

Date: 2nd April 2008
Our Ref: CM/000034

Development Management Consultation
Planning Directorate
Scottish Government
2H, Victoria Quay
Edinburgh
EH6 6QQ

Dear Sirs,

Response to Development Management – Consultation Paper January 2008

On behalf of Keppie Planning, Urban Design and Landscape, I hereby enclose our response to the recently published Development Management Consultation Paper. Our planning practice currently employ 10 chartered town planners and 3 graduate planners in our offices in Glasgow and Edinburgh who, along with the wider Keppie Design company as a whole, take an active role in the Development Management process, representing an array of clients throughout Scotland.

Please note that, as a practice, we support the current agenda to modernise the planning system, ensuring it is fit for purpose. However, we would comment in general that we do not consider that the proposed Development Management Regulations (DMR), and in particular the associated lengthy processes involved with a large number of developments, will achieve the aim of increasing the efficiency in determining planning applications.

In particular, it is considered that a large number of the proposals contained in the DMR will have significant resourcing implications for planning authorities, and we trust that this will be taken into account within the wider agenda of modernising the planning system, ensuring the system is indeed fit for purpose.

Also enclosed is the Respondent Information Form. As this response is on behalf of an organisation, the Equal Opportunities Questionnaire has not been completed.

I trust the above and attached are appropriate, however should you have any queries, please do not hesitate to contact me.

Yours sincerely,



Chris Mitchell
Senior Planner
[Redacted]

Enc.

DEVELOPMENT MANAGEMENT CONSULTATION QUESTIONS / RESPONSES

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

Q2: Do you have any comments on the thresholds in Schedule 1 of the DMR on preapplication consultation?

In general, the key response is that the inclusion of all developments listed in column 1 of Schedule 1 of the DMR which meet the criteria or exceed the threshold in column 2 in the categories of development that are proposed to be subject of formal pre-application consultation with local communities is too restrictive. Such developments include: development of more than 5 houses on industrial land which can have been identified through studies as being surplus and may be welcomed by the local community, or where a policy allows for non-industrial development subject to certain criteria and where the proposal meets such criteria; and particularly includes all development in the greenbelt, which will include development which is wholly accordant with the relevant local and national policies. The inclusion of a 12-week consultation period for such non-contentious developments would be unnecessary, unreasonable and significantly costly in terms of time and finances, particularly upon individual land-owners/farmers etc.

We would recommend the inclusion of developments where the local authority have an interest in the development in Regulation 4.

Notwithstanding the above, and while we understand the desire to have DMR which can be easily understood and interpreted by all who engage in the DM process, we would recommend the investigation of introducing an element of 'regionalisation' of the regulations, insofar that a development proposal in a rural/remote area of the country will be met with a different level of interest than the same development proposal would in a city region.

In addition, we would question whether pre-application consultation with local communities and pre-application discussions with planning authorities can reasonably be dealt with separately i.e. can effective pre-application consultation with the community be had without any input from the planning authority. This will be explored later in the response however, in brief, the lack of planning authority involvement in pre-application consultation processes may result in amendments being made to a development proposal during the 12-week process which shall not meet with the approval of the planning authority which will either require the development to be amended and thereby undoing any work previously undertaken with the local community, or will require the development to be amended and the 12-week consultation period to be undertaken afresh.

We would also seek clarification as to whether information/application required under conditions attached to a PPP, where the PPP application itself required pre-application consultation, will require its own pre-application consultation process.

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

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

Noting the significant resourcing implications that the DMR will have for planning authorities, we would be keen to avoid a situation where a planning authority can make a request for additional screening information on 'Day 20' of their consideration of the request for a screening opinion, with the submission of additional information re-setting the 21-day period to 'Day 1'.

Also, we would seek clarification whether no response from the authority within 21 days shall assume a default position of no pre-application consultation being required.

We would also question whether 21 days is a suitable period, given the potential additional 12-week period at the end of it. We would recommend the consideration of a 14-day period as an alternative.

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

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?

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

We would question the reasonableness for the requirement for at least one public meeting for all pre-application consultation processes, particularly when it is unlikely that a local community will be satisfied with just one public meeting which will not suit all who wish to attend. As such, this places significant expense upon the developer to organise out-of-hours meetings, and could place a strain on local Council facilities, so much so that it may result in pre-application consultation processing lasting longer than 12 weeks, thereby further lengthening the DM processes. We would be keen to learn how the Scottish Government expects developers to respond to the potential requests for a large numbers of public meetings etc.

With regards to the notification of "neighbouring land", we would question the need for persons 20m from a development site to be notified of either pre-application consultations or planning applications, particularly when local public meetings are required to be advertised, as this may encourage flippant or vexatious involvement/objection to proposals.

We would question the merit of publishing details of public meetings, or any notices required in the DM process, in local papers, many of which are seldom read.

As per responses to Questions 1 & 2, we would question the need for a local farmer to hold a public meeting for a proposed agricultural development on his land which accords with local and national planning policies, a development which would require such consultation under the DMR as proposed. As such, should the developments listed in Regulation 4 not be amended as suggested earlier, we would strongly recommend moderating the consultation requirements for certain developments.

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

We would be keen to learn how the Scottish Government expect planning authorities to assess the conciseness of the report, or an assessment of the quality, breadth and depth of the activities, if they have not been represented at said pre-application consultation activities i.e. public meetings etc, particularly with the potential for vexatious objections to the proposal which could include objections to the contents of the pre-application report.

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

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

We consider the making of pre-determination hearings for developments listed in regulation 37 mandatory as overly restrictive in that it assumes that said proposals will attract a number of objections. Should such a scheme not attract any objections, or an insignificant number, we would question the merit in holding a pre-determination hearing. As such, we would suggest that pre-determination hearings are only made mandatory where the developments included

in regulation 37 have been subject of 10 or more objections and where said objector(s) have indicated a desire to address the relevant planning committee.

In addition we would have concerns with the associated delays involved with mandatory pre-determination hearings, insofar that where a development may be subject of a large number of objections, or where its determination is likely to involve lengthy debate, such a hearing may have to be held at a specially arranged meeting, outwith the established diet of Planning Committee meetings, thereby further lengthening the decision-making process.

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

We would be extremely concerned if this proposal were to be implemented. Firstly, this requirement will add even further delay to the decision-making process, having to go through two separate committee processes. Secondly, the consideration of an application by the full Council i.e. a political body as opposed to an apolitical body, can lead to political decisions being made on a planning application as opposed to decisions based on the planning merits of the proposal.

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

With regards processing agreements, we are uncertain of their merit. Given the potential unknowns within the decision-making process for both the planning authority and developer, it may be that either party is unable to meet their aspect of the agreement through no fault of their own. For this reason, and given the significant resourcing implications the DMR will have on planning authorities, there is concern that planning authorities are unlikely to agree to processing agreements which may set challenging timescales for fear of not meeting them, or potentially rushing a decision through the process for fear of being fined for not keeping to the agreed timescales.

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

We are concerned with the comment in para 3.11 which states that, "in providing for processing agreements the intention is not to create an additional layer of bureaucracy associated with lengthy discussions and exchanges". It is considered that this is exactly what processing agreements create.

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?

While the planning authority and the applicant do not control all aspects regarding timescales i.e. consultation responses, it would likely be complicated to have statutory consultees sign the agreement as well, with many consultees unlikely to have the resources to sign up to any challenging agreements.

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

In general, we do not consider that enough information has been provided on the proposals for PPP replacing outline planning permissions to provide any significant comments. While we would seek additional general information on this aspect of the DMR, we would be keen to

learn specifically whether all conditions attached to a PPP require separate applications and fees to 'discharge' them, or whether one further formal application can address all conditions at once.

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?

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?

We would recommend that a standard application form is introduced at the same time as all other proposed changes to the system to avoid confusion/discrepancies at a later date.

With regards requirements for planning applications, we agree that Options a) to c) as per para 5.3 are overly complex and will potentially generate far more detailed information than is necessary for the determination of certain applications.

We would recommend, as advised previously, the statutory inclusion of planning authorities in the pre-application process, subject to a national review of planning authority resourcing, which will help the Scottish Government achieve their aim of giving applicants and planning authorities a clear steer on what should be provided in support of applications, without being tied to, or misled by, rigid, prescriptive requirements.

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?

A general concern exists with the ability to 'approximately' design a scheme, insofar that suggesting approximate heights/locations etc, which the applicant may be subsequently tied to, may need to be fully tested in the guise of a full design of the scheme.

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

It is not considered that assessing the competency of information-packed plans, statements and pre-application consultation reports will be a straightforward administrative check and is likely to require a professional planner to accurately assess them rather than an administrator. This is likely to have significant resourcing implications for planning authorities.

We would again highlight the issues of a planning officer/administrator assessing the competency of a pre-application consultation report without having been involved in the pre-application activities.

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?

We consider Option 1 to be the most sensible.

Q22: In addition to those considered in the options, in what circumstances might statements consider only one element – design or access?

We consider that, to avoid dubiety, statements on both design and access should be provided for all relevant developments. Should it be clear that there are no access issues, the statement can reflect this.

Q23: How can access panels be used most effectively in considering design and access?

We have no comments other than making them a consultee.

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?

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

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

We have no significant comments to make in this regard.

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

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?

With regards to the proposal to serve a single notice to "the owner, lessee or occupier" at the address of the neighbouring land, we would be keen to have written confirmation in either guidance or legislation that the failure of the occupier of a neighbouring dwelling or unit to pass the information to all relevant parties holding an interest in the neighbouring dwelling or unit, or serving notice on a vacant premise, shall not nullify any permissions that may be granted.

We note that, while much has been made of the transferring of the responsibility for neighbour notification from the applicant to the planning authority, the first notification procedure for a development listed in Regulation 4 and Schedule 1 of the DMR will be undertaken by the applicant.

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

There is concern that such additional requirements can delay the notification process.

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

We would question the need for persons 20m from a development site to be notified of either pre-application consultations or planning applications, particularly when local public meetings are required to be advertised, as this may encourage flippant or vexatious involvement/objection to proposals, all of which will lengthen the process.

Clarification is also sought as to whether the 20m also refers to vertical distances i.e. in flatted developments.

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

Yes, however the erection of site notices is yet another resource required from the planning authority.

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

If the planning authority are to notify the owners of the site at the same time as undertaking neighbour notification, is their merit in the applicant notifying the owners at the time of the application? This appears to be a duplication of work.

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

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

We would question the merit of publishing details of public meetings, or any notices required in the DM process, in local papers, many of which are seldom read.

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

No comments.

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

Yes, considered appropriate subject to a review of what is a "major development". It is not considered appropriate that any developments on a site which exceeds 2 hectares are treated as a major development – it is considered that this should be further quantified, as this could feasibly include relatively insignificant developments in rural areas which necessitate a large application site.

Note: While no specific question has been raised in relation to the proposed reduction of the time limit to appeal against a decision from 6 months to 3 months, we consider that this proposed amendment is unsuitable. This will lead to a number of unsubstantiated appeals given the reduced time to consider the merits of making an appeal, all of which would place undue burdens on the appeals process. It is understood that such a reduction was introduced in Northern Ireland in recent years with limited success given the number of flippant appeals received.

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

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

We are content with the level of information to be provided on decision notices. With regards advising those who made representations are advised of a decision, we would assume this to be a reasonably simple administrative procedure which can be tied into the same Information Technology that will be employed when undertaking neighbour notification. Indeed, it is understood that many Councils already notify those who previously made representations of the decision.

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?

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

It is considered important that planning authorities are accountable for all decisions made, with a robust summary of how the application was dealt with and assessed, ensuring that all

issues will be fully considered prior to making a decision. However, in a climate where planning authorities are seeking to increase their KPI figures and reduce their timescales for decision-making, the requirement for a report for every application, all tantamount to a committee report, shall place significant resourcing burdens on planning authorities, no doubt slowing the decision-making process, and by no means making it more efficient.

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

Potential alternatives include: development of potential concern; development of potential conflict; development of note; potential incompatible use.

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

We would seek clarification of the definition of “recycling points”.

In addition, we would suggest using this review as an opportunity to clarify the wording of other aspects of Schedule 7 of the GDPO, namely “*alter the character* of an area of established amenity”, and to “introduce *significant change* into a *homogenous area*”, as there appears to an inconsistency in the approach of planning authorities.

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

No comments.

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

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

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

We support the Government’s proposals on all of the above questions.

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

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

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

We have no further comments to make.

Chris Mitchell
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Keppie Planning