Law Society of Scotland

Consultation Response

Planning Obligations and Good Neighbour Agreements: draft guidance

September 2025

Introduction

The Law Society of Scotland is the professional body for over 13,000 Scottish solicitors.

We are a regulator that sets and enforces standards for the solicitor profession which helps people in need and supports business in Scotland, the UK and overseas. We support solicitors and drive change to ensure Scotland has a strong, successful and diverse legal profession. We represent our members and wider society when speaking out on human rights and the rule of law. We also seek to influence changes to legislation and the operation of our justice system as part of our work towards a fairer and more just society.

Our Planning law sub-committee welcomes the opportunity to consider and respond to the Scottish Government's draft guidance on Planning obligations and good neighbour agreements.[1] The sub-committee has the following comments to put forward for consideration.

General comments

Section 3.1

We would highlight that this wording in paragraph 19 is stricter than NPF4 policy 18 which states that obligations "should" meet the policy tests.[2]

We would highlight there is a lack of reference to the legal requirements for obligations under section 75 of the 1997 Act in paragraph 20. We note that this is referenced in paragraph 12. We think it appropriate that the legal tests be set out clearly here and that it should be acknowledged that the policy tests are stricter than the legal tests. We would also highlight that the where the guidance states in this paragraph that "planning obligations made under section 75 of the Town and Country Planning (Scotland) Act 1997 (as amended) should only be sought" is stricter than NPF4 policy 18.[3]

In regards to paragraph 22. i), we would highlight that the legal tests for planning conditions are tighter than those for planning obligations. We would suggest consideration should be given to referencing this fact within the circular. We would also suggest that consideration should be given toward explaining the different purposes further.

Regarding paragraph 28, we consider that this guidance goes further than required and may have unintended consequences. Whilst, in policy terms, it is not

[1] Planning Obligations and Good Neighbour Agreements: draft guidance - gov.scot
[2] National Planning Framework 4
[3] National Planning Framework 4

appropriate to request a developer to address an existing infrastructure deficiency which is not caused by the proposed development, a policy statement that existing deficiencies must be funded through other sources could cause a significant issue if no such funding is available and lead to refusal of planning applications even if circumstances where the developer is willing to fund the shortfall (which would be a lawful use of a planning obligation). We would therefore suggest that further consideration should be given to the inclusion of this text.

Regarding paragraphs 29-31, we consider that the reasonableness test set out in these paragraphs appears specific to planning obligations and seems to assume compliance with the Wednesbury reasonableness test. We consider that it would be appropriate to expressly lay out the terms of enforceability, especially as it is mentioned later on p.18 paragraph 71 of the circular. Furthermore, we would also suggest consideration should be given to including information relating to certainty (capable of meaning - and interpretation) in these paragraphs.

Regarding paragraph 30, we would highlight that there is considerable variation between local planning authorities (LPA) on timescales for utilisation of contributions. We would consider that it would be helpful to develop guidance on what timescales are considered reasonable.

Regarding paragraph 33, we would highlight that there have been recent legal cases concerning section 75A decisions where developments have been held not to be unviable dispute very small profit margins. Whilst it may not be a matter for this circular, we would suggest consideration should be given as to whether there is a need for further guidance on viability, particularly in relation to profit margins.

Regarding paragraph 44, we consider it would be helpful to have more detail on the role that non-statutory guidance can play in relation to developer contributions.

Section 3.2

Regarding paragraph 45, we consider that the wording of this paragraph may place too much emphasis on policy 18 and 16e. Whilst these are important, NPF4 contains other policies that are relevant to planning obligations. We would anticipate that delivery of offsite biodiversity enhancement (or contributions to such provision) pursuant to policy 3 may be an increasingly common use of planning obligations. We would suggest consideration should be given to reflecting the use of planning obligations in this way within paragraph 45 beyond the use of obligations to fund infrastructure in the conventional sense.

Regarding paragraph 46, we would suggest the removal of the text under the heading “Local Development Plans” and replacing it with the below

Local Development Plans (LDPs) and delivery programmes should be based on an integrated infrastructure first approach. Plans should:

- *be informed by evidence on infrastructure capacity, condition, needs and deliverability within the plan area, including cross boundary infrastructure;*
- *set out the infrastructure requirements to deliver the spatial strategy, informed by the evidence base, identifying the infrastructure priorities, and where, how, when and by whom they will be delivered; and*
- *indicate the type, level (or method of calculation) and location of the financial or in-kind contributions, and the types of development from which they will be required.*

Regarding paragraph 48, we would recommend deleting the text setting out policy 16e. Please see our suggested new section under “Local Development Plans” for our suggested points covering contributions.

Regarding paragraph 52, we would highlight that there is potential scope for dispute on the level of detail which requires to be set out in LDPs on developer contributions which could lead to unnecessary delays in LDP preparation and adoption. We are strongly of the view that the circular requires far greater clarity on what LPAs are expected to include in their LDP in relation to developer contributions.

Regarding paragraph 53, we would highlight that this paragraph potentially means that LDPs may require to contain a significant level of detail on contribution zones which may be in conflict with the concept of LDPs being more slimmed down plan based documents.

Regarding paragraph 54, we consider that the guidance is unclear on what role it is intended that the delivery programme should play here. We would welcome clarity on whether this is intended to be an additional level of funding detail (including formulae) or simply a reflection on what is to be set out in the LDP. We would again highlight that there is potential for dispute on what needs to be set out in the LDP and what is for the delivery programme. Clearer guidance is required in the circular to avoid such disputes. We would also stress that the role of delivery programmes set out in the circular must also be consistent with the legislative framework.

Regarding paragraph 58, as per our previous comments, we consider that it would be useful to have more clarity on the roles of the LDP and delivery programme in setting developer contributions. We would also consider it useful to have further clarity on the role of non-statutory guidance.

In paragraph 68, we would suggest the inclusion of the word “that” following the phrase “registered immediately”.

Section 3.3

Regarding paragraph 71, we think it appropriate if this paragraph cross references paragraph 70.

Section 3.4

Regarding paragraph 95, we would welcome further clarity from the Scottish Government concerning its view of such applications not being subject to the requirement in section 25 of the 1997 Act concerning the development plan. We would highlight the outcome of *Tesco Stores Limited v Perth and Kinross Council, Court of Session, Outer House, 2014 CSOH 153.*[4]

[4] Tesco Stores Limited v Perth and Kinross Council, Court of Session, Outer House, 2014 CSOH 153

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