

WEST DUNBARTONSHIRE COUNCIL

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

Planning Committee: 2 June 2009

Subject: Local Review Bodies

1. Purpose

- 1.1** To inform the Committee of the requirement to set up a Local Review Body and to seek approval for appropriate arrangements in relation to this.

2. Background

- 2.1** As part of the Scottish Government's proposals for modernisation of the planning system, the Town and Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations 2008 require planning authorities to prepare a new scheme of delegation (see earlier report on this agenda) and to make provision for setting up and implementing a Local Review Body (LRB).
- 2.2** The new scheme of delegation will enable the majority of decisions on local planning applications to be determined by officers, as is currently the case. The new scheme of delegation will designate the "appointed officer" to whom the power is delegated as the Section Head Development Management.
- 2.3** Prior to the new legislation coming into force applicants who are aggrieved at a decision to refuse or at a condition(s) imposed on any consent have a right of appeal to the Scottish Ministers (who in turn delegate the majority of appeal decisions to Reporters). Following implementation of the new legislation on 3 August 2009, applicants aggrieved at a decision to refuse or at a condition(s) imposed on any consent for an application determined by the appointed officer will be able to seek to have the decision reviewed by a Local Review Body (LRB) set up for that purpose. Applicants will also be able to seek a review in cases where their application has not been determined by the appointed officer within the prescribed two month period. For applications determined by the Council and the Planning Committee or for development not covered by the new scheme of delegation for local developments the route of appeal will remain as at present, ie through appeal to the Scottish Ministers. This will include appeals relating to applications for Listed Building Consent, Conservation Area Consent, Advertisement Consent and Hazardous Substance Consent.
- 2.4** The remainder of this report sets out the main issues involved in implementing this new requirement, the main aim of which is to ensure that applications for

local development are determined locally and not by a Scottish Government representative.

3. Main Issues

Membership

- 3.1** The role of the LRB is to review the delegated decision. The LRB is to act as a Committee of the Council and, therefore, the agreement of full Council is required to set it up. All meetings of the LRB are to be held in public and the body is to be made up of a minimum of 3 Members. There is no upper limit to the membership. Given that the LRB is only to deal with planning matters it makes sense that membership is drawn from the Planning Committee. It is suggested that six nominations are sought from the Planning Committee which should ensure that the minimum requirement of 3 members is always achieved. Given the specialised role of the chair in leading structured discussions at hearings around the planning issues, it is recommended that the LRB be allowed to appoint its own chair.

Frequency of Meetings

- 3.2** A request for a review of a delegated decision by an applicant has to be submitted within three months of the date of the delegated decision. In cases where the applicant is seeking a review when the planning application has not been determined within the statutory two month period the LRB has to review the case within two further months.
- 3.3** It is important, in any case, that the LRB deals with any reviews in an efficient, open and transparent way. To that end it is recommended that a monthly date of 2pm on the first Thursday of the month (except July) be set. Timetables for receipt of any necessary documentation and issuing of LRB papers would be set around this date.

Review Process

- 3.4** The focus of the review should be on material which was before the appointed officer during the planning process, including any delegated report. All matters that the applicant intends to raise in the review should accompany the notice of review, including all documents, material and evidence. Only in exceptional circumstances will the applicant be able to submit anything new which was not considered by the appointed officer in determining the application.
- 3.5** The notice of review has to be made known to consultees and people who made representations on the application and a copy of the review documents has to be available for public inspection.
- 3.6** The Scottish Government anticipates that the majority of cases will be determined quickly by the LRB on the basis of written submissions and this may be how members of the LRB wish to proceed with the more straightforward cases. There is provision, however, in the legislation for the LRB to seek further information and a combination of procedures can be

employed using written submissions, hearings and site visits (accompanied or unaccompanied). This is very much in line with current Planning Committee practice and ensures that members are fully acquainted with all facets of the case. Guidance will be offered to the LRB in relation to each case in order that informed decisions can be made in the most efficient way.

- 3.7** Hearings should be conducted under the rules set out in the Regulations. The intention is that they should take the form of a structured discussion, led by the chair, only to hear matters set out in advance by the LRB. Parties may be represented but hearings are not intended to be adversarial and cross-examination should not be allowed unless the LRB considers it necessary to ensure a thorough examination of the issues.

Advice and Guidance

- 3.8** It is important that the LRB provides applicants with a fair hearing and that reviews are, and are seen to be, independent from the decision taken by the appointed officer under delegated authority. The administration of LRB meetings will be carried out by Committee Administration services. Procedural and legal guidance will be available through a senior solicitor. Planning guidance will be offered by the Planning Services Manager as he is not directly involved in the processing and determination of delegated applications.

Decision and Decision Letter

- 3.9** In carrying out a review it is important that the LRB maintains high standards, that those requesting a review are confident that their case will be dealt with fairly and that clear reasons explaining the decision of the review body are made available. The LRB has full powers to uphold, reverse or vary a determination. The decision letter must set out the considerations taken into account by the LRB in reaching its decision and will be drafted on behalf of the LRB by the legal advisor with assistance on planning matters from the Planning Services Manager. A full decision letter is required in all cases and there is no further appeal although the validity of the decision can be challenged in an application to the Court of Session.

Training

- 3.10** Participation in the LRB is important and from the above it will be clear that it is important for members of the LRB to have appropriate training prior to taking up their new role. There are new procedural issues, including the conduct of hearings, and the intention is to offer training to prospective members of the LRB. The role of the chair in leading the structured discussion at hearings will require specific training.

4. Personnel Issues

- 4.1** The new requirements and procedures make additional demands on staff in Planning, Legal and Administration as well as on elected members who serve on the LRB.

5. Financial Implications

- 5.1** No additional funding is being made available from central government to cover the additional duties and responsibilities which will have to be provided from within existing budgets. There has been no indication that fees for planning applications will be raised.

6. Risk Analysis

- 6.1** There is a risk of legal challenge if proper procedures are not put in place to ensure that the business of the LRB is conducted in a fair and open way.

7. Conclusions and Officers' Recommendations

- 7.1** The new legislation introduces significant changes to the planning system. Local Review Bodies give the opportunity for a review of decisions locally. The principles behind Local Review Bodies should therefore be welcomed and this report has sought to set out the main issues for consideration. Member training will be provided and detailed procedural guidance notes for all parties will be prepared.

- 7.2** The following recommendations are made to ensure that the new Local Review Body is properly established and can operate effectively and efficiently. Because the LRB is a new Committee the recommendations will have to be referred to Council for approval.

- 7.3** It is recommended that the Committee agrees to remit to the Council the following:

- (a) to set up a Local Review Body, to nominate 6 members to serve on it and to allow the LRB to appoint its own chair, given the specialised role of the chair in leading structured discussions at hearings;
- (b) to agree that meetings of the Local Review Body will be scheduled for 2pm on the first Thursday of each month (except July);
- (c) to note that working procedures are for the Local Review Body to determine and that an appropriate paper will be presented to an early meeting of the body; and
- (d) to agree that members of the Local Review Body undergo appropriate training before participating in meetings.

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Appendices: none

Background Papers: Draft Circular and the Town and Country Planning
(Schemes of Delegation and Local Review
Procedure) (Scotland) Regulations 2008

Wards Affected: All