

PRE-DETERMINATION PLANNING HEARING ARRANGEMENTS DURING COVID-19 RESPONSE PERIOD

1.0 INTRODUCTION

1.1 This report sets out the current position in relation to pre-determination planning hearing arrangements during the Covid-19 response period.

It invites the Committee to note the current situation with regards to pending pre-determination applications and to review the arrangements for hearings in light of the ongoing response to the Covid-19 pandemic and government guidance on public gatherings.

2.0 RECOMMENDATIONS

The Committee is invited to:

- a) Note the position in relation to pre-determination hearings within Argyll and Bute which are currently pending as a consequence of the Covid-19 pandemic response and the arrangements for planning hearings in light of the ongoing response to the Covid-19 pandemic and government guidance on public gatherings,
- b) Agree the next steps in relation to the operation of Pre-determination Planning Hearings in respect of the proposals set out at paragraph 3.6, and
- c) Agree that in the event of resumption of Pre-determination planning hearings the arrangements for informal site visits are as set out in para 3.10

3.0 DETAIL

3.1 *Arrangements for Pre-Determination Hearings*

The requirement for Pre-Determination hearings in certain cases, i.e national developments and major developments where the proposals are significantly contrary to the Council's Development Plan, is set out in Section 38A and regulation 27 of the Town and Country Planning (Scotland) Act 1997, (as amended) and the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013. Their purpose is to allow the views of applicants and those who have made representations to be heard before a planning decision is taken. The planning authority has discretion over how hearings will operate in its area and this includes ensuring the matters discussed at a hearing are relevant, efficient and avoid repetition. Attendance, beyond those who have a right to appear before and be heard by the committee, is to be such as the authority consider appropriate.

3.2 The Council has established arrangements and processes which are applicable to

statutory pre-determination hearings and discretionary hearings however in light of the Covid-19 pandemic and the current limitations on public gatherings as well as government advice on social distancing it has not been possible for such events to take place in person since March 2020.

3.3 *Covid-19 Impact*

The Coronavirus (Scotland) Bill provides that, for the duration of the coronavirus crisis, local authorities have the power to exclude the public from their meetings on health grounds, to protect the public and local authority council members. A number of Planning Regulations have also been amended on a temporary basis and include suspension of the requirement for “public events” relating to Pre-Application Consultations.

3.4 As a consequence of the Coronavirus response the Council currently has two discretionary pre-determination planning hearings pending as a consequence of these restrictions which are as follows:

1. Reference No: 19/02555/PP – May PPSL Committee

Planning Hierarchy: Major application

Applicant: Speciality Drinks Limited

Proposal: Erection of distillery with associated maltings and vaulted maturation warehouse, visitor's centre with shop, restaurant and meeting facilities, tasting lodge and associated infrastructure including: sewage treatment plant and pumping station, new junction, access roads, car parking, tank farms, SuDS pond, reservoir and sea water intake

Site Address: Land South and East of Farkin Cottage, Port Ellen

2. Reference No: 19/01232/PP – March PPSL Committee

Planning Hierarchy: Major Application

Applicant: Scottish Water

Proposal: New wastewater treatment works including installation of underground plant, 2 control kiosks, administration building and perimeter fence, new access track and mounded landscaping. Existing works - Removal of plant and installation of underground tanks, control kiosk and outfall pipe.

Site Address: Sewage Works and Land West Of Existing Works Clachan Seil Isle of Seil

3.5 At the PPSL meetings in March and May it was agreed that if it had not been possible to hold the hearings by August 2020, given the ongoing situation regarding the coronavirus (COVID-19) infection, to bring this matter back to the PPSL Committee in August to decide how the hearing would proceed. This report therefore sets out matters for consideration by the committee.

3.6 *Proposals for Consideration*

Planning Hearings are among the Council's most well attended public meetings and are usually heard in a location close to the application site in order to facilitate a high level of public attendance. Assuming full committee member attendance it would be prudent to assume the following minimum number would require to be accommodated:

Committee Members	15
Governance	3
Planning reps	3
Applicant representatives	3
Statutory Consultees	3
Supporters/Objectors	5
Venue staff	1
General Public	<u>10</u>
	43

Given these numbers and the logistics of maintaining public safety in light of the Covid-19 pandemic it would be difficult to arrange a traditional hearing as appropriate accommodation and social distancing would not be achievable even if such a gathering was within the terms of what is permissible. In light of this the Council has 2 key options for consideration as a way forward:

a) *Continue to sist planning hearings until such times a traditional hearing model is possible*

While “sisting” or pausing hearings allows the Council to continue with a tried and tested process which is familiar to the public the key drawback is that the likely timescale for reinstatement is unknown at this time, particularly given the risk connected with a second peak in Coronavirus. There are also risks associated with potential delay to economic recovery arising from non-determination, the additional workload associated with managing a build-up of hearings, impact on service performance and also potential reputational risks in terms of the Councils perception as being open for business.

b) *Arrange for virtual hearings to proceed on either an audio or video basis*

Virtual meetings are now well established within the Council and in light of the Coronavirus situation and government guidance the agreement is that all strategic committees should continue on this basis until a further review at the end of September 2020.

Virtual meetings to date have been held on an audio-only basis with limited use of video given limitations with broadband speed and wider access to suitable technology. Audio-only is a tried and tested process within the Council however the inclusion of video would allow for virtual arrangements to more closely mirror established hearing arrangements. Both options require provision to be made for participant and public access to be made to the technology and ICT have advised of existing technology enhancements to support this approach. A virtual option would allow for the hearing process to be concluded without further delay and mitigate against current and any ongoing challenges in respect of public health factors and associated government restrictions and guidance.

3.7 There is no doubt that the current exceptional circumstances in responding to the Coronavirus present a real challenge with regards to local participation and therefore it is important to work with parties and their representatives, and to acknowledge the

public interest, in finding ways to deliver a solution that enables hearings to continue in an open, fair and impartial way. It is currently not possible to put the usual arrangements for hearings in place and indeed most venues suitable for large gatherings remain closed at this time. In the event of a decision to proceed on a virtual basis a key message will be to ensure effective arrangements for community participation and that this different way of conducting our work does not undermine confidence in the transparency of the planning system. Similar arrangements have been put in place by the Scottish Government Planning and Environmental Appeals service and are also part of a wider transformation programme to enhance public access to open and transparent discussions on planning issues.

3.8 *Site Visits*

The impact of the Covid-19 guidance also limits the facility for pre-determination hearing site visits by Committee members and therefore in the event of a decision to proceed with pre-determination hearings on a virtual basis it is recommended that the requirement for an associated site visit is assessed on a case by case basis. There is no statutory requirement for planning authorities to physically attend potential development sites and a pre-determination hearing site visit should only be necessary in situations where the additional benefit in visualising and assessing plans is substantial. No minutes are taken of a site visit and no recommendation is made back to the committee as the purpose is simply to assist in the decision-making process. Members who will sit in determination of a pre-determination hearing are not required to attend an informal site visit, should they consider they do not require to do so and this does not preclude them from participating in the pre-determination hearing.

3.9 The advice from the Chief Planner states that in many cases it will be possible to consider a proposed development without the need for physical attendance on site, by drawing on existing knowledge of an area and supporting that as appropriate with tools such as satellite imagery, photographs and video. If that remote assessment is not possible, or not sufficient in the circumstances of the case, a physical site visit can be carried out if that can be done within the scope of physical distancing requirements.

3.10 It is therefore recommended that in the event of resumption of planning hearings the arrangements for informal site visits, including those at paragraph 3.4, are:

- Site visits are only considered if specifically requested by the committee and where additional information on the site provided through photographs, satellite imagery or video is not acceptable;
- Officers will consider arrangements for the site visit to ensure adherence to Covid-19 guidance can be maintained;
- In the event there are concerns in regard to those arrangements then officers will report that back to members for their further consideration as required;

4.0 **CONCLUSION**

It is important for economic recovery that the planning system continues to function during this current period and that it achieves the necessary balance between openness and transparency and adherence to government restrictions and public health guidance. Pre-determination Planning Hearings are a key element of the planning system and their operation is a matter for the Local Authority to determine. The Committee is invited to note the current position with outstanding hearings. It is also invited to review the arrangements for planning hearings in light of the ongoing response to the Covid-19 pandemic and government guidance on public gatherings in order to determine the next steps.

5.0 IMPLICATIONS

- 5.1 Policy - This is in keeping with the Council's commitment to manage its response to the Covid-19 pandemic in supporting the people and communities of Argyll and Bute and in adhering to national guidance.
- 5.2 Financial – none arising from the recommendations.
- 5.3 Legal – addresses legislation changes contained within The Coronavirus (Scotland) Act 2020, and The Town and Country Planning Miscellaneous Temporary Modifications) (Coronavirus) (Scotland) Regulations 2020.
- 5.4 HR – This approach supports adherence to recommended government guidelines in relation to Covid-19 for staff, Elected Members and partners.
- 5.5 Fairer Scotland Duty: None
- 5.5.1 Equalities - Protected characteristics – None
- 5.5.2 Socio-economic Duty - None
- 5.5.3 Islands – None
- 5.6 Risk – addresses risk associated with ensuring business continuity and resilience.
- 5.7 Customer Service – supports arrangements for amending decision making framework to support critical customer services.

Douglas Hendry

Executive Director with responsibility for Legal and Regulatory Support

Kirsty Flanagan

Interim Executive Director with responsibility for Development & Economic Growth

Policy Lead

Councillor David Kinniburgh

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For further information contact:

Patricia O'Neill, Governance Manager +441546604384

David Logan, Head of Legal and Regulatory Support +441546604322

Fergus Murray, Head of Development & Economic Growth +441546604293