

Helensburgh Community Council



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The Scottish Government's Consultation Paper on **Development Management**

The Helensburgh Community Council (HCC) offers the following five preliminary comments not derived from the set questions on the above consultation, followed by answers to specific questions.

1. **The HCC is supportive of much of the above draft and especially the increased role for community councils.** Whilst we recognise that the issues are complex and technical and that simplifying runs the risk of distortion, we consider that the the explanatory notes, and even more so the draft regulations, could be written in a more straightforward manner in places. If local community involvement in planning is to be a feature of the future, as Scottish Government statements have asserted, then we hope it might be possible for key documents to be written in a way that the public can understand easily.
2. **Definitions of terms used.** The HCC agrees with the submission by the Helensburgh Study Group which argues that key terms such as 'local community', 'local people', 'local newspaper', 'efficiency' and 'stakeholders' need to be defined.

The HCC also supports the definition of 'local community' as 'those people living within the territory designated for a community council'. Where there is no community council or no delineated community council territory, then appropriate parish boundaries (as suggested by the Wheatley Commission) should be used, initially, for consultation purposes. The HCC further agrees that the term 'community' cannot be defined and should not be used; but that 'local community' can be defined and should be used in regulations as well as in explanatory documents.

3. **Regarding draft Regulation 34**, the open-ended way in which a planning authority would be allowed to grant planning permission contrary to the development plan seems to us to be contradictory to the Scottish Government's commitment to make development plans more certain, not less. There need to be tighter checks on departures from development plans. One would be to inform the local community council (CC) before finalising a departure so that the CC could, if it felt it appropriate, refer the matter to Scottish Ministers.

We also suggest that planning authorities be required to introduce a system of sequential numbering (including the year) for every consent to a development which is contrary to the approved development plan in order that any trends can be monitored.

We also think it should be made clear in the regulations that if an application is contrary to the development plan, there should be a **presumption that it be refused**. That would help to ensure that departures from development plans would be abnormal and necessarily subject to very careful public consultation and debate.

4. **Regarding draft Regulation 37**, it is right that there should be a pre-determination hearing if a development is significantly contrary to the local development plan. The matter which is not addressed is : who decides if a development is significantly contrary to the plan ? Again, there needs to be local community involvement in that decision. It is proposed that the community council for the area should be consulted on whether it is significant.

5. **Non-repeat of appeals**. It is suggested that once a planning application has gone through the appeal system, including a Public Local Inquiry, the decision should be final and no further appeals (e.g. with small modifications) should be allowed for the same site for a period of 10 years.

6 To highlight the difference between 'pre-application discussions' and the new statutory requirement for 'pre-application consultations', HCC suggests that the word 'public' should be inserted between 'pre-application' and 'consultation', and the procedure referred to as 'pre-application public consultation' as the official term.

Responses to questions in the Consultation Paper on Development Management

Q1. . . . proposed categories of development . . . for pre-application consultation

The HCC agrees with most of the categories, but has concerns about the following.

- The HCC disagrees with the definition of 'major developments'. In our joint submission with the Helensburgh Study Group dated 19th March 2008, on the planning hierarchy we stated :

'What is not major for a city could be emphatically major for a small town (1,000 to 20,000 people : see PAN 52, page 2.) and even more so for a village.

We suggest three lists of "major" thresholds :

- (i) for those settlements above 20,000 population (as in the draft) ;
 - (ii) for those of 1,000 to 20,000 people (much lower thresholds); and
 - (iii) for those below 1,000 people (lower still).'
- There is a need for an additional category concerning pre-application consultations for proposed developments in protected areas such as conservation areas or local nature reserves.
 - In paragraph 2.6 the words 'significantly' and 'significant' are too vague and open to abuse. It is not sufficient for a planning authority alone to judge whether a departure from a development plan is 'significant'. That decision should involve the community council which specifically represents the local community and would be able to judge - in some cases possibly better than a planning authority - whether a particular departure would be significant.

Q2. Comments on thresholds in Schedule 1

The list in Schedule 1 of local developments requiring pre-application public consultation goes some way to meet the HCC's concerns given above. However, there appears to be a flaw regarding residential, building and waste constructions. The pre-application consultations would only happen if these are contrary to the development plan. But there may be issues of design, landscaping and density which require pre-application consultation. It is suggested that the words 'there is no proposal in the development plan for such development on the land in question' be deleted in all instances.

Q5. . . . content of proposal of application notice

Since community councils are statutory consultees and integral to the process, they should be kept involved at all stages.

Q6. . . . should others be notified at this stage as a statutory minimum ?

Yes. Some areas do not have community councils but do have other committed community groups which meet the criteria of Section 30 in PAN 82. Such other local organisations could be informed and involved like community councils.

Q8. . . . agree requirements on the content of pre-application reports ?

Generally yes, but there is one crucial flaw in the system. This is that it is left entirely to the applicant to report. This is open to possible distortion and omission. There should be a requirement for a draft of the report to be commented on by those consulted in the pre-application consultation, especially the relevant community council as statutory consultee.

Q9 & Q10 Conditions for pre-determination hearings

As discussed above with regard to question 1, there is a problem with the word 'significantly'. It is too vague and open to abuse. It is not sufficient for a planning authority alone to judge whether a departure from a development plan is 'significant'. That decision should involve the community council which specifically represents the local community and would be able to judge - in some cases possibly better than a planning authority - whether a particular departure would be significant.

Q12. . . . processing agreements . . .

The answer to question 12 is 'No, not without statutory consultee involvement'. The HCC regards the proposed processing agreements with caution. Although para. 3.6 states that they do not mean that the outcome of the planning application will be approval, it does seem that (as with discussions held in commercial confidentiality) there could be 'cosy deals' struck without transparency and public involvement. Para. 3.5 refers to working together 'in a co-operative, open manner', but it seems that 'open' means between the developer and officials, but still far from publicly open. Para. 3.7 only brings in statutory consultees 'as appropriate' and that needs to be deleted. Para. 3.15 seems to bring in the public only after the agreement has been concluded. The terms of the agreement should be made clear in the pre-application public consultation. In particular, community councils, as statutory consultees, should have the opportunity to comment.

The HCC further suggests that para. 3.5 should have inserted the word 'all' between 'and' and 'parties' in the consultation paper. Similarly 'including planning authorities, applicants and public consultees' might have appeared between 'parties' and 'being'. Although this consultation is not about the wording of the consultation paper itself, the concepts need to be reflected in the regulations.

Q15. . . . statutory consultees to also sign the agreement ?

There ought to be advance involvement of statutory consultees and local organisations which meet the criteria of para. 30 of PAN 82. Para. 3.11 seems to leave it open to 'the parties' (undefined) to exclude statutory consultees and others if they so wish. Thus, statutory consultees should sign, but merely signing the processing agreement without having influenced its content seems wrong.

Q16. Planning permission in principle

We agree with para. 4.2 that the current distinction between conditions relating to reserved matters and other conditions causes confusion. However, the HCC's concern is that before preliminary planning permission the application should go through public consultation. There are many circumstances in which this is important. Examples include conservation areas, listed buildings and green belts.

Q17 & 18 Content of planning applications

The HCC considers that quite full data at the main planning application stage is appropriate and that the crucial statement is the last sentence of paragraph 5.5. But in addition to giving applicants and planning authorities a clear steer, there needs to be awareness of the need for clarity in public assessment of applications as well.

Q19 . . . draft regulations . . . applications for PPP . . . pitched at an appropriate level of information ?

No. There needs to be a statement by the developer about the quality of design and landscaping relative to the location of the site and the character of the area. Item 12(2)(e) is insufficient. This statement should be open to public comment and the applicant held to it. There also needs to be clarity that any application for PPP would be advertised and have a public consultation.

Q21 . . . view on the two options . . . design and/or access statement ?

The HCC has three observations.

- (i) Option 1 appears to require more applications to have design and access statements than does option 2. The HCC therefore supports option 1. The whole question of good design and sensitivity of setting is essential and cannot be left to a voluntary code.
- (ii) Two distinct issues appear here. First the appropriateness of a development for the locality; secondly accessibility to public buildings and spaces for everyone regardless of age, gender or disability. These two issues need to be dealt with separately, not bundled together in a catch-all regulation.
- (iii) Regarding appropriateness of development for a locality, the matter is more than just good building design. The Scottish Landscape Forum's 2007 report has usefully highlighted (a) a broad definition of 'landscape' to include the total environment around us and (b) the importance to people of 'landscape'. What is missing from both option 1 and option 2 is the issue of good landscape, irrespective of whether the site is of historic interest / sensitivity or not. If the aim is as stated in paragraph 6.1, then this broader interpretation of landscape should be included. The HCC suggests that the term '**Design, landscape and access statement**' be used, including a definition of 'landscape' derived from the Scottish Landscape Forum's report.

Q22 . . . consider only one element - design or access ?

The issue of landscape should be added as explained in our answer to question 21 as should consideration of public spaces.

Q23, 24, 25, 26 . . . access panels . . . considering design and access

There are more issues to consider than the set question envisages.

- (a) The term 'stakeholders' is used in paragraph 6.26, but is not defined in the draft regulations. It should be made clear that this includes community councils.
- (b) Consultation with the general public is envisaged as only happening when there is a 'major' development proposed. See the HCC's answer to set question 1 above - the term 'major development' does not cover excessive developments in smaller towns or villages. The scale needs to be reduced for these and community councils consulted.
- (c) Community councils should be able to comment at an early stage.

Q29 . . . keeping people informed of PPP etc.

The draft regulations are not easy to follow because of cross-references, but HCC agrees with the consultation paper's paragraph 7.7 that those who made representations should be notified and that applications for PPP should not be seen as a way of avoiding public involvement. However, it should be noted that mere notification does not amount to involvement and there should be the opportunity to comment before a decision.

Q33 and 34. . . public availability of the list of applications. . . local newspaper monthly

- (a) Weekly provision of lists to community councils is appropriate.
- (b) The outlines of applications in the local newspaper should be weekly, not monthly. If the recognised starting-point for the public consultation period is the date of publication in the local newspaper, then monthly announcements could create an unhelpful and even damaging delay in some cases.
- (c) Advertisement of availability of lists in the local newspaper is not sufficient. The applications themselves should be listed in the local newspaper in outline and details given of where the applications can be seen in full, including the local public library (remote areas, Post Office - see also (d) below).
- (d) Lists of applications published on the planning authority's website (para. 8.6) is acceptable, but **VERY IMPORTANTLY** this should not be seen as the main source of information to community councils or to the public. These should continue to be both announced in the local newspaper in outline and made available to the public on paper (in the local planning office and local library / post office) as described above. Over-reliance on electronic communication debars some members of the public, unfairly transfers costs from the planning authority to the community organisation or individual citizen and makes reading / printing of plans difficult - all of which are undesirable and counter-democratic.

Q35 Statutory consultees

The HCC recognises with appreciation the moves towards to local community engagement which the 2005 White Paper and subsequent legislative drafts have included. However, the HCC has one concern regarding question 35. While it is right that community councils should be statutory consultees, the conditions given in draft (1)(n) Regulation 30 do not seem reasonable. They fail to allow for the modes of operating by community councils which are composed of volunteers functioning unpaid in their own time and usually only meeting as a full council monthly. By this proposed Regulation, a community council (CC) would only be consulted (i) if the CC informs the authority within 7 days of the authority sending the list, (ii) if it is a type of development that the CC has informed the authority in writing it should be consulted on and (iii) if the planning authority [i.e. not the CC] thinks the development is likely to affect the amenity of the area. These restrictions make CC consultation very difficult.

It is therefore proposed that each CC should be able to set its own terms for consultation to suit its mode of functioning, but with recognition that it should not unreasonably delay processing of a planning application.

Q38 How advise those who made representations ?

Answer : by copies of the decision sent by post.

Q41 Alternative name for 'bad neighbour development' ?

A concern expressed in the consultation document is that the term 'bad neighbour development' is unduly negative. We disagree. If anything is likely to be disturbing, it should have a clear, blunt name, not an evasively innocent-sounding name. The HCC favours retention of the term 'bad neighbour development'. It is clear, accurate and widely understood.

Q42 Agree with additions / deletions ?

The HCC agrees with the additions but disagrees with the proposed deletions. However, if the proposal to remove music halls and dance halls is because they now rarely exist, the main point about disturbance remains. We therefore suggest introduction of the term 'Any public hall or building likely to cause noise or late night disturbance'.



Nigel Millar (Chairman)