

EAST AYRSHIRE COUNCIL

DEVELOPMENT SERVICES COMMITTEE: 13 MARCH 2002

GETTING INVOLVED IN PLANNING: CONSULTATION PAPER

Report by Director of Development Services

1. PURPOSE OF REPORT

- 1.1** To advise on a Consultation Paper entitled "Getting Involved in Planning" which invites the views of the Council as to how people in Scotland can be more effectively involved in the planning system.

2. BACKGROUND INFORMATION

- 2.1** In November 2001, the Scottish Executive Development Department issued a Consultation Paper pertaining to its ongoing review of existing arrangements for enabling people to become involved in planning issues. The Paper details the various "Drivers for Change" which underlie the review of arrangements. These include

- The emergence of Community Planning as the principal over-arching framework for community engagement at the local level
- The development of new technology and efficient information systems such as "Digital Scotland" and "21st Century Government"
- The development of Best Value as a process for achieving continuous improvement of service delivery
- The requirement from the Ombudsman for Councils to provide intensive and full consultation in the planning process in order to ensure that individuals feel that any complaints they may have, have been treated fairly
- The requirement to meet various International and European obligations that focus on public participation and access to environmental information and justice.

- 2.2** The Consultation paper then looks at the provision for public involvement in various key aspects of the planning system and suggests various ways in which the planning service could be made more accessible. A summary of the main suggestions made in the Consultation Paper is appended to this report as ANNEX 1.

3. Key Proposals

- 3.1** These are:-

- Notifying neighbours of new land use proposals in development plans
- Responsibility for neighbour notification to be transferred to Councils
- Introduction of a standardised planning application form

- Introduction of notifications for enforcement and some advertisement cases
- Extending information supplied to neighbours and extending the period for making representations
- Reducing the period for lodging appeals from 6 to 2 months
- New arrangements for Local Plan Inquiries and Adoption of Local plans giving greater weight to Reporters recommendations
- Introduction of a national helpline, a review of information technology and Planning Aid

3.2 The paper then poses a series of 32 questions. These are set out in Annex 1 together with suggested Council responses.

4. MAIN IMPLICATIONS

4.1 The Council has already put in place a number of initiatives to increase its interactions with the public through its hearing processes and decentralised committee structure. This has to be balanced against the desire to speed up the planning process and meet performance targets and it is considered that the Council has got this balance about right, and has implemented many of the changes suggested.

4.2 As we already undertake many of the suggestions, the main implication is the addition of new administrative responsibilities for neighbour notification into the authority. This will not be possible without a significant input of new resources possibly through a substantial increase in planning fees, and there are practical difficulties which remain and are addressed in Annex 1. It is also appreciated that there is a downside to a straight increase in fees which is the perception that applicants are paying for increased involvement of the public.

4.3 The paper encourages ideas to speed up the development plan process and public inquiries but this is at odds with the underlying thrust of increasing the involvement of the public in the process. The same conflict exists with the proposal to extend neighbour notification to 21 days and all advert periods (except EIA's) to 21 days. There is thus a fundamental dilemma in the Consultation Paper that reflects some of the rhetoric about the Statutory Planning System over many years which is that many call for improved performance in terms of speed which is at odds with greater involvement by the public in the process.

5. FINANCIAL IMPLICATIONS

5.1 No financial implications at this stage of the Consultation Process; but there are significant financial and resource implications if the extra responsibilities attributed to the Council are agreed. Furthermore, these cannot be met within the current resources.

6. LEGAL/AUTHORITY IMPLICATIONS

6.1 No legal/authority implications at this stage of the Consultation Process.

7. PERSONNEL IMPLICATIONS

- 7.1** No personnel implications at this stage of the Consultation Process but there are significant resource implications if the extra responsibilities fall to the Council. Furthermore, these cannot be met by the current levels of staffing.

8. RECOMMENDATIONS

- 8.1** It is recommended that the Committee agrees:-

- (i)** to approve the contents of this report; and
- (ii)** to submit a copy of this report to the Scottish Executive as representing the views of East Ayrshire Council on the Consultation Paper.

Stephen Chorley
Director of Development Services

25 February 2002 (JL/SA)

LIST OF BACKGROUND PAPERS

- 1. Scottish Executive Development Department Consultation Paper 'Getting Involved in Planning' : November 2001.**

For further information on the contents of this report contact John Lilley, Principal Planning Officer. Telephone (01563) 576754.

Implementation Officer: Alan Neish

ANNEX 1

QUESTIONS POSED IN THE CONSULTATION PAPER

Question 1. We think Councils should consider setting up local planning policy forums to consider planning issues and build up local interest and expertise. Do you agree?

Suggested Council Response

The Council already undertakes a significant amount of public consultation and involvement in the Planning System, through a decentralised approach involving local committees, local planning committees and a system of planning hearings. Officers are also actively involved with communities in preparing Action plans and environmental improvements. Experience has shown that those involved are particularly focussed on a specific local issue and less concerned with strategic issues. The level of involvement at present is commensurate with resources available and it is therefore not considered that separate dedicated policy forums are additionally required.

Question 2 Where people are going to be directly affected by policy changes in a development plan, we think direct notification of owners, tenants and neighbours should be considered. Do you agree?

Suggested Council Response

Any requirement for owners, tenants and neighbours to be formally notified of policy changes in a development plan would have considerable implications for the Planning Authority in terms of costs, officer time and additional workload. Certainly, additional resources would require to be allocated to the Council should such a requirement be introduced. In addition, the Council does not necessarily hold the required information regarding the ownership or tenancy of individual parcels of privately owned land that may be affected by policy changes. Neither does it hold information regarding the ownership of neighbouring land. Indeed, problems may also be experienced in defining or determining exactly which parties should be notified as policy changes in a development plan may well affect a wide range of individuals other than owners, tenants and immediate neighbours. Such a requirement would involve substantial searches of Sasines and other information to identify all interested parties and it is not considered that the time and expense in providing this service would be cost effective when compared to the anticipated benefits that may be accrued. The additional time required to provide such a service would also be extremely onerous and will impact on the ability of Councils to quickly produce local plans. The Council would not therefore be in favour of such a requirement being introduced, in terms of both practicality and costs involved.

Question 3 We think Reporters for Local Plan Inquiries should be appointed Independently by the Scottish Executive Inquiry Reporters Unit, who would conduct the Inquiry and recover costs from the Council. Do you agree?

Suggested Council Response

It is considered that such a move would remove any perception on behalf of the general public that a Reporter chosen by the Council would be biased in favour of the Council in making his/her recommendations. The Council would strongly support this proposal. Please also see our comments on Question 5 and 27 below which deal with similar issues.

Question 4 And we think the scope to depart from the Reporters recommendation should be limited. Do you agree?

Suggested Council Response

During the recent Public Local Inquiries into the East Ayrshire Local Plan and the East Ayrshire Opencast Coal Subject Plan, some concern was expressed by objectors that the Council was not obliged to follow the recommendations of the Reporter if it did not wish to do so. This was seen as somewhat iniquitous, placing the Council in the role of both Judge and Jury. In order to remove this perception, the Council would be fully supportive of any proposal to adopt a local plan within a certain stipulated period in line with the Reporters recommendation unless it had strong and fully justified reasons for not doing so. Any such reasons for the Council not adopting a plan in line with a Reporters recommendation should, however, be clearly defined in any new Scottish Office advice to be produced in this regard.

Question 5 How can we make local plan adoption faster and more user friendly.

Suggested Council Response

The question is wide ranging and complex. However, it is considered that adoption of local plans could possibly be speeded up by Councils being required, by statute, to proceed directly to preparing a Finalised Version of a Local Plan, rather than first producing a Consultative Draft Version. It is accepted that this move would possibly invite a greater number of objections to be dealt with at Public Local Inquiry but it is considered that this would be more than offset by the substantial savings made, both in cost and time, in producing the document.

It is also considered that Public Local Inquiries could also be speeded up by encouraging both Councils and objectors to avoid using Queens Council to present or defend their case at Inquiry. The removal of involved legal argument from most Inquiries and a concentration on purely planning matters would greatly simplify and speed up Inquiry procedures and make Inquiries much more user friendly. It is,

however, accepted that the conduct of Public Local Inquiry lies in the hands of the appointed Reporter and consequently outwith the control of the Council itself.

In addition to the above, it is considered that each individual Councils could be required to produce only a single local plan for its area which, once in place, should be continually reviewed on a regular, say, 2 year basis. This would remove the necessity for a new plan to be produced from scratch, each time a change is required to the document, a move which would greatly speed up and simplify the process of keeping a plan up to date. The requirement for Councils to prepare their local plans within a statutorily defined time period and with the imposition of penalties should these timetables not be met, would also help ensure speedy and efficient plan production.

It is also considered that the opportunity should be taken, in the interests of clarity, to re-name the various stages of the local plan process. In particular the public do not readily understand the difference between a 'finalised ' and 'adopted' plan.

Question 6 *We see merit in standard application forms for all Councils. They could be user friendly, with translation and all necessary certificates. Do you agree?*

Suggested Council Response

The Council would have no objection to such a proposal being implemented, but would wish an opportunity to comment on the format and content of any standardised application forms. Standardised guidance to accompany the forms is not seen as being necessary.

Question 7 *Do you agree that*

- (a) authorities should take responsibility for neighbour notification?*
- (b) application fees should be increased to cover the extra costs?*
- (c) research is carried out to help decide the fee increase required?*

Suggested Council Response

The Council is of the opinion that, because of cost problems and difficulties which would be encountered in establishing appropriate individual fee levels to cover cost increases by the Council, responsibility for neighbour notification should remain with the applicant. Placing the duty of neighbour notification on the Council would be extremely onerous in terms of officer time, certainly requiring additional administrative or technical staff to be engaged. The additional staff costs would require to be met by appropriate increases in application fees which, in some cases where there are considerable numbers of neighbours or where searches are required to establish regular identity, could be substantial. This move could prove to be a disincentive to applicants from submitting formal applications for their prospective developments, possibly leading to increases in the number of

unauthorised developments taking place and consequent additional workload pressures for the Councils Enforcement Officers. In some instances the applicant (who will generally be the landowner) will actually be better placed as a result of local knowledge to undertake a full neighbour notification.

Rather than placing responsibility for neighbour notification with the Council, it is recommended that this responsibility should remain with the applicant. It is considered, however, that the whole question of neighbour notification should be reassessed, with individual neighbour notification being supplemented by the posting of site notices for a stipulated period and the advertising of all applications received in the local press.

Lists of all planning applications lodged with the Council could also be posted in all appropriate local offices and libraries, as well as being posted on the Council's web site. Lists could also be posted within, for example, supermarkets and post offices.

With regard to any weakness in the existing arrangements, confidence in them could be increased if penalties for intentional, improper certification of neighbour notification were raised substantially, and there existed clear support from Government and procurators fiscal for the taking of action where notification was improperly undertaken.

Question 8 Do you agree that planning authorities should have the flexibility to decide how best to serve neighbour notification?

Suggested Council Response

It is agreed that, in the eventuality of neighbour notification becoming the responsibility of the Council, the Planning Authority should have the flexibility to serve notices in the way that it considers most appropriate. (e.g. leaflet drops) However, it is considered that the acceptable methods of serving neighbour notification should be clearly laid down in Scottish Office advice in order to remove any challenge or complaint from notifiable neighbours who may take issue with any particular notification methods utilised by the Council.

Question 9 Do you agree with keeping the duty to notify owners and occupiers and removing it for non-domestic lessees?

Suggested Council Response

The Council would agree that the requirement for neighbour notification to be served on lessees of non-domestic property should be removed.

Question 10 Do you agree that notification should include the information and guidance described above? (i.e. broad details of the proposed development and details of procedures involved in the Council's determination of the application).

Suggested Council Response

The Council would agree that additional guidance could be provided to neighbours as an integral part of the neighbour notification form which, it is considered, could be in a standardised format applicable to all Planning Authorities. While the Council would be generally supportive of more details of a proposed development accompanying a neighbour notification, this could prove burdensome for the applicant who would possibly be required to submit a substantial number of extra copies of the application either for submission by him/her to neighbours if the system were to be unchanged, or for submission to the Planning Authority for issue to individual neighbours. It may also involve applicants requiring to produce separate plans showing the required information at an appropriate scale, designed specifically for neighbour notification purposes. The Council would not be supportive of any proposal to make the Planning Authority responsible for the assembly of this information as this would involve substantial costs in terms of printing, postage and manpower which again, would require to be met, principally, through an appropriate increase in planning application fees.

Question 11 Do you agreed with extending the time for responding to neighbour notification from 14 to 21 days?

Suggested Council Response

The Council would object to extending the neighbour notification period from 14 to 21 days as this extended period could well result in delays to applications being determined within the required period. East Ayrshire Council already formally extends the period where it is known that neighbours have been on holiday or some other special circumstances apply. Should such a change be introduced, some consideration should also be given to extending the recommended period for the determination of applications by a corresponding amount. This would particularly apply where an amendment to an application was being re-advertised and the Council did not view the scale of the amendment as meriting withdrawal of the original application and re-submission of a new application.

- Question 12 (a) Do you agree that there should be neighbour notification where an enforcement notice is served and for certain types of advertisement proposals?**
- (b) What kind of advertisements should be included?**
 - (c) Should the authority serve the notice in both cases?**

Suggested Council Response

The Council would generally be supportive of neighbour notification being carried out in cases where an enforcement appeal is lodged for consideration against an unauthorised development. It is, however, recommended that such neighbour notification be carried out by the appellant as a necessary and integral part of the

appeal procedures, rather than by the planning authority. The Council would agree that in enforcement appeal cases it may not be possible for the authority to recoup any neighbour notification expenditure that it may be incurred, especially if the appeal is dismissed.

The Council would object to neighbour notification procedures being introduced for advertisement applications. The Council would anticipate that in many instances identification of which neighbours to notify would be onerous if only some applications require to be neighbour notified the Council can anticipate difficulties over definitions and application of the new regulations.

Question 13 What are your views on what should trigger re-notification?

Suggested Council Response

The Council would consider that any re-notification of an application that may be required as a result of amended plans being submitted prior to consideration of an application, should be limited to those cases where the charges are deemed, by the Planning Authority, to be material with regard to their impact on neighbouring properties.

Question 14 Do you agree that we should end the requirement to advertise planning proposals in the Edinburgh Gazette?

Suggested Council Response

The Council would very strongly agree with this suggestion.

Question 15 Do you think local authorities should be able to decide themselves how best to publicise planning proposals locally?

Suggested Council Response

It is considered that allowing individual authorities flexibility in the advertising of applications would introduce an inappropriate degree of subjectivity into the planning process and, as stated in the Consultation Paper, could lead to confusion. This suggestion would not be supported by the Council unless the key principles or requirements for publicity of planning proposals, and a range of acceptable publicity measures is set out in Scottish Office Advice for the Local Authority to follow. Additionally the Planning Authority would urge the Scottish Executive to rationalise and simplify the permitted wording prescribing the content of advertisements. The current requirement that certain categories "shall" by advertised in accordance with a set form of words leads to excessive advertising costs as well as the absence of plain English.

- Question 16 (a) Do you agree that Council should regularly publish a notice explaining where copies of the weekly list can be viewed, and post the list on the internet?**
- (b) Should such lists be distributed free of charge to Amenity societies currently dependent upon the Edinburgh Gazette for information**

Suggested Council Response

As stated in its suggested response to Question 7 above, the Council would be in favour of advertising all applications received in the local press and on the internet. This, it is considered, could well be in the form of the weekly list produced by the Planning Authority. There would be no objection to the weekly lists being circulated to amenity bodies, presently using the Edinburgh Gazette, should the requirement to advertise in the Gazette be removed by the Scottish Executive, as posed in Question 14 above.

- Question 17 Do you agree that the time for making representations in all cases should be extended to 21 days? EIA cases would continue to have 28 days.**

Suggested Council Response

As with the suggested extension of the neighbour notification period detailed in response to Question 11 above, the Council would object to extending the period for representations to 21 days in all cases. This move could well result in delays to applications being determined within the statutory period. Should such a change be introduced, consideration should also be given to extending the period for the determination of applications by an appropriate amount.

- Question 18 Do you agree that applicants for proposals contrary to an adopted development plan should bear the cost of advertising?**

- Question 19 Do you agree that costs for advertising listed building and conservation area developments should remain with planning authorities?**

Suggested Council Response

It is considered that the costs of advertising all advertisements should be borne by the applicant, with the exception of any requirement for advertising applications required as a result of an Article 4 Direction.

Question 20 Would the wider use of site notices add to the effectiveness of informing the public?

Suggested Council Response

It is considered that the wider use of site notices should be supported, particularly in the manner suggested i.e. ongoing information during the construction process.

Question 21 Should official consultation responses be open to all as soon as they are made?

Suggested Council Response

The Council would have no objection in principle to making consultation responses available for inspection upon receipt by the authority, however this once again requires additional administrative/photocopying resources, the cost of which must be provided for.

Question 22(a) Should there be standard ways to make comments on applications electronically?

(b) Should there be a national form for comments?

(c) Should the comments be publicly available?

Suggested Council Response

Experience has shown that the use of standard response forms for the submission of representations on planning matters is rarely effective with members of the public generally preferring to write in individual letters, this allowing greater flexibility of expression. The introduction of a national form for representations is therefore, in the opinion of the Council, unlikely to be effective in practical terms. The Council would, in principle, have no objection to observations and representations on planning applications being made electronically, with these being made publicly available on receipt. Given the Government's commitment to e-government and access it is suggested that funding be made available to facilitate the implementation of this proposal. In this regard, it is considered that all applicants or objectors should be informed on any standard planning application or neighbour notification form, prior to any objections being lodged, that all comments received in respect of an application will be open to public scrutiny.

Question 23 Do you agree that the full record of relevant factors in deciding applications, and the reasons for decision, should always be publicly available on receipt?

Suggested Council Response

The Council would have no objection to making available, on request, copies of all reports pertaining to planning applications presented to committee for consideration. In cases where a planning application is dealt with under delegated powers, no report is currently prepared for public consumption. In order to meet this suggestion, it would be necessary for the Division to prepare a standardised sheet detailing all requisite information used in the determination of the application, for the information of the public. It is considered that this could not be produced within reasonable cost using existing manpower. Additional resources would be necessary to enable this service to be undertaken.

Question 24 We think the full text of planning decisions should always be available from the Council so that people can take copies without undue difficulty or expense. Do you agree?

Suggested Council Response

The current practice of the Council is to make copies of decision notices available free of charge to persons who have made representations or objections to a submitted application. Copies of decision notices are made available to third parties for a standard fee. This charge would require to be removed if the general public was to be allowed to take copies of planning decisions without undue expense, which would result in a loss of revenue to the Council. The loss of revenue would be in addition to servicing the increased level of demand for such documentation that would undoubtedly arise.

Question 25 (a) We think more information should be made available on planning agreements and entered into the planning register. Do you agree?
(b) What level of information should be recorded?

Suggested Council Response

The Council would have no objection in principle to mention being made in the planning register that a Section 75 Agreement has been concluded with regard to any particular application. It is not considered appropriate, however, to reproduce in full the details of an agreement in the register as such agreements can be extremely lengthy. The details of any Section 75 Agreements entered into will, however, be made available for public information purposes, as an integral part of the planning application file to which the agreement relates.

Question 26 We think that six months for making appeals is too long and suggest that it be reduced to two months. Do you agree?

Suggested Council Response

The Council would agree with this view.

Question 27 How can we make appeal inquiries more accessible and less intimidating?

Suggested Council Response

The Council would agree that appeal inquiries can be daunting experiences for all parties concerned, especially when appellants engage QC's to conduct the inquiry on their behalf. It is considered that one way in which appeal inquiry procedures could be improved and made more user friendly would be for the Scottish Executive to specifically encourage appellants, wherever possible, to avoid the use of legal advocates, engaging instead competent planning consultants or other planning professionals to conduct their case. This would undoubtedly reduce both the costs of appeal inquiries and the time taken in their determination.

It is also considered that inquiries could be made less intimidating by removing any requirement or necessity for cross-examination by opposing parties at the inquiry itself. Instead, all parties would be allowed to present their case, using any appropriate supporting material, with the Reporter making an informed decision on the evidence presented and on any further information he/she may request or require from the appellant, any witnesses or the Council. Any party involved in an appeal inquiry should also possibly be allowed to submit final comments on the Inquiry Reporters decision within a defined period for consideration by the Reporter, prior to any final ratification of the decision being made.

The normal seating arrangement also adds to the formality of the event and can increase the level of anxiety for parties involved.

- Question 28 (a) Do you agree that enforcement notices should be neighbour notified?**
- (b) Should there be other changes in public information on enforcement, particularly to publicise any action being taken by the planning authority?**

Suggested Council Response

The Council would not object, in principle, to neighbour notification procedures being introduced in connection with the serving of enforcement notices. However, the publicity of enforcement actions taken by the Council may be more problematic in that appeals against enforcement action can be successful and any successful appellant may be justifiably aggrieved by adverse publicity given to the enforcement action prior to the appeal being conducted.

- Question 29 (a) Do you have views on the use of mediation in Planning?**
- (b) When could it be recommended?**
- (c) How could it be funded and arranged?**

Suggested Council Response

As part of its normal planning procedures, the Council will always attempt to resolve any difficulties or problems regarding any particular matter by negotiation or agreement. It is not considered that mediation needs to be defined as a specific part of the planning process.

Question 30 Do you see a value in a national consultative group to review current problems and help promote best practice and policy development?

Suggested Council Response

The Council would have no objection to the setting up of a national consultative group as suggested by the Executive. Any such group should have represented on it a widespread mix of stakeholders in the planning process.

Question 31 We think that a working group should keep abreast of electronic opportunities for better access to planning information and services, co-ordinating access across Scotland and drawing attention to good practice. Do you agree?

Suggested Council Response

The Council would be supportive of an appropriate working group being established to co-ordinate and promote the use of electronic means in sharing aspects of planning advice and policy across Scotland.

Question 32 We propose to explore ways to co-ordinate national and local planning helpline services. Do you agree?

Suggested Council Response

The Council would be supportive of any proposals to further understanding of the planning process by the general public at all levels. This and the previous proposal (see question 31) would be greatly facilitated were the Government to make funding directly available for e-government initiatives in the planning realm.

AGENDA