Ref: ABH1/2009

ARGYLL AND BUTE COUNCIL

PROCEDURE NOTE FOR USE AT

(1) Statutory Pre Determination Hearing	☐
(2) Pan 41 Hearing	☐
(3) Council Interest Application	☐
(4) Discretionary Hearing	**X**

HELD BY THE PLANNING, PROTECTIVE SERVICES & LICENSING COMMITTEE

1. The Director of Customer Services will notify the applicant, all representees and objectors of the Council's decision to hold a Hearing and to indicate the date on which the hearing will take place. The hearing will proceed on that day, unless the Council otherwise decides, whether or not some or all of the parties are represented or not. Statutory consultees (including Community Councils) will be invited to attend the meeting to provide an oral presentation on their written submissions to the Committee, if they so wish.

2. The Director of Customer Services will give a minimum of 7 days notice of the date, time and venue for the proposed Hearing to all parties.

3 The hearing will proceed in the following order and as follows.

4 The Chair will introduce the Members of the Panel, ascertain the parties present who wish to speak and outline the procedure which will be followed.

5. The Director of Development and Infrastructure's representative will present their report and recommendations to the Committee on how the matter should be disposed of.

6. The applicant will be given an opportunity to present their case for approval of the proposal and may include in their submission any relevant points made by representees supporting the application or in relation to points contained in the written representations of objectors.

7. The consultees, supporters and objectors in that order (see notes 1 and 2), will be given the opportunity to state their case to the Council.

8. All parties to the proceedings will be given a period of time to state their case (see note 3). In exceptional circumstances and on good case shown the Panel may extend the time for a presentation by any of the parties at their sole discretion.

9. Members of the Panel only will have the opportunity to put questions to the Director of Development and Infrastructure's representative, the applicant, the consultees, the supporters and the objectors in that order.

10. At the conclusion of the question session the Director of Development and Infrastructure's representative, the applicant, any consultees present, the supporters and the objectors (in that order) will each be given an opportunity to comment on any particular information given by any other party after they had made their original submission and sum up their case.

11. The Chair will ascertain from the parties present that they have had a reasonable opportunity to state their case.

12. The Panel will then debate the merits of the application and will reach a decision on it. No new information can be introduced at this stage.

13. The Chair or the Committee Services Officer on his/her behalf will announce the decision.

14. A summary of the proceedings will be recorded by the Committee Services Officer.

15. If at any stage it appears to the Chair that any of the parties is speaking for an excessive length of time he will be entitled to invite them to conclude their presentation forthwith.

NOTE

(1) Objectors who intend to be present and speak at a hearing are encouraged to appoint one or a small number of spokespersons to present their views to concentrate on the matters of main concern to them and to avoid repetition. To assist this process the Council will provide a full list of the names and addresses of all objectors.

(2) Supporters who intend to be present and speak at a hearing are encouraged to appoint one or a small number of spokespersons to present their views to concentrate on the matters of main concern to them and to avoid repetition. To assist this process the Council will provide a full list of the names and addresses of all supporters.

(3) Councillors (other than those on the Panel) who have made written representations and who wish to speak at the hearing will do so under category (1) or (2) above according to their representations but will be heard by the Panel individually.

(4) Recognising the level of representation the following time periods have been allocated to the parties involved in the Hearing.

The Director of Development Services' representative – not more than half an hour
The Applicant - not more than half an hour.
The Consultees - not more than half an hour.
The Supporters - not more than half an hour.
The Objectors - not more than half an hour.

(4) The purpose of the meeting is to ensure that all relevant information is before the Panel and this is best achieved when people with similar views co-operate in making their submissions.

(5) Everyone properly qualified as a representee recorded on the application report who wishes to be given an opportunity to speak will be given such opportunity.

(6) The Council has developed guidance for Councillors on the need to compose a competent motion if they consider that they do not support the recommendation from the Director of Development and Infrastructure which is attached hereto.

I:data/typing/planning/procedure note

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COMPETENT MOTIONS

- Why is there a need for a competent motion?
    - Need to avoid challenge by "third party" to local authority decision which may result in award of expenses and/or decision being overturned.
    - Challenges may arise from: judicial review, planning appeal, ombudsman (maladministration) referral. All appeal/review processes have rights to award expenses against unreasonable/unlawful behaviour.
- Member/Officer protocol for agreeing competent motion:
    - The process that should be followed should Members be minded to go against an officer's recommendation is set out below.
- The key elements involved in formulating a competent motion:
    - It is preferable to have discussed the component parts of a competent motion with the relevant Member in advance of the Committee (role of professional officers). This does not mean that a Member has prejudged the matter but rather will reflect discussions on whether opinions contrary to that of professional officers have a sound basis as material planning considerations.
    - A motion should relate to material considerations only.
    - A motion must address the issue as to whether proposals are considered consistent with Adopted Policy of justified as a departure to the Development Plan. Departure must be determined as being major or minor.
    - If a motion for approval is on the basis of being consistent with policy reasoned justification for considering why it is consistent with policy contrary to the Head of Planning's recommendation must be clearly stated and minuted.
    - If a motion for approval is on the basis of a departure reasoned justification for that departure must be clearly stated and minuted. Consideration should be given to holding a PAN 41 Hearing (determined by policy grounds for objection, how up to date development plan policies are, volume and strength of representation/contention)
    - A motion should also address planning conditions and the need for a Section 75 Agreement.
    - Advice from the Scottish Government on what are material planning considerations is attached herewith. However, interested parties should always seek their own advice on matters relating to legal or planning considerations as the Council cannot be held liable for any error or omission in the said guidance.

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DEFINING A MATERIAL CONSIDERATION

1. Legislation requires decisions on planning applications to be made in accordance with the development plan (and, in the case of national developments, any statement in the National Planning Framework made under section 3A(5) of the 1997 Act) unless material considerations indicate otherwise. The House of Lord's judgement on City of Edinburgh Council v the Secretary of State for Scotland (1998) provided the following interpretation. If a proposal accords with the development plan and there are no material considerations indicating that it should be refused, permission should be granted. If the proposal does not accord with the development plan, it should be refused unless there are material considerations indicating that it should be granted.

2. The House of Lord's judgement also set out the following approach to deciding an application:

   - Identify any provisions of the development plan which are relevant to the decision,
   - Interpret them carefully, looking at the aims and objectives of the plan as well as detailed wording of policies,
   - Consider whether or not the proposal accords with the development plan.
   - Identify and consider relevant material considerations for and against the proposal, and
   - Assess whether these considerations warrant a departure from the development plan.

3. There are two main tests in deciding whether a consideration is material and relevant:

   - It should serve or be related to the purpose of planning. It should therefore relate to the development and use of land, and
   - It should fairly and reasonably relate to the particular application.

4. It is for the decision maker to decide if a consideration is material and to assess both the weight to be attached to each material consideration and whether individually or together they are sufficient to outweigh the development plan. Where development plan policies are not directly relevant to the development proposal, material considerations will be of particular importance.

5. The range of considerations which might be considered material in planning terms is very wide and can only be determined in the context of each case. Examples of possible material considerations include:

   - Scottish Government policy, and UK Government policy on reserved matters
   - The National Planning Framework
   - Scottish planning policy, advice and circulars
   - European policy
   - A proposed strategic development plan, a proposed local development plan, or proposed supplementary guidance

- Guidance adopted by a Strategic Development Plan Authority or a planning authority that is not supplementary guidance adopted under section 22(1) of the 1997 Act
- A National Park Plan
- The National Waste Management Plan
- Community plans
- The Environmental impact of the proposal
- The design of the proposed development and its relationship to its surroundings
- Access, provision of infrastructure and planning history of the site
- Views of statutory and other consultees
- Legitimate public concern or support expressed on relevant planning matters

6. The planning system operates in the long term public interest. It does not exist to protect the interests of one person or business against the activities of another. In distinguishing between public and private interest, the basic question is whether the proposal would unacceptably affect the amenity and existing use of land and buildings which ought to be protected in the public interest, not whether owners or occupiers of neighbouring or other existing properties would experience financial or other loss from a particular development.