

REPORT TO: CITY DEVELOPMENT COMMITTEE - 25 JUNE 2012

REPORT ON: CONTINUING MODERNISATION OF THE PLANNING PROCESS

REPORT BY: DIRECTOR OF CITY DEVELOPMENT

REPORT NO: 181-2012

1 PURPOSE OF REPORT

1.1 The purpose of this report is to advise members of the Scottish Government's latest consultation in the continuing modernisation for Planning in Scotland process. The detailed responses to the specific questions asked in the Consultation are contained in the Appendix to this Report

2 RECOMMENDATION

2.1 It is recommended that the Committee

- a Agrees the Council's suggested responses to the questions asked in the Consultation Documents, and;
- b Agrees to forward these comments to the Scottish Government as Dundee City Council's formal response.

3 FINANCIAL IMPLICATIONS

3.1 There are no Financial Implications for the Council associated with this Report.

4 BACKGROUND

4.1 The Scottish Government announced on 28 March 2012 that it intended to consult on a number of proposals to modify the planning system. The Planning Reform Next Steps Document summarises a package of proposals which are intended to help the planning system reach its potential in supporting economic recovery. The emphasis is on non-legislative measures but it is indicated that legislative changes will be brought forward if these are considered necessary.

4.2 Five Consultation Documents have therefore been issued as follows:-

- Fees for Planning Applications
- Development Delivery
- Development Plan Examinations
- Miscellaneous Amendments to the Planning System
- General Permitted Development Order

4.3 Dundee City Council's response to these consultation documents is contained in Appendix 1 and can be briefly summarised as follows:

- Fees for Planning Applications

Seeks to increase planning application fees to address the gap between the expenditure on processing applications and the income from fees and to ensure that the increase in fees is linked to improvements in performance. The Council is

broadly supportive of the proposals which should ensure that fees generally reflect the resource required to provide an effective service.

- Development Delivery

Highlights the difficulty in providing the appropriate infrastructure for new development in the current economic climate, suggests ways the Scottish Government may be able to assist Local Authorities to deliver these and seeks further, possibly novel, suggestions for delivery from Consultees. Dundee City Council has already embarked on some of the methods suggested and welcomes the SG's support to

- Development Plan Examinations

Identifies some of the problems currently being experienced, puts forward suggestions for improvement and seeks consultees opinions on how to further improve the process. Dundee City Council, in a previous consultation exercise questioned the wisdom of making Inquiry Reporter's recommendations binding. It is supportive of measures to substantially reduce the time and costs of this process including some radical suggestions.

- Miscellaneous Amendments to the Planning System

Introduces amendments/refinements to the modernised planning system which was introduced in 2009 and reflects views expressed at a review of the system in 2010. The main changes relate to pre application consultation, neighbour notification and advertisement of applications, delegation of Council interest applications and amendments to Review and Appeal procedures. The Council is broadly supportive of the proposals.

- General Permitted Development Order

Seeks to remove the requirement to apply for planning permission for a restricted range of non householder development broadly in line with the 2011 consultation on this topic (Report 283-2011 refers). The Council is broadly supportive of the current proposals (which take on board its previous comments) but would point out that the restrictions on permitted development will mean that there will be no significant reduction in the number of applications submitted.

As the closing date for these consultations was Friday June 22, 2012, Draft comments have already been forwarded to the Scottish Government.

5 POLICY IMPLICATIONS

- 5.1 This Report has been screened for any policy implications in respect of Sustainability, Strategic Environmental Assessment, Anti-Poverty, Equality Impact Assessment and Risk Management. There are no major issues.

6 CONSULTATIONS

- 6.1 The Chief Executive, the Director of Corporate Services and Head of Democratic and Legal Services have been consulted and are in agreement with the contents of this report.

7 BACKGROUND PAPERS

- 7.1 Development Plan Examinations, Consultation 2012. March 2012. The Scottish Government
- 7.2 Consultation on Miscellaneous Amendments to the Planning System - 2012, March 2012. The Scottish Government.
- 7.3 Development Delivery Consultation 2012, March 2012. The Scottish Government.
- 7.4 Consultation on the General Permitted Development Amendment Order 2012. The Scottish Government.
- 7.5 Planning Fees Consultation 2012. The Scottish Government

Mike Galloway
Director of City Development

Gregor Hamilton
Head of Planning

GH/IJ/ES

13 June 2012

Dundee City Council
Dundee House
Dundee

APPENDIX 1**CONSULTATION ON FEES FOR PLANNING APPLICATIONS 2012****CONSULTATION QUESTIONS**

Question 1: Are there any costs or benefits not identified in the draft Business & Regulatory Impact Assessment (BRIA)?

We are not aware of any

Question 2: Do you have any information or can you suggest sources of relevant information on the costs and/or benefits detailed in the BRIA at Section C?

No

Question 3: We would appreciate your assessment of the potential equalities impact our proposals may have on different sectors of the population. A partial Equality Impact Assessment (EQIA) is attached to this consultation at Section D, for your comment and feedback.

No comment

Question 4: Do you consider that linking fees to stages within processing agreements is a good or bad idea? What should the second trigger payment be?

We are not aware that the planning fee is a significant barrier to development (we suspect that the planning fee is a very small portion of the cost of submitting a major application). If staged fees were considered to be appropriate, then the first payment should be for 75% of the fee and the trigger point for the second payment should be sufficiently in advance of decision making to prevent abandonment of proposals at the last minute to avoid paying the balance of the fee.

Question 5: Do you agree or disagree with the proposal that where applications are required because permitted development rights for dwellings in conservation are restricted, then a reduced fee should be payable?

Agree X Disagree

Question 6: Do you agree or disagree with the proposal that there should be a separate fee for renewals of planning permission?

Agree X Disagree

Question 7: Do you agree or disagree that the new fee is set at an appropriate level?

Agree X Disagree

Question 8: Do you agree or disagree with the proposal that the fee should increase on an annual basis?

Agree X Disagree

Question 9: Is using site area the best method of calculating fees for windfarms of more than 2 turbines? If not, could you suggest an alternative? In your response please provide any evidence that supports your view.

Yes No

As an urban authority we do not receive windfarm applications but suggest that a fee linked to output might be more appropriate

Question 10: Please list any types of developments not included within the proposed categories that you consider should be.

We consider that there should be a separate fee structure for Approval of Matters Specified in Conditions (AMSC) applications which could be linked to the number and type of condition being considered. We also consider that the fee for free standing telecom masts does not cover the cost of processing applications and should be increased.

Question 11: We would welcome any other views or comments you may have on the contents and provisions on the new regulations.

We consider that it is not reasonable to remove the fee for Certificates of Lawfulness for proposed householder developments but the fee could be kept at £80 if necessary. Processing these applications is costly and involves a site visit and sometimes gathering extensive information. We estimate that the number of applications would increase substantially if no fee was levied. If applicants wish to ascertain if their proposals need permission we can give informal verbal advice but consider that it is not unreasonable to charge a small fee for the formal process of a Certificate of Lawfulness application.

We consider that there should be a fee for applications to modify or discharge S75 Obligations. These applications are costly to process and are referred to Committee under the Council's Scheme of Delegation.

Finally, whilst we welcome most of the proposed changes to the fee structure, we would point out that the changes will not lead to a substantial increase in fee income for the Council (the large increase to the maximum fee may give the impression that there will be a large increase in fees but the Council rarely receives applications that would come even close to the maximum fee).

CONSULTATION ON MISCELLANEOUS AMENDMENTS TO THE PLANNING SYSTEM 2012

CONSULTATION QUESTIONS

Question 1: Are there any costs or benefits not identified in the draft BRIA?

We are not aware of any

Question 2: Do you have any information or can you suggest sources of relevant information on the costs and/or benefits detailed in the BRIA at Annex VI?

No

Question 3: We would appreciate your assessment of the potential equalities impact our proposals may have on different sectors of the population. A partial EQIA is attached to this consultation at Annex VII for your comment and feedback.

No comment

Question 4: Do you agree or disagree with the proposed removal of Pre Application Consultation (PAC) requirements in relation to Section 42 Applications? Please explain why.

Agree Disagree

The requirement for PAC for S42 applications is disproportionate and does not add to the process

Question 5: Do you think the proposed changes to advertising requirements are appropriate or inappropriate?

Appropriate Inappropriate

Please give reasons for your answer.

The current requirements to advertise are excessive and in particular place an unacceptable financial burden on householders.

Question 6: Are there further changes to requirements or the use of advertising in planning which should be considered?

Yes No

Please give reasons and evidence to support your answer.

We strongly urge that the requirement to advertise applications that are departures from the Development Plan should also be removed. It is often very late in the assessment of an application that this decision can be made. Since there is no requirement to give the reason for the advertisement it is considered that the advert serves little purpose and can lead to significant delays in the determination of applications. Finally we question the value

of Newspaper advertisements generally given the requirements for neighbour notification, the use of the Public Information Notices Scotland (PINS) system and increasing use of the Council's website to view applications.

Question 7: Do you agree or disagree with the proposed removal of the restrictions on the delegation of planning authority interest cases?

Agree X Disagree

If you disagree, please give your reasons.

The mandatory requirement to refer very minor Council applications to Committee does not add value to the process, can cause delay and is not best use of Committee time.

Question 8: This section proposes a change to allow an extended period for the determination of an application to be agreed upon between the applicant and appointed person where local review procedures would apply. Do you agree or disagree with this change?

Agree X Disagree

Please explain your view.

It is logical that if the applicant and the Council consider that the timescale for determining a local application should be extended then there should be provision for this.

Question 9: Do you agree or disagree with this change to the time period on determining local reviews sought on the grounds of non-determination?

Agree X Disagree

Please explain your view.

It is very difficult for a Local Review to be determined within a 2 month period.

Question 10: Do you agree or disagree with this change to the Appeals Regulations on procedure regarding minor additional information?

Agree X Disagree

There is no need for extensive circulation for minor information requests

Question 11: Do you think the current requirements on applications for approval of matters specified in conditions on planning permission in principle are generally excessive?

Yes X No

Please explain your views, citing examples as appropriate.

Those conditions which do not go to the heart of the consent should not be subject to the full procedures.

Question 12: Are there any issues in this consultation not covered by a specific question or any other aspects of the current planning legislation on which you would like to comment? If so, please elaborate.

1. PAC - The mandatory requirement for a 12 week period for PAC should be reviewed, allowing Councils a discretion as to the appropriate period on a case by case basis subject to a minimum requirement of 4 weeks. The current system is excessive in some cases and encourages developers to split sites to avoid PAC. In all cases there should be an end stop date when a proposal which has been the subject of PAC must be submitted as a planning application
2. Householder Neighbour Notification -The extent of neighbour notification required for householder development in tenemental areas is excessive and consideration should be given to a distance of 10 metres in all cases.

CONSULTATION ON DEVELOPMENT DELIVERY

CONSULTATION QUESTIONS

Consultation question 1a: Do you think the current planning system supports or hinders the delivery of development and infrastructure?

- Strongly Supports**
- Mostly supports**
- Does not influence**
- Mostly hinders**
- Strongly hinders**
- Don't know**

Please explain why you have chosen your above answer.

The Planning System itself strongly supports development, while giving careful consideration to all its implications. Until now this has depended largely on the development industry, mostly through the use of Section 75 Agreements, to provide the accompanying infrastructure. The changed situation with the economic downturn and the ability to appeal Section 75 Obligations means that this is not dependable any more.

Consultation question 1b: What additional measures could be taken to support development and infrastructure delivery?

In the current circumstances, the Local Authority represents the most reliable body for the delivery of infrastructure. A guaranteed method of ensuring the ability for recouping the expenditure on infrastructure expenditure by the Authority would be of significant assistance.

Consultation question 2: How well do you think the process of seeking developer contributions through Section 75 planning obligations is functioning?

- Process functions well
- Process requires some MINOR changes
- Process requires some MAJOR changes
- Section 75 Planning Obligations is not an appropriate process for securing developer contributions

Please explain why you have chosen your above answer and identify what can be done to alleviate any issues raised?

The process is still useful, however the ability to appeal Section 75 Planning Obligations has introduced an element of uncertainty. Where a developer/s have agreed costs there should still be an ability to enforce compliance.

Consultation question 3: What additional measures or support could the Scottish Government undertake or provide to facilitate the provision of development and infrastructure within the current legislative framework?

As 1b.

Consultation question 4: What innovative approaches are you aware of in facilitating development and infrastructure delivery and what are your views on their effectiveness?

Have in the past made use of Prudential Borrowing and found this to be effective. More publicity for schemes could be helpful.

Consultation question 5: Would you be supportive of the introduction of a Development Charge system in Scotland to assist in the delivery of development and infrastructure?

YES

No

Please explain why you have chosen your above answer.

This would allow for the reassurances sought at 1b.

Consultation question 6: Do you have any information or can you suggest sources of relevant information on the costs and/or benefits to support the preparation of a BRIA? (Business and Regulatory Impact Assessment).

No comment.

Consultation question 7: We would appreciate your assessment of the potential equalities impact these issues may have on different sectors of the population.

No comment.

CONSULTATION ON DEVELOPMENT PLAN EXAMINATIONS

CONSULTATION QUESTIONS

Question 1: How well do you think the examination process is functioning and should any changes be made to the process at this stage?

Dundee has not had any direct experience of the examination process as yet, however in previous consultation on the new procedures concern was expressed at the proposal to make Reporters findings binding. This concerns still held, particularly with regard to experience now gained from elsewhere..

Question 2: If you think changes are needed which option do you support, and why?

With regard to the suggested changes we would strongly support the approach outlined in Option 2. In the past when this was the case, clear reasons were provided for any departures and these were almost always accepted locally.

The current situation whereby Reporters hear the arguments for additional and allocations for new housing and feel compelled to make recommendations for additions the supply as a result is felt to be entirely unacceptable and wholly contrary to the principles of local democracy.

Option 3 may have some merits but as it makes clear may not actually result in any time saving and in the process be unsatisfactory for all parties. If a radical approach is to be taken and real time savings made as a result, then Option 4 should be given serious consideration.

Question 3: Are there other ways in which we might reduce the period taken to complete the plan-making process without removing stakeholder confidence?

See above.

Question 4: Do you think any of the options would have an impact on particular sections of Scottish society?

All sections of Scottish Society should benefit from a more efficient plan making process, it is not felt that some of the even more radical suggestions would particularly disadvantage any sections of the community, indeed the current system itself raises issues of local democracy.

CONSULTATION ON GENERAL PERMITTED DEVELOPMENT ORDER

CONSULTATION QUESTIONS

Q1. Are there any costs or benefits not identified in the draft BRIA?

We are not aware of any.

Q2. Do you have any information or can you suggest sources of relevant information on the costs and/or benefits detailed in the BRIA?

No

Q3. We would appreciate your assessment of the potential equalities impact our proposals may have on different sectors of the population. A partial EQIA is attached to this consultation at Annex 3 for your comment and feedback.

No comment

Part 1. Amendments to existing classes of permitted development.

Q4. Should we retain class 26? If class 26 should be retained are there any changes to the controls that would strike a better balance?

Yes No

We have not dealt with any proposals under this procedure

Q5. With regard to the proposed amendments to existing classes;

(a) Is the granting of permission, and the restrictions and conditions, clear?

Yes No

(b) Is the granting of permission, and the restrictions and conditions, reasonable?

Yes No

(c) Will the controls strike the right balance between removing unnecessary planning applications and protecting amenity?

Yes No

(d) Please identify and explain any changes to the controls that you think would strike a better balance?

Class 33 - We feel that the Local Authority exemption should be increased to £500,000 to reflect the fact that some very minor uncontroversial development proposals can often cost between £250,000-£500,000. We also consider that changes of use not involving bad neighbour development should be permitted development. In all cases Class 33 should not require to be "under any enactment".

In general for changes to existing classes and proposed new classes, the extent of permitted development will be restricted by the fact that many proposals will be within conservation areas.

Part 2. Proposed new classes of permitted development.**Q6. With regard to the proposed new classes 7E and 7F;**

- (a) Is the granting of permission, and the restrictions and conditions, clear?
Yes X No
- (b) Is the granting of permission, and the restrictions and conditions, reasonable?
Yes X No
- (c) Will the controls strike the right balance between removing unnecessary planning applications and protecting amenity?
Yes X No
- (d) Please identify and explain any changes to the controls that you think would strike a better balance?

There may be benefits in considering restrictions for free standing development within the curtilage of a listed building.

Q7. With regard to the proposed new classes 7A and 7B;

- (a) Is the granting of permission, and the restrictions and conditions, clear?
Yes X No
- (b) Is the granting of permission, and the restrictions and conditions, reasonable?
Yes X No
- (c) Will the controls strike the right balance between removing unnecessary planning applications and protecting amenity?
Yes X No
- (d) Please identify and explain any changes to the controls that you think would strike a better balance?

It is unlikely that many proposals will be permitted development (other than in larger retail park units) due to the 10 metre to boundary rule.

Q8. With regard to the proposed new class 7C;

- (a) Is the granting of permission, and the restrictions and conditions, clear?
Yes X No
- (b) Is the granting of permission, and the restrictions and conditions, reasonable?
Yes X No
- (c) Will the controls strike the right balance between removing unnecessary planning applications and protecting amenity?
Yes X No

- (d) Please identify and explain any changes to the controls that you think would strike a better balance?

The guidance suggests development in front of or altering a shop front will not be PD (perhaps this is mistakenly copied from 7A) but the draft Order does not reflect this.

Q9. With regard to the proposed new class 7D;

- (a) Is the granting of permission, and the restrictions and conditions, clear?
Yes X No
- (b) Is the granting of permission, and the restrictions and conditions, reasonable?
Yes X No
- (c) Will the controls strike the right balance between removing unnecessary planning applications and protecting amenity?
Yes X No
- (d) Please identify and explain any changes to the controls that you think would strike a better balance?

Presumably this relates only to Class 4 offices.

Q10. With regard to the proposed new class 7H;

- (a) Is the granting of permission, and the restrictions and conditions, clear?
Yes X No
- (b) Is the granting of permission, and the restrictions and conditions, reasonable?
Yes X No
- (c) Will the controls strike the right balance between removing unnecessary planning applications and protecting amenity?
Yes X No
- (d) Please identify and explain any changes to the controls that you think would strike a better balance?

Presumably "road" relates to a road used for vehicular traffic only (otherwise no pavement cafe would be permitted development .

Q11. With regard to the proposed new class 7G;

- (a) Is the granting of permission, and the restrictions and conditions, clear?
Yes X No
- (b) Is the granting of permission, and the restrictions and conditions, reasonable?
Yes XNo
- (c) Will the controls strike the right balance between removing unnecessary planning applications and protecting amenity?

Yes X No

- (d) Please identify and explain any changes to the controls that you think would strike a better balance?

Although most ramps to listed buildings will also require Listed Building Consent there may be circumstances where structures within the curtilage but not attached to listed building will need to be controlled.