

WEST DUNBARTONSHIRE COUNCIL

Report by the Executive Director of Housing, Environmental and Economic Development

Planning Committee: 7 November 2012

Subject: Elected Member Involvement in Pre-Application Discussions

1. Purpose

- 1.1** To seek the approval of procedures for elected member involvement in the pre-application stages of major development proposals.

2. Recommendations

- 2.1** It is recommended that the Committee:

- (i) Agrees that elected member engagement at the pre-application stage should be by way of written briefings and developer presentations; and
- (ii) Agrees that a protocol be drafted for elected member involvement in the pre-application stage.

3. Background

- 3.1** As part of the Scottish Government's Planning Modernisation reforms introduced over the last few years, the planning system is intended to be "front loaded", meaning that significant issues should be identified at the earliest stage possible rather than only emerging in the course of a planning application. The reforms included the introduction of formal requirements for community engagement on major development proposals at the pre-application stage, whereby there is a 12 week consultation period during which developers must engage with the community to seek their views prior to submitting a planning application. At least one public event must be held to allow the public to make comments to the developer on the proposal. As part of the subsequent planning application, the developer must provide a report summarising the pre-application consultation responses and detailing how these have influenced the development proposal. There is no formal requirement for Councillors to attend such events or to engage at the pre-application stage, but Members are free to attend the public meetings if they wish, and developers will often make local ward members aware of these events.

4. Main Issues

- 4.1** Good pre-application consultation removes as much uncertainty as possible for the developer, allowing the proposal to proceed with more confidence and

reducing the risk of abortive costs arising from failed applications or expensive redesign work. It also improves the quality of development proposals by allowing the Council and other stakeholders to suggest improvements at an early stage. The Council therefore actively encourages developers to engage in pre-application discussions with officers, and has recently promoted its pre-application service and developer liaison meetings by publishing two protocols (Appendix 1). These protocols focus on the key regeneration sites, but they also apply to all other major development proposals. The purpose of these protocols is to formalise procedures for pre-application consultation and ongoing liaison meetings, and to set out what the developer and the Council can expect from each other as part of this process. Developers have been consulted on these protocols, and the feedback received has been positive and supportive towards the adoption of this approach.

- 4.2** Whilst most pre-application advice from the Council is provided by Planning Service officers as an important part of their duties, developers often wish to have input from elected members as well. However, some Members have expressed anxiety about participation in pre-application consultations due to a concern that this could be seen as pre-judging an application or compromising their impartiality.
- 4.3** Whilst the Planning Modernisation reforms did not specifically address elected member involvement in pre-application discussions, the Councillors' Code of Conduct was reviewed by the Standards Commission for Scotland in the light of these reforms and a new Code of Conduct was published in December 2010. The new Code of Conduct gives Members greater flexibility to express their provisional views in advance of the submission of a planning application, especially in cases where developers are seeking the planning authority's views before committing to lengthy and expensive technical or design work. In terms of any pre-application consultation an elected member who will be involved in the final decision making process can make their provisional views known as part of the discussions however they should only make a final judgement when all the relevant material considerations are before the meeting that will determine the application. Therefore they must not indicate or imply support or opposition to a proposal or declare their voting intention during any pre-application discussions. Any Planning Committee member must not give grounds to doubt their impartiality such as make public statements about a future decision. This is to ensure that they are not seen to prejudge a decision which will be made at the Planning Committee where it is expected that all the information required to take a decision will be available.
- 4.4** Apart from the Councillors' Code of Conduct, there is no Scotland-wide best practice guidance for Councillor involvement at the pre-application stage, but some local planning authorities have their own protocols. In England the Planning Advisory Service and the Planning Officers Society have jointly issued guidance which encourages Councillor involvement in pre-application discussions on major applications provided members' roles are clearly understood, and again some English authorities have adopted their own guidance. Therefore, given the positive feedback from developers in relation to this Council's first two protocols, and to various guidance and best practice

documents which encourage early Councillor involvement at pre-application stages, it is considered appropriate for this Council to prepare and adopt its own protocol concerning elected member participation at the pre-application stage.

4.5 Some issues to consider in deciding upon a procedure include the following:

- **Should discussions take place in public, and should papers or minutes be public?** Providing full public access offers transparency and accountability. However, it can sometimes inhibit open and frank discussion so be less appropriate for pre-application discussions. Comments may also be quoted out of context in the press, in such a way as to suggest that a decision has already been made.
- **Should pre-application consultation take place at the Planning Committee or elsewhere?** The Planning Committee is an already organised forum for pre-application consultation to take place rather than another forum. Planning Committee members are more likely to engage in pre-application discussions and they have knowledge of planning matters and will determine the application in the future. This approach does not prevent ward members also attending the pre-application consultation.
- **What advice should officers' give?** Unlike Members, officers are able to give developers an opinion about whether or not an application would be likely to be supported by the Planning Service as this is professional advice offered without prejudice to the outcome of an application. However, it would not normally be appropriate for such advice to be considered by the Committee at the pre-application stage. Any advice from officers would therefore be confined to factual matters, and officers would not make any recommendation to the Committee.
- **Should the applicant be allowed to speak?** Applicants often wish to make a presentation to Members in order to explain their proposals, and answer any questions. Such presentations ought to be limited to factual issues but there is a temptation for developers to lobby in favour of their proposals, which is not appropriate for pre-application discussions, particularly as any contrary views would not be heard.
- **How should ward members participate?** Ward members who are not members of the Planning Committee may wish to comment at the pre-application stage. If pre-application consultation with elected members takes place at Planning Committee the procedures would need to make clear whether or how ward members could participate.
- **What outcome would be expected?** It would not be appropriate for the Planning Committee to indicate whether or not an application would be likely to be approved as that would amount to pre-judging an application. It is therefore not necessary for the Committee to reach an agreed position. Instead, the outcome of the discussion would simply be that the applicant was given an opportunity to listen to the issues raised by Members. If a minute of the discussion was desired, this could take the form of a short note of the issues discussed, and would not record any opinion about the proposal.

- 4.6** Officers have reviewed the procedures adopted by a number of other authorities, which has revealed that a number of different approaches are taken. For example, Edinburgh City Council adopted its own procedures for Councillor involvement in the pre-application stage in 2008. Planning officers prepare interim committee reports on officers' pre-application discussions for that authority's Development Management Sub-Committee. A presentation by officers highlights key issues and members are invited to comment on these and any other issues which could be taken into account in the finalisation of proposals by the developer. That is a relatively formal procedure, and other Scottish Planning authorities have much more informal arrangements. Based on a review of other authorities' practices, four alternative approaches to pre-application consultation with elected members are suggested:

Option 1: Interim Committee Reports

Interim reports are prepared by Planning officials, highlighting the key issues, and these are considered as part of the Planning Committee's agenda. Members are invited to comment on these issues and to raise any other matters which could be taken into account by the developer in the finalisation of their proposals. The main advantage of this approach is that committee reports are public documents and could be used to keep all interested Councillors and other parties informed. However this formal procedure may stifle discussion, or give rise to an inaccurate perception by third parties that the development proposals are in a final form. There is also no opportunity for the developer to make a direct presentation of their draft proposals.

Option 2: Developer Presentations to Committee

The developer is invited to make a short presentation of their draft proposals as part of the agenda of Planning Committee. No written reports would be prepared. This approach allows the Planning Committee members and other parties to hear directly from the developer in an open public meeting, but there is no opportunity to hear from officers or third parties, which risks the presentation being (or being perceived as) one-sided or incomplete.

Option 3: Informal Briefing of Members in Private

Officers brief elected members (either Planning Committee members or any interested members) in a closed meeting. No written report is prepared and the developer is not present, but officers note members' comments and convey these to the applicant (this document may be public). This approach allows Members to discuss issues arising from the emerging proposals informally and may allow for frank discussion of contentious issues. However this approach has reduced transparency for other parties with possible perceptions of pre-determination by members or undue influence by the opinions of officers. The developer is not only unable to make a presentation to members, but is also not able to attend the meeting to hear directly what elected members have to say.

Option 4: Briefing of Main Issues and Presentation to Committee

This approach is a hybrid of the preceding three options. A briefing note is prepared by officers detailing the main issues of the proposal together with relevant development plan policies. This is a public document but is not as formal as an interim committee report and would be less likely to give the impression that the development was in its final form. The developer would be invited to make a short presentation of draft proposals. The meeting would be open to the public. This allows Members to hear directly from the developer, but with some guidance by officers and an open discussion of the key issues. Ward members would also be invited to attend. The discussion, the briefing paper and a summary of issues discussed would be made available to the public.

- 4.7** The fourth option is considered the most appropriate way to secure the engagement of members at the pre application stage, as it combines most of the benefits of the other three options with regard to providing details regarding the proposals in a more informal format but allowing developers to present their proposals to the Planning Committee. This approach is considered to allow a consistent and transparent procedure for involving members of Planning Committee at pre-application stages of major development proposals, without compromising on issues of probity, openness and accountability.
- 4.8** It is envisaged that this procedure would occur following the close of the Planning Committee and the written briefing would be circulated in advance of the meeting. A third protocol would be drafted addressing elected members involvement at the pre-application stage which would be read in conjunction with the protocols for pre-application advice and liaison meetings. This new procedure would not relate to proposals where an application has been formally submitted as any presentations would take place at the Planning Committee meeting before the determination of the application.

5. People Implications

- 5.1** There are no people implications apart from planning officer time preparing these briefings

6. Financial Implications

- 6.1** There are no financial implications.

7. Risk Analysis

- 7.1** There are no risks for the Council provided that all members taking part are aware of the purpose of the pre-application discussions.

8. Equalities Impact Assessment (EIA)

- 8.1** No issues were identified in relation to the equality impact of this report.

9. Consultation

- 9.1** The Chair and Vice Chair and Legal Services have been consulted on this report.

10. Strategic Assessment

- 10.1** This measure accords with the main strategic priorities of the Council as good pre application advice will allow developers to progress their development proposals and help to facilitate early development on the ground. It will instil confidence in developers and encourage them to invest in the West Dunbartonshire area.

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Date: 22 October 2012

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Appendices:	Developers Protocol: Preapplication advice and Liaison meetings
Background Papers:	Edinburgh City Council: Councillor Involvement in the pre-application stages Planning Committee 2008 Planning Officers Society Practice Guidance Note 3 Councillor Involvement in pre application discussions Planning Advisory Service "Positive Engagement-a guide for planning councillors " The Councillor Code of Conduct Standards Commission Scotland
Wards Affected:	All

APPENDIX 1

Housing, Environmental and Economic Development Services

Facilitating Appropriate Development on Key Development Sites



FACILITATING APPROPRIATE DEVELOPMENT ON KEY DEVELOPMENT SITES

Background

West Dunbartonshire like other Council areas has been severely affected by the economic downturn and as a result a number of its key major development sites remain undeveloped. The Council is committed to taking a more proactive role in order to facilitate appropriate development on key development sites. The West Dunbartonshire Economic Development Strategy 2011-2016 provides an economic vision and strategy for West Dunbartonshire for a five year period. One of the key objectives of the strategy is the delivery of major regeneration sites. Planning and Building Standards together with the Economic Development section have a key role to play in the delivery of the objective.

Organisational Change

In order to achieve the above objective and other objectives of the Council it was recognised that the Planning and Building Standards Section required to be reviewed together with other sections in the Department of Housing, Environmental and Economic Development. The organisational review has been implemented and allows officers and support staff to be more focused on major employment and regeneration projects. A key feature of the organisational review is the implementation of Lead Planning Officers and Lead Building Standards Surveyors. Key responsibilities of these officers will be giving priority to major employment and regeneration projects in terms of pre-application advice, the processing of applications and aftercare support when permissions/warrants have been granted. A formal pre-application service will be offered whereby developers/applicants and agents can discuss their proposals with officers and consultees and receive formal advice on whether the proposal is acceptable or not, and if modifications or amendments could make the proposal more acceptable. This advice will be material in the consideration of any future planning application or building warrant. Further details of the pre-application/warrant service are available in **Protocol 1**.

The second new service; Lead Officers will hold regular liaison meetings with the developers/owners of key development sites. These meetings will be held on a regular basis (every 6-8 weeks) and it will be an opportunity to progress existing permissions, addressing outstanding conditions and issues and developing alternative proposals or modifications, when necessary. The role, function and composition of the liaison meetings are addressed in **Protocol 2** related to liaison meetings.

PROTOCOL 1 - PRE-APPLICATION ADVICE

Purpose

West Dunbartonshire is committed to the delivery of its major development sites. In order to meet the objectives of the Council and the economic strategy it is recognised that encouraging early and effective consultation and engagement will assist in avoiding delays and difficult situations during the planning and building warrant processes.

Major developments can be complex and involve different services both within and outwith the Council. West Dunbartonshire Council recognises the value of co-ordinated pre-application discussions to facilitate a more efficient handling of subsequent applications for major development and encourage early development on the ground. The Planning etc (Scotland) Act 2006 put in place new processes for dealing with major applications regarding public consultation. Separate advice is contained within Development Management General Advice Note 4 on Pre-application consultations ([Advice Note 4](#)). It defines what constitutes a major development and what is required in terms of public consultation.

Role

To provide a forum whereby developers can discuss your proposals with key Council Officers prior to submitting an application and receive formal advice regarding any issues affecting any future planning application or building warrant.

Function

To assist developers in bringing forward high quality development at the earliest possible date.

What you can expect of us:

- Commitment to meet at the earliest date and thereafter, when required;
- Dedicated Lead Planning Officer/Lead Building Standards Surveyor to take the proposal forward from pre-application stage through the application process to decision and beyond;
- Commitment to facilitate joint meetings with other Officers of the Council, and key consultees;
- Formal advice from officers and consultees which will be endorsed by the Team Leader/Manager;
- Proactive and positive attitude to progressing development on the ground;
- Willingness to suggest amendments and modifications to make an application acceptable.

What we expect of you:

- Commitment to provide detailed information and plans regarding proposals and the development site;
- Providing documents and plans for discussion at the earliest opportunity prior to the meeting;
- Openness and transparency regarding your proposals for the site;
- Willingness to consider and take forward suggested amendments and modifications;
- Commitment to achieve quality development, recognising placemaking and good urban design.

Next Step

If you wish to engage in this pre-application or warrant service, submit a pre-application meeting request containing details of your proposal for a major development. The form is attached to this document. We will respond within 3 working days of potential dates for the meeting and we will facilitate the attendance of key consultees. There is no charge for this service.

Table A and **Table B** provides details of the Planning and Building Standards information and advice which we will endeavour to provide regarding a development proposal. This will be followed up in writing within 10 days of the meeting.

Assessment of the Service

An annual report will be produced regarding the effectiveness of this service. This report will be reported to the appropriate Committee in order to keep elected members informed regarding the effectiveness of the service. The report will be circulated to all parties who took part in the pre-application service over the previous year.

Contact

If you require more information about this advice please contact:

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Table A: PLANNING - What Advice Can You Expect To Receive?

Principle of the development	Is it acceptable or not?
Policy	Local plan designation and policies affecting the site and proposed use(s)
Constraints	Details of the constraints affecting the site
Design	Comments on the built form-scale, massing, views, design, materials, patterns
Context	How it relates to the surrounding area
Amenity	The properties affected by the development and what further information is required – noise impact assessment site survey, etc
Transport	Advice on servicing, access, parking standards, cycle parking and public transport linkages. Requirement for Transport Assessment, Green Travel Plan
Studies	What studies would be required- Habitat Study, Ecological Study , Flood Risk Assessment, Drainage Impact Study, Air Quality Study
Open Space	Type, form and nature of the open space and whether play areas will be required
Public Consultation	Advice on who and how to consult in terms of community consultation
Documents and information required	What we will need in terms of plans and documents. Timescales for processing and Committee dates

Table B: BUILDING STANDARDS – What Advice Can You Expect To Receive?

General Advice	General advice on the Building Standards system, legislation, procedures and processes.
Detailed Technical Advice	Consideration of the viability of the proposals when compared to the various sections of the Technical Handbooks; including Fire and Means of Escape, Environment, Safety, Energy & Sustainability.
Certification Options	Information on options for self-certification of the design & construction; including structure, energy and electrical works.
Ground Conditions	Information relating to general ground conditions within the vicinity and potential for remediation works being required in relation to contamination & gassing.
Disability Issues	Advice on compliance with the various building regulation requirements relating to accessibility to, throughout and usability of the proposed development in relation to people with disabilities.
Submission Information	Advice on the plans, information and supporting documents that will require to be submitted with your Building Warrant Application.
Departures & Alternative Design Proposals	Consideration of & advice on any proposed departures from Government guidance clauses and likely acceptability of these. Advice can be given on how to make any design not following guidance clauses acceptable.
Building Technology	Advice on the suitability of innovative materials/products and new building technology against the requirements of the building regulations and associated guidance clauses.
Fire, Means of Escape from Fire and Fire Engineering	Detailed consideration of the proposals against the various fire mandatory standards and guidance clauses, and suggestion on ways to amend non-compliant designs; including initial views on any fire engineering designs & departures.

PROTOCOL 2 - LIAISON MEETINGS

Purpose

West Dunbartonshire Council is committed to the delivery of our major regeneration and employment opportunities. To assist in the delivery of the objective and in order to meet the economic strategy we have put in place a new service for developers and land owners of key development sites whereby they can meet key Planning, Building Standards and the Economic Regeneration Team on a regular basis in order to facilitate and progress development on their sites.

Role

To provide a regular meeting forum whereby developers and landowners can bring forward development proposals and progress existing permissions with key Council Officers and achieve joint working where one or more developer is developing the site.

Function

To assist developers in bringing forward high quality development at the earliest possible date.

What you can expect of us:

- Regular 6-8 week meetings, when required;
- Dedicated Lead Planning Officer for the development site with Team Leader/Manager, Economic Regeneration Co-ordinator, Lead Building Standards Surveyor in attendance when required;
- Commitment to facilitate joint meetings with other Officers of the Council such as Environmental Health, Roads and key consultees, when required;
- Formal advice from Officers and consultees which will be endorsed by the Team Leader/Manager;
- Proactive and positive attitude to progressing development on the ground;
- Willingness to discuss and consider alternative appropriate forms of development in order to achieve development on the ground;
- Commitment that certain information regarding the financial workings of site and other sensitive information are kept confidential;
- Willingness to meet in the developers offices, when appropriate.

What we expect of you:

- Willingness to work with Council Officers and attend regular liaison meetings;
- To be open and transparent regarding your proposals to develop your site;
- Progressive and proactive approach to achieving early and high quality appropriate development and recognising placemaking and good urban design;
- Commitment to provide detailed information and plans regarding proposals and the development site and any relevant financial information, when required;
- Ensuring that all action points are followed up;
- Submit documents and plans for discussion at the earliest opportunity prior to meetings.

Key Development Sites

Since 2007 regular liaison meetings have been held for the Lomondgate development to the west of Dumbarton with Planning and Economic Development officers, the sites main developer - the Walker Group and Strathleven Regeneration Company development. These regular meetings have helped to facilitate development on the Lomondgate site during some challenging economic times. Based on this model, and in order to formalise the arrangement, a similar service will be available to the developers and owners of other major regeneration and employment sites.

Appendix A provides details of the key development sites it is proposed that regular liaison meetings will take place.

A brief description of the site, the owner of the site and developer interest and relevant development plan policies is provided. The list is not exhaustive and other development sites can be added when required.

Assessment of the Liaison Meeting

An annual report will be produced regarding the effectiveness of the liaison meetings and to provide an up to date regarding the progress of development on the site. This report will be reported to the appropriate Committee in order to keep elected members informed regarding the progress of major development sites. The report will be circulated to all parties who took part in the liaison meetings over the previous year.

Assessment of the Service

An annual report will be produced regarding the effectiveness of this service. This report will be reported to the appropriate Committee in order to keep elected members informed regarding the effectiveness of the service. The report will be circulated to all parties who took part in the liaison meetings over the previous year.

Contact

If you require more information about this advice please contact:

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Disclaimer

The Council will make every effort to ensure that the advice given in the pre-application process is as accurate as possible. However any advice given by Council officers for pre-application inquiries does not constitute a formal decision of the Council with regards to any planning application and, whilst it may be a material consideration, cannot be held to bind the Council in its validation or formal determination of a subsequent application.

If an application is subsequently submitted which fails to take on board advice given by officers, then the Council may refuse it without further discussion with the applicant or their agent.

Freedom of Information

There is a possibility that, under the Freedom of Information Act, the Council will be asked to provide information regarding inquiries for pre-application advice and copies of any advice provided or correspondence entered into. This information may only be withheld if its disclosure could prejudice commercial interests, inhibit the free and frank provision of advice or exchange of views during the planning process, or could prejudice the effective conduct of public affairs. Those seeking pre-application advice should provide a covering letter that sets out the reasons why, and for how long, any information relating to the case needs to remain confidential.

It will be for the Council to decide whether information can be treated as exempt from disclosure and the thrust of the legislation is to make information accessible unless there is a pressing reason why not. Each case will be assessed on its merits. The passage of time may remove the need for exemption as information becomes less sensitive. Generally notes and correspondence relating to pre-application discussion will not be treated as confidential once a planning application has been submitted and the case is in the public domain.