

REPORT TO: East Lothian Council

MEETING DATE: 22 October 2013

BY: Depute Chief Executive (Partnerships and Services for Communities)

SUBJECT: Amended Procedure for Pre-Determination Hearings

1 PURPOSE

- 1.1 To seek approval for amendments to the current procedure for dealing with Pre-Determination Hearings held as required by the Planning etc. (Scotland) Act 2006.

2 RECOMMENDATIONS

- 2.1 Council is asked to approve the amended procedure for Pre-Determination Hearings set out in Appendix 2 to this report, as a replacement for the existing procedure approved by Council at its meeting on 23 February 2010 (Appendix 1).

3 BACKGROUND

- 3.1 At its meeting on 23 February 2010, Council approved amendments to Standing Orders and a procedure to facilitate the holding of Pre-Determination Hearings, all as required following implementation of the Planning etc. (Scotland) Act 2006. The Council's procedure introduced a two stage process, with the Pre-Determination Hearing being held at a meeting of the Planning Committee and the decision on the application being taken at the next scheduled meeting of the Council. This was to comply with the statutory requirements to have these stages dealt with by a Committee of the Council and the Council respectively.
- 3.2 The two stage process means that there can be a delay of some weeks between the holding of a Pre-Determination Hearing and the making of a decision on an application. In addition, applicants, agents and Members have expressed dissatisfaction with the process. In light of this, it is now proposed to amend the procedure to enable both stages of the determination of applications to take place on the same day.

- 3.3 The amended procedure provides for the Pre-Determination Hearing taking place at a meeting of the Planning Committee immediately prior to a Council meeting. For the purposes of a Pre-Determination Hearing, membership of the Planning Committee is extended to all Members. Having heard representations at the Pre-Determination Hearing, the Planning Committee meeting will end and the Council meeting will begin. All Members present will then debate the application and reach a decision at that meeting.

4 POLICY IMPLICATIONS

- 4.1 These changes will enable the Council to deal with Pre-Determination Hearings in a more efficient manner, while continuing to comply with its statutory obligations in terms of the Planning etc. (Scotland) Act 2006 and associated regulations.

5 EQUALITIES IMPACT ASSESSMENT

- 5.1 This report is not applicable to the well being of equalities groups and an Equalities Impact Assessment is not required.

6 RESOURCE IMPLICATIONS

- 6.1 Financial - None
6.2 Personnel - None
6.3 Other - None

7 BACKGROUND PAPERS

- 7.1 Report to Council of 23rd February 2010

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Appendix 1 – Current procedures

PRE-DETERMINATION HEARING PROCEDURES

Where a Pre-Determination Hearing is to be held the following procedures will apply:-

1. The pre-determination hearing will only be held once the neighbour notification period and any period of advertisement of the application has expired.
2. Parties invited to the pre-determination hearing will be the applicant/agent, any authority or person consulted by the planning authority in compliance with Section 43(1)(c) of the Town and Country Planning (Scotland) Act 1997, as amended by the Planning etc (Scotland) Act 2006 and from whom the Council received representations i.e. the statutory consultees, and any person from whom the Council received representations or objections
3. Once the date for the hearing has been confirmed, formal invitations will be issued, giving fair notice to the applicant/agent, the statutory consultees who have submitted representations, and any person from whom the Council received representations or objections, confirming arrangements for the hearing.
4. Parties wishing to be heard at the hearing should advise the Clerk to the Planning Committee of their intention by 12 noon on the day before the hearing (excluding Saturdays and Sundays). Parties must advise the name of the person(s) who will be speaking. All interested parties, even if they do not wish to be heard, retain the right to attend the hearing to listen to the proceedings.
5. The Executive Director of Environment will provide a written report for the hearing that describes the proposal, and summarises the relevant Development Plan policies, other material planning considerations, consultation responses and the public representations/objection to the planning application. A copy of the report will be available seven days prior to the hearing. This report will not include any assessment of the development proposed in the planning application and will not make recommendation for approval or refusal of the planning application. A full report including an assessment of the development proposal and a recommendation for a decision will be submitted to Council for consideration after the hearing has taken place.
6. If appropriate, prior to the date of the Council meeting, members shall have an opportunity to visit the site. They may be accompanied by such officers as they deem appropriate. The purpose of a site visit will be to inspect the site and the surroundings, not to debate the application or to hear representations from any party. No such site visit will be a formally

constituted meeting of the Committee. No person, other than an accompanying officer, may address the Committee during a site visit.

7. At the pre-determination hearing the order of business will be as follows:
 - (a) The Convener will explain the purpose of the hearing.
 - (b) The following parties will be given the opportunity of being heard by the Committee: the applicant and/or agent, relevant statutory consultees, and any person from whom the Council received representations including objectors and supporters
 - (c) The Convener may permit the applicant and/or agent to respond to any points raised by any party heard by the Committee and may allow a further opportunity for that party to reply to any new points raised by the applicant/agent.
 - (d) After each presentation, members of the Committee will have the opportunity to question the party who gave the presentation or to seek clarification on factual or legal matters arising from the presentation from Council officers.
 - (e) The Convener then closes the pre-determination hearing.
8. Unless with the consent of the Convener, the applicant and/or agent will normally be entitled to speak for up to 10 minutes in total. Any individual who has made representations regarding the planning application will normally be entitled to speak for up to 5 minutes. For parties other than the applicant, where there are two or more persons having a similar interest being discussed at the hearing a spokesperson should, where possible, make the submission on behalf of the group. This is to ensure that all relevant matters are given the time to be put forward and to avoid repetition by parties with similar issues. Unless with the consent of the Convener, a spokesperson for a group will normally be entitled to speak for up to 10 minutes. In the event that a large number of representations are received, mainly on the same aspect(s) of the application, the Convener may limit the number of speakers, having regard to paragraph 12 below.
9. If anyone who has intimated their intention to be heard fails to appear at the hearing timeously, the Committee may proceed with the business without hearing that person.
10. No cross-examination of any parties by other parties will be permitted.
11. The Convener will be responsible for ensuring that the business of the Committee is carried out efficiently while having due regard to the principles of natural justice.
12. For the avoidance of doubt, there will be no consideration by Members of the Committee of the merits of the development proposed in the planning application and no decision on the application will be taken at the hearing.

13. The application will be determined at the next appropriate meeting of Council after the predetermination hearing.
14. A note of the presentations made to the Committee at the hearing will be taken by the Clerk and will be made available to the meeting of the Council at which the planning application is to be determined.

Appendix 2 – Proposed procedures

PRE-DETERMINATION HEARING PROCEDURES

Where a Pre-Determination Hearing is to be held the following procedures will apply:-

6. The pre-determination hearing will only be held once the neighbour notification period and any period of advertisement of the application has expired.
7. Parties invited to the pre-determination hearing will be the applicant/agent, any authority or person consulted by the planning authority in compliance with Section 43(1)(c) of the Town and Country Planning (Scotland) Act 1997, as amended by the Planning etc (Scotland) Act 2006 and from whom the Council received representations i.e. the statutory consultees, and any person from whom the Council received representations or objections
8. Once the date for the hearing has been confirmed, formal invitations will be issued, giving fair notice to the applicant/agent, the statutory consultees who have submitted representations, and any person from whom the Council received representations or objections, confirming arrangements for the hearing.
9. Parties wishing to be heard at the hearing should advise the Clerk to the Planning Committee of their intention by 12 noon on the day before the hearing (excluding Saturdays and Sundays). Parties must advise the name of the person(s) who will be speaking. All interested parties, even if they do not wish to be heard, retain the right to attend the hearing to listen to the proceedings.
10. The Service Manager, Development Management will provide a written report for the hearing that describes the proposal, summarises the relevant Development Plan policies, other material planning considerations, consultation responses and the public representations/objection to the planning application and assesses the development proposal. The report will also contain an officer's recommendation for approval or refusal of the application. A copy of the report will be available seven days prior to the hearing.
15. If appropriate, prior to the date of the hearing, members shall have an opportunity to visit the site. They may be accompanied by such officers as they deem appropriate. The purpose of a site visit will be to inspect the site and the surroundings, not to debate the application or to hear representations from any party. No such site visit will be a formally constituted meeting of the Committee. No person, other than an accompanying officer, may address the Committee during a site visit.
16. At the pre-determination hearing the order of business will be as follows:

- (a) The Convener will explain the purpose of the hearing.
 - (b) The following parties will be given the opportunity of being heard by the Committee: the applicant and/or agent, relevant statutory consultees, and any person from whom the Council received representations including objectors and supporters
 - (c) The Convener may permit the applicant and/or agent to respond to any points raised by any party heard by the Committee and may allow a further opportunity for that party to reply to any new points raised by the applicant/agent.
 - (d) After each presentation, members of the Committee will have the opportunity to question the party who gave the presentation or to seek clarification on factual or legal matters arising from the presentation from Council officers.
 - (e) The Convener then closes the pre-determination hearing.
17. Unless with the consent of the Convener, the applicant and/or agent will normally be entitled to speak for up to 10 minutes in total. Any individual who has made representations regarding the planning application will normally be entitled to speak for up to 5 minutes. For parties other than the applicant, where there are two or more persons having a similar interest being discussed at the hearing a spokesperson should, where possible, make the submission on behalf of the group. This is to ensure that all relevant matters are given the time to be put forward and to avoid repetition by parties with similar issues. Unless with the consent of the Convener, a spokesperson for a group will normally be entitled to speak for up to 10 minutes. In the event that a large number of representations are received, mainly on the same aspect(s) of the application, the Convener may limit the number of speakers, having regard to paragraph 12 below.
18. If anyone who has intimated their intention to be heard fails to appear at the hearing timeously, the Committee may proceed with the business without hearing that person.
19. No cross-examination of any parties by other parties will be permitted.
20. The Convener will be responsible for ensuring that the business of the Committee is carried out efficiently while having due regard to the principles of natural justice.
21. For the avoidance of doubt, there will be no consideration or debate by Members of the Committee of the merits of the development proposed in the planning application and no decision on the application will be taken at the hearing.
22. The application will be determined at the next meeting of Council after the predetermination hearing. In normal circumstances, this meeting will take place immediately following the pre-determination hearing.

23. If it is not possible to hold a meeting of the Council immediately following a pre-determination hearing, a note of the presentations made to the Committee at the hearing will be taken by the Clerk and will be made available to the meeting of the Council at which the planning application is to be determined.