

## ANGUS COUNCIL

## POLICY AND RESOURCES COMMITTEE - 6 FEBRUARY 2001

## AMENDMENTS TO STANDING ORDERS

## REPORT BY DIRECTOR OF LAW AND ADMINISTRATION

**ABSTRACT**

The purpose of this Report is to propose some minor amendments to the Council's Standing Orders in connection with procedures before and at the Development Control Committee meetings to take account of Human Rights Legislation and accepted practice which has emerged since 1996.

**1. RECOMMENDATION**

The Committee is asked to recommend to the Council that the amendments to the Council's Standing Orders proposed in this Report be approved, for immediate implementation; and that it be remitted to the Director of Law and Administration to incorporate the appropriate amendments into the Standing Orders and Related Documents at the next revision.

**2. BACKGROUND**

The Council's Standing Orders were last revised in 1998 and came into effect after the Council meeting of 3 April 1998. Since then, a further review of Standing Orders, including the Order of Reference to Committees and the Scheme of Delegation to Officers, has been deferred pending consideration of the report of the Political and Management Structures Member/Officer Group. It was felt premature to review Standing Orders while the Council was looking at its political and management structures, the results of which could have significant implications for the current Standing Orders.

The introduction of the Human Rights Legislation with effect from 2 October 2000 has, however, necessitated an examination of the current procedures of the Development Control Committee and discussions have taken place with the Director of Planning and Transport on what appropriate minor amendments might be introduced at this time. In addition, it was felt that certain practices which have emerged since 1996 should appropriately be incorporated into the Council's Standing Orders in order to imbue them in a formal document relating to the Council's committee and meeting procedures.

**3. PROPOSED CHANGES****(a) Parties wishing to speak at Development Control Committee meetings**

- (i) At present, this is covered by Standing Order 13 entitled "Applicants and Objectors". There may, however, be other parties who support a development proposed in a planning application and who should also be permitted the right to speak. By virtue of the Human Rights legislation, it should also be extended to others whose Convention Rights will be directly affected by the decision eg owners of land in relation to proposed enforcement action. It is therefore suggested that the sub-heading be reworded "**Applicants, Objectors, etc**" and be extended to cover the above groups so that sub-section (1) will now read:

*"(1) Subject to any statutory provisions providing differently, the following procedures shall apply, to applicants, supporters and objectors along with other parties whose Convention rights (within the meaning of Section 1(2) of the Human Rights Act 1998) are or will be directly affected by the decision of the Council, where the Council is acting in a regulatory capacity (as such parties are referred to in this Standing Order as "relevant parties")."*

References in the Standing Order to “applicants and objectors” will be amended accordingly.

- (ii) Sub-section (3) of Standing Order 13 deals with the time allowed for speaking. A party whose human rights could be affected by a planning application should be allowed an appropriate time in which to present their case. There is no support in the human rights jurisprudence for an absolute time-limit rule of this nature. Accordingly, the provision which allows for persons speaking to applications to speak for no more than five minutes should be deleted but replaced by provision giving the Convener of the meeting power to restrict any lengthy speeches by parties to a planning application, for example where a point is merely being repeated. In the interests of business efficiency, the 5 minute **rule** would, in practice, be replaced by a 5 minute **guideline**.
- (iii) Sub-section (2) provides for the time within which, prior to a meeting, written notice must be given of the date of the meeting and the issue on which applicants, supporters or objectors wish to be heard. The “issue” will normally be a planning application. Given that the Development Control Committee meetings are on a Thursday and that the agenda and papers are sent out and made publicly available only the previous Friday, it is suggested that it would be reasonable for requests to be heard at the Development Control Committee to be notified (either in writing or by phone) to my Department no later than 5 pm on the day preceding the meeting (ie the Wednesday). This would allow the parties time to consider whether or not they wished to speak, following their receipt of the report incorporating the Director of Planning and Transport's recommendation.
- (iv) As members are aware, Community Councils are statutory consultees on planning applications within their area. For the avoidance of doubt, it is proposed to incorporate a note within Standing Order 13 to emphasise that such Community Councils do not need to apply to be heard at meetings and that they should be able to speak in the same way as other consultees (eg Roads Department).
- (v) Standing Orders should make clear that the purpose of allowing applicants, supporters or objectors to speak is to give them a further opportunity to address **orally** points which they wish the Committee to take into account. This is **not** an opportunity to table submissions, drawings, plans, show slides/make visual presentations and the Development Control Committee has, in practice, refused to allow parties to do so. If photographs are being submitted, there should be sufficient copies for all members of the Committee. It would be helpful if this provision were clearly stated within Standing Orders, for the avoidance of any doubt.

In exceptional circumstances, a presentation or submission in relation to a major application (eg, Hatton Waste Water Treatment Plan, competing retail developments in Arbroath) could be appropriate. To enable applicants, supporters or objectors time to prepare such presentation or submission, it is recommended that it be delegated to the Director of Planning and Transport, in consultation with the Convener, to agree that such a presentation would be permissible.

- (vi) It should also be made clear in Standing Orders that applicants should have the last word in relation to their application and therefore should be permitted to speak **after** objectors or supporters had been heard.

**(b) Determination of Planning Applications**

At present, most applications are dealt with either by the Director of Planning and Transport acting under delegated powers, or by the Development Control Committee. However, there is provision in certain cases for applications to be referred to the full Council for determination.

The Order of Reference for the Development Control Committee has four explanatory notes set out at the end of the list of functions which are referred to it. These relate to planning applications. Many applicants have found confusing the definition of what is “an application which raises a general issue affecting a large area or is of major land use or economic development significance”. Applicants are also confused by the “two-thirds rule” which provides that applications which are **not** in the “major” category require to be carried by a two-thirds majority of the members “present and voting” at the meeting. Failure to achieve that majority means that applications are **automatically** referred to the Council.

For simplicity and ease of understanding by members, applicants and others, and to ensure that applications are dealt with as fairly as possible, it is suggested that the procedures for determining applications should be revised as follows:

- All applications requiring determination at member level (ie those not delegated to the Director of Planning and Transport) should be considered **only once by the Development Control Committee, and be fully delegated to that Committee.**
- For “major” applications, all members of the Council should be members of the Development Control Committee for the consideration of such applications. The applications which are likely to fall into this category are ones which are considered to have Council-wide significance, involve a very substantial area of land or have major economic development significance. The decision as to whether or not an application is “major” should be taken by the Committee at the first appropriate meeting after the application is received. There would be no consideration of the merits of the application at this stage. The Director of Planning and Transport would submit a report on any application which he considered fell into this category, seeking the Committee’s confirmation that it should be treated as such.
- As the Council is acting in a regulatory capacity when considering planning applications, enforcement actions etc, the provisions of Standing Order 39(3) (ie the power of 2 members to refer a matter to the full Council) should, as in the case of the Civic Licensing Committee, **not** apply. This restates the current position.
- For ease of reference and presentation, all planning applications requiring consideration by the Committee will be the subject of a separate report by the Director of Planning and Transport.

**(c) Delegated Powers**

The Director of Planning and Transport has suggested that a number of changes should be made to his delegated authority. Some of these are already being carried out by him and are therefore a “tidying up” operation. Currently, these are listed in Section 14 of the Scheme of Delegation to Officers made under Section 50G (2) of the Local Government (Scotland) Act 1973. The additional delegation sought is for authority to undertake the following additional Development Control functions:

- (i) to refuse minor planning applications that are **clearly** contrary to planning policies (eg illuminated signs, satellite antennae, certain householder applications, etc);
- (ii) to determine the validity of a “representation” to a planning application (this would mean that where the Director determined that an objection or representation did not constitute valid planning or human rights grounds, was immaterial, or the point of objection was addressed by changes or conditions, the application would **not** be referred to Committee);
- (iii) to determine the necessity or otherwise for an environmental impact statement (including requests for a screening opinion) to accompany a planning application;

- (iv) to "spot" list a potential listed building prior to reporting to Committee for confirmation;
- (v) to serve Urgent Works Notices in respect of listed buildings prior to reporting to Committee for confirmation; and
- (vi) to issue Planning Contravention Notices and Section 272 Notices as and when required.

**4. FINANCIAL IMPLICATIONS**

There are no financial implications arising from this report.

**5. CONSULTATION**

The Chief Executive, Director of Finance and Director of Planning and Transport have been consulted in the preparation of this Report.

**6. CONCLUSION**

The proposals in this Report take account of the coming into effect of the Human Rights Act 1998 and put on a formal footing accepted practice which has emerged at Development Control Committee meetings since 1996.

**CATHERINE A COULL  
DIRECTOR OF LAW AND ADMINISTRATION**