

REPORT TO: DEVELOPMENT QUALITY COMMITTEE – 27 OCTOBER 2003

REPORT ON: MODERNISING PUBLIC LOCAL INQUIRIES – CONSULTATION PAPER BY THE SCOTTISH EXECUTIVE

REPORT BY: DIRECTOR OF PLANNING AND TRANSPORTATION

REPORT NO: 630-2003

1 PURPOSE OF REPORT

1.1 To review the Consultation document 'Modernising Public Local Inquiries' and confirm this Council's response to the Scottish Executive.

2 RECOMMENDATIONS

2.1 It is recommended that the Committee agrees the comments it is proposed to forward to the Scottish Executive in response to its Consultation Document.

3 FINANCIAL IMPLICATIONS

3.1 There are no financial implications from this report.

4 LOCAL AGENDA 21 IMPLICATIONS

4.1 The Local Agenda 21 implications of this report cover a very wide range of key themes, in particular transportation implications for new developments, issues of sustainable development, the efficient use of resources and minimising of waste and access to facilities, services, goods and people is not achieved at the expense of the environment and are accessible to all.

5 EQUAL OPPORTUNITIES IMPLICATIONS

5.1 There are no equal opportunities implications associated with this report.

6 BACKGROUND

6.1 Dundee City Council, as an authority, has, in the past, expressed its fundamental concerns to the Executive with regard to the operation of the appeals procedure in general. In particular it disagrees with a system that allows full reconsideration of the merits of an application for planning consent by unelected officials of central government after it has been properly considered and decided upon by the Elected Members of the local authority.

6.2 Against this background the Council wishes to make a number of comments on the Consultation document with regard to the possible improvement of the present system. These comments are set out in the Appendix to this report.

6.3 Particularly in respect of major and complicated cases, the current system tends to be overly complex leading to lengthy inquiries with too much attention to detail that are ultimately unnecessarily expensive and not conducive to the participation of members of the public or their general level of understanding.

7 CONCLUSIONS

- 7.1 The Scottish Executive's proposals for change are put forward as a result of an extensive review and consultation process.
- 7.2 Dundee City Council should be supportive of the proposed changes to the system as representing a more rational and workable alternative.

8 CONSULTATIONS

- 8.1 The Chief Executive, Depute Chief Executive (Finance), Depute Chief Executive (Support Services) and Assistant Chief Executive (Community Planning) have been consulted and are in agreement with the contents of this report.

9 BACKGROUND PAPERS

- 9.1 Modernising Public Local Inquiries, Scottish Executive, June 2003.

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APPENDIX 1

MODERNISING PUBLIC LOCAL INQUIRIES: CONSULTATION PAPER BY THE SCOTTISH EXECUTIVE

Question 1	In order to improve the operation of the public local inquiry process should we be focusing on the time taken to process the appeal or called-in application; the cost, level of certainty about process; and the need to make it easier for the public to be involved, or are there other important matters to be addressed?
Answer	Time, cost and certainty of process are all important. The current system however, particularly in relation to Local Plan Inquiries tends to be overly complex leading to lengthy inquiries with too much attention to detail that are ultimately unnecessarily expensive and not conducive to the participation of members of the public or their general level of understanding
Question 2	Should public local inquiries into planning proposals be re-named “planning inquiries”?
Answer	No objection to change of name. It would be useful to clearly distinguish between the two types of Inquiry.
Question 3	Should the right of an appellant or planning authority to a planning appeal inquiry or hearing be further qualified? If so, do you have a preference for Option 1, Option 2, or Option 3? Alternatively, do you have other suggestions that might be effective in achieving this objective?
Answer	Option 3 would see to offer the most flexibility. The balance of probability should be in favour of hearings.
Question 4	Where an appeal is lodged against non-determination, should the planning authority be required to indicate whether they would have granted or refused the application within, say, 2 weeks of the appeal being lodged?
Answer	Two weeks is rather a short timescale given that most authorities would require to report to Committee on this and allow for varying schedules.
Question 5	Should incomplete appeals be rejected and returned to the appellant?
Answer	Yes, without a doubt! 6 months is too long a time period and we see no reason to exclude householder applications from this provision.
Question 6	Should the present maximum period for production of the full statement of case be reduced from 8 weeks to 4 weeks from the issue of relevant notice?

Answer	The current timescale is adequate at most, no less than 6 weeks should be allowed.
Question 7	Are there other ways of shortening the essential pre-inquiry stages that could be as, or more, effective?
Answer	Agree with reduction in period allowed for circulation of statements of case. No further suggestions.
Question 8	Should all parties to a planning inquiry who intend to lead oral evidence be required to register their intention to do so by a specified date; and also to disclose their case in advance on the same structured and consistent basis?
Answer	Yes, and they should be required to prepare and circulate statements of case within a prescribed period prior to the Inquiry.
Question 9	Do you subscribe to the view that the pre-inquiry process set by the Inquiries Procedure Rules does not allow sufficient time for proper preparation? If so, why?
Answer	No.
Question 10	Once statements of case have been lodged should the Scottish Ministers give more explicit guidance, even if no pre-inquiry meeting is held, on the essential issues that they wish addressed in evidence to the Inquiry?
Answer	Yes, the Development Plan provisions and other indisputable evidence should be identified as guidance. Would it not be simpler to hold a pre-inquiry meeting in all circumstances to agree this?
Question 11	Should the Scottish Ministers indicate the material that must be considered by the appellant or applicant and the planning authority in order to identify areas of agreement and disagreement and be lodged as inquiry documents in order for the planning inquiry to start as programmed?
Answer	Yes.
Question 12	Should the Scottish Ministers set a time limit on sisted appeals, so that these expire if the case is not brought to planning inquiry within 6 months of the date on which processing first stopped?
Answer	Yes, but why 6 months?
Question 13	Should the Scottish Ministers exercise their powers to recover their own costs and the costs of others where an appeal party fails to proceed, or an appeal is withdrawn, once the planning inquiry arrangements have been made?

Answer	Yes, Ministers should seek to recover their own costs as well as those incurred by the local planning authority, especially as the consequence of “unreasonable behaviour”.
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Question 14	Should preliminary argument be ruled out at the opening of a planning inquiry?
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Answer	Yes, but all procedural issues should be dealt with pre-inquiry so that the planning merits can be dealt with immediately the Inquiry commences.
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Question 15	Should time at the planning inquiry be programmed more rigorously in advance by reporters, and parties held to that programme witness by witness?
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Answer	Yes.
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Question 16	Do you consider that it is necessary for the Scottish Ministers explicitly to set a more inquisitorial role for reporters?
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Answer	Yes, it is often the case that the most pertinent and searching questions are put by the Reporter and this could be more extensive.
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Question 17	Should hearings practice be imported to planning inquiries when it represents the most effective means of determining the matters in dispute? Does this enhanced role for the hearings process suggest that statutory procedure rules are required?
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Answer	If this is deemed appropriate by both parties.
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Question 18	Should the existing Inquiries Procedure Rules be amended to make it clear that the scope to request that a Reporter takes account of new material after the planning inquiry has closed is strictly limited to a change in the provisions of the development plan?
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Answer	Yes.
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Question 19	Do you consider that the hearings format represents a suitable means of examining objections to strategic development plans? If not, what other model do you suggest?
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Answer	The formal and largely adversarial nature of most Inquiries is undoubtedly a discouragement to the involvement of the general public in the process.
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Question 20	Do you agree that the process of development planning would be improved by requiring planning authorities to reduce the volume of objections through negotiation and mediation before calling a local plan inquiry; by adopting the hearing format as the norm for all local plan inquiries; and by applying other relevant improvements in practice contained in this consultation. Do you have any other suggestions for ways in which the process might be improved?
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Answer	<p>Most Local Plans now attract a substantial number of objections. While planning authorities try to negotiate in as many instances as possible it is clear that under the present system there is still a substantial incentive for many, particularly commercial interests, with professional agents to wish to proceed to a local inquiry.</p> <p>Local planning authorities in most instances make strenuous efforts to negotiate as many objections as possible and there is no objection to any requirement to demonstrate the measures that have been taken to reduce objections prior to the Inquiry. Many objectors, however, can be extremely intransigent, are often highly suspicious of the planning authority's motives and wish to have an independent consideration of their objections.</p> <p>There is no doubt that fewer objections would make for shorter inquiries that would 'allow the oral process to be concentrated on issues that are critical to the delivery of the development strategy' however most objectors are of the opinion that their objections fall into this category. There needs to be a much more rigorous filter applied to potential objections to disqualify the many irrelevant, incompetent and frivolous submissions in the first instance, a greater scrutiny of the relevance objections when submitted and a firmer line by Reporters in how they are dealt with before and at Inquiry.</p> <p>The current system does not encourage the withdrawal of objections as a result of negotiations no matter what changes may be proposed by the Planning Authority to try to accommodate them. No sanction or stronger means of persuasion are available to facilitate this.</p> <p>In addition it should be recognised that changes themselves do not necessarily result in less objectors and can, in many instances, simply generate further objection.</p> <p>At present all objections tend to be treated with equal weight. If negotiation is to succeed it must be clear that time will not be allocated at Inquiry for minor issues. If the hearings procedure is to be more widely adopted it must be mandatory for certain types of objection and strongly advised in most other cases.</p> <p>The role of negotiation and mediation is, while important, presently limited in effectiveness and much more fundamental measures are required if the volume of objections reaching Inquiry is realistically to be reduced.</p>
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Question 21	Should inquiries into planning appeals and called-in applications be dealt with separately from inquiries that are arranged to hear objections to local plans and from the public examination of objections to strategic and local development plans?
Answer	There is no doubt that the consideration of planning appeals alongside related objections to a local plan results in a complex overly detailed debate of issues which is detrimental to public involvement and unnecessarily time consuming in the Local Plan Inquiry process.

The higher level issues of land use and policy require to be clarified at the Local Plan Public Inquiry in the first instance and any appeals or called in applications kept entirely separate and dealt with subsequently.

Question 22 We would welcome views on other options not covered by this paper that could help to make public local inquiries less adversarial but allow them to remain just as robust as the means of taking decisions on major planning proposals.