

EAST AYRSHIRE COUNCIL

DEVELOPMENT SERVICES COMMITTEE - 22 AUGUST 2006

NEIGHBOUR NOTIFICATION REPORT ON THE SCOTTISH EXECUTIVE WORKING GROUP

Report by Executive Director of Development and Property Services

1. PURPOSE OF REPORT

- 1.1** To inform the Council of the conclusions and recommendations reached by the Scottish Executive Working Group, convened to discuss the detailed issues involved in implementing the new system of neighbour notification that will operate in relation to development planning, development management and enforcement.

2. BACKGROUND INFORMATION

- 2.1** In November 2001, the Scottish Executive published the consultation paper 'Getting Involved in Planning' to explore ways in which people in Scotland could become more effectively involved in the planning system. This was followed in June 2002, by the production of a review paper entitled 'Review of Strategic Planning - Next Steps and Conclusions' which proposed a series of radical changes to the planning system, the production in March 2003 of the Executive's White Paper 'Your place, your plan', the publication in 2004 of a further public consultation document entitled 'Making Development Plans Deliver' which gave details of the changes proposed and the production, in June 2005, of the White Paper 'Modernising the Planning System' confirming the Executive's decision, amongst many others:

- (i) to transfer responsibility for neighbour notification in respect of planning applications from applicants to planning authorities;
- (ii) to extend neighbour notification to notify owners, occupiers and neighbours who would be directly affected by key policy changes in local plans; and
- (iii) to extend the new arrangements for neighbour notification to enforcement decisions.

- 2.2** The Council made responses and observations on all of the above documents at the appropriate time and, in particular, expressed its concerns on the issue of neighbour notification in its response to the 'Modernising the Planning System' White Paper, recognising that the detailed notification proposals would require close examination, once they had been formulated.

- 2.3** In July 2004, the Executive convened a Working Group to discuss the detailed issues involved in implementing the new system of neighbour notification, the need for guidance on the proposed new arrangements and the identification of solutions to any potential problems. The findings of the Working Group are detailed in an annex attached to the report under consideration.

3. THE WORKING GROUP REPORT

3.1 The Working Group gave consideration to a wide range of issues which are detailed, together with a suggested Council response, in the annex attached to this report. For ease of comprehension, the Council has grouped the issues discussed into three main categories comprising general issues, issues relating specifically to the development planning process and issues relating to the development management system.

3.2 The main issues addressed by the Working Group included:

- In what circumstances is notification required?
- Who are the neighbours that should be notified?
- How and when should notification be carried out?
- What information should be included and accompany a notice?
- What happens if errors or omissions occur?
- What are the implications and costs for planning authorities?
- What changes will be needed to primary and secondary legislation?
- What advice and guidance will require to be given to planning authorities?

3.3 The main conclusions reached by the Working Group in respect of the above issues can be summarised as follows;

- (i) Neighbour notification should be addressed simply to 'the owner and / or occupier' for domestic properties and to 'the owner and / or lessee and / or occupier' for non domestic properties, rather than addressing each neighbour by name.
- (ii) Re-notification of neighbours should take place in cases where material changes have been made to an application or to a local plan designation.
- (iii) Notification should be given to all owners, tenants and neighbours directly affected by proposed changes in site specific policies or proposals in a local development plan at the 'proposed plan' stage of the plan's production.
- (iv) A significant amount of supplementary information should be provided to neighbours, along with the formal notification itself.
- (v) If similar arrangements for neighbour notification, as currently carried out in England, are adopted in Scotland, the risk of complaint or legal challenge should not be a cause for concern.
- (vi) No conclusions about the anticipated costs involved in the neighbour notification of new site specific policies and proposals in development plans was reached although it was considered that the anticipated costs involved would, in the context of wider public consultations on local plans, only be minimal.

- (vii) All planning applications, applications for listed building consent, appeals against enforcement notices and all advertisement consents should be subject to neighbour notification.
- (viii) It is anticipated that the average cost of neighbour notification across Scotland would be £75 per planning application. The Scottish Executive has already accepted in principle that these additional costs should be recovered through increased planning fees.
- (ix) Section 34 of the Town and Country Planning (Scotland) Act 1997 and the General Development Procedure Order will require to be amended to give effect to the proposed changes in the way that neighbour notification is carried out with respect to planning applications.
- (x) New guidance and advice on the arrangements for carrying out neighbour notification of local development plans should be provided in a dedicated Planning Circular and through revisions to existing and proposed Planning Advice Notes.

4. FINANCIAL IMPLICATIONS

- 4.1** Any costs to be incurred by the Council as a direct result of implementing the conclusions and recommendations of the Working Group would have significant financial implications for the Council. While the anticipated additional costs incurred by the Council in carrying out neighbour notification procedures with regard to planning applications would be recouped by the Council through an increase in planning fees, the Council would be solely liable for meeting all costs incurred regarding neighbour notification of site specific local development plan policies or proposals. No assessment of the likely costs of carrying out such notifications has been made by the working group but it is considered that the amounts involved could be substantial. It is unlikely that the costs involved could be met from existing Departmental budgets.
- 4.2** Any proposed increase in planning application fees to cover the costs of the neighbour notification of planning applications could prove financially onerous on the individual applicants concerned, representing, for example, an additional 50% increase in the fees payable for a householder development and 25% increase in fees for the erection of a new house.

5. LEGAL IMPLICATIONS

- 5.1** Changes to both primary and secondary planning legislation will be required to facilitate to new neighbour notification procedures. There may be implications for the workload of Solicitor to the Council in dealing with any complaints or legal challenges that may arise as a result of any perceived errors in the serving of the notices concerned.

6. POLICY IMPLICATIONS

- 6.1** The formal adoption by the Scottish Executive of any of the conclusions and recommendations reached by the Working Group, could have some policy implications for the Council and require to be reflected in the Council's local plans. The extent to which this may be requires is presently unknown.
- 6.2** There remains a fundamental conflict in the nature of these proposals and the desire to speed up the planning system. The desire to speed up the process is welcomed, as is the desire to involve more people in it. However, it is entirely inappropriate to publicise the proposals for increasing public involvement as a means towards speeding up the process as the proposals will inevitably have the opposite effect.

7. COMMUNITY PLAN IMPLICATIONS

- 7.1** There are no direct implications for the Community Plan as a result of implementing this report.

8. RECOMMENDATIONS

- 8.1** It is recommended that the Committee agrees:
- (i) to authorise the Head of Planning, Development and Building Standards to send a copy of this report to the Scottish Executive as representing the Council's views on the conclusions and recommendations of the Working Group; and
 - (ii) to otherwise note the contents of the report.

James Lavery
Executive Director of Development and Property Services
JL/JL -
28 July 2006

LIST OF BACKGROUND PAPERS

- (i) Report by the Director of Development Services to the 13 March 2002 meeting of the Development Services Committee entitled 'Getting Involved in Planning: Consultation Paper'
- (ii) Report by the Director of Development Services to the 22 October 2002 meeting of the Development Services Committee entitled 'Review of Strategic Planning: Conclusions and Next Steps'
- (iii) Report by the Executive Director of Development and Property Services to the 4 May 2004 meeting of the Development Services Committee entitled 'Making Development Plans Deliver: Public Consultation'

- (iv) Report by the Director of Development and Property Services to the 23 August 2005 meeting of the Development Services Committee entitled 'Modernising the Planning System: Scottish Executive White Paper'

For further information on this report please contact Karl Doroszenko (01563) 576751.

Implementation Officer: Alan Neish, Head of Planning, Development and Building Standards (01563) 576767).

ANNEX

ISSUES UNDER CONSIDERATION AND SUGGESTED COUNCIL RESPONSE

GENERAL ISSUES

(i) The Working Group considered that the existing definition of 'neighbouring land' in the General Permitted Development Order was complex and difficult to understand and proposes that a simpler definition be adopted, relating to all neighbour notification procedures

The Council fully supports the introduction of a new, simplified definition of 'neighbouring land'. However, it is considered that the simplified definition proposed still remains complex and difficult to understand.

(ii) The Working Group's decided preference was that neighbour notification letters with respect to both planning applications and development plan proposals should be addressed simply to 'the owner and / or occupier' for domestic properties and to 'the owner and / or lessee and / or occupier' for non domestic properties.

The Council would agree with the preference stated, agreeing that this particular proposal would be cheaper to implement and involve less delays than if searches had to be carried out to establish the identity of all neighbours by name.

(iii) The Working Group recommended that re-notification of neighbours should take place in cases where material changes have been made to an application or to a local plan designation.

The general principle of neighbour re-notification is accepted by the Council in the above circumstances. However, no consideration appears to have been given to re-notification of neighbours in cases where the neighbours themselves may have changed. This situation is particularly relevant in the case of local development plan preparation where the period between the time of notification and the adoption of the plan could extend to a considerable number of months, over which time many of the neighbours originally notified could have relocated and new neighbours moved in. Some clarification of this situation is required.

(iv) The Working Group concluded that it will be necessary for the Scottish Executive to issue guidance and advice on the new arrangements for carrying out neighbour notification and it was suggested that this guidance should be provided in a dedicated Planning Circular. References to the new arrangements will also need to be provided in revisions to PAN40 on 'Development Control / Management', PAN49 on 'Local Planning / Local Development Planning' and in the proposed new PAN on 'Community Engagement'.

The requirement for new advice and guidance is recognised and welcomed.

ISSUES RELATING TO DEVELOPMENT PLANNING

(i) The Working Group agreed that all owners, tenants and neighbours directly affected by proposed changes in policies or proposals in a local development plan should be notified, subject to the qualification that notification should be in respect of policies or proposals which are site specific in nature and likely to have significant impact.

The Council notes, with concern, the above requirements. While there is no objection, in principle, to the Council notifying owners and tenants that their land or property has been identified for particular development purposes in a local development plan or is subject to a particular site specific development policy or proposal, there is considerable objection to the Council having to carry out neighbour notification procedures with regard to all properties neighbouring the particular site identified. Currently, notification of owners or tenants of development land and owners or tenants of neighbouring land is not required under planning legislation. The requirement for Planning Authorities to carry out these notification procedures is a new requirement which would place an extremely onerous burden on the planning authority, would be highly expensive to implement and would have a significant detrimental impact on the Council's already severely constrained professional and technical resources. At a time when both the Executive and the Council are attempting to expedite plan preparation, the imposition for the authority to carry out a wide ranging, time consuming and expensive consultation exercise as an integral part of the plan preparation process is not considered appropriate, justified or warranted in cost / benefit terms.

In addition, no indication is given in the report as what might constitute 'significant' impact. Some clarification of this point and a definition of the term 'significant' is required in future guidance.

(ii) The Working Group's decided preference was that notification letters with respect to a local development plan proposing a change in the designated use of a site should be addressed simply to 'the owner, occupier and / or lessee of the site concerned.

The Council would agree with the preference stated, agreeing that this particular proposal would be cheaper to implement and involve less delays than if searches had to be carried out to establish the identity of all involved owners, lessees and occupiers by name.

(iii) The Working Group considered that notification should take place at the proposed plan stage but, unlike the guidance given with regard to development management notifications, has not given any consideration as to the period within which any representations to the planning authority should be made in respect of development planning.

It is considered that, as with recommendations relating to development management, neighbour notification for development planning should include a statement that any neighbour who wishes to make representations on the plan should make them in writing within a stipulated period. Consideration should be give as to what that period should be.

(iv) The Working Group agreed that a significant amount of information should be provided to neighbours, along with the formal notification itself. It is suggested that this information should comprise:

- information on the development planning process;
- details as to where the whole plan can be viewed;
- reference to the planning authority's Development Plan Scheme;
- details of the particular proposal, setting it clearly in the context of the local development plan with an explanation of the development plans objectives;
- a map showing the boundary of the site and proposed access arrangements;
- additional site specific information on proposed mitigation measures such as landscaping, open space provision and master plan preparation;
- a 'Frequently Asked Questions Sheet' which provides answers to such questions as 'Why do we need a local development plan?', 'Why do we need new housing / business sites?' and 'What happens if I object?'

It is considered that any requirement to provide all of this information goes way beyond what could be considered to be a realistic or sensible neighbour notification and would involve local authorities in a huge amount of extra work. While it is considered that some of the information listed above should indeed be included in any neighbour notification ie information regarding where the whole plan can be viewed, details of the particular site specific policy or proposal concerned and a map showing the boundary of the site, it is considered that the inclusion of all the other information is unnecessary and superfluous for the purposes proposed. Indeed, much of the information suggested for inclusion in the neighbour notification would be readily available in the local development plan itself and duplication in the notification is not considered necessary or appropriate. Preparation of such a wide range of detailed information, individually tailored to refer specifically to each of the many hundreds of sites and site specific policies proposed in an average local development plan, would be extremely time consuming, place enormous pressure on existing staff resources and have consequential and significant financial implications for the Council. It is argued that the provision of additional, supplementary information to accompany any neighbour notification should be at the discretion of the local authority concerned and not prescribed by Regulation.

(v) The Working Group gave due consideration as to what safeguards would be needed to ensure that direct notification reaches correct people and to what would happen if mistakes are made. In this regard it was agreed that Regulations need to stipulate how planning authorities should carry out neighbour notification in a manner appropriate to the different stages in the development planning process and the different categories of application. The Working Group has recommended that similar arrangements for neighbour notification, as currently carried out in England, should be adopted in Scotland and the Group took the view that, if this advice was accepted by Scottish planning authorities, then the risk of complaint or legal challenge should not be a cause for concern.

While noting these views, the notification arrangements described relate exclusively to the English procedures adopted for the neighbour notification of planning applications. No specific consideration has been given by the Working Group to avoiding or dealing with complaints or legal challenge to neighbour notifications for

local development plans. Notwithstanding the views expressed that the risk of complaint or legal challenge should not be a cause for concern if appropriate English style notification procedures were to be adopted, it is considered that this statement is extremely subjective and unsubstantiated. The Council would in fact take an opposite view regarding this matter, considering that, because of the anticipated extremely large numbers of notifications that would require to be carried out, the numbers of potential complaints are also likely to be substantial. Substantial numbers of objections on procedural grounds relating to non compliance with notification processes would undoubtedly divert officers from dealing with planning based representations and objections and possibly cause appreciable delays in plan production.

(vi) Studies commissioned by the Working Group have not come to any conclusions about the anticipated costs involved in the neighbour notification of new site specific policies and proposals in development plans. It was however concluded that neighbour notification would be likely to incur modest postage and administrative costs but that, in the context of wider public consultations on local plans, the additional costs in the neighbour notification of specific sites was thought to be minimal.

The bland statements in the report dealing with the implications for costs and staff resources regarding development planning notifications are woefully inadequate and totally unacceptable. A great deal of further research requires to be carried out regarding the potential costs of such notification procedures to a planning authority, especially bearing in mind that local authorities themselves will have to bear the full costs of providing this notification service. Because of the significant number of development opportunity and other policy sites generally identified in local development plans, the Council would strongly disagree that postage and administrative cost would only be 'modest'. Taking into account all of the associated material that requires to be prepared to accompany such notifications (see point (iv) above) it is considered, on the contrary, that such costs are likely to be significant. Some quantification of the costs involved in this exercise requires to be carried out as a matter of extreme urgency. The costs in officer time alone are considered to be considerable.

(vii) There are currently no statutory provisions requiring direct notification of those with an interest in land which is proposed as the subject of a policy or proposal change in a draft development plan or for the notification of neighbours to that land. New provisions have therefore been made in the Planning etc (Scotland) Bill. Amendments are also required to the Town and Country Planning (Structure and Local Planning)(Scotland) Regulations 1983 to cover the proposed notification arrangements. The Working Group agreed that the Regulations should prescribe the sort of circumstances in which notification would be necessary and that they should set out the form of the notice, the matters to be notified and the person to be notified.

The necessary changes to primary and secondary legislation are duly noted

ISSUES RELATING TO DEVELOPMENT MANAGEMENT

(i) The Group agreed that it would be helpful to have a definition of 'planning application site'.

There are no objections to the definition of 'planning application site' proposed in the report.

(ii) The Working Group agreed that all planning applications, applications for listed building consent, appeals against enforcement notices and all advertisement consents should be subject to neighbour notification.

At the present time, only planning applications are the subject of neighbour notification, with notification being carried out by applicants prior to submission to the planning authority for determination. No neighbour notification procedures are required in respect of listed building consent, enforcement notice appeals and advertisement consent. The requirement for the Council to carry out neighbour notification procedures in respect of all these application types is considered to represent an unwarranted and unacceptable increase in the workload of the development management officers and their support staff. It is considered that, in addition to being an expensive procedure to implement, the introduction of neighbour notification could well result in significant delays in the processing and determination of the applications concerned. Unlike the case with notification procedures carried out by applicants, notification by the Council can only take place once the application has been received by the Council and delays in processing applications could well occur, particularly in instances where information on the addresses of owners or tenants of neighbouring properties is not readily available or subject to search.

(iii) Studies commissioned by the Working Group have indicated that the average cost of neighbour notification across Scotland would be £75 per application. The Scottish Executive has already accepted in principle that these additional costs should be recovered through increased planning fees.

On the basis that the average additional costs to a planning authority in carrying out neighbour notification procedures would be £75 per application, it is likely that the total cost to the Council, dealing with approximately 1200 applications per annum, would be in the region of £90,000 per year. Recouping this expenditure from individual applicants could prove financially onerous on the individual applicants concerned. For example, this would represent an addition 50% increase in the fees payable for a householder development and 25% increase in fees for the erection of a new house. This additional burden could prove to be a disincentive for potential applicants to carry out development and could lead to an increase in the level of unauthorised development taking place throughout East Ayrshire and a corresponding increase in the workload of enforcement staff within the department.

(iv) Section 34 of the Town and Country Planning (Scotland) Act 1997 presently provides for the notification of owners or occupiers of neighbouring land or property adjacent to a proposed development site. It will therefore be necessary to amend this section of the Act to require planning authorities to carry out this function. This matter is also addressed by Section 9 of the Planning etc (Scotland) Bill. Specific changes will also require to be made to the General Development Procedure Order to give effect to the proposed changes in the way that neighbour notification is carried out.

The necessary changes to primary and secondary legislation are duly noted