

PERTH AND KINROSS COUNCIL

COUNCIL MEETING – 24 JUNE 2009

JOINT REPORT BY HEAD OF PLANNING AND HEAD OF DEMOCRATIC SERVICES

IMPLEMENTATION OF PLANNING ETC (SCOTLAND) ACT 2006 – UPDATE

Abstract

This report updates members in relation to the implementation of the Planning etc (Scotland) Act 2006; outlines the main changes in the legislation with regard to development management; and seeks approval for a Scheme of Delegation and the establishment of a Local Review Body as required by the Act, including the appointment of a Convener for the Local Review Body. Approval is also sought for certain aspects of the arrangements for the Dundee, Perth, Angus and North Fife Strategic Development Plan Authority.

1 RECOMMENDATION

It is recommended that the Council:-

1. notes the content of this report in respect of the update regarding the implementation of the Planning etc (Scotland) Act 2006;
2. subject to the approval of the proposed Scheme of Delegation by Scottish Ministers as required by the Town and Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations 2008, remits to the Head of Democratic Services in consultation with the Head of Planning to amend the Council's Scheme of Administration as set out in Paragraph 6.1 of this report;
3. remits to the Head of Democratic Services in consultation with the Head of Planning to otherwise amend the Council's Scheme of Administration to reflect any further changes resulting from the implementation of the Planning etc (Scotland) Act 2006;
4. approves the principles for the establishment of a Local Review Body for Perth and Kinross as set out in Paragraph 6.3 of this report and instructs the Head of Democratic Services in consultation with the Head of Planning and the Head of Legal Services to make the necessary arrangements to support the work of the Local Review Body;

5. appoints a Convener of the Local Review Body as suggested in Paragraph 6.4 of this report; and
6. ratifies the decisions of the Dundee, Perth, Angus and North Fife Strategic Development Plan Authority as set out in Paragraphs 5.2 and 5.3 of this report.

2 INTRODUCTION

- 2.1 The Planning etc (Scotland) Act 2006 ('the 2006 Act') sets out the framework for modernising the planning system in Scotland. The 2006 Act makes changes to development management within the context of making the planning application process fit for purpose and responsive to different types of development proposal, improving efficiency in determining planning applications and improving public involvement in the consultation of planning applications.
- 2.2 In December 2006 the Planning Bill received Royal Assent following approval by the Scottish Parliament. Its contents will not come into force or update relevant sections of the 1997 Town and Country Planning (Scotland) Act until they have been enacted by Commencement Orders or by other secondary legislation.
- 2.3 Members will be aware that in June 2007, the Enterprise and Infrastructure Committee agreed to establish a member / officer working group on the changes to the planning system arising from the 2006 Act (Article 346 refers). The Planning etc (Scotland) Act 2006 Member / Officer Working Group ('the Planning MOWG') has met regularly since then, with the membership of the Group being refreshed at the end of 2008 (Article 733 of the Council meeting of 17 December 2008 refers).
- 2.4 The Group has received a number of reports explaining the main provisions of the 2006 Act and the main points of the secondary legislation as these have become available. This report provides an update on the implementation of the Act and in particular seeks approval for a Scheme of Delegation and the establishment of a Local Review Body as required by the Act, and also for certain aspects of the arrangements for the Dundee, Perth, Angus and North Fife Strategic Development Plan Authority.

3 BACKGROUND

- 3.1 In December 2008 the Scottish Government laid four significant pieces of secondary legislation before the Scottish Parliament to be implemented on 3 August 2009, namely:-
 - Town and Country Planning (Hierarchy of Developments)(Scotland) Regulations 2008

- Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2008
 - Town and Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations 2008
 - Town and Country Planning (Appeals) (Scotland) Regulations 2008.
- 3.2 The introduction of the above legislation will have significant implications for the development management process. Whilst this report focuses on the requirements of the Town and Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations 2008 with regard to Schemes of Delegation and the establishment of a Local Review Body, there are significant requirements arising from other aspects of the legislation.
- 3.3 The Council has already agreed a number of matters with regard to the Dundee, Perth, Angus and North Fife Strategic Development Plan Authority and this report refers to a further range of matters which require to be approved by the Council.

4 SCHEME OF DELEGATION

- 4.1 Under the Act, there is a hierarchy of applications for planning permission – national, major and local. Proposed developments under these categories will be subject to different procedures. The new Act will only affect applications for planning permission and does not change the law regarding other planning-related consents such as Listed Building Consent, Conservation Area Consent and Advertisement Consent
- 4.2 At present, the Council's Scheme of Administration sets out the levels of delegation to the Council's committees and officers, including matters relating to development management. Previously, the Scheme and any amendments thereto required only to be approved by the Council.
- 4.3 The Town and Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations 2008 introduce the requirement for the Council to have a Scheme of Delegation in respect of the determination of planning applications for local developments and for that scheme to be approved by Scottish Ministers. The legislation also specifies that national and some major planning applications have to be determined by the full Council, and that some major and local applications have to be determined by a committee of the Council. However, most local applications (with a few exceptions) may be delegated to officers and, when they are, the right of appeal for applicants is to a Local Review Body of members and not to Scottish Ministers. The diagram contained at **Appendix 1** to this report sets out the decision-making and appeal mechanisms which will come into force from 3 August 2009.

- 4.4 The main part of the Regulations, including the requirement for the new Scheme of Delegation and the establishment of a Local Review Body, comes into force on 3 August 2009, although the first review cases will be later. However, as the Scheme of Delegation requires to be approved by Scottish Ministers before it can be formally adopted by the Council, 'Delivering Planning Reform' (the concordat between COSLA and the Scottish Government published in October 2008) there is a commitment that Councils would submit their Schemes to Scottish Ministers by 30 June 2009. Once the Scheme is adopted, the Council must make a copy available for public inspection at its offices, libraries etc and publish the Scheme on the internet. The Scheme must be reviewed at intervals of no greater than five years.
- 4.5 It is not proposed that a separate Scheme of Delegation be created to satisfy the requirements of the Regulations, but rather that in the light of all of the above, the Council's Scheme of Administration be amended to reflect the requirements of the new legislation. As the Scheme of Delegation required under the 2006 Act only refers to applications for planning permission for local developments, there remains a need to ensure that the authority to determine other applications (such as major applications and listed building and advertisement consents) continues to be appropriately covered in the Scheme of Administration. The proposed amendments to the Scheme of Administration are set out in Paragraph 6.1 below.
- 4.6 The Town and Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations 2008 also set out the procedures to be followed in respect of the local review of planning applications by elected members sitting as a Local Review Body where a review request has been submitted in respect of:-
- an application for:planning permission for local development which has been refused by officers or
 - an application for:planning permission for local development which has not been determined by officers within the statutory period or
 - where the applicant wishes a review of conditions on a permission.
- 4.7 The Member / Officer Group has considered the arrangements for the establishment of the Local Review Body for Perth and Kinross, and the proposals are set out in Paragraphs 6.3 and 6.4 below.

5 DUNDEE, PERTH, ANGUS AND NORTH FIFE STRATEGIC DEVELOPMENT PLAN AUTHORITY

- 5.1 At meetings held on 25 November 2008 and 24 February 2009, the Dundee, Perth, Angus and North Fife Strategic Development Plan Authority (SDPA) agreed inter alia a number of matters in relation to the governance and management arrangements for the SDPA. These matters require to be ratified by the constituent Councils. The relevant reports can be accessed at www.tayplan-sdpa.gov.uk and the particular matters are as noted below.

5.2 Meeting of 25 November 2008

- (a) Report 05-2008 requires the Council to ratify the member council support roles as set out in Paragraphs 8.2 - 8.4 of the report; and
- (b) Report 06-2008 requires the Council to ratify the staffing and budget proposals as set out in the report.

5.3 Meeting of 24 February 2009

- (a) Report 02-2009 requires the Council to ratify the proposed scheme of delegation and the proposed amendments to the Minute of Agreement as set out in the report; and
- (b) Report 30-2009 requires the Council to ratify the proposed financial regulations as set out in the report.

6 PROPOSALS

Scheme of Delegation

6.1 It is proposed that the Council's Scheme of Administration be amended to reflect the following:-

6.1.1 Council

That the full Council is required to determine applications for planning permission in respect of all major developments which are significantly contrary to the development plan.

In addition, the full Council is required to consider applications for planning permission in respect of projects designated as national developments in the National Planning Framework for Scotland.

6.1.2 Development Control Committee

That the Development Control Committee will determine –

- All other applications for planning permission for major developments (i.e. all those major developments which are not significantly contrary to the development plan), unless the Executive Director (Environment) intends to refuse solely on the ground of inadequate information to enable determination; and
- All applications for planning permission for local developments, for listed building consent, conservation area consent, hazardous substances consent and advertisement consent where -
 - (a) the Council is the applicant; or
 - (b) the application relates to land in the ownership of the Council or to land in which the Council has a financial interest; or

- (c) the applicant is a member or chief officer of the Council; or
- (d) the recommendation by the Executive Director (Environment) is for approval, but the proposal is significantly contrary to the development plan; or
- (e) the recommendation by the Executive Director (Environment) is for approval, but the proposal has attracted six or more valid planning objections from a Community Council, household, business address or interest group with multiple letters from the same household, organisation or property counting as one letter of objection; or
- (f) a similar application at the same site was previously determined by the Committee

6.1.3 Executive Director (Environment)

That the Executive Director (Environment) and any person appointed in writing by the Executive Director to exercise delegated powers under Section 43A of the Town and Country Planning (Scotland) Act 1997 and the Local Government Act (Scotland) 1973 will determine –

- All applications for planning permission in respect of local developments, except those which have to be referred to the Development Control Committee as listed above; and
- All other applications for permission or consent required under the Town and Country Planning (Scotland) Act 1997 as amended, the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 as amended, and all other related and subsidiary legislation, including for Listed Building, Conservation Area, Hazardous Substances and Advertisement Consents, except those which have to be referred to the Development Control Committee as listed above.

In addition it is proposed that the Executive Director may refuse any application on the grounds of inadequate information.

- 6.2 It should be noted that in respect of applications for planning permission requiring to be determined by the full Council, there may be a need for additional meetings of the Council to ensure timeous decisions.
- 6.3 It should also be noted that the changes proposed at 6.1.2 above with regard to letters of objection, would allow a Community Council which submitted a letter of objection subsequently to submit a request for a deputation to the Development Control.

Local Review Body

- 6.4 In relation to the establishment of a Local Review Body for Perth and Kinross, the Planning MOWG has agreed on a number of principles -
- The membership of any particular meeting of the LRB should be three members, all drawn from the Development Control Committee
 - That a Convener of the LRB should be appointed to chair LRB meetings – the Convener not to be the Convener or Vice-Convenor of the Development Control Committee
 - That a protocol should be drawn up by the Planning MOWG and the Convener of the LRB as to the detailed workings of the LRB.
 - That members of the LRB should undergo training on planning issues and hearings
 - That the LRB should normally meet every four weeks
 - That administrative and legal advice should be provided by Democratic Services and Legal Services respectively
 - That there should normally be an ‘Assessor’ to provide professional planning advice at all meetings and that assessor should be sourced externally from the Council
 - That the arrangements for the LRB, including the position of Convener should be reviewed after no more than one year.
- 6.4 It is further proposed that the Convener of the LRB be appointed at this meeting to allow them to work with the Planning MOWG on the development of a protocol for the operation of the LRB.

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- 6.5 It is proposed that the Council ratify the decisions of the SDPA as set out at Paragraphs 5.2 and 5.3 above.

7. CONSULTATION

- 7.1 The Planning etc (Scotland) Act 2006 Member / Officer Working Group has been consulted in the preparation of this report.

8. RESOURCE IMPLICATIONS

- 8.1 The implementation of all of the provisions of the Planning etc (Scotland) Act 2006 and related subordinate legislation will have resource implications which it is not possible to quantify at this time.

9. COUNCIL CORPORATE PLAN OBJECTIVES 2006-2010

9.1 The Council's Corporate Plan 2006-2010 lays out five Objectives which provide clear strategic direction, inform decisions at a corporate and service level and shape resources allocation. They are as follows:-

- (i) A Safe, Secure and Welcoming Environment
- (ii) Healthy, Caring Communities
- (iii) A Prosperous, Sustainable and Inclusive Economy
- (iv) Educated, Responsible and Informed Citizens
- (v) Confident, Active and Inclusive Communities

The proposals in this report relate to the achievement of all of these objectives.

10. EQUALITIES ASSESSMENT

10.1 The Council's Corporate Equalities Assessment Framework requires an assessment of functions, policies, procedures or strategies in relation to race, gender and disability and other relevant equality categories. This supports the Council's legal requirement to comply with the duty to assess and consult on relevant new policies to ensure there is no adverse impact on any community group or employees.

10.2 The function, policy, procedure or strategy presented in this report was considered under the Corporate Equalities Assessment Framework and the determination was made that the items summarised in this report do not require further assessment.

11. STRATEGIC ENVIRONMENTAL ASSESSMENT

11.1 Strategic Environmental Assessment (SEA) is a legal requirement under the Environmental Assessment (Scotland) Act 2005 that applies to all qualifying plans, programmes and strategies, including policies (PPS).

11.2 The matters presented in this report were considered under the Environmental Assessment (Scotland) Act 2005 and no further action is required.

12. CONCLUSION

- 12.1 This report updates members in relation to the implementation of the Planning etc (Scotland) Act 2006; outlines the main changes in legislation with regard to development management; and seeks approval for a Scheme of Delegation as required by the Act; the principles for the establishment of a Local Review Body for Perth and Kinross; appoint a Convener for that body; and also for certain aspects of the arrangements for the Dundee, Perth, Angus and North Fife Strategic Development Plan Authority

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Note: The following background papers, as defined by Section 50D of the Local Government (Scotland) Act 1973 (and not containing confidential or exempt information) were relied on to a material extent in preparing the above report -

Planning etc (Scotland) Act 2006

Town and Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations 2008

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