
Report To:	Environment and Regeneration Committee	Date: 17th January 2012
Report By:	Corporate Director, Environment, Regeneration & Resources	Report No: E+R/13/01/09/SJ/NMcL
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Subject:	Pre-determination hearings procedures	

1.0 PURPOSE

- 1.1 The purpose of this report is to seek approval for the procedures to be adopted by the Council in holding pre-determination hearings on planning applications.

2.0 SUMMARY

- 2.1 The Planning etc. (Scotland) Act 2006 and associated regulations and circulars require the Council to hold pre-determination hearings for national and major planning applications which are significantly contrary to the development plan. To ensure the efficient operation of the hearings the Council must adopt an order of proceedings, specify the maximum number of individuals on each side that may present their case at the hearing, agree the time to be allocated for making representations, and establish the opportunity for Board members to ask questions and seek advice and information.

3.0 RECOMMENDATION

- 3.1 It is recommended that the Committee agrees to adopt the proposed Pre-Determination Hearing Procedures.

4.0 BACKGROUND

- 4.1 Section 38A of the Planning etc. (Scotland) Act 2006 and the related development management regulations introduce a mandatory requirement for pre-determination hearings to be held for national and major planning applications which are significantly contrary to the development plan. There is no legislative or detailed government guidance on the definition of “significantly contrary”, so to ensure that the Council takes a consistent approach in interpretation, the recommendation below sets out a schedule of scales of development considered to be significant and to which pre-determination hearings should apply. Since the introduction of this requirement, no such applications have been considered by the Council.
- 4.2 The Act requires the Council to give the applicant and those making representation the opportunity to be heard by a committee of the Council. The Planning Board exercises the functions of the Council as planning authority and it is consequently appropriate that it carries out pre-determination hearings. Pre-determination hearings will be subject to the statutory provisions governing all committee meetings as well as the Council’s procedural standing orders. Legislation dictates that following the pre-determination hearing the decision on the planning application is to be made by the full Council.
- 4.3 The procedures to be adopted in arranging and conducting pre-determination hearings, while discretionary, are to be guided by Scottish Government Circular 4/2009. The recommendation below sets out the proposed order of proceedings, the maximum number of individuals on each side that may present their case at the hearing, the time allocated for making representation and the opportunity for Board members to ask questions and seek advice and information.

5.0 RECOMMENDATION

- 5.1 It is recommended that for the purpose of Pre-Determination Hearing Procedures, the following developments on sites not identified in the Development Plan for the land uses specified, shall be defined as “significantly contrary”:
1. Green Belt Housing Developments of 10 or more units.
 2. Retail Development including over 2,000 square metres gross comparison floorspace.
 3. Retail Development including over 1,000 square metres gross convenience floorspace.
 4. Business Development (Class 4) over 2,000 square metres gross floorspace.
 5. Mineral Extraction over 2 hectares or 50,000 tonnes.
 6. Waste Management Developments over 10 hectares.
 7. General Industry Development (Class 5) over 5 hectares.
 8. Storage or Distribution Development (Class 6) over 5 hectares.
 9. Wind Turbine Developments over 20MW output capacity.
- 5.2 It is recommended that the following Pre-Determination Hearing Procedures are adopted :
1. Pre-Determination Hearings will be held for national and major category planning applications when the development proposed is substantially contrary to the provisions of the development plan. A development will be

'substantially contrary' only if it contravenes the vision or wider spatial strategy of the plan.

2. A hearing may only be held once the period for representation specified in any neighbour notification, site notice or public notice has expired.
3. The hearing will be open to the press and public.
4. In addition to Members of the Planning Board and their substitutes, only those invited to participate in the hearing may do so. Those invited shall include officials, representatives of consultees and bodies that have made representation on the application, the applicant or representative(s) of, and members of the public that have made representation on the application.
5. The date and venue of the hearing shall be agreed with the Chair of the Planning Board. Notice of the date and venue must be posted to all identified as potential participants under point 4 at least 14 days in advance of the Hearing.
6. All parties wishing to be heard will require to advise the Council of their intent by 12 noon on the last working date before the meeting. Parties must advise the name(s) of those who wish to speak. Where members of the public have made similar representations it is expected that they appoint one person to participate on their behalf.
7. On the day the order of the proceedings will be as follows:
 - a) The applicant or agent will be invited to describe and present the case for the proposal, with a time limit of 15 minutes.
 - b) Individual objectors will be invited to comment, each restricted to a limit of 15 minutes. Repetition of similar points is to be avoided and will be managed by the Chair.
 - c) Representatives of consultees and bodies will be invited to comment, each restricted to a limit of 15 minutes.
 - d) The Head of Regeneration and Planning, or his representative, will present his report and recommendation.
 - e) The applicant or agent will be invited to reply to any points made by individual objectors, by representatives of consultees and bodies and by the Head of Regeneration and Planning, restricted to a time limit of 15 minutes.
 - f) At no time will cross examination be permitted.
 - g) Members of the Board will then be invited by the Chair to ask questions of those who have spoken and seek guidance on factual matters relating to the application or hearing procedure from officials. Members of the Board will then make a recommendation of approval or refusal on the application.
8. After the Pre-Determination Hearing, a summary report of the matters raised at the Hearing and the Head of Regeneration and Planning's application report shall be included in the agenda for the next available meeting of the full Council. At the full Council meeting, the Chair shall present the recommendation of the Planning Board for decision.

6.0 IMPLICATIONS

6.1 Finance:

Financial Implications – One off Costs

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 Circular 4/2009

The Town and Country Planning (Scotland) Act 1997 (consolidated)

The Town and Country Planning (Development Management Procedure)(Scotland) Regulations 2008