



RTPI

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Consultation on Revision of Planning Circular 12/1996: Planning Agreements

Directorate for the Built Environment

Scottish Government

Area 2H (Bridge), Victoria Quay

Edinburgh

EH6 6QQ

09/04

7 April 2009

Dear Stuart

Consultation on Revision of Planning Circular 12/1996: Planning Agreements

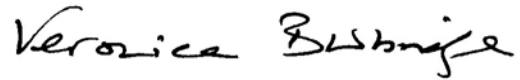
The Royal Town Planning Institute (RTPI) regrets that time pressure has meant that it was not possible to send in this response by the date specified. However, it is hoped that the points in the Annex to this letter may be of assistance.

The RTPI is the UK body chartered to represent the planning profession and offers these comments from the point of view of a diverse and politically-neutral professional body committed to supporting devolved government in Scotland. The Institute has approximately 2100 members in Scotland, working across all sectors of central government, local government, government agencies, the voluntary sector, private consultancy, the development industry and academia.

Since devolution, the Institute has empowered its RTPI in Scotland Office, together with its Scottish Executive Committee, with the responsibility for working with government and public bodies generally for the improvement of the planning system in Scotland. This is in accordance with its charter obligation to work for the public interest. I am grateful to members of the RTPI Task Group on Development Management who have contributed to this response.

The Institute trusts that these comments are of assistance and has no objection to them being made available to the public in the usual way. Should you wish any clarification or further assistance, please do not hesitate to contact me at our Edinburgh office: 57 Melville Street Edinburgh, EH3 7HL phone: 0131 226 1959, or email: scotland@rtpi.org.uk

Yours sincerely

A handwritten signature in black ink that reads "Veronica Bushnige". The signature is written in a cursive style with a large initial 'V' and a stylized 'B'.

National Director

Annex I

Revision of Circular 12/1996: Planning Agreements: Consultation Paper

Response by the RTPI in Scotland to the Consultation Questions

Q1. Does the revised Circular help users to identify clearly the various implementation stages of the Planning Agreements process and does the Circular follow a logical and transparent process?

More guidance is needed on the degree of transparency required at the various stages. (and see Q6 below)

Q2. Will the revised circular help streamline the process of negotiating and concluding planning agreements?

No comment

Q3. Does the revised Circular set out clear guidance on how to determine when a planning agreement, as opposed to a condition or other legal agreement is required?

Unilateral contributions are helpful and can speed up the process, but are only useful in circumstances where the contribution is very specific and can realistically be collected at the determination stage. Agreements under the Local Government (Scotland) Act 1973 play a similar role but are not always useful e.g. when the site will be sold on. They do not apply in the jurisdictions of the National Park Authorities;

Q4. To what extent do you consider the policy tests in the revised Circular sufficiently explicit to ensure enable consistent interpretation by all who use the Circular?

More guidance is needed on the way in which infrastructure requirements are identified in Local Development Plans (by site or by settlement/location/area). There should not be a requirement to draw only on pre-determined infrastructure, as windfall sites and previously unidentified infrastructure needs may be just as pertinent provided that they can be fully justified in terms of the tests. In addition, the consultation paper is virtually silent on the relationship between affordable housing contributions, the relevancy tests and the types of development to which affordable housing might be relevant.

Q5. To what extent do you consider that planning agreements may be negotiated at pre-application stage in order to reduce unnecessary delay and cost?

Pre-application discussion is usually confined to Heads of Terms, but pre-drafted agreements can be submitted with an application. The Planning Committee should retain the opportunity to add in a requirement for a particular contribution (or for an Agreement at all), again subject to the proper tests, and thus developers need to be aware from the outset that *this may occur at the determination stage*. This then begs the question about how much the public and the Members of the Planning Committee might be involved at the pre-application public consultation stage and about how developers should avoid pre-mature and inappropriate commitments. This requires clarification

Q6. Does the revised Circular offer adequate guidance on access to Planning Agreements by the public?

Clarification is required as to how and when agreements should be publicly available. Of necessity, agreements are often negotiated in confidence, but we would argue that Heads of Terms submitted with an application should be public documents along with other application papers. As with the rest of the application, they may be subject to change as the application progresses. For the purposes of taking a proper planning decision, and subject to (5) above, the planning committee should be aware of the draft proposed Heads of Terms but not the financial details.

Q7. Are there other changes to the system of mitigating impacts of development that would be effective in supporting sustainable economic growth in Scotland? If so what are these and how would they function?

No comment

Q8. The Planning etc (Scotland) Act 2006 when commenced makes new provisions on the use of unilateral obligations and variation of planning agreements. Do you consider that these will alter the process of negotiating and concluding a planning agreement as set out in this circular?

More guidance on the variation of planning agreements is sought. This is becoming particularly pertinent with developer claims about reduced viability. The use of Open Book Viability Assessments and independent arbitrators (accountancy firms) is worthwhile. A revisit of the terms and timing are also useful but, fundamentally, if the contribution was found necessary in the first instance, this is unlikely to change. Some clear guidance on this emerging area would aid consistency across Scotland and give some welcome clarity to developers, local authorities and public alike.

Q9. Are there particular costs or benefits not addressed in the partial RIA? What are they?

The consultation paper shows research on the usefulness of a dedicated Developer Contribution Officer. This is a valuable post:

- (i) for early negotiation of heads of terms/details in a speedy and consistent manner across the authority
- (ii) for identification of contributions that might otherwise be overlooked
- (iii) for building the confidence and level of certainty felt by developers
- (iv) for providing some separation between the planning negotiation and the contributions negotiation, always ensuring that the two co-ordinate well
- and
- (v) for monitoring and pursuing contributions, and coordinating and chasing spending services.

The post is best filled by (a) qualified and professional person(s) with a close knowledge of the requirements of the planning system.

Q10. Will particular groups not identified by the partial RIA be affected by the revised Circular?

No comment

Q11. How might the revised Circular impact positively or negatively on equalities groups?

No comment

Q12. Will any groups not identified already in the partial EqIA be affected by the revised Circular?

No comment

Comments on any other part of the consultative draft are welcomed.

No comment

RTPI in Scotland
April 2009