

## Development Management Sub-Committee: Review of Procedures

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### The City of Edinburgh Council

23 August 2012

#### 1 Purpose of report

- 1.1 To refer to the full Council recommendations from the Planning Committee in regard to an alteration of procedures on ward members speaking on planning applications before the Development Management Sub-Committee.

#### 2 Details

- 2.1 The Director of Corporate Governance, in consultation with the Head of Planning, had been asked to undertake a review of procedures used by the Development Management Sub-Committee, in accordance with a motion by Councillor Perry. The Director's report to the Planning Committee on 9 August 2012 is appended.
- 2.2 The review had focussed on the matter of ward members speaking before the Development Management Sub-Committee on planning applications within their wards, with reference to guidance recently issued on the Councillor's Code of Conduct.

#### 3 Motion

- 3.1 To approve the recommendations by the Director of Corporate Governance.
- 3.2 To agree that representations be made to the Scottish Government and Standards Commission on the Councillor's Code of Conduct in light of members' concerns at the implications of the guidance.
- 3.3 To ask that the changes to procedures be reviewed by the Planning Committee in six months time.

- moved by Councillor Perry, seconded by Councillor Howat.

#### **4 Amendment**

- 4.1 To note that the revised Code of Conduct for Councillors produced by the Standards Commission for Scotland in 2011 introduces a challenge to the current procedures of the Development Management Committee, in particular Para 7.15 in context.
- 4.2 To note that the section addressing representations, paragraphs 7.13, 7.14 and 7.15, limits the ability of councillors to represent the interests of their ward, is not clearly expressed, and unnecessarily requires those contributing to the consideration but not making the decision to 'retire from the meeting room'.
- 4.3 To express concern that this section may lead to a lack of transparency, delay and administratively intensive procedures.
- 4.4 To resolve to make representation to the Scottish Government and the Standards Commission to review the Code of Conduct in the light of these concerns.
- 4.5 To resolve in the meantime to adopt Option One as described in paragraph 2.6 of the report – this to be viewed as an interim measure, pending the outcome of representations to be made (under para (iv) of this amendment).

- moved by Councillor Rose, seconded by Councillor Mowat.

#### **5 Voting**

- 5.1 The motion was carried by 11 votes to 3.

#### **6 For Decision**

- 6.1 The Planning Committee resolved in terms of the motion by Councillor Perry and therefore recommended to the full Council as follows –
  - (i) That the Planning Committee should amend procedures to ensure that ward members are not heard in connection with planning applications before the Development Management Sub-Committee, other than in circumstances where equal opportunity is afforded to applicants and other parties to make representations.
  - (ii) That procedures be further amended, in line with Option Two in the Director's report, to allow a ward member, in circumstances that afford equal opportunity to applicants and other parties to make representations, to make a request for the Development Management Sub-Committee to hold a hearing on a planning application.
  - (iii) That representations be made to the Scottish Government and the Standards Commission to review the Councillors Code of Conduct.
  - (iv) That the changes to procedure be reviewed by the Planning Committee in six months time.

- (v) That, where required, any adjustments to delegated authority or Standing Orders required as a result of the Committee's recommendation would be referred to full Council for approval.

**Carol Campbell**  
Acting Head of Legal and Administrative Services

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<b>Appendix</b>	Report by the Director of Corporate Governance , as considered by the Planning Committee on 9 August 2012.
<b>Contact/tel</b>	S MacVean, Committee Services tel 0131 529 4376 e-mail scott.macvean@edinburgh.gov.uk
<b>Wards affected</b>	
<b>Background Papers</b>	Minutes of Planning Committee 19 May 2011 and 9 August 2012

## Development Management Sub-Committee: Review of Procedures

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### Planning Committee

9 August 2012

#### 1 Purpose of report

- 1.1 The purpose of this report is to respond to a motion by Councillor Perry to provide an overview of options on hearings and ward members making representations on planning applications, following a review of procedures.

#### 2 Background

- 2.1 On 4 July 2012 the Planning Committee approved the following motion by Councillor Perry:

“In view of the general review of the Council's political management governance arrangements, as instructed by the Council on 24 May 2012, to instruct the Director of Corporate Governance in consultation with the Head of Planning to undertake a review of procedures used at the Development Management Sub-Committee. The review to address the Council's stated desire to be a Council that will listen to and work with local people and which will operate in a co-operative, fair, accountable and responsible manner.”

- 2.2 The procedures used by the Development Management Sub Committee were reviewed in May 2011. In recognition of ward members' local and community representational role, the procedures incorporated an involvement in the planning process and a process to invite ward members to contribute to hearings instigated by the Head of Planning. In addition, members could also request to be heard on planning applications before the Development Management Sub-Committee.

- 2.3 The Councillors' Code of Conduct at paragraph 7.15, in relation to decisions on planning matters states as follows:

If as part of the decision making process you wish to make representations on behalf of constituents or other parties you may do so, providing:

- (i) you do so in terms of procedures agreed by the Council which afford equal opportunity to any parties wishing to make representations to do so;
- (ii) you declare your interest in the matter, and
- (iii) after making those representations you then retire from the meeting room.

2.4 Recent Guidance issued by the Standards Commission indicates that this paragraph applies to all councillors, irrespective of whether or not they are part of the decision making process. The guidance provides direction to members in dealing with planning applications and suggests if ward members were to speak and express views on an application before the planning authority, then it has to be in a situation that allows equal opportunity for all other parties to do the same.

2.5 The terms of the guidance issued has led to consideration of the following options to adjust procedures for the future role of ward members in the planning process.

#### Option One

2.6 The Committee could amend current procedures so that ward members would not longer be able to speak and express views before the planning authority on applications and matters within their ward area. This would ensure compliance with the provisions of the Councillors' Code of Conduct and the recently issued guidance.

#### Option Two

2.7 If the Committee considered it appropriate to allow ward members to make requests to speak on particular applications, then there is an option to allow representations to be made within the context of a pre-determination hearing, under the criteria outlined in 2.8(b) below.

2.8 There are two types of pre-determination hearings held by the Development Management Sub-Committee:

- (a) National Developments and Major Developments significantly contrary to the Development Plan

Section 38A(1) of the Town and Country Planning Scotland Act 1997, and Regulation 27 of the Development Management Regulations 2008, provide that the planning authority, when considering the above categories of application, must provide a process that allows the applicant and other persons so prescribed an opportunity of appearing before and being heard by a Committee. There is no discretion on the matter and the applicant must be afforded an opportunity to present to the Committee before the application is determined. A person 'so prescribed' means any person who has made a timeous representation on the application during the statutory objection period.

The authority can determine the hearing procedures itself, including measures to ensure that the matters discussed are relevant, efficient and avoid repetition. Attendance, beyond those who have the right to appear before the Committee, is to be such as the authority considers appropriate. The Council has previously approved the procedures for such hearings and decided that, as such an application would be ultimately determined by full Council, ward members should not be allowed to participate in the pre-determination hearing as is to be held before the Development Management Sub-Committee.

- (b) Pre-determination Hearings for Other Applications – Major Applications (which are significantly contrary to the Development Plan) and Local Applications

Section 38A(4) of the Town and Country Planning (Scotland) Act 1997 allows the planning authority to use discretion to hold hearings for other types of planning applications in which they may decide to offer the applicant and any other person an opportunity of appearing before and being heard by the Development Management Sub-Committee. In such cases, they can allow any person to appear before and speak to the Committee whether or not those persons have made timeous representations during the planning application process.

Scottish Government guidance on the legislation (Development Management Procedures: Circular 4/2009) states that examples of such categories of development which the authority might decide as requiring a pre-determination hearing might include, for example, applications in which the Council has a financial interest; applications that had attracted a given number and type of objections, or applications relating to development in sensitive areas protected by statutory designations. There is no legislative requirement to refer them to the full Council for determination.

The Planning Committee has agreed a set of procedures for holding such hearings, as last reviewed on 19 May 2011, in line with general rules on pre-determination hearings. The Council has agreed that the parties invited to be heard at such hearings will include the applicants and a balance of groups or individuals representing both objectors and supporters, and including community councils, and ward members.

- 2.8 The committee procedures would require to be amended to allow a ward member to submit a 'request for a hearing to be held'. It would be for the Development Management Sub-Committee to decide whether or not to hold a hearing in light of the information available. The ward member would be expected to submit written grounds for a hearing, based on planning considerations, copies of which would be circulated with the agenda and papers for the meeting. A deadline for submission of such a request would require to be set by the Committee and which would need to be prior to the meeting at which the application was due to be considered.

- 2.9 If the Development Management Sub-Committee agrees that a pre-determination hearing should be held, then the application would be continued to allow the applicants and other interested parties to be notified and for a hearing arranged as soon as possible thereafter. For any application that was due to be dealt with by means of pre-determination hearing, in terms outlined in 2.8(b) above, then ward members would continue to have an opportunity to speak, along with applicants and other interested parties, as per current procedures.
- 2.10 If committee recommends this option, it should be noted that the time taken to process applications will increase. To reduce the impact of this, it is intended that hearings will be held at next meeting of the Development Management Sub-Committee following the decision to hold a hearing.

### **3 Recommendations**

#### **3.1 It is recommended that the Planning Committee:**

- 3.1.1 Agrees to amend procedures to ensure that ward members are not heard in connection with planning applications before the Development Management Sub-Committee, other than in circumstances where equal opportunity is afforded to applicants and other parties to make representations.
- 3.1.2 Considers if it would be appropriate to recommend that the Council amends procedures, in line with option 2 outlined above, to allow a ward member, in circumstances that afford equal opportunity to applicants and other parties to make representations, to make a request for the Development Management Sub-Committee to hold a hearing on a planning application.
- 3.1.3 To refer to Full Council for approval, where necessary, any adjustments to delegated authority or Standing Orders required as a result of the Committee's recommendation.

**Alastair D Maclean**  
Director of Corporate Governance

<b>Appendices</b>	none
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<b>Wards affected</b>	
<b>Background Papers</b>	Minutes of Planning Committee 19 May 2012 (item 2)