

**RESPONSE TO THE SCOTTISH GOVERNMENT
by EAST RENFREWSHIRE COUNCIL
ON THE FOLLOWING TWO DOCUMENTS**

- 1. DRAFT REGULATIONS ON THE PLANNING HIERARCHY, AND**
- 2. DEVELOPMENT MANAGEMENT.**

20th March 2007

1. It is considered that the principle of introducing enhanced scrutiny etc for the major applications is a positive step. However it is considered that the implementation of the regulations is over-complex. The proposals as they stand introduce different criteria for a variety of requirements (major/local development; pre-application consultation; pre-determination hearings; delegation to officers; need for design/access statements), which is considered too complicated and it is thought that it will be very confusing for the public to easily follow.

2. It is therefore suggested that the categories and thresholds for defining a 'major' development should be altered to include a wider/larger range of developments (possibly incorporating some or all of the drafted criteria for pre-application consultation and for exclusion from the scheme of delegation). Once defined as 'major', this would lead to the need for pre-application consultation, determination by Members, pre-determination hearings, design/access statements, enhanced fees, longer processing times etc. 'Local' developments would not generally require any of these.

3. Fuller and more detailed comments as detailed in appendices 1 and 2 are also made.

APPENDIX 1

DETAILED COMMENTS ON THE PLANNING HIERARCHY REGULATIONS	
QUESTION/SUBJECT	COMMENT
Q1 Number of Classes	1. Support
Q2 Proposed thresholds	<p>2. As proposed, to be defined as 'major' an application has to exceed certain thresholds for each land-use listed. However there should be criteria that recognises large mixed-use development as 'major' even where individual uses fall below the respective threshold e.g. a mixed use proposal of 1.5ha of housing, 3.5ha of business and 1.5ha of leisure would not trigger a 'major' application as individually each use is below the threshold. It is suggested that mixed uses incorporating the categories 2, 3 or 7, with a combined/total area of 2ha+ should also be included as 'major'.</p> <p>3. The regulations should exclude minor developments on large sites. For example a recent application for window replacement at a High School would have been classified as 'major' due to the site being over 2 hectares in size. Also, certain advertisement applications may be similarly classified as we have had applications for advertisements at various locations within large development sites. It is suggested that advertisements should be specifically excluded from the 'major' category.</p>
Q3 Avoiding regional variation	4. Support, but it may be that rural authorities may have a different opinion
Q4 Definition of local developments	5. Agree
Q5 Impacts on business or voluntary sectors	6. No comment
Q6 Impacts on societal groups	7. No comment

APPENDIX 2

DETAILED COMMENTS ON THE DEVELOPMENT MANAGEMENT REGULATIONS	
QUESTION/SUBJECT	COMMENT
Pre-application consultation generally	<ol style="list-style-type: none"> 1. The regulations should recognise that pre-application consultation with the Council and/or consultees, in the absence of detailed proposals, will have a lesser weight/standing than formal consultation on a detailed planning application. 2. The regulations should also make the circumstances clear that further/revised consultation may be needed for example when an application changes significantly prior to formal submission to the planning authority.
Q1 Categories requiring pre-application consultation	<ol style="list-style-type: none"> 3. Category 2(a) - 'hot food' uses have specifically been excluded from the need for consultation. As these are usually <u>more</u> contentious than other retail uses, it is suggested that they should not be excluded. 4. Category 2 (b)(v) - Similarly there is no reason why recreation uses involving motorised vehicles and firearms should be excluded. 5. It is suggested that all 'bad neighbour' uses should be included as these are the ones that neighbours are particularly interested in and affected by (read in conjunction with comment number 25 below regarding un-necessary public meetings/advertisements). 6. Category 5 - To be consistent with SPP 11 (Open Space) and Circular 7/2007, consultation should be needed on loss of outdoor sports facilities including tennis courts, bowling greens, golf courses, athletics tracks etc.
Q2 Thresholds for pre-application consultation	<ol style="list-style-type: none"> 7. The regulations should be clear in terms of whether consultation is needed for <i>planning permission in principle</i> and also for applications for further approval. 8. The thresholds are generally set too low e.g. pre-application consultation on 6 houses outwith a conservation area is too minor a scale to warrant pre-application consultation – it is suggested that this be increased to at least 10 houses, unless within a protected area. 9. In general the thresholds should be more closely linked with other existing thresholds, for example, with regards to retail development the thresholds could be the same as those which trigger a Retail Impact Assessment (1,000sq.m. convenience or 2,000sq.m comparison floorspace). Similarly the definition of a 'significant' housing development could be the same as that used in the national performance targets (and Glasgow & CV Joint Structure Plan) i.e. 10 units. There would also be scope to link the thresholds more closely with the thresholds contained in the regular returns which are made to the Government. 10. Category 2 should for the avoidance of doubt state "gross" floor area. 11. Category 6 – The need for consultation on <u>all</u> development in the green belt is excessive as this would cover even very minor building alterations and garages. It is suggested that building alterations (particularly householder extensions) up to certain limits should be excluded from the need for pre-application consultation. 12. Similarly the need for consultation on all sewage treatment facilities (which could also be small scale) is too onerous and these should not require pre-application consultation up to certain limits.

DETAILED COMMENTS ON THE DEVELOPMENT MANAGEMENT REGULATIONS	
QUESTION/SUBJECT	COMMENT
Q3 Information in pre-application screening notice	<p>13. If pre-application consultation is needed for all EIA applications, then the applicant must be required (pre-application) to submit sufficient information for screening to be undertaken. The applicant therefore needs to be required to supply sufficient information about the nature of the proposal and 'constraints' at the site for the Council to be able come to a screening judgement.</p> <p>14. In paragraph 2.9(a), the 'general description' should indicate the use/nature of the use, the area of the site and if appropriate the floorspace that will be created and/or the number of residential units to be created (estimated if necessary). These points appear necessary in order to assess whether the proposal will fall within the 'major' category or within Schedule 1 of these Regulations.</p> <p>15. In paragraph 2.9(b), if there is not a postal address, the application must include a written description of the location, possibly involving where road access will be taken from. Such a description is required for the decision notice.</p> <p>16. In paragraph 2.9(c), the plan must be to a proper cartographic base e.g. Ordnance Survey, and not just hand scribbled.</p> <p>17. Regulation 5 (and paragraph 2.9f) would be better worded "... <i>whether in the prospective applicant's view the development is one which is in accord with the provisions of the Development Plan, and the applicant should specify the relevant Development Plan policies and proposals</i>".</p> <p>18. It is suggested that a standard 'notice' be included as a Schedule to the Regulations to ensure consistency.</p>
Q4 Response to pre-application screening within 21 days	<p>19. If a development needs an Environmental Assessment screening (28 days to respond), then <u>both</u> screenings should be set at 28 days – there may be benefit simply in setting 28 days for all screenings. Alternatively there should be scope for planning authorities to have an extension of time to 28 days if need be.</p> <p>20. There are some concerns about paragraph 2.11 and there being no need to re-screen if an application has not altered <u>significantly</u> within 12 months. It is thought that there will be a lot of debate/disagreement over the definition of 'significantly'. It should be made clear that the judgement of significance should lie with the planning authority.</p> <p>21. Pre-application consultation will only function well if the statutory consultees are geared up to respond to pre-application consultation. Assurances are sought from the Government and the consultation bodies in this regard.</p>
Q5 Content of the proposal of application notice	22. See comments re paragraph 2.9 above.
Q6 Minimum pre-application notification	23. Agree, as to widen out consultation would bring too many uncertainties and differing interpretations into consideration.
Q7 Minimum statutory requirements for pre-application consultation	<p>24. The need for a public meeting and newspaper advertisement for all these developments is excessive, particularly for all Green Belt developments. It would however get very confusing to introduce a second criteria for defining when a meeting/advertisement would be needed. It is suggested that a public meeting/advertisement should only be needed for 'major' developments.</p> <p>25. The rules for neighbour notification by the applicant in regulation 7 should be the same as the Council would undertake for a formal application.</p>

DETAILED COMMENTS ON THE DEVELOPMENT MANAGEMENT REGULATIONS	
QUESTION/SUBJECT	COMMENT
Q8 Content of pre-application report	<p>26. Agree on the content of the report.</p> <p>27. Paragraph 2.20 is unclear in terms of the standing of an application where the pre-application consultation is considered unsatisfactory. It states that “the planning authority must decline to determine the application”. What is the status then of such an application? Is it a deemed refusal and does the applicant have a right of appeal? It may be better to allow a refusal of permission on this ground, otherwise applications may sit ‘in limbo’. Such a scenario would also adversely affect the Council’s ‘performance’ figures for a reason that is outwith the Council’s control. In this situation the Council should be able to stop the processing clock in terms of appeals and performance reporting.</p>
Q9 Classes of development subject to hearings	<p>28. The variety of differing criteria will make the process confusing for the public, and it is suggested that more consistency would be beneficial e.g. perhaps only ‘major’ developments would have the right to a hearing rather than having a separate set of criteria for this.</p>
Q10 Other parties to be heard at hearings	<p>29. Only those who commented should be allowed to speak – this should include those making representations and consultees.</p>
Q11 Arrangements for full Council to determine applications	<p>30. Procedures will have to change significantly. Council may have to meet more often, and be more closely tied into Committee dates. The need for ratification could slow down decision-making. It is questionable what benefit this arrangement will have. It is strange that only pre-application hearing applications will have to go to full Council and not all National or Major applications, so the rationale for this requirement is doubtful.</p>
Q12 Processing Agreements in place before submission of an application	<p>31. There should be an expectation that agreements should normally be reached before an application is submitted (although extension up to 28 days should be allowed exceptionally). It also puts the onus on the applicant to take the lead in pursuing the Agreement.</p>
Q13 Processing Agreements entered within 28 days of validation	<p>32. See comment above, reaching agreement after validation may have limited value as the Council will need to start processing the application as soon as it is validated in order to meet its performance targets – the Council can’t put an application on hold for as long as 28 days in the hope that a processing agreement might be reached.</p>
Q14 The components of a processing agreement	<p>33. It is likely to be very difficult if not impossible to include information/timescales for discharge of conditions at the start of the process when the need for conditions is unknown.</p>
Q15 The parties to sign a processing agreement	<p>34. As consultees are important 3rd parties in applications, and as many of the delays in processing applications are caused by slow consultation responses, it will be important that they are involved. They must however be geared up to participate.</p> <p>35. If Councils are to be ‘punished’ for non-compliance with processing agreements then it will be important to have consultees signed up to play their part.</p>

DETAILED COMMENTS ON THE DEVELOPMENT MANAGEMENT REGULATIONS	
QUESTION/SUBJECT	COMMENT
General comments on processing agreements	<p>36. If there are potential punishments at stake e.g. fee paybacks, then this may make Councils very reluctant to enter into processing agreements. It is suggested that the punishments be removed.</p> <p>37. If Councils are to be 'punished' for non-compliance, then there should also be punishments for applicants otherwise the system will be unfair and open to abuse.</p> <p>38. To avoid paying back fees, the Council may feel pressured to determine applications before they would otherwise wish to – leading either to more unsatisfactory developments or to more refusals/appeals.</p>
Q16 Approach to Planning Permission in Principle	39. Support.
Q17 Content of planning applications	<p>40. As national on-line forms will be introduced soon, it is considered that this consistency should be continued with the introduction of complete national (paper) forms as well.</p> <p>41. It is considered that there should be a list of minimum plan requirements, although not as extensive as contained in the consultation paper.</p> <p>42. It is considered that where additional assessments are advised as required through pre-application consultation and/or processing agreement, or are necessary in order, for instance, to assess protected species, then the Council should be entitled to refuse to register the application without them. This is particularly important as the submission of insufficient information impacts very significantly and adversely on the performance figures of Councils and is a matter which is outwith the control of the Council.</p> <p>43. If a detailed list of plans is to be included – the elevations (paragraph 5.3a, 3rd bullet point (c)) should indicate “..where relevant...proposed building materials ...etc.”</p>
Q18 Other information needed at the start of the planning process	44. As discussed above, if further required information is intimated to applicants pre-application, and this information is not submitted, then the Council should be able to stop the clock until the necessary information is submitted. If the developers don't submit and the clock is stopped then it is of their own doing and not the efficiency of the system that is at fault.
Q19 Content of applications for planning permission in principle	45. Paragraph 5.8 allows the planning authority to stop the clock where necessary information is not submitted along with a PPP. However paragraph 5.3c (see also 5.15 and 10.4) seems to preclude stopping the clock for other applications. There needs to be consistency in approach and not different approaches for different types of applications.
Q 20 Content of applications to allow straightforward validation	46. The term “applications for approval of matters specified in conditions” could be better phrased.

DETAILED COMMENTS ON THE DEVELOPMENT MANAGEMENT REGULATIONS	
QUESTION/SUBJECT	COMMENT
Q21 Applications to be accompanied by design & access statement	<p>47. Option 2 may be preferable, but should include requirements for SSSIs, Scheduled Ancient Monuments and Listed Buildings (as well as European protected sites such as SACs). It seems very strange that they would be required for Conservation Areas but not for these other important national designations, which are of equal if not greater design importance. Design statements should also be needed for new houses in the countryside which have a very significant visual impact.</p> <p>48. Possible third option of all national & major as well local developments which meet the criteria for pre-application consultation (even where in accord with the Development Plan).</p> <p>49. It is considered that the necessary design and access statements must be submitted along with an application and not at a later stage as suggested in paragraph 6.15. To allow late submission would run contrary to the aims elsewhere in the regulations of getting necessary information up-front.</p> <p>50. Access statements should not just address disabled access issues, but also wider access implications for instance through the Land Reform Act.</p>
Q22 Circumstances for needing only design or access statement	51. No comment.
Q23 How can access panels be used most effectively	52. The Council's Access Panel has been consulted on this issue.
Q24 Is there sufficient clarity to allow validation of applications with design/access statements?	53. There is concern that a judgement would have to be made at the application verification stage on the adequacy of design/access statements. This would need significant additional training and/or staff resources.
Q25 Role of local authority access officers	54. There are concerns about whether there is the capacity and skills available to properly assess access statements, particularly if they are going to be numerous. The role of access officers may have to be expanded.
Q26 Information needed to ensure robust design and access statements	55. Unknown.
Q27 Proposals for neighbour notification	56. Agree, providing that the increase in planning application fees is sufficient to cover costs.
Q28 Single notice to be sent to neighbour	57. Agree.
Q29 Keeping people informed of PPP and approval of conditions	58. Agree.
Q30 Definition of neighbouring land	<p>59. Agree, but suggest a minor wording change "land within 20 metres of all boundaries of the land for which development is proposed".</p> <p>60. It should be noted that the proposed change will lead to an increase in the number of neighbours that will need to be notified.</p>
Q31 Use of site notices and advertisements	61. Agree.
Q32 Requirement to notify owner/tenant and advertise	62. Agree.

DETAILED COMMENTS ON THE DEVELOPMENT MANAGEMENT REGULATIONS	
QUESTION/SUBJECT	COMMENT
Q33 Content of planning application list	63. Agree.
Q34 Advertising availability of list monthly	64. It is considered that the need to publish the availability of the list monthly is too frequent – it is considered that six monthly or even annually would be adequate.
Q35 List of consultees and criteria for consulting	65. No comment.
Q36 Statutory time period for national & major developments extended to 4 months	66. Agree.
Q37 Information to be provided in the decision notice	67. Agree.
Q38 The management of advising those who made representations	68. Where Councils do get a large number of representations or a petition, for example over 50, it should be sufficient to place an advertisement in a local newspaper to advise of the decision rather than write individually to each.
Part II of the Planning Register	69. It is considered unnecessary for a copy of the related plans to be put on Part II of the planning register. These are kept within Part I. Part II currently functions well giving a summary of what has been applied for and what the decision has been. This can be kept and stored in easily accessible folders. If a complete set of approved plans have to be added for every application, it would become very unwieldy and the volume of paperwork contained therein would significantly reduce its usability for the public as well as adding significantly to storage needs within planning offices. Similarly it is considered unnecessary and to be duplication to place a copy of an environmental statement within Part II.
Q39 Information to be contained in the application report	70. Most of the information proposed for the report is already included in reports prepared by this Council. There is concern however that the new regulations will introduce the need in some circumstances for two reports, thereby introducing potential confusion. At present a report assessing the application is prepared for Committee. The Committee may agree or disagree with the report and the decision is minuted in the Committee minutes. Under the new proposed procedure (see schedule 4, 4d) where there is a pre-determination hearing, a second report following committee would be needed in order to include the main issues raised at the hearing. It is considered that this is introducing unnecessary duplication and is unnecessary as such matters will be included in Committee minutes.
Q40 Adaptation of committee reports	71. Committee reports could be adapted, but the introduction of second reports (see above re recording pre-determination hearings) would introduce duplication and confusion.
Q41 Alternative names for 'bad neighbour development'	72. The title should more properly refer to the effect on amenity e.g. 'Development likely to have a significant affect on amenity'.
Q42 List of bad neighbour developments	73. It is suggested that recording studios should be added to the list of bad neighbours in view of the noise that can be generated.
Q43 Other uses which should be subject to controls on increase in floorspace	74. Could include leisure centres and offices.

DETAILED COMMENTS ON THE DEVELOPMENT MANAGEMENT REGULATIONS	
QUESTION/SUBJECT	COMMENT
Q44 Different approaches for increase in internal floorspace	75. Agree.
Q45 Appropriate level for increase in internal floorspace	76. Agree.
Q 46 Controlling increase in floorspace using square metres	77. Agree.
Q47 Impacts on business or voluntary sectors	78. No comment.
Q48 Impact on societal groups	79. No comment.
Q49 Other comments	80. None.