

Planning Information Online

Data Protection Guidance for Planning Authorities

1st Edition, September 2008

Table of Contents

<u>1. Introduction</u>	3
<u>2. Purpose of the Document</u>	4
<u>3. Information to be Published on the Internet</u>	5
<u>3.1 E-Planning and Data Protection</u>	
<u>3.2 Submission of Planning Applications and Appeals</u>	
<u>3.3 List of Applications</u>	
<u>3.4 Planning Registers</u>	
<u>4. Publishing Applicant and Objector Details</u>	8
<u>4.1 Publishing Personal Data on the Internet</u>	
<u>5. Privacy Statement/Fair Processing Notice</u>	10
<u>6. Copyright</u>	11

1. INTRODUCTION

The Scottish Government is committed to improving the planning system by: strengthening the involvement of communities; speeding up decisions; reflecting local views better, and; allowing quicker investment decisions. Planning can make an important contribution to the delivery of the Government's key objective of increasing sustainable economic growth. The Planning etc. (Scotland) Act 2006¹, has introduced far reaching changes designed to modernise the planning system.

E-planning is an integral part of Planning's modernisation and culture change. New technology has huge potential to make the planning service more transparent, accessible and efficient. The Scottish Government has been working with planning authorities since 2001 to coordinate the use of new technology in planning service delivery. It has committed £10.5m in funds to support the design and roll-out of a common, integrated e-planning system for planning authorities across Scotland. The aim is to provide a speedier, more accessible and more efficient option for planning applications, appeals and development plans.

The vision for e-Planning is to manage the transition from primarily paper-based to electronic processes throughout the planning system. The aim is to drive efficiencies from the planning process, enhance citizen facing services, offer greater choice and convenience of access and to ensure this is delivered consistently across Scotland.

Planning Advice Note 70: *Electronic Planning Service Delivery* identifies how new technology can improve the delivery of the planning system. It sets out the online information and services that need to be provided by the Scottish Government, Planning Authorities and other organisations responsible for the efficient operation of the planning system.

The Town and Country Planning (Electronic Communications) (Scotland) Order 2004 came into effect on 28 July 2004². The Order, made under sections 8 and 9 of the Electronic Communications Act 2000, allows for the use of electronic communications for certain procedures within the town and country planning system. It does this by amending existing legislation to remove legal impediments to the use of electronic communication and storage for planning purposes. Information on the order is available in SEDD Circular 3/2004³.

¹ http://www.opsi.gov.uk/legislation/scotland/acts2006/pdf/asp_20060017_en.pdf

² <http://www.opsi.gov.uk/legislation/scotland/ssi2004/20040332.htm>

³ [Planning Circular 3 2004: The Town and Country Planning \(Electronic Communications\) \(Scotland\) Order 2004](#)

2. PURPOSE OF THE DOCUMENT

With the move to a greater use of electronic communication in the planning system and greater publication it is important that authorities ensure that personal information is processed in strict compliance with the Data Protection Act 1998. Therefore it is important that there is an increased awareness amongst planning authorities of the importance of complying with the Data Protection Act 1998⁴ when publishing information online and this guidance is intended to assist planning authorities in that process. This guidance applies to the Scottish Government's Directorate for Planning and Environmental Appeals and may also provide advice to Planning Authorities on making information available online through their Online Planning Information Systems.

The Information Commissioner's Office (ICO) provides general advice on the processing of personal information and how to comply with the Data Protection Act. This guidance has been prepared in collaboration with the ICO to accord with the Data Protection Act 1998, the relevant Planning Legislation and should also be used in conjunction with guidance already issued by the ICO.

By following this guidance note, Planning Authorities should have the confidence that they are making every effort to comply with the Data Protection Act when making information publicly available via the internet.

Further information can be found on the Information Commissioner's website at: www.ico.gov.uk. Advice can also be obtained from the Scottish office of the ICO at Scotland@ico.gsi.gov.uk.

⁴ [Data Protection Act 1998 \(c. 29\)](#)

3. INFORMATION TO BE PUBLISHED ON THE INTERNET

Planning Authorities have a legal duty to make available certain details relating to planning applications and regulations allow for this information to be made publicly available on the Internet.⁵ Following the introduction of the Town and Country Planning (Electronic Communications)(Scotland) Order 2004, the current General Development Procedure Order (GDPO) allows most of the statutory procedures to be carried out electronically and the intention is that the new Development Management Regulations should be similarly e-enabled. Planning Authorities are, and will, be acting lawfully in making planning applications available on the Internet.

3.1 E-Planning and Data Protection

The e-Planning Programme will deliver a key change in the way the planning system is delivered through the provision of a range of online services to users. It will create an end-to-end e-Planning service which will be transparent with all applications, plans and progress updates viewable online.

With the move to have more planning information accessible online, there is a responsibility on all staff who are handling, storing and publishing planning information to ensure that it is done correctly and in line with data protection legislation. All information received by planning authorities will need to be captured, and where necessary, redacted to ensure that information published online through their online planning information system does not breach the Data Protection Act.

Not all of the information relating to an application or appeal will be personal data relating to the applicant, appellant or third parties. Neither will all of the information or correspondence accompanying a planning application form part of the planning register. However, with the move to a more e-enabled planning system it is essential that planning authorities carefully consider how much information is published on the web, and the guidance below should be followed as a matter of good practice.

3.2 Submission of Planning Applications and Appeals

Through the Scottish Government's Online Application and Appeals system, applicants, agents and appellants will be able to submit their application or appeal, associated documents and payment electronically to planning authorities back office systems.

Changes introduced by the Planning etc. (Scotland) Act 2006 and the Town and Country (Scotland) Act 1997 as amended allow Scottish Ministers to prepare statutory standard planning application forms. Work on standard application forms

⁵ Town and Country Planning (General Development Procedure) (Scotland) Order 1992 (GDPO)

has been taken forward through the ePlanning Programme, in developing standard application forms for electronic submission of planning applications.

The advice provided by the Information Commissioner confirms that *applicants and objectors should be made aware of which elements of their personal information will be published on the internet.*

It **must** be made clear to people which information there is a legal requirement to publish and which information there is an option to publish. Planning Authorities should ensure that this advice is included in any hard copy application forms or guidance provided to applicants and it should also be clearly stated on the Local Authority's website. For example, Authorities may wish to state: *"Please note that when you submit a planning application, the information will appear on the Planning Register and the completed forms and any associated documentation will also be published on the Council's website."* A clear and concise statement should be included in any correspondence, consultation letters, online advice and forms, and in press and site notices.

Where people wish to make a representation on planning applications, Planning Authorities must ensure that the same message is communicated clearly. Planning Authorities should provide guidance on what issues can be taken into account in making representations, information on how representations are dealt with, and advice on how name and postal address information will be handled. For example, authorities may wish to communicate that all comments submitted will be available for anyone to see through their Online Planning and Information System but any telephone numbers, email addresses or signatures will be removed. It should also be made clear to those making representations that if an appeal against the proposal is submitted to the Scottish Government's Directorate of Planning and Environmental Appeals (DPEA), they will also publish their comments on the web.

3.3 List of Applications

Weekly lists of planning applications are prepared by all Planning Authorities. They are primarily used to inform community councils and others of the planning applications received that week.

Currently there is no requirement for this information to be published online. Rather it is seen as good practice in terms of openness and transparency within the planning system. In line with the Scottish Government's commitment to promote greater involvement in the planning system for all and to allow for the provision of public services electronically, the new section of 36A in the 1997 Act, places a duty on every planning authority to publish a list of applications and proposals of application notices for pre-applications. The terms "publish" includes making it available by electronic means.

This has implications for planning authorities in regards to data protection and authorities should ensure only those requirements set out in planning legislation are made publicly available on the internet. The current information requirements which the list must include are:

- the reference number given to the application by the planning authority;
- the site location;
- the name and address of the applicant or agent; and,
- a description of the proposed development.

Through powers made under the Town and Country Planning (Scotland) Act 1997, as amended by the Planning etc (Scotland) Act, new Development Management Regulations will set out the statutory requirement for what is to be published and will require the planning authority to publish the list of applications on their website.

Should authorities wish to publish information beyond the statutory requirement set out in planning legislation, it is their responsibility to ensure that any information published is compliant with the Data Protection Act 1998, and other relevant legislation.

Authorities have the option of seeking legal guidance where clarification is required to ensure they do not contravene the relevant legislation regarding information disclosure. Advice can also be sought from ICO.⁶

3.4 Planning Registers

Section 36(1) of the Town and Country (Scotland) Planning Act 1997 requires planning authorities to keep a register containing information on applications for planning permission, their approval of applications and the manner in which the applications have been dealt with.

Once commenced, the changes made by section 12 of the Planning (Scotland) Act 2006 will require planning authorities to provide a full record of the relevant factors considered in determining each application, including all documents relating to the application and considered in the decision making process, the reasons for the decision, and the material considerations to which regard was had when making the decision. Authorities will have to provide an explanation of how the application has been dealt with and provide a copy of the notice informing the applicant of the authority's decision.

New Development Management Regulations will prescribe the content of the Register for planning permission applications and planning authorities should ensure that this statutory requirement is met. Should Planning Authorities wish to publish any information beyond what is prescribed in Regulations, they should ensure that it complies with the Data Protection Act.

⁶ Advice can also be sought from ICO through the Scotland office on 0131 225 6341.

4. Publishing Applicant and Objector Details

4.1 Publishing Personal Data on the Internet

Planning Authorities should take extreme care when publishing personal information on their websites and avoid publishing personal data such as telephone numbers, email addresses and signatures. A letter from the ICO to all Scottish Local Authorities in October 2007 stated:

*telephone numbers, e-mail addresses and signatures should not be made public. Attention should also be paid to the removal of sensitive personal information (e.g. relating to criminal history or state of health) where such information is provided as part of the application process.*⁷

Where the publication of personal data is involved e.g. signatures, planning authorities must comply with the eight data protection principles laid down in the Data Protection Act 1998. In doing so, planning authorities are committed to respecting the public's right to privacy and to protecting personal information. These require that information must be:

1. Processed fairly and lawfully
2. Obtained and used only for limited lawful purposes
3. Adequate, relevant and not excessive
4. Accurate and kept up to date
5. Kept for no longer than necessary for the purposes for which it was collected
6. Processed in line with the rights of data subjects under the Data Protection Act 1998.
7. Kept secure by technical and management measures
8. Not transferred to countries outside the European Economic Area without adequate protection

Whilst current application forms are in use, it is recognised that applicants details may be available publicly on the web whilst the application is viewable through weekly list and planning authorities online planning information systems.

As good practice and for compliance with the Data Protection Act, the online application and appeals system will make planning applicants and appellants aware that the information they submit through the system, plus any accompanying maps, drawings and documentation *may* be published on the web.

Planning Authorities **must** ensure that any information received through the online application and appeals system is redacted accordingly before publishing to the web. Where planning authorities receive paper forms and associated documents, they should ensure that this information is also redacted before scanning and making

⁷ Information Commissioner's Office, October 2007

available on the web. Precautions should also be taken before making such documents available through other means.

All representations to planning applications should be acknowledged and those submitting them advised that their comments will be open to public view. When making representations available online Planning Authorities **must** ensure peoples' identities are protected. They should be aware that they could be held legally responsible for the content of their website and should also have procedures in place to ensure the removal of any obscene, illegal or defamatory comments. Planning authorities also need to ensure that they accord with their council's policy on disclosure of information.

With regards to applications, appeals and representations, planning authorities should seek to avoid any harmful consequences that might arise as a result of publishing information online. As a minimum, planning authorities should seek to ensure that the following is removed:

1. signatures (internal and external),
2. email addresses,
3. phone numbers..

Any personal information collected in order to comply with the diversity monitoring requirements of the Race Relations (Amendment) Act 2000 should not be published. The information should only be made available to the public in summary and in an anonymous way.

When planning authorities are publishing information online, they should ensure that only those documents relevant to the public interest are shown at a given point in time. Where personal information is involved, this will help ensure that the planning authority is complying with the fifth data protection principle i.e. keeping the information for no longer than necessary for the purposes for which it was collected. This does not affect any individual's right to access all the documents on the Statutory Register as this can still be access at the Planning Authority office, if necessary.

Privacy Statement/ Fair Processing Notice

In fulfilling their responsibilities under the Data Protection Act, planning authorities should publish a privacy statement (or fair processing notice) on their website which should be accessible from the home page and other relevant pages of the website.

An example of a privacy statement can be found at:

<http://www.planningportal.gov.uk/england/professionals/en/1097521227444.html>

ICO is currently working on guidance on fair processing notices which will be published later this year and which will be available on the ICO website.

4. COPYRIGHT

It is probable that the following should be considered as “literary works” for the purposes of the Copyright Designs and Patents Act 1988:

- Drawings, CAD drawings and site plans.
- Additional information and reports accompanying the application.
- Objectors’ comments.
- Supporters’ comments.
- Where there is an appeal to the Planning Inspectorate, the appellant’s case and other person’s representation.

The owner of the copyright has the exclusive rights to copy the work, to issue copies of the work to the public and to communicate the work to the public. Unless otherwise permitted, for a planning authority to make such information available on its website without permission of the owner of the copyright (usually the author of the letter, drawings, plans etc) may constitute an infringement of the owner's copyright. Public downloading of the information may also be an infringing copyright of the work.

In order to mitigate the risks associated with infringing copyright the following actions are suggested:

- Consider including a form of words which clearly indicates that those making planning applications and comments to planning applications that the information they provide will be published on the planning authority’s website.
- Utilise a “click accept” facility on the website which clearly prompts the user to view and accept or reject the terms and conditions of using the website.
- Planning authorities should consider including a clause in the terms and conditions specifically relating to copyright. An example form of words is detailed below:

“Plans, drawings and other material submitted to the local authority are protected by the Copyright, Designs and Patents Act 1988 (section 47). You may only use material which is downloaded and/or printed for consultation purposes, to compare current applications with previous schemes and to check whether developments have been completed in accordance with approved plans. Further copies must not be made without the prior permission of the copyright owner.”

Ordnance Survey maps, and maps created from Ordnance Survey material are subject to Crown copyright. It is therefore recommended that the use of the mapping is limited to an allowance to view and download for private and non-commercial purposes only. It should be made clear that mapping may not be further sub-licensed, sold, demonstrated, lent, or otherwise transferred or exploited without prior written permission of Ordnance Survey. Ordnance Survey shall not be held liable for the map material not being fit for your purposes or applications.