

'PLANNING AND ECONOMIC GROWTH' – SEMINAR PAPERS

1. INTRODUCTION

This report addresses issues identified during discussions between the Scottish Government and council officers as part of the government's 'Planning and Economic Growth' initiative. They were specifically raised at a Meeting in Fort William in November 2011.

The government's stated intention is to aim to stimulate sustainable economic growth with planners and the planning system being seen as a means to achieve this through, for example, supporting cities to thrive; through helping to deliver development and kick-start stalled projects; and through working to support renewables to be delivered in the right places. One of the elements of this, is the identification of factors which inhibit the effective operation of the planning system and which contribute to delay or which do not add value to the decision-making process, with a view to removing impediments to efficiency.

To that end, the Council has been asked for its views firstly, on how multiple representations to planning applications from third parties should be most appropriately considered in the decision-making process, and secondly on the performance of our current scheme of delegation that is in operation.

2. RECOMMENDATION

It is recommended that:

- i) Representations in respect of planning applications should continue to be reported to Members in the manner adopted hitherto, and that multiple standardised representations and petitions ought not to be given lesser credence in committee reports than individual representations, on the understanding that the method of representation will be recorded and that it will be up to individual Members in their capacity as decision-makers to accord what weight they see fit to all representations received.
- ii) To acknowledge that the current Scheme of Delegation (approved in 2009) has been performing well, with the exception of dealing with Council Interest applications, and that a review of arrangements should only take place if primary legislation changes or in 2014 whichever is earliest. The Scottish Government recommended a 5 year lifespan for Schemes of Delegation.

3. BACKGROUND

Multiple representations – Public participation is a long-standing element in the planning process and representations received from third parties are material considerations to be weighed in the balance in the determination of all planning applications, provided that they are founded on legitimate planning grounds. Such planning considerations must have consequences for the use and development of land and must exclude irrelevancies. Whilst the weight of representation alone will not determine the outcome of an application, it will be a contributory factor in arriving at a decision. The Council's approved delegation scheme provides that applications with ten or less representations may be determined by officers, whereas applications attracting more than ten representations are determined by committee. Where large numbers of representations have been received, Members will give consideration whether they should hold a discretionary local hearing prior to determination of an application. Developments constituting development plan 'departures' and attracting significant representation will be the subject of PAN 41 hearings. Given that 94% of the council's planning decisions are delegated to officers, only a small proportion of applications attracting multiple objections are reported to committee (of the order of one or two per month).

Representations are received in the form of individually written letters or e-mails, individual letters which have been endorsed by additional signatories (often neighbours), standardised letters or e-mails (sometimes with the opportunity for editing or adding supplementary comments in order to customise them), and in the form of petitions comprising a list of signatories. Where a 'Mr and Mrs' representation is received, for decision-making purposes, it is counted as two representees.

The issue raised in this case, is whether multiple standardised representations, or petitions of multiple signatories ought to be accorded the same weight in the application process as the equivalent number of individually composed representations, given that such multiple representations can impede the planning process by preventing the deployment of delegated powers, by occasioning the need for local hearings, and by generally burdening the application process and causing consequent delay.

In arriving at a decision, is for the Members in their capacity as decision-makers to determine what weight they should accord to individual representations (as is the case with officers in reaching their conclusions on the merits of delegated applications). Whilst officers in a committee report will summarise the grounds of representation received, and will indicate where matters have been raised which are not material planning considerations, it is not appropriate for officers to seek to influence the weighing-up of considerations by Members, by seeking to bring into question the credulity of representations based on the format in which they have received. To that extent, at present, all representations are reported in an equal fashion regardless of how they have been expressed or submitted, and it is for Members to attribute more or less weight to representations of local provenance, or according to whether they have been expressed individually or have been received in the form of a multiple representation.

Whilst standardised letters and petitions might well arise a consequence of an orchestrated campaign for or against a particular development and may, on the face of it be perceived as

indicating less commitment to the issue than a series of individually written letters, they are also deployed as a matter of convenience, sometimes to represent the concerted view of a small community, where they simply represent a more economic form of engagement in the planning process. It is not therefore appropriate to seek to downgrade the value of all duplicated letters or petitions in the decision-making process, as there is no way of determining that a representation received in this form is any less sincere or credible than one which is penned individually.

The consequence of seeking to differentiate the weight to be accorded to representations received in a variety of formats would be to potentially open-up decisions to third party challenge in the courts. The substantive grounds of judicial review include abuse of discretion, procedural irregularity and procedural fairness. This requires not only legislative provisions and council adopted procedures to be followed, but also confers additional implied standards, arising from the general duty to act fairly in the manner in which decisions are arrived at. It also confers an element of 'legitimate expectation' on the part of the individual engaging with the planning process, as to the extent to which their representation should be expected to be taken into account in the decision-making process.

Given the relatively small number of applications which are prompted to be reported to Members as a consequence of representations, there is likely to be more to be lost than to be gained as a result of attempting some form of screening representations, having regard to the manner in which they have been made. To do so, would involve the exercising of a value-judgment at second hand on the part of officers, which could lead to misrepresentation of the balance of views expressed for and against a proposal, and could create a situation of potential legal challenge if a representation was unjustifiably discounted, or Members were advised to accord it less weight than it might otherwise have received had it been received in another form. In practice, it is simply not possible to disaggregate the uncommitted petition signatory from someone signing a petition with sincerity, any more than in terms of individual responses, it is possible to identify an off-the-cuff e-mail and then give it less weight than an apparently sincere letter.

For that reason, it is considered appropriate to continue to report representations in the manner adopted hitherto, on the basis that delay occasioned by the submission of multiple representation or petitions is not widespread in the council's decision-making, and that to seek to give such representations less weight according to their means of receipt could prompt complaints to the ombudsman or court actions, the rebuttal of which would be time-consuming, potentially costly, could threaten the validity of decisions made, and which would contribute to an undermining of confidence in the planning process.

Scheme of Delegation - The current Development Management Scheme of Delegation was approved by both the Full Council (as part of the Constitution) and also by the Scottish Government in 2009.

The new Planning Act requires a very substantial delegation to officers in order to deliver the main aims of the Scottish Governments 'Modernisation Agenda' namely being efficient, inclusive, fit for purpose and sustainable. There is clearly a strong drive towards improving performance (principally decision making timescales) and ensuring economic potential is fully realised through prompt responses based on up to date Development Plans, which in Argyll and Bute we are fortunate to have. There is also a drive for more decisions to be taken at the 'Local' level with the benefit of delegated refusals being referred to Local

Review Bodies (made up of Local Members) rather than being determined externally by Scottish Ministers. Any PPSL / Committee refusals that are appealed are still dealt with by Scottish Ministers.

In summary the current Scheme of Delegation allows any application to be determined by an Area Team Leader (office) unless it is:-

Delegated to Planning, Protective Services and Licensing Committee criteria

- A Major Applications as defined in 2008 Regulations (*50+ residential units or over 2ha area, 10k sq m of employment buildings, 5k sq m of other buildings*) if approved would not be a significant departure from the Local Plan AND have over 10 objections.
- All Applications with over 10 objections based on sound planning, land use or policy grounds
- Any application with an associated Area Capacity Evaluation (ACE)
- Fixed Penalty Notices
- Applications at request of Director of Development and Infrastructure Services
- Council Interest Applications
- Elected Member Applications

Delegated to Full Council criteria

- National Developments as defined in National Planning Framework (Marine Energy)
- Major Applications as defined in 2008 Regulations that deemed to be a significant departure from Local Plan should application be approved.

This current scheme of delegation is more generous than the pre-2009 provisions and is a key factor attributed to the departments improved performance over past two years in terms of reducing timescale to determine applications and reduction of complaints. In summary the number of applications delegated has risen from around 88% to around 97% and an overall improved performance (against the statutory 2 month timescale to determine an application) by approximately 20%. Complaints have also reduced significantly during this period by around 70%. Officers assert that delegated applications can be dealt with much more promptly in line with the local plan (many well within the 2 month period) when compared to those which require entering a committee cycle or Member approval. The current scheme also ensures Members focus is much more orientated around the major and controversial applications thus making the planning process much more proportionate. Determining delegated planning applications is also more cost efficient in time / officer resource given the added procedures required for preparing committee reports.

The exception to all of this is applications where the council has a controlling interest as applicant or landowner. At present these, usually minor, applications still require assessment by the PPSL committee and limited value is achieved and the resource required for this, for the large part, is disproportionate to the application. However, this arrangement is required by primary legislation and cannot be overcome at this time. Our views on this along with Heads of Planning Scotland have been expressed to the Scottish Government and if there is an amendment to primary legislation we would be keen to remove this burden of requiring Council interest applications to be determined by PPSL.

Notwithstanding this, we must remember that planning is a political process and Member input is essential for appropriate applications and striking a balance between officer and Councillor delegation is an important one. The question was raised at the November 'Planning and Economic Growth' meeting (Fort William) in November by an agent who asked if we could review our current scheme of delegation with a view to making it more lenient particularly when there are multiple representations. They particularly felt that an application they were involved in had been strategically objected to by third parties which triggered a PPSL determination then subsequently a hearing given that 20 objections were submitted by households and family members. The agents view was that this sort of manipulation was neither proportionate, assisted economic development given added timescale for PPSL then hearing and added little value to the development cycle.

Whilst we acknowledge the agents concerns I must conclude that the current thresholds of 10 representations to trigger a PPSL item are generally consistent with other Authorities in our benchmarking group and give an broad indication of a 'contentious' application which we consider is in Members interest to be aware of and determine. Increasing this threshold to 15 or 20 may result in it becoming difficult for small communities to trigger a PPSL item on matters that genuinely concern them. We should not require our smaller communities to be forced into strategically objections just to trigger a PPSL by setting too high a threshold. Furthermore, the decision to hold a pre-determination hearing is at the discretion of the PPSL and we have frequently recommended (and Members agreed) occasions where a hearing would not add value to the determination process.

Given the performance improvement since 2009, benchmarking and resource efficiencies of delegation along with seeking to strike an appropriate balance of Member input and officer sign off we consider the current scheme of delegation to be fit for purpose. Proposals to increase the delegation threshold, significantly, may prejudice small communities who wish to have 'contentious' applications heard by elected Members. The Scottish Government requires a review in 2014 which shall be carried out but in advance of that a review should only take place if the primary legislation is changed to allow for Council interest applications to be delegated.

4. IMPLICATIONS

PERSONNEL	None
FINANCIAL	None
EQUALITY	None
LEGAL	None

Author and contact officer: Ross McLaughlin 01436 658914

**Angus Gilmour
Head of Planning and Regulatory Services**