

ANGUS COUNCIL

**INFRASTRUCTURE SERVICES COMMITTEE
DEVELOPMENT STANDARDS COMMITTEE**

**3 MARCH 2009
10 MARCH 2009**

**SUBJECT: IMPLEMENTING THE PLANNING ETC (SCOTLAND) ACT 2006
DEVELOPMENT MANAGEMENT UPDATE**

REPORT BY DIRECTOR OF INFRASTRUCTURE SERVICES

Abstract: This report updates Members in respect of the implementation of the Planning etc (Scotland) Act 2006. The report outlines the main changes in legislation and suggests a programme of training for Members in order to set up a Local Review Body in respect of local applications where a planning review is requested.

1 RECOMMENDATION

It is recommended that the Committees, for their respective interests –

1. note the content of this report in respect of the update regarding the implementation of the Planning etc (Scotland) Act 2006;
2. agree that the Head of Planning & Transport and Director of Law & Administration bring forward procedures to set up a Review Body to review the decision in respect of local applications where such a review is requested;
3. agree that the Head of Planning and Transport, in conjunction with the Head of Law and Administration bring forward a programme of training for Elected Members to enable the establishment of a Review Body which requires to be constituted as a separate Committee of the Council to review planning decisions; and
4. to send the Council's Scheme of Delegation to the Scottish Government for approval as required by the Regulations.

2 INTRODUCTION

- 2.1 The Planning etc (Scotland) Act 2006 sets out the framework for modernising the planning system in Scotland. The Planning etc (Scotland) Act 2006 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 achieved Royal Consent which means that it has been approved by the Scottish Parliament but 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. The first Commencement Orders were introduced in April 2007 with others to follow over the next two to three years.

- 2.3 Members have received a number of reports including 128/06, 252/08 and 254/08 which explained the main provisions of the new Act and the main points of the secondary legislation as proposed. This report provides an update on the implementation of the new Act.

3 BACKGROUND

- 3.1 The Scottish Government on 23 December 2008 laid before Parliament three significant pieces of legislation, namely:-

- 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.

4 IMPLICATIONS FOR DEVELOPMENT MANAGEMENT

- 4.1 The introduction of these pieces of legislation will have a significant impact on the process of Development Management

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

- 4.2 The Regulations introduce a requirement for pre-application consultation in respect of national and major developments and as part of this process the applicant must notify the Planning Authority of the intention to make such an application at least 12 weeks before it is submitted. For such applications the prospective applicant is to hold at least one public event where members of the public may make comments on the proposed development. Procedures are laid down as to how the event is to be publicised and how the public make comments but this must include a press notice and details as to how further information can be obtained. The applicant requires to submit to the Planning Authority a pre-application consultation report with the application on its submission. The Regulations state that representations made to the applicant as part of the pre-application consultation process are not representations and that opportunity will be given for the public to make representations to the Planning Authority on the application. As part of the pre-application consultation process the applicant must consult every Community Council any part whose area is in or adjoins the land the proposed development is situated. This part of the Regulations come into effect on 6 April 2009 and means that any national or major application submitted on or after 3 August 2009 must have complied with the pre-application consultation requirements.

- 4.3 These Regulations also stipulate requirements in respect of the form and content of planning applications. The main change being that for national, major applications and applications within environmentally sensitive areas, such as conservation areas, or the curtilage of an 'A' listed building, a Design and Access Statement will be required. A Design Statement is a statement that describes the design principles and concepts that have been applied to the development. It should also include what, if any, consultation has been undertaken in respect of design issues and what account

has been taken of any such consultation. A Design and Access Statement is a document containing both a Design Statement and a Written Statement about how issues relating to access to the development for disabled people have been dealt with.

- 4.4 The Regulations stipulate that the time period for giving a decision in respect of national and major applications will be four months after the validation date and such applications are to be determined by a Committee of the Authority.
- 4.5 With the exception of pre-application consultation the Regulations come into force on 3 August 2009.

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

- 4.6 These Regulations introduce the requirement for the Council to have a Scheme of Delegation in respect of the determination of planning applications. The Scheme is to provide for national and major applications being determined by a Committee of the Council with local applications being delegated to officers. Members will recollect that the Development Standards Short Life Working Group agreed a Scheme of Delegation and the Council at its meeting on 18 December 2008 elected to implement that Scheme with immediate effect. The Scheme that the Full Council elected to implement is in accordance with the requirements of the new legislation. The Planning Authority are required to send a copy of the Scheme to Scottish Ministers and to make a copy of the Scheme available for public inspection. The Scheme must be reviewed at intervals of no greater than five years.
- 4.7 The Regulations also set out the procedures to be followed in respect of the local review of planning applications by Elected Members where a review request has been submitted in respect of a delegated application. The applicant is required to provide a statement setting out the reasons for requiring the Local Review Body to review the case and to indicate what procedure or combination of procedures the applicant wishes the review to be conducted. The intention of the Regulations is that the application will be reviewed on the basis of the information submitted during its initial consideration and new information will not normally be entertained. The applicant is also required to submit all information that is to be relied upon as part of the review. It is for the Review Body to determine which procedure shall be utilised but the review can either be by means of written submissions, by holding one or more hearing sessions and by means of an inspection of the land to which the review relates. Meetings of the Review Body as to the manner in which the review is to be considered or how the case under review is to be determined or to be held in public.
- 4.8 The Regulations set out in detail the administrative and procedural requirements from review submission to the undertaking of a hearing session and the taking of a decision, including the issues of the formal Decision Notice. The main part of these Regulations including the requirement to have a Scheme of Delegation and the establishment of a Local Review Body, come into force on 3 August 2009.

Town and Country Planning (Appeals) (Scotland) Regulations 2008

- 4.9 These Regulations come into force on 3 August 2009 and update the administrative and procedural requirements in respect of planning appeals to the Scottish Government.
- 4.10 Appeals can be determined on the basis of written information or hearing or inquiry or any combination. Appeals to the Scottish Government are only appropriate for applications that have been determined by Elected Members.

5 PLANNING CONSIDERATIONS

- 5.1 The implementation of the Town and Country (Development Management Procedure) (Scotland) Regulations 2008 will in the main be achieved through the alteration and adaptation of current procedures. In the main with the exception of pre-application consultation and Design and Access Statements, most users of the service will not be affected in a radical way. It has been clear from the outset that the Scottish Government as part of the Modernising Planning Agenda have been keen to try and make planning more inclusive and raise the importance of design. The requirement of pre-application consultations are such that affected neighbours etc with regard to national and major applications should no longer feel that applications are submitted and that interested parties have insufficient time to make their views known and influence the format of the development. In the case of a Design and Access Statement the applicant has to indicate to what account consultation has been taken into account. With the exception of local applications, persons who submit representations are to be given the opportunity of being heard by a Committee of the Council.
- 5.2 The Regulations in terms of Schemes of Delegation and Local Review Procedure will introduce a significant change in terms of implementation of planning legislation. In an Angus context the introduction in December 2008 of the new Scheme of Delegation was a first, but significant step in that context. The implementation of the legislation will necessitate the establishment of a Local Review Body which is to consist of at least three Elected Members. The Review Body will require to receive training in order to implement the requirements of the legislation. Consideration needs to be given as to the number of members that should sit on the Body and the frequency it should meet. I would recommend that all members of the Development Standards Committee receive training.

6 FINANCIAL IMPLICATIONS

- 6.1 There are no financial implications arising directly from the recommendations contained in this report.

7 HUMAN RIGHTS IMPLICATIONS

- 7.1 There are no human rights implications arising from this report.

8 EQUALITIES IMPLICATIONS

- 8.1 The issues dealt with in this report have been the subject of consideration from an equalities perspective (as required by legislation). An equalities impact assessment is not required.

9 CONSULTATION

- 9.1 The Chief Executive, Director of Corporate Services, Head of Finance and Head of Law & Administration were consulted in the preparation of this report.

10 CONCLUSION

- 10.1 This report updates Members on the implementation of the new Planning Act significant parts of which will be introduced between April and August 2009. To implement the legislation Members will require to receive training in order to be in a position to determine appeals through the Local Review Body which will require to be established.

NOTE

No background papers, as defined by Section 50D of the Local Government (Scotland) Act 1973, (other than any containing confidential or exempt information) were relied on to any material extent in preparing the above Report.

P&T/IM/IAL
24 February 2009

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Director of Infrastructure Services