

# Report

Report to:	<b>Planning Committee</b>
Date of Meeting:	<b>13 March 2018</b>
Report by:	<b>Executive Director (Finance and Corporate Resources)</b> <b>Executive Director(Community and Enterprise Resources)</b>

Subject:	<b>Review of the Planning Application Decision Making Process Guidance</b>
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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 The Council's Planning Application Decision Making Process Guidance sets out the procedure for dealing with planning applications at Committee. A review of the document 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 in August 2017 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.

3.2 A report was presented to the Planning Committee on 21 November 2017 seeking approval for amendments to the guidance on dealing with these circumstances. The report set out proposed changes 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.

- 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. A further report was presented to the Planning Committee on 13 February 2018. After discussion, a decision was deferred again to allow research on the way in which other Planning Authorities deal with these matters and for further legal advice to be sought.
- 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 at risk of successful legal challenge if there is a lack of procedural 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.
- 3.5 Dealing with instances where members go against officer recommendations can be broken down into two specific but related matters. Firstly, the procedure to be used at committee when a member moves a recommendation to make a decision contrary to recommendation and, secondly, the procedure for dealing with any subsequent appeal against that decision or drafting conditions/negotiating a related section 75 Obligation or other legal agreement.
- 3.6 Decisions made by committee contrary to officer recommendation are permissible and competent and this remains unchanged. However, the decision must comply with the Town and Country (Planning) Scotland Act 1997 and so, on reaching a decision, the committee must have regard to the provisions of the development plan as far as material to the application and to any other material considerations. The written decision notice which must be issued must include a statement of the sound and proper planning reasons for the decision based on the committee debate. Accordingly, if the committee overturns an officer recommendation, the minutes for the meeting must clearly identify the committee's planning reasons for its decision. Consideration of a planning application by an officer is carried out with impartiality. Planning officers are subject to the code of conduct of the Royal Town Planning Institute (their professional body) and can be subject of disciplinary action if they are seen to be acting contrary to the code of conduct. Officers are required to form a view on the merits of a planning application based on their judgement while demonstrating impartiality. As a result, an officer cannot become involved in drafting reasons for refusal or planning conditions attached to a planning permission nor in later discussions on any related legal agreement contrary to their professional recommendation. Whilst some Planning Authorities use another planning officer in their employ and unrelated to the case to deal with these matters, legal advice is that this is a conflict of interest and that it is not professionally appropriate for a planning officer to challenge the professional view of a fellow officer in these circumstances.
- 3.7 Section 7.3 of the guide currently states that the Member moving the amendment to the officer recommendation 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.
- 3.8 Research of the way in which other Planning Authorities deal with these instances has shown that, in most cases, the members who move and second the amendment to

recommendation are required to provide the reasons for their decision. In cases where it is intended to refuse an application contrary to recommendation, it is critical that the reasons for refusal are valid, sustainable and defensible and based on planning grounds and the evidential evaluation of material considerations. Similarly, where it is intended to overturn a recommendation to refuse the relevant members are required to provide reasons for the decision, prepare conditions to be attached to the consent and, where appropriate, whether a legal agreement is required for example to ensure financial contributions are sought. It is usual practice in these cases for the meeting to be adjourned to ensure the motion is competent in planning and legal terms and for the members to frame reasons for refusal. The committee is then re-convened to allow a vote to be taken. It is proposed that the guidance be updated to reflect this procedure which is set out in more detail in appendix 1 of the report. The process is adopted in various forms by other Planning Authorities.

- 3.9 In cases where an appeal is lodged against the refusal of an application contrary to recommendation, it is standard practice that the planning officer will not take part in this process for the reasons set out in 3.6 above. The recommendation in the earlier reports was for the Committee to nominate at least one Member to act as instructing client to the Head of Administration and Legal Services 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. However it is now proposed that following the making of the decision it will be understood that the Chair of the Committee will instruct the Director of Community and Enterprise Resources to give a direction to Head of Administration and Legal Services to carry out all necessary procedures including instructing external advisors where appropriate.
- 3.10 Similarly, where a decision to grant planning permission is taken contrary to officer recommendation to refuse the application, it will be understood that delegated authority is given to the Head of Administration 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.
- 3.11 Finally the procedures as approved will apply to decisions taken at the Planning Committee and the relevant Area Committees. In all cases 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 The Council is at risk of successful legal challenge if there is a lack of procedural guidance on this specific part of the decision making process
- 7.2 There are no implications for sustainability in terms of the information 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)**

**6 March 2018**

**Link(s) to Council Values/Objectives/Ambitions**

- Work with Communities and Partners to Promote High Quality, Thriving and Sustainable Communities
- Accountable, Effective, Efficient and Transparent

**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
- Report to the Planning Committee on 13 February 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) The decision on the application must be issued in writing and must narrate the reasons for the decision with reference to the material considerations which were taken into account in reaching the decision. If a Committee Member moves an amendment against the recommendation of the Planning Officer and is seconded, the Committee may suspend formal proceedings, with any members of the press and public asked to leave, to prepare the written reasons (described above) and, as appropriate, either the reasons for refusal, or the planning conditions for inclusion in the amendment. In the case of an amendment to grant planning permission against officer recommendation, the Committee may also consider whether a related planning agreement is required and, if so, include provision 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. Thereafter, the Committee will recommence formal proceedings, to vote on these matters, with the press and public invited to re-enter the room. The outcome will be recorded as the Committee's decision.

7.3 (i) If an officer's recommendation is not accepted, the officer cannot handle any subsequent planning appeal or be involved in discussions on any planning conditions or related planning agreements and so 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(j) Where a decision to refuse planning permission is taken, contrary to officer recommendation to grant consent, the Chair of the Committee will instruct the Executive Director (Community and Enterprise Resources), in the event of an appeal, to direct 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(k) 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.