
Report to Council

Date: 4th June 2009

Subject: Implementing the Planning etc. (Scotland) Act 2006

**Report by: Head of Development Services and
Head of Administration and Legal Services**

1.0 Purpose

- 1.1. The purpose of this report is to update the Council on the implementation of the Planning etc (Scotland) Act 2006. It also sets out actions that must be taken by the Council to ensure that it is in a position to deal with planning applications and appeals once the main provisions of the Act come into force on 3 August 2009. The main things that the Council must do are to nominate a person to determine delegated applications, approve a Scheme of Delegation of categories of application and set up a Local Review Body (LRB) to deal with appeals in respect of decisions taken under delegated powers.
- 1.2. The recommendations in this report are based on officers understanding of the primary and secondary legislation and advice issued by Ministers in the form of Draft Circulars. This report will be updated by supplementary written or verbal reports when the finalised Circulars are issued.

2.0 Recommendations

2.1 It is recommended that the Council:-

- (i) nominate the Director of Development and Environmental Services to be the appointed person to determine applications for planning permission and other applications as defined in Section 43A of the Town & Country Planning (Scotland) Act 1997;
- (ii) approve the amendments to the Council's Scheme of Delegation attached as Appendix 1 to this report, to take effect from 3 August 2009;
- (iii) agree the categories of application that would be subject to pre-determination hearings as set out in Paragraph 3.16 of this report;
- (iv) agree to the creation of a Local Review Body comprising 8 elected members, noting that only three members at a time will be required to attend any meeting of the Local Review Body, and that the Chair of the

Local Review Body be the current Convener of the Planning Committee;

- (v) note the requirement for training for elected members as set out in paragraph 3.17 of this report not only for members of the Local Review Body but also for all elected members;
- (vi) agree in principle the changes to the Council's Standing Orders set out in paragraph 3.15 of this report, noting that final approval to the changes will be sought at the next meeting of the Council.

3.0 Considerations

- 3.1. As Members will know from articles in the press, from recent training sessions and from items on Clacksweb and in the D & E Bulletin, the modernisation of the planning system in Scotland is gathering pace.
- 3.2. The Scottish Government's overarching purpose is to increase sustainable economic growth whilst safeguarding the environment and ensuring a better quality of life for communities. The Scottish Government sees a reformed and better functioning planning system as essential to achieving this.
- 3.3. "Delivering Planning Reform (DPR)" is a statement of shared objectives and joint actions published in October 2008 and involved all major stakeholders in the delivery of a modernised planning system. The purpose of the joint statement was to drive cultural change and improvement in the whole system.
- 3.4. A modernised planning system is one where:-
 - * developers engage with communities earlier in their planning process;
 - * communities engage with the planning process earlier and constructively;
 - * agencies see their role as facilitating growth through engagement in the planning process;
 - * central government withdraws from local issues and focuses on matters of genuine national interest;
 - * local government puts land use planning at the heart of its thinking in terms of delivery of its strategic objectives with regard to infrastructure provision and service delivery as expressed in the Single Outcome Agreement.
- 3.5. Following the October 2008 Planning Summit and the publication of DPR, much has been achieved. All of the Government agencies (SEPA, SNH, Transport Scotland, Historic Scotland and Scottish Water) have published their Improvement Plans and contributed to a Statement on Joint Agency Working. The E-Planning Project, which allows for the submission of applications and appeals on-line, and much more, was launched on 29th April. The Scottish Government is rationalising Scottish Planning Policy from some seventeen separate documents down to two. One of these,

covering aspirations and core principles, was published in October 2008 and the other is currently the subject of consultation.

- 3.6 The other important dimension to planning modernisation is the roll out of the detailed provisions of the Planning etc. (Scotland) Act 2006 which amends the Town and Country Planning (Scotland) Act 1997 (the 1997 Act).

- 3.7 Members were advised of the main changes in planning legislation at the training session on 16th April. From 3rd August 2009 all planning applications must be dealt with in accordance with the new legislation. Officers are making good progress in setting up procedures for dealing with applications from this date. This report seeks decisions on key aspects of the implementation which require Council authorisation.

3.8 Appointed Person

The first decision relates to the identification of an officer of the Council who will be the person appointed under Section 43A of the 1997 Act to make decisions on applications. Under the Council's current Scheme of Delegation approved on 26th May 2008 it is the Director of Development and Environmental Services who has delegated authority to make decisions on planning applications and take enforcement action as necessary. It seems logical therefore to identify this Director as the appointed person for the purposes of the 1997 Act. It had been assumed that, as is currently the case, the general authority granted to Directors to further delegate decision-making in order to efficiently manage the function and delivery of the Service, would pertain. However, recent discussions with Scottish Government officials, referring to their own legal advice, indicate that the appointed person, and only the appointed person, may determine planning applications on the Planning Authority's behalf. This advice appears to be based on a strict, and very literal, interpretation of the primary legislation and does not appear to take into account the obvious impracticality of such an arrangement. Nor does it appear to take into account the general powers of delegation available to Councils under the Local Government (Scotland) Act 1973 (the 1973 Act). It is expected that the finalised Circulars will clarify this issue. Meanwhile, the recommendation is that the Director of Development and Environmental Services should be identified as the appointed person.

3.9 Scheme of Delegation

The second decision relates to the approval of a Scheme of Delegation which identifies the types of application to be delegated to the appointed person and the circumstances under which such delegated authority should be exercised.

- 3.10 One of the key objectives of the legislative requirements in relation to delegation is to ensure that decision making on planning applications is undertaken at the most appropriate level in the authority, having regard to the strategic significance of the proposal. Members should set the strategic policy framework in the Development Plan and thereafter leave the majority of decisions on applications in accordance with the policy framework to officers. Other than in specific circumstances as defined in the legislation, Councils should have sufficient confidence in their professional officers to implement policies through the development management process.

3.11 One of the other key objectives of creating a requirement to delegate as much as possible is to improve the efficiency and effectiveness of the planning application consideration process. The positive effect of extensive delegation in this regard has been demonstrated since the adoption of such a scheme here in Clackmannanshire over the past two years. High performance levels were generally maintained even during periods of significantly increased workload.

3.12 Regulation 3 of the Town and Country Planning (Scheme of Delegation and Local Review Procedure)(Scotland) Regulations 2008 (the SD and LRP Regs) define the types of application which, by virtue of Section 43A of the 1997 Act, the Planning Authority cannot, under these provisions, delegate to the appointed person. These are:-

- * Applications made by the Planning Authority;
- * Applications by a Member of the Planning Authority; and
- * Applications relating to land in the ownership of the Planning Authority or to land in which the Planning Authority have a financial interest.

3.13 Having regard to these limitations and those referred to in Paragraph 3.16, the above objectives, and the desire to give effect to the principles of a modernised planning system, it is proposed that the Council's Scheme of Delegation should be amended as set out in Appendix 1. This would supersede all previous arrangements governing the delegation of decisions on planning and other applications. The proposed Scheme of Delegation is a hybrid as it is based on both the 1973 Act and 1997 Act powers and incorporates the limitations identified in the latter. The 1997 Act elements of the Scheme must be submitted to Ministers for approval by 30th June. Once approved by Ministers, the Scheme will be applied to all applications received after the 3rd August. The Scheme will be on the internet and must be reviewed every 5 years.

If Ministers suggest changes then this will be reported to the next Council meeting at which the Council will, in any event have to formally approve the changes to the Council's Standing Orders set out in Paragraph 3.15 of this report.

3.14 Local Review Body (LRB)

Section 43A of the 1997 Act makes provision for the review by the planning authority of delegated decisions made by officers in relation to applications for "local development" as defined in the Town & Country Planning (Hierarchy of Developments)(Scotland) Regulations 2008 (the HoD Regs). The opportunity for an applicant aggrieved by an officer decision to have it reviewed relates to refusal of permission, conditions on approvals and non-determination with the statutory timescale.

The local review provisions relate only to officer decisions on local development applications and the LRB's decision is final, subject to any Judicial Review proceedings. Local development applications are all applications other than those which are "major" or "national" as defined in the HoD Regs.

Decisions on all other types of development application whether by officers or by the Council, can be appealed to Ministers.

- 3.15 The SD & LRP Regs set out the procedures that must be followed in the review process and specifies that a minimum of three elected members should sit on the LRB. Full training will be provided to Members appointed to the LRB. The LRB has a significant role in defining for itself how it intends to deal with cases up for review therefore rather than consider the details at this stage it is considered appropriate to allow the LRB, when appointed, to consider these issues.

It is proposed that the LRB should comprise eight elected members but that, when meeting to consider any review, only three elected members would be required to attend. This "pool" arrangement would mean that not all elected members would have to attend all review meetings and would give flexibility in dealing with potential conflicts of interest or matters arising in particular wards.

After 3 August, and assuming the attached Scheme of Delegation is approved, the number of applications having to be dealt with by the Planning Committee will reduce and eventually cease. It is suggested that, this being the case, and given the expertise built up by the Committee, that the eight members of the Planning Committee be nominated as the members of the LRB, with the Convener of the Planning Committee being nominated as Chair of the LRB.

In order to create the LRB, the Council's Standing Orders require to be amended. It is proposed that Standing Order 46.1 be amended by adding, at the end, "Local Review Body" and that Standing Order 46.2 be amended by adding, at the end "Local Review Body - Members 8 - Quorum - 3".

3.16 Pre-Determination Hearings

S. 38A of the 1997 Act amends the 1973 Act stating that the determination of certain classes of planning application may only be by the full Council. Such applications must also be subject to pre-determination hearings. The types of application relate to "national development" and "development that is significantly contrary to the development plan". It is proposed that the other categories of development not delegated to officers should also be subject to pre-determination hearings. Officers are working on the detailed procedures to be followed and guidance will be made available to Members as part of the training arrangements.

3.17 Training

As recommended in the Circulars, and all other advice and guidance from the Scottish Government, and as referred to in Paragraphs 3.15 and 3.16 of this report Members will require to engage in training in planning and procedural matters relating to the administration of the process.

Three training sessions on planning have already taken place over the past two years and a further session, is scheduled for 16th June, 2009. This is aimed at all Members given the fact that decisions on planning applications not delegated to officers will be made by all Members sitting on full Council.

In addition, all Members appointed to serve on the Local Review Body will be required to engage in training to ensure that they can discharge their duties appropriately. Officers are in the process of organising this and it is hoped that this training will be scheduled over the next two months.

3.18 Conclusions

This report sets out proposals to enable the Council to decide on those matters that require its decision in terms of implementing the provisions of the new planning legislation. These decisions will alter the planning application decision-making process radically but will be entirely in line with, not only the letter, but also the spirit of the legislation.

Officers will update Members if significant changes are necessary as a result of the impending publication of finalised Circulars.

4.0 **Sustainability Implications**

4.1. None

5.0 **Resource Implications**

5.1. *Financial Details*

5.2. The full financial implications of the recommendations are set out in the report. This includes a reference to full life cycle costs where appropriate.

Yes ☒

5.3. *Staffing: None*

6.0 **Exempt Reports**

6.1. Is this report exempt? Yes ☐ (please detail the reasons for exemption below) No ☒

7.0 **Declarations**

The recommendations contained within this report support or implement our Corporate Priorities and Council Policies.

(1) **Our Priorities 2008 - 2011** (Please tick ☒)

The area has a positive image and attracts people and businesses ☒

Our communities are more cohesive and inclusive ☐

People are better skilled, trained and ready for learning and employment ☐

Our communities are safer	<input type="checkbox"/>
Vulnerable people and families are supported	<input type="checkbox"/>
Substance misuse and its effects are reduced	<input type="checkbox"/>
Health is improving and health inequalities are reducing	<input type="checkbox"/>
The environment is protected and enhanced for all	<input checked="" type="checkbox"/>
The Council is effective, efficient and recognised for excellence	<input checked="" type="checkbox"/>

(2) Council Policies (Please detail)

8.0 Equalities Impact

8.1 Have you undertaken the required equalities impact assessment to ensure that no groups are adversely affected by the recommendations?

Yes ☐ No ☒

9.0 Legality

9.1 In adopting the recommendations contained in this report, the Council is acting within its legal powers. Yes ☒

10.0 Appendices

10.1 Please list any appendices attached to this report. If there are no appendices, please state "none".

Appendix 1 - Amendments to the Council's Scheme of Delegation

11.0 Background Papers

11.1 Have you used other documents to compile your report? (All documents must be kept available by the author for public inspection for four years from the date of meeting at which the report is considered)

Yes ☒ (please list the documents below) No ☐

1. The Planning etc (Scotland) Act 2006

2. The Town and Country Planning (Scotland) Act 1997

3. The Local Government (Scotland) Act 1973

4. The Town and Country Planning (Hierarchy of Developments)(Scotland) Regulations 2008 and Draft Circular

5. The Town and Country Planning (Development Management Procedure)(Scotland) Regulations 2008 and Draft Circular

6. The Town and Country Planning (Scheme of Delegation and Local Review Procedure) (Scotland) Regulations 2008 and Draft Circular

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APPENDIX 1

Amendments to the Council's Scheme of Delegation

1. Add new Paragraph "3.28 Decisions on planning applications which the Planning Authority is required to make in terms of the Town and Country Planning (Scotland) Act 1997, as amended".
2. At the start of Paragraph 6.1, add "subject to Paragraphs 3.28 and 18.2".
3. After Paragraph 8 add a new Paragraph 8A, to read "Local Review Body - Considering and determining applications for review of decisions made by officers under delegated powers in respect of planning applications for local development, in accordance with the Town and Country Planning (Scotland) Act 1997, as amended".
4. In Paragraph 18.2, add after the words "enforcing planning laws", the words "subject to the following:-

As the appointed person for the purposes of Section 43A(1) of the Town and Country Planning (Scotland) Act 2007 as amended, the Director is authorised to make decisions on all applications made under the planning and related Acts other than where:-

- (i) The application relates to a "national development" as defined by Section 3A of the Act;
- (ii) The application relates to a "major development" as defined in the Schedule to the Town and Country Planning (Hierarchy of Development)(Scotland) Regulations 2008 which is significantly contrary to the development plan;
- (iii) The application is by the Council or involves development of land in which the Council has a financial, land ownership or other interest;
- (iv) The application is by a member of the Council.

