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**DEVELOPMENT MANAGEMENT CONSULTATION PAPER
EXTENDED DEADLINE 16 APRIL 2008**

Homes for Scotland is the representative body for the private home building industry in Scotland. Homes for Scotland represents the interests of over one hundred and thirty member organisations who provide 95 of every 100 homes built for sale in Scotland and we have a rapidly expanding membership of professional and other service businesses engaged in our industry.

Homes for Scotland has been involved in an ongoing 'conversation' with the Scottish Government during the modernisation of the planning system. We are grateful to the Scottish Government for taking time to present the proposals to our member companies and hope that the early feedback given has been helpful in the drafting of the new regulations. Homes for Scotland will be responding formally to each of the draft regulations forming the planning modernisation package.

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 pre-application consultation?

We are generally content with the proposed categories of development to which the requirements for pre-application consultation apply.

For the home building industry the categories proposed are: all major developments; all developments requiring an environmental impact assessment, plus the developments listed in Schedule 1 of the DMR which are 5 or more houses (including flats) with no proposal in the development plan and development on land identified as open space, a playing field or greenbelt land in the development plan.

We do however feel that the threshold of 5 units for residential sites to be much too low. Setting the threshold too low could have implications for both the developer, making small projects unviable, and the planning authority imposing an administrative burden on already tight resources. Consideration should be given to increasing the threshold to 12 or 15 units.

We would also ask, for clarity's sake, for the Scottish Government to clearly define what is meant by 'open space' as this may differ from one local authority plan to another. The regulations should specify if it is private or public open space (i.e. open space associated with educational establishments but not playing fields).

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

We are content with the level of information to be requested in the pre-application screening notice.

It is crucial that development plans are kept up to date as intended by the Planning Act to allow the applicant to offer an accurate view on whether or not the development is one which the development plan proposes should be carried out at the site.

The need to seek clarification from the planning authority at this stage, has the potential to cause early unnecessary delays.

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

We accept the 21 days as a reasonable period for the planning authority to respond to a pre-application screening notice. However we have one major concern with the proposed regulations.

The regulations state that the “planning authority has powers under new section 35A(6) to request further information where necessary to provide a view”. The ability of the planning authority to ‘stop the clock’ on the allocated 21 days has the potential to cause serious delays. Where a planning authority is under-resourced, the request for further information could be used for no other purpose than to buy extra time for the decision making process. We understand that the Scottish Government intend to produce further guidance in this regard. It is crucial that the regulations for pre-application screening do not allow or encourage additional delays.

If the ability to ‘stop the clock’ is retained in the final proposals there must be a channel for applicants to appeal to Scottish Ministers where they consider subsequent additional requests by the planning authority to be unreasonable. This procedure need not be cumbersome and should be set up to deliver a decision within a short time-frame. This could be along similar lines to those currently in existence under EIA Screening Request Regulations. The planning authorities’ should have their pre-application screening procedures audited.

If the deadline is passed without comment this should result in deemed approval and the applicant should be able to proceed without pre-application consultation.

Whatever provision is put in place it must recognise that current procedures are thoroughly discredited in the eyes of the home building industry.

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

We are generally content with the information to be requested in the proposal of application notice. Further to the information requested in the pre-application screening notice the regulations propose that the applicant include an account of what consultation the applicant proposes to undertake, when such consultation is to take place, with whom and what form it will take. We accept the need to provide the planning authority with this detail but are concerned about the intended process.

The intention of the Planning Act is to transfer the responsibility for neighbour notification to the planning authority. The provisions outlined will effectively transfer the work required to identify all neighbours back to the applicant.

An applicant must submit a proposal of application notice with consultation details and then has 12 weeks to carry out the consultation before the application can be submitted. However the planning authority has 21 days of the 12 week period to then come back to the prospective applicant and ask them to carry out further consultation. This has the potential to cause delays. By this time it is likely that the applicant would have gone some way in the planning and arranging of consultation events which may then have to be amended. To prevent the applicant wasting time and money on organising, what the local authorities could decide are inappropriate consultation exercises, it is inevitable that the applicant will wait until the 21 day period has expired before planning consultation exercises.

In order to prevent the lengthening of the 15 week period before the application can be submitted the list of those to be notified and consulted by the applicant should be presented by the planning authority along with the authority's view of the pre-application screening notice.

The draft regulations suggest that the Scottish Government would "expect" planning authorities to develop lists of non-statutory local bodies and interests with whom applicants should consult in particular cases and that these should be made available to prospective applicants. This needs to be strengthened. It should be more than an expectation on planning authorities. To ensure consistency and provide clarity to prospective applicants the regulations should insist that planning authorities develop the suggested lists and make them available with the pre-application screening view. The prospective applicant can then use the list to ensure they target their consultation exercises correctly and state these intentions in their proposal of application notice, thereby saving time and unnecessary confusion.

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?

We are content with the statutory minimum contained in the draft regulations.

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

Although we welcome the introduction of a statutory minimum to promote consistency we are concerned about the inclusion of a public meeting.

It is questionable if public meetings are a useful forum for discussion. Feedback from our member companies suggest that public meetings may not always be the most appropriate and efficient method of engaging with the local community. When the threshold of unallocated residential developments exceeding 5 units is being proposed, we expect that holding a public meeting would be an unproductive use of time and money. In addition, research has demonstrated that the "focus group" approaches to public consultation often charge the supporter of development to engage in the debate.

We would therefore suggest that the minimum statutory requirements for pre-application consultation be one public engagement exercise with associated publicity.

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

We accept that the pre-application report should state what has been done during the pre-application phase to comply with requirements of the legislation and any additional requirements set out by the planning authority. We understand why it is important to include an assessment of the quality, breadth and depth of the consultation activities and look forward to receiving further guidance on this. We also understand the need to include evidence of the consultation.

As stated above, we do not agree that the planning authority should have 21 days from receipt of the proposal of application notice to ask the applicant to extend their planned consultation to accommodate additional groups etc. Instead, and as mentioned at Q5, we propose that the regulations are amended to oblige the planning authority to create a list of consultees to contact during the consultation exercises. This should be presented to the applicant along with the view on the pre-application screening notice. The pre-application report will show how the applicant complied with the planning authorities requests.

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 are unsure why the extra phase of hearings is required. It is proposed that developments which are significantly contrary to the development plan should be subject to a pre-determination hearing. We are concerned about the ability of a planning authority to determine whether a development is significantly contrary to the development plan or not. This is rarely a matter of fact but a matter of judgement which can be open to challenge. Our greatest concern is that such a hearing could act as an opportunity for objectors to make their opinions known to the committee members without the applicant being given the opportunity to defend their position. This would be considered unfair and raises the prospect of a legal challenge to the process.

The draft regulations state that the persons to be given an opportunity of appearing before and being heard by the committee of the authority are those who have submitted representations on the application. The regulations also state that under new section 38A(3), the planning authority has the discretion to allow other parties to attend the pre-determination hearing. This could expose the planning authority to accusations of bias if a third party believed the interests being promoted at the hearing were deliberately skewed in favour of the applicant or the objector.

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

While this matter must undoubtedly be determined by local authorities, we do not support the requirement to convene full councils to ratify decisions made by the Planning Authority. This has serious potential to lead to delay and even contrary decision making.

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

We are concerned generally with the proposed intentions for processing agreements. Specifically, that they cannot be required, only recommended.

A planning authority might be unwilling to enter into an agreement if it could be used to demonstrate shortcomings and undermined performance in processing applications to agreed timescales. If an agreement is in place it should constitute a contract with payback arrangements in place in the event of failure to comply with the contract.

There will also be a need to confirm that the agreement commits the planning authority to agreed performance standards.

For processing agreements to be most effective they should be in place as early as possible.

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?

We find the proposal for an “end-stop” provision reasonable. If discussions have been ongoing during the 12 weeks of the pre-application consultation period then a further 28 days is a lengthy additional period to add to the process. Our members would argue that with this in mind 14 days is a more reasonable timeframe.

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

The template in Annex A is potentially useful.

However there is no provision for possible legal agreements (currently S69 or S75 Agreements) or other matters such as Road Construction Consents and other infrastructure agreements in this part. There must be some recognition in a processing agreement of the timescale taken for these agreements to be resolved and where necessary registered.

Another concern relates to the ability of all parties to identify a full list of supporting information at the outset, and then resist requests for additional information from various parties as the application is processed. While there is provision in the regulations for a review of the agreement, and there will be circumstances where this is inevitable, it is imperative to end the present circumstances where repeated calls are made for additional information and/or changes to layouts without recognising that each such request incurs costs for the developer and potentially a further round of consultations.

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?

It would clearly be desirable for the statutory consultees to commit to the terms of a processing agreement. However, the industry is highly-sceptical that this could be achieved in practice. Nonetheless, the statutory consultees should be under a duty to

take part in any discussions about the use of a processing agreement and should be encouraged to be signatories. This would mirror the duty placed on them in the Act to take account of the development plan.

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

Having given consideration in general terms to the merits of Planning Permission in Principle we do not oppose the approach but question whether it is significantly different to the current system of Outline Consent.

The current system of Outline Consent is being used less and less. With more information being sought by planning authorities at outline stage the value of obtaining Outline Consent is diminishing, at least for allocated sites in development plans. Outline Consent is still valuable for establishing the principles of development on long-term or strategic sites. In legal contracts and valuation matters it has an established status.

Planning permission in principle appears to require a higher level of supporting information at the early stage; the difference would be the removal of Reserved Matters and the requirement instead to deal with conditions through a fresh application. This may result in a duplication of the lengthy pre-application consultation stage and the duplication of other processes if each fresh application is required to follow all the steps set out in the Regulations. It may also remove the ability of planning authorities to deal with some conditions and reserved matters by delegation to officers.

However, there should be less need to seek permission in principle if development plans are improved, with the principles of development established in site allocations and supported by appropriate information in the plan or Supplementary Planning Guidance, covering site requirement schedules, briefs, masterplans etc. If the development plan is of sufficient quality then there should be less need to establish the principle of development through an application for planning permission in principle.

Where planning permission in principle was sought, for instance on strategic sites, developers are likely to seek assurances that each fresh application to purify a condition would be subject to a reasonable and proportionate process.

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?

The regulations on the requirements for validation should remain at a fairly general level, since it would be impossible to draw up a list of requirements suitable for all types of development.

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?

That places an onus on the planning authority and other bodies to identify, at an early stage, what other information is required. As discussed in relation to the processing agreement questions, it is important to avoid uncertainty, to avoid repetitious requests

for additional information which “stop the clock”, and for all parties to engage early and fully with developers to ensure speedy processing of applications. A processing agreement is clearly one way to manage this, subject to the comments above on its status and the extent to which it binds parties to honour its terms.

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?

Regulation 15 appears to go against some of the principles of early certainty sought by proposals such as pre-application consultation and processing agreements. This Regulation builds in a period of 1 month between receipt of an application for planning permission in principle and a request for further information. The level of supporting information should have been resolved at pre-application and public consultation stage, and through a processing agreement if appropriate. The case for an additional period of 1 month, following a minimum 12 week consultation period, has not been made.

Within the context of the Scottish Government’s proposals to increase housing production to at least 35,000 units per annum, this provision will deter planning applications and significantly increase costs where applications for planning permission in principle are being considered. Planning authorities and local communities will not be prejudiced by the granting of planning permission in principle without the level of detail now sought in the draft regulations (including design statements, traffic and access assessments, open space standards etc). The opportunity will still exist for all of this information to be submitted with an application for the approval of matters specified in conditions. If any of this detailed information is subsequently found to be unacceptable, then the full power remains with the planning authority to refuse detailed planning permission despite the existence of planning permission in principle.

The Scottish Government should reconsider these proposals.

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 unclear whether this is essentially a ‘box ticking’ exercise or something that requires consideration of the qualitative content of the material requested and submitted. The objective should be to improve the quality of the decision making process and not the achievement of timescale targets set by Ministers against which Local Authority planning authority’s performance is measured.

Setting this aside, the proposals on validation seem generally reasonable.

The Regulations set out the minimum requirements for validation, which are appropriate. Paragraph 5.15 is supported i.e. if a planning authority requests further information after submission of a valid application then the clock does not stop. However this appears to contradict Regulation 15 where the clock does stop in respect of further information requested to support an application for planning permission in principle. This contradiction should be resolved. In neither case should the clock stop. The onus should be placed on the planning authority and statutory bodies to identify all information requirements at the outset.

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?

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

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

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?

In general, we are concerned that the information to accompany an application should not multiply unnecessarily. To that extent, Option 2 is favoured. However, there are fundamental concerns about the lack of skills within planning authorities to deal with design issues and assess design statements. Additionally resources do not appear to be available to allow planning authorities to augment these skills.

In terms of validation, the Regulations appear reasonable. Validation is seen as determining whether a statement has been submitted and whether it addresses the defined issues. It is not and should not be a judgement on its content.

In terms of access panels and access officers, the onus should be placed on planning authorities to ensure that all appropriate interests, including access panels, are aware of applications at the point developers submit a notice of intent to apply. Access panels and officers would then have the same 12 week period as statutory bodies and the public to identify issues and information requirements.

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

The proposal on service of neighbour notification seems excessive. In many cases neighbours will be contacted in relation to the proposal at the pre-application stage as well as the neighbour notification stage. In the case of planning permission in principle, neighbours will be notified about the application at the pre application consultation stage, on submission of planning permission in principle and at the approval of matters specific to conditions. This level of consultation is excessive and inappropriate

The proposal to transfer neighbour notification responsibility to the planning authority is supported by our members but this must not lead to delays to the determination process.

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?

Minimising costs must not be the sole and overriding criteria for assessing performance.

It is essential that guidance is provided to planning authorities reminding them that a failure to notify a neighbour may leave a subsequent grant of permission open to challenge in judicial review proceedings. Furthermore, errors in the notification process, in particular those highlighted to the planning authority prior to its decision, but not remedied, may leave a grant of planning permission open to challenge in the courts by a person with a notifiable interest who received no notification of the application. In such circumstances, the applicant may seek damages from the local planning authority.

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

The proposed approach of keeping people informed of PPP and approval of matters specified in conditions will cause unnecessary delays.

It is unclear what will happen in cases where someone that was previously notified moves properties over the course of the determining period. This type of occurrence must not be allowed to delay the determination of a planning application.

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

The definition of neighbouring land seems excessive and may create large numbers of neighbours for notification. This will be a particular issue in densely built up areas.

Neighbouring land should be defined as land within 10 meters of the development site, conterminous with the boundary of the proposed development site.

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

The discretionary use of a site notice is likely to result in Local Authorities using it in every circumstance in order to avoid the risk of challenge. This is unnecessary. Clear guidance on the application of site notices and local adverts would be more appropriate.

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

The proposed requirements for notifying owners and agricultural tenants and the placing of local advertisement is unnecessary and could be dealt with at the neighbour notification stage.

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?

The Scottish Government should reconsider the proposals for making the list publicly available. The publication of a monthly list in a local newspaper is not an effective means of communication. This is particularly true in large cities where it is difficult to identify a newspaper that is read by the majority of the population. The costs of advertising the list is recovered as an additional charge within the planning application fee. The Scottish Government must consider more cost effective options. Placing the lists on Council planning websites, with an email update function, could allow lists to be easily accessible to any interested parties. Many authorities have user friendly and up to date web based planning portals which are already getting well used.

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

Whilst the list of consultees is sufficient, the provision of responses from the consultees should be more rigorously enforced. If a consultee has not responded within the prescribed period it should be deemed that they have no objection and the Local Authority can determine the application. The requirement for consultation responses should not be treated as a device by the consulted authority to delay matters whilst they are assessing their position.

The nature of the consultation required before the determination of the application is a matter of concern. Where objections indicate a requirement to change the design layout, this must not result in a requirement to begin the 12 week consultation period again. This point is also relevant where the planning authority makes changes to the design and layout or where market forces require a change to the mix of house types. If the determination process had to start from the beginning in such instances, the cost burdens might become excessive.

Major consultees (e.g. SEPA, Scottish Water) should have to comply with the requirements or face sanctions if the progress of determining an application is unreasonably delayed.

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

It is a matter of grave concern that the 4 month period may be extended much further where the Local Authority uses the 'stop the clock' function. Planning authorities must take all reasonable measures to determine applications within the 4 month period and 'stop the clock' must only be used in exceptional circumstances. There must be a channel for applicants to appeal to Scottish Ministers where they consider the planning authority is using the 'stop the clock' function unreasonably. This could be along similar lines to those currently in existence under EIA Screening Request Regulations.

The 4 month period would not be appropriate for sites that fall under the category of development plan departures, unless they are national or major developments.

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

The level of information provided in the decision notice seems unnecessary and may have repercussions if the planning authority fails to include sufficient justification for a decision. In practice such requirements are likely to result in large volumes of information being attached to the report.

It is likely that, a planning officer will be reluctant to interpret a committee report for fear of misrepresentation.

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

While this is a question for planning authorities to address, it is possible to ensure that those who made representations are advised of the decision by the planning authority by means of a written advert which could be posted on the council's website.

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?

The inclusion of much of the application documentation will lead to excessive paper generation that may not be appropriate, particularly for minor applications.

The report of handling would appear to be an unnecessary duplication of the officer's report to committee. There could simply be a requirement to place the committee report on the register in electronic form.

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

An alternative name rather than 'bad neighbour development' could be 'development of potential concern'.

Q42 – Q49

No comment.