

REPORT TO: ENVIRONMENTAL SERVICES COMMITTEE 16 APRIL 2008

SUBJECT: MODERNISING PLANNING APPEALS

BY: DIRECTOR OF ENVIRONMENTAL SERVICES

1. REASON FOR REPORT

1.1 To consider and respond to the consultation paper “Modernising Planning Appeals” issued by the Scottish Government.

1.2 This report is submitted to Committee in terms of Section E (1) of the Council's Administrative Scheme relating to exercising the statutory functions of the Council as Planning Authority.

2. RECOMMENDATION

2.1 That the Committee consider the comments and proposals contained in this report.

2.2 That the comments in Appendix A be submitted to the Scottish Government as the Council's response.

2.3 It is recommended that the issues raised be discussed at an informal seminar prior to further amendment of the Scheme of Delegation.

3. BACKGROUND

3.1 The consultation paper stresses that it is essential that applicants who are unhappy with the terms of a planning decision have recourse to a process that enables an effective review of the decision to take place. It is also clear that people should continue to have an appropriate opportunity during the planning process to make representations about proposals that affect them or their communities.

3.2 The Appeal system has to provide a fair, transparent and independent mechanism for reviewing Planning Applications. While these are strengths the existing system is considered by many as difficult for ordinary people to engage with. The time taken also contributes to the impression that the present planning system is inefficient.

3.3 The Governments proposals to amend the Planning Appeal system should be seen within the context of wider proposals to modernise the planning system in Scotland.

Part of the wider proposals include a new hierarchy for planning aimed at delivering a more proportionate response from the Planning system to the proposals that come before it for consideration. A number of National developments will be identified in the National Planning Framework (NPF). A

separate report on this agenda comments on the second NPF, which is currently the subject of consultation. An example contained in the Consultative Draft National Planning Framework is the provision of an upgrade for the electricity grid from Beaully to Keith. A category of major developments will then be identified, these being relatively complex proposals which raise significant environmental or economic issues. An example might be the application for Elgin's Flood Defences. All other applications will be classed as Local Developments. Some of these will be determined under a new scheme of delegation and in turn will be the subject of a review procedure by the Planning Authority rather than an appeal to the Scottish Ministers.

- 3.4 The white paper highlighted the efficiency gains that can be made by delegation to officers. The intention is that greater use should be made of delegation allowing Councillors to focus their efforts on more complex or more controversial applications. Officers should take the full range of decisions unless there are clear reasons why the decisions should be taken by elected members – for example where applications are significantly contrary to the Development Plan, involve EIA development, have attracted substantial body of objection or where the Authority has a financial interest in the development. Elected members would continue to take decisions on such applications.
- 3.5 Appeals against decisions taken by the Planning Committee would continue to be made to Scottish Ministers. Decisions taken under delegated powers would be reviewed by elected members meeting as a Local review body supported by officers who were not involved in the decision under review.
- 3.6 The timescale for appealing against all decisions is to be reduced from six months to three.
- 3.7 There are also proposals to curb the tendency for proposals and indeed the justification for them to change through the planning process. The system in future should focus on reviewing the material that was before the Planning Authority.
- 3.8 It is proposed that the right to examination be reserved for those issues where the subject matter could not be addressed through less formal procedures.
- 3.9 Local Authorities are obliged to submit for approval a “scheme of delegation” indicating where decisions can be taken by officers. Ministers can prescribe the form and content of such schemes. They will require to be reviewed at intervals of no more than 5 years.
- 3.10 The Scottish Government requires that the following type of application should not be determined by officers under the new scheme of delegation: -
 - Applications subject to an unresolved objection from a statutory consultee,
 - Applications made by the Planning Authority or a member of the Planning Authority;
 - Applications relating to land in the ownership of the Planning Authority or to land in which the Planning Authority have a financial interest;

- Applications requiring an Environmental Impact Analysis (EIA)
 - Applications relating to development that is significantly contrary to the terms of the Development Plan
 - Applications subject to a substantial body of objections; and
 - Applications of a class mentioned in Section 38A of the 2006 Act (these being applications subject to enhanced scrutiny, including a pre-determination hearing by the Planning Authority).
- 3.11 All other Planning applications for local development are intended to be within the scope of delegation by officers for determination.
- 3.12 All proposed “schemes of delegation must be sent to Scottish Ministers and the Authority cannot adopt a scheme less than 28 days after submission.
- 3.13 It is suggested by the Scottish Government that each Authority should establish a “pool” of Councillors from which to select a Review Panel of 3 or 5. The panel would be able to endorse, amend or reverse decisions taken by officers. Regulations give the Panel latitude to determine whether a decision can be taken on the basis of available information or, whether further information is required; whether parties should be heard or not and; whether a site visit should take place or not. The Review Panel would be assisted by a legal officer with planning advice being given by a Planning Officer who took no part in the assessment of the original application.
- 3.14 The Review would have to be determined within 3 months of an appeal being submitted. Discussion would take place in public and written explanations of decisions given.

4. SUMMARY OF IMPLICATIONS

(a) Corporate Development Plan/Community Plan/Service Improvement Plan

The proposal to establish a local review panel to consider planning appeals against refusals dealt with under delegation will assist the Planning Authority to take more efficient decisions and provide a better service to the public.

(b) Policy and Legal

If adopted in its current form the Authority would require to amend its' Scheme of Delegation.

(c) Resources (Financial, Risks, Staffing and Property)

It is suggested that a Review body would be assisted by legal and planning advice from officers who had no part in processing the original application. In the case of Moray this could be achieved but would make greater calls on the time of senior officers within Environmental Services and Legal Services.

Administrative assistance would also be required.

The number of applications which would be the subject of an appeal to a review body is not known but could be substantial.

(d) Consultations

This report has been prepared with the assistance of the Development Control Manager, the Head of Development Services and the Principal Solicitor. Their comments have informed the report.

5. CONCLUSION

These proposals are generally to be welcomed. They will assist the Planning Authority to take more efficient decisions and provide a better service to the public.

Author of Report: Director of Environmental Services
Background Papers: Consultation paper "Modernising Planning Appeals"
Ref:

APPENDIX A

Q1 Do you agree with the above scope of schemes of delegation.

The delegation envisaged is similar to that already operated by the Moray Council although minor changes may be required to the Scheme of Delegation. The existing scheme of delegation already excludes: -

- applications subject to an unresolved objection from a statutory consultee;
- applications made by the planning authority or a member of the planning authority;

- applications relating to land in the ownership of the planning authority or to land in which the planning authority have a financial interest;
- applications requiring Environmental Impact Assessment;
- applications relating to development that is contrary to the terms of the development plan;
- applications subject to a substantial body of objections; and,
- major applications.

It was recognised in preparing the scheme that there might be further categories though it was not possible to be definitive about what these might include.

In these circumstances the Council agrees with the scope of delegation.

Q2 Are there other categories of decision which should not be delegated to officials.

The current scheme of delegation excludes applications submitted by staff who have a part to play in the Development Management process.

Also excluded are applications, which would involve a significant change in developments, which have already been the subject of Committee consideration.

These matters should not be delegated to officials.

Q3 - Should planning authorities be required to undertake local consultation on their proposed scheme of delegation?

The proposed legislation gives the Planning Authority limited opportunity to respond to any comments received. Existing Local Authority "Schemes of Delegation" are not subject to consultation. There seems to be little benefit in treating these proposals differently.

Q4 - Do you agree with the proposed approach to preparing and adopting the scheme of delegation?

The Moray Council agrees that there is merit in securing a broad level of consistency in the categories of application which are delegated to officials. At the same time both Councillors and Officers require to be comfortable with an adopted scheme. The Council would wish to retain the right to amend any scheme as experience dictates.

Q5 - Do you agree that it is reasonable not to invite additional comments from third parties to those made during the course of considering the planning application when considering a review?

Yes, provided that the review panel is reviewing a decision on the Planning Application as submitted and is not considering new material.

Q6 - Do you consider that the proposed size of the review body is appropriate?

The Authority would accept that it is necessary to establish a “pool” of Councillors that can be asked to review decisions.

The formality and timescale involved in current Appeal arrangements have undoubtedly deterred some applicants from appealing. It is possible, at least at the outset that Authorities could be faced with reviewing all applications which are refused under delegated powers or, have not been determined within the statutory timescale. This could place time pressure on a small number of Councillors.

It is suggested that the size of the pool and indeed the review body may vary from Council to Council.

Q7 - Are the timescales proposed for carrying out a review reasonable?

The timescale of 3 months is considered appropriate.

Q8 - Are there additional provisions to those proposed which would improve the process of reviewing the decision?

It is agreed that the discussion and decisions of any Review Body should be taken in public. An added ingredient would be the need for the review body and those providing Planning advice to visit the site.

Q9 - Do you agree that it is reasonable *not* to invite additional comments from third parties to those made during the course of considering the planning application when considering an appeal?

Yes, the existing system has at times been asked to deal with amended proposals, which bear little resemblance to the submission placed before the Planning Authority. This disadvantages the Authority and those seeking to comment on the application.

Q10 - Do you agree that Ministers should seek to use the method of examination that best fits the circumstances of the case, taking account of the views of the parties?

Yes

Q11 - Do you consider that the framework set out in the accompanying regulations reflects the more proportionate appeals regime envisaged in the White Paper?

Yes

Q12 - Are there any particular issues in relation to proposals for Crown development which would require special handling in relation to schemes of delegation, local review and appeals procedures?

It is accepted that there may be rare occasions (e.g in the interests of National Security) where due to the type of development proposed, a different procedure would be appropriate.

Q13 - Are there any potential impacts on the business or voluntary sector that we should be aware of in finalising these regulations?

The proposals, seen as a whole, should improve the service to business and consequently should have a beneficial effect by providing a more efficient service.

Q14 - Are there any impacts on particular societal groups that we should be aware of in finalising these regulations?

No more than in designing any other part of the Planning System.

Q15 - Do you have any other comments to make on the draft regulations covering schemes of delegation, local review bodies or appeals examinations?

No