



Facilitating Change (UK) Ltd

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Development Management Consultation
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Thursday, March 27, 2008

Ref: Modernising The Planning System: Development Management Consultation

Dear Sir / Madam

Please find attached our response to your invitation to respond to the 'Development Management Consultation Paper'.

Our response focuses on the Pre-Application Consultation element of the proposed legislation, as this is our particular area of expertise. We wholeheartedly agree with the ambition 'to allow local communities a greater role at the pre-application stages of certain applications [and] to influence the nature of the proposals themselves'. However, we have a number of reservations regarding the interpretation of the proposal. These are provided in the attached document entitled 'PAC Consultation Response'.

We believe that there will need to be significant work undertaken to ensure successful implementation and delivery of these new proposals. We have already offered support and assistance to the Planning Directorate to facilitate this. (Letter to Tom McNamara dated Thursday 20 March 2008.)

Many Regards

Chris Whitehead
Managing Director - Facilitating Change (UK) Ltd.

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SCOTTISH PRE-APPLICATION CONSULTATION LEGISLATION - Issues

Issue	Potential Outcome	Possible Solution
1. No clear definition of what 'consultation' aims to achieve	The aim of the legislation is to make the planning process less adversarial and less confrontational. However the proposed legislation does not give a clear definition of what 'consultation' aims to achieve. The legislation should be very explicit in defining the outcomes of effective public consultation.	Different parties will have different expectations of the pre-application process. If the aim of the consultation is not made clear by central government prior to legislation being implemented consultation processes will be adversarial from their inception as different parties disagree on the scope of the consultation undertaken.
2. The role of public opinion	The role of public opinion in the planning process is not clear.. Should it be a material consideration in the planning decision?	Provide clear definitions of key phrases such as : 'What is successful public consultation?' Eg 'Local community input influences the final design, construction and operation of the development.' We believe a test of effective community engagement, is the influence the consultation has had on the final design, construction and operation of the development. In our opinion if there has been no change in the design, construction or operation then the consultation has been ineffective and a waste of time.
3. Consultation on major developments needs to take place earlier than the legislation suggests	As in point #1 above clarity is required to ensure that consultation is successful. If different parties (developers, politicians, planning authorities, public) have different expectations of the consultation process this will lead to conflict. If public opinion is given too much weight it can undermine the planning system. Most major developments will, by their nature, generate a level of local opposition.	The "proposal of application" should take place as soon as possible after the Planning Authority has made its scoping opinion. It should be de-coupled from the planning submission and follow the principle of front-end loading taking place as early as possible in the project life-cycle. Consultation should be undertaken on initial designs of the development.
4. Councils do not have the skills or resources to respond to proposal of application	The Planning Act suggests that the developer should submit a 'Proposal of application' a minimum of 12 weeks prior to the submission of an application. The planning authority has 3 weeks to respond to the application. The 9 weeks left do not leave enough time to conduct a rigorous and robust consultation exercise on a major development. At this stage in the development project life cycle, designs will have been finalised. Consultation taking place at this time is unlikely to result in any meaningful outcome.	A developer presents his "proposal of application" 12 weeks prior to his intention to submit his application. The planning authority advises 3 weeks later that the development requires a consultation that will take much longer than the time available to allow the developer to submit his application on the expected date. Either the developer has to delay his planning application or the planning authority will have to accept the consultation does not meet the standards of public engagement outlined in PAN 81.
4. Councils do not have the skills or resources to respond to proposal of application	The legislation will require the Planning Authority to respond to developers within 3 weeks of the 'Proposal of application' being submitted. This will require resourcing by the Planning Authority. In order to provide a robust response to the developer the Planning Authority will require a new skill set, or very clear guidance.	Planning applications will be delayed if the Planning Authority cannot respond on time. Where a Planning Authority is able to respond on time they are likely to be risk averse and over specify the level of consultation required for the development. This could lead to consultation being disproportionate which will place an unnecessary burden of time and cost on the developer.
4. Councils do not have the skills or resources to respond to proposal of application		Planning resources will have to be committed to this new activity. What will happen if Planning Authorities do not respond within the three weeks? Planning Authorities will require training and guidance. Implementation of the legislation should use PAN 81 and the Standards of Public Engagement as key reference documents..



	Issue	Potential Outcome	Possible Solution
5. The minimum consultation requirements are not aligned to PAN 81	The legislation states that as a minimum there should be at least one public meeting. This is completely contradictory to PAN81. It is difficult to think of a major development where this would be an appropriate level of consultation. Every public consultation will require a mix of methods to ensure representation across the community. (Refer to PAN 81)	Developers will have an expectation that a public meeting itself will be an adequate form of consultation. Opposition and community groups could challenge this view. See Reporters comments on public meetings in the appeal decision to the Stirling Local Plan (2005).	Make clear reference to the Standards of Public Engagement outlined in PAN 81 as a way of determining the level of consultation required.
6. Notification for major developments completely inappropriate	The legislation states that the developer should contact the Community Council whose land is within, or adjoins, the proposed development.	As point #5, it is difficult to think of a situation where this would be an appropriate level of consultation.	This needs to be re-thought and made more appropriate for the level of development being addressed. Stakeholder mapping should be an integral element of the design of the consultation process.
7. No reference to SDP and LDP in the pre-application process.	The development being proposed may have already been subject to consultation as part of the wider planning process. i.e. the development may have been included in the National Planning Framework, a Structural Development Plan (SDP) or a Local Development Plan (LDP). These planning documents will have had to be subject to consultation and may be legally binding. However no reference is made to the wider planning process in the pre-application consultation legislation.	Developers often discuss their proposals with the local community in isolation of the wider planning framework. Communities may not understand the wider benefit of the development being proposed.	The relevant planning authority should have an obligation to have an input into the consultation to provide an objective summary of the planning context for the development.
8. The developer should agree the consultation plan with the Planning Authority and Community representatives.	The community may disagree with the consultation process, which will inhibit the quality of consultation that can be delivered.	The community fails to engage with the developer.	The legislation should encourage the developer to agree a consultation plan with the community prior to the commencement of the consultation (Participation Statement). This should then be presented to the Planning Authority as a key element of the "proposal of application". The development of protocols for specific types of development will help ensure that role and responsibilities for each party are clear.
9. Lack of consistency in the guidance being provided by planning authorities.	Advice provided by individual Planning Authorities may not be consistent with that provided by other Planning Authorities for similar developments.	Organised opposition groups may challenge advice offered by individual Planning Authorities by comparing advice offered by different authorities (locally and nationally)	Implement best practice and protocols for industries that are likely to have the most planning applications eg In example of Onshore Wind farms the South West protocol has been adopted in England and Wales as "The Protocol for Public Engagement with Proposed Wind Energy Developments in England".

