

EAST AYRSHIRE COUNCIL

MEMBER OFFICER WORKING GROUP: 28 MARCH 2008

SCOTTISH GOVERNMENT CONSULTATION PAPER

DEVELOPMENT MANAGEMENT

Report by Head of Planning and Economic Development

1. INTRODUCTION

1.1 The changes proposed to "development management" are concerned specifically with making the processes around planning applications fit for purpose and responsive to different types of development proposal; improving efficiency in determining planning applications and improving public involvement in the consideration of proposals requiring planning permission. Draft Town and Country Planning (Development Management Procedure) (Scotland) Regulations give effect to the new procedures. The concept of public inclusivity has not been extended to include third party rights of appeal but a significant element of the new development management procedures relates to new awareness and inclusion measures.

1.2 The Consultation Paper details proposals under the following general headings and poses a number of specific questions that are reproduced. Councils are invited to respond to these questions. These proposals should be noted in conjunction with a range of associated consultation papers similarly being presented before member / officer working groups or to Cabinet. The range of proposals is extensive and for ease of reference on this occasion it is proposed that the proposed responses to the questions be listed immediately after the summary of the proposal.

1.3 The proposals for Development Management fall within the categories –

- Enhanced Scrutiny
- Processing Agreements
- Planning Permission in Principle
- Content of Applications and Validation
- Design and Access Statements
- Neighbour Notification and Publicity for Applications
- List of Applications
- Statutory Consultees
- Time periods for Decisions
- Decision Notices, reports of Handling and registers
- Bad Neighbour Development
- Miscellaneous Issues
- Control of Increase in Gross Floorspace - mezzanine floors
- Transitional Arrangements
- Concluding remarks

2 THE PROPOSALS IN THE CONSULTATION PAPER

ENHANCED SCRUTINY

2.1 Pre-Application Scrutiny with Local Communities

The Scottish Government is seeking to ensure that additional scrutiny is

undertaken in respect of certain categories of development and in particular to involve communities in pre-application consultations. The proposed categories for pre-application consultation with the community are:-

- all national developments;
- all major developments;
- all development requiring environmental impact assessment (EIA); and
- developments listed in column 1 of Schedule 1 of the Development Management Regulations (DMR) which meet the criteria or exceed the threshold in column 2 - (largely local developments under the planning hierarchy but where there is no proposal for the development in the development plan)

Q1: Do you agree with the proposed categories of development to which the requirements for "pre-application consultation" apply?

It is considered that the categories of development to which pre-application consultation apply are acceptable. However, in order to avoid potential confusion with "pre-application discussions" as acknowledged in the consultation paper, consideration should be given to alternative terminology. e.g. "Developer/community engagement".

Q2: Do you have any comments on the thresholds in Schedule 1 of the DMR on "pre-application consultation"?

Schedule 1 of the DMR lists certain local applications requiring pre-application consultation. These are generally acceptable. concerning applications for which there is no proposal in the development plan. However, the following comments are offered:-

Category 2(a): It is unclear why the construction of a building for the sale of hot food, (not being identified in development plan and >2500 sq ms), has been excluded.

Category 3: The threshold for construction of residential development is, at 5 houses including flats, too low. The threshold could reasonably be set at, say, 20 units which would focus the additional administration and publicity requirements at somewhat larger applications.

2.2 Screening for Pre-Application consultation

A prospective applicant may serve a formal notice on a planning authority requesting a view on the need for pre-application consultation. The applicant will need to provide specific information as laid out in the DMR. The planning authority has 21 days to respond to this screening request. A view once given is binding on the Council for 12 months and the applicant has no right of appeal; other than to challenge with the Scottish Ministers, the need for EIA if that was the basis for the pre-consultation view. (As an aside, a pre-application screening opinion under the EIA Regulations that EIA was not required would not in itself function as a view on the need for pre-application consultation.)

Q3: Is the information required in a "pre-application screening notice" sufficient?

The level of information to be provided with a screening request is

adequate but the Council welcomes the provisions of Section 35(6) of the 2006 Act giving powers to PAs to request more information if necessary. In general terms and particularly until the development industry is comfortable with the operation of the circumstances when pre-application consultation will be required, pre-application screening will place additional workload on the Division. There is a danger in the implementation of this process that planning authorities will become embroiled in extensive additional administration.

Q4: Is 21 days a reasonable period for authorities to respond to a "pre-application screening notice" in all circumstances?

The Council is content with the 21 day response time to screening requests. It should be explicit in the regs that where further information has to be requested, the 21 day period recommences from receipt of that information.

2.3 Requirements for pre-application notification. (via proposal of application notice)

Where development requires pre-application consultation with a local community, the applicant must submit to the planning authority a "proposal of application notice" at least 12 weeks before lodging the application. This must contain information including site address, development description and applicant contacts. The notice must give an account of what consultations the applicant proposes to undertake, when such consultation is to take place, with whom and what form it will take. The proposal of application notice must be served on the community council and neighbours and the planning authority will also place it with the weekly list of applications received.

Within 21 days of receiving a "proposal of application notice", the planning authority can notify the applicants of other consultations to be undertaken and of anyone else who should receive the notice. The Scottish Government intend to produce guidance for planning authorities and applicants alike, on what consultations should be carried out relative to the nature of the development.

Q5: Do you agree with the proposed content of the "proposal of application notice"?

The content of the proposal of application notice is generally pitched at the right level. There should be a pro forma developed to assist planning authorities and developers alike. The Council welcomes the proposal to provide guidance on consultations relative to the nature, scale and location of the development proposed.

What guarantees would be in place that the application when eventually submitted bears any relationship to the proposal which the developer laid out during the pre-application consultation; and given that the pre-application report will offer outcomes, will planning authorities be certain that these relate to precisely the same proposal?

There is no detail as to how an applicant is to confirm the service of this notice on neighbours; no mention of certification. How are planning authorities to confirm notification indeed took place and what actions are available to planning authorities if notification was improperly carried out? The applicant must at least provide a list those parties on whom the notice has been served.

The formality and complexity of these processes will significantly impact on staff resources and workload and throw into question the efficacy of the new pre-application processes

Has consideration been given to how planning authorities' application

management systems (Uniform, etc) will be able to accommodate this and other new processes and thereafter cross reference pre-application processes to subsequent planning applications?

Q6: 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?

The notification process associated with a proposal of application notice could easily generate representations in advance of receipt of an actual application. The notice should be explicitly clear that all pre-application representations should be made to the prospective applicant, not to the planning authority. It would be unreasonable for planning authorities to "hold" any such representations prior to the lodging of the application. The extent of notification should be limited to community councils and neighbours; placing the proposal of application notice with the list of applications received would widen the potential for misdirected, pre application representations from those viewing the list.

2.4 Requirements for Pre-Application Consultation

Under Regulation 8, prospective applicants are required to consult every community council any part of whose area is within or adjoins the land where the proposed development is situated. Consultation with the community will involve at least one public meeting and associated publicity, (notice in a local newspaper), indicating how to and by when comments may be made to the developer.

Q7: Do you agree with the minimum statutory requirements for pre-application consultation in regulation 8?

The Council agrees with the minimum requirements for pre-application consultation; however regulation 8 should be amended to require publication of the time as well as the date and place of the public meeting. The pre-application process should be as simple as possible; smaller developers in particular may trigger the thresholds as currently proposed and require to administer pre-application consultation procedures at a cost of time and resources. These procedures should be closely monitored by Scottish Government to establish their efficacy and impacts.

2.5 Pre-application Consultation Reports

The 2006 Act (sect 35c) and Regulation 9 set out the requirement for a pre-application consultation report and its contents. The report must accompany any planning application and if none has been submitted where required, a planning authority must decline to determine the application and give its reasons.

A pre-consultation report must indicate how a developer has engaged the community; the persons consulted; an account of the steps taken to comply with pre-application consultation; an account of representations received and how these have been addressed including whether the application has been altered, The report will form part of the planning register.

Q8: Do you agree with the requirements on the content of pre-application reports?

The Council acknowledge the need to specify requirements about the content of pre-application reports, and the Scottish Government's intention to provide guidance on the form & content of such reports will be useful. There will, again, be major resource impacts for the planning authority at the validation stage in scrutinising documents submitted evidencing that

the applicant has complied with the pre-application consultation process. (press notices, proof of postage, etc) It is anticipated that this may have to be done by planning officers at the start of the process.

2.6 Pre-determination Hearings

The 2006 Act (sect 38A) requires mandatory hearings prior to the determination of certain planning applications to achieve enhanced scrutiny. The cases specified are developments including EIA and development that is significantly contrary to the development plan. The person to be heard at a hearing before a committee of the Council are those who have submitted representations, although under regulation 38, the Council may allow other parties to speak.

Q9: Do you support the classes of development which will be subject to pre-determination hearings?

At present the Council offers pre-determination hearings for a wider range of applications under the scheme of delegation, although the presence of EIA in itself would not necessarily place an application before Committee. The Scheme of Delegation will require to be revised to accommodate this. Indeed, the Council's current practice of hearings being arranged to allow for objectors to address committee with applicants responding, would require revision to accommodate representations being made by supporters as well. The Council supports Scottish Government's intention to provide further guidance including a model Code of Conduct for Hearings.

The Scottish Government should include in guidance advice as to what constitutes being "significantly contrary to the development plan".

Q10: Should the opportunity to be heard at a pre-determination hearing be extended to other parties beyond those who made representations?

No, the Council considers that the opportunity to address Committee at a hearing should, in the interests of natural justice, be restricted to those who made formal representations within the statutory timescales. This Council has had extensive experience of planning hearings, these being available to objectors to all planning committee determined applications. Applicants are in every case entitled to respond at Committee to the objectors' issues. This experience has highlighted the difficulties arising from submissions made outwith any formally received representations. Under no circumstances should the hearing process entertain new information introduced where neither the applicant nor the planning authority have had the opportunity to properly assess it. Deferring decisions to accommodate new information introduces unnecessary delay and would run contrary to procedures being advocated by Scottish Government for the appeal process. The proposed discretionary powers to allow other parties to speak should extend no further than allowing representatives to speak to formal representations.

A related issue for this Council concerns its current Scheme of Delegation and the ability of our officers to determine applications subject to no more than 10 objections. Consideration will need to be given to whether > 10 letters of support would trigger a hearing. Indeed, if the proposals are to be understood, all applications subject to even a single objection or letter of support appear now to have to go before Committee to enable a pre-determination hearing. This would have major negative implications for workload and determination performance and unpick delegated

procedures in place since May 2007.

The implications of having to hold a pre-determination hearing where there is even just one letter of representation (for or against) will significantly delay planning applications and the development process. This Council would advocate a system of mandatory pre-determination hearings where there were representations from a number of individuals over a specified threshold; 10 would be reasonable.

2.7 Decisions by Full Council

Under new Section 38A (1) of the 1997 Act those applications that are subject to a pre-determination hearing by the planning committee must be referred to the Council as a whole for ratification or refusal.

Q11: What arrangements would need to be made to convene full Councils to make these decisions?

Full Council meetings occur six or seven times per year. Any requirement to wait for the next Council meeting to ratify a decision on a "hearing" planning application will seriously impact speed of determination / performance. It may not be practical to convene additional Council meetings simply to ratify planning applications and beyond ratification is the further requirement in such applications (EIAs and significantly contrary) to formally notify the Scottish Ministers. These proposals are at odds with achieving a more efficient service.

The various legislative revisions introduced by the 2006 Act combine to provide that "a local authority's function of determining an application for planning permission for a development of a class mentioned in section 38A(1) of the Town and Country Planning (Scotland) Act 1997 c.8 shall be discharged only by the authority" Further consideration is required as to whether this indeed prescribes ratification by Full Council or whether there is any prospect of there being a different mechanism consistent with the 2006 Act. As presented, however, the ratification process will make determination of these controversial applications within the statutory timeframes wholly unrealistic.

A further matter is whether such ratification by Council implies a Council meeting having to re-run consideration of the application and the hearing process previously undertaken at the local planning committee. If Council is to be able to ratify or indeed refuse a proposal, it can hardly do so without members being fully acquainted with the circumstances and submissions surrounding the application. This is considered as unacceptable and undermines the status and role of the Local Planning Committee to which this Council has given delegated authority. Furthermore, East Ayrshire's two local planning committees comprise all the members within that half of the district. Consequently a very healthy scrutiny process is in place which would gain little from the involvement of the totality of members at full Council.

PROCESSING AGREEMENTS

2.8 Processing Agreements

Processing agreements are intended to allow applicants and planning authorities to agree on the approach and a realistic timetable to determine "national" and "major" planning applications. A revised timeframe may be appropriate to

produce a masterplan or design brief or produce additional studies. This is a voluntary process, but whenever it is practical, planning authorities are expected to provide the opportunity and facilitate arrangements for such agreements. The agreement can be reached even before submission of an application or within 28 days of its submission. If agreement cannot be reached inside those 28 days, the timescale for determination of national and major applications would default to 4 months, the proposed statutory timescale.

Q12: Do you support the view that processing agreements should be in place before submission of the application?

The Council supports the view that where possible, processing agreements should be in place before submission of an application.

Q13: Do you agree that where there is to be a processing agreement that it should be entered into not later than 28 days after validation?

The Council agrees that processing agreements should not be in place later than 28 days after validation.

2.9 Scope & Content of Processing Agreements

These agreements can relate to planning permission, conservation area consent, listed building consent. The key objectives of such agreements are to set out clear and simple arrangements that establish a realistic timescale with milestones for determining an application. The agreement would set out roles & responsibilities, information requirements, decision making framework, key milestones (within a project plan), and timescales, (including agreed extension of timescales where after a non determination appeal may be made).

The agreement could embrace all stages in the development management process from pre-application consultation to associated legal agreements and the potential for notification to Scottish Ministers.

It is anticipated that in Schemes of Delegation, planning authorities would delegate responsibility to officers for signing such agreements.

Agreements could be amended by agreement in the event of unforeseen circumstances, such as previously unknown development constraints.

Q14: Do you agree with the suggested components of a processing agreement?

The proposed components are acceptable and the Council welcomes the template for such agreements within the Consultation paper.

It is noted that statutory performance measurement will recognise attainment of an agreed target other than the two and four months periods.

There needs to be recognition that a further bureaucratic tier is created through the Processing Agreement arrangements. Although the principles are welcome, Agreements will rely significantly for their success on appropriate resourcing. There are implications for staff with additional burdens being placed on the more experienced staff handling major applications having to engage in early discussion with statutory consultees as well as the applicant.

2.10 Implications of Processing Agreements

To reinforce parties' commitment to a processing agreement, consideration is being given to linking non-compliance with its terms with the return of the

planning applications fee; where the planning authority was found to have acted unreasonably. This will be the subject of separate consultation later this year. At this point it is not known who would adjudicate in any dispute over the "reasonableness" of the planning authorities' actions.

The Scottish Government propose that, in the interests of transparency, any processing agreement would be placed on Part I of the planning register, and be made available online in line with the move towards e-planning.

Q15: Do you agree that the sole parties signing the processing agreement should be the planning authority and the applicant, or do you think there is scope for statutory consultees to also sign the agreement?

Although in most cases the planning authority and the applicant will be the sole signatories, there will be circumstances where statutory consultees should be involved; for example in those developments where their role is prescribed by statute. Agencies / third parties such as SEPA, SNH or Historic Scotland will frequently play a key role in determining applications impacting on natural or built heritage; indeed they may place determination periods outwith the control of the planning authority.

As referred to above, the mechanism for assessing whether the Council's, or presumably any other party's actions, have been unreasonable requires to be clarified in the Consultation on the Fee regulations. So too does the situation whereby the (in)actions of a third party create a delay beyond that anticipated in the processing agreement. What penalties befall third parties and, in particular, no penalty or return of planning fee should arise for the Council where delays are attributable to third parties.

PLANNING PERMISSION IN PRINCIPLE

2.11 Planning Permission in Principle (PPP)

PPP will replace the current GPDO provision for outline planning permission (OPP) and subsequent approval of "reserved matters" being the subject of conditions on the OPP. The proposed changes most importantly relate to the removal of reserved matters and a future arrangement whereby planning authorities simply specify conditions on a PPP which require matters specified in the conditions to be the subject of a further formal planning application. These formal applications will be subject to further neighbour notification and a requirement to notify those parties who made representations on the PPP.

Q16: Do you support the proposed approach to Planning Permission in Principle and approval of matters specified in conditions?

The Council supports the introduction of Planning Permission in Principle and approval thereafter of matters specified in conditions. This Council has historically required formal reserved matters applications complete with full neighbour notification, however, these proposals whilst generally welcome, will bring with them the additional administrative burden of identifying the objectors to PPP and thereafter notifying them of subsequent applications.

CONTENT OF APPLICATIONS AND VALIDATION

2.12 Content of Applications

Work is progressing towards standard application forms, but at present

applicants are expected to continue to use planning authorities' forms. DM Reg 11 introduces into the necessary accompanying documentation, as appropriate under separate regulations, pre-application consultation report, ICNIRP declaration and design & access statements (reg 16).

In addition, the Scottish Government has considered more detailed statutory requirements for the plans and drawings to accompany an application. However there were concerns that over specifying the level of information required could generate more information than necessary to determine many applications.

As with plans/drawings, consideration was given to defining what development types and circumstances might be defined as requiring additional assessment documents. Again, it was concluded that the variety of circumstances, made it impossible to be legislatively specific and would complicate the system.

Stopping the "processing clock" was considered by the Scottish Government where further additional information had been sought, but rejected because of its impacts on the appeal process and the complexity it introduced.

Q17: Do respondents consider the approach to the content of planning applications to be appropriate or are any of the other options. in paragraph 5.3 preferable?

Notwithstanding the Scottish Government's conclusions, it is considered that the scale of plans, particularly location and site plans should be prescribed.

The consultation document has given consideration to, amongst other thing, requiring that an application only be valid if accompanied by necessary assessments / statements. The consultation says that it would be too difficult to assess in advance what assessments / statements would be required. However, circumstances can arise where the determination of an application is prolonged by the applicant's failure to submit necessary flood risk, transport or other assessments. To preclude this, consideration still requires to be given to specifying that within certain development types, applicants are required to consult with planning authorities specifically to determine if the authority will require additional assessments. The authority's response would draw upon the Council's knowledge of constraints impacting the site. This approach could be focused on national, major and those local applications defined in schedule 1 of the regulations as requiring pre application consultation. Applicants are already being asked to submit to planning authorities a "proposal of application notice" at least 12 weeks before submitting the application as part of the pre-application consultation process. It could be at that time that applicants are also required to include a request seeking Council confirmation of supplementary assessments likely to be required as part of the application.

It is agreed that proposals relating to stopping the clock are unworkable.

Q18: What other measures could help to ensure that applications are supported by adequate information at the start of the planning process whilst still encouraging efficiency in the development management system?

Clearer guidance notes would significantly improve the quality of information submitted. Noting that the Scottish Government is working on standard application forms, when these are available they should be

available with guidance that clearly illustrates the benefit of early contact with planning authorities before lodging applications.

2.13 Content of applications for Planning Permission in Principle.

In the interests of transparency and to secure sufficient information to speed determination, the Consultation paper requires applicants for PPP to submit information describing what the proposed development would be like, approximate locations for buildings, routes and open spaces as well as a design and access statement; (referred to later in this report). Simply drawing a red line round a site is no longer sufficient.

Regulation 15(1) proposes that planning authorities be allowed, within a period of one month of receiving a PPP application, to request specified further information and that the time taken for the applicant to lodge that information is not to be included in the time period for determining the application. A request for further information can only be made outwith the one month period if the authority has previously made a request for such details within the month.

Q19: Do respondents consider that the draft regulations on the content of applications for Planning Permission in Principle are pitched at an appropriate level of information?

It is already possible for planning authorities if necessary to conclude that they are unable to determine the principle explicit in an Outline application unless they receive more information. Outline applications should still be able to be lodged with minimum information, if appropriate, to simply establish the acceptability of a development in principle. This would allow for a necessary measure of flexibility, allowing landowners to establish the potential uses appropriate on their land. At that point land owners are not going to be aware of the layout, open space provisions access routes, etc which subsequent developers (not yet having an interest in the site) may ultimately propose.

PPP will cause more confusion, delay and misunderstanding for no real end benefit.

2.14 Applications for approval of matters specified in conditions

It is proposed to replace seeking approval of reserved matters with applications for approval of matters specified in conditions.

The proposals are considered acceptable. The proposals confirm amongst other things that multi stage consents (matters specified) are clearly to be considered against the provisions of the Environmental Impact Assessment Directive.

2.15 Validation

Currently the definition of what constitutes a valid application is limited and as a consequence submissions that are in practice lacking in many substantive respects could arguably be viewed as "valid", allowing thereafter for the two month statutory timeframe to commence even though the first actions of the planning authority will be to seek sufficient information to allow proper consideration. This is wasteful of planning officers' time and this Council has always operated to publicly available in-house guidance detailing what reasonably constitutes a valid application.

This Consultation recognises that planning authorities operate the validation process differently and offers improved guidance through regs 11 - 14 of the DMR. Once valid and unless an EIA application, the statutory two months

determination period commences. The "clock starts ticking" upon compliance with the requirements of regs 11 - 14 and any additional information or assessments required will need to be prepared within that period. This highlights the merit of pre-application discussions clarifying what will be required and "processing agreements" mutually agreeing document requirements and setting alternative timeframes. (Where processing agreements are in place, performance will be measured against the agreed timeframe rather than the statutory period.)

As discussed previously for certain applications to be valid they will require a pre-application consultation report, (such as major developments). Other applications will require design and access statements to be valid, (see below).

Q20: Do respondents consider that the requirements on content of applications are sufficiently clear to allow validation to be a relatively straightforward administrative check?

The question certainly sets out the assumption that validation is a simple check to ensure that sufficient details have been lodged to comply with the administrative requirements in the regulations. However this falls short of the level of validation currently operated by East Ayrshire which seeks to remove the burden of seeking corrective or additional measures from planning officers onto planning administrators. For example, there is no mention of the necessity for there to be included a properly completed, signed and dated application form.

DESIGN AND ACCESS STATEMENTS

2.16 Role of and Requirement for a Statement

The Scottish Government's National Objectives include securing well designed, sustainable and inclusive living environments. The 2006 Act allows for prescription by regulation of the types of applications where design and access statements should be provided. Issues of either design, access or both should be addressed as appropriate. The Statements will explain the design principles and concepts that have been applied to a development and/or how issues relating to access for disabled people have been dealt with. Statements would apply to both full and PPP applications and should help interested parties to understand the design and access rationale that underpins them. The consultation paper indicates that only applications prescribed in DM Reg 16 need a design or access statement. Regulation 16 indicates that no statement are needed for:-

Engineering or mining operations; development of an existing dwelling house; development within the curtilage of a dwellinghouse for any purpose incidental to the enjoyment of the dwellinghouse; a material change in the use of land or buildings; application for development of land without complying with conditions subject to which a previous application was granted.

The consultation paper seeks comments on two possible options.

Option 1

Statements for all planning applications, except certain minor items, where development would lead to access by the general public. Reg 16 exemptions would apply. This option allows early consideration of the issues leading to better design and access. However it introduces additional burden on planning authorities and developers and in some cases will be of little benefit.

Option 2

Drawing upon PAN 68, this would focus on major developments and some minor or small scale developments on sensitive sites. Regulation would require that statements accompany national and major applications, (in addition to pre-application consultation.) Statements would be required in respect of sensitive sites such as conservation areas and "promoted" where development impacted on other designations such as listed buildings or historic gardens. This option embraces PAN 68 good practice and would be compatible with the national, major and specified local development pre-application consultation process.

Q21: Do you have a view on the two options on the range of applications to be accompanied by a design and/or access statement?

Option 1 would require too many statements on applications of questionable value and would put an unacceptable burden on planning authorities and developers.

Option 2 is the preferred option only requiring statements for larger applications when this is likely to be a material consideration. Option 2 statements should be a required part of the validation process for an application, although planning authorities should be able to request statements when they think appropriate for smaller developments.

2.17 What information should statements contain?

A slightly different approach is proposed in terms of the information for inclusion in design and access statements.

Informed by the Disability Rights Commission, access statements should set out:-

the policy or approach adopted as to access and how policies relating to access in the development plan have been taken into account & how the application in relation to access fits into the design process; and how any issues affecting access to the development for persons with disabilities have been addressed; and how features ensuring access will be maintained.

Design statements should contain information on:-

the policy or approach adopted as to design and how any development plan design policies have been taken into account; and demonstrate the steps taken to appraise the content of the development and how design of the development takes that context into account in relation to the proposed use.

Consideration should be given to the types of application that might be subject to which type of statement. The following table summarises the options in this respect.

development transpire to have been flawed, then no liability should fall on the planning authority in the event of any claim arising from the design of the development.

2.19 Assessing the Statement

Assessing a statement at validation stage will be a quantitative process; has it been provided where required and does it set out the information required in the regs.? The access officer's role has the potential to be pivotal.

Q24: Do you consider that there is sufficient clarity in the regulations to allow for effective and timeous validation of applications where design and/or access statements are required?

For the purposes of validation, there is enough clarity in the regulations; however whilst applicants and agents more familiar with larger applications should be able to interpret the requirements correctly, it would be appropriate for there to be made available a design and/or access statement template to guide those encountering the process for the first time. This could form part of the proposed policy and guidance framework. The incorporation of design and access statements into the validation process represents an additional burden for planning authorities in resource terms.

Q25: What role can local authority access officers play in assessing the access element of statements?

Whilst access officers have an important role, their level of expertise may be focused on matters of internal layout and access and egress from buildings. Wider appraisal of a development layout will often be required which may be outwith the access officers' experience. Having said that, their role could be both as a source of professional opinion and as a conduit to the disabled access panels whose experience of wider access issues could be relayed back to inform the planning function. Improved training for access officers could also widen their perspective and further validate their role assisting the planning function.

Q26: What information do planning authorities and communities need to ensure a thorough and robust assessment of the design and access statement?

The information required under the DM regs should arm Planning Authorities with sufficient information to thoroughly assess design and access statements. Staff training in relevant subjects would further add to the overall benefits of the process.

NEIGHBOUR NOTIFICATION AND PUBLICITY FOR APPLICATIONS

2.20 Neighbour Notification

Neighbour notification requirements are set out in Regulation 22. Such requirements pertain to "neighbouring land" whose definition has now been simplified, (reg 2). The responsibility for neighbour notification is to be transferred to planning authorities and the period for making representations having been notified would be increased to 21 from 14 days. Neighbour notification will apply to applications for approval of matters specified in conditions relating to PPP.

2.21 Who will be notified?

It is proposed to remove the current distinction in methodology between notifying domestic and non-domestic properties. To minimise costs and delays, neighbour notification would be served through a single notice sent to the "owner, lessee or occupier" at the neighbouring address. Where there are no premises on the neighbouring land to which notification could be sent, the planning authority would advertise the application.

Neighbour notification is to be undertaken within 5 working days of the validation

date of the application; neighbours to receive information on the application, where plans/documents can be viewed and a date by which representations may be made.

Q27: Do you consider the proposals on service of notice to neighbours to be appropriate?

No, it is not considered that they are entirely appropriate. The service of a single notice, although administratively simpler, does not guarantee that all parties receive notification. As a process it assumes that the individual first receiving the notification appropriately passes on the notification details. Set against a climate of greater inclusivity, this appears a retrograde step.

The new procedures, again, place significant additional administrative burdens upon the planning authority, including finding appropriate resources and undertaking the notification timeously as required. What measures would be open to the applicant or Scottish Government should an authority on occasion not be able, (for technical or staff sickness reasons), to comply with the 5 working day deadline?

There would be merit in very clearly stating that the validation date, (the date an application is taken as having been made), is to be the latest date when all necessary information required by regulation has not only been received but has been received in a legislatively correct form. It is considered worth further emphasising that a critical point here is that the date valid is not the date an application was determined to be valid but the date on which the latest information was received.

Q28: Do you agree that, in order to minimise costs and potential delay, a single notice sent to the address of the neighbouring land is sufficient for these purposes?

No, see response to Q27 above.

In relation to applications for approval of matters specified in conditions attached to a planning permission in principle (PPP), the planning authority must give notice to those who made representations on the PPP.

Q29: Is the proposed approach to keeping people informed of PPP and approval of matters specified in conditions appropriate?

This approach is appropriate. This will help to keep persons involved with the PPP informed of the progress of subsequent applications.

2.22 Definition of Neighbouring Land

The definition of neighbouring land has been simplified, in part to allow authorities to use Information Technology to identify neighbours who should be notified, in part for ease of use and also to be consistent with the draft Development Planning Regulations. Neighbouring land:-

"land which is conterminous with or within 20 metres of the boundary of land for which the development is proposed."

Guidance will be produced allowing authorities to notify more widely should the application merit it.

Q30: Do you support the proposed definition of neighbouring land?

Yes, the simplified definition is supported, however it should be confirmed whether the previous exemption for roads will remain or can it be assumed that where sites bound major roads, there could be no requirement to notify land across the road, if the road was in excess of 20 metres wide?

2.23 Advertising and Site Notices

Regulation 23 includes requirements to advertise applications where:- there are no premises on neighbouring land to which notification can be sent, the proposal is a bad neighbour development as detailed in Schedule 7 to DM Regs, and where it involves development contrary to the development plan. Planning authorities will be able to recover costs of advertising in the above cases.

No specific recommendations are made about the placing of site notices, although, through guidance, authorities will be encouraged to consider when the use of notices might be appropriate in supplement to other measures.

Q31: Do you consider the proposals concerning the use of site notices and of local advertisements to be appropriate?

Yes, the proposals are appropriate and it is helpful that the costs of these adverts can be recovered by the planning authority, however, again, neighbour notification brings with it significant resource implications for the authority.

2.24 The Cost of Neighbour Notification and Advertising

In the consultation document, it is stated that the White Paper has acknowledged that planning fees should increase to cover the costs incurred by planning authorities through neighbour notification. There has been no increase in fees this year. The consultation indicates that research on fees is currently underway.

2.25 Notice to Owners and Agricultural Tenants

A wording change is proposed in the notices to be served on those parties having an interest in an application site. Recognising that the application documents may not immediately be available for public inspection, the notification documents will simply refer to there being an opportunity to comment once the application papers are ready for public inspection.

Planning Authorities when neighbour notifying, will also be obliged to notify the owners and tenants identified by the applicant.

Where an applicant cannot identify some or all of the site's owners or tenants, they will not, as at present, have to advertise the application; it will be for the planning authority to do so and recover the costs from the applicant. Where an advert is required because the proposal is a "bad neighbour" or for any of the other reasons set out in reg 23, only the one advert will be required.

Q32: Do respondents support the proposed requirements on notifying owners and agricultural tenants and the placing of local advertisements in this regard?

The requirements appear excessively burdensome on the planning authority. Can that authority rely on the accuracy of the names and

addresses submitted by the applicants? If subsequently the owner / tenant details prove erroneous, the planning authority should carry no liability for having notified on that basis. There should be confirmation of the status of any consent issued, or any penalties applying to the applicant, following erroneous notification of owners and tenants unwittingly carried out by planning authorities on the basis of incorrect owner / tenant details.

The Scottish Government should confirm that there is no obligation falling on the planning authority to check the owner / tenant details supplied to it. Potentially application forms or available guidance should highlight the consequences of providing the authority with incorrect owner / tenant details

There are, again, resource implications for the planning authority in terms of serving notices on owners and tenants.

Costs of advertisements placed by planning authorities should be fully recoverable.

Where applications are potentially to be advertised for a number of reasons, (neighbour notification. bad neighbour development), then each reason for its placement should be referred to in the advertisement in order that neighbours do not feel they are less able to make a representation because the advert was placed for a reason other than neighbour notification.

The outcomes of the fee research currently ongoing should not lose sight of their not having been a fee increase this year. The absence of a fee increase this year needs to be acknowledged when identifying the extent of appropriate fee levels for future years when neighbour notification falls to planning authorities.

LISTS OF APPLICATIONS

2.26 Lists of Applications

Scottish Ministers propose that additional information be included in the weekly list of applications and that they be more widely available and access to them be advertised. Regulations will require that the list detail how to obtain more information about the application and the list shall be kept in 4 sections:-

- applications for planning permission;
- applications for approval, consent or agreement required by condition on a PPP or a planning permission for development in Schedules 10r 2 of the EIA regs.;
- applications made under section 242 of the Act; (urgent development procedures for crown development direct to Scottish Ministers)
- Proposal of Application Notices (where an applicant has alerted a planning authority to his intention to make an application requiring pre-consultation with the community)

2.27 Contents of the list of applications

The Consultation envisages retaining the existing recorded information, (applic ref number / site location / name & address applicant or agent / development description), but also recording information about when any comments are to be

received. In addition, information would be provided as follows:-

- Statement re how application details can be obtained
- The application number of a previous OPP or PPP where the application is for approval of matters specified in a previous grant of planning permission.

2.28 Availability of the List

Planning authorities are to publish the list of applications on their website and to make it available at their principal office. Applications received over the last week are to be made available to community councils and at public libraries.

In addition the Scottish Ministers will require monthly advertisement of the availability of the list; (not the list itself).

2.29 The cost of Advertising the List

The cost of the availability of list advert is being considered in the context of the research ongoing into planning fees.

Q33: Are you content with the Scottish Government's proposals for the public availability of the list?

Yes, the Council is content with the proposals.

Q34: Is the advertisement of the availability of the list in a local newspaper on a monthly basis appropriate?

Monthly separate, advertisement of availability appears excessive. It would be more appropriate to incorporate the "availability" advert within the weekly application advertisements; this surely being more cost effective and indeed more frequent.

STATUTORY CONSULTEES

2.30 Who should be consulted

OM Reg 30 lists the bodies to be consulted and the triggering criteria. These remain as in the General Development Procedure Order 1992 (GDPO) although as work progresses on "e-planning" initiative, changes may be required and their would be further Scottish Government consultation to that end.

One minor change will be that consultations are to be undertaken "before determination of an application for planning permission" rather than before granting planning permission" as currently in the GDPO. Thus all views will be available to any appeal body when considering refusal appeals.

In the context of local reviews it would be inappropriate for a local review panel to approve "on appeal" an application which requires to be notified to the Scottish Ministers prior to grant. These cases will not be subject to the scheme of delegation which leads to local reviews. To identify these cases, planning authorities will need to consult statutory consultees to establish where there would be an outstanding statutory consultee objection. Such applications would not be delegated.

Q35: Do respondents have any views on the list of statutory consultees and the criteria for consultation?

The Council is generally satisfied with these proposals. It is noted however that the Coal Authority will not respond to a consultation on an application unless the Council pay a fee for each enquiry. This has impacted on such consultations with that authority.

TIME PERIODS FOR DECISIONS

2.31 Time Periods for Decisions

DM Reg sets out time periods for determining applications and periods within which a decision should not be taken, (to allow adverts and notifications to expire).

Local Applications will continue to have a 2 month determination period; national and major developments become 4 months. EIAs will remain at 4 months. There will be some exceptions including where applicants have not submitted neighbour notification advert / bad neighbour advert fees, or where the planning authority within one month (Reg 15) seeks further information in support of an application for PPP. Here the determination period would be extended.

It remains possible for applicants to appeal on the basis of non determination within the above time periods. However, applicants will now have only 3 months as opposed to 6 months to lodge their appeal to the Scottish Ministers. With regards to "local development there would not be an appeal to the Scottish Ministers on the basis of non determination; rather, an entitlement to a "review" by the Council's review panel.

Q36: Do respondents consider it appropriate to extend the statutory period for determining an application for national and major development to 4 months?

Yes, this is appropriate and will be of assistance in relation to the often unrealistic expectations of developers. The role of processing agreements in certain circumstances will further assist the planning authority.

DECISION NOTICES, REPORTS OF HANDLING AND REGISTERS

2.32 Contents of the New Decision Notices

A new section in the 1997 Act indicates that a decision notice shall include:

- the terms of the planning authority's decision,
- any conditions to which that decision is subject, and
- the reasons on which the authority based that decision, (approvals as well as refusals)

It is now proposed that the following also be included:

- Additional general information (address & reference number)
- Lapse of planning permission after 3 years if development not commenced.
- Reference identifying the plans considered by the planning authority in determining the planning application
- Indicate whether there is a planning obligation under section 75

associated with the planning permission

- Scottish Ministers' direction (Ministers can now issue a direction to require the attachment of conditions to a planning permission)
- Challenge of decision' (appeal or local review) - standard wording for inclusion in decisions is provided

The Scottish Ministers are to require the planning authority to send a copy of the decision notice to those who submitted representations on the application. They say this may represent an additional burden on planning authorities.

Q37: Is the level of information to be provided in the decision notice appropriate?

In theory the above additional contents will be useful and there are some particularly valuable proposals such as reference to associated Sect 75 obligations and the 3 year time limit. In total the amount of information to be included is significant and its success is likely to be dependent on the set out and format of the decision notice.

Q38: How should planning authorities best manage the potential burden of ensuring those who made representations are advised of the decision?

This planning authority already sends out decisions notices to every objector. The placing, as an alternative, of an application decision in the local press may well exceed the cost of a batch mail drop to objectors. In addition and to provide the same level of information, the decision notice in full would need to be placed in the press. Furthermore, there is always the issue of many objectors / supporters potentially not receiving or subscribing to the local press.

As regards web based alternatives, certainly not all objectors would have access to the internet.

2.33 Registers and reports of handling planning applications

Part 1 of the Planning Register comprises applications still to be determined. Part 2 is the record of determined applications. This two part structure would be retained with some additions.

Part 1 would be extended to include all matters taken as validating the application, such as any "processing agreement, pre-application consultation report or design & access statement. Certain additional information relating to EIAs would also be included.

Part 2 of the Planning Register would contain different information dependent on the type of application. A copy of any EIA would be placed in part 2 of the Register.

2.34 Reports of Handling of Planning Applications

Planning Authorities are to ensure there' is a report of handling for a range of planning applications kept in Part 2 of the Register. This will include policy references, consultee comments and a summary of the main issues arising from any statements; design, access, environmental, etc.

2.35 Other entries in Part 2

Planning Applications: plans, drawings, statements and pre-application consultation reports must be placed on the Part 1 Register before adverts or neighbour notification is carried out by the authority. Part 2 of the Register must be updated within 7 days of a decision being issued.

Q39: Is the information to be contained in the report of handling appropriate in order to provide a robust summary of how the application has been dealt with and the reasons behind the planning authority's decision?

The proposed information would be adequate.

Q40: Can existing Committee reports, where available, be easily adapted to incorporate the proposed statutory requirements in paragraph 4 of Schedule 4?

Yes, this Council currently incorporates many of the proposed statutory requirements set out by Schedule 4. It is considered that any further information is likely to be able to be incorporated into the committee report without significant difficulties.

BAD NEIGHBOUR DEVELOPMENT

2.36 Bad Neighbour Development

Bad neighbour developments is the term used to identify developments likely to raise a range of challenging amenity issues for communities. The Consultation presents concern about the term "bad neighbour" itself and about the need to update the developments contained under that definition. Developments such as "music hall" and "dance hall" are to be deleted whereas inclusions would be "skateboard park", "waste transfer site", "recycling point" and "nightclub / public house".

Q41: What might be an appropriate alternative name for "bad neighbour development"?

There is not felt to be a pressing need to update the terminology, however, in that the development types are specified in Schedule 7 to the DMR, potentially "specified development" or "schedule 7 development" might be suitable alternatives.

Q42: Do you support the proposed additions and deletions to the list of "bad neighbour developments" and do you have other suggestions?

The proposed changes are acceptable.

MISCELLANEOUS ISSUES

2.37 Powers of Direction and Variation of Applications

The Scottish Ministers' powers to make Directions, (eg. to require an EIA or to pass information to specified bodies including the manner in which a decision was taken), will remain. The power to vary applications after submission, provided it was not a substantial variation, has been put on a statutory footing.

2.38 Crown Immunity Provisions

Crown immunity from planning permission was removed in 2006. The OM Regs continue current provisions relating to crown developments which in certain

circumstances withhold sensitive information for security reasons, (relevant in relation to pre-application consultation), and allow for swift consideration of proposals in certain cases under the 'special urgency procedures'.

2.39 Certificates of Lawful Use or Development – CLUD

Provisions will be continued with no significant changes.

2.40 E-enablement of Development Management

The new OM Regs will allow most of the statutory procedures to be carried out electronically.

2.41 Other Forms and Certificates

Schedules to the OM Regs contain templates of the various forms to be utilised in determining planning and related applications.

CONTROL OF INCREASE IN GROSS FLOOR SPACE - MEZZANINE FLOORS

Increases in the amount of internal floorspace in retail premises are not currently considered to be development and are outwith planning controls. The introduction of such floorspace, most commonly by means of mezzanine floors, can undermine policy objectives for town centres and divert trade. Mezzanine floors are now to be controlled through new powers.

2.42 Types of Use Covered by Controls on Internal Floorspace.

The Scottish Government are not proposing internal floorspace controls over other types of building uses.

Q43: Are there any other uses which you consider should also be subject to controls on increases in gross floorspace?

In that these controls have been designed to regulate undesirable impacts of developments having the ability to impact on established retail activity, consideration should also be given to applying internal floorspace controls to all categories of "bad neighbour" development whose intensification through internal addition could well impact adversely on existing, neighbouring uses.

2.43 Thresholds and Circumstances

The OM Regs propose that internal additions of less than 200sq ms would not be Development and not need planning permission. In determining the need for planning permission, account is to be taken of existing internal additions.

Q44: Do you support our proposal to have different approaches depending on whether other increases in the internal floorspace have taken place?

Yes, this is acceptable.

Q45: Do you consider that 200 square metres is an appropriate level to help achieve the objectives of helping protect town centres?

Yes, this is acceptable; and indeed is a figure consistent with related policies in the Council's Adopted Local Plan.

Q46: For the purpose of controlling internal Floorspace, do you support the decision to use amounts in square metres rather than a percentage?

Yes, a floorspace figure is preferable to a percentage, particularly with larger stores outwith town centres which would often have a bigger impact on the existing town centre.

TRANSITIONAL ARRANGEMENTS

The Scottish Government is considering how to deal with applications caught mid-process when the new Regulations take effect and will consult with planning authorities on these issues and offer guidance.

Q47: Are there any potential Impacts on businesses or voluntary sectors that we should be aware of in finalising the regulations or the order?

This would be a matter best addressed by those sectors.

Q48: Are there any potential impacts on particular societal groups that we should be aware of In finalising the regulations or the order?

This is a matter best answered by others.

Q49: Do you have any other comments to make on the draft development management regulations or the mezzanine floors order?

The Council has no other comments on the mezzanine proposals however it would offer the following general observations for noting.

General Observations

Individually there is much to be applauded in the wide ranging proposals for improving public scrutiny. It is appreciated that the Scottish Government had been under some pressure to introduce third party rights of appeal and that the significant scrutiny measures dealt with early on in the consultation will be viewed as providing some measure of comfort in lieu of third party appeals. However, taken as a whole, and not loosing sight of the Scottish Government's other goals in terms of efficiency and speed of determination, there can be no doubt that the proposed raft of additional regulations carries with it a very significant administrative burden that does not sit well with the consultation paper's stated aims.

There is cause to be concerned that the extent of the scrutiny measures in particular will front load the process of determining planning applications to a degree that authorities will not be able to effectively resource. This is not intended to be taken as a criticism of change which without doubt is required to align development management with the demands of the 21st century, rather it is an expression of concern that an opportunity may be lost to fully liberate the potential for development to take the country forward to a more prosperous future.

Consider an application for planning permission requiring an EIA, not an uncommon occurrence.

- *The developer may first wish to seek a screening of his proposals as to the need for EIA.*
- *The Council may require up to 3 weeks to offer the "opinion" in that regard.*
- *The developer embarks on preparing his Assessment, hopefully not caught out by the incompatibility of his development timescale with the availability of seasonal ecological baseline information.*
- *The developer may wish to confirm the need for pre-application consultation*

by serving a "pre-application screening notice" on the planning authority. The authority has 21 days to respond.

- *The application will in this case require pre-application consultation with the community and the developer will have to submit, at least 12 weeks before lodging his planning application, a "proposal of application notice" indicating what their consultation process will involve. (This should at least create some opportunity for gathering baseline environmental data.)*
- *The planning authority may within 21 days of receipt of the pre-application notice notify the developer of other consultations to be undertaken.*
- *The developer undertakes their pre-application consultation by means of press advertisement, public meeting(s), etc*
- *The developer submits their pre-application consultation report indicating an account of their consultation process.*
- *The planning authority has up to 4 months to determine the application, (being an EIA application).*
- *The application, lets say, is surprisingly subject to only one representation of support.*
- *In accordance with the pre-determination hearing procedures, this application, not being subject to public opposition, still has to go to a planning committee where a hearing will be held to allow the supporter to support the application.*
- *As the application has been subject to a pre-determination hearing, the planning committee's decision requires to be ratified by the Full Council; currently meeting only every two months. (Will members of the Council agree to special Council meetings to ratify such an apparently non-controversial application, or will it have to wait two months until the next Full Council?)*
- *Being an EIA application, the Council's decision will require to be notified to
Scottish Ministers.*

This scenario, it might be suggested, does not present the case well for the DM Regs as proposed.