

The Highland Council

Planning, Development and Infrastructure Committee

14 May 2014

Guidance on the Role of Councillors in Pre- Application Procedures

Report by Director of Development and Infrastructure

Agenda Item	7
Report No	PDI 4/14

Summary

The Scottish Government has recently published a document which seeks to encourage elected members to highlight issues with a proposed development at pre-application stage. Planning Authorities have been tasked with preparing guidance for Members. This report sets out the proposed approach for Highland. Members are asked to consider and endorse the recommendations detailed in the report.

1. Background

- 1.1 The Scottish Government has recently published a document which seeks to encourage elected members to highlight issues with a proposed development at pre-application stage that they would wish to see addressed by an application for planning permission. The guidance is attached at Appendix 1 for information.
- 1.2 Planning authorities have been tasked with preparing guidance for the implementation and roll out of this approach in their area. The guidance contained within this document is proposed to form the basis of local procedures for pre-application consultation in Highland.
- 1.3 In terms of the Code of Conduct, elected members are expected to approach their decision making with open minds and must not pre-determine planning applications.
- 1.4 Paragraph 7.14 of the Code advises that elected members can attend public meetings/events (relating to statutory pre-application consultation linked to major applications – Proposal of Application Notice (PAN)).
- 1.5 Any views expressed at the pre-application stage must not indicate pre-determination of a future application in order to avoid legal challenge.
- 1.6 The intention is that issues raised by elected members can be taken into account by the applicant in the submission of any subsequent planning application. Elected members are therefore encouraged to actively engage with this pre-application procedure to avoid the criticism that an issue raised during the determination of a planning application could have been considered earlier in the process.

2. Proposed Approach

- 2.1 Given the terms of the Government's guidance, it is considered that the category of proposals to be considered under this new procedure should be "major" developments as defined under the Town and Country Planning (Hierarchy of Developments) (Scotland) Regulations 2009.
- 2.2 All major scale planning applications are subject to a 12 week Proposal of Application Notice (PAN) period for community consultation before a planning application can be lodged. It is proposed under the new procedure that the PAN would be presented to the relevant Planning Applications Committee (PAC) for the views of members to be minuted as part of the PAC meeting.
- 2.3 Since the introduction of the 2009 Regulations, 153 major applications have been lodged with Highland Council. Assuming that there are more PANs than actual planning applications ultimately brought forward, this would correspond to around 20-25 proposed developments being reported annually to each of the 2 PACs under this new procedure.
- 2.4 Consideration has been given to broadening the range of development proposals presented to PAC to include "locally significant development" proposals. This, however, is not considered to represent a practical or appropriate measure given (1) that local scale applications are not subject to the PAN process and can be lodged without any pre-application advice procedure and (2) what would constitute a "locally significant development" would be open to interpretation and is likely to lead to inconsistency of approach.
- 2.5 It is proposed that the PAN, comprising all documentation submitted by the prospective developer, would be circulated with a short covering report along with the major applications report, now a feature of all PAC meetings. The covering report will highlight the relevant policy framework, likely material considerations and key issues associated with the proposed development. There will be no presentation of the covering report but there will be an opportunity for members (and non-members of PAC) to identify pertinent and relevant issues as they consider appropriate. The merits, or otherwise, of the proposed development will not be discussed. The issues raised will be minuted and reported back to the prospective developer.
- 2.6 It will be necessary to modify the current scheme of delegation for PAC to include this new procedure. Member training will be mandatory before elected members can participate in the consideration of PANs at Committee.

Recommendations

That Committee:

- **AGREE** the pre-application procedure for Highland as set out in this report;
- **AGREE** that the PAC scheme of delegation be modified to include the new PAN procedure;
- **AGREE** that mandatory member training on the new procedures be undertaken before its implementation. A provisional date of 29th August has been set aside for this purpose; and
- **AGREE** that the new procedure be implemented at the meetings of the respective PACs in September 2014.

Designation: Head of Planning & Building Standards

Date: 28th April 2014

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Background Paper: Guidance on the Role of Councillors in Pre-Application Procedures



The Scottish
Government
Riaghaltas na h-Alba

Guidance on the Role of Councillors in Pre-Application Procedures



Commissioner for Ethical Standards
in Public Life in Scotland



COSLA

To:- All local authorities in Scotland

GUIDANCE ON THE ROLE OF COUNCILLORS IN PRE-APPLICATION PROCEDURES

1.0 Introduction

- 1.1 The Scottish Government is keen to ensure that councillors are confident in engaging at the pre-application stage on substantial development proposals, adding value to the process, while continuing to act within the terms of the Councillors' Code of Conduct. Their involvement at this stage in the planning process is not a substitute for formal consideration and decision-making on development proposals. But this early engagement is intended to better inform councillors of proposals that may subsequently come before them, support a degree of certainty by enabling an early exchange of views and discussion of key issues that councillors want to see addressed, and assist officers of the authority in negotiating on those issues.
- 1.2 We are seeking a consistency of approach across Scotland that will both support certainty from strong early engagement and also enable councillors to participate confidently, backed by a clear remit and procedure to do so. We wish to ensure that councillors, and other parties, are clear of their roles and responsibilities through procedures set out by their own authority.
- 1.3 This guidance should form the basis of agreed and adopted local procedures for pre-application discussions which should be prepared as a matter of priority. Considerations to be taken into account in producing those procedures are set out in section 4 below.
- 1.4 In producing this guidance, the Scottish Government has worked closely with the Commissioner for Ethical Standards in Public Life in Scotland and received endorsement for the relevant sections of its contents.

2.0 Context

- 2.1 The responsibility which councillors have to make proper and reasoned decisions on planning matters in terms of the Councillors' Code of Conduct ("the Code") provides the context for this subject.
- 2.2 Amendments to legislation arising from the Planning etc (Scotland) Act 2006 changed some aspects of the roles of councillors. In addition to councillors being responsible for decisions both on policy and strategic issues and also individual planning applications (unless delegated), additional measures were introduced regarding enhanced scrutiny of applications and the authority's Local Review Body.

- 2.3 One of the policy drivers for change was the introduction of more “front-loading” of engagement. It was also recognised that through early councillor involvement and expression of provisional views; more certainty and confidence would come from informing the process and avoiding unexpected issues emerging at a late stage.

Policy and Strategy

- 2.4 The Code explicitly allows councillors to discuss or debate matters of policy or strategy, even though these may provide the framework within which individual applications will in due course be decided.
- 2.5 As noted at section 7.7 of the Code “...in your key role in establishing planning policies for the area, you are fully entitled to express your views or advocate proposals for the making, approval or amendment of the development plan, including supplementary planning guidance published by the planning authority both relating to general policies for the authority’s area and to briefs and masterplans prepared for specific sites in anticipation of planning applications.”

Individual Applications

- 2.6 In terms of handling individual applications once they have been submitted, the Code seeks to reinforce the principles of fairness and impartiality in relation to the determination of any statutory application including planning applications. Councillors must not be - or be seen to be - biased, predetermined or have a closed mind or to have been influenced by improper or irrelevant considerations.
- 2.7 Councillors are expected to approach their decision-making with an open mind in the sense that they must have regard to all material considerations and be prepared to change their views which they are minded towards if persuaded that they should.

3.0 Pre-application Discussions

- 3.1 Paragraph 7.14 of the Code makes it clear that it is entirely appropriate for councillors, to attend public meetings/events (including those relating to statutory pre-application consultation). Pre-application consultation was introduced as one of the measures to improve early engagement with the community on prospective applications for national and major developments.
- 3.2 As a matter of Scottish Government policy the early engagement of councillors in pre-application discussions has been encouraged as part of the wider reform of the planning system. As already indicated this early engagement is intended to better inform members of proposals that may later come before them formally, enable an early exchange of views and discussion of key issues that councillors want addressed and to assist officers in negotiating on those issues. This is helpful to prospective

applicants, aiding their understanding of local issues and informing the development of their plans before submitting applications.

3.3 The Code includes a key provision in this regard at paragraph 7.8:-

'7.8 You may also be asked to comment on requests to the planning authority for a provisional view as to whether - in respect of a proposal for a major development the authority might be minded, in principle, to consider granting planning permission. This may occur in cases where developers are seeking the planning authority's view in advance of committing to expensive and lengthy technical appraisals. As a part of any such request and only as part of the planning authority considering and forming such a provisional view, you are entitled to express an opinion in advance of the statutory application for planning permission being submitted to the planning authority formally for determination.'

3.4 It is not only appropriate and acceptable for councillors to engage and provide a provisional view at the pre-application stage; it can also be a helpful and responsible thing to do, contributing towards greater certainty and more efficient processing of subsequent applications.

3.5 Any opinions or views expressed by councillors at that stage must be made mindful of the overarching requirements of fairness and impartiality and of keeping an open mind. This will be particularly important as any conduct inconsistent with these requirements may compromise the determination of any subsequent planning application.

4.0 Pre-Planning Application Procedures

Key Considerations for Pre-application Discussions

4.1 The following considerations should be applied by local authorities in drawing up procedures for councillors to engage in pre-application discussions:

- Emphasis should be given to providing meaningful guidance and a helpful service that adds value to the preparation of applications.
- Councillors should be able to air points of view at the pre-application stage on the understanding that the general issues aired in, or the outcomes of, the discussions will be placed into the public domain.
- Any procedures must be compliant with the requirements of the Councillors' Code of Conduct.
- Local authorities should consider their own procedures in implementing this guidance and set out which councillors are to be involved in pre-application discussions. This could be the relevant committee which determines planning applications or could be the members of that committee setting in a consultative forum (rather than as a formal committee).
- Procedures should be conducted in a consistent and transparent manner to avoid suspicions that councillors may have prejudiced their positions.

Key Provisions for Pre-application Procedures

- 4.2 The considerations referred to in paragraph 4.1 above apply to the establishment of any forum in which a provisional view is to be considered and generated.
- 4.3 The forum in which discussion is to take place (committee, panel, other grouping) should be identified. Discussions should usually be held in public. However, where seen as appropriate or necessary, local authorities should carefully consider if they should be held in private. Guidance in paragraph 4.7 should continue to be followed.
- 4.4 The status and purpose of the process should be clear, articulate and publicly available. It is essential to make it clear that persons who may wish to comment on the application if it comes to be submitted will - at the appropriate time - have a full right to make representations.
- 4.5 The unique status of pre-application proposals should be clearly identified in the agenda for any meeting, including covering reports and any other introductory material prepared by officers. Such items should be clearly distinguished from other development management issues.
- 4.6 To avoid any misunderstanding (for councillors, interested parties and members of the public) it may be appropriate for the committee clerk to introduce the item in sufficient detail to allow participants to understand the purpose of the event, the broad nature of the proposals and to emphasise that the outcome is limited to the generation of a provisional view.
- 4.7 Officers should take a note of the meeting and prepare a minute which should be made publicly available in accordance with the requirements of good practice and the council's established conventions.

Training for Councillors

- 4.8 To assist in enhancing public confidence, authorities should consider the need for further councillor training so that members can demonstrate objective levels of competence in planning generally and in the pre-application and development management processes, in particular.

Review of Procedures

- 4.9 Procedures should be kept under review by cross council, planning and professional networks to ensure the dissemination of best practice.

5.0 Timescales for Introduction of the Procedures

- 5.1 Each local authority should establish its own pre-application procedures as a matter of priority.

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