

## **Aberdeenshire Council**

### **OFFICERS RESPONSE TO SCOTTISH GOVERNMENT CONSULTATION DEVELOPMENT MANAGEMENT**

#### ***Pre-application consultations with local communities***

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

It is agreed that pre-application consultation requirements should apply to all national developments, all major developments and all development requiring an Environmental Impact Assessment.

With regard to the categories of development listed in Schedule 1, if this is intended to identify instances where local developments are likely to be significant departures from the development plan and where local communities should be consulted, then a category for business, industry, storage and distribution development is required.

It is unclear why the retail sale of 'hot food' has been excluded from the requirement for pre-application consultation.

It is unclear whether the requirement for pre-application consultation should only apply to proposals for the construction of a building or other structure required for the purpose of outdoor sports or recreation, or whether it should apply to proposals for the use of the land for the outdoor sport or recreation activity. If it is intended to include the latter (which would be logical), then the schedule will require to be amended to reflect this.

Proposals for outdoor sports or recreation involving motorised vehicles or firearms are more likely to be of particular interest to communities and therefore should be included rather than excluded.

#### **Q2 Do you have any comments on the thresholds in Schedule 1 of the Development Management Regulations (DMR) on pre-application consultation?**

It is assumed that the threshold for building structures of 2,500 square metres is gross floorspace but this could be made more clear.

The proposed threshold of 5 houses (including flats) is considered too low. While in rural areas and smaller settlements, relatively small developments of 5 houses could have a significant local impact. This is less likely to be the case in towns and cities. The need for pre-application consultation for developments of this scale in all locations may place an unnecessary burden on the development industry. It is suggested that there should be a separate 5-unit threshold for free standing sites and sites adjacent to settlements of less than 1,000 existing residential units and that in other circumstances the threshold should be 50 units.

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

The notice only requires a general description of the development, basic site identification, contact details, the applicants view on conformity with the development plan, and details of any previous screening opinions sought. There is no requirement for more detailed information (e.g. number of units, floorspace) that would allow for assessment against the thresholds for pre-application consultation. The proposed information required is therefore considered insufficient. The screening notice should contain information relative to these thresholds at the outset so that the planning authority does not have to request further additional information.

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

The proposed 21-day period is reasonable provided the required information is submitted. It is not clear from the draft regulations what the consequences would be if the planning authority does not respond within the time period. Would no response mean that no pre-application consultation is required?

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

A general description of the development and a plan showing only the outline of the site is unlikely to be sufficient for the authority to consider the nature, extent and location of the proposed development and its likely effects on the location and the need for additional consultation. The notice should include details of the proposed uses, the approximate floorspace, number of units, and height of any buildings and the plan should include the approximate location of the proposed uses/buildings on the site. This additional information would help people decide whether the development is likely to have an impact on them and whether they should attend the public meeting.

**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?**

As the proposed regulations require the applicant to publish a notice in a local newspaper, the inclusion of the 'notice of application' in the weekly list of applications and the provision for the planning authority to request additional consultation in appropriate circumstances, the requirement to notify community councils and neighbours is considered sufficient.

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

The minimum statutory requirement to consult the community council, convene one public meeting, and publish in a local newspaper details of the proposal, contact details and the meeting details is considered acceptable.

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

The requirement that the pre-application report should include an account of the representations made, the applicants response to those representations and any changes to the proposed development in response to these is reasonable. The report should specify the 'names and addresses' of persons who have been consulted. The account of what steps were taken to comply with the consultation requirements should include the date and manner in which each person was consulted and the evidence of consultation. This would help to respond to claims that consultation was not carried out

### ***Pre-determination hearings***

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

We agree that applications for development requiring an Environmental Impact Assessment or which are significantly contrary to the development plan should be subject to pre-determination hearings. We consider that developments in which the local authority has an interest should also be subject to mandatory pre-determination hearings. However, there should only be a hearing if third parties have submitted representations and those parties confirm they wish to appear before a hearing. This would avoid unnecessary hearings.

The estimated costs referred to in the Regulatory Impact Assessment are significant underestimations. The number of hearings in Aberdeenshire is likely to exceed 2 per year.

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

If there is to be a hearing to accommodate third party representations, the opportunity to be heard should be extended to the applicant/agent, the community council and all consultees who have made comments on the application.

### ***Decisions by the Full Council***

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

The existing arrangements for the meetings of Aberdeenshire Council is likely to accommodate the need for decisions on some planning applications.

### ***Processing Agreements***

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

While it is accepted that processing agreements are likely to be of most benefit where there has been early discussion between the applicant and the planning authority, this does not always happen. It is not always possible for all issues to be identified before the application is submitted and the need for an agreement may not become apparent until later in the process or, the processing timescales may not be known at that stage. As processing

agreements will be on a voluntary basis there should be no requirement for agreements to be in place prior to the submission of an application.

**Q13 Do you agree that where there is to be a processing agreement that it should be entered into not later than 28 days after validation?**

Although it is accepted that agreements should be in place as early possible in the process, it is not always possible to identify all the issues within 28 days. Consultees may not be in a position to respond within this timescale and that response may well raise issues that require further work. Therefore the legislation should not preclude agreements being entered after 28 days if the parties are agreeable to this. The legislation should not set time limits for processing agreements to be in place.

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

We agree with the suggested components and the provision for review stages.

**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?**

Issues raised by statutory consultees can be critical to the determination of an application. In some cases delays in the determination of applications arise because of delays in receipt of responses from statutory consultees. If there are issues that will require input from a statutory consultee it is essential that they are party to the agreement.

***Planning Permission in Principle***

**Q16 Do you support the proposed approach to Planning Permission in Principle (PPP) and approval of matters specified in conditions?**

Yes, this change should avoid the confusion that sometimes exists between reserved matters and other details required by condition. However, the requirement for applications for approval of matters specified in conditions should be extended to applications for non-operational development (e.g applications for change of use), which can be subject to conditions requiring further details of access arrangements, landscaping etc. This would ensure a consistent approach.

***Content of Applications and Validation***

**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 suggested approach does not go far enough to ensure that applications include sufficient information to properly describe the proposals and ensure proper consideration of the proposals. The information listed at para. 5.3 (a) is not an unreasonable requirement, and is information that interested parties might expect to comment on and that planning authorities might reasonably need to determine an application. At present, there are sometimes delays in determining applications while this information is requested and submitted. A requirement for this information at the start of the process would improve the overall quality of applications submitted and reduce unnecessary delays.

It is agreed that trying to capture the range of developments and circumstances in which particular assessments would be applicable could be problematic and this could generate confusion about what may be required for those cases not covered by legislation. Therefore, the need for additional assessments should not be set out in regulations but should be the subject of pre-application discussions between the applicant and the planning authority.

It is agreed that 'stopping the clock' is not a realistic option unless there is an additional provision for the applicant to challenge the planning authority's request for further information. This is likely to make the processes overly complex.

**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?**

The range of developments and circumstances which would require particular types of assessment, and the content of such assessments should be described in Scottish Planning Policy and Planning Advice Notes where the reasoning and practice applicable to different cases can be set out more freely.

Pre-application consultation with communities, pre-application discussions with consultees and planning authorities and processing agreements should also help ensure that applications are supported by adequate information at the start of the 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?**

The proposed requirements for the content of applications for PPP are considered appropriate. This is the minimum necessary for communities to make meaningful comment and for planning authorities to make considered decisions on the principle of development.

It is not clear how far the information contained in the statements supporting the application will be binding on the final form of development on the site. Will a new separate application for planning permission be required if the final layout of the buildings and storey heights submitted with any application for approval of matters specified in conditions do not accord with the statements supporting the application for PPP? Further guidance on this matter is necessary to avoid potential disputes.

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

The required content of applications is considered to be sufficiently clear and is set out in a format that could be readily converted into a checklist for use by administrative or technical staff. Guidance containing examples of the level of information expected in different circumstances would be helpful for the validation process.

***Design and Access Statements***

**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?**

If the Government wants to achieve an overall improvement in design and access standards then option 2 does not go far enough to achieve this. The proposals in option 1 should ensure a general improvement in the quality of development.

Applications for a material change of use that would involve access by the public should be supported by an access statement.

The impact of any proposal on a historic environment (e.g. listed building, historic garden) should be a major consideration in designing any proposal and the impact of the development should be assessed before the application is submitted. A requirement for a design statement for developments in a historic environment would go a significant way to ensuring that any designer takes into account the impact of the proposals on the historic environment.

The implications of the approach set out in option 2 are that in planning applications where the design and access issues may be important factors, the proposal will not be accompanied by a statement setting out how these issues have been considered. This is unfortunate as design and access issues are relevant to all scales of development, not just national or major.

The form of the statement and the level of detail it will contain, is likely to vary according to the size, nature and complexity of the proposed development. The provision of guidance to ensure that the statements are proportionate to the issues associated with the development should avoid excessive burdens on applicants.

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

An application for change of use of an existing building to a use involving access by the public would only require an access statement.

Applications for changes to the fabric of an existing building but not the level and nature of the existing use would justify a design statement but not an access statement.

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

At present Aberdeenshire's Access panels consider applications on a case by case basis and forward their comments to the applicant and the planning officer for consideration. Given the requirement for statements to include reference to the extent and outcome of discussions with stakeholders, it is likely that the Access panels would become important consultees in the process. Unfortunately the panels are made up of volunteers and do not meet on a frequent basis. To ensure they are used most effectively the panels should be encouraged to draw up policy documents and examples of good practice for use by developers to help ensure that access issues are addressed at an early stage in the design process. This will ensure consistency and avoid repetitive comments being made.

**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?**

The regulations are as clear as they can be about what is required and it is noted that the Government intends to issue further advice on assessing design or access statements. However, the requirement to check that statements contain the required information would need more than purely administrative consideration at the validation stage. Given the number and type of applications that are likely to require design and access statements it would not be practical for planning officers to be involved at the validation stage. If applications are to be validated timeously the process will have to be carried out by support staff (Development Services Assistants). These staff will require training to undertake these tasks.

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

The role currently carried out by Aberdeenshire Access Officers relates to outdoor access and does not cover access in the context of Disability Discrimination legislation. There are no Building Standards Surveyors with dedicated responsibility for disability issues. The Council's Transportation and Infrastructure Service has produced a Disability Equality Scheme and has introduced a requirement that Access Audits and Access Statements be included in the Roads Construction Consent process. The developer is

required to carry out an access audit using a qualified access auditor independent of the design team and through that process produce an access statement. Aberdeenshire Council staff then audit this process and only have to consider unresolved issues raised by the developer. A similar process could take place in relation to access statements submitted with planning applications. Existing staff would require training in accessible design or a member of staff with special responsibility for disability issues would require to be appointed.

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

A Planning Advice Note setting out the objectives and scope of access and design statements, best practice in their production and robust assessment criteria is required.

***Neighbour Notification***

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

The proposals for service of notice on to neighbours, although an additional burden on local authorities, are considered appropriate. The transfer of responsibility to the local authority should avoid some existing delays in validation, when notice has been incorrectly served, and reduce the potential for disputes as to whether a notice has been appropriately served. Service of the notice after the application is valid will ensure that complete papers are available for inspection avoiding wasted trips to the planning office. The extension of the period for making representations is welcomed.

**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 single notice sent to 'the Owner, Lessee or Occupier' at the address of the neighbouring land will minimise costs and potential delay in service of notices, however, there are concerns that the notice will not be passed to other interested parties, in particular, to the owner who may not be the occupier, but is likely to have an interest in proposals for development on adjacent land.

**Q29 Is the proposed approach to keeping people informed of the Planning Permission in Principle (PPP) and approval of matters specified in conditions appropriate?**

The proposed approach will help ensure that those who had an interest in the original proposal in principle will not be excluded from consideration of the more detailed aspects of the proposal, which can be a significant part of the application process. The proposed requirement should be extended to include those who may not have made representations on the original application for PPP (perhaps because they were not resident in the area at

that time) but who have already made representations on other applications for approval of matters specified in conditions in respect of the same application for PPP. However, where a substantial body of objection was received at the PPP stage, neighbour notification of all former representees would be an unreasonable administrative burden. In such cases the planning authority should have the discretion to use alternative mechanisms, e.g. newspaper advert, site notice, to keep people informed of applications for approval of matters specified in conditions.

### **Q30 Do you support the proposed definition of neighbouring land?**

The simplified definition should make it easier to use the Geographical Information Systems (GIS) to identify notifiable neighbours, however, further guidance (including diagrams) is required as to the meaning of 'boundary of land' – is this the boundary of the development or the application site? Further guidance is also required to clarify what notification is required where the neighbouring land consists of a multi-storey building divided into separate units. Also, it needs to be clear that although there may be no premises on the neighbouring land to which notification can be sent, if the notifiable land is within the curtilage of premises located nearby, then the neighbour notification should be addressed to those premises. This would avoid the need for unnecessary advertisements.

The task of identifying notifiable neighbours will be a desk based administrative one. Staff will rely on information contained in the GIS and Corporate Address Gazetteer (CAG) data-bases to identify neighbours. As this data is not always up-to-date or complete, the planning case officer, who will visit the site, will require to satisfy themselves that all notifiable neighbours have been notified.

### ***Advertising and Site Notices***

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

The proposals reflect existing requirements and are appropriate. The standardisation of the period for representations to 21 days should help minimise confusion. The requirement for only one advertisement will reduce duplication and associated costs. The ability to recover advert costs from the applicant in all cases is welcomed.

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

The proposals are an improvement on current practice. Service of notice or advertisement after the application is valid should ensure that complete papers are available for inspection. This will avoid wasted trips by owners and tenants to the planning office to inspect plans that are not yet available. The ability to recover costs from the applicant is welcomed.

## ***List of Applications***

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

Publication of the date by which comments may be received is a useful addition to the list for customers who may wish to make representations on an application. However, this date may change during the determination of an application if, for example, it becomes apparent that the application is contrary to the development plan and advertisement is required.

In accordance with advice contained in PAN 70, Aberdeenshire already publishes a weekly list on the internet and has also developed an on-line register of applications. Further development of these systems will be required to meet the new requirements.

We are pleased that publication on-line is a statutory requirement but hope that the requirement to publish applicant or agent details on-line has been discussed with the Information Commissioner and will not be subject to challenge under the requirements of the Data Protection Act.

Whenever possible, Aberdeenshire endeavours to minimise the number of documents produced and circulated in paper format, particularly where such information is available electronically. Access to the internet to view this information is available in all libraries. Further clarification, perhaps in guidance, is required on the extent to which publication and sending of documents in electronic format, or sending links to information published on our web site, would meet the requirements of the Act and regulations.

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

Although not convinced that this requirement will actually improve public awareness of planning applications, it is not considered an onerous requirement and could be achieved by minor amendments to the existing advertisement format in relation to planning applications.

## ***Statutory Consultees***

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

It is assumed that regulation 30(1)(p) refers to notified hazardous establishments but this is not clear in the regulation.

The consultation paper suggests that consultation before determination of the application will be required to ensure the views of statutory consultees will be available to any appeal body. This is a reasonable objective. However, the regulations only require consultation to take place and for the consultation period to have expired before the application can be determined. There is no requirement that responses must have been received, only a presumption that

they will be received within the consultation period, which is often not the case.

Given the pressure to deal with applications within the statutory time period and the constraints of committee cycles and agenda lead times, it is the practice in Aberdeenshire to report some applications to committee with a recommendation that the grant of planning permission be delegated to officers on receipt of outstanding consultations. Also, where a proposal clearly departs from policy and there is no justification to depart from policy the application may, in some circumstances, be reported to committee prior to the receipt of all consultation responses. The requirement that all consultation responses are available will require a review of our current practice and may cause delays in the determination of applications.

### ***Time Periods For Decisions***

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

Yes. It has long been recognised that the existing 2-month period is too short to allow for the determination of a major application. Committee cycles, agenda lead in times, publicity procedures and consultation processes make it virtually impossible for a major application to be decided by committee within the 2-month period. The increase in the statutory time period to 4 months recognises the reality of the process where applications must be considered by a committee, and is essential for those cases where pre-determination hearings and referral to full council is required.

The change should also reduce the time spent responding to applicants chasing decisions and seeking extensions to the determination period and reduce the number of appeals against non-determination.

The provisions to 'stop the clock' in certain circumstances are welcomed. However, further regulation or guidance is required to clarify exactly when the clock should be stopped, for example, might it be on the date of a letter to the applicant requesting payment of advertisement costs or on the date of a letter requesting further information in connection with an application for PPP?

### ***Decision Notices***

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

As it is intended that the decision notice should be a more helpful document to both the applicant and those who have made representations, then the proposed additional information is appropriate and should improve the openness and transparency of the system.

A further improvement could be made by requiring all suspensive conditions (those that require to be complied with before the commencement of

development), be listed under a separate heading. This would assist the developer, the planning authority and any third parties in following up compliance with these conditions when notice of initiation of development is given.

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

The requirement to give a copy of the decision notice to all those who made representations on an application will in some cases place an unreasonable burden on the planning authority. A significant number of applications generate large numbers of representations and where planning permission is subject to conditions, decision notices can be large documents. At present Aberdeenshire Council acknowledges all representations and in most cases notifies all representees of the decision. For a number of years, in accordance with guidance, we did send a copy of decision notices granting planning permission to all representees. However, we found this an unreasonable administrative burden, particularly for applications where there were large numbers of representations. We now direct all representees to view the decision on our web site or in our offices. In those cases where we receive hundreds of representations we publish a notice in a local newspaper giving details of the decision and where the decision notice can be inspected.

***Registers and reports of handling planning applications***

**Q39 Is the information to be contained in the report of handling appropriate to provide a robust summary of how the application has been dealt with and the reasons behind the planning authorities decision?**

Yes. Generally the proposed requirements should provide a robust summary of the procedures that were followed and the reasons behind an authority's decision. However, in the interests of transparency and for completeness, the report of handling should perhaps also include a list of those who were notified as notifiable neighbours, owners and tenants and the date this notification took place. This information is currently publicly available on the certificates accompanying planning applications and is often the subject of scrutiny by interested parties. Also, the requirement to provide a summary of planning obligations should not be limited to those under section 75 but should extend to all types of agreements.

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

Aberdeenshire's existing committee report could be easily adapted to include the additional information contained in the draft regulations. However, where the Committee decision does not accord with the officers analysis or recommendations, it will be important that the members express clearly the regard they have had to the development plan and other material

considerations so that this can be recorded in the minute and used to produce the report of handling. Officers currently produce an abbreviated report where an application has been dealt with under delegated powers. These reports will require to be developed to include all the information required for the report of handling.

### ***Bad Neighbour Development***

#### **Q41 What might be an appropriate alternative name for 'bad neighbour development'?**

It is agreed that the term 'bad neighbour' is unduly negative and can create a misconception about the nature of the proposal. An alternative name could be 'Development likely to be of public concern'.

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

It is agreed that the developments included in the list of proposed additions could have an impact beyond the neighbouring land and therefore should be subject to public advertisement. However, 'public house' is already covered under the category 'licensed premises' so this specific description is not required. 'Music halls' and 'dance halls' can be considered to fall within the definition of 'concert hall' and 'nightclub' and can therefore be deleted. The updated wording for the 'slaughterhouse and knacker's yard' category is acceptable. The term 'gymnasium' is perhaps a little outdated and should be replaced by 'sports hall/facility'. Category (7) should be amended to include a building/structure to a height exceeding 20 metres.

Any changes in terminology should be replicated in the other sections of the regulations, for example, in Schedule 1.

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

The insertion of mezzanine floors to provide additional office accommodation within older industrial buildings can sometimes give rise to overspill on-street parking issues if there is insufficient space to accommodate the additional car parking requirements on site. Some control on the increase in internal gross floorspace that can be created within industrial and business premises is therefore considered appropriate.

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

Yes, the different approaches are supported. It is appropriate that where previous works have already increased the internal floorspace, the extent to which the internal floorspace can be further increased without planning permission should be restricted.

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

Most of town centre shops within Aberdeenshire are in the 100-200 square metre size range. An extension of out of centre retail floorspace of this size has the potential to impact adversely on a town centre, especially when considering the cumulative impact. The proposed threshold does however provide a degree of flexibility for businesses to provide some additional space to meet business needs.

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

Yes. The use of a percentage figure would be less precise and make an assessment as to whether planning permission is required more complex. A percentage figure would also favour large scale developments, with smaller stores requiring planning permission for much smaller increases in floorspace, placing an unfair burden on smaller stores.

***Regulatory Impact Assessments***

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

The proposals will have many impacts on these sectors. We are not aware of any other impacts that have not already been identified in the Partial Regulatory Impact Assessment.

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

We are not aware of any potential impacts on particular societal groups that have not already been identified in the Partial regulatory Impact Assessment and the Partial Equalities Impact Assessment.

***Other Comments***

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

The increase in gross floorspace order should be implemented as soon as possible.