

REPORT TO: POLICY AND RESOURCES COMMITTEE - 1ST JULY, 2009

REPORT ON: PLANNING LOCAL REVIEW BODY

REPORT BY: DEPUTE CHIEF EXECUTIVE (SUPPORT SERVICES) AND DIRECTOR OF PLANNING AND TRANSPORTATION

REPORT NO: 292-2009

1 PURPOSE OF REPORT

- 1.1 To make recommendations concerning the establishment of Dundee City Council's Planning Local Review Body which the Council is required to constitute under the provisions of Section 43A of the Town and Country Planning (Scotland) Act 1997 as inserted by the Planning etc (Scotland) Act 2006.

2 RECOMMENDATIONS

It is recommended that the Committee:-

- (a) approve the terms of reference and operating arrangements for the Planning Local Review Body as detailed in Section 4 of the report;
- (b) approve the amended terms of reference for the Development Quality Committee;
- (c) remit to the Depute Chief Executive (Support Services) to make any consequential amendments to Standing Orders;
- (d) remit to the Director of Planning and Transportation to make appropriate training arrangements;
- (e) be invited to appoint a Chair and Depute Chair; and
- (f) remit to the Depute Chief Executive (Support Services) and Director of Planning and Transportation to monitor staffing implications and other expenditure and if necessary additional financial provision be made in the 2010/2011 Revenue Budget for Support Services and/or City Development.

3 FINANCIAL IMPLICATIONS

- 3.1 The establishment, operation and servicing of the Planning Local Review Body will have resource implications for the Council. The main area of additional expenditure will relate to:-
- (a) costs associated with the attendance of Members at scheduled meetings of the Planning Local Review Body; preliminary meetings associated with the Review Body's work, public hearings and site meetings;
 - (b) additional officer costs by the Support Services and City Development Departments in administering and advising the Review Body, including the costs of preparing and circulating reports and others papers; and
 - (c) the potential cost of appointing any assessor or external professionals to inform or advise the Review Body; and member training (if this is to be provided externally). The Improvement Service has provided a grant of £10,000 for training development requirements relating to Local Review bodies.
- 3.2 The Regulations do not provide for any charges to be imposed on those requesting reviews.
- 3.3 There are no provisions in the Regulations for Council's to impose financial penalties on appellants for unreasonable behaviour in bringing and presenting a review request.

- 3.4 During the consultation stage in 2008 the Scottish Government indicated that a review of the planning fees was to be undertaken and that consultation with stakeholders would follow. This review has yet to be consulted on but it cannot be assumed that any increase in planning fees is inevitable or would be sufficient to cover the entire financial implications of the new legislation in respect of Local Review Bodies.
- 3.5 It is not possible to predict with certainty the number of cases which will be reviewed, how often the Review Body will decide to hold hearings, nor indeed how complex each case will be.
- 3.6 Due to the timing and content of the secondary legislation which establishes this new procedure it has not been possible to include provision for this expenditure within the Council's budget for 2009-2010.
- 3.7 It is proposed that staffing implications and other expenditure be monitored by the Depute Chief Executive (Support Services) and the Director of City Development and if necessary additional financial provision be made in the 2010/2011 Revenue Budget.

4 BACKGROUND

- 4.1 Reference is made to Report No 195-2009 which was approved by the Policy and Resources Committee on 27th April, 2009 as a basis for further discussion and consultation. That report outlined the terms of statutory requirements and guidance available from Scottish Ministers. Members will recall that the Planning etc (Scotland) Act 2006 and its subordinate legislation introduced a new "appeals" regime for certain categories of planning applications. This is linked to the new mandatory scheme of delegation approved by the Policy and Resources Committee on 8th June, 2009. The effect of the new regime is that, for those applications refused, granted with conditions or not determined within the prescribed period under the mandatory scheme of delegation the final decision on the planning merits will rest with the Planning authority's Review Body. The Review Body's decision can only be challenged in the courts on a point of law. As far as the conduct of the business of the Review Body is concerned, this will be governed by legislation. The details of the administrative and support arrangements for the Review Body are matters for the Review Body to decide. Suitable arrangements need to be made for planning, legal and administrative support.
- 4.2 The Director of Planning and Transportation's nominated planning adviser will attend the Review Body meeting to assist with factual information associated with the case, but will be unable to offer professional advice or to make recommendations to the Review Body as these are matters for the Body to decide on independently on the basis of the information before them.
- 4.3 Report No 195-2009 also raised draft proposals for further discussion and for agreement at this meeting. Members are required to reach a decision at this meeting in order that the Review Body can be constituted, trained and in readiness to undertake its business in respect of review cases which may be submitted after 3rd August, 2009 when the bulk of the development management regulations become active.
- 4.4 Since the Policy and Resources Committee meeting the Director of Planning and Transportation has taken the opportunity to consult with Community Councils and Neighbourhood Representative Structures. No written individual responses were received. In addition, a meeting of the Development Quality Forum took place on 14th May, 2009 and the debate at that meeting has informed the recommendations contained in this report.
- 4.5 Also, in the intervening period briefings have been given to Councillors by the Director of Planning and Transportation and views sought. These have also informed the recommendations.

4.6 PLANNING LOCAL REVIEW BODY

Following the consultation referred to above, it is proposed that the Review Body's operating arrangements be as follows:-

(a) Terms of Reference

To determine reviews in terms of Section 43A of the Town and Country Planning (Scotland) Act 1997 as inserted by the Planning etc (Scotland) Act 2006.

(b) Membership

The membership of the Review Body shall comprise 2 members from the Administration and 1 member from the Opposition Groups. A further 3 members from the Administration and 3 members from the Opposition Groups shall be identified as substitute members.

(c) Chair and Depute Chair

It is proposed that a Chair and Depute Chair be appointed.

(d) Frequency of Meetings

Meetings be held during the day on a monthly basis.

(e) Quorum

The quorum shall be three members.

(f) Substitutes

It shall be competent for substitutes to be intimated and effected for individual meetings, however continuity of membership throughout the case must be maintained as far as practically possible.

(g) Other Issues

(i) INVOLVEMENT OF LOCAL WARD COUNCILLORS

In the interests of impartiality and independence, the view may be taken that no Ward member for the Ward in which the review case is located should sit on that particular review panel. However, the local member would undoubtedly bring a degree of local knowledge to the review which would be helpful. On the assumption that the member concerned strictly adheres to the Councillors' Code of Conduct, members may feel that the advantages of participation outweigh the possibility of accusations of bias.

On balance, it is proposed that provided that members adhere strictly to the Councillors' Code of Conduct, there shall be no restriction on a Ward Councillor being a member of the Review Body for a review case located within their Ward.

(ii) MEMBERS' TRAINING

The Improvement Service is proposing to co-ordinate training but details have yet to emerge. The preferred option for the Council is that the Review Body member training should be from an independent external source with Council input. In the event that this cannot happen prior to the Review Body being convened then training from within the Council will be provided. It is proposed that no member shall sit on the Review Body without having received a certificate indicating that prescribed training has been undertaken and that a satisfactory standard has been achieved.

(iii) ALTERNATIVE METHODS OF REVIEW

The Review Body for each case has to decide, following receipt of the Notice of Review and the notification and publication of preliminary papers, whether to:-

- (i) determine the review on the basis of the information already to hand, without further procedure; or

- (ii) proceed to a decision on the basis of written submissions; or
- (iii) convene a Hearing Session; or
- (iv) make a decision by site inspection; or
- (v) use a combination of ii, iii and iv.

Although it is a matter for the Review Body on a case by case basis, it is suggested that the use of the Hearings Procedures is reserved for the most technical of cases where oral evidence is essential to the determination of the review. Review Body business can, for the majority of cases, be efficiently conducted based on the review papers without recourse to further procedures. Where the Hearing method is selected it is envisaged that the Review Body will wish to appoint an "Assessor" only in exceptional cases where complex technical evidence is involved.

(iv) **DEVELOPMENT QUALITY COMMITTEE**

It is proposed that the existing terms of reference for the Development Quality Committee be amended.

Existing (paragraph 1 only)

All functions, powers and duties of the Council as Planning Authority under any enactments so far as they relate to development control which term is deemed to include processing of all notifications and applications for permission or consent as provided under the Town and Country Planning (Scotland) Acts and subsidiary legislation.

Add

Excluding reviews in terms of Section 43A of the Town and Country Planning (Scotland) Act 1997 as inserted by the Planning etc (Scotland) Act 2006.

5 POLICY IMPLICATIONS

This Report has been screened for any policy implications in respect of Sustainability, Strategic Environmental Assessment, Anti-Poverty, Equality Impact Assessment and Risk Management. There are no major issues.

6 CONSULTATIONS

- 6.1 The Chief Executive, Depute Chief Executive (Finance), and Head of Finance have been consulted.

7 BACKGROUND PAPERS

- 7.1 The Planning etc (Scotland) Act 2006 - Section 43A(8).
- 7.2 Town and Country Planning (Schemes of Delegation and Local Plans Procedure) (Scotland) Regulations 2009.
- 7.3 Draft Circular XX/2009 - Schemes of Delegation and Local Reviews (December 2009).
- 7.4 Report No 176-2008 - Modernising Planning Appeals - Development Quality Committee - 21st April, 2008.
- 7.5 Report No 59-2008 - Draft Regulations on The Planning Hierarchy - Consultation Paper - Development Quality Committee - 18th February, 2008.
- 7.6 Report No 52-2009 - The Planning Hierarchy - Development Quality Committee - 20th April, 2009.
- 7.7 Report No 200-2009 - Schemes of Delegation - Development Quality Committee - 20th April, 2009.

- 7.8 Report No 195-2009 - Local Review Body - Policy and Resources Committee - 27th April, 2009.
- 7.9 Report No 293-2009 - Planning Scheme of Delegation - 8th June, 2009.

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