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## **GUIDANCE ON THE ROLE OF COUNCILLORS IN THE CONSIDERATION OF PRE-APPLICATION CONSULTATIONS FOR MAJOR DEVELOPMENTS**

Report by Head of Communities and Economy

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### **1 PURPOSE OF REPORT**

- 1.1 The purpose of this report is to advise the Committee of the recommended procedures for Councillors in the pre-application process.

### **2 BACKGROUND**

- 2.1 Guidance on the role of Councillors in the pre-application process, published by the Commissioner for Ethical Standards in Public Life in Scotland (a copy is appended to this report), was first reported to the Committee at its meeting of 27 May 2014 with further guidance being reported to the Committee at its meeting of 07 October 2014. The guidance clarifies the position with regard Councillors stating a provisional view on proposals at pre-application stage.
- 2.2 The Planning team of the Communities and Economy Service manages the process of applying for planning permission, and offers an advice service to anyone considering making an application. Giving pre-application advice helps applicants to gain clear, impartial and professional advice at an early stage regarding any key issues that need to be addressed prior to submitting a formal development proposal. Advice can be provided for developments requiring planning permission, advertisement consent, conservation area consent or listed building consent.
- 2.3 The Planning team provides free pre-application advice on over 200 projects each year, the vast majority of which is with regard local developments. However a small number of requests relate to major developments and are subject to a formal process as defined by regulations. A major application is defined by regulations and constitutes proposed developments over a specified size. For example; a development comprising 50 or more dwellings, a business/industry use with a gross floor space exceeding 10,000 square metres, a retail development with a gross floor space exceeding 5,000 square metres and sites exceeding 2 hectares. A major application (with the exception of a Section 42 application to

amend a previous grant of planning permission) cannot be submitted to the planning authority for determination without undertaking a formal pre application consultation (PAC) with local communities.

- 2.4 With regard to the role of Councillors in the pre-application process, the Councillors' Code of Conduct states the following 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.'*

- 2.5 It is reasonable for constituents to expect their local elected representatives to have a provisional view on a major planning application proposal within their locality. The above guidance provides for this within specific terms. The further guidance and recommended procedures identified below seek to enable Members to be confident about expressing a provisional view whilst being safeguarded from challenge on grounds of partiality. It also remains the case that Members can at any time contact the Council's planning officers for advice and guidance.

### **3 PROCEDURES**

- 3.1 The Councillors Code of Conduct enables Councillors to express a 'without prejudice' view and to raise material considerations with regard to a major application.

#### Report Pre-Application Consultations to Committee

- 3.2 To enable Councillors to express an early view on a major application it is proposed to report to the Committee details of formal pre-application consultations by prospective applicants. The report will outline the proposal, identify the key development plan policies and material considerations and state a provisional without prejudice planning view regarding the principle of development.
- 3.3 Reports on individual sites will supplement the existing major developments report which updates the Committee on applications being assessed and other developments at pre-application consultation stage.
- 3.4 The Committee will be invited to express a 'without prejudice' view and to raise any material considerations which they wish the applicant and/or officers to consider. Views and comments expressed by the

Committee will be entered into the minutes of the meeting and relayed to the applicant for consideration.

### Meetings and Site Visits

- 3.5 Outwith the Committee process elected members may be invited to attend meetings or site visits with prospective applicants as part of the pre-application consultation process. When attending a meeting or site visit in connection to a major application, it is recommended that the elected member request a planning officer to attend. Any planning issues raised at the meeting can then be noted by officers.
- 3.6 Prior to the submission of a major planning application it is a statutory requirement on the prospective applicants to undertake public consultation in the locality including at least one 'public event' (usually a public exhibition). It is reasonable for an Elected Member to attend such a public event without a Council planning officer present, but the Member should (in accordance with the Commissioner's guidance) not offer views, as the forum for doing so will be at the meeting of the Planning Committee referred to in paragraphs 3.2 to 3.4 above.
- 3.7 Members will be aware that from time to time they are approached unsolicited by phone, e-mail or face to face contact (e.g. at surgeries), by applicants, supporters and objectors to applications. Clearly, a planning officer will not be present on such occasions but it would be reasonable for the Elected Member to note that s/he had raised (or was intending to raise) the following material considerations at the appropriate meeting of the Planning Committee.

### Determining a Subsequent Application

- 3.8 In terms of handling individual applications once they have been submitted, the Councillors' Code of Conduct 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.
- 3.9 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.
- 3.10 In reporting a major application to the Committee for consideration, reference will be made to any pre-application advice given.

## **4 RECOMMENDATION**

- 4.1 It is recommended that the Committee:
  - a) notes the established guidance and Committee procedures set out in this report; and

- b) agrees to receive a regular report regarding any formal pre-application consultations by prospective applicants.

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**The Scottish  
Government**  
Riaghaltas na h-Alba

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



Commissioner for Ethical Standards  
in Public Life in Scotland



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**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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