

**REPORT TO: POLICY & RESOURCES COMMITTEE - 28 SEPTEMBER 2009**

**REPORT ON: MANDATORY PRE-DETERMINATION HEARINGS AND PLANNING DECISIONS BY FULL COUNCIL**

**REPORT BY: DIRECTOR OF CITY DEVELOPMENT AND DEPUTE CHIEF EXECUTIVE (SUPPORT SERVICES)**

**REPORT NO: 364-2009**

## **1 PURPOSE OF REPORT**

1.1 To make recommendations concerning the requirements under the Town and Country Planning (Scotland) Act 1997 as amended by Section 38A of the Planning Etc (Scotland) Act 2006, that for certain categories of planning application a mandatory Pre-determination Hearing shall be required. Also in relation to such applications, the Local Government (Scotland) Act 1973 has been amended requiring that such applications be discharged "only by the authority", ie the Full Council. The report makes recommendations concerning decision-making procedures to be followed.

## **2 RECOMMENDATIONS**

2.1 It is recommended that the Committee:

- a approves Option A as set out in paragraph 5.3 of this report in respect of decisions on planning applications which require to be taken by Full Council; and
- b approves the proposals for the convening of mandatory Pre-determination Hearings as set out in Annex A to this report;
- c remits the Depute Chief Executive (Support Services) to make arrangements to amend the Council's Standing Orders.

## **3 FINANCIAL IMPLICATIONS**

3.1 There are no financial implications arising from this report.

## **4 BACKGROUND**

4.1 The new planning legislation introduces procedures to ensure that planning applications are subject to enhanced scrutiny. These changes are aimed at making the planning system more inclusive, allowing the views of applicants and those who have made representations to be heard before a planning decision is taken.

4.2 In general planning authorities have discretion over how hearings (deputations) operate in their areas. The Council has for many years, and still does, operate a non-statutory system of deputations at Development Quality Committee. The procedures involved were reviewed by the DQ Committee of 9 February 2009 when it adopted its interim revised Scheme of Delegation.

Scottish Government Circular 4/2009 suggests that the categories of application to which discretionary hearing procedures might apply are:

- applications in which the local authority has a financial interest; or
- applications which have attracted a given number or type of objection; or
- applications relating to development in sensitive areas protected by statutory designations.

However, it is the Council's practice to offer the opportunity of making a deputation available to applicants and objectors for all categories of application coming before Committee, irrespective of scale or nature of proposal. This report brings forward no proposed changes to these arrangements given that they were only last reviewed in February 2009.

4.3 This report, however, relates specifically to the statutory requirements summarised in paragraph 1.1 above. The Act now requires that the opportunity to attend Pre-determination Hearings must be provided in respect of the following categories of application only:

- a "national" developments<sup>1</sup>; and
- b "major" developments where they are "significantly contrary to the development plan"<sup>2</sup>.

4.4 In doing so the Council must give the applicant and people who submitted representations an opportunity of appearing before and being heard by a committee of the authority. The Act allows planning authorities to specify procedures around arranging and conducting hearings. This includes ensuring that the matters discussed at a hearing are relevant, that the conduct of the hearing is efficient and that repetition is avoided. Attendances, beyond those who have a right to appear before the committee are as the authority considers appropriate. Annex F to Circular 4/2009 outlines the issues to be considered in setting up rules to govern the conduct of Pre-determination Hearings.

4.5 Based on these guidelines Annex A to this report outlines a protocol in relation to mandatory Pre-determination Hearings and these are recommended for adoption by the Council.

## 5 DECISIONS BY FULL COUNCIL

5.1 Members will be aware that all members of the Council sit on all its principal committees, including the Development Quality Committee which is charged under delegated authority through Standing Orders to decide all applications which do not fall to be decided by officers under its Schemes of Delegation.

5.2 The Local Government (Scotland) Act has been amended by Section 14(2) of the Planning Etc (Scotland) Act 2006 to the effect that those applications where an

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<sup>1</sup> As defined in the National Planning Framework.

<sup>2</sup> A definition of "significantly contrary to the development plan" is contained in the Council's mandatory Scheme of Delegation approved by Scottish Ministers on 2 July 2009.

opportunity to attend a Pre-determination Hearing is to be provided, will instead have to be decided by the Full Council.

5.3 The options for the Council in considering this requirement are:

Option A: Convene the Pre-determination Hearing during the Development Quality Committee as part of its agenda of business. No decision would be taken by the Committee. Immediately after the Committee, Members would constitute themselves as the Full Council and take the decision as the sole item of business.

Option B: As for Option A but instead reverting the decision-making part of the process to the next scheduled meeting of the Council.

5.4 Option A is recommended as it has the advantage of the process being conducted without undue delay and with parties being present and not having to be recalled at a later date to hear the decision.

5.5 Circular advice indicates that Members should receive training and advice in order to enable them to discharge these new functions. However, as all Members are members of the Development Quality Committee and are experienced in deciding planning applications it is considered that no additional training is required in Dundee's case. Advice from the Director of City Development and other senior officers will be readily available both during the Pre-determination Hearing and at the meeting of Full Council.

## **6 POLICY IMPLICATIONS**

6.1 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.

## **7 CONSULTATIONS**

7.1 The Chief Executive, Depute Chief Executive (Support Services), Depute Chief Executive (Finance), Head of Finance and Assistant Chief Executive (Community Planning) have been consulted and are in agreement with the contents of this report.

## **8 BACKGROUND PAPERS**

8.1 The following background papers have been referred to in the preparation of this report:

- a The Planning Etc (Scotland) Act 2006 Section 38A;
- b The Local Government (Scotland) Act 1973;
- c The Town and Country Planning (Hierarchy of Developments) (Scotland) Regulations 2009;

- d The Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2008;
- e Circular 4/2009 Development Management Procedures.

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Depute Chief Executive (Support Services)

IAR/MM

14 August 2009

Dundee City Council  
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**ANNEX A****PRE-DETERMINATION HEARINGS PROTOCOL**

- 1 Pre-determination Hearings shall be heard by the Development Quality Committee and only after all statutory processes up to that point have been completed.
- 2 In accordance with Section 38A(1) of the Act and Regulation 27 of the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2008 the following parties shall be offered the opportunity of attending and addressing the Pre-determination Hearing:
  - the applicant or their representative;
  - all persons who submitted representations.
- 3 If both the above parties do not wish to attend and participate in the Pre-determination Hearing no hearing will be convened and the application will proceed to Full Council for a decision.
- 4 The Council's existing arrangements for notifying applicants and objectors will apply allowing all the deputations to be listed on the agenda for the meeting.
- 5 The provision of the Council's existing Standing Orders will apply to the procedures to be adopted and this allows for the established period of presentation (7 minutes) to be extended at the discretion of the Convener giving greater flexibility where a major or complex proposal is the subject of a Pre Determination Hearing.