

Report To: Environment and Regeneration Date: 30th August 2012
Committee

Report By: Corporate Director,
Environment, Regeneration
and Resources **Report No:**
E+R/12/08/07/SJ/NMcL

Contact Officer: N.McLaren, Development and
Building Standards Manager **Contact No:** 01475 712420

Subject: Scottish Government Consultation on Miscellaneous
Amendments to the Planning System

1.0 PURPOSE

- 1.1 The purpose of this report is to approve a draft response to the Scottish Government's consultation on Miscellaneous Amendments to the Planning System.
- 1.2 The Scottish Government undertook a review of the first 12 months of the modernised planning system, including forums involving various stakeholders.
- 1.3 The proposed changes are contained in a number of draft Scottish Statutory Instruments and seek to ensure that the requirements of the system are clear, proportionate and fit for purpose.

2.0 SUMMARY

- 2.1 The consultation poses 12 questions, which were responded to as detailed in paragraphs 5.2 to 5.10.

3.0 RECOMMENDATION

- 3.1 It is recommended that the Committee agrees to the consultation response submitted to the Scottish Government.

4.0 BACKGROUND

- 4.1 The purpose of this consultation is to seek views on draft legislation for a number of refinements and amendments to the procedures on development management, schemes of delegation, local reviews and appeals.
- 4.2 The proposed changes come as a result of the findings from the Scottish Government's review of the first 12 months of the modernised planning system and forums involving various stakeholders on a range of aspects of the modernised system, as well as responses to the 2010 Consultation.
- 4.3 The proposed changes are contained in a number of draft Scottish Statutory Instruments and seek to ensure that the requirements of the system are clear, proportionate and fit for purpose. Subject to this consultation, the Government intends that changes will be incorporated into new versions of the regulations on development management procedures, local reviews and schemes of delegation and appeals, incorporating all the amendments made since 2009, which will be laid before Parliament. This consultation sought views by 22 June 2012.

5.0 CONSULTATION QUESTIONS

- 5.1 The consultation poses 12 questions:
- 5.2 A partial Business Regulatory Impact Assessment (BRIA) sets out the costs, benefits and risks of the proposed changes and a partial Equality Impact Assessment (EQIA) have been prepared.

Question 1: Are there any costs or benefits not identified in the draft BRIA?

Response: No

Question 2: Do you have any information or can you suggest sources of relevant information on the costs and/or benefits detailed in the BRIA?

Response: No

Question 3: We would appreciate your assessment of the potential equalities impact our proposals may have on different sectors of the population. A partial EQIA is attached to this consultation at Annex VII for your comment and feedback.

Response: Inverclyde Council does not consider that changes have an impact on equalities.

- 5.3 Planning authorities and developers have previously raised concerns over the Pre Application Consultation (PAC) process, in particular the requirements of waiting 12 weeks and having to hold public events is often disproportionate to the proposed amendment. The Government considers that removing PAC requirements for non compliance with planning conditions (section 42 applications) represents a pragmatic, proportionate and simple solution. The application process will still provide opportunities for public comment and requires the planning authority to give due consideration to such comment. It is intended is to alter the Act to exclude amendments to planning applications from the requirements for PAC.
- 5.4 These amendments do not apply to major and national developments applications for planning permission incorporating changes (other than to conditions) to existing permissions. Given the wide array of possible changes, the Government considers that there is no obvious way to provide a pragmatic, proportionate and simple solution for identifying and exempting those applications for such material changes

that may not require PAC.

Question 4: Do you agree or disagree with the proposed removal of PAC requirements in relation to Section 42 Applications? Please explain why.

Response: The proposed change is most welcome, but a proportionate way to avoid PAC requirements for modest amendments to major applications requires to be fully considered. For example, housebuilders require to be responsive to market demand and it is to be expected that, within a major housing site, there will be substitutions of house types. Such changes, which are not material to the overall concept and principle of the development already approved should not require to be the subject of PAC.

- 5.5 The Government propose to streamline the planning process by reducing the instance when a planning application is required to be advertised and removing the bureaucracy around cost recovery of advertising charges, but recognise concerns about loss of publicity and about whether a single charge or a planning fees adjustment would cover advertising costs. The Scottish Government intends to amend the current requirements so that:

a) advertising is not required where neighbouring land is a road or a private means of access to land; or land with no premises which is owned by the applicant or the planning authority.

b) advertising is not required where the application is for householder development and neighbouring land has no premises on it.

c) the separate charging regime for recovering the costs of advertising from applicants will be removed and such costs will be met out of fee income, with an adjustment to fee levels to cover this.

Proposal b) is on the basis that householder development is only likely to affect the neighbours actually living or working in neighbouring premises. The Government has concluded that in a plan led system, the requirement to advertise development plan departures should remain. The changes in c) would remove the delays in cost recovery of such advertising. The Scottish Government wants to ensure that people can access information about proposals that may affect them or their communities in the most appropriate way and without undue cost and delay being added to the process. At present there are requirements for neighbour notification, for the publication of the weekly list of applications, available in planning offices, libraries, on-line and sent to community councils, and in some cases there are further requirements for newspaper advertising. The Government would welcome views on the effectiveness of the current arrangements. Notices also require to be published for a range of other planning issues. These include for environmental impact assessment, for stages in the development plan process and for more specialist consents covering listed buildings, conservation areas, adverts and hazardous substances. The Government are interested in views on the current arrangements for informing people of these issues and whether they are considered effective and proportionate.

Question 5: Do you think the proposed changes to advertising requirements are appropriate or inappropriate? Please give reasons for your answer.

Response: The changes proposed are, in themselves, appropriate. In particular, the incorporation of the cost of advertising within the overall planning application fee will prevent delays in the decision process (retrospective fee collection continues to be a problem).

Question 6: Are there further changes to requirements or the use of advertising in planning which should be considered? Please give reasons and

evidence to support your answer.

Response: Inverclyde Council supports public participation in the planning application process, but expects that methods of consultation and publicity be proportionate, effective and value for money. In this respect the removal of local authority owned land and householder applications is welcomed. Newspaper notices should only be placed where there is a purpose; the development is of wider public interest or there is no method of identifying land owners. The continued requirement to advertise proposed development plan departures, rather than potential departures, leaves the administration of the process open to challenge. Departure from policy is one of interpretation and is often not concluded until late in the assessment process. The placing of late advertisements only delays the decision process for no obvious benefit. While there may not be a building on neighbouring land, local knowledge often ensures that ownership is known. In such circumstances this would present a more effective and cost efficient solution.

- 5.6 In 2009 procedures were introduced specifying that where the decision on a planning application for local development was delegated to officials, that decision could be challenged via a local review and not an appeal to the Scottish Ministers. The delegation of applications in which the planning authority has an interest or which have been made by members of the planning authority is not permitted. Many applications for relatively minor developments, which would previously have been delegated to an officer for decision, have therefore had to be referred to committee for a decision. This delays decisions and diverts planning authority resources. Planning authorities are also required to notify applications in which they have an interest to the Scottish Ministers if they wish to grant permission in circumstances where the proposed development would be significantly contrary to the development plan. The Government propose to remove this requirement but, in doing so, has no plans at present to amend the above requirements on notifying cases to Ministers. Where the planning authority wish to remove the restriction the planning authority will have to prepare a new scheme of delegation.

Question 7: Do you agree or disagree with the proposed removal of the restrictions on the delegation of planning authority interest cases?

Response: Inverclyde Council agrees with the removal of the restrictions.

- 5.7 Applicants are allowed to appeal to Ministers where a planning authority has not determined the application within an agreed period or the period set out in regulations. This postpones both the point at which the right to appeal on the grounds of non-determination arises and the start of the three month period within which such an appeal must be made. There is no similar allowance made for agreements in relation to cases to which local review would apply. Applicants may therefore feel pressed to seek a local review rather than risk losing that right by waiting even a short additional period for the officer's decision. Introducing a similar power to agree extensions in local review cases would ensure applicants had the flexibility to agree longer decision periods and preserve their right to seek a local review on the grounds of non-determination. The Government propose to allow local reviews on the grounds of non-determination after the prescribed two month period, or after any extended period as may at any time be agreed upon in writing between the applicant and the appointed person.

Question 8: This section proposes a change to allow an extended period for the determination of an application to be agreed upon between the applicant and appointed person where local review procedures would apply. Do you agree or disagree with this change?

Response: Inverclyde Council agrees with this change. Although no non determination appeals have been lodged in Inverclyde, the change provides consistency with the planning appeal process.

- 5.8 Where an applicant has sought a local review on the grounds of non-determination of

the application and the LRB does not determine the case within 2 months then the planning permission is automatically deemed to be refused and the LRB has no power to make a decision beyond this period, even if the applicant were willing to wait. Other than making another application for the proposal, the applicant's only recourse is to appeal to the Scottish Ministers against this deemed refusal. The statutory requirements on local reviews mean in practice it is challenging to issue a decision within two months if further processing is required. This means such cases are very likely to be subject to the automatic deemed refusal. To address this issue it is proposed to extend the period for determination of local reviews sought on the grounds of non-determination of the application to three months.

Question 9: Do you agree or disagree with this change to the time period on determining local reviews sought on the grounds of non-determination?

Response: Inverclyde Council agrees with this change, although no non determination appeals have been lodged in Inverclyde.

- 5.9 The Appeals Regulations do not make provision for the Scottish Government reporter considering a case to ask for the submission of relatively minor pieces of information which might be needed to help process the case, but would not constitute new evidence requiring the full range of circulation and garnering of comments from the parties to the case. As a result, such requests for minor pieces of information can lead to unnecessary processing and delay. It is proposed to make an amendment to the Appeals Regulations to allow the reporter to judge whether a fair and transparent process requires such requests for minor pieces of information to be subject to the full procedural requirements of the Regulations.

Question 10. Do you agree or disagree with this change to the Appeals Regulations on procedure regarding minor additional information?

Response: Agree. The Reporter is entitled to the full facts in coming to a decision.

- 5.10 Since August 2009, those conditions attached to planning permission in principle which require the further approval of the planning authority, for some detailed aspect of the development, require an application. Such applications must be neighbour notified, advertised, where necessary, in a local paper and subject to requirements on formal decision notices. Concerns have been raised that this could be excessive, with, for example, objections triggering referral to the Planning Board on technical issues such as archaeological surveys. The comparison is made to the situation prior to August 2009, when, in relation to outline planning permission, only conditions relating to "reserved matters" - that was landscaping, access arrangements and the design and location of buildings - were subject to such formal processing. Other matters specified in conditions as requiring further approval could previously be dealt with by an exchange of letters.

Question 11: Do you think the current requirements on applications for approval of matters specified in conditions on planning permission in principle are generally excessive?

Response: Yes, although Inverclyde Council has not experienced difficulties with the present system.

Question 12: Are there any issues in this consultation not covered by a specific question or any other aspects of the current planning legislation on which you would like to comment? If so, please elaborate.

Response: No.

6.0 IMPLICATIONS

6.1 Finance: None

Financial Implications –

Cost Centre	Budget Heading	Budget Year	Proposed Spend this Report	Virement From	Other Comments
n/a	n/a	n/a	n/a	n/a	n/a

Financial Implications – Annually Recurring Costs/ (Savings)

Cost Centre	Budget Heading	With Effect from	Annual Net Impact	Virement From	Other Comments
n/a	n/a	n/a	n/a	n/a	n/a

6.2 Personnel: None.

6.3 Legal: None.

7.0 LIST OF BACKGROUND PAPERS

Scottish Government – Consultation on Miscellaneous Amendments to the Planning System 2012

ANNEX VIII

CONSULTATION ON MISCELLANEOUS AMENDMENTS TO THE PLANNING SYSTEM 2012

RESPONDENT INFORMATION FORM

Please Note this form **must** be returned with your response to ensure that we handle your response appropriately

1. Name/Organisation

Organisation Name

Inverclyde Council

Title Mr

Surname

McLaren

Forename

Nicholas

2. Postal Address

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Phone

01475 712420

Email

Nicholas.McLaren@Inverclyde.gov.uk

3. Permissions - I am responding as...

/ Group/Organisation

(c)

The name and address of your organisation **will be** made available to the public (in the Scottish Government library and/or on the Scottish Government web site).

Are you content for your **response** to be made available?

Please tick as appropriate X Yes

(d)

We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

Please tick as appropriate

X Yes

ANNEX VIII

CONSULTATION ON MISCELLANEOUS AMENDMENTS TO THE PLANNING SYSTEM 2012

CONSULTATION QUESTIONS

Question 1: Are there any costs or benefits not identified in the draft BRIA?

Comments *No*

Question 2: Do you have any information or can you suggest sources of relevant information on the costs and/or benefits detailed in the BRIA at Annex VI?

Comments *No*

Question 3: We would appreciate your assessment of the potential equalities impact our proposals may have on different sectors of the population. A partial EQIA is attached to this consultation at Annex VII for your comment and feedback.

Comments *Inverclyde Council does not consider that changes have an impact on equalities.*

Question 4: Do you agree or disagree with the proposed removal of PAC requirements in relation to Section 42 Applications? Please explain why.

Agree

Comments *The proposed change is most welcome, but a proportionate way to avoid PAC requirements for modest amendments to major applications requires to be fully considered. For example, housebuilders require to be responsive to market demand and it is to be expected that, within a major housing site, there will be substitutions of house types. Such changes, which are not material to the overall concept and principle of the development already approved should not require to be the subject of PAC.*

Question 5: Do you think the proposed changes to advertising requirements are appropriate or inappropriate?

Appropriate

Please give reasons for your answer.

Comments *The changes proposed are, in themselves, appropriate. In particular, the incorporation of the cost of advertising within the overall planning application fee will prevent delays in the decision process (retrospective fee collection continues to be a problem).*

Question 6: Are there further changes to requirements or the use of advertising in planning which should be considered?

Yes

Please give reasons and evidence to support your answer.

Comments Inverclyde Council supports public participation in the planning application process, but expects that methods of consultation and publicity be proportionate, effective and value for money. In this respect the removal of local authority owned land and householder applications is welcomed. Newspaper notices should only be placed where there is a purpose; the development is of wider public interest or there is no method of identifying land owners. The continued requirement to advertise proposed development plan departures, rather than potential departures, leaves the administration of the process open to challenge. Departure from policy is one of interpretation and is often not concluded until late in the assessment process. The placing of late advertisements only delays the decision process for no obvious benefit. While there may not be a building on neighbouring land, local knowledge often ensures that ownership is known. In such circumstances this would present a more effective and cost efficient solution.

Question 7: Do you agree or disagree with the proposed removal of the restrictions on the delegation of planning authority interest cases?

Agree

Question 8: This section proposes a change to allow an extended period for the determination of an application to be agreed upon between the applicant and appointed person where local review procedures would apply. Do you agree or disagree with this change?

Agree

Please explain your view.

Comments Inverclyde Council agrees with this change. Although no non determination appeals have been lodged in Inverclyde, the change provides consistency with the planning appeal process.

Question 9: Do you agree or disagree with this change to the time period on determining local reviews sought on the grounds of non-determination?

Agree

Please explain your view.

Comments Inverclyde Council agrees with this change, although no non determination appeals have been lodged in Inverclyde.

Question 10. Do you agree or disagree with this change to the Appeals Regulations on procedure regarding minor additional information?

Agree

Comments The Reporter is entitled to the full facts in coming to a decision.

Question 11: Do you think the current requirements on applications for approval of matters specified in conditions on planning permission in principle are generally excessive?

Yes

Please explain your views, citing examples as appropriate.

Comments *Yes, although Inverclyde Council has not experienced difficulties with the present system.*

Question 12: Are there any issues in this consultation not covered by a specific question or any other aspects of the current planning legislation on which you would like to comment? If so, please elaborate.

Comments *No.*