

# **EAST AYRSHIRE COUNCIL**

**CABINET – 1 APRIL 2009**

## **Update on Modernising the Planning System**

### **Report by Depute Chief Executive/ Executive Director of Corporate Support**

#### **1 PURPOSE OF REPORT**

To update Cabinet on the current position with regards to the Scottish Governments programme of modernisation for the planning system and to advise of the implications for the Council and associated timescales for implementation.

#### **2 BACKGROUND**

**2.1** The Planning etc (Scotland) Act 2006 introduced far-reaching legislative changes to planning in Scotland. In order to support the new primary legislation a major programme of secondary legislation is required to allow the new approach and procedures to be implemented.

**2.2** In December 2008, 8 sets of regulations were laid before the Scottish Parliament, to allow the changes to the planning system to be enacted. When these regulations come into force later this year, effectively implementing most of the Planning etc (Scotland) Act 2006, the result will be the most significant change to planning in Scotland in 60 years. The implementation of these regulations will have significant impacts for the Council's planning service, both in terms of Development Planning and Development Management. A summary table of the changes now coming forward and associated timescales, is included as Appendix 1.

#### **3 DEVELOPMENT PLANNING - UPDATE**

**3.1** The Planning etc (Scotland) Act 2006 introduced a new approach to the structure and delivery of planning policy in Scotland. The key changes brought in by the act can be summarised as:

- The replacement of Structure Plans and Local Plans with Strategic Development Plans (required only for the 4 city regions) and Local Development Plans (LDPs).
- A duty to review development plans on a five-yearly basis.
- The elevation of supplementary planning guidance to have a status similar to that of the statutory development plan.

- A new requirement for planning authorities to prepare a development plan scheme, outlining a programme for preparing the local development plan and indicating how the public will be engaged.
- A requirement for neighbour notification to be carried out for proposed development sites
- A requirement for plans to be accompanied by action programmes.
- The removal of the right to be heard at examinations.

**3.2** With regards to Development Planning, 19 December 2008 saw 3 distinct sets of regulations laid before parliament, all of which come into force on 28 February 2009. These comprise of:

- (i) The Town and County Planning (Development Planning) (Scotland) Regulations 2008, detailing the system of Development Plans that will be implemented;
- (ii) The Planning etc (Scotland) Act 2006 (Development Planning) (Saving, Transitional and Consequential Provisions) Order 2008, outlining the process for moving from the current system of development plans to the new scheme; and
- (iii) The Town and Country Planning (Grounds for declining to follow recommendations) (Scotland) Regulations 2009, outlining the grounds upon which a planning authority may decline to make modifications to a proposed local development plan as recommended by an appointed person (i.e. appointed by the Scottish Ministers)

## **4 DEVELOPMENT PLANNING – IMPLICATIONS FOR THE COUNCIL**

**4.1** The Council is currently committed to progressing an Alteration to the East Ayrshire Local Plan, with a planning horizon of 2017, although a longer term horizon to 2025 has been used for strategic expansion locations to reflect the Ayrshire Joint Structure Plan. The Finalised Version with Modifications was approved by Full Council on 26 February 2009 and thereafter it is anticipated that the modifications will be put out for public consultation for a period of 6 weeks. Once the objection period is over and the scale of unresolved objections ascertained, an examination into the outstanding objections will be arranged. It is anticipated that the examination will take place in the Autumn of 2009.

**4.2** On the basis that the Council is at an advanced stage of producing the Alteration to the Local Plan, the transitional arrangements outlined in the regulations described in 3.2(ii) above, indicate that instead of progressing to a public local inquiry, the Alteration can be addressed by way of a new style examination. Whereas previously objectors could choose whether to have their objection dealt with through written submission, informal hearing or formal inquiry procedures, the new regulations stipulate that it is the Scottish Government's reporter who determines how each objection will be addressed.

The new procedures should result in a quicker and more efficient means of addressing outstanding objections.

**4.3** In terms of preparing a new style Local Development Plan, it is clear that resources available will not allow for a new plan to be prepared until after the examination into the Alteration to the Local Plan. However, in line with the regulations, which become effective as of the end of February, there are certain areas of the work the Council are required to commence:

- A Development Plan Scheme must be submitted to the Scottish Government by the end of March 2009. The Development Plan Scheme, a key element of the new approach to Development Planning, must contain: (i) a timetable indicating the month in which the authority will reach certain milestones in the preparation of the LDP and (ii) a Participation Statement outlining when, how and with whom consultation will take place and how the Council will actively involve the public in the preparation of the plan.
- The initial preparation of a Monitoring Report and Main Issues Report. Under the regulations as described in 3.2 (i), prior to producing the LDP itself, the Council must prepare a Monitoring Statement, which should outline changes in the physical, economic, social and environmental characteristics of the area that have occurred since the preparation of the existing local plan and the impact of the policies of that plan. The new regulations also require that a Main Issues Report be prepared, as an initial stage in producing an LDP, which should outline the broad approach to development and include alternative options for guiding development. It is considered that preparation on both the Monitoring report and Main Issues Report could commence whilst, the Alteration to the Local Plan is still being progressed.
- Preparation of a Housing Needs and Demand Assessment (HNDA), in conjunction with Housing Services. The revised Scottish Planning Policy 3, published in July 2008, introduced a requirement for local authorities to prepare a Housing Needs and Demand Assessment, to provide the evidence base for both local housing strategies and Local Development Plans. In terms of the Local Development Plan, the HNDA will be the key tool for determining the amount of land required for housing and the appropriate locations in which this land should be identified. As the HNDA should inform the Main Issues Report, work will be required to start on the Assessment, in early course.

## **5 DEVELOPMENT MANAGEMENT – UPDATE**

**5.1** With specific regards to Development Management, the Scottish Government's intention for the new planning system is to make the process around planning applications fit for purpose and responsive to different types/scales of development, improve the speed and efficiency in determining

planning applications and improve public involvement in the consideration of applications. The key changes brought in by the act can be summarised as:

- The introduction of a hierarchy of development and a requirement to produce an associated scheme of delegation
- Pre-application consultation with the community
- New arrangements for notifying neighbours of applications
- A longer period for making representations on a planning application
- A new requirement for design and access statements for certain applications
- Provision of more information about planning applications and how decisions have been arrived at.
- Changes to the appeals system and the introduction of local review bodies.

**5.2** As with Development Planning, a raft of regulations were laid before the Scottish Parliament in December 2008, comprising of:

- (i) Town and Country Planning (Hierarchy of Developments) (Scotland) Regulations 2008, introducing the new process of classifying classes of development as 'national', 'major' and 'local' developments. The regulations will come into force on 6 April 2009.
- (ii) Town and Country Planning (Amount of Fixed Penalty) (Scotland) Regulations 2008, introducing a new power for planning authorities to issue fixed penalty notices for breaches of planning consent. This will come into force on 3 August 2009.
- (iii) Town and Country Planning (Appeals) (Scotland) Regulations 2008, setting out the new procedures with regards to the applicants right to appeal a decision made by the planning authority, which comes into force on 3 August 2009.
- (iv) Town and Country Planning (Schemes of Delegation and Local Review Procedures) (Scotland) Regulations 2008, outlining the requirement for planning authorities to put in place a scheme of delegation for determining planning applications and to establish Local Review Bodies. Elements of this come into force on 6 April 2009, with the remainder becoming effective as of 3 August 2009.
- (v) Town and Country Planning (Development Management Procedures) (Scotland) Regulations 2008, setting out the detailed planning process, from pre-application consultation to the issuing of the decision notice. Certain elements of the regulations will come into force on 6 April 2009, whilst the majority of the regulations will be implemented as of 3 August 2009

## 6 DEVELOPMENT MANAGEMENT – IMPLICATIONS FOR THE COUNCIL

6.1 The changes to the Development Management system that are now being implemented, will have a considerable impact on both the Council and applicants, in terms of the procedures involved in processing a planning application and with regards to how decisions, and subsequent appeals decisions are made. As a result of the regulations listed in 5.2, the key implications for the Council can be described as:

- Hierarchy of Development

The hierarchy of Development, will become effective as of 6 April, with the implication that all planning applications will require to be classed as either 'national', 'major' or 'local', in order that resources can be focused on proposals that involve greater economic benefits or environmental impacts. As part of this process the permitted development rights will be extended to remove minor applications from the planning system.

- Scheme of Delegation

The Council currently has in place a Scheme of Delegation, agreed by full Council, which stipulates those developments that are delegated to the Head of Planning and Economic Development for determination and those that should be determined by Planning Committee. The new regulations, described in 5.2(iv) above, bring in a new requirement for the Scheme of Delegation to be submitted to Scottish Ministers, for approval before it can be adopted by the Council. The Scheme of Delegation should reflect the hierarchy of development as described above, with those applications being delegated, restricted to applications falling with the category of 'local' developments.

**The Council must submit the Scheme of Delegation to Ministers by the end of June 2009, prior to which it should be approved by both Cabinet and full Council.**

- Procedures for carrying out pre-application consultation

The regulations outlined in 6.2(v) introduce significant new requirements for applicants considering large or complex developments, to consult appropriately with local communities that will be affected by the proposed development. Applicants will be required to demonstrate this process through the submission of a pre-application consultation report. Whilst the onus for pre-application consultation will be on the applicant, an additional requirement will be placed on the Council as planning authority to: (i) determine whether pre-application consultation is required; (ii) ensure pre-application is carried out appropriately; and (iii) assess the pre-application consultation report as part of the submitted planning application. The new provisions for pre-application consultation will therefore add to the current workload of the Council's Development Management section.

**The requirement for pre-application consultation will come into effect as of 6 April 2009, to ensure developers have sufficient time to complete statutory pre-application consultation before other elements of the new system come into force in August 2009.**

- Procedures for Making a Planning Application

The regulations outlined in 6.2(v) contain changes to the way in which applicants will be required to make an application for planning permission, including the information that is required to be submitted to the planning authority. Of particular note is the requirement for applicants of certain developments to submit design and access statements explaining: (i) the design principles and concepts that have been applied; and (ii) how issues relating to access for disabled people have been dealt with.

**The changes to the way in which planning applications are made will be effective as of 3 August 2008.**

- Procedures for Processing a Planning Application

The regulations described in 6.2(v) outline significant amendments to the way planning applications will be processed under the new regulations. A major new element of the regulations is the emphasis on e-planning and mainlining electronic communications. In this respect, the regulations ensure that most statutory procedures may be carried out electronically, including correspondence between the applicant and the Council.

A key aim of modernisation is to make the system more transparent through ensuring information on planning applications is more readily available. Of particular significance to planning authorities is the responsibility for carrying out neighbour notification transferring from the applicant to the planning authority. The regulations state that all those with an interest in neighbouring land should be notified of an application, with neighbouring land defined as 'land which is conterminous with or within 20 metres of the boundary of the land for which the development is proposed.' The requirement for planning authorities to take on responsibility for neighbour notification should ensure greater consistency and public confidence in the process, but will at the same time increase the workload of the Development Management section.

**The changes to the way in which planning application will be processed, including the neighbour notification, will come into force as of 3 August 2009.**

- Local Review Bodies

The introduction of local review bodies, sees a significant change in the way planning decisions can be appealed. Should an applicant wish to challenge a decision that has been made on a development classed as 'local' under the scheme of delegation, they will have a right to seek review

by the planning authority instead of a right to appeal to Scottish Ministers. The decision of the local review body, comprising of at least three elected members, will be made in public and will be final. The intention of this new approach is to ensure that the process is more efficient and that more local issues can be determined locally.

**The use of a Local Review Body will become mandatory from 3 August 2009, before which a Cabinet and Council decision must be taken to agree the membership and operations of the body.**

- Planning Appeals

As stated above, applicants dis-satisfied with a decision granted under the terms of the new schemes of delegation, will no longer have a right to appeal to a Scottish Ministers. However, the regulations also bring in changes to the system of appeals for all other classes of development. Most notably, no applicant will have the automatic right to appear before and to be heard by a person appointed by Scottish Ministers. Instead the person appointed by Ministers will determine the most effective means of examining each case, either by way of written submissions, a hearing or an inquiry. It is the intention that this will streamline and improve efficiency of the appeal system.

**This change to the system of appeals will come into effect as of 3 August 2009 and thereafter any applications determined by the Councils Northern or Southern Planning Committee will be subject to appeal in accordance with the new regulations.**

**6.2** In addition to the regulations that have now been laid before parliament, a number of aspects of the new planning system are still to be finalised, with consultation currently being carried out on a number of issues. Views are currently being sought on:

- A review of permitted development rights for householders, with the intention that planning controls will be relaxed for existing dwelling houses, thus removing the need for certain planning applications. The closing date for comments is 13 March 2009;
- A review of design guidance in relation to designing street, with a closing date of 23 March; and
- A review of circular 12/1996, outlining changes to the practice of using planning agreements (Section 75s), to improve transparency and consistency. The closing date for comments is 10 April 2009.

In order to ensure the Council's views are taken on board, detailed responses to the consultation papers will be prepared by officers and approval sought through the member-officer working group, before comments are submitted to the Scottish Government.

## **7 LEGAL IMPLICATIONS**

This report outlines a number of pieces of secondary legislation that have now been laid before parliament, with timescales now in place for these regulations to become operational. The Council has a legal obligation to ensure it has procedures in place to meet these timescales.

## **8 FINANCIAL AND PERSONNEL IMPLICATIONS**

The changes to the planning system introduced through the Planning etc (Scotland) Act 2006 and the associated secondary legislation will have significant implications for the working practices for the Planning and Economic Development Service, in terms of both Development Planning and Development Management. It is envisaged that additional resources may be required to ensure the requirements of the new planning system are fully met.

## **9 COMMUNITY PLANNING IMPLICATIONS**

It is considered that there are no direct implications of this report for Community Planning.

## **10 RISK MANAGEMENT IMPLICATIONS**

There are no immediate risk management implications arising from this report.

## **11 RECOMMENDATION**

### **11.1 It is recommended that Cabinet:**

- (i) Note the contents of this report, with specific regard to the timescale for implementation of the new regulations and agree that a subsequent report on the Scheme of Delegation be submitted to Full Council.**
- (ii) Agrees that the officer-member working group will continue to deal with current Scottish Government consultations as outlined in section 6.2**

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23 February 2009

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**Appendix 1: Planning Modernisation – Implementation table**

<b>Key Date</b>	<b>Regulations and consultations</b>	<b>Action required</b>
<b>29 February 2009</b>	3 sets of regulation relating to Development Planning come into force: <ul style="list-style-type: none"> <li>• Development Planning</li> <li>• Saving Transitional and Consequential Provisions</li> <li>• Grounds for declining to follow recommendations</li> </ul>	Initial preparatory work to begin on Local Development Plan. (Priority to remain on progressing the Alteration to the Local Plan)
<b>13 March 2009</b>	Closing date for consultation on Householder Permitted Development Rights	Consultation response to be submitted to Scottish Government, following approval by member-officer working group
<b>23 March 2009</b>	Closing date for consultation on Designing Streets	Consultation response to be submitted to Scottish Government, following approval by member-officer working group
<b>31 March 2009</b>	Development Plan Scheme to be submitted to Scottish Ministers	Development Plan scheme to be submitted, following Cabinet approval
<b>6 April 2009</b>	Regulations relating to Development Management come into force <ul style="list-style-type: none"> <li>• Hierarchy of Developments</li> <li>• Schemes of Delegation</li> <li>• Pre-application consultation</li> <li>• Electronic communications</li> </ul>	Working practices to be in place to allow new procedures to be followed
<b>10 April 2009</b>	Closing date for consultation on Planning Agreements	Consultation response to be submitted to Scottish Government, following approval by member-officer working group
<b>31 June 2009</b>	Scheme of Delegation to be submitted to Scottish Ministers	Scheme of Delegation to be submitted, following Cabinet and Council approval
<b>3 August 2009</b>	Regulations relating to Development Management come into force: <ul style="list-style-type: none"> <li>• New requirements for information to be submitted with a planning application</li> <li>• New procedures for processing a planning application, including neighbour notification</li> <li>• Introduction of Local Review Bodies</li> <li>• Planning appeals</li> <li>• Introduction of fixed penalties</li> </ul>	Working practices to be in place to allow new procedures to be followed  Details of how Local Review bodies will operate to be approved by Cabinet