Glasgow City Council

Development and Regeneration Policy Development and Scrutiny Committee

Report by Executive Director of Development and Regeneration Services

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Modernising the Planning System
Consultation Paper on Development Management

Purpose of Report:

To highlight the key points arising from the Scottish Government's consultation paper on Development Management.

Recommendation:

That Committee notes the terms of the report outlining the Council's response.

Ward No(s):			Citywide:			
Local Member(s) Advised:	Yes ☐	No ✓	Consulted:	Yes ☐	No ✓	

PLEASE NOTE THE FOLLOWING*:*

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1. BACKGROUND

1.1 The Planning etc (Scotland) Act 2006 received Royal Assent in December 2006. The implementation of the Act requires extensive new or amended secondary legislation (regulations and orders) in conjunction with detailed guidance which the Scottish Government intends to issue over the following year.

1.2 Comments have been invited on proposed secondary legislation by the issuing of consultation papers. Papers issued so far include:

- regulations on development planning;
- planning enforcement regulations;
- development management;
- regulations on the planning hierarchy;
- permitted development rights for domestic microgeneration equipment;
- modernising planning appeals.

2. THE DEVELOPMENT MANAGEMENT CONSULTATION PAPER

2.1 One of the Scottish Government's key aims is improvement in the efficient operation of the planning system. The consultation states that development management should be reliable, consistent, speedy and efficient.

2.2 The proposed changes can be summarised as follows:

- hierarchy of developments - national, major and local with different procedures for each;
- pre-application consultation with local communities by applicants for large and complex applications;
- processing agreements for national or major applications;
- neighbour notification to be the responsibility of the local authority;
- specified types of applications to require design and / or access statements;
- enhanced scrutiny for specified types of application to allow opportunities for people to be heard by Committee;
- local review bodies established to deal with low level application appeals (separate consultation exercise);
- local authorities to prepare reports on each application and how they were handled and place these on the planning register;
- decision notices will contain more information, setting out a fuller reasoning for decisions.

3. KEY ISSUES

3.1 The consultation is an extensive document including a questionnaire with 49 questions (attached as Appendix 1). This report attempts to highlight some of the key issues.

3.2 Enhanced Scrutiny

This is proposed to apply to a select range of applications including all national and major developments and certain types of local applications. It will involve three main elements:

(i) pre-application consultations with local communities;
(ii) pre-determination hearings; and
(iii) decisions by Full Council rather than Committee.

3.3 For specific types of application, pre-application consultation with local communities will be required. The applicant must submit a notice illustrating how consultation is to take place at least 12 weeks before lodging an application. This is entirely separate from pre-application discussions which take place at present prior to submission of proposals. Further guidance is expected, however, applicants must submit reports along with any application illustrating the quality, breadth and depth of consultation that has taken place. Failure to submit such a report will result in the authority declining to determine an application.

Whilst more guidance on this area will be forthcoming, it will have resource implications on officers who will have to be involved in certain aspects of this exercise. However this will now be regulated and give the local community more information earlier in the processing of such applications.

3.4 It is intended to make pre-determination hearings mandatory for:

- applications requiring environmental impact assessment; and
- development significantly contrary to the development plan.

This will be a limited number of cases, although members may wish to convene more than the required mandatory levels. The Scottish Government intends offering further guidance, which may include a model code for hearings.

The Planning Applications Committee has a system for hearings in place. This has been used sparingly. The benefit of having an up to date City Plan (in a plan led system) should ensure that this approach is maintained. The government is proposing a very limited number of mandatory pre-determination hearings.

3.5 The Scottish Government, to ensure further probity, wishes all mandatory pre-determination hearing decisions to be ratified by an authority's Full Council (six week cycle). There are implications for processing times. The Council already has streamlined its decision making processes. The Planning Applications Committee routinely deals with large and complex applications. There is no real justification in departing from these currently successful arrangements.

4. PROCESSING AGREEMENTS

4.1 The Scottish Government accepts that certain large scale applications take much longer to process than two months. This is a welcome recognition of the complexities involved in dealing with such applications. It is now proposed to extend the timescales for determining national and major applications (eg 100 plus houses, office / industrial buildings over 20,000 sq meters). However, this will still only deal with a small number of applications.

4.2 Processing agreements would be entered into voluntarily between the Council and a developer. This would be very much a partnership. Many large applications slip in timescales due to a lack of information to enable processing timeously. Any agreement would need this information delivered at specified times to guarantee processing timescales. A processing agreement does not in itself guarantee planning permission.

4.3 The Scottish Government proposes that the agreement should cover the entire timescale of any proposal up to clearance by government if stipulated as a referable application. These agreements are voluntary and an inability to agree would lead to the default period of four months for national and major applications being applied.

4.4 The Council has been experimenting with such applications through its fast track planning framework. This has underlined the necessity for agreements to stretch into the statutory consultee framework. Whilst the Council can engage with its consultees, this would be much better handled if direction came from the government to emphasise timeous responses to consultation.

5. CONTENT OF APPLICATIONS AND VALIDATIONS

5.1 The Scottish Government has examined the information requirements to validate an application on its receipt. New items proposed include the need for design and access statements and pre-application consultation reports for certain types of applications. Unfortunately, the government has decided against the requirement for such reports as transport assessments, retail impact assessments and flood risk analysis to be part of the validation process. Many applications require these additional studies and, if they are not lodged at the start, do impact on the Council's ability to determine the proposal within the prescribed period. This can place undue pressures on officers receiving late and complex additions to justify proposals.

5.2 The Scottish Government believes that voluntary processing agreements will be valuable in ensuring that information is submitted timeously. This will still leave the Council at a disadvantage and would have been better imprinted in the development management regulations.

6. DESIGN AND ACCESS STATEMENTS

6.1 It is proposed that applicants will require to submit statements on the design principles applied to the development and how access for the disabled has been dealt with. The government has yet to decide finally on the types of prescribed applications but most certainly will include major schemes and those in sensitive locations.

6.2 City Plan 2 anticipates these changes and includes policy on these issues. Design statements have been submitted regularly for major applications as part of the Council's assessment process.

6.3 The work of Access Panels could feature in any assessments, however, resourcing the large number of statements received may be an issue for these organisations. More importantly, disseminating advice and training will probably be of greater benefit. This process has already started with an Access Panel led workshop held within DRS, giving officers a better understanding of the issues involved.

7. NEIGHBOUR NOTIFICATION AND PUBLICITY FOR APPLICATIONS

7.1 Responsibility for notification is proposed to transfer to local authorities. A single notice (simplified procedure) will be sent to the 'owner, lessee or occupier' of neighbouring land. This must be carried out within five working days of the validation date. In addition, whilst the applicant must notify owners and agricultural tenants, the local authority must also

advise these parties of a valid application and where it can be inspected and timescales involved.

7.2 The definition of neighbouring land is proposed to change and becomes more extensive, 'land which is conterminous with or within 20 metres of the boundary of land for which development is proposed'. This has implications for dense urban authorities and resource allocation. An example of a simple application in a West End tenement, comparing the existing and proposed regulations, revealed the following:

Neighbour Notification for minor tenement application	Existing Situation 68 notifications	Proposed Modification 130 notifications

7.3 The Scottish Government has carried out some testing of possible additional costs via the Neighbour Notification Working Group in July 2006. This group suggested an average cost of £75 per application would result across Scotland. Currently, further research is underway into costs associated with the development management system. Glasgow is participating in this initial research.

7.4 Whilst planning fees will be increased, the averaging of fees across Scotland may not address dense urban areas, particularly tenemental areas and, if not properly resourced, could expose the Council to further costs.

8. DECISION NOTICES, REPORTS OF HANDLING AND REGISTERS

8.1 The Scottish Government wishes to provide more information to applicants and those who make representation. This will involve several changes to the system. However, many of these aspects are carried out by the Council at present, including notification of a decision to those who have made representations.

8.2 Planning registers (publicly accessible) will have to contain reports on all applications, including those delegated to the authority. It is current practice to create an officer report for an application file.

9. CONCLUSIONS

The new regulations being proposed will bring extensive change to the planning system in Scotland. Certain aspects of the changes are already current practice within the Council. The requirements for neighbour notification will have potential resource implications for urban authorities. There are other elements which individually may not be resource intensive but taken together will impact on the work of officers directly handling the applications. Whilst the Scottish Government is aiming for improved performance, these changes may still impact on timescales.

10. SERVICE IMPLICATIONS

Financial - there will be financial implications for the Council. These as yet are still to be fully quantified. There are potential changes necessary to IT systems to handle the neighbour notification alterations. This may involve increased staffing. The Scottish Government intends setting new fee levels for applications to address these issues. However, this will average out across Scotland and may not address dense urban areas and the levels of notification required. In addition, permitted development rights are to be extended (yet to be finalised) and this may reduce the number of applications received.

However, for Councils with extensive conservation areas and considerable flatted development, this may have limited impact.

Legal - there will be implication with regards advice to planning officers on interpretation of the new regulations as each part starts to go live.

Personnel - see Financial Implications above.

Service Plan - none.

11. BACKGROUND PAPERS

- Modernising the Planning System, Scottish Executive, June 2005 and the Council's report thereon.
- Consultation paper on Development Management.

Development and Regeneration Services
AMacD (123-08)
15 April 2008

Appendix 1

Development Management Consultation

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

A.1 Yes. Schedule 1(3) requires to define "residential accommodation"

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

A.2 Yes. In a Glasgow context the 5 houses category in section 3 of the schedule is considered to be set too low. Either its adjusted or deleted.

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

A.3 Yes although noted that further guidance will be forthcoming. It is likely that most Council's will err on the cautious side in stating that a pre-application consultation is required to avoid any potential challenge at a later stage.

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

A.4 Yes. This would be the same as the 3 week screening period in the EIA Regulations.

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

A.5 Yes but note that further guidance from Scottish Government is expected. The last paragraph of 2.16 is far reaching and almost implies judgements being undertaken before formal consultations taking place.

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?

A.6 Yes requirements sufficient, However this is based on a fully active list of community councils. Where none exist the local authority may have to make a judgement which raises particular issues of challenge through exclusion from this process

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

A.7 If all that is intended is consultation then it is sufficient. However the area of community engagement needs to be address. The pre-application report should perhaps illustrate where views have been taken onboard and changes made to the proposal. This would make such consultation more proactive and responsive rather than simply a list of procedures undertaken.

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

A.8 Yes, but this concentrates on process rather than result. Scottish Government should produce publicity on this issue (paragraph 2.22) and not leave it up to individual authorities/applicants. It is noted that best practice guidance is to be issued. This must be specific on section 9 (c).

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

A.9 Yes, noted that good practice guidance to be issued.

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

A.10 No, but Regulation 37 should include the applicant as per the Act sect 38(1) given the need to ensure all stakeholders have the opportunity to make representation.

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

A.11 Given that pre-determination hearing applications will be referable to the Scottish Government it seems a completely unnecessary process to refer the matter to a full Council meeting which in Glasgow meets on a 6 weekly interval. Councillors on Planning Committees receive formal training. The introduction of a review creates more delays in the process and negates the streamlining of delivery which the Council has created with its new reporting structure.

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

A.12 Yes.

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?

A.13 No. This will create additional work early in the timescale of an application and should be handled at pre-application stage to avoid misused time.

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

A.14 Yes. Clarification of responsibilities with statutory consultees required and what the Scottish Government intends doing to ensure nationally that statutory consultees meet timescales.

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?

A.15 First part: Yes; second part. However this should not be used as a back door approach for local authorities to improve the consultation performance of statutory bodies. This will need a lead from the Scottish Government to outline timescale expectations for statutory consultees. Signing of any agreement could also extend to Historic Scotland and the Scottish Government with regards referred applications.

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

A.16 Yes. The Council as a matter of course requires full details in Conservation Areas and does exercise the use of the GDPO to request further details within 28 days.

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?

A.17 Awaiting guidance from Scottish Government. Missed opportunity to simplify and make efficient and fit for purpose. Proposal fundamentally flawed; does not clarify (paragraph 5.3) or give a clear view on (paragraph 5.5) what is required for a valid application. Preferred option would be a simplified option A and more robust Option B (to include any necessary assessments, not only those listed). This area of regulation will continue to cause undue delay caused by the lack of detail to determine applications timeously caused by poor submissions.

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?

A.18 The principle must be that adequate information is lodged at the start of the process. Transport Assessments, Retail Impact Assessments and Flood risk analysis are all regularly required for a variety of applications. At the very least these along with Design and Access Statements should form part of the validation process.

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.19 Yes.

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

A.20 No. There are clearly both Administrative and Professional roles and it is too simplistic a viewpoint to view validation as purely administrative. In relation, in particular, to content (para5.17) a professional input is required. If Design/Access statements form part of validation these must be reviewed as part of a professional judgement.

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?

A.21 Option 1 is the least favoured and would lead to unnecessary work, local plans should have design policies which many small scale applications can be judged against. In addition Building Regulations can also deal with much of the low level access requirements. Option 2 seems the most appropriate response but some trigger is required for those applications.

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

A.22 Difficult to identify these circumstances. Design/access intrinsically linked together

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

A.23 Glasgow has set up staff training with the Glasgow Access Panel. The dissemination of training and information is viewed as being the most effective way of using limited resources.

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?

A.24 Yes, but doesn't sit comfortably with other required information such as Transport Assessment, Retail Impact, Flood Risk Analysis which it would appear will not constitute a valid planning application.

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

A.25 By providing guidance and training initiatives for Councillors and Officers (see Q23)

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

A.26 Require further guidance from Scottish Government. Glasgow already has in place staff skilled in Design matters plus links to the Glasgow Urban Design Panel.

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

A.27 Yes.

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?

A.28 Yes.

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

A.29 Yes. However it is another layer of information and work required of an authority.

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

A.30 No, This is likely to prove difficult in the use of existing IT systems. The City Council's current system will not identify all necessary parties as digitisation is carried out on a central point and not on site boundary. Extending neighbouring land makes it a more onerous process for the authority. Consultation paper (para 7.9) encourages authorities to do more than the statutory minimum but no guidance on when this is appropriate. Does the requirement to exclude roads up to 20.00 metres remain? In dense tenemental areas the 20.0 metre rule particularly for minor applications will have major implications and be entirely unnecessary. This will have resource implications for the City Council when fee income levels are averaged across Scotland. A worked example for a ground floor tenement flat illustrates that at present 68 properties would require notification. Under the proposed regulations this rises to 130 properties. Perhaps the fee regulations could have a staggering mechanism that triggers higher fees once certain levels are reached e.g. 50, 150, 200, 250 and notifications to assist those authorities with numerous flatted properties.

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

A.31 Yes, however, the potential abuse /vandalism of site notices should be considered. Effectiveness of site notices should be reviewed.

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

A.32 Yes, but question of liability for false/incorrect owner information supplied by applicant needs to be addressed.

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

A.33 Yes. The Council currently publishes a weekly list. More electronic delivery needs to be examined.

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

A.34 No. This appears unnecessary and more electronic delivery of this medium needs examination.

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

A.35 Coal Authority - Delete. Reason: In 2004, the Coal Authority stopped giving consultation replies. Instead they began to return consultations with a standard advisory note. Since that time the Council has attached that advisory note to relevant planning applications. Text of advisory note attached. "The proposed development lies within a coal mining area. In the circumstances, applicants should take account of any coal mining related hazards to stability in their proposals. Developers must also seek permission from the Coal Authority before undertaking any operations that involves entry into any coal or mines of coal, including coal mine shafts and adits and the implementation of site investigations or other works. Property specific summary information on any past, current and proposed surface and underground coal mining activity to affect the development can be obtained from the Coal Authority. The Coal Authority Mining Reports Service can be contacted on 0845 762 6848 or at www.coal.gov.uk."

The Scottish Ministers-DMR, Article 30(j) (iv) and (v)-Reword. Reason: These categories were introduced in April 1997 and relate to the provision of roadside facilities on motorways (see circular 5/1997).The M8 runs through the Glasgow conurbation and, indeed, the centre of Glasgow. In particular, the criterion in article 30(j) (iv) (development of land within 400 metres of the boundary of any motorway for the purpose of providing such services such as refreshments, fuel or parking) requires statutory consultation on scores of proposals for class 3 developments and hot food shops, multi-storey car parks and the occasional fuel filling station within a quarter mile of the M8. There is no guidance regarding types of development in these categories which do not need to be the subject of consultation, equivalent to the guidance contained in Circular 1/2005(containing the revised Annex D to Circular 4/1997)in relation to the 1992 GDPO Article 15(1)(j)(i)and (ii)(DRM Article 30 (1)(j)(i)and(ii)).
Scottish Government should pursue strategy for mandatory timescales on consultees. This is particularly relevant for Processing Agreements.

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

A.36 Yes. However processing times would be greatly assisted if the necessary additional information mentioned under Q.18 was mandatory.

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

A.37 Where there are a large number of representations there is the potential to significantly increase the administrative burden. Recent Tesco application attracted over 1000 representations. GOAPE application circa 900 representation and 4000 named petition submitted at hearing.

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

A.38 The Council currently advises all who make representation of the outcome of a planning decision. Better/increased use of IT and E-planning.

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?

A.39 Yes. All committee reports have fully detailed assessments. Templates required for delegated items which at present have an on file assessment sheet.

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

A.40 Yes.

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

A.41 Amenity Issue Development, However existing terminology is well used and understood change may create confusion.

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

A.42 Betting Offices - Alter definition of licensed premises. Reason: Schedule 7 includes “licensed premises”. These include betting offices. However, betting offices are specifically included in class 2 of the Use Classes Order. Betting offices have been in this anomalous situation for many years.
Schedule 7 8(d) - Question: do the drafters of legislation adopt a consistent approach to the use of am/pm or the 24 hour clock?

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

A.43 No.

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

A.44 No, this is over-complicated and not clearly explained. Should less than 10 square metres not be ‘permitted development’ rather than ‘not development’.

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

A.45 Yes

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

A.46 Yes.

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

A.47 For these sectors to comment upon.

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

A.48 For these sectors to comment upon.

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

A.49 No.

General Points

The Council recognises the Scottish Governments aim to improve legislation for all stakeholders. However there are particular resource implications for Councils which need to be clearly thought through in any fee alterations. Greater pre-application consultation will place a firm onus on the private sector and local community to give time commitments to the process. The latter may find this difficult. The lack of proper forward thinking on what constitutes a valid planning application is a missed opportunity. The lack of certain documents e.g. Retail Impact, Flooding and Transport Assessment does have major implications for Councils and their processing times. Processing Agreement will only deal with certain types of applications and there are many outwith the range that will need additional information. Existing tree cover at the proposed site should be a requirement of any validation process. This should be mandatory along with properly certified on site level drawings.

Relative to timescales for applications, the Scottish Government encourages Councils to promote 'planning gain' e.g. affordable housing or greenspace policies. These involve usually a Section 75 Agreement or Section 69 under the Local Government Scotland Act. Planning permissions are not issued until the legal agreements are signed which can add significantly to timescale. Glasgow suggests that for these types of applications the performance indicator date should be the Committee resolution to grant date. There are current examples of developers receiving consent but not finalising agreement for several months particularly where there is a financial transaction to the City.

The City Council would again emphasise the need for the Government to engage with statutory undertakers with regards timeous consultation responses. Each Council should not be left to negotiate in particular Processing Agreement timescales without a commitment from the Scottish Government to pursue these vigorously with statutory undertakers.

Whilst many aspects of the proposed changes are small scale when taken incrementally they do have resource implications. Currently the Council is preparing a package for a GOAPE application involving large volumes of objection. Legislation now means that where there is a Council interest the objectors need to be contacted after a Committee decision and before sending a final package to the Scottish Government. This alone has resulted is significant staff time collating and checking the information before finalising a package. The new measures will undoubtedly introduce further levels of administration into the process with attendant resource implications.