

REPORT TO: CITY DEVELOPMENT COMMITTEE - 24 JANUARY 2011

REPORT ON: AMENDMENTS TO THE MODERNISED PLANNING SYSTEM

REPORT BY: DIRECTOR OF CITY DEVELOPMENT

REPORT NO: 4-2011

1 PURPOSE OF REPORT

- 1.1 The report seeks to confirm the views of the Council in response to the consultation paper "Amendments to the Modernised Planning System" issued by the Scottish Government in October 2010 and to authorise the Director of City Development to issue the response to the Scottish Government by 28 January 2011.

2 RECOMMENDATION

- 2.1 It is recommended that the Committee:
- a endorses this report as the Council's formal response to the consultation paper; and
 - b authorises the Director of City Development to issue the formal response to the Scottish Government by 28 January 2011.

3 FINANCIAL IMPLICATIONS

- 3.1 The proposed changes to neighbour notification and the advertisement of applications will result in very modest savings to the Council by marginally reducing the amount of notification and advertisement required to be carried out. The opportunity for more radical changes, which would have resulted in more substantial savings, was not taken up by this Consultation.

4 BACKGROUND

- 4.1 The consultation paper comes out over a year after the introduction of the Modernised Planning System in August 2009. Key stakeholders, including the Council, had suggested a number of changes to the system as a result of problems and difficulties experienced in its operation. The consultation paper is seeking views on a number of refinements and amendments to the procedures on development management and appeals. It does not involve a fundamental review of planning modernisation.
- 4.2 The principal areas of proposed change of interest to the Council are as follows:
- a It is proposed to either remove or reduce the requirement for Pre-Application Consultation (PAC) for S42 applications (these are applications to develop land without complying with conditions previously attached), to consider generally reducing the period for PAC from 12 to 6 weeks and to consider other types of applications where PAC should not apply;
 - b It is proposed to remove the requirement to advertise applications where the neighbouring land is a road, or is land which has no premises on it and is owned by the Local Authority or by the applicant;

- c It is proposed to require advertisement fees to be paid when submitting an application and to consider a national advertising charge or increasing the planning fees to include advertising costs;
 - d It is proposed to increase the level of consultation with Network Rail; and
 - e It is proposed to make councils responsible for neighbour notification for prior notification of demolitions.
- 4.3 Although the Council's detailed response to the standard questions posed is contained in Annex A to this report, the following general conclusions emerge:
- a The proposed changes are helpful and remove some anomalies in the new Development Management Regulations; and
 - b Unfortunately the opportunity to address more fundamental problems, the most significant of which relate to the neighbour notification requirements, has not been progressed in this consultation. The notification distance of 20 metres is excessive, particularly in tenemental areas, and the requirement to advertise applications where there are no premises on adjoining land is disproportionate and does not add value to the system.

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.
- 5.2 In accordance with the Council's policy an Equality Impact Assessment of the consultation paper was undertaken using the Rapid Impact Assessment Tool to determine whether the proposals implementation by Scottish Government is likely to lead to prejudice in terms of race, ethnic background, disability, sexual orientation, gender, religion or belief and age.
- 5.3 No evidence of likely prejudice in any of the six strands listed above was detected.

6 CONSULTATIONS

- 6.1 The Chief Executive, Depute Chief Executive (Support Services), Director of Finance and Assistant Chief Executive have been consulted and are in agreement with the contents of this report.

7 BACKGROUND PAPERS

- 7.1 Amendments to the Modernised Planning System - Consultation Paper - October 2010.

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Director of City Development

MPG/CW/MM

14 December 2010

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APPENDIX A**AMENDMENTS TO THE MODERNISED PLANNING SYSTEM
QUESTIONS AND COUNCIL RESPONSES*****Section A - Statutory Pre-Application Consultation Requirements and Applications to Change Planning Conditions***

Q1 Do you think the Scottish Government should amend the requirements on PAC in the 1997 Act?

Yes

Q2 Which of the Options identified would you prefer, Option 1, 2(a), 2(b) or 3 and why?

Option 3 because this addresses the issue in a comprehensive fashion. Option 1 only deals with S42 applications whereas there is a concern about requiring PAC for minor (but material) amendments to major developments. Option 2(a) could create difficulties for community groups which have monthly meetings and a shorter period may be inappropriate for a number of major applications. Option 2(b) is the worst option because it requires PAC for S42 applications and does not address the issue of minor (but material) amendments to applications for major developments.

Q3 Which of the Options identified would be your least favoured, Option 1, 2(a), 2(b) or 3 and why?

Option 2(b) for the reasons given in the answer to Q2.

Q4 Is there an alternative approach you would prefer to the Options identified and, if so, what would it consist of and why would it be preferred?

Option 3 seems the best way forward. An alternative might be that for S42 applications and applications for material amendments to existing consents, that applicants seek a screening opinion from the Planning Authority as to whether they consider PAC is required given the nature of the application and scale of the changes and that the Planning Authority have a discretion in these cases as to whether PAC is required.

Q5 If the statutory minimum 12 week period for PAC were to be reduced, what should the minimum be for:

New proposals which will be applications for planning permission? 6 weeks.

Section 42 Applications to change conditions? 6 weeks.

Other types of application you can describe? Material amendments 6 weeks.

Q6 Should the time period for planning authorities to respond to proposal of application notices with any additional consultation requirements be reduced from 21 days as part of any reduction in the 12 week period?

This could be reduced to 14 days.

Section B - The Neighbour Notification and Advertising of Planning Applications

- Q7 Do you agree with removing the requirement to advertise applications in relation to neighbouring land which is a road?

Yes

- Q8 Should there be a requirement to advertise applications where neighbouring land includes a private road?

No. It is likely that those who have an interest in the private road will have been notified as neighbours in any case.

- Q9 Do you agree with removing the requirement to advertise applications in relation to neighbouring land which is local authority land with no premises on it?

Yes

- Q10 Do you agree with removing the requirement to advertise applications in relation to neighbouring land which is owned by the applicant but has no premises on it?

Yes, although some form of certification that the applicant owns this land would be appropriate.

- Q11 Do you agree that the requirement to advertise development plan departures should be removed?

Yes. There is often great uncertainty as to whether an advertisement is required and the position often becomes clear some time after the application is submitted.

- Q12 Do you think a requirement to advertise all major developments should be introduced?

Yes, these applications deserve the widest possible publicity. Almost all are probably advertised under the current procedures.

- Q13 In principle, do you support a nationally set standard charge for advertising (bearing in mind statutory planning powers do not allow such charges to be set at the discretion of the planning authority)?

It would be preferable if each Council could set its own charge. This has operated for many years in the case of "bad neighbour" developments without any difficulty.

- Q14 Would you support an adjustment to planning fees generally to cover advertising costs (rather than a charge on an application by application basis)?

This would seem more equitable as the advertisement fee can be a significant burden for a householder. It also greatly simplifies the payments required for a planning application and provides certainty for all.

Q15 Of the two, which approach would you prefer?

Adjusting planning fees.

Section C - Other Changes to the DMR

New Consultation Requirements for Planning Applications

Development Near a Railway Line

Q16 In terms of ease of identification would planning authorities prefer the distance criterion to relate to the railway line or the boundary of railway property?

As the Council does not have a record of railway property, distance from a railway line would be preferred.

Q17 Are there any other issues for planning authorities in interpreting or implementing this requirement?

Does it apply to sidings or disused tracks? As there will be a large number of properties affected, it would seem appropriate that some restriction is placed on the types of application requiring notification. Finally, this requirement for notification should remove the requirement to advertise such applications under the neighbour notification process.

Q18 How many applications do planning authorities think might be covered by this requirement?

As an urban authority, there will be a large number of properties within 10 metres of railway lines.

Development Affecting Croft Land and Crofting Communities

Q19 What refinements to the consultation criterion would you suggest in order to meet the policy aim?

No comment

Q20 Do you think a crofting questionnaire is the best way to identify planning applications on which the Crofters Commission should be consulted, or is there a better way?

No comment

Q21 Planning authorities only - Approximately how many applications a year in your area do you think would require consultation with the Crofters Commission using the proposed criterion?

None

Section E - Changes to the Neighbour Notification Requirements on Permitted Development Rights for Demolition

Q22 Do you have any comments on the proposed changes to neighbour notification in relation to demolition?

It would be almost impossible for the Council to respond within 28 days if a 21 day notification period was required.

Q23 In particular, do you agree with the removal of the requirement to advertise demolition locally such proposals where there are no premises on neighbouring land to which notification can be sent?

Yes

Section F - Changes to Development Planning Regulations

Q24 Do you have any comments on the changes to the list of considerations and items which strategic development planning authorities are required to have regard to in the preparation of strategic development plans?

The proposed amendments merely reflect an updating with respect to new legislation.

Q25 Do you have any comments on the changes to the list of considerations and items which planning authorities are required to have regard to in the preparation of local strategic development plans?

The proposed amendments merely reflect an updating with respect to new legislation.

Section G - General Questions

Q26 Do you have any additional comments on any of the issues mentioned in this?

It is very disappointing that the opportunity was not taken to address the following issues of concern:

- 1 The notification distance of 20 metres is excessive. In tenemental areas of the city an application for a dormer can result in up to 150 notifications. It is suggested that the notification distance is reduced to 10 metres (excluding roads) for major applications and 4 metres (excluding roads) for other applications.
- 2 The requirement to advertise applications where there are no premises on adjoining land is disproportionate and does not add value to the system. As an alternative to advertisement, notification to an agreed address for major land owners (eg Crown Estates, Network Rail, Scottish Gas, Housebuilders etc) should be considered.

Q27 Do you have any comments on or information to help inform the partial Business Regulatory Impact Assessment in [Annex II](#)?

No

Q28 Do you think any of the proposals in this consultation document will raise any specific issues for any of the equality groups (including race, disability, age, sexual orientation, gender or religion and belief)? See partial equality impact assessment in [Annex III](#).

No