

WEST DUNBARTONSHIRE COUNCIL

Report by the Executive Director of Corporate Services

Council : 24 June 2009

Subject: Modernisation of the Planning System – Changes required to Standing Orders

1. Purpose

1.1 The Planning etc (Scotland) Act introduces extensive changes to the planning system designed to modernise it. Some of these changes require the Council to amend its Standing Orders to:-

- Create a local Review Body which will be a Committee of the Council.
- Amend the remit of the Planning Committee to provide that certain applications must be determined by the Council.
- To produce a new Scheme of Delegation in relation to planning matters, and forward this to the Scottish Ministers for their approval.

1.2 As Council amended Parts 1 and 2 of Standing Orders in February 2009 it will be necessary to suspend Standing Orders to amend the remit of the Planning Committee. The other two changes will not require the suspension of Standing Orders. However all three changes are required to conform to the Council's statutory duties under the 2006 Act.

2. Background

2.1 The background to the proposed changes is set out in two reports to the Planning Committee of 2 June 2009 dealing with (a) Local Review Bodies and (b) Scheme of Delegation and Remit of Planning Committee. Copies of these reports, the recommendations of which were approved, with minor amendments by Planning Committee on 2 June 2009 are appended hereto at Appendix 1 and 2.

2.2 The new Act has introduced a hierarchy of planning applications being:-

- National – these are issues of national importance identified by the National Planning Framework and require to be determined by the Scottish Government.
- Major Developments – these are specified in regulations and include, for example, developments for 50 or more dwellings and retail, commercial and industrial developments over specified sizes. Certain

classes of major development which are detailed by statutory instrument require to be the subject of pre-determination hearings and can only be determined by Council. These classes are national developments and major developments which are significantly contrary to the local development plan and this requirement will be relatively rare.

- Local Developments – these will either be determined by the Planning Committee or by officers under a Scheme of Delegation. Each authority is required to prepare a Scheme of Delegation and submit this to Scottish Ministers by 30 June 2009. For developments which are granted under Delegated Powers appeal will no longer be to the Scottish Ministers. Instead appeal will be to a new Committee of the Council, called a Local Review Body.
- Permitted Development – final regulations are awaited which are expected to expand the types of development which are permitted development not requiring a planning application.

3. Main Issues

3.1 The following changes require amendments to the Council's Standing Orders:

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Local Review Body – this is required to be a Committee of the Authority, separate from the Planning Committee, and will review decisions made by officers under the Scheme of Delegation. It replaces the present procedure of appeals to Scottish Ministers which are usually determined by Reporters from the Directorate for Planning and Environmental Appeals (DPEA). It will deal with delegated decisions to refuse applications, to grant subject to conditions or failure to determine applications within two months. The core requirements for the Review Body are set out in the Town and Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations 2008. This provides that the Local Review Body is to be a committee of the Council (not a sub-committee) comprising of at least three Members of the authority. It is recommended that the following changes to Standing Orders are made:-

- i) Creation of Local Review Body as a new committee of the Council.
- ii) Members of the Local Review Body will require expertise in determining planning applications in order to undertake reviews. Accordingly it is recommended that membership of the Local Review Body is drawn from the membership of the Planning Committee. It is therefore recommended that membership will comprise all Members of the Planning Committee.
- iii) Chair – the role of Chair will be a particularly demanding one as the intention of the legislation is that a review will be a focussed

discussion, not dissimilar to the Hearing procedure undertaken by DPEA Reporters. This will focus on a note of planning issues prepared earlier in the review process. In these circumstances, and given the non-political nature of the Local Review Body it is recommended that the Local Review Body is allowed to appoint its own Chair.

- iv) The remit of the Local Review Body will be to act as Local Review Body in terms of the Planning (Scotland) Act 1997 as amended by the Planning etc (Scotland) Act 2006 and in particular to review cases where a person appointed by the Council under a Scheme of Delegation to determine an application for planning permission for a development within the category of Local Developments or any application for consent, agreement or approval, required by a condition imposed on a grant of planning permission for a development within that category has:-
 - a) Refused an application for planning permission or for consent, agreement or approval,
 - b) Grants it subject to conditions, or
 - c) Has not determined it within such period as may be prescribed by regulations or a development order.
- v) The Local Review Body will have full delegated powers to implement its functions, remits and responsibilities.

A draft of the proposed remit of the Local Review Body is contained at Appendix 3.

It is also recommended that Council agrees that all members require to be trained in the work of the Local Review Body before taking their places in the body.

- 3.2** Remit of the Planning Committee – as detailed in Section 2 of this report, certain applications can no longer be determined by the Planning Committee must now be determined by Council. Accordingly the remit of the Planning Committee will require to be changed to execute these.

In considering such applications it is important that Members have expertise and training in planning issues. For this reason it is recommended that where Council require to determine applications, that these applications are previously submitted to the Planning Committee for their consideration. The Planning Committee would not have powers to determine such application but would make recommendations to Council.

The following changes to Standing Orders are proposed:-

- Standing Orders Part 2 Appendix 3(h), paragraph 2.2 – amend as follows:-

- 2.2 The Planning Committee will have full delegated powers to implement its functions, remits and responsibilities as detailed above with the exception of the following:-

Applications for planning permission for development of a class mentioned in Section 38A(1) of the Town and Country Planning (Scotland) Act 1997.

In relation to these matters the Planning Committee does not have delegated powers

- 3.3 Scheme of Delegation – the new Scheme of Delegation requires to be submitted to Scottish Ministers by 30 June 2009. Thereafter it needs to be approved by Scottish Ministers prior to commencement of the new planning system on 3 August 2009. The proposed Scheme of Delegation, as recommended by the Planning Committee is contained at Appendix 4. There are no significant changes compared to the present Scheme of Delegation.
- 3.4 The Scheme of Delegation would replace Section 4.1 of the existing Scheme of Delegation to the Executive Director of Housing, Environmental and Economic Development.
- 3.5 It is likely that amendments proposed by the Scottish Ministers to the Scheme of Delegation will be made during the summer recess. It is recommended that authority is given to the Chief Executive in consultation with the Chair of the Planning Committee, whom failing the Vice Chair of the Planning Committee to agree any changes to the Scheme of Delegation arising out of the comments of the Scottish Ministers. This would allow the Scheme of Delegation to be in place for the commencement of the new Act.

4. Personnel Issues

- 4.1 The creation of the Local Review Body will create additional work for Committee Services, for the Planning Services Manager who will provide it with planning advice and for its Legal Advisor who will provide it with legal and procedural advice. It will also create more work for members of the committee and a requirement for training.

5. Financial Implications

- 5.1 Whether any further resources are required to support the Local Review Body will depend on the workload of the new body, which is dependent on the number of applications made, and the number of review requests. This will be the subject of on-going monitoring.

6. Risk Analysis

- 6.1** The Council is obliged by the terms of the Planning etc (Scotland) Act 2006 to put in place these changes and failure to do so will result in the Council breaching its statutory requirements.

7. Conclusions and Officers Recommendations

- 7.1** The creation of a new Local Review Body, changes to the remit of the Planning Committee and the creation of a new Scheme of Delegation for the Scottish Ministers approval are statutory requirements resulting from the Planning etc (Scotland) Act 2006.

The recommendations are that:-

- The Council create a new committee to be known the Local Review Body, the remit of which is set out in appendix 3 hereof.
- Membership of the Local review Body is the same as membership of the Planning Committee.
- The Council decline to nominate a Chairman of the committee but allow the new committee to appoint its own chair.

- 7.2** Remit of the Planning Committee – Standing Orders Part 2 appendix 3 (h) paragraph 2.2 is amended as follows:-

“The Planning Committee will have full delegated powers to implement its functions, remits and responsibilities as detailed above with the exception of the following:-

- Applications for planning permission for development of a class mentioned in Section 38A(1) of the Town and Country Planning (Scotland) Act 1997
- In relation to these matters the Planning Committee does not have delegated powers”

- 7.3** Scheme of Delegation – That Council approve the Scheme of Delegation in relation to planning matters detailed at appendix 4 hereof. Council is further recommended to give authority to the Chief Executive in consultation with the Chair of the Planning Committee, whom failing the Vice Chair of the Planning Committee to agree any changes to the Scheme of Delegation arising out of the comments of the Scottish Ministers.

Joyce White
Executive Director of Corporate Services

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Appendices: Appendix 1 – Report to Planning Committee of 2/6/09 – Local Review Bodies
Appendix 2 – Report to Planning Committee of 2/6/09 – Scheme of Delegation and Remit of the Planning Committee
Appendix 3 – Proposed Remit of the Local Review Body
Appendix 4 – Proposed Scheme of Delegation

Background Papers:

Wards Affected: ALL

Appendix 3 – Proposed Remit of the Local Review Body

1. Membership/Arrangements for meetings

- 1.1 Membership of the Local Review Body will comprise the members of the Planning Committee.
- 1.2 The quorum of the Local Review Body will be 3 elected members.
- 1.3 The Local Review Body will meet once per month.

2. Role and Remit

2.1 General

The remit of the Local Review Body will be to:-

Act as Local Review Body in terms of the Town and Country Planning (Scotland) Act 1997 as amended by the Planning etc (Scotland) Act 2006 and in particular to review cases where a person appointed by the Council under a Scheme of Delegation to determine an application for planning permission for a development within the category of local developments or any applications for consent, agreement or approval, required by a condition imposed on that grant of planning permission for a development within that category has:-

- a) refused an application for planning permission or for consent, agreement or approval,
- b) grants it subject to conditions, or
- c) has not determined it within such period as prescribed by regulations or a development order.

2.2 Delegated Powers

The Local Review Body will have full delegated powers to implement its functions, remits and responsibilities as detailed above.

Appendix 4 – Proposed Scheme of Delegation

1 Appointed Officer - The Executive Director of Housing, Environment and Economic Development is responsible for Planning but the Section Head of Development Management or such properly qualified or experienced Planning Officer appointed by them is appointed under section 43 A (1) of the Town and Country Planning (Scotland) Act 1997 to:

- a) determine all applications for permission in respect of development within the category of local development, changes of use and listed building applications, conservation area consents, advertisement applications, hazardous substances applications, Tree Preservation Order applications.
- b) make decisions upon or implement as required provisional Tree Preservation Orders; prior approval and notification applications, certificates of existing/proposed lawful use or development, stopping up orders, screening and scoping options for Environmental Impact Assessment or pre-application consultation, enforcement actions, refusals of applications on the basis of insufficient information and agreements under Section 75 of the 1997 Act ancillary to applications otherwise falling with the remit of this scheme.
- c) all applications to comply with the terms of a condition imposed on a consent for any development; and
- d) all applications for non-material variations to planning permissions and related consents (including where the original application was subject to the exceptions outlined in paragraphs 2).

2 Exceptions - Delegated Powers shall not apply where:

- a) the application has been made by or on behalf of West Dunbartonshire Council (the planning authority);
- b) the application has been made by or on behalf of an elected member of the Council, a member of the Senior Management Team of the Council, or a member of staff directly involved with the Council's Planning Service;
- c) the application relates to land in the ownership of the Council, or in respect of which the Council has a financial interest;
- d) the application relates to development within the categories of national or major development;
- e) the application is for local development which would be a significant departure from the statutory development plan, from other national or local policy, or from the emerging development plan;

- f) the application is subject to a substantial body of objection where the appointed officer is minded to grant permission;
- g) the application has been the subject of a formal objection by a statutory consultee, from a Community Council, from a neighbouring planning authority, or from another Council Service; or
- h) the application, in the opinion of the appointed officer, raises new or significant issues meriting determination at Planning Committee

Proviso:

Under section 43A of the 2006 Planning Act if it is decided that an application which would otherwise fall to be determined under delegated powers be determined by Committee the applicant shall be provided with a statement giving reasons for why the application is to be determined by Committee.

Footnote:

1. National, major or local development are categorised as development belonging to the categories described in the Town and Country Planning (Hierarchy of Developments) (Scotland) Regulations 2009.

CORPORATE SERVICES DEPARTMENT

MEETING: Council
DATE OF MEETING: 24 June 2009
REPORT TITLE: Modernisation of the Planning System -
Changes required to Standing Orders
AUTHOR: Andrew Fraser

Chief Officers Consulted (please tick):

Corporate Services Department		Date
• Legal Services	X	21/05/09
• Human Resources & OD		
• Finance & ICT		
Educational Services		
Social Work and Health		
Housing, Environmental & Economic Development		
Other (e.g. Community Planning) please state:		

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I confirm that the attached report has been proof-read by me personally, has been discussed with the appropriate Director/Heads of Service and is, in my opinion, of a quality suitable for submission to Council.

Signature: 

Date: 21/05/09

WEST DUNBARTONSHIRE COUNCIL

COUNCIL – 24 June 2009

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the remit of the Planning Committee, albeit that the other 2 changes will not require suspension of standing orders. However all 3 changes are required to conform to the Council's statutory duties under the 2006 Act

The recommendations are:-

- The Council creates a new committee to be known as the Local Review Body, the remit of which is set out in appendix 3 of the report.
- Membership of the Local Review Body is drawn from the existing membership of the Planning Committee.
- The Council decline to nominate a Chairman of the committee but allow the new committee to appoint its own Chair (this is in light of the considerable workload for the new Chair and the non political nature of the committee)
- To change the remit of the Planning Committee to provide that certain applications must now be determined by full Council, albeit that the Planning Committee would previously consider these and make recommendations.
- To approve a new Scheme of Delegation in relation to planning matters and forward this to the Scottish Ministers for their approval.

- To give authority to the Chief Executive in consultation with the Chair of the Planning Committee, whom failing the Vice Chair of the Planning Committee to agree any changes to the Scheme of Delegation arising out of the comments of the Scottish Ministers.