



26 March 2008

**CONSULTATION RESPONSE BY PLANNING AID FOR SCOTLAND TO THE
SCOTTISH GOVERNMENT: MODERNISING THE PLANNING SYSTEM:
CONSULTATION PAPER ON DEVELOPMENT MANAGEMENT: JANUARY 2008**

WHO WE ARE Planning Aid for Scotland is a company and a charity registered in Scotland which provides services to all people seeking to engage more effectively in the planning system and related activities which affect the environments of local communities. It is funded by the Scottish Government, Local Authorities, charities, members and sponsors and provides advice and training through its small complement of staff and over 160 volunteers from the membership of the planning profession in Scotland.

Planning Aid for Scotland (PAS) believes in a plan led system which gives clear direction to developers and communities and takes an active interest in improving the way that planning serves local communities, national interest groups, minority and hard to reach groups, as well as any member of the public who would benefit from understanding and participating better in how plans and planning policies are adopted and planning decisions on individual cases made. We are especially interested in developing and sharing good practice in informing, consulting and involving all groups of society in planning in a transparent and equitable way.

GENERAL COMMENTS

Through our advice service, a high proportion of the enquiries and cases on which advice is given by PAS staff and volunteers relate to development management issues. The experience of PAS provides considerable evidence that many of our clients find the current system confusing, overly complex and its decision making processes fail to command the credibility expected and required.

Taken in their entirety, PAS has some reservations that the changes now proposed will create a system that is potentially more complex than the existing arrangements. While there is considerable merit in seeking to establish procedural requirements that are appropriate to the nature and scale of development proposed, it is evident that the proposed arrangements will need to be presented in a manner readily understood by members of the public. There is no indication given to date on how this will be achieved, although it is confirmed that PAS will continue to contribute to the dissemination of information on the operation of the planning system. PAS welcomes the proposals likely to achieve the intended objective of making the system more inclusive particularly for local communities. It is noted however that community engagement is primarily focussed through the community councils and does little to address the wider communities and hard to reach groups.

It is anticipated that the proposed changes will have a significant impact in increasing demand for advice and assistance from PAS.

SPECIFIC COMMENTS IN RELATION TO QUESTIONS RAISED

Question 1: Do you agree with the proposed categories of development to which the requirements for pre-application consultation apply?

Yes, PAS welcomes this provision that will encourage community engagement early within the process. However, in the interests of greater simplicity there is a case for redefining 'major development' such that this includes everything listed in the Schedule. A clear and defining characteristic of 'local developments' could therefore be that they do not require pre-application consultations. It is the experience of PAS that relatively minor developments can on occasion give rise to significant local concern and controversy. It might be suggested that a further general category is added giving planning authorities some discretion to require pre-application consultation for specific sites or types of development depending on local circumstances. This form of discretion already exists in relation to EIA.

Question 2: Do you have any comments on the thresholds in Schedule 1 of the DMR on pre-application consultation?

There is an argument that the requirement for 'pre-application consultation' should take into account regional and local variations, particularly with regard to housing. While an urban planning authority may be kept considerably busier than necessary in relation to pre-application consultations relating to relatively small-scale and uncontroversial housing developments, there may well be instances in rural areas, where the introduction of one or two houses is much more controversial and deserving of being the subject of a pre-application consultation.

Question 3: Is the information required in a pre-application screening notice sufficient?

Given the importance of thresholds and criteria to define the types of developments that require pre-application consultations, surely there should be an explicit request for the inclusion of information that will allow the planning authority to identify as easily as possible whether or not a pre-application consultation is required?

It is noted that developers are to be asked to indicate the relationship of the proposals to the development plan. This is likely to give rise to early disputes over the content and/or interpretation of the development plan. It may therefore be prudent that this aspect is left to the planning authority to determine.

Question 5: Do you agree with the proposed content of the proposal of application notice?

It might usefully also contain an explanation as to why the development proposal requires a pre-application consultation. This of course, would encourage, if not require, dialogue with the planning authority, which in turn, would encourage pre-application discussions.

Question 6: Are the requirements to notify community councils and neighbours of the proposal of application notice sufficient or should others be notified at this stage as a statutory minimum?

Yes, they are sufficient as a statutory minimum. However, in the spirit of wider community engagement there may be some merit in encouraging wider notification at the discretion of the prospective applicant, particularly in circumstances where a community council may not exist or other known community organisations with a potential interest in the proposed development.

Question 7: Do you agree with the minimum statutory requirements for pre-application consultation in regulation 8?

It needs to be made clear that the minimum requirement is both a) public meeting *and* b) newspaper notice. PAS is of the opinion that one public meeting is unlikely to be acceptable. In addition, it is regrettable that this aspect is not given a higher status within the statutory provisions based on the recommendations of PAN 81 as previously raised by PAS. At this stage it may be suggested that it would be helpful for a requirement that an appropriate programme of pre-application consultation be established to reflect the particular circumstances and nature of the proposed development.

Question 8: Do you agree with the requirements on the content of pre-application reports?

Again, it might be helpful to make it a specific requirement that the basis for the pre-application consultation is explicitly recorded. This further emphasises the need for all parties to be clear on this point.

Question 9: Do you support the classes of development which will be subject to pre-determination hearings?

Yes, but further to the point made in relation to Question 1 above, there may be some scope for clarifying the definition of 'local developments' even further; that is, as developments that do not require 'pre-determination hearings', 'pre-application consultation' etc. While this might increase the number of 'major developments', it firstly brings clarity to the development hierarchy AND ensures that more complex cases, whatever their size, can benefit from the opportunities afforded by the major development route. Rather than size distinguishing major developments from local developments, local developments could be those a) where the proposed use is in accordance with/supported by the development plan and b) that have not been explicitly identified as national or major developments in the development plan.

There is a need for further guidance on the format adopted for such hearings. Given major variations in current practice between planning authorities in relation to development plan departure hearings, it would be appropriate that a common format is adopted based on best practice.

Question 10: Should the opportunity to be heard at a pre-determination hearing be extended to other parties beyond those who made representations?

No, except in unusual circumstances. Best practice for hearings should include statutory consultees.

Question 11: What arrangements would need to be made to convene full Councils to make these decisions?

No specific comment, but it is noted that this feature has potential for delay in decision-making that in many cases is unhelpful for local communities in creating uncertainty of outcome over an extended period of time.

Question 12: Do you support the view that processing agreements should be in place before submission of the application?

PAS supports processing agreements insofar as they provide local communities with greater certainty over the timescale for decision. At present, our experience would suggest that delays in decision-making can lead to particular frustration and lack of confidence in the process being followed prior to decision.

Question 14: Do you agree with the suggested components of a processing agreement?

Clearly more guidance as to 'best practice' is required but it might be clearer for all parties and the public if the planning authority were to take responsibility for the drafting and the administration of the agreement, thereby guaranteeing that these are produced to a consistent standard.

There is considerable merit in including statutory consultees in such agreements, where a known particular interest is initially known, bearing in mind that failure to give timely responses is a common source of delay in the current system.

Question 16: Do you support the proposed approach to Planning Permission in Principle and approval of matters specified in conditions?

While the end of outline planning permission might discourage truly speculative applications, the requirement for greater detail to support a planning application with a PPP application introduces a need for significantly more investment by developers and understanding requirements on the part of local communities.

Question 20: Do respondents consider that the requirements on content of applications are sufficiently clear to allow validation to be a relatively straightforward administrative check?

Yes, as far as the validation process itself is concerned, although the experience of PAS would suggest that local communities often find the validation process frustrating and poorly understood.

Question 21: Do you have a view on the two options on the range of applications to be accompanied by a design and/or access statement?

PAS has no specific comment, but recognising wider objectives of the modernisation programme Option 2 is probably preferred both by local communities and developers.

Question 23: How can access panels be used most effectively in considering design and access?

PAS welcomes the inclusion of potential users of proposed facilities at the design stage as part of the inclusive objectives of the modernisation programme. Given provisions outlined above, there is obviously a need to develop uniform coverage of Scotland by access panels. Once this has happened, and in recognition of the fact that the requirement for design and access statements has a statutory basis, it would follow that the panels should be consulted by the Council on all proposals requiring a design and/or access statement.

Question 27: Do you consider the proposals on service of notice to neighbours to be appropriate?

Yes – however, at this stage some concerns must be raised over the resources available to planning authorities to undertake these requirements.

Question 29: Is the proposed approach to keeping people informed of PPP and approval of matters specified in conditions appropriate?

Yes

Question 30: Do you support the proposed definition of neighbouring land?

Yes. This is a clear definition and a welcome improvement over the existing definition which in the experience of PAS is often misunderstood by members of the public.

Question 33: Are you content with the Scottish Government's proposals for the public availability of that list?

Yes, but might there be some capacity for the list to be made available for inspection at local offices as well as the principal office?

Question 34: Is the advertisement of the availability of the list in a local newspaper on a monthly basis appropriate?

In time yes, but initially there would be merit in more frequent advertising.

Question 35: Do respondents have any views on the list of statutory consultees and the criteria for consultation?

PAS would support the proposals

Question 37: Is the level of information to be provided in the decision notice appropriate?

Yes, PAS welcomes the proposals that clarify the decision taken

Question 38: How should planning authorities best manage the potential burden of ensuring those who made representations are advised of the decision?

It is essential for public confidence in the system that those making representations are adequately informed of the outcome and reasons for the decision.

Question 40: Can existing Committee reports, where available, be easily adapted to incorporate the proposed statutory requirements in paragraph 4 of Schedule 4?

No comment, but the question of public confidence is of paramount importance that in the opinion of PAS requires use of plain English.

Question 47: Are there any potential impacts on business or voluntary sectors that we should be aware of in finalising the regulations or the order?

The proposals have considerable potential implications for anticipated demand for both PAS training and advice services, particularly in the years immediately following the introduction of the new arrangements. At this stage it is impossible to quantify the extent of this expected increase in demand. We would anticipate that this is also likely to be influenced by the level and nature of publicity given to the new arrangements.

Question 48: Are there any potential impacts on particular societal groups that we should be aware of in finalising the regulations or the order?

The work of PAS in recent years has identified that various groups in society are effectively excluded from engagement with the planning system for a variety of reasons. It is disappointing that the proposed arrangements do not address hard to reach sections of the community, although it is also recognised that this is as much a matter of practice rather than only relying on statutory regulations.

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