

**PROPOSED AMENDMENTS TO PRE-DETERMINATION HEARING
PROTOCOL**

1. SUMMARY

- 1.1 This Report seeks to reflect upon and review the past 12 months of planning practice since the enactment of the 2006 Planning Act on 3rd August 2009.
- 1.2 It is a part of a wider review of the planning service post August 2009 which shall be reported to the Executive on 4th November and Council on 25th November. This report is solely concentrated on the topic of pre-determination hearings.
- 1.3 In summary, it is noted that the Planning, Protective Services and Licensing Committee (PPSL) has convened 14 pre-determination hearings since the new regulations came into force. They have generally been conducted in a venue close to the application site in order to bolster public access and have determined applications from windfarms, fishfarms, large scale residential development to change of use applications.
- 1.3 Whilst the rationale and format of the hearings have proved credible thus far, there has been Officer and Member concern about the relatively crude numbers threshold that currently exists to trigger a recommendation for a hearing. It has been noted that there may be scenarios where the current system is open to manipulation (standard representation canvassing, petitions, representations from friends and family out with Argyll and Bute) for the sole purpose of triggering a hearing process. Furthermore, there may also be scenarios where there has been significantly one sided public and statutory consultee representations supportive of Officer recommendation that still requires a hearing due to number of contributions.
- 1.4 This report therefore recommends a move away from the numbers threshold approach to one that seeks to 'add value' to the decision making process based on a set criteria. This is seen to be an efficient use of Officer and Member resources as time shall be concentrated on most pertinent applications and result in speedier decision for all involved.

2. RECOMMENDATIONS

It is recommended that Members:

- (i) Note the content of the report.
- (ii) Endorse the recommendation to discontinue number based trigger for hearing recommendation (ie > 20 representations) in favour of criteria based approach that seeks to add value to the decision making process.
- (iii) If agreed we recommend that the new protocol is implemented with immediate effect and available for use at October PPSL.

3. DETAILS

3.1 Scottish Government advice provides that Authorities may offer contributors the opportunity of appearing before them to state and explain their representations. Although such an invitation remains at the discretion of the PPSL, robust and consistent use of the practice will lead to greater confidence by the public in the PPSL's decisions. The hearing process can also better inform elected members in coming to a legally robust sustainable outcome to the planning decision making process.

3.2 In response to this and following the introduction of the new planning act, the council implemented a protocol that any application with equal to or greater than 20 representations (both in support and objection) would be recommended for a pre-determination hearing.

3.3 This practice has resulted in 14 pre-determination hearings being held in various locations across the authority such as Carradale, Helensburgh, Campbeltown, Sandbank, Dunoon and Rothesay (to end of Oct 2010). In general, the process has been well received and administered as there has been no adverse comments received when the Chair of PPSL seeks feedback at the end of each hearing. It is also deemed to be democratic as the PPSL hold the hearings at locations accessible to the community affected by the application giving them opportunity to verbally support their representation.

3.4 Notwithstanding this, concern has been noted throughout the year and notably at the recent Member Seminar (Review of new

Planning Act – 31st Aug 2010) from both Officers and Members that the volume of hearings has been steadily increasing. This has an associated impact of increasing workloads for both Officers and Members and also reducing speed of decision making / performance.

3.5

Whilst convening a pre-determination hearing is obviously part of the decision making process for contentious and significant applications the concern has been focussed on scenarios where there may be manipulation of the system (standard representation canvassing, petitions, representations from friends and family out with Argyll and Bute) for the sole purpose of triggering a hearing. There may also be scenarios where there has been significantly one sided public and statutory consultee representations supportive of Officer recommendation that still requires a hearing due to number of contributions. Furthermore, in smaller isolated settlements where there is a small number of households it can be difficult to raise the 20 representations even though the application is significantly important to that community due to economies of scale.

3.6

These scenarios require greater scrutiny whether there is actual 'added value' to convening a pre-determination hearing.

3.7

To this extent, we advocate that the existing number based threshold protocol is superseded by the following criteria based approach that seeks to resolve these tensions:-

3.8

'In deciding whether to exercise their discretion to allow respondents to appear at a hearing, the members of the PPSL Committee should be guided by :

- Whether the proposal constitutes a justified departure to the local development plan, and/or is a Council Interest Application and the degree of local interest and controversy
- The complexity of technical/material considerations raised
- How up-to-date the Development Plan is, the relevance of the policies to the proposed development and whether the representations are on development plan policy grounds which have recently (ie. within the 5 year life of the Plan) been considered through the development plan process
- The volume of representations and degree of conflict within the local community (eg. notwithstanding there may be significant representation if there is consensus between local community and planning authority in recommendation

a hearing may not be required)

- The degree of local interest and controversy on material considerations eg. the relative size of community affected set against the relative number of representations, and their provenance

- 3.9
- Whether there has been any previous decisions or pre-determination hearing held covering similar issues/material considerations'

- 3.10
- For the avoidance of doubt, and in an effort to assist Members the Head of Planning and Regulatory Services will offer Members a view on whether to exercise a discretion at section 'B' and 'O' of the Report of Handing / Officers Report in each case.

In terms of Section 27 of the Town and Country Planning (Development Management Procedure)(Scotland) Regulations 2008 the Planning Authority are required to hold a pre-determination hearing to national and major development applications which are significantly contrary to the local development plan and where representations have been submitted.

4. CONCLUSION

- 4.1 Having the benefit of 13 months worth of practice we consider that the introduction of the new criteria based model to determine whether a pre-determination hearing is held shall 'add value' to the decision making process and be a more efficient use of both Officer and Member resources. It shall also eliminate tensions where there is the potential manipulation of the current number based thresholds.
- 4.2 If agreed we recommend that the new protocol is implemented with immediate effect and available for use at October PPSL.

10. IMPLICATIONS

- 6.1 Legal – No specific legal implication albeit that convening pre-determination hearings may allow Members to be best informed on making competent decisions based on full explanation of issues, particularly in complex cases. This new protocol shall allow for this even if there has not been a threshold of representation received.
- 6.2 Financial – Considered that new criteria based approach shall focus both Member and Officer resources more efficiently on complex, contentious, community significant and applications that conflict with policy. There is less opportunity for the system to be manipulated thereby utilising resources on hearings that do not

'add value' to the decision making process.

- 6.3 Personnel - No personnel implications other than Member and Officer resources shall be more efficiently utilised by focussing on hearings that 'add value' to decision making process.
- 6.4 Equal Opportunities – If protocol is consistently implemented then it improves the opportunity for even small communities to trigger hearings where it may difficult to trigger the current 20 representation threshold.
- 6.5 Policy - No policy implications