

Report

Report to:	Planning Committee
Date of Meeting:	21 November 2017
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 Executive Committee on 10 June 2009 informing members of changes to the planning system that were due to be introduced as a result of the implementation of the Planning etc (Scotland) Act 2009. The report also set out for Committee approval the Council's response on how the requirements of the Act would be delivered.
- 3.2. Committee agreed the approval of, among other items, the updating of the Guide to the Planning Application Decision Making Process to reflect the legislative changes. This document included a revised scheme of delegation (that allows officers to determine certain types of application without referral to Committee); reference to the weekly list of new planning applications and guidance on circumstances when an elected member can request an otherwise delegated application to be referred to Committee for decision; and guidance on the presentation of items to Committee, including criteria for considering requests for hearings before a decision is made by members. Further minor changes were made in 2015 and the latest version of the guide is attached in appendix 2.
- 3.3. A review of the guidance has been carried out recently by the Head of Administration and Legal Services and the Head of Planning and Economic Development Services which highlighted the further changes which are required to reflect changes in current

working practice and statutory legislation. These are set out in Appendix 1 and summarised below.

- 3.4. In particular, it has become apparent that the 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 guide to reflect these circumstances.
- 3.5. Once the decision to refuse the application is made 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 Administrative 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, for example, financial contributions are expected to be made, 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 Administrative and Legal Services before being issued.
- 3.6. Section 2.3 of the current guide permits, following the issue of the Weekly List of planning applications, any Member who is considering requesting that an otherwise delegated application be dealt with by committee, to contact the relevant Planning and Buildings Standards Manager or Head of Planning and Economic Development Services to discuss the application. The Member can then make a request that the application be dealt with by committee. It is proposed to update the guide to clarify that the request will be dealt with by the Head of Service, in consultation with the appropriate Chair. This is to ensure that the determination of an application is not unnecessarily delayed. At all times, Members should take account of Section 7 of the Councilors' Code of Conduct which provides guidance for dealing with planning applications.
- 3.7. The scheme of delegation permits planning applications that attract 5 or less objections, where approval of the application is recommended, to be dealt with under delegated powers. In cases where 6 or more objections are received and the recommendation is to grant consent, the application must be reported to Committee for a decision. In terms of counting the number of objections, the guide presently defines this as all individual letters from any one person or household. However, in some cases, individual objectors have submitted multiple letters of objection, each raising different issues, which can result in an application having to be referred to Committee. This does not promote efficiency within the planning process and therefore, it is recommended that in such circumstances the letters from that individual will count only as one objection. It is important to recognise that the concerns of an individual objector will always be taken into account no matter what decision route is taken. The exception would be cases where the objector submits additional objections following receipt of new information or amendments to the original scheme that raise new issues. For clarity, the submission of letters of objection from individual members of the same household will continue to be counted as single objections. In addition, any representations received will only be considered once an application has been made valid ie when all the relevant details to start

processing an application has been provided. This is on order to avoid objections being made in respect of a lack of information which would otherwise be submitted as part of the validation process.

- 3.8. Finally, it is recommended that the guide be updated at section 4.3 to clarify that representations which are received after the deadline for the compilation of the associated committee report will not form part of the background papers to the report, however, they will be reported verbally to Committee when new issues are raised. A range of other minor changes are also set out in Appendix 1.

4. Next Steps and Timescale

- 4.1. Following Committee approval, it is intended that the revised guide will be published on the Councils website and form the basis for the Councils 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 other implications.

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)

13 November 2017

Link(s) to Council Values/Objectives

- Improve the Quality of the Physical Environment

Previous References

- Report to the Executive Committee on 10 June 2009 – Planning etc (Scotland) Act 2006

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

Page 2

- In paragraph 1.2 delete the word “Board” on line 5 and replace with “Body”

Page 3

- At the end of paragraph 2.2, add:-

“As the Scheme of Delegation is a requirement of the 1997 Act and as that Act defines the categories of application which must be dealt with by officers, this should happen only in exceptional circumstances where the Head of Planning and Economic Development Services, in consultation with the Chair of the Planning or relevant Area Committee as appropriate, considers it necessary to do so.”

- Amend paragraphs 2.3 and 2.4, to:-

“2.3 Following the issue of the Weekly List, any Member who is considering requesting that an otherwise delegated application be dealt with by committee, should contact the relevant Planning and Building Standards Manager or Head of Planning and Economic Development Services no later than 10 days of the week-ending date of the Weekly List to discuss the application. If the Member makes a request that an otherwise delegated application be dealt with by committee, the request will be dealt with by the Head of Service, in consultation with the appropriate Chair, whose decision will be final.

2.4 In this respect, Members should take account of Section 7 of the Councillors’ Code of Conduct which provides guidance for dealing with planning applications.”

Page 4

- Amend paragraph 3.1 at line 6 by adding new sentence between the words “objections” and “When”:-

“but will be published on the portal and given consideration in determining the application”.

- Amend paragraph 3.1 at lines 6 – 8, by deleting sentence beginning with the word “When” and adding the following sentence in its place:-

“Where there are multiple objections on different grounds from the same person, each ground of objection will be considered separately but all of the objections will be treated cumulatively as one objection. The exception will be when additional information or amendments to plans are submitted and new matters are raised”.

- At end of paragraph 3.1, add new sentence:

“Objections will only be treated as valid representations after the application has been made valid.”

- In paragraph 3.5, remove reference to Article 4 Directions in Conservation Areas.

Page 7

- In paragraph 3.6(a), delete “would come” and replace with “came”

Page 8

- In paragraph 3.11(h) delete the word “Board” on line 2 and replace with “Body”

Page 9

- At the beginning of paragraph 4.2 add the following new sentence:-

4.2 “Representations means letters of support, comment and objection”.

- Delete paragraph 4.3 and add the following paragraph in its place:-

4.3 “Representations received after the deadline for the compilation of the associated committee report will not form part of the background papers to the report, however, they will be reported verbally to Committee when new issues are raised.”

Page 13

- 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 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.

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.

Page 14

- In paragraph 8.4 add “Finance and” on line 3 after “to” and before “Corporate”
- Amend paragraph 8.5 by deleting the final sentence and adding the following sentence in its place

“Once Committee papers have been issued to Members, Administration Services will advise nominated spokespersons on both sides that the committee report is available electronically and provide a link to the Council’s website or, where necessary, forward a hard copy of the Committee report.”