
Report To:	Inverclyde Council	Date:	20 February 2020
Report By:	Head of Legal & Property Services	Report No:	LP/014/20
Contact Officer:	Gerard Malone	Contact No:	01475 712710
Subject:	Administrative Arrangements: Determination of Planning Applications Subject to a Pre-Determination Hearing		

1.0 PURPOSE

- 1.1 The purpose of this report is to: (1) advise of legislative changes relative to the determination of those planning applications which are subject to a Pre-Determination Hearing (PDH); and, (2) request the Council to approve the proposals set out in section 6.4 and the consequent changes to the Scheme of Administration.

2.0 SUMMARY

- 2.1 A PDH is necessary for any planning application for any national or major development which is significantly contrary to the Development Plan.
- 2.2 It has been an explicit legislative requirement that planning applications subject to a PDH are determined by the full Council. However, Section 27 of the Planning (Scotland) Act 2019 will remove the requirement for determination of such applications by the full Council.
- 2.3 The Planning (Scotland) Act 2019 (Commencement No. 3) Regulations 2019 bring the above section into force on 1 March 2020 and, so, the change applies to all relevant applications that fall to be determined on or after 1 March.
- 2.4 The recommended proposal for PDH-relevant applications is set out in paragraph 6.4 of this report and other arrangements are also outlined for Members' consideration.

3.0 RECOMMENDATIONS

- 3.1 That the Council considers the proposals for determining those planning applications subject to a PDH set out in section 6.4 of the report and, if so agreed, approves the consequent changes to the Scheme of Administration set out in Appendix 1.

Gerard Malone
Head of Legal & Property Services

4.0 BACKGROUND

- 4.1 The Planning etc. (Scotland) Act 2006 introduced a hierarchy of developments. The 2006 Act defines the three categories in the hierarchy of developments to which all applications for planning permission will be allocated. The three categories are national development, major development and local development.
- 4.2 Before determining an application for planning permission for a development within the classes of national developments and major developments which are significantly contrary to the Development Plan, the planning authority must give to the applicant and also to those persons who submit representations in respect of that application an opportunity of appearing before and being heard by a committee of the authority. This hearing is known as a Pre-Determination Hearing (PDH) and arrangements for such are made in accordance with Regulations made by Scottish Ministers. As Members know, apart from these specific circumstances, it is not otherwise the case that any hearing of applicants for planning permission or hearing of representations from parties is undertaken at the Planning Board.
- 4.3 The specific purpose of a PDH is to make the planning system more inclusive, allowing the views of applicants and those who have made representations to be heard before a planning decision is taken for these types of large developments. The planning authority has discretion over how PDHs operate in its area. This Council agreed procedures for PDHs at the meeting of the Environment and Regeneration Committee on 17 January 2013.
- 4.4 However, it was a specific legislative requirement of this PDH process that the planning application be determined by the full Council. This specific legislative requirement meant that all such major and national developments which are significantly contrary to the Development Plan had to be decided on by the Council and not the Planning Board. The legislation is now, however, about to change.

5.0 PRESENT POSITION

- 5.1 Section 27 of the Planning (Scotland) Act 2019 now removes the requirement for determination of those planning applications subject to a PDH to be made by the full Council.
- 5.2 This part of the Act will be brought into force on 1 March 2020 and will apply to all applications that fall to be determined on or after 1 March.
- 5.3 This new legislative requirement specifically addresses the concerns that the decision-makers involved in the determination by the full Council had not had the benefit of hearing the evidence presented at the PDH. It is an established principle that all of those persons involved in making a decision on a quasi-judicial application, such as any planning application, should be involved at every stage of the decision-making process. This legislative change addresses concerns that some of those persons involved in the determination by the full Council may have not had the benefit of hearing all of the evidence as presented to the PDH.
- 5.4 It is also explained in the background to the legislation that the change from the mandatory full Council consideration will assist to expedite applications and to assist in the timescales taken for consideration of these significant developments.

6.0 PROPOSALS

- 6.1 As a result of the new legislation, it is proposed firstly that there be no alteration to the initial step of the Council's current arrangements and any planning application subject to a PDH will be considered at a special meeting of the Planning Board.
- 6.2 This ensures there is a clear and comprehensible process which allows Elected Members to hear those wishing to present evidence and enables the Planning Board to consider and discuss the planning application, the report by the Head of Regeneration & Planning and the evidence presented, all without time pressures.

- 6.3 However, it is the next stage of the process which requires Council consideration. It is now not necessary for the full Council to determine the planning application and the reasons for this include concerns, as set out in 5.3 above, that some of those involved in determination by the full Council had not had the benefit of hearing the evidence presented at the PDH. This is a critical issue. It is essential for purposes of a sound legal approach to the determination of any quasi-judicial or regulatory decision by Members of this Council, including those decisions following upon a PDH, that any decision-maker is fully involved and engaged at all key stages of its consideration.
- 6.4 For this reason, it is proposed in this report that the process for national and major developments which are significantly contrary to the Development Plan shall be as follows:-
- Special meeting of the Planning Board for the purpose of the PDH;
 - Period of no fewer than 10 working days to allow Elected Members a period for proper consideration and reflection on the PDH; and
 - Thereafter, report on outcome of PDH submitted to the next scheduled meeting of the Planning Board for determination.
- 6.5 Authority is sought for these changes to be reflected in the Scheme of Administration set out in italicised text in the extract of the Scheme of Administration at Appendix 1 to the report (and shown coloured on the electronic version).
- 6.6 The above proposal secures the key principle that all of the decision-makers on a quasi-judicial application shall be thoroughly involved in each stage of the process whether in relation to any site visit, any Pre-Determination Hearing meeting itself and the report on the outcome of the PDH. The above process minimises the risk of challenge to the Council on the basis that all of the Elected Members determining an application on that basis will have heard all of the evidence presented at a PDH and this is an especially relevant point now given the very purpose of the amendment to the legislation as noted above.
- 6.7 However, it has to be recognised that the new legislation does not explicitly prohibit the full Council from determining planning applications which are subject to a PDH. It is, again, critical that any decision on a planning application, including those decisions following upon a PDH, is taken with regard only to relevant planning considerations and not to any other factor. An alternative means to secure a wider forum for the determination of PDH applications would be to require those Members who participate in that wider forum to (a) obtain and maintain their specialist certificate of training relative to planning determinations; and (b) ensure they fully attend (even though they are not a Member of the Planning Board) the PDH meeting itself and any relative site visit in connection with the application. Otherwise, it would now be wholly imprudent for any Member to seek to determine a PDH-relevant application without meeting these two, definite criteria. It has to be recognised that arrangements would be required to demonstrate and evidence compliance with these criteria. If the Council prefers this alternative to paragraph 6.4 above, then Standing Orders and the Scheme of Administration will be amended suitably.

7.0 IMPLICATIONS

7.1 Finance

There are no financial implications.

Financial Implications:

One off Costs

Cost Centre	Budget Heading	Budget Years	Proposed Spend this Report	Virement From	Other Comments
N/A	N/A	N/A	N/A	N/A	N/A

Annually Recurring Costs/ (Savings)

Cost Centre	Budget Heading	With Effect from	Annual Net Impact	Virement From (If Applicable)	Other Comments
N/A	N/A	N/A	N/A	N/A	N/A

7.2 Legal

The legal implications are as set out in the report.

7.3 Human Resources

There are no HR implications arising from this report.

7.4 Equalities

Equalities

(a) Has an Equality Impact Assessment been carried out?

<input type="checkbox"/>	YES
<input checked="" type="checkbox"/>	NO – This report does not introduce a new policy, function or strategy or recommend a substantive change to an existing policy, function or strategy. Therefore, no Equality Impact Assessment is required

(b) Fairer Scotland Duty

If this report affects or proposes any major strategic decision:-

Has there been active consideration of how this report's recommendations reduce inequalities of outcome?

<input type="checkbox"/>	YES – A written statement showing how this report's recommendations reduce inequalities of outcome caused by socio-economic disadvantage has been completed.
<input checked="" type="checkbox"/>	NO

(c) Data Protection

Has a Data Protection Impact Assessment been carried out?

<input type="checkbox"/>	YES – This report involves data processing which may result in a high risk to the rights and freedoms of individuals.
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X	NO
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7.5 **Repopulation**

There are no direct repopulation implications arising from this report.

8.0 **CONSULTATIONS**

8.1 This report has been endorsed by the Corporate Management Team.

9.0 **BACKGROUND PAPERS**

9.1 None.

INVERCLYDE COUNCIL

1. SCHEME OF ADMINISTRATION

1.1 This Scheme of Administration is within the Council's Standing Orders.

2. PURPOSE OF SCHEME

2.1 These terms of reference and delegated functions (Scheme of Administration) set out the powers delegated by the Council to its Committees, Sub-Committees and Boards in terms of the Local Government (Scotland) Act 1973 and shall regulate:

- (a) the allocation of the functions of the Council to the Committees, Sub-Committees and Boards of the Council; and
- (b) the delegation to Committees, Sub-Committees and Boards, where appropriate, of authority to exercise the functions of the Council.

2.2 The Scheme of Administration is to be read with the Council's Standing Orders, Standing Orders Relating to Contracts and Financial Regulations.

3. PROVISIONS APPLICABLE TO ALL COMMITTEES

3.1 Committees shall consider only matters within their terms of reference.

3.2 Where the Council has delegated any class of functions to a Committee, it shall retain the power to delegate any one of those functions to another Committee on a particular occasion when, by reason of the nature of the matter, in the opinion of the Council, it ought to be so referred.

3.3 All functions listed as delegated functions and any further additional such functions which may be delegated by the Council are also delegated to the respective Committee.

4. DELEGATED FUNCTIONS

4.1 The following functions shall be delegated to Committees:

- (a) The powers required to carry out their functions provided that the decisions made by any Committee shall comply with the terms of policy and budget approved by the Council.
- (b) All Boards and the Local Review Body, being quasi-judicial bodies, shall have full powers and no decisions taken shall be referred to the Council *except in the case of the Planning Board relative to those applications for major and national developments which are statutorily subject to pre-determination hearings.*

5. GENERAL PROVISIONS

5.1 The following general provisions shall apply:

- (a) A Committee may further delegate authority to an officer of the Council to undertake or discharge any function which is delegated to that Committee. The Local Review Body may delegate authority to an officer of the Council to undertake or discharge

any function delegated to it, where it is so enabled by the Town and Country Planning (Schemes of Delegation and Local Review Bodies) (Scotland) Regulations 2013;

- 5.5(b) The Member who is unable to attend and who is appointing a substitute must inform the Proper Officer as soon as possible of the appointment of the substitute. When a substitute attends, the substitution applies throughout the duration of the meeting including any adjournment to a time later the same day and the appointing Member shall not be entitled to revoke the substitution or vote at the meeting or its same day adjournment. Only the substitute intimated by the appointing Member to the Proper Officer prior to the commencement of the meeting is entitled to attend and vote. The appointment of a substitute can be revoked by the appointing Member only prior to the commencement of the meeting.

6. FUNCTIONS RETAINED BY THE COUNCIL

- 6.1 The Council has overall responsibility for the Council Budget, the Chief Officer Management Structure and oversight of all political decision-making processes.
- 6.2 The following are reserved to the Council:
- (a) All functions reserved by law to the Council;
 - (b) The determination of the strategic objectives of the Council;
 - (c) The annual review of the revenue budget and the fixing of Council Tax;
 - (d) The annual review of the Capital Programme and the approval of annual budgets of capital and revenue expenditure;
 - (e) Approval of the Annual Treasury Strategy and Annual Report;
 - (f) The consideration of the Annual Report to Members by the Council's External Auditors;
 - (g) The making of Standing Orders and a Scheme of Administration, Standing Orders Relating to Contracts, a Scheme of Delegation to Officers and Financial Regulations;
 - (h) The making of an order for the compulsory acquisition of any land or interest in land;
 - (i) The making of any formal resolution to co-operate or combine with other local authorities in the provision of services;
 - (j) The appointment of the Provost and Depute Provost of the Council;
 - (k) The establishment of Committees of the Council and their terms of reference and the delegations of function thereto;
 - (l) The appointment of Members to Committees and the appointment of Conveners and Vice-Conveners;
 - (m) The appointment of Members of the Council to Joint Committees, Joint Boards and outside bodies;
 - (n) The approval of Schemes for the establishment of Community Councils;
 - (o) The approval of Polling Schemes for elections and referendums;
 - (p) The promoting or the opposing of the making of private legislation;

- (q) The promotion of byelaws, management rules and any necessary orders;
- (r) The appointment of the Chief Executive and all matters relating to disciplinary procedures for the Chief Executive;
- (s) The making of resolutions for Housing Renewal Areas;
- (t) The consideration of Members' remuneration;
- (u) The formal adoption of the Local Plan;
- ~~(v) The determination of an application for planning permission for a development of a class specified in Section 38A(1) of the Town & Country Planning (Scotland) Act 1997.~~

7. FUNCTIONS DELEGATED TO COMMITTEES

7.1 POLICY AND RESOURCES COMMITTEE

7.1.1 Power is delegated to the Policy and Resources Committee:

- (a) To advise the Council on outcomes, strategic objectives and key priorities;
- (b) To develop and approve Council policies, including community planning and partnership working;
- (c) To adopt and implement the management framework for planning, implementing, reporting and reviewing corporate service delivery;
- (d) To ensure the Council meets its statutory responsibilities in terms of best value;
- (e) To monitor implementation of the Council's Corporate Statement;
- (f) To facilitate and encourage any public consultation, engagement and participation with the community, partners and key stakeholders;
- (g) To instruct such performance information as the Committee requires to fulfil its remit and monitor overall performance in the delivery of services and the Council's financial performance;
- (h) To determine any reviews of community asset transfer requests;
- (i) To take all decisions which are not reserved to the Council or delegated to another Committee of the Council;
- (j) To have responsibility for the directorate planning, performance management reporting and financial monitoring for the following service areas:
 - Chief Executive's Office
 - Finance
 - Organisational Development, Human Resources and Corporate Communications
 - Legal and Property Services
 - Performance Management

- (d) To exercise the functions of the Council in respect of the Pharmacy and Poisons Act 1933 and Poisons Act 1972;
- (e) To exercise the functions of the Council in respect of permits in terms of Section 19 of the Transport Act 1985 (minibus permits);
- (f) To exercise the functions of the Council in respect of the Radioactive Substances Act 1993;
- (g) To exercise the functions of the Council in respect of the legislation relating to the control of diseases of animals;
- (h) To exercise the functions of the Council in respect of the safety of sports grounds;
- (i) To approve charges as required by statute and determine licence fees;
- (j) To exercise the Council's functions regarding notification of parades and processions insofar as not delegated to officers.

7.8 HUMAN RESOURCES APPEALS BOARD

7.8.1 Power is delegated to the Human Resources Appeal Board to be the internal Council appeal body for the purposes of the Council's role as an employer, in relation to workforce matters;

- (a) To hear and decide disciplinary appeals and grievances by employees on their conditions of employment and working arrangements;
- (b) To hear and decide appeals from teaching staff in regard to the application and interpretation of Schemes and Conditions of Service for Education staff.

7.9 PLANNING BOARD

7.9.1 Power is delegated to the Planning Board:

- (a) To undertake and discharge the development control and building standards functions of the Council as Planning Authority, Buildings Authority and as Verifier and Enforcer in terms of the relevant legislation;
- (b) [The determination of an application for planning permission for a development of a class specified in Section 38\(A\)\(i\) of the Town & Country Planning \(Scotland\) Act 1997.](#)

7.10 LOCAL REVIEW BODY

7.10.1 Power is delegated to the Local Review Body:

- (a) To review applications for planning permission or for consent, agreement or approval which have been refused, granted subject to conditions or which have not been determined within the prescribed period by the appointed officer under the Scheme of Delegation prepared in terms of the relevant legislation;
- (b) To carry out all other functions as a Local Review Body, as described in the relevant legislation.

7.11 GRANTS SUB-COMMITTEE

7.11.1 Power is delegated to the Grants Sub-Committee: