

**FALKIRK COUNCIL**

**Subject: IMPLEMENTATION OF THE PLANNING ETC (SCOTLAND) ACT 2006 – CONSEQUENTIAL CHANGES TO DEVELOPMENT MANAGEMENT OPERATION (EFFECTIVE FROM 3 AUGUST 2009)**  
**Meeting: PLANNING COMMITTEE**  
**Date: 26 August 2009**  
**Author: DIRECTOR OF DEVELOPMENT SERVICES**

**1. INTRODUCTION AND CONTEXT**

- 1.1 The purpose of this report is to update the Planning Committee on the consequential changes to the development management operation within Falkirk Council, with effect from 3 August 2009.
- 1.2 The Planning etc. (Scotland) Act 2006 made provision for major changes to the delivery of planning services across Scotland, including a new Development Management System. This, to date, has resulted in a number of procedural changes comprising:

- **Statutory Pre-Application Consultation**

Applicants submitting a planning application for "national" and "major" development proposals require to submit a Proposal of Application Notice at least 12 weeks prior to the submission of a planning application. In addition, they have to undertake a Pre-Application consultation exercise (PAC). As a minimum, this has to include one public event and a newspaper advert, and the applicant must also consult every Community Council where any part of its area is within or adjoins land where the proposed development is situated. It should be noted that proposals may alter at any stage of this process, and it is a matter for the applicant to decide upon the final submission detail. Therefore, it is important that the Community Council considers the proposal again when a planning application is formally submitted. A letter was sent to all Community Councils at the end of June, advising them of this change in procedure.

- **Submitting an Application**

The responsibility for undertaking neighbour notification now rests with the Planning Authority, only once the planning application is deemed to be valid. It is now mandatory for national and major planning applications (and in some local developments) to include design or design and access statements as part of the submission.

- **Notification of Planning Applications in Local Press**

As part of the revised neighbour notification procedures, in the event that there are no premises on neighbouring land in relation to a planning application site, the Planning Authority is required to advertise the planning application in the local press (either Bo'ness Journal or Falkirk Herald). Applicants are now responsible for meeting the cost of the advertisement, and the cost is equally divided among those applicants whose proposals have been advertised. A decision cannot be issued until the cost has been recovered. Proposals which do not accord with the provisions of the development plan now have to be advertised at the applicant's expense, with costs similarly recoverable.

- **Revised Scheme of Delegation**

The Council's Scheme of Delegation which was approved by full Council on 24<sup>th</sup> June was formally approved by Scottish Ministers on 3 July 2009 and came into force on 3 August 2009. This scheme describes the circumstances in which officers can take decisions in respect of planning applications. The provision to enable individual members to request referral of an application to the Planning Committee for consideration is retained. However, a reason for the referral request is required.

- **Local Review Body**

The establishment of a Local Review Body in principle has also been agreed. This body is required to determine requests by applicants to review a decision of the appointed officer in respect of an application for a local development or the failure of the appointed officer to determine such an application. A detailed report on the formal setting up and procedures of the Local Review Body will be presented to the September Planning Committee.

- **Pre-Determination Hearings**

Any planning application in respect of a "major" development proposal which is significantly contrary to the Development Plan or any application in respect of a national development must be subject to a pre-determination hearing. The decision making responsibility for such applications now rests with the full council and not the planning committee. The pre-determination hearing procedures will apply to all relevant planning applications which were undetermined as at 3 August 2009. Further details in respect of the pre-determination hearing process will be the subject of a report to planning committee in September.

- **Delegated List**

Members now have the opportunity for one week at the end of the application determination process to "call-in" the application for determination at planning committee. In these cases the applicant cannot have the decision reviewed, but still has a right of appeal to Scottish Ministers.

- **Duration of Planning Permission**

The standard period for implementing planning permission is reduced from 5 years to 3 years.

- **Other Publicity for Planning Applications**

All major planning applications, including "bad neighbour" proposals, are required to display a site notice for the duration of works. For all planning applications submitted, the applicant is now required to serve notice on the Planning Authority of their intention to commence development on site. It is also a requirement that the person(s) undertaking such works are obliged to notify the Planning Authority of the completion of the works on site.

## **2. LEGAL IMPLICATIONS**

- 2.1 The Local Review Body procedure is an entirely new concept and has not been trialed elsewhere in the UK. The potential for legal challenge of decisions taken by the Local Review Body is similarly untested. Any concern that the Local Review Body has not made a fair and impartial decision or that it has insufficient expertise to make the decision could invite challenge under Human Rights Legislation. Review decisions will be open to challenge in the courts (as can happen at present), and therefore continued care will be needed in drafting decisions.

## **3. FINANCIAL IMPLICATIONS**

- 3.1 There will be financial implications arising in terms of the provision of the legal, technical and administrative support required to carry out the review function of the Local Review Body and the possible pursuance of advert fees from applicants. Balanced against this, it is anticipated that there would be savings in the legal, technical and administrative costs associated with preparing and reviewing Committee Reports and attending Committee meetings, if Committee workload is reduced. Costs associated with appeals to Scottish Government will also reduce as a consequence of decisions on local development now being subject to Local Review Body procedures. The cost implications cannot be quantified until the new procedures are in practice.

## **4. PERSONNEL**

- 4.1 Additional personnel resources will be required in the provision of legal, technical and administrative support required to carry out the review function of the Local Review Body. However, this could to some extent be offset if the Committee workload is reduced. The overall workload may, however, increase with the neighbour notification responsibilities now resting with the Planning Authority. However, it is difficult to quantify the staff resource requirements at this time until the level of planning application submissions return to normal.

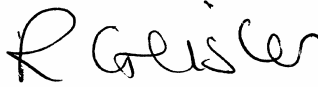
## **5. CONCLUSION**

- 5.1 This report provides an update on the key procedural changes now in place in respect of dealing with planning applications following the coming into force of the new planning legislation on 3 August 2009. The new legislation is part of the modernising planning agenda which seeks to improve the delivery of planning services and make the system fit for a purpose, more open, transparent and efficient. A further report in respect of the procedural requirements in setting up the Local Review Body/pre-determination hearings is expected to be considered by the Planning Committee in September.

## 6. RECOMMENDATION

### 6.1 It is recommended that committee:

- (a) note the implications and changes to recent procedures resulting from the Implementation of the Planning etc. (Scotland) Act 2006 and subsequent Regulations which have come into force on 3 August 2009.

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Date: 18 August 2009

### LIST OF BACKGROUND PAPERS

1. The Planning etc. (Scotland) Act 2006
2. The Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2008
3. The Town and Country Planning (Schemes of Delegation and Local Review Procedures) (Scotland) Regulation 2009
4. The Town and Country Planning (Appeals) (Scotland) Regulations 2008