

Transforming Planning in Practice Regulations and Guidance Subgroups

Evidence Report and Gatecheck

Introduction

Before turning to the Outputs, it is useful to have regard to the statutory requirement for preparation of an evidence report. This is set out in section 16B of the Town and Country Planning (Scotland) Act 1997, as amended, and provides the overarching framework for the regulations and guidance which will bring life to the evidence report.

S16B(3) looks for the evidence report to do the following things:

- (a) set out the planning authority's views on the matters listed in section 15(5) for the land covered by the local development plan;
- (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; and (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; and (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; and (ii) the assistance provided to local communities to assist them to prepare local place plans.
- (e) such other matters as are prescribed.

Under s16B(4) the evidence report must also 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.

(b) The steps taken by the planning authority in preparing the report to seek the views of community councils.

(c) The extent to which the views expressed under paragraphs (a) and (b) have been taken into account.

In addition to the views required under s16(4), s16(2) requires planning authorities to seek the views of the key agencies; children and young people (in particular school pupils, youth councillors and youth parliament representatives); such other persons as may be prescribed; and the public at large.

The matters listed in s15(5) are as follows:

- (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 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 the infrastructure is used;
- (f) Any change which the planning authority think may occur in relation to any of the matters specified in paragraphs (a) to (eb).

Output 1

1. What are the key stages, milestones and outputs in the process of preparing an Evidence Report?

The Moray Council Pilot Project produced a Flow Diagram with recommended stages for the preparation and production of an Evidence Report. This is attached as Appendix 1.

The Group needs to consider whether it considers these stages to be all the stages which are required to produce an Evidence Report which contains sufficient information to enable a Reporter to confirm that the planning authority has the appropriate basis on which to proceed to prepare a local development plan.

The key here must be to produce a robust set of information with no gaps which can be challenged at the LDP stage.

The Evidence Report must provide a basis from which an authority can build its spatial strategy - evidence + aspiration = LDP.

Are there additional stages which the Group considers necessary?

The stages are considered in turn below.

Having reviewed and discussed The Moray Council Flow Diagram with recommended stages for preparation of an Evidence Report, the group was happy that it addressed the key stages, milestones and outputs. The group was advised that HoPs had refined the flow diagram further and it was agreed that this would be reviewed by the group once it was available.

Project Planning

The Group discussion highlighted the following issues:

First step is to identify with whom the planning authority will be engaging and the information required from them. The key stakeholders are dealt with in more detail under Output 2.

Stakeholder mapping – helps with being clear what is being asked of groups at an early stage

In terms of the information required, the Group felt that it would be important for the planning authority to have a baseline for each part of the plan from which to demonstrate an understanding of each of the areas which requires to be covered in terms of s15(5).

The planning authority should therefore identify what information is needs to support each area.

The Group should consider whether guidance should be given on what that information might comprise and whether it should be prescriptive or simply examples.

The Group had highlighted the following issues for consideration in preparing the baseline:

- Any initiatives on-going in an area that can help to identify issues and opportunities. Any relevant growth deals, for example.
- Use SEA scoping to gather evidence for baseline
- Use monitoring info from previous plan. What worked and what didn't?
- Delivery status of current LDP
- Mapping out of planning problems & opportunities - evidence for these & gaps which need to be addressed and when in the process
- Infrastructure overview particularly important. Need to determine at what level this is provided, but it was suggested that it should be high level and not site level. Digital infrastructure needs to have the same prominence as other types of infrastructure
- Important to establish a 'cut off' point for the Evidence Report - it needs to set up subsequent stages of the plan process. Forward planning is for the Plan.
- People are interested in 'location' – how tight does location need to be: site / neighbourhood / town / authority area?

The stakeholders will require to be given a timescale for providing the information. See Output 3 below.

The compilation of the baseline evidence was considered by the group to be important. It is effectively assessing the success or otherwise of the delivery of the

previous LDP and whether the strategy which was followed previously is still appropriate or whether it should be changed. This is akin to a scoping exercise, aligned with the SEA.

This would be an opportunity to include the regional spatial strategies.

Evidence Gathering and Sign off

The Group should consider whether there should be a standard form for the provision of evidence which would make it easier for Reporters to assess plans and perhaps compare them to a standard/each other.

Issues which the Group identified for further consideration:

How would existing sites be assessed?

- Be clear that is not just rolling sites forward from previous plans – all existing sites to be assessed,
- Evidence report is an opportunity to agree assessment methodology for sites to be proposed in emerging LDP. This was considered to be critical to assist with landowners/developers promoting sites for inclusion in the LDP and speeding up assessment of sites during the LDP examination.
- Connect this with SEA methodology so that assessments do not contradict or follow different approaches
- Developing the methodology means aims / outcomes of the plan can be fed into site assessment so is more transparent and clearer decision making process.
- Infrastructure info at early stage to embed infrastructure first approach – digital infrastructure as well as hard infrastructure
- Resource and capacity needed to undertake appraisal work

How will effective land supply be established?

- What is the status of existing sites? Need to review deliverability of existing sites and not automatically carry forward
- Look at vacant and derelict land and buildings at risk as key opportunities
- The Group noted that changes due to pandemic mean it may not be possible to stay wedded to what's in plans at present – baseline info on different transport modes will be of greater significance in future (walking / cycling / public transport / rail / trunk road)
- Need to move quickly from baseline to plan and be clear at what point evidence is considered fixed.

The Group did not discuss the stages of Reviewing the Evidence or pulling together the Evidence Report and this needs to be considered in the next discussion.

The Moray Council pilot project suggested that a proposed Evidence Report structure be based on report headings that include: *Outcomes; Stakeholder Involvement; Infrastructure; Housing Land; Employment Land; Environment; Other*

Policy Considerations; Local / National Departures. Extracted summary reports would cover: *technical evidence; summary evidence and implications for spatial strategy, plan preparation and delivery; summary stakeholder consultation; statement of agreement / summary of disputed matters.*

After consideration, the group decided that there would be merit in having a standard form for evidence gathering for different types of infrastructure eg education capacity; health services; transport network; public transport; water supply; foul drainage; housing land; employment land. That way the stakeholders know what is required of them regardless of the authority area.

The Evidence Report should also be compiled in a standard template for similar reasons. This will also assist Reporters when it comes to the gatecheck.

The group was satisfied that the template for the chapters of the Evidence Report produced by The Moray Council was an appropriate style to follow.

2. What would be the relationship between the gatecheck and the examination of the plan? And how can we avoid duplication between them?

The Evidence Report is both the baseline setting out the existing position at that point in time in terms of, for example, effective housing land supply, but also looks forward to identify the issues to be addressed in the local development plan.

The issues should be agreed by stakeholders and settled by Reporter at Gatecheck.

The success of the Evidence Report depends on all parties being involved in identifying and agreeing the issues and way forward as the aim is not to re-visit matters at the end of the process as well.

The Group discussed whether sites should be included at this stage and this requires to be considered further. The general feeling was that while existing sites from the extant LDP would be part of the background assessment, proposed sites would not be as these should be examined through the LDP process.

The group considered this matter at length. Given the importance of the LDP being infrastructure led, the group agreed that the Evidence Report will require to set out the authority's proposed spatial strategy. This should be high level, but detailed enough that stakeholders can provide meaningful input on the availability of infrastructure to support that spatial strategy or point to where upgrades will be required and the authority have a clear plan for how those upgrades will be delivered and when.

The gatecheck will determine whether the evidence which has been gathered provides the appropriate baseline information to enable the authority to take that

spatial strategy forward into preparing the LDP which will flesh out that strategy by identifying sites. It should identify the basis for assessing sites in accordance with the approved strategy.

It will also identify where there is a local need for departing from national policy.

The LDP examination should therefore focus on whether the sites identified accord with the approved strategy, having regard to the available infrastructure and the site assessment criteria.

The LDP examination will also review any LDP policies which depart from national policy.

On the basis that the gatecheck has signed off the spatial strategy and the evidence supporting it and identified the criteria against which sites will be assessed for inclusion in the LDP, representations on the LDP should be site specific and more focused. Proceeding in this way should reduce the number of representations; avoid duplication with the gatecheck; and shorten the LDP examination stage.

3. What should the gatecheck focus on?

The Reporter needs to be confident that the planning authority has assessed all the areas highlighted in s15(5) and carried out all the necessary stakeholder consultation/engagement.

For example, is there a housing shortfall and if so, what is its extent and how will this be addressed in the plan. Who has been consulted on that issue, what did they say and how was it taken into account?

The Gatecheck should focus on baseline spatial evidence and parameters for future assessment of options/spatial strategy to avoid duplication with site specific LDP examination.

In other words, does the planning authority have a solid evidence base from which to project forward and make new allocations in the correct places.

The Group may want to consider whether guidance or regulations should specify what the Reporter should consider to be sufficient information.

The group was of the view that what is considered to be "sufficient evidence" requires to be prescribed in order that all stakeholders understand what is required of them. This will help shape the information gathering; will guide Reporters at the gatecheck stage; and will hopefully avoid subsequent challenge of the baseline information at the LDP stage.

It would mean that anyone challenging the Evidence Report or any part thereof would need to be able to highlight to the Reporter why they consider that the Report, or any part of it, is insufficient.

As a minimum, the Reporter will require to assess whether the planning authority has assessed all the areas highlighted in s15(5) and carried out all the necessary stakeholder consultation/engagement.

There should be a particular focus on the infrastructure identified as either being in place or being required to deliver the spatial strategy and the timescale for delivery. The authority will need to demonstrate how the sites which will subsequently come forward can and will be delivered.

In terms of housing, the Reporter will require to be satisfied that the authority has identified the required number of units required over the plan period. This aspect requires further clarification after confirmation of how NPF4 will deal with housing targets at a national and local level.

The same applies to any other national strategy/provision/requirement eg employment land; renewable energy.

Output 2

1. Who is responsible – inside and outside of local authorities - for producing the Evidence Report?

As set out above, the Act specifies the statutory consultees (s16B(2) and (4)). The key agencies are specified in <https://www.gov.scot/groups/key-agencies-group/#:~:text=%20Planning%20regulations%20define%20Key%20Agencies%20as%3A%20in%20crofting%20counties%29%209%20Health%20Boards%20More%20>

At present key agencies can only be public bodies. The 2019 Act changes this so they can also be private companies or individual office-holders. This was intended to support the infrastructure-first approach by potentially including certain infrastructure providers.

There are also various provisions where Ministers may prescribe that particular people or groups must be consulted at different stages of the process, without imposing duties on them to co-operate.

The Group needs to consider whether there are other persons who should be prescribed in regulation and if not, whether the guidance should highlight recommended bodies. This will normally be done in general terms (eg “organisations representing [sector]”) to avoid problems should a particular organisation change its name. It is recognised that there will be a wide range of interested bodies given the range of matters set out in s15(5). Suggestions would include Homes for Scotland.

In terms of the planning authority itself, the Group highlighted the need to be corporate and ensure everyone contributes in line with timescales as follows:

- Aligning strategies across a local authority and externally, eg NHS, agencies, and tying in to same timescales. (Some good examples, eg Moray, but needs to become universal)
- Opportunity to pull together engagement along with Community Planning
- High level management buy-in is critical

The group considered that there should be regulations specifying the people/groups/key stakeholders with whom consultation should take place as a minimum. Authorities can choose to engage more widely.

2. 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?

- Guidance needs to explain who needs to be involved and when – need to be very clear with other parties what is required

How do we get the best out of different participating groups?

- Tailored approaches needed for different groups.
- Be clear on what are asking of the exercise
- This isn't just something for the 'evidence report' stage, it needs to be an ongoing approach – could be covered in each section of the guidance
- It may be harder to engage some groups before spatial strategy is being developed

The Group needs to consider further whether the guidance recommends a minimum number and/or type of consultation for each group much as is the case for pre-app consultation.

The updated PAC guidance for COVID is helpful in making suggestions as to different types of events and how online consultation can work. This is currently being used for LDP consultation by various authorities.

Consideration needs to be given as to whether the authority needs to go back out to consult on the draft Evidence Report once it has been prepared.

What happens if changes are made to the Evidence Report by members in approving it under s16B(5)?

The group considered that there should be regulations specifying the people/groups/key stakeholders with whom consultation should take place as a minimum. Authorities can choose to engage more widely.

It was felt that the authorities were probably best placed to determine how best to engage with the different groups, but that guidance could be issued on potential ways to ensure appropriate engagement.

As there will no longer be an MIR, there needs to be appropriate public engagement, with a minimum of one public event/online consultation. Effectively this would be setting out the evidence which has been gathered together and inviting views. This would include views on the proposed spatial strategy and methodology for assessing sites.

As such, this engagement should occur towards the end of the evidence gathering process ie at the Draft Evidence Report Stage and ahead of the Final Report as along with the Final Report, the authority will require to submit a Statement of Participation/Engagement Report setting out how the consultation has been undertaken and how the views which were received have been taken into account/will be taken into account when preparing the plan.

3. What is an appropriate indicative / average timescale for preparation?

Based on the pilot project the following timescales were suggested and **the Group should review these as it continues to refine its approach to the items set out above.**

8 weeks project planning/early engagement
 24 weeks for preparation of evidence report
 4 weeks for corporate buy in
 8 weeks for finalisation and adoption of evidence report
 16 weeks for gatecheck

Comment was made that this should be an ongoing process, with evidence held in an established format and rolled out at particular points in time and therefore it should not be a case of starting from scratch on everything, therefore perhaps the process shouldn't take so long after the first Evidence Report?

It should be noted that HOPS suggesting that a longer timescale is needed, to ensure that ER and gatecheck lays the groundwork well for preparing the plan.

A query raised was whether the early engagement period could/should coincide with SEA Scoping or is that later in the process? The Group should consider this further.

This question should be revisited once further discussion takes place on the various steps.

At this stage, the group considered that the indicative timescales set out in the pilot project should be used as a guide. However, the following issues were identified:

- It is important that the evidence which has been provide is as up to date as possible. The longer it takes between gathering the evidence and the gatecheck/sign off, the greater the potential for the information to be out of date.
- It may be possible to speed up the early stages of the process if there is continuous dialogue as part of the Development Plan programme and with increased use of digital planning.
- The time required for the gatecheck will depend on the level of disagreement over the evidence.
- Clear guidance is required for Reporters on what is sufficient evidence.

4. How can the statutory requirements of the Evidence Report be met, while also meeting its broader purpose?

The statutory requirements of the Evidence Report are quite far-reaching given the different areas which need to be considered and analysed under s15(5) and the various stakeholders who need to be consulted in terms of s16.

The focus should be on delivery and providing a base from which the authority can produce a plan which will do what it says on the tin.

Output 3

1. How should the Evidence Report connect with the critical evidence relating to housing and transport?

In terms of housing, the Group highlighted the following:

- Need to be conscious that we are keeping the debate about housing supply, but moving it to the gatecheck instead of examination. The evidence requires to be robust.
- Aim is to agree housing numbers / land required at gatecheck stage, and consider sites at plan stage. But locations will be showing up earlier, including sites from previous plans etc. At the moment the Reporter looks at the sufficiency of the Council's proposed sites in an LDP, is this being done in terms of "carried forward sites" at the gatecheck and if so, can those sites still be challenged at the LDP examination?
- Examination to focus on new sites needed to meet the housing requirement?
- Concerned about suggestion of reducing time spent on agreeing land supply, it is a critical stage which forms the foundation for the release of additional land in the emerging LDP.
- Makes sense that baseline would be agreed at the HLA stage
- Concerns over how 5 yr HLA will fit with 10 yr plan? Need to bear in mind that NPF policies and housing methodology remain under development (as proposed by SG). Needs to be an agreed methodology.

- If the housing land audit is agreed, then should there be a debate during the gatecheck about supply? HOPS felt that the debate should not be re-opened once agreed, either at gatecheck or examination.
- Problem is that HLAs are not inclusive of all relevant actors, so they don't have the chance to raise issues. HLA will need to involve more relevant people.
- Audit part of evidence base -scrutiny through evidence report and consultation arrangements for that or limited to current agreement process?
- Support for there being the potential for a hearing at Gate Check
- ER needs to set out parameters for plan
- From an engagement point of view, people are interested in locational issues. But, is that important for the ER stage?
- Need to appreciate that where evidence directs development isn't necessarily where people want to live, in e.g. of housing

In terms of transport:

- Need to know how much development can go in a place before the infrastructure is overloaded.
- Environment is changing - transport opportunities of sites will be a crucial part of their consideration
- Baseline info on different transport modes will be of greater significance in future (walking / cycling / public transport / rail / trunk road)
- Can provide high level hot spots, but can't be more specific without site and development details.

The Group needs to consider whether housing and transport may be areas where the guidance is more specific on what a Reporter requires as evidence.

For example, there will need to be an agreed methodology for calculating a 5 year effective housing land supply.

Without further guidance from NPF4 on housing targets/requirement and whether these will be set at a national or local level by Scottish Government and an agreed methodology for the calculation of an effective housing land supply, it is difficult to provide further detail at this stage on what evidence will require to be included in the housing chapter of the Evidence Report. However, a critical assessment of any sites which are being carried forward to help meet the target/requirement will be essential. Those sites should be considered against the same methodology which will be used to assess new sites. This should include confirmation that the infrastructure is available/will be available to service carried forward sites.

In terms of transport, reference is made to the submission provided by Transport Scotland which was circulated to the group.

2. 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?

Arguably the Evidence Report and Gatecheck should be the longest part of the process as it provides the foundation upon which the LDP can progress. It is critical to get this part right to ensure that the LDP is focused on delivery or addressing deficiencies.

That said, it should be taking a strategic view on infrastructure eg where are the hot spots (transport, utilities – other?) which can then be used to direct spatial strategy and help balance constraints / benefits of different sites in a transparent way at the LDP stage.

How much is enough information to be prepared in a timely manner / to be robust without being OTT?

See comments in earlier sections. It remains the group's view that spending time on ingathering and testing the evidence which supports the spatial strategy which will be followed in the LDP is critical to saving time at the LDP examination stage. That said, the key concern is that the evidence base becomes out of date by the time that the LDP is being examined and further out of date by adoption. At the end of a 10 year plan, the evidence base will virtually irrelevant.

The group considering the LDP stage should have regard to how the evidence base is kept up to date and/or the Plan can be amended during its lifetime to respond to changing economic/social/environmental conditions.