

EAST AYRSHIRE COUNCIL

DEVELOPMENT SERVICES COMMITTEE: 21 OCTOBER 2003

REMOVAL OF LEGAL IMPEDIMENTS TO E-PLANNING

Report by Director of Development Services

1 PURPOSE OF REPORT

- 1.1** The purpose of this report is to consult members on a proposal by the Scottish Executive to Remove the Legal Impediments to E-Planning by introducing an Order; The Town and Country Planning (Electronic Communications) (Scotland) Order 2003. Comments are requested by 31 October 2003. The report has been prepared in consultation with the Head of Information Technology.

2 BACKGROUND

- 2.1** The overall objective of the draft Order is to make it possible for those that wish to do so to use an electronic rather than a paper based system within the priority areas of

- Planning applications
- Listed building consent and conservation area consent applications
- Appeals including enforcement notice appeals

- 2.2** At present there are the requirements in legislation for many actions to be taken "in writing" or by "post". These actions include applications, representations on applications and consents and other notices by the Planning Authority.

- 2.3** The Order is thus intended to enable the electronic submission of planning and other applications once the technology is in place. Applications and certificates could be submitted electronically and there is provision for electronic versions of the written register and publication of notices in online versions of newspapers. There are a range of exemptions exemptions proposed. For example, it is not proposed that neighbour notification or owner notification is carried out by electronic means. Similarly the service of enforcement and related notices are exempt from the electronic regime.

3 SUGGESTED RESPONSE TO CONSULTATION QUESTIONS

What are the implications of allowing electronic methods of communication?

- 3.1** Whilst the conversion of letters into e-mails appears straightforward there are a number of technical issues which could result in communications failures or misuse. These include:
- Incompatible software, or e-mails sent in a form which the receiver cannot read, or contains minor format changes (these difficulties could be particularly significant in relation to CAD drawings)
 - Lack of permanency or accidental loss of data
 - Failure of an Internet Service Provider (ISP) to deliver e-mails – ISPs are private ‘post offices’ under no statutory obligations or regulation. E-mail addresses also change with change of ISP.
 - The authenticity of an e-mail is almost impossible to establish – this is particularly important in relation to certificate of owner and neighbour notification which the local authority must be able to rely upon if the competence of an application is subsequently challenged, and in establishing the authenticity of objections
- 3.2** Technical issues can be overcome. But increasing use of e-mail alongside other forms of communication will increase the complexity of the planning process with little obvious saving in staff time. E-mails have to be read, may need to be printed out and have to be filed correctly. Replies have to be typed and sent. It may also be more difficult to separate routine correspondence from non-routine material, leading to a risk of missing critical correspondence and making it more difficult to organise workload allocation between professional and support staff. It may be necessary to retain the existing written systems and thus there will be a duplication of systems. It will also be important to create one receipt address within the Authority to avoid important correspondence like objections not being received in the wrong place; a situation that could lead to maladministration if an objection fails to be considered.
- 3.3** Use of e-mail may further increase the volume of communication. Whilst this may improve the accessibility of Council services, it could have, together with the greater technical complexity, significant workload implications particularly for professional Planning Officers and their Managers.
- 3.4** Particular issues will arise in relation to e-mail objections. Unlike applications which are to a degree ‘self authenticating’ to the extent they relate to physical property, there are no such guarantees of authenticity with e-mail objections. There could also be an increase in objections received from third parties who are not directly affected by a developer. Campaigns will be easier to mobilise without a requirement for physical signatures. Regrettably, widescale campaigns tend to focus on issues not material to planning. Applications will also be exposed to fictitious objections. To address these issues the Council may require to develop a protocol on the weight to be attached to different forms of objections depending on origin and level of authentication.

- 3.5** Most authorities including our own have firewalls to prevent abusive material being received. Since strongly held views are sometimes communicated with inappropriate language there is a further implication in that some objections may be automatically blocked at the Council's Firewall and hence not delivered to the intended recipient.
- 3.6** E-mail communication may be generally welcomed in line with improving accessibility. But Councils will require to introduce new procedures and protocols to address the technical and logistical consequences. There will be resource implications which will need to be addressed by an increase in the planning application fees to enable staff to cope with an increased level of communication and complexity.

Are the exemptions appropriate?

- 3.7** The exemptions proposed will be necessary to provide a sound basis for enforcement. Further consideration should, however, be given to requiring neighbour and owner notification certificates to be submitted with a physical signature. If the authenticity of these is challenged it may invalidate a planning consent. The Council must be able to rely on the authenticity of certificates in these circumstances.

Should legal barriers be removed in any additional processes at this time?

- 3.8** It is significant that there is not enough confidence in extending electronic communication to processes that involve offences for failing to comply or notify (e.g. enforcement, notification of areas/neighbours). This demonstrates that the system is not robust enough to withstand subsequent security through a legal process. Accordingly it is suggested that there should not be any further extension of electronic communication within Planning until the implications of the first alterations are assessed.

Interpretation Difficulties

- 3.9** The proposed amendments include a provision that 'where the communication is received by that person outside business hours, it shall be deemed to have been received on the next working day.' Generally the point of time by which communications require to be received is midnight. This would probably be less open to dispute. In fact, there will be less of a practical problem in receiving e-mails outside business hours than there may be with post or hand delivered communication. The regulations should, however, distinguish between the time an e-mail is received by an ISP, posted by an ISP and opened by a recipient – the key time should be considered the point at which the e-mail is delivered to the recipient's ISP, or if delivery failed the time of this failure.
- 3.10** The proposed amendments require e-mail to be 'capable of being accessed by the recipient, legible in all materials respects; and in a form which is sufficiently permanent to be used for subsequent reference.' The regulations must make it clear that the onus is on the sender to establish whether the

recipient's software is fully compatible and there is no potential for files to be corrupted in transmission.

- 3.11** The amendments propose a definition of 'working days' which excludes public holidays. The proposed definition does not, however, list local public holidays (it refers erroneously to 'bank holidays'). With this correction the clarification of the definition of a 'working day' is helpful.

4 CONCLUSION

- 4.1** The use of electronic communication is broadly welcomed in the spirit of transparency and efficiency but clearly there are many issues to be resolved and there remain concerns about complexity, reliability and potential for abuse. The use of e-mail is likely to stretch existing staff and systems and resources must be made available to tackle the technical issues.

5 LEGAL AND FINANCIAL IMPLICATIONS

- 5.1** There are no immediate financial or legal implications arising from the recommendation in this report.

6 RECOMMENDATIONS

- 6.1** It is recommended that this report forms the basis of the Council's response to the Consultation Paper on "Removal of Legal Impediments to E-Planning".

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Director of Development Services

29 September 2003 (AN/SA)

LIST OF BACKGROUND PAPERS

1. Consultation Paper on Removal of Legal Impediments to E-Planning; August 2003.

Anyone wishing to inspect the above papers please contact Alan Neish on (01563) 576767.

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