the purposes of resettlement,

- (cd) the health needs of the population of the district and the likely effects of development and use of land on those health needs,
 - (ce) the education needs of the population of the district and the likely effects of development and use of land on those education needs,
 - (cf) the extent to which there are rural areas within the district in relation to which there has been a substantial decline in population,
 - (cg) the capacity of education services in the district,
 - (ch) the desirability of maintaining an appropriate number and range of cultural venues and facilities (including in particular, but not limited to, live music venues) in the district,
 - (d) the infrastructure of the district (including communications, transport and drainage systems, systems for the supply of water and energy, and health care and education facilities),
 - (e) how that infrastructure is used,
 - (f) any change which the planning authority think may occur in relation to any of the matters mentioned in paragraphs (a) to (eb).
- (5A) In subsection (5)(d), references to systems for the supply of energy include in particular land available for the development and use of facilities for renewable sources of energy.

16 – Preparation and monitoring of local development plans - general

- 16(2) In preparing a local development plan the planning authority—
- (a) are to take into account—
 - (i) the National Planning Framework, and
 - (ii) any local outcomes improvement plan (within the meaning of section 6 of the Community Empowerment (Scotland) Act 2015) for the part of their district to which the local development plan relates,
 - (iii) any registered local place plan (see schedule 19) that is for the part of their district to which the local development plan relates,
 - (aa) are to have regard to the desirability of preserving disused railway infrastructure for the purpose of ensuring its availability for possible future public transport requirements,
 - (ab) are to have regard to the list published under section 16E of persons seeking to acquire land in the authority’s area for self-build housing,
 - (b) are to have regard to such information and considerations as may be prescribed, and**
 - (c) may have regard to such other information and considerations as appear to them to be relevant.

16D Play sufficiency assessment *(as inserted by section 7(6) of the 2019 Act)*

- (1) A planning authority must assess the sufficiency of play opportunities in its area for children in preparing an evidence report.
- (2) The Scottish Ministers must by regulations make provisions about—
 - (a) the form and content of the assessment,
 - (b) such persons who must be consulted in relation to the assessment,
 - (c) publication of the assessment.