

**REPORT TO:** East Lothian Council

**MEETING DATE:** 24 February 2015

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

**SUBJECT:** Involvement of Elected Members in Pre-application Stages of Major Development Proposals in Accordance with Scottish Government/CoSLA Guidance

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## **1 PURPOSE**

- 1.1 The report proposes a procedure for the involvement of Members in pre-application stages of major development proposals, to contribute to the Scottish Government's agenda for modernisation of the planning system.

## **2 RECOMMENDATIONS**

- 2.1 That Members approve the proposed procedures in respect of Councillor Pre-Application Discussions.
- 2.2 That the Scheme of Administration for Planning Committee be amended to reflect these procedures.

## **3 BACKGROUND**

- 3.1 The reforms brought forward through the Planning Etc (Scotland) Act 2006 introduced the distinction between 'national', 'major' and 'local' planning applications. National developments are those set out in the Scottish Government's National Planning Framework). Major applications are defined in a number of terms dependant on the type of development proposed, as set out in The Town and Country Planning (Hierarchy of Development) (Scotland) Regulations 2009.
- 3.2 Any development (other than exempt development) mentioned in Schedule 1 of the Environmental Impact Assessment (Scotland) Regulations 2011 is a major development. For housing development, a major application is one comprising of 50 houses or more or with a site

area of 2 hectares or more. For business, general industry and storage and distribution developments any of 10,000 square metres floorspace or more or a site area of 2 hectares or more is a major development. For retail development the thresholds are 5,000 square metres floorspace or a site area of 2 hectares or more. Other development types (e.g. electricity generation, waste management, minerals) have relevant criteria.

- 3.3 Local applications are those which do not meet the above criteria, though Ministers can direct that a local application be dealt with as if it were a major or national development.
- 3.4 One of the purposes of the reforms of the planning system is to increase the level of public engagement and scrutiny of major applications, in order to allow for improved understanding of such proposals, deliver better guidance on key issues and ultimately achieve better decision making.
- 3.5 A further purpose of the reforms is to 'front-load' the planning system to achieve early identification of significant issues. That this involve Members as well as officers is considered helpful to prospective applicants, aiding their understanding of local issues and informing the development of their plans before submitting applications.
- 3.6 Since the legislative and regulatory reform of the planning system, guidance has sought to flesh out how Member involvement in the pre-application process could work whilst respecting the Code of Conduct for Councillors and avoiding any perception of proposals being pre-determined.
- 3.7 The Improvement Service guidance of 2007 is relevant in that it makes clear that a councillor, either as a member of the Planning Committee or as a local elected member may discuss the details of development proposals prior to their consideration for determination at Planning Committee. However, a member of the Planning Committee cannot state a view on the determination of an application or organise support or opposition to a proposal if they are to take part in their determination.
- 3.8 Paragraph 7.14 of the Code makes it clear that it is entirely appropriate for councillors to attend public meetings/events, including those relating to statutory pre-application consultation.
- 3.9 More recently (February 2014), the Scottish Government, COSLA and the Commissioner for Ethical Standards in Public Life in Scotland have jointly published Guidance on the Role of Councillors in Pre-Application Procedures (Appendix 2).
- 3.10 In this Guidance the Scottish Government reiterates that it is keen to ensure that members are confident in engaging at the pre-application stage on substantial development proposals, adding value to the process, while continuing to act within the terms of the Councillors' Code of Conduct. This early engagement is intended to better inform Members

of proposals that may subsequently come before them, support a degree of certainty by enabling an early exchange of views and discussion of key issues that they want to see addressed, and assist officers of the authority in negotiating on those issues.

- 3.11 As stated in the Guidance, the Scottish Government seeks a consistency of approach across Scotland that will both support certainty from strong early engagement and also enable members to participate confidently, backed by a clear remit and procedure to do so. They wish to ensure that councillors, and other parties, are clear of their roles and responsibilities through procedures set out by their own authority.
- 3.12 It is further stated that Councillors must not be - or be seen to be - biased, predetermined or have a closed mind or to have been influenced by improper or irrelevant considerations. They are expected to approach their decision-making with an open mind in the sense that they must have regard to all material considerations and be prepared to change the views they are minded towards, if persuaded that they should.
- 3.13 The Guidance also considers where Members may be asked to comment on requests to the planning authority for a provisional view as to whether the authority might be minded, in principle, to consider granting planning permission. (This may occur in cases where developers are seeking the planning authority's view in advance of committing to expensive and lengthy technical appraisals.) The Guidance advises that as a part of any such request and only as part of the planning authority considering and forming such a provisional view, Members are entitled to express an opinion. This is seen as not only appropriate and acceptable; the Guidance states that it can also be a helpful and responsible thing to do, contributing towards greater certainty and more efficient processing of subsequent applications. However, it also states that any opinions or views expressed by councillors at that stage must remain mindful of the overarching requirements of fairness and impartiality and of keeping an open mind, as any conduct inconsistent with these requirements may compromise the determination of any subsequent planning application.
- 3.14 To address this the Guidance includes advice on the considerations which should be used to form the basis of agreed and adopted local procedures for any forum in which a provisional view is to be considered and generated pre-application discussions:
- Emphasis should be given to providing meaningful guidance and a helpful service that adds value to the preparation of applications;
  - Members should be able to air points of view at the pre-application stage on the understanding that the general issues aired in, or the outcomes of, the discussions will be placed into the public domain;
  - Any procedures must be compliant with the requirements of the Councillors' Code of Conduct;

- Local authorities should consider their own procedures in implementing this guidance and set out which members are to be involved in pre-application discussions. This could be the relevant committee which determines planning applications or could be the members of that committee setting in a consultative forum (rather than as a formal committee); and
  - Procedures should be conducted in a consistent and transparent manner to avoid suspicions that councillors may have prejudiced their positions.
- 3.15 To meet these considerations the Guidance further advises that the forum in which discussion is to take place (committee, panel, other grouping) should be identified and that discussions should usually be held in public but that, if seen as appropriate or necessary in particular instances, local authorities should carefully consider if they should be held in private.
- 3.16 In all such meetings, the status and purpose of the process (including public minutes) should be clear, articulate and publicly available. It is essential to make it clear that persons who may wish to comment on the application if it comes to be submitted will - at the appropriate time - have a full right to make representations.
- 3.17 In respect of East Lothian Council, the recommended procedures set out in accompanying schedule (Appendix 1) would allow for consideration of proposals in an appropriate public forum, as already used for pre-determination hearings for major applications significantly contrary to the development plan, whilst minimising the impact on resources in terms of notification and administrative procedures.
- 3.18 Furthermore, it would minimise demand on resources by allowing Members to consider which major or national proposals they wish to consider, rather than automatically bringing them to Planning Committee. There would be a commitment required from officers in reporting to Committee; however, the report would feed in to the fuller report on an application for determination in due course.
- 3.19 Other options could include:
- Informal meetings between Members and officers. This may be difficult to organise all relevant Members and officers or it would involve multiple briefings which would be time and resource intensive. The benefit of using Planning Committee is the fixed scheduling of it. It may also be more difficult to involve applicants.
  - Developer presentations. In terms of impartiality, it is seen as preferable for officers to present the details of the proposal and the issues as relevant, with developers presenting their case as they do for determination of applications at Committee.

- Developer or development management forums. These would involve a separate organisation of meetings, with implications for Member's and officer's schedules, as well as resource implications.

3.20 Overall the proposed alignment of the procedure with the existing Planning Committee reporting and scheduling is seen as the most effective and certain process to allow Members, if they see fit in the particular circumstance of the case, the option to consider such proposals prior to applications being lodged. The Scheme of Administration would be updated to take account of these new arrangements to facilitate and to provide information for pre-application discussions by Members on national and major applications.

#### **4 POLICY IMPLICATIONS**

4.1 There are no policy implications of the proposed procedure.

#### **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 - some additional work required by Planning and Committee Services staff in reporting/organisation.

6.3 Other – none.

#### **7 BACKGROUND PAPERS**

7.1 Planning Etc (Scotland) Act 2006

<http://www.legislation.gov.uk/asp/2006/17/contents>

7.2 Town and Country Planning (Hierarchy of Development) (Scotland) Regulations 2009

<http://www.legislation.gov.uk/ssi/2009/51/regulation/2/made>

7.3 National Planning Framework 3 2014

<http://www.scotland.gov.uk/Topics/Built-Environment/planning/NPF3-SPP-Review/NPF3>

- 7.4 Environmental Impact Assessment (Scotland) Regulations 2011  
<http://www.legislation.gov.uk/ssi/2011/139/contents/made>
- 7.5 Code of Conduct for Councillors  
<http://www.scotland.gov.uk/Publications/2010/12/10145144/0>
- 7.6 Guidance on the Role of Councillors in Pre - Application Procedures  
<http://www.scotland.gov.uk/Resource/0044/00444959.pdf>

<b>AUTHOR'S NAME</b>	Iain McFarlane
<b>DESIGNATION</b>	Service Manager, Planning
<b>CONTACT INFO</b>	x7292 imcfarlane@eastlothian.gov.uk
<b>DATE</b>	09/02/2015

**Member Pre-Application Discussions of Major Applications**

All major and national applications can be considered for formal pre-application discussion by Members.

In order to facilitate this, all Proposal of Application Notices (PANs), as required for all major applications a minimum of 12 weeks before the submission of the application itself, will be notified to Members on the weekly Scheme of Delegation List.

The details of the notification will include the Case Officer to whom it has been allocated.

Members will have 4 weeks from the date of notification to call in the PAN to be subject to pre-application discussion by Members.

A call-in requires to be sent to Planning via [environment@eastlothian.gov.uk](mailto:environment@eastlothian.gov.uk), copied to the case officer email address as given in the notification and to the Service Manager, [Planning.imcfarlane@eastlothian.gov.uk](mailto:Planning.imcfarlane@eastlothian.gov.uk).

No reason is required for call-in of a PAN for pre-application discussions.

If called in, the PAN will be subject to an officer report to be heard at Planning Committee within 2 months of the date of the PAN call-in.

The officer report will form part of the Planning Committee agenda.

A site visit will be held as part of the normal Committee site visit schedules.

The officer report will give details of the character and constraints of the site, of the proposed development and of the principal material considerations to be considered in its determination.

The applicant would be invited to address committee in the same terms as for determination reports.

Members will discuss the proposal in terms of the Councillor Code of Conduct.

The discussions will be public unless Members consider there is good reason to hold a private hearing. All discussions will be minuted.

# Guidance on the Role of Councillors in Pre-Application Procedures



Commissioner for Ethical Standards  
in Public Life in Scotland





**To:- All local authorities in Scotland**

## **GUIDANCE ON THE ROLE OF COUNCILLORS IN PRE-APPLICATION PROCEDURES**

### **1.0 Introduction**

- 1.1 The Scottish Government is keen to ensure that councillors are confident in engaging at the pre-application stage on substantial development proposals, adding value to the process, while continuing to act within the terms of the Councillors' Code of Conduct. Their involvement at this stage in the planning process is not a substitute for formal consideration and decision-making on development proposals. But this early engagement is intended to better inform councillors of proposals that may subsequently come before them, support a degree of certainty by enabling an early exchange of views and discussion of key issues that councillors want to see addressed, and assist officers of the authority in negotiating on those issues.
- 1.2 We are seeking a consistency of approach across Scotland that will both support certainty from strong early engagement and also enable councillors to participate confidently, backed by a clear remit and procedure to do so. We wish to ensure that councillors, and other parties, are clear of their roles and responsibilities through procedures set out by their own authority.
- 1.3 This guidance should form the basis of agreed and adopted local procedures for pre-application discussions which should be prepared as a matter of priority. Considerations to be taken into account in producing those procedures are set out in section 4 below.
- 1.4 In producing this guidance, the Scottish Government has worked closely with the Commissioner for Ethical Standards in Public Life in Scotland and received endorsement for the relevant sections of its contents.

### **2.0 Context**

- 2.1 The responsibility which councillors have to make proper and reasoned decisions on planning matters in terms of the Councillors' Code of Conduct ("the Code") provides the context for this subject.
- 2.2 Amendments to legislation arising from the Planning etc (Scotland) Act 2006 changed some aspects of the roles of councillors. In addition to councillors being responsible for decisions both on policy and strategic issues and also individual planning applications (unless delegated), additional measures were introduced regarding enhanced scrutiny of applications and the authority's Local Review Body.

- 2.3 One of the policy drivers for change was the introduction of more “front-loading” of engagement. It was also recognised that through early councillor involvement and expression of provisional views; more certainty and confidence would come from informing the process and avoiding unexpected issues emerging at a late stage.

### **Policy and Strategy**

- 2.4 The Code explicitly allows councillors to discuss or debate matters of policy or strategy, even though these may provide the framework within which individual applications will in due course be decided.
- 2.5 As noted at section 7.7 of the Code “...in your key role in establishing planning policies for the area, you are fully entitled to express your views or advocate proposals for the making, approval or amendment of the development plan, including supplementary planning guidance published by the planning authority both relating to general policies for the authority’s area and to briefs and masterplans prepared for specific sites in anticipation of planning applications.”

### **Individual Applications**

- 2.6 In terms of handling individual applications once they have been submitted, the Code seeks to reinforce the principles of fairness and impartiality in relation to the determination of any statutory application including planning applications. Councillors must not be - or be seen to be - biased, predetermined or have a closed mind or to have been influenced by improper or irrelevant considerations.
- 2.7 Councillors are expected to approach their decision-making with an open mind in the sense that they must have regard to all material considerations and be prepared to change their views which they are minded towards if persuaded that they should.

## **3.0 Pre-application Discussions**

- 3.1 Paragraph 7.14 of the Code makes it clear that it is entirely appropriate for councillors, to attend public meetings/events (including those relating to statutory pre-application consultation). Pre-application consultation was introduced as one of the measures to improve early engagement with the community on prospective applications for national and major developments.
- 3.2 As a matter of Scottish Government policy the early engagement of councillors in pre-application discussions has been encouraged as part of the wider reform of the planning system. As already indicated this early engagement is intended to better inform members of proposals that may later come before them formally, enable an early exchange of views and discussion of key issues that councillors want addressed and to assist officers in negotiating on those issues. This is helpful to prospective

applicants, aiding their understanding of local issues and informing the development of their plans before submitting applications.

3.3 The Code includes a key provision in this regard at paragraph 7.8:-

*'7.8 You may also be asked to comment on requests to the planning authority for a provisional view as to whether - in respect of a proposal for a major development the authority might be minded, in principle, to consider granting planning permission. This may occur in cases where developers are seeking the planning authority's view in advance of committing to expensive and lengthy technical appraisals. As a part of any such request and only as part of the planning authority considering and forming such a provisional view, you are entitled to express an opinion in advance of the statutory application for planning permission being submitted to the planning authority formally for determination.'*

3.4 It is not only appropriate and acceptable for councillors to engage and provide a provisional view at the pre-application stage; it can also be a helpful and responsible thing to do, contributing towards greater certainty and more efficient processing of subsequent applications.

3.5 Any opinions or views expressed by councillors at that stage must be made mindful of the overarching requirements of fairness and impartiality and of keeping an open mind. This will be particularly important as any conduct inconsistent with these requirements may compromise the determination of any subsequent planning application.

## **4.0 Pre-Planning Application Procedures**

### **Key Considerations for Pre-application Discussions**

4.1 The following considerations should be applied by local authorities in drawing up procedures for councillors to engage in pre-application discussions:

- Emphasis should be given to providing meaningful guidance and a helpful service that adds value to the preparation of applications.
- Councillors should be able to air points of view at the pre-application stage on the understanding that the general issues aired in, or the outcomes of, the discussions will be placed into the public domain.
- Any procedures must be compliant with the requirements of the Councillors' Code of Conduct.
- Local authorities should consider their own procedures in implementing this guidance and set out which councillors are to be involved in pre-application discussions. This could be the relevant committee which determines planning applications or could be the members of that committee setting in a consultative forum (rather than as a formal committee).
- Procedures should be conducted in a consistent and transparent manner to avoid suspicions that councillors may have prejudiced their positions.

## **Key Provisions for Pre-application Procedures**

- 4.2 The considerations referred to in paragraph 4.1 above apply to the establishment of any forum in which a provisional view is to be considered and generated.
- 4.3 The forum in which discussion is to take place (committee, panel, other grouping) should be identified. Discussions should usually be held in public. However, where seen as appropriate or necessary, local authorities should carefully consider if they should be held in private. Guidance in paragraph 4.7 should continue to be followed.
- 4.4 The status and purpose of the process should be clear, articulate and publicly available. It is essential to make it clear that persons who may wish to comment on the application if it comes to be submitted will - at the appropriate time - have a full right to make representations.
- 4.5 The unique status of pre-application proposals should be clearly identified in the agenda for any meeting, including covering reports and any other introductory material prepared by officers. Such items should be clearly distinguished from other development management issues.
- 4.6 To avoid any misunderstanding (for councillors, interested parties and members of the public) it may be appropriate for the committee clerk to introduce the item in sufficient detail to allow participants to understand the purpose of the event, the broad nature of the proposals and to emphasise that the outcome is limited to the generation of a provisional view.
- 4.7 Officers should take a note of the meeting and prepare a minute which should be made publicly available in accordance with the requirements of good practice and the council's established conventions.

## **Training for Councillors**

- 4.8 To assist in enhancing public confidence, authorities should consider the need for further councillor training so that members can demonstrate objective levels of competence in planning generally and in the pre-application and development management processes, in particular.

## **Review of Procedures**

- 4.9 Procedures should be kept under review by cross council, planning and professional networks to ensure the dissemination of best practice.

## **5.0 Timescales for Introduction of the Procedures**

- 5.1 Each local authority should establish its own pre-application procedures as a matter of priority.

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