



THE MORAY COUNCIL
DEVELOPMENT MANAGEMENT SERVICE

ePLANNING: REDACTION AND COPYRIGHT POLICY

1 Introduction

1.1 This policy is prepared following the decision by the Moray Council's Planning & Regulatory Services Committee on 30 November 2010, to publicise further information on valid planning applications online through the Council's Public Access facility at <http://public.moray.gov.uk/eplanning/>

1.2 This policy applies to information contained within all applications for planning permission and other planning-related consents including Advertisement Consent, Listed Building Consent, Prior Notification and Certificates of Lawfulness, etc. whether received in electronic format through the Scottish Government's ePlanning service at <https://eplanning.scotland.gov.uk/WAM/> or received in paper format (which is then converted into electronic format). Once initially processed and validated, application particulars and supporting documents, representations and consultations can be viewed and tracked online. Reports and decision notices prepared in support of the Council's decision on the proposal can also be viewed online.

1.3 With greater commitment to, and increased use of electronic communications in the planning system, it is important that publication of information, in particular personal information is processed in compliance with the Data Protection Act, 1998 and other statutory requirements. Other advice on publication is also available, through the recommendations of the Information Commissioner Officer for Scotland, the Council's own Data Protection Policy and the Scottish Government's "*Planning Information Online – Data Protection Guidance*" (September 2008). This policy has been prepared in accordance with available advice.

2 ePlanning

2.1 The Planning etc. (Scotland) Act 2006 introduced changes designed to modernise the planning system, including aims to encourage greater engagement with the community and promote openness and transparency in the planning process. ePlanning is designed to support the modernisation of the planning system with the use of new technology to support and deliver an online planning service, both to facilitate the submission of applications electronically and to manage, exchange and publish planning information online. The

objective is to create an end-to-end ePlanning service which will be open and transparent, with planning information available and accessible online.

2.2 The Moray Council, as planning authority, has a legal duty to make available certain details about applications both before and after they are determined i.e. requirements to maintain a planning register. Regulations allow for this information to be made publicly available on the Internet and also for statutory procedures associated with processing applications to be carried out electronically. The Council's Public Access facility acts as a planning register and enables documents, once published, to be accessed online.

2.3 The Council's initial approach to online publication of planning information has focussed on fulfilling planning register requirements i.e. application forms and certificates, drawings describing the development and other supporting documentation submitted with the proposal, together with details of formal decision documents and Committee reports/reports of handling (for delegated proposals) prepared in support of the Council's decision. Although there is no statutory requirement to do so, the Council agreed, in November 2010, to undertake further publication of planning information, in particular publication of planning consultation responses and representations, whether made in support of, or objecting to any formal application for planning permission i.e. comments on proposals as received from members of the public and other interested parties in response to formal notification and advertisement procedures.

2.4 It is important to note that the publishing of planning information on the Council's website, including comments and views as expressed in documents and correspondence (in written and/or electronic formats) submitted by applicants and other contributors on the Council's website does not mean that the Council, as planning authority agrees or endorses these views, or confirms any statements of fact to be correct.

3 Data Protection

3.1 With the move to have more planning information accessible online, there is a responsibility on all staff handling, storing and publishing planning information to ensure that it is done correctly and in line with data protection legislation. All information received by the Council, as planning authority will be captured, scanned and where necessary, redacted (i.e. the removal or 'masking' of personal or sensitive information) to ensure that information published online through the Council's online planning information system does not breach the Data Protection Act, etc.

3.2 The advice provided by the Information Commission Officer for Scotland affirms that applicants and contributors should be made aware of which elements of their personal information will be published through the Council's Public Access facility.

3.3 The following statement will be included in any application forms issued by the Council, including guidance notes, website pages and in any correspondence issued to any potential applicant:

Please note that when you submit an application, information about the planning application will appear on the planning register and the completed application forms

and associated documents will be published on the Council's website at <http://public.moray.gov.uk/eplanning>. You can also use this site to track progress of your application. Prior to publication online and in order to comply with the Data Protection Act, 'redaction' software will be applied to documents to avoid (or mask) publication of personal information i.e. signatures, and personal telephone numbers and email addresses. Where appropriate, other "sensitive" information within documents will also be redacted prior to publication online.

3.4 And, the following statement on general correspondence and acknowledgement letters issued to applicants/agents and representors, and in formal requests for consultations issued to consultees:

Please note that information associated with the application, consultation responses and representations (or comments) objecting or supporting the proposal will be published on the Council's website at <http://public.moray.gov.uk/eplanning>. You can also use this site to track progress of the application. Prior to publication online and in order to comply with the Data Protection Act, 'redaction' software will be applied to documents to avoid (or mask) publication of personal information i.e. signatures, and personal telephone numbers and email addresses. Where appropriate, other "sensitive" information within documents will also be redacted prior to publication online.

3.5 Where personal data is involved with a planning application, the Moray Council is required to comply with the Data Protection Act 1988. Information will only be kept for as long as necessary for the purposes for which it was collected. Retention periods will be contained in the Council's Records Retention & Disposal Schedules. However, with agreement of the owner of the personal data, retention may be longer than that stated within the published schedule.

3.6 If a data protection breach occurs or errors in published data are identified the breach will be expeditiously corrected by Council staff, and in the case of a breach of personal data reported to the Council's Data Protection Officer. If significant, the incident will be reported to the Information Commission for Scotland.

3.7 In terms of Data Protection principles, details of consultations and representations will be published as soon as possible after receipt (and only after redaction has been applied) and remain available online until a decision is issued on the application. Thereafter, the information will no longer be accessible online.

3.8 Following receipt of a valid appeal (to Scottish Ministers) or Notice of Review (to Local Review Board), details of the representations and consultations will be (re)published and accessible online for the duration of the appeal/review process. Once notice of a decision on the appeal/review has been issued, the documents will no longer be accessible to view online. In the case of appeals, the Directorate for Planning and Environmental Appeals (DPEA) will also publish planning appeal information on their website.

3.9 Although documents may be withdrawn and no longer accessible online, this does not mean they will be destroyed, unless in accordance with the Council's file retention schedule.

4 Redaction

4.1 The Council will take extreme care when publishing personal information on the Council's Public Access facility and will avoid publishing the following data of an applicant or contributor by the use of the process of redaction, where certain information will not be made visible in any copy of a document published online through Public Access:

- signatures (hand written and electronic)
- personal telephone numbers including mobile phone numbers (this does not include commercial or business phone numbers)
- personal email addresses (this does not include commercial or business email addresses)
- evidence of a reduction in the planning fee based on an applicant's circumstances where registered with a physical and/or mental impairment
- sensitive personal information relating to an individual's:
 - alleged or actual criminal history
 - state of health, both physical and mental
 - race or ethnic origin
 - sexual orientation
 - political opinions
 - religious beliefs
 - trade union membership
- personal information collected in order to comply with the diversity monitoring requirements of the Race Relations (Amendment) Act, 2000, the Sex Discrimination Act, 1975, and the Disability Discrimination Act 2005
- sensitive (or confidential) information or data from Environmental Impact Assessments (EIAs) or similar documents submitted in support of the application, for example information relating to sites or locations of protected bird and mammal species, etc.
- Sections within studies, design statements, reports, impact assessments etc that are thought to be exempt under the Freedom of Information (Scotland) Act 2002 or the Environmental Information (Scotland) Regulations 2004, will in the first instance be redacted unless challenged by the appropriate case officer
- Details of applications which are accompanied by a statement that the public disclosure of information would be contrary to the national interest (which may result in plans, drawings or other information being withheld from display)

4.2 In addition, the Council will use its discretion to apply redaction prior to publication to any comments or information it considers to be derogatory, defamatory or racist in character, including the use of salacious, slanderous, erroneous or pejorative words or phrases. Where the decision is made not to publish such information, the writer will be advised and asked to submit an acceptable version, which can be made public.

5 Copyright

5.1 The following should be considered as “literary works” for the purposes of the Copyright Designs and Patents Act, 1988:

- hand drawn drawings, CAD drawings and site plans
- additional information and reports accompanying the application
- objectors’ comments
- supporters’ comments
- officers’ comments
- where there is an appeal, the appellant’s case and other person’s representations

5.2 The owner of the copyright has the exclusive rights to copy the work, to issue copies of the work to the public and to communicate the work to the public. For a planning authority to make such information available on its website without permission of the owner of the copyright (usually the author of the letter, drawings, plans, etc) may constitute an infringement of the owner’s copyright. Public downloading of the information may also be infringing copyright of the work.

5.3 The permission from the owner of the copyright is deemed to have been implicitly given to the Moray Council, as planning authority when submitting an application (whether online through the Scottish Government portal or in paper) that such material will be republished online and viewable publicly via the Council’s Public Access facility

5.4 In addition, the following statement is published on the Council’s Public Access facility (on the web page where you can view planning application documents):

“Plans, drawings and other material submitted to the local authority are protected by the Copyright, Designs and Patents Act 1988 (section 47). You may only use material which is downloaded and/or printed for consultation purposes, to compare current applications with previous schemes and to check whether developments have been completed in accordance with approved plans.

Further copies must not be made without the prior permission of the copyright owner.”

5.5 Ordnance Survey (OS) maps and maps created from OS material are subject to Crown Copyright. It is therefore recommended that the use of mapping is limited to an allowance to view and download for private and non-commercial purposes only. OS

mapping may not be further sub-licensed, sold, demonstrated, lent or otherwise transferred or exploited without prior written permission of OS. Moreover, OS shall not be held liable for the map material not being fit for purpose for any application.

5.6 Under agreement with One Scotland Mapping, the Moray Council as planning authority must ensure that OS Maps of 1:10,000 or larger when submitted as part of a planning application and scanned for republication via Public Access are appropriately watermarked and must cover at least 10% of the visible map image. This requirement applies to any valid application received online from April 2009 and for all valid paper applications received from April 2009 which, when scanned, are made electronic and published online.

5.7 Publishing a hard copy OS map does not require a mandatory watermark but the Council's Agreement with One Scotland Mapping makes it a recommendation. Once published on the Council's ePlanning website, electronic publishing conditions contained in this policy and One Scotland Mapping apply.

DATED: 1 April 2011

SIGNED: Stewart Halkett, Head of Development Services, Environmental Services, The Moray Council