

THE HIGHLAND COUNCIL

27 JUNE 2013

Agenda Item	
Report No	

Corporate Governance: Planning Application Committees

Report by Director of Planning and Development & Assistant Chief Executive

Summary

A review of the operation of the Planning Application Committees and forthcoming changes to Planning Regulations has provided the opportunity to consider a number of options for change to the current arrangements. These include looking at the number of committees, how they operate and the continuation of Local Member Votes. This Report sets out the options available to members and recommends a number of changes which it is considered will provide greater certainty and efficiency in the planning decision making process.

1. Background

- 1.1 The Council agreed at a meeting on 27 October 2011 that with effect from January 2012, the 3 Planning Application Committees should be reduced to 2 Committees to align with the two new management areas for the Planning Service. It was also agreed that Local Member Votes should be retained and that arrangements for the 2 new Committees should be monitored and reviewed within a 12 month period. A review is therefore due.
- 1.2 Given the need for this review and the forthcoming changes to Development Management Regulations in respect of developments within which the Council has an interest (and the subsequent required changes to the Scheme of Delegation), there are a number of options for change that might be considered in respect of the operation of the North and South Planning Application Committees (PACs).
- 1.3 Appendix 1 to this Report indicates the level and type of business dealt with by the two PACS between January 2012 and April 2013. A number of potential changes that Members may wish to consider are set out below.

2. Changes to the Development Management Regulations and Implications

- 2.1 Changes to the Development Management Regulations will be put in place from 30 June 2013. The most significant change will be that Council interest schemes will no longer have to be referred to the Planning Applications Committees for determination. These applications will be treated the same as any other planning application. The required changes to the Council's Scheme of Delegation are included within Appendix 2 (*which can be accessed via [Members' Intranet/Planning](#)*) for approval by Council.
- 2.2 Between January 2012 and April 2013, 88 such planning applications were considered by the Planning Applications Committees (43 by South PAC and 45 by North PAC) (see Appendix 1). This was out of a total of 249 items

- considered by the Committees.
- 2.3 It is estimated that around 10% of Council interest planning applications will still be referred to Committee in line with the general requirements of the scheme of delegation (e.g. if there are 5 or more objections, objections from a statutory consultee etc.). The significant fact is that about one third of Committee business will be removed from PAC agendas following the forthcoming changes. It is important to note however that although one third of Committee business is likely to be removed from agendas, these Council schemes actually account for only some 10% of the total time taken up by Committee, given that the majority of them are non-contentious and are generally not subject to debate.
- 2.4 The fact that one third of Committee items are going to be removed from the relevant PAC agendas does raise the question as to whether there is merit in merging together the two PACs to form one Highland-wide PAC. There are likely to be savings in terms of Member expenses and staff costs in relation to moving from two to one PAC. The delivery of such an approach could also be justified on the basis that the chamber is already used as the location for both committees and the fact that the use of Google Earth and improved presentation material has already greatly reduced the number of site visits. Further improvements could allow the Service to maximise the opportunities to reduce the need for site visits further.
- 2.5 There are three options potentially available to members:
1. Retain the current North and South PAC arrangement;
 2. Move to one Highland wide PAC; or
 3. Retain the current arrangements and carry out a review in June 2014 once the full effects of Regulation changes and other improvements are known.
- 2.6 Clearly the actual impact of removing the need for Council interest cases to be referred to Committee will not be known until after the Regulations change at the end of June 2013. Until it can be determined what proportion of time is actually saved by removing the need for these types of application to be taken to committee, it is considered premature to move to a one PAC model. There is an opportunity to make other changes to the scheme of delegation and monitor the impact of these changes over the course of the next year. It is therefore recommended that Members retain the current arrangements and carry out a review in June 2014 once the full effects of the changes to Regulations in respect of Council interest cases and the impacts of other potential changes to the Scheme of Delegation (as set out below) are clear.

3. Increase the Numbers of Objections which trigger PAC Referral

- 3.1 At present the scheme of delegation states that if there are 5 or more objections from separate addresses the cases should be referred to the relevant PAC for determination. As can be seen from Appendix 1, this reason accounts for 86 out of the 249 cases considered by Committee between January 2012 and April 2013. One option may be to raise the number of objections which trigger a referral to Committee to 10 (from the current 5).

- 3.2 This approach would reduce the number of planning applications being considered by Committee and as a result would improve performance by allowing faster decisions to be made by officers under delegated powers. Officers estimate that some 50% of such referrals have between 5 and 10 objectors.
- 3.3 There is a risk that increasing to 10 objections could be perceived as prejudicing objectors to developments in smaller communities where there may not be a large number of affected parties. Practice elsewhere in Scotland does vary with most authorities having their threshold between 5 and 10 objectors (although the majority are closer to 5). The system works well at present and is clearly understood by customers. It is therefore recommended that there should be no change to the status quo.
- 3.4 Additionally, 5 or more objections in the form of a petition currently require a case to be presented to the relevant PAC for consideration. Informal feedback from officers and members of the public suggests that those putting their name to a petition often do so without the same level of consideration as may be applied writing a bespoke letter. Sometimes those listed on petitions have, when contacted by officers, disclosed that they had been lobbied to sign and were not fully appraised of, or ultimately concerned about, the subject matter.
- 3.5 Increasing the number of signatories on a petition from 5 or more to 10 or more (or higher) would also reduce the number of planning applications being considered by Committee and, as a result, would improve performance by allowing faster decisions to be made by officers under delegated powers.
- 3.6 It is recommended that Members increase the threshold for the number of objections in the form of signatories to a petition that trigger referral to PAC from 5 signatories to 10 signatories.

4. Delegation of Planning Application Types

- 4.1 At present the scheme of delegation deals with all planning application types. These range in size from major developments (e.g. proposals for 50 houses or more, large renewable schemes) to local developments (up to 50 houses, smaller scale commercial or business developments). Householder developments, which can include relatively small extensions, are also on occasion subject to referral. It may therefore be an option to restrict the types of applications that are dealt with by Committee.
- 4.2 One possible way forward would be that only Major planning applications and Section 36 applications be dealt with by Committee, with all applications for local development delegated to officers. This would ensure that the most contentious planning applications (e.g. large housing developments over 50 houses, large business and retail schemes and large renewables energy schemes) would still be decided by Member's ; and these number between 20 and 40 a year. This would have the effect of vastly reducing Committee business, given that the majority of cases are planning applications for local development.

- 4.3 Another option would be to ensure that all householder planning applications are delegated to Officers. While these generally straightforward planning applications (for sheds, fences, garages, small extensions etc.) do not routinely go to Committee, when they have in the past they have taken up Committee time.
- 4.4 Whilst dealing only with major applications would reduce the number of planning applications being considered by Committee, the majority of planning applications currently considered are local applications. It is appropriate that that there is a committee decision on such cases where they impact on local communities; so as a result, it is recommended that there is no change to the current arrangement.

5. Local Member Votes at PAC

- 5.1 One further change which Members may wish to consider relates to the use of Local Member Votes (LMVs). Experience elsewhere in Scotland demonstrates that local members do not have the right to vote on planning application matters if they are not formal members of the PAC. Whilst the LMV does enable a non-member of committee to take part in the determination of an application pertaining to their ward, there are concerns that non-members applying for LMV may already have made up their mind or be perceived to have made up their mind in advance of a decision and therefore be at risk of breaching the Councillors Code of Conduct. It is important to note that there are alternatives, as set out below.
- 5.2 Elsewhere in Scotland, there are protocols that allow local members to speak either for or against a development on behalf of constituents or other parties, at which point they have to leave the Committee meeting. In terms of paragraph 7.15 of the Code, any such arrangement would require to be part of a formal Hearing process, affording equal opportunity to any other party wishing to make representations to do so.
- 5.3 There is already provision in the Council's Standing Order 13.1 allowing any Member who is not a member of a Committee to speak, at the Chairman's discretion, at a meeting of that Committee. Consequently, if Members wish to consider removing the right, under Standing Order 13.2, for local members to both speak and vote at Planning Applications Committees, local members would still have the option of obtaining the Chairman's approval to their addressing the Committee without a vote. However, it would be prudent to have guidance in place to ensure that local members addressing a Planning Applications Committee under SO 13.1 are fully aware that they may do so only to express their own assessment of the planning merits of the application. Speaking rights under SO 13.1 should not be used by local Members to make representations on behalf of constituents or other parties. If it became apparent at a meeting that a local Member was doing this, determination of the application would immediately have to be deferred for a hearing to allow other parties (applicants or objectors) equal opportunity to be heard in terms of para 7.15 of the Code.
- 5.4 In addition, there is currently nothing to prevent local Members making written

representations to the Planning Service on any planning application if they wish to do so. Where these representations are merely for the purpose of making known to planning officers the representations from constituents or others which the local Member has received (as permitted under paragraph 7.14 of the Code), this would not prevent the local member then exercising the right under SO 13.1 to address the Committee. The local member would not, by simply relaying to the planning officer the views which others have expressed to him or her, have indicated or implied his or her own support for or opposition to the proposal in advance of the meeting.

- 5.5 However, where a local member writes to the Planning Service in support of the views of particular constituents (whether for or against a development), or indeed does so to express their own personal views for or against the development, it would not be appropriate in terms of the Code for the local member to take any part in the proceedings at Committee unless as part of a formal Hearing in accordance with paragraph 7.15 of the Code.
- 5.6 Written representations received by the Planning Service from a local Member and which express support for or opposition to an application would be considered on the same basis as other representations. Any material planning considerations contained in such representations would be summarised in the report to Committee along with any material considerations raised in other representations received.
- 5.7 Reflecting established practice in the rest of Scotland, it is recommended that Members change the current arrangements to dispense with the ability for Members to use a Local Member Vote on planning and licensing applications.

6. Other changes to the Scheme of Delegation

- 6.1 The Council is required to amend the scheme of delegation as it relates to Council interest cases (as referred to in paragraph 2.1). The changes to the scheme of delegation are shown in Appendix 2 (*which can be accessed via [Members' Intranet/Planning](#)*) for approval by Members. An opportunity has also been taken to slightly amend other parts of the scheme.
- 6.2 The other changes being suggested relate to the need for greater scrutiny of policy changes during the period between when the Council is minded to grant planning permission subject to legal agreement and the actual issue of the decision notice. This was drawn to the Council's attention through the outcomes of a recent legal case. Approval is also sought to allow officers the powers to issue Stop Notices, and reflects the ongoing improvements to the enforcement responsibilities of the Council.

7. Implications

- 7.1 Financial implications: There are likely to be some financial savings in terms of officer time preparing reports and attending meetings arising from the reduced number of items being considered by PACs due to Council interest cases no longer being referred as a matter of course.
- 7.2 Legal Implications: The scheme of delegation must be changed prior to the

implementation of the revised arrangements for Council interest cases from 30 June 2013. The proposed change in Local Member Vote will also ensure that Members are not at risk of a breach of the Councillors Code of Conduct and that alternative arrangements and protocols can be put in place to enable Members to participate within the planning and licensing decision making process.

7.3 Equalities implications: There are no equalities implications arising from this report.

7.4 Climate change implications: There are no climate change implications arising from this report.

8. Recommendations

Members are asked to agree to:

8.1 Retain the current arrangements for Planning Applications Committees and carry out a review in June 2014 once the full effects of the changes to Regulations in respect of Council interest cases are clear.

8.2 Increase the threshold for the number of objections in the form of signatories to a petition that trigger referral to PAC from 5 signatories to 10 signatories.

8.3 Change the current arrangements to dispense with the ability for Members to use a Local Member Vote on planning applications.

8.4 Approve the changes to the scheme of delegation as set out in Appendix 2.

Designation: Director of Planning & Development

Designation: Assistant Chief Executive

Author: Malcolm Macleod

Date: 17 June 2013

Appendix 1 South PAC Applications 2012

Reason referred to PAC	17.1.12 SV SCH	21.2.12 SCH	27.3.12 SV SCH	17.4.12 SV SP	24.4.12 SV SCH	26.06.12 SV SCH	21.8.12 SV SCH	25.9.12 SV SCH	30.10.12 SV SCH	11.12.12 SCH	TOTAL
5 or more objections	1		5	1	3	2	5	3	4	4	28
Statutory consultee objection		5	1		1			3	2	1	13
Council interest	1	10	5		2	3	5	2	1	1	30
Ward members' request					1	1	1		1	1	5
Application by member											
Application by senior officer	1		1								2
Manager's discretion			1			1	2	1			5
Previous agreement to refer to PAC			1								1
Tree preservation order					1		1		1	1	4
TOTAL no. of applications	3	15	14	1	8	7	14	9	9	8	88
Duration & type of meeting	5h50	1h15	4h05	3h + 6h travel	2h40	3h05	4h35	3h45	3h30	3h55	
No. of officers	9	8	17	4	11	7	13	11	11	13	

Abbreviations:
SCH = Scheduled meeting
SP = Special meeting
SV = Site visit

South PAC Applications 2013

Reason referred to PAC	22.1.13 SCH	19.2.13 SCH	26.3.13 SCH	8.4.13 SV SP	23.4.13 SCH	TOTAL
5 or more objections		1	4	1	1	7
Statutory consultee objection	1					1
Council interest	8	1	2		2	13
Ward members' request			2		1	3
Application by member						
Application by senior officer						
Manager's discretion						
Previous agreement to refer to PAC						
Tree preservation order						
TOTAL no. of applications	9	2	8	1	4	24
Duration of meeting	1h20	0h40	1h40	7h05 + 2h travel		
No. of officers	7	10	14	4		

Abbreviations:

SCH = Scheduled meeting

SP = Special meeting

SV = Site visit

North PAC Applications 2012

Reason referred to PAC	10.1.12 SCH	14.2.12 SCH	20.3.12 SCH	17.4.12 SCH	19.6.12 SCH	14.8.12 SCH	18.9.12 SCH	23.10.12 SCH	27.11.12 SCH	TOTAL
5 or more objections	2	6	3	3	7	1	7	4	3	36
Statutory consultee objection			1		4	1		1	2	9
Council interest	1	4	5	7	6	2		1	5	31
Ward members' request	1	2	2	1		2	2		1	11
Application by member			1	1	1					3
Application by senior official					1					1
Manager's discretion						1	1			2
Previous agreement to refer to PAC										
Tree preservation order										
TOTAL no. of applications	4	12	12	12	19	7	10	6	11	93
Duration of meeting	1h45	4h10	2h45	3h50	4h05	1h55	2h55	2h30	2h20	
No. of officers	7	12	12	11	11	9	9	8	10	

Abbreviations:

SCH = Scheduled meeting

SP = Special meeting

SV = Site visit

North PAC Applications 2013

Reason referred to PAC	14.1.13 SV	15.1.13 SCH	11.1.13 SV	12.2.13 SCH	19.3.13 SCH	16.4.13 SCH	TOTAL
5 or more objections	1	2	1	3	4	4	15
Statutory consultee objection		1		3		2	6
Council interest		4		4	4	2	14
Ward members' request		2		1		1	4
Application by member							
Application by senior official							
Manager's discretion				1	2	2	5
Previous agreement to refer to PAC							
Tree preservation order							
TOTAL no. of applications	1	9	1	12	10	11	44
Duration of meeting	6h	3h	6h	6h	2h30	3h30	
No. of officers	3	9	4	12	9		

Abbreviations:

SCH = Scheduled meeting

SP = Special meeting

SV = Site visit

