

Report

Report to:	Planning Committee
Date of Meeting:	13 February 2018
Report by:	Executive Director (Finance and Corporate Resources) Executive Director(Community and Enterprise Resources)

Subject:	Review of the Planning Application Decision Making Process Guidance
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1 Purpose of Report

1.1 The purpose of the report is to:-

- Seek Committee approval for revisions to the Council's guidance on the Planning Application Decision Making Process.

2 Recommendation(s)

2.1 The Committee is asked to approve the following recommendations;

- Approve the amendments to the Council's guidance on the Planning Application Decision Making Process set out in appendix 1 to this report, subject to the Head of Planning and Economic Development being authorised to modify the document to take account of drafting, presentational and technical matters prior to publication.

3 Background

3.1 A report was presented to the Planning Committee on 21 November 2017 seeking approval for amendments to the Council's Planning Application Decision Making Process Guidance which document includes the scheme of delegation (that allows officers to determine certain types of application without referral to Committee) and the procedure for dealing with planning applications at Committee.

3.2 A review of the guidance was carried out by the Head of Administration and Legal Services and the Head of Planning and Economic Development Services following a decision by Committee at an earlier meeting to refuse an application contrary to officer recommendation. The decision was then the subject of an appeal to Scottish Ministers and it was concluded that there was insufficient clarity in the guidance to deal with these circumstances. The report set out proposed changes to the document to address that matter as well as other revisions covering issues such as requests by Members for an otherwise delegated application to be determined by Committee; the manner in which multiple objections from individuals are dealt with; and the status of objections received after a committee report had been finalised which highlighted the further changes which are required to reflect changes in current working practice and legislation.

- 3.3 Following presentation of the report by officers and discussion by Members it was agreed that consideration of the review of the guidance be continued to a future meeting of the Planning Committee in order to address comments made by Members.
- 3.4 The main reason for the original review of the guidance was to put in place a comprehensive process for dealing with decisions made against officer recommendation. The Head of Administration and Legal Services has advised of the significance of having clear procedures in place for handling decisions made against officer recommendation as the Council is vulnerable to the lack of guidance on this specific part of the decision making process. It is considered Members will also benefit from clarity on their role and responsibility in these circumstances. As a result this report deals only with this issue. A further report will be presented to Committee once further work on the other topics has been carried out.
- 3.5 It is advised that decisions made by committee contrary to officer recommendation are permissible and competent and this remains unchanged. However, it has become apparent that the existing guidance lacks sufficient clarity on the processes in respect of situations where the Committee determines applications against officer recommendation. Section 7.3 of the guide currently states that the Member moving the amendment will be required to give their reasons for refusing the application or appropriate planning conditions to be attached to a grant of planning permission. Further, in the event of the refusal of an application contrary to officer recommendation, the Planning Service cannot handle any subsequent appeal. However, there is an absence of procedure once the decision is taken. As a result, it is proposed to update the guidance to reflect these circumstances.
- 3.6 Once a decision to refuse an application contrary to officer recommendation is made, the Committee will require to nominate at least one Member to act as instructing client to the Head of Administration and Legal Services in the event of an appeal and, if appropriate, to delegate authority to the Head of Administration and Legal Services to instruct such external legal and technical advisors as may be required to deal with the appeal. Similarly, where a decision to grant planning permission is taken contrary to officer recommendation to refuse the application, the Committee will require to delegate authority to the Head of Administrative and Legal Services to prepare an agreement in terms of Section 75 of the 1997 Act where Committee considers that planning obligations are required and any other statutory agreement that may be required. It will generally be expected that the Member moving the amendment will take on the role of instructing client. In both circumstances the decision notice must be signed by the Head of Administration and Legal Services before being issued.

4. Next Steps and Timescale

- 4.1 Following Committee approval it is intended that the revised guide will be published on the Council's website and form the basis for the Council's approach to the matters described above.

5. Employee Implications

- 5.1 There are no employee implications.

6. Financial Implications

- 6.1 There are no budgetary implications at this stage. Any publishing costs can be met from existing revenue budgets.

7. Other Implications

- 7.1 There are no significant implications for risk or sustainability contained in this report.

8. Equality Impact Assessment and Consultation Arrangements

- 8.1 This report does not introduce a new policy, function or strategy or recommend a change to an existing policy, function or strategy and, therefore, no impact assessment is required. There is also no requirement to undertake any consultation in terms of the information contained in this report.

Paul Manning, Executive Director (Finance and Corporate Resources)

Michael McGlynn, Executive Director (Community and Enterprise Resources)

25 January 2018

Link(s) to Council Values/Objectives/Ambitions

- Work with communities and partners to promote high quality, thriving and sustainable communities

Previous References

- Report to the Executive Committee on 10 June 2009 – Planning etc (Scotland) Act 2006
- Report to the Planning Committee on 21 November 2017 – Review of the Planning Application Decision Making Process Guidance

List of Background Papers

None

Contact for Further Information

If you would like to inspect the background papers or want further information, please contact:-

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Appendix 1

Addendum Planning Application Decision Making Process

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- Delete sub- paragraph 7.3(h) and add the following sub-paragraphs in its place:-

“7.3(h) If a Committee Member moves an amendment against the recommendation of the Planning Officer and is seconded, the matter should go to the vote. The outcome will be recorded as the Committee’s decision and the Member will require to give his/her reasons in planning terms. In the event that an officer’s recommendation is not accepted, the officer cannot handle any subsequent planning appeal or be involved in discussions on any related planning agreement. The planning Decision Notice will be signed by the Head of Administration and Legal Services and, thereafter, Legal Services will deal with any appeal or other statutory agreements.

7.3(i) Where a decision to refuse planning permission is taken, contrary to officer recommendation to grant consent, the Committee will require to nominate at least one Member to act as instructing client to the Head of Administrative and Legal Services in the event of an appeal and, if appropriate, to delegate authority to the Head of Administration and Legal Services to instruct such external legal and technical advisors as may be required to deal with the appeal.

7.3(j) Similarly, where a decision to grant planning permission is taken, contrary to officer recommendation to refuse the application, Committee will require to specify the planning conditions, if any, which are to be attached to the planning consent and, if appropriate, to delegate authority to the Head of Administration and Legal Services to prepare an agreement in terms of Section 75 of the 1997 Act and any other such statutory agreement as may be required.

7.3(k) In both cases it will generally be expected that the Member moving the recommendation to take the decision contrary to that of the Planning Officer shall take on the role of instructing client.

7.3 (l) For the avoidance of doubt the committee procedure set out in this section of the guide will apply to the Planning Committee or the respective Area Committee at which the application is reported.