

## Decision making processes

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### Planning Committee 21 April 2005

#### 1 Purpose of report

- 1.1 To review procedures for the presentation of planning applications at Development Quality Sub-Committee meetings following two years of Hearings experience.
- 1.2 To address an outstanding remit of the Development Quality Sub-Committee in respect of members attendance and entitlement to vote in the Hearings procedures.
- 1.3 To review the operation of the Scheme of Delegated Powers for determining planning applications during the past year.

#### 2 Summary

- 2.1 The Hearings system has improved the transparency of the process. A small increase in the time available to applicants is proposed. In addition, the key areas of significant departure from the development plan and the degree of public interest in determining whether a Hearing is appropriate have been reviewed.
- 2.2 The scheme of delegation continues to assist in performance management and shares common features with best practice models.

#### 3 Main report

##### A Review of Presentation of Planning Applications

- 3.1 The current procedures for presenting planning applications to the Development Quality Sub-Committee have operated since the beginning of 2003 and include the use of Hearings and adjusted criteria under which applications would be presented to the Sub-Committee. The criteria for selecting applications for Hearings are detailed in Appendix 1.

- 3.2 The most recent review was reported to the Planning Committee on 5 February 2004 It concluded that the Hearing procedures have improved the transparency and accountability of the decision-making process. Only a few changes were made as a result of the experience gained in the first year of operation. These related to the selection of speakers, and the period of time allowed for questioning speakers and considering their points. Last year, three Hearings took place in respect of planning applications and one in respect of an enforcement case. The characteristics of these cases are provided in the first part of Appendix 2.
- 3.3 At present, up to three people who have submitted written representations are selected to speak at Hearings, in addition to the Ward Councillor. Three minutes is the maximum allotted speaking time. Most, but not necessarily all, of this time will be spent outlining points against the proposal. To date, the applicant has been allowed to speak for up to three minutes, but in some instances this has not been sufficient to describe all the points in favour of the proposal. It is therefore proposed that, for a trial period until the next review of the Hearings procedure, the maximum time available for applicants be increased to 5 minutes.

#### **Development contrary to the Development Plan**

- 3.4 This review of the second year of operation focuses on two key areas of analysis in the use of Hearings for:
- (a) Departures from the Development Plan
  - (b) Applications where there is substantial public interest.
- 3.5 Current practice is to identify potential departures of planning applications from the development plan shortly after receipt and reassess this when the planning recommendation is being drafted. Procedures are currently under review to achieve greater consistency in the statistical returns to the Scottish Executive.
- 3.6 Sections 25 and 37(2) of the Town and Country Planning (Scotland) Act 1997 require that decisions on planning applications be made in accordance with the development plan unless material considerations indicate that it should be determined otherwise. Under the Town and Country Planning (Development Contrary to Development Plans) (Scotland) Direction 1996, planning authorities are authorised to grant planning permission for development which does not accord with the provisions of the development plan, provided a) details of the application have been published in a local newspaper and representations invited and b) the planning authority has considered any representations so made. For significant departures from the Structure Plan and for development plan departures where the Council has an interest, and there is a substantial body of objection, the case then has to be referred to Scottish Ministers.
- 3.7 In looking at cases where applications were contrary to the development plan, a number of instances were identified where a development framework or planning brief had been approved. Although such statements are approved by Committee after public consultation, they do not form part of the statutory development plan.

Where an application conforms to the non-statutory guidance, but is a significant departure from the development plan, a Hearing will be held where the criteria outlined in Appendix 1 apply.

- 3.8 Of the three applications detailed in the second part of Appendix 2, hearings were not justified.

#### **The degree of public interest**

- 3.9 The degree of public interest is another criterion for deciding if a Hearing should be held. It is demonstrated not just by the volume of representations received but by their nature. Between 2003 and 2004, there was a decline of 25 per cent in the number of representations received on planning applications decided in the relevant year where development was significantly contrary to the development plan. In addition, the number of such cases with more than 10 representations declined from 17 to 12. The number of Hearings into planning applications reduced from eight to three. The purpose of hearings is to 'increase public participation in meetings to assist in the transparency and accountability of decision-making and improve public confidence in the system'. However, the number of hearings in any one year is dependent on the nature of the planning applications considered and the recommendations made to Committee.

- 3.10 An analysis has been undertaken of the Uniform database of planning cases decided in 2004 which were:

- regarded as significantly contrary to the development plan during at least one phase of the consideration process, and
- being recommended for approval, and
- indicated a substantial amount of public interest

- 3.11 These are critical factors in deciding if a Hearing should be called. Two further applications were assessed in relation to the aims of transparency and accountability in holding hearings. They are summarised in the third part of Appendix 2. It was concluded that, on balance, it was correct to exclude them from a hearing format in that they did not meet the criteria, within Appendix 1.

#### **B Outstanding remit from Development Quality Sub-Committee meeting of 7 July 2004**

- 3.12 Following consideration of the case of the Raeburn House Hotel on 7 July 2004, the Development Quality Sub-Committee members asked "officials for clarification of the operation on the procedure for hearings in regard to changing decisions taken in principle and the attendance of members."

- 3.13 The relevance of this remit as part of the decision-making process relates to cases, whether or not subject to a hearing, where the sub-committee is minded to make the determination contrary to the recommendation of the Director of City Development.

### **'Minded to overturn the recommendation'**

- 3.14 The procedure used by the Sub-Committee when minded to overturn the recommendation of the Director of City Development is to indicate their intention and to ask the officials to report on the proposed refusal reasons or conditions. This allows for the sub-committee to receive further advice from the Head of Planning and Strategy and Council Solicitor on appropriate reasons and conditions. This should ensure that the Committee's decisions can be justified at any subsequent challenge.
- 3.15 So long as the Sub-Committee specifies the reasons why they were minded to overturn the recommendations and considers detailed reasons or conditions at a future meeting, the process will be transparent. Should there be an occasion when the further advice is that an intended decision could not be defended at appeal, or in the courts, it would be appropriate for the Convener to rule that this advice constituted a material change in circumstances to allow reconsideration of the application (as permitted by Standing Order 22), otherwise the initial decision should not be challenged.

### **Attendance of members**

- 3.16 On three occasions where a Hearing was held in 2004, consideration of the cases was continued to another meeting of the Sub-Committee. In such case, there is no further hearing.
- 3.17 Existing standing orders pre-date the planning processes now used and were not designed to deal with hearings of this nature. There needs to be further exploration with Legal Services of the relationship with issues of natural justice and human rights. A report will be brought to Committee as part of future monitoring of procedures.

### **C Review of the Scheme of Delegated Powers**

- 3.18 The current scheme of delegation was introduced in 1999, and subsequently amended to increase the number of application types to be delegated. The most recent change to the Scheme was in 2001 to include items recommended for refusal.
- 3.19 PAN 40 'Development Control' (revised March 2001) recommends that the delegation of decision making is particularly appropriate for applications that are consistent with the development plan or which raise no objection from consultees or the public. Schemes of delegation should be kept under review to ensure that opportunities for streamlined decision making are taken and that elected members are satisfied with their involvement in decisions.
- 3.20 Table 1 below shows the change in the proportion of applications decided under delegated powers rising from 61% in 1999-2000 to over 80% in 2004. Whilst these figures for delegated decision-making in Edinburgh have improved substantially over the past five years, they have also improved, but to a lesser extent, for other comparable Scottish cities. One quarter of Scottish planning authorities delegate 90% or more of their planning decisions.

Table 1 Delegation of decision making for planning applications

<b>Year End</b>	<b>No of applications determined</b>	<b>No of applications delegated</b>	<b>% of Edinburgh applications delegated</b>	<b>(No) &amp; % of Dundee applications delegated</b>	<b>(No) and % of Glasgow applications delegated</b>
1999-00	4031	2475	61%		
2000-01	3649	2433	67%	(582) 82%	(2351) 77%
2001-02	4491	3264	72.7%	(545) 83%	(2264) 74%
2002-03	4562	3522	77.2%	(595) 82%	(2339) 77%
2003-04	4750	3817	80.3%	(707) 83%	(3187) 80%
2004-05 [Apr-Sep04]	2435	1579	81.8%	(417) 89%	(1599) 83%

3.21 Delegation of decisions to the Head of Planning and Strategy increases the Council's ability to process increased numbers of applications within the periods set in the statutory performance indicators. This facility is particularly useful in dealing with householder applications which form the largest individual category of applications received, and have a target determination period of two months.

3.22 Table 2 shows the percentage of householder applications determined within the two month period for Edinburgh, Aberdeen, Dundee and Glasgow. None of these city authorities are within the handful of authorities which reach the Scottish Executive guideline of 90 per cent. Benchmarking discussions are in progress with these planning authorities to explore factors affecting decision-making e.g. level of representations, public interest, complexity of proposals, density of the urban living environment. Any recommendations for further changes to delegated powers will be brought forward to a future meeting of the Committee.

Table 2 Percentage of householder planning applications determined within 2 months

<b>Year End</b>	<b>(No.), % Edinburgh householder applications determined in 2 months</b>	<b>(No.),% Aberdeen householder applications determined in 2 months</b>	<b>(No.), % Dundee householder applications determined in 2 months</b>	<b>(No.), % Glasgow householder applications determined in 2 months</b>
1999-00	(1028) 59.3%	(1019) 74.2%	(231) 82.5%	(435) 72.7%
2000-01	(1003) 59.8%	(841) 74.8%	(215) 87.4%	(629) 84.3%
2001-02	(1344) 70.3%	(939) 74.2%	(215) 82.9%	(523) 77.1%
2002-03	(1565) 73.3%	(1145) 79.5%	(240) 84.4%	(689) 82.5%
2003-04	(1548) 66.9%	(1276) 87.3%	(280) 81.2%	(574) 55.3%
2004-05	73.8% (Apr '04-Feb '05)	71.4% (Apr-Sep '04)	88.7% (Apr-Sep '04)	83.4% (Apr-Sep '04)

## **Quality of decision-making**

- 3.23 The Committee consistently focuses its decision-making on major applications and those of greatest public interest, and the level of delegation would support this. A Report to Committee in March 2003 reviewed the department's delegated decision-making procedures to assess the consistency and quality of the decisions. Measures were then put in place to ensure that procedures remained reliable and robust, with a short follow-up review reported to Committee in August 2003.
- 3.24 With the advent of the Planning and Building Control Portal, access to planning applications via the internet has become increasingly important, and has to some extent overtaken the recommendations of the August 2003 Report on Delegated Planning Decisions. As an illustration of recommended improvements where information is now in the public domain:
- (a) there is an 'Important Dates' screen available on the portal for each application. The 'Important Dates' screen can be checked for advert dates, dates of posting of site notices, and the relevant expiry dates etc, any Committee date, date of decision and expiry date of any permission
  - (b) copies of reports on delegated decisions are now posted on the planning portal
- 3.25 Since the report to Committee last year, the Office of the Deputy Prime Minister has published guidance on 'Delivering Delegation'. Within the 'Best Value and performance improvement' section it states: "In pursuit of the OPDM's performance aspirations, delegation schemes must recognise the wide variety and differing complexity of applications and the need for accountability, involvement and open debate."
- 3.26 The Edinburgh scheme for delegation shares common features with the model scheme provided with the ODPM good practice guidance. One issue of interest is where exceptions are made to exclude certain types of applications that would in other circumstances be suitable for delegation. In the model scheme, applications by Housing Associations which propose additional residential units are not delegated. In Edinburgh, the equivalent exception from delegation is for proposals from any sector which involve significant numbers of additional residential units to be presented to Committee for information.

## **4 Financial Implications**

- 4.1 None

## **5 Conclusions**

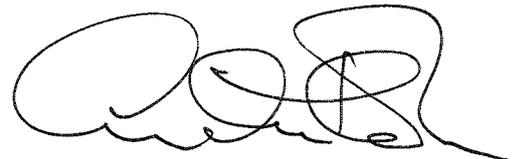
- 5.1 The Hearing procedures have improved the transparency and accountability of the decision-making process.

5.2 The delegated procedures are working well and have enabled a greater proportion of householder applications to be processed by officials, thereby allowing the Committee to focus on applications of the greatest significance.

## 6 Recommendations

6.1 It is recommended that the Committee:

- (i) Agrees that, for a trial period, up until the next review of the hearings procedure, the maximum time available for applicants to speak at a Hearing be increased to five minutes.
- (ii) Confirms the procedure to be followed as set out in paras 3.14 and 3.15 when the Sub-Committee are minded to refuse an application contrary to the recommendation of the Director of City Development.
- (iii) Notes that a further report will be prepared on the relationship between sub-committee procedures and standing orders.
- (iv) Notes the successful operation of the scheme of delegation and that further analysis will be undertaken with a view to establishing the potential for further improvements in performance when handling planning applications.



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**Appendices**      Appendix 1: Selection criteria for considering planning applications by means of a 'Hearing'  
Appendix 2      Decisions made in 2004 where there was an advertised departure from the Development Plan, a recommendation to grant, substantial interest by Consultees/representations

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### Wards affected

**Background Papers**      1 Scottish Executive Annual reports of the Planning Audit Unit  
2 Report to the Planning Committee of 5 February 2004 'Decision-making Structures' (Agenda item 19)  
3 Delivering Delegation –Guide published by the Office of Deputy Prime Minister

## **Appendix 1**

### **Selection criteria for considering planning applications by means of a 'Hearing'**

Where there have been material representations a hearing will be called:

- a. if, excluding development by the Council, the Council has substantial financial or land interests in the proposals, or
- b. if the degree of public interest is substantial, as demonstrated by the nature of material representations raised, rather than the volume of representations, or
- c. if the draft report recommends approval, and,  
- the proposal involves significant departures from the development plan/finalised plan, or
- d. if the proposal raises issues not adequately covered by the development plan/finalised plan

APPENDIX 2

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Decisions made in 2004 where there was an advertised departure from the Development Plan and a recommendation to grant

sent 15 Mar '05

Application Ref	Reason advertised	Departure from Plans	Approval contrary to Dev. Plan	Recommendation	Committee type	Recommendation Accepted/ Other	Date of Decision	PROPOSAL	Application address	Representations
Part 1 - Hearings during 2004										
1621/CA	-	-	-	Choice of 3 options	COMM	To Procurator Fiscal	03-Mar-04	Breach of Control (Restoration of the overburden mound)	1 Kaimes, Long Dalmahoy Road, KIRKNEWTON EH27 8EF	2 representations
03/03864/FUL	DP	YES	N	GRA	COMP	O	08-Jul-04	Extension to existing hotel and new members clubhouse (all to operate with hotel liquor license)	Raeburn House Hotel, Raeburn Place	104 representations
04/00681/FUL	ENVIR OTHER		N	GRA	COMM	Called in for Inquiry convened by Scottish Ministers	11-Aug-04	Clearance of existing car park and ancillary buildings to form comprehensive redevelopment comprising of: retail, office, leisure, licensed premises, car parking and replacement public conveniences, proposals incorporate regrading of site to adjacent street levels	Morrison Street Edinburgh EH3 8DS (old Morrison Street Goods Yard)	75 representations
04/03361/FUL	CA		N	GRA	COMH	Continued	18-Aug-04	Alterations and change of use of 37 and 39 Craigmillar Park to form 4 flatted dwellings, demolition of 41 and 43 Craigmillar Park, and redevelopment to form 32 flatted dwellings.	37-43 Craigmillar Park Edinburgh EH16 5PD	325 representations
Part 2 Further applications contrary to the development plan										
02/04372/OUT	DP		Y	GRA	COMP	A	23-Dec-04	Outline planning permission for centre for bio-medical research including educational, health and support facilities	Edmonstone Campus, Old Dalkeith Road	3 representations
03/00399/FUL	DP	YES	N	GRA	COMP	A	17-Sep-04	Proposed residential development of 79 houses and land designated for 14 affordable units all with associated road and parking	Stirling Rd Kirkliston Waterfront Avenue,	3 representations
03/04606/FUL	DP	YES	N	GRA	COMM	A	29-Oct-04	Form new link road and access to North Shore, Waterfront, Edinburgh	Land North {in masterplan}	5 representations
Part 3 Further applications contrary to the development plan with heightened public interest										
03/03523/FUL	DP	YES	Y	GRA	COMP	A	24-Nov-04	mixed use office and residential development	8 Hopetoun St/ 56 Annandale Street	11 representations + petition
03/01379/FUL	DP	YES	N	GRA	COMO	A	08-Jun-04	New flatted housing development	44 Biggar Road	9 representations

M=Meeting  
H=Hearing  
P=Presentation  
O= Other