

Report No 447/97

ANGUS COUNCIL**PLANNING AND TRANSPORT POLICY COMMITTEE
DEVELOPMENT CONTROL COMMITTEE****24 APRIL 1997
6 MAY 1997****SUBJECT: PLANNING ADVICE NOTE 51
PLANNING AND ENVIRONMENTAL PROTECTION****REPORT BY DIRECTOR OF PLANNING, TRANSPORT & ECONOMIC DEVELOPMENT**

Abstract: This report outlines advice on Planning and Environmental Protection published recently in a Planning Advice Note issued by the Scottish Office. The guidance summarises the functions of Development Planning, Development Control and the relationship with Environmental Protection.

1 RECOMMENDATION

It is recommended that:-

1. the Planning and Transport Policy Committee and Development Control Committee note Planning Advice Note 51 on Planning and Environmental Protection from their respective interests and agree that the advice will be taken into account as appropriate in Development Plan preparation, including the Angus Local Plan, and in Development Control;
2. this report be referred to the Environmental and Consumer Protection Committee for its interest; and
3. a further report be submitted to the Development Control Committee outlining in more detail the inter-relationship between planning and other environmental protection regimes as they relate to the consideration of planning applications.

2 INTRODUCTION

2.1 The Scottish Office has recently issued Planning Advice Note (PAN) 51 - Planning and Environmental Protection. The key purpose of the PAN is to outline the responsibilities of Planning Authorities and environmental protection agencies with regard to environmental protection regimes. It is acknowledged there are some occasions when protection of the environment will require the application of a combination of controls and the PAN stresses the need for liaison, consultation and co-operation between Planning Authorities and the various regulatory bodies. In addition to a summary of the planning system and associated legislation, an Annex to the PAN also sets out environmental protection regimes including objectives, legislation, the main regulators, monitoring and registers relating to:-

- Integrated Pollution Control (IPC);
- Local Air Pollution Control (LAPC);
- Pollution of controlled waters;
- Drinking water quality;

- Contaminated land;
- Radioactive substances;
- Statutory nuisance (including noise);
- Litter; and
- Light.

2.2 A copy of the Planning Advice Note is available for consultation purposes at the Members Room, the Cross, Forfar.

3 KEY POINTS OF PLANNING ADVICE NOTE 51

Basic Principles

3.1 The PAN reflects that current thinking on environmental protection has been greatly influenced through the concept of sustainable development embraced by the World Commission on Environment and Development. The publication of their report "Our Common Future" in 1987 gave the following definition of "sustainable development" which is now the generally accepted working definition:-

"Development that meets the needs of the present without compromising the ability of future generations to meet their own needs."

3.2 In addition to the principle of sustainable development and Local Agenda 21, the Government's approach to the environment now embodies principles such as:-

- "polluter pays" - requiring that the costs of necessary environmental measures should be borne by the 'polluter' and not by society;
- "precautionary principle" - where there are significant risks of damage to the environment, precautionary action will be taken to limit the use of potential dangerous materials or the spread of potentially dangerous pollutants, even where scientific knowledge is not conclusive.

Legislative Context

3.3 The PAN summarises the key strands of environmental protection and pollution control legislation and comments that the framework is directly affected by European Law which has an influence on planning and environmental concerns.

3.4 The main U.K. legislation for pollution control is as follows:-

- **The Control of Pollution Act 1974** - the cornerstone of the legislative framework for the control of water pollution in Scotland;
- **The Environmental Protection Act 1990** - introduced a new system of pollution control for many activities which are capable of causing significant pollution by introducing new regimes of Integrated Pollution Control (IPC) and Local Air Pollution Control (LAPC);

- **The Radioactive Substances Act 1993** - regulates the keeping and use of radioactive material and makes provision for its disposal and accumulation;
- **The Environment Act 1995** amends previous environmental legislation. In addition the Act includes important new provisions relating to contaminated land, abandoned mines and air quality, with particular regard to preparing a National Air Quality Strategy (NAQS).

It also established the Scottish Environmental Protection Agency (SEPA) which is now responsible for a wide range of environmental issues. The Secretary of State has decided the principle aim of SEPA is:-

“to provide an efficient and integrated environmental protection system for Scotland, which will both improve the environment and contribute to the Government’s goal of sustainable development.”

3.5 Other related legislation includes:-

- Habitats Regulations - Scottish Natural Heritage are the main regulator and the legislation seeks to avoid significant pollution and deterioration of habitats;
- Marine Protection - Food and Environment Protection Act 1985 - controls deposit of substances or articles in the sea or under the sea bed in U.K. or U.K. controlled waters;
- Control of Industrial Major Accident Hazard Regulations 1984 - aimed at health and safety issues at installations with a major accident potential, and addresses environmental protection aspects of major accident hazards.

Planning Framework

- 3.6 The PAN summarises the planning system firstly outlining the function of Structure and Local Plans and highlighting how environmental protection issues relate to both of these. Following from this the development control process is the main interface between the planning system and environmental protection regimes.
- 3.7 The PAN summarises the relationship between various aspects of the development control process and environmental protection regimes including pre-submission discussions, consultations, material considerations, use of conditions, enforcement and Environmental Assessment, and finally also sets out the provisions for Hazardous Substances Consent.
- 3.8 Planning Authorities and environmental protection bodies have different powers and functions that on occasions can overlap. However, the PAN stresses that it is a long established policy that planning controls should not duplicate other statutory controls or be used to secure objectives achievable under other legislation.

- 3.9 The PAN acknowledges the complex nature of environmental protection issues and seeks to ensure that arrangements are in place which minimise the risks to public health and to the environment. It is the responsibility of Planning Authorities and the environmental protection bodies to collaborate in the task of protecting the environment, and to apply controls so that duplication is minimised and overlap is avoided.

4 DISCUSSION

- 4.1 The Planning Advice Note provides a useful summary of recent changes to legislation and operational aspects of environmental protection. It also helps to clarify the linkages between the various agencies and functions.
- 4.2 The importance of the planning system in respect of environmental protection is reinforced at all stages of the relevant processes for guiding the development and use of land. It is therefore vital that environment protection bodies contribute fully to the preparation of development plans and do not rely only on their role in development control.
- 4.3 An important strand of the advice is the encouragement of relevant agencies to establish effective working linkages. Arrangements are already in place between Angus Council and related agencies, including the Scottish Environmental Protection Agency (SEPA) to ensure effective involvement both in the preparation of the development plan and as part of ongoing liaison on development control issues.
- 4.4 The complex relationship between planning legislation and various environmental protection regimes can potentially lead to overlap or duplication of controls. In order to avoid this the PAN confirms that the determination of planning applications should be made on planning grounds and that planning powers should not normally be used to secure objectives which can be achieved under other legislation.
- 4.5 Central to the implementation of this aspect of the advice is the extent to which environmental matters raise land use planning implications and therefore represent a material planning consideration to be taken into account in determining an application. This will vary depending on the location and nature of the application and in some circumstances may include environmental matters which are also the subject of regulation by other bodies under other legislation. In this respect the planning system is concerned with the proper use of land and buildings and with the sum total of the effects which a development has on its surroundings and the environment.

5 FINANCIAL IMPLICATIONS

- 5.1 There are no financial implications arising from this report.

6 CONSULTATION

- 6.1 The Chief Executive, Director of Environmental and Consumer Protection, Director of Law and Administration and Director of Finance have been consulted in the preparation of this report.

7 CONCLUSION

- 7.1 The advice contained in PAN 51 - Planning and Environmental Protection seeks to clarify what is a complex set of controls for both planning and environmental protection bodies. Particularly it reflects major changes in specific arrangements which came into force on 1 April 1996, for example the establishment of the Scottish Environmental Protection Agency.
- 7.2 The PAN highlights that the Town and Country Planning system and the statutory environmental protection regimes are separate but complementary. Both are designed to protect the environment from potential harm caused by development and operations. The PAN therefore provides advice to help planning authorities avoid duplicating the more specific environmental protection regime, such as Local Air Pollution Control, and stresses the need for liaison and consultation between planning authorities and the regulatory bodies, including SEPA.
- 7.3 The PAN is timely, arriving as it does when the issue of what is appropriate for the consideration of the Planning Authority in its determination of planning applications, has been deliberated by the Development Control Committee at several recent meetings. However, the PAN does not provide all the answers but does provide the impetus for the provision of more detailed guidance on this complex subject at some later date.

NOTE

The following background papers, as defined by Section 50D of the Local Government (Scotland) Act 1973, (other than any containing confidential or exempt information) were relied on to a material extent in preparing the above Report:-

- 1 Planning Advice Note 51 - Planning and Environmental Protection

AA/NH/KW
14 April 1997

Alex Anderson
Director of Planning, Transport & Economic Development

