

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 officer's 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 officer's 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

Officer's 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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Appendices: Developers Protocol: Pre-application 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