

**REPORT TO: PLANNING AND TRANSPORTATION COMMITTEE
25 FEBRUARY 2002**

REPORT ON: SCOTTISH EXECUTIVE CONSULTATION PAPER "GETTING INVOLVED IN PLANNING"

REPORT BY: DIRECTOR OF PLANNING AND TRANSPORTATION

REPORT NO: 68-2002

1 PURPOSE OF REPORT

- 1.1 To obtain the Council's views on the Scottish Executive's consultation paper "Getting Involved in Planning" and to seek authorisation to transmit these views to the Scottish Executive.

2 RECOMMENDATIONS

- 2.1 It is recommended that the Committee:
- a Supports in principle the Scottish Executives suggestion that authorities should take responsibility for Neighbour Notification procedures on the understanding that a dialogue will take place between the Scottish Executive and authorities on the detail of the procedural and financial implications.
 - b Endorses the comments on the Consultation Paper "Getting Involved In Planning" (November 2001) outlined in Sections 7, 8 and 9 and the Appendix to this report; and
 - c Remits the Director of Planning and Transportation to forward these comments, as the Council's formal response, to the Scottish Executive prior to 31 March 2002.

3 FINANCIAL IMPLICATIONS

- 3.1 Being a consultation paper its terms do not impose any additional financial burden on the Council at this stage. However, several of the positive suggestions made will potentially, if implemented, impose additional revenue expenditure in the delivery of improved levels of service (eg neighbour notification arrangements). However, the Scottish Executive envisages the imposition of compensatory application fee level increases. These details have yet to be thought through and the Council reserves its position pending further consultation on these details.

4 LOCAL AGENDA 21 IMPLICATIONS

- 4.1 The general nature of the proposals are procedural in nature and do not directly relate to environmental planning policy.
- 4.2 Nevertheless, it is to be expected that the wider involvement of the public in planning matters will result in the awareness and appreciation of environmental policies as reflected in the Council's Local Agenda 21 objectives.

5 EQUAL OPPORTUNITIES IMPLICATIONS

- 5.1 The Council supports the general thrust of the consultation paper which seeks to introduce procedural changes designed to give the maximum opportunity for all sectors of the community to become even more included in the workings of the planning process.

6 BACKGROUND

- 6.1 The Scottish Executive is undertaking a review of existing arrangements to enable people to become more involved in planning issues. A consultation paper outlining the main issues was published in November 2001 inviting comments by 31 March 2002.
- 6.2 The Consultation paper and a short easy-read revision have been made available in print and also on the Scottish Executive website www.scotland.gov.uk/planning. Copies of the "easy read" revision have been made available to the general public via Tayside House Reception. Members have also been issued with copies. Copies of the full paper have been lodged in the Members Lounges.
- 6.3 This report represents the Council's views on the consultation paper.
- 6.4 The Consultation Paper makes the following general points before moving on to pose a series of 32 questions upon which comments are invited:
- Public involvement is an important and longstanding feature of the Scottish planning system. However, it can be viewed by many as not being designed to be totally inclusive of all who have views to express.
 - The draft proposals reflect heightened expectations, following devolution, that decision making should be totally inclusive and reflect the Scottish Executive's commitment to social justice.
 - The greater, meaningful involvement of individuals and communities in the statutory planning process will complement Community Planning and social inclusion partnership work and will encourage "ownership" of the process.
 - The use of IT and its increasing accessibility by more and more individuals to better communicate with one another. This is seen as an opportunity for planning authorities to harness the opportunities available through IT and use these to enhance service improvements.
 - Greater public involvement in decision-making and service delivery will strengthen the relationship between individuals, communities and Councils and result in customer views of the service helping to deliver Best Value.
 - The public must have confidence that the planning system is treating them fairly. The regular exchange of information and feedback between Councils, applicants and objectors is seen as assisting the work of the Ombudsman and those who believe they have a genuine grievance in relation to the administration of the planning system.

- A number of initiatives at international level (mostly through the European Commission) have fed their way into the statutory planning system via access to environmental information, public participation and human rights issues. The consultation paper raises issues relating to these themes although the paper does not support third party rights of appeal at this stage (the Scottish Executive will monitor developments in case law).
- The consultation paper is a further contribution of many best practice initiatives by Council's, the Scottish Executive, partnerships, voluntary and community organisations which in their own way seek to make the public's involvement in planning more effective.

7 GENERAL

- 7.1 All these issues club together to give a general thrust within the paper which should be unreservedly welcomed by the Council. Many of the suggestions for best practice are already undertaken by the Council whilst others should be explored further as initiatives for the future.
- 7.2 The following sections of this report offer comments and recommendations relating to the main issues covered whilst the Appendix expresses views on each of the questions raised by the paper.

8 DEVELOPMENT PLANNING (Q1-Q5)

- 8.1 The encouragement of greater public understanding of and participation in development planning is to be welcomed. The Council's track record in this is extremely good eg Local Forums and will develop further with the review of the Dundee Local Plan, currently underway. The reservations outlined in the Appendix should not detract from the Council's support for the general thrust of the measures being suggested.

9 DEVELOPMENT CONTROL (NEIGHBOUR NOTIFICATION Q6-Q13; PUBLICITY FOR APPLICATION Q14-Q20; DECISION MAKING Q21-Q25; APPEALS, ENFORCEMENT AND MEDIATION Q26-Q30 AND INFORMATION TECHNOLOGY Q31-Q32)

- 9.1 Again the objective of Council's facilitating opportunities for the fuller participation of individuals in the development control process is welcomed and is consistent with the core objectives of the Council.
- 9.2 Any measures which demystify a complex legal process and promote greater openness, accessibility, transparency of and participation in decision making are welcomed and supported in principle.
- 9.3 Best practices which lead to the streamlining of administrative procedures using information technology are already explored and developed within a Development Quality Action Plan. In connection with this, the further development and more effective use of the Council's web site is also already being explored.

10 CONCLUSION

- 10.1 This consultation paper is welcomed and raises many relevant issues. Its general thrust is supported and the Council would welcome a continued involvement with the Scottish Executive and others in developing positive aspects of the detail.

11 CONSULTATIONS

- 11.1 The Chief Executive, Director of Finance, Director of Support Services, Director of Corporate Planning, have been consulted and are in agreement with the contents of this report.

12 BACKGROUND PAPERS

- 12.1 "Getting Involved in Planning" Scottish Executive Development Department November 2001.

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APPENDIX

Consultation Questions From The Scottish Executive	Dundee City Council Response
<p>Q1 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?</p>	<p>Yes. This has been method has been used by the Council in Local Plan preparation and has proved satisfactory.</p>
<p>Q2 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?</p>	<p>The City Council is keen to pursue the intent of this suggestion to better inform and involve residents in changes which may affect their environment and amenity.</p> <p>The former Dundee District Council, at the time of advancement of the current Local Plan in 1994, notified all frontagers to major housing and other identified allocation sites on an informal, but pro-active attempt to inform people of proposed changes. This differs from the policy approach covered in the question.</p> <p>The current paper, as may be the intention, is unclear as to how and when such direct notification should be undertaken. The relationship within the existing Development Plan departure process is not clear.</p> <p>There are therefore concerns, to be answered, over the imposition of a potentially cumbersome, bureaucratic experience and time consuming process. However, the principle is to be lauded and fits with this Council's aims of community engagement. This is also provided that an engagement is focussed and adds value to the preparation of the Development Plan, does not cut across other consultation processes and must be balanced against the desire to advance Development Plan preparation more speedily.</p>

Consultation Questions From The Scottish Executive	Dundee City Council Response
<p>Q3 We think Reporters for local inquiries should be chosen independently by the Scottish Executive Inquiry Reporters Unit, who could conduct the Inquiry and recover costs from the Council. Do you agree?</p>	<p>Agree. However, the detail regarding costs and their recovery needs further careful consideration.</p>
<p>Q4 We think the scope to depart from the Reporter's recommendation should be limited. Do you agree?</p>	<p>Agree. However, the paper (paragraph 49) suggests a default procedure for consultation where Councils see merit in departing from Reporters' recommendations. It is unclear if the implication is that the lengthy modification procedures would cease as a result.</p>
<p>Q5 How can we make local plan adoption faster and more user-friendly?</p>	<p>Although the use of the internet would speed up communications and administration, the underlying cause for concern is the overall lengthy legal process for preparation and adoption.</p> <p>Specific suggestions include:</p> <ul style="list-style-type: none"> • that Councils should prepare and submit to the Scottish Executive for approval, a scheme of consultation at the commencement of the Local Plan process; • that allied to the above, there should be no implicit requirement for the production of a consultative draft plan where other appropriate forms of public involvement are proposed; • that the scope and nature of Local Plan inquiries be revised, including the right of all objectors to be heard at a public inquiry. There needs to be a better balance between process and outcomes;

	<ul style="list-style-type: none"> that statutory procedures between the public inquiry and plan adoption be simplified. The suggestion in Question 4 that scope to depart from the Reporter's findings should be limited may assist with this. 	
Q6	<p>We see merit in standard application forms for all councils. They could be user-friendly, with translation and all the necessary certificates. Do you agree?</p>	<p>Agreed. Also similar easy read Guidance Notes based on a common interpretation of the Act would help consistency and public understanding. Application forms could be designed to be more user friendly and include simplified certificates.</p>
Q7	<p>Do you agree that:</p> <p>a Authorities should take responsibility for neighbour notification?</p> <p>b Application fees should be increased to cover their costs?</p> <p>c Research is carried out to help decide the fee increase required?</p>	<p>a Yes, in principle. Additional resource (administration) burden on Councils in relation to staff and IT costs will result.</p> <p>b Yes, although the fee increases should be realistic in terms of a), yet proportionate to the scale of the development proposed, particularly householder developments.</p> <p>c Yes. The opportunity should be taken to review the Fee Regulations in their entirety in the light of b) above.</p>
Q8	<p>Do you agree that planning authorities should have the flexibility to decide how best to serve neighbour notification?</p>	<p>Yes, because circumstances will vary from Council to Council. Numbers and types of application vary leading to different neighbour notification requirements. An important consideration in selecting a method is proof of service. Defence against legal challenges will be a consideration but will have resource implications (see Q7 above). The paper does not consider simplifying the criteria for neighbour notification.</p>
Q9	<p>Do you agree with keeping the duty to notify owners and occupiers and removing it for non-domestic lessees?</p>	<p>Agree that non-domestic lessees can be deleted. However, the absence of a domestic valuation role may tender separate service on specific owners and occupiers at the correct addresses difficult.</p>

<p>Q10 Do you agree that notification should include the information and guidance described above?</p>	<p>Agreed. Clearer and more comprehensive information (form, plans etc) is required and which should be specified in secondary legislation as a requirement for the applicant to supply.</p>
<p>Q11 Do you agree with extending the time for responding to neighbour notification from 14 to 21 days?</p>	<p>Agreed. However this will have an impact on performance targets which may need to be reviewed in any event following the introduction of procedural changes as a package.</p>
<p>Q12</p> <p>a Do you agree that there should be neighbour notification where an enforcement notice is served, and for certain types of advertisement proposals?</p> <p>b What kind of advertisements should be included?</p> <p>c Should the authority serve the notice in both cases?</p>	<p>a No objection to neighbour notification where planning permission is granted following a successful enforcement appeal. However, this would be for information only. For neighbour notification when an Enforcement Notice is served implies a role in the process for neighbours. Given the current legislation it is assumed that this would be for information only.</p> <p>The non-neighbour notification of advertisements has not proved problematic and it would be difficult to distinguish which application should be notified. The paper does not mention the possible need in future to notify listed buildings and conservation area consent applications. This should be considered in addition to the statutory newspaper advertisement.</p> <p>b Scope for inconsistency and unfairness if no perceived rules, therefore all or nothing should apply.</p> <p>c Yes, if the procedure is to be introduced.</p>

<p>Q13 What are your views on what should trigger re-notification?</p>	<p>Circumstances vary and each amendment should be considered by individual authorities on merit, according to the degree of change and the circumstances of the amendments. Dundee City Council has prepared its own guidelines which appear to work relatively well. The degree of change may merit a new application but if re-notification of the existing application is required, then Councils should be able to legitimately "stop the clock" on processing timescales.</p>
<p>Q14 Do you agree that we should end the requirement to advertise planning proposals in the Edinburgh Gazette?</p>	<p>Yes in relation to advertisements relating to Listed Building consents and Conservation Area consents. These advertisements are expensive to insert and given the availability of the weekly list on the Internet and advertisement in a newspaper available nationally, these advertisements may no longer represent Best Value. In relation to other statutory notices related to planning, the wide use of the Edinburgh Gazette would presumably continue as required by the relevant legislation.</p>
<p>Q15 Do you think local authorities should be able to decide themselves how best to publicise planning proposals locally?</p>	<p>Yes. Where neighbour notification rules do not apply and where a statutory advertisement is not required, publicity arrangements can appear inadequate. The local press may carry an editorial list but this is not mandatory by statute. The options for enhancement should be explored but these may have a financial impact.</p>
<p>Q16</p> <p>a Do you agree that Councils should regularly publish a notice explaining where copies of the weekly list can be viewed, and post the list on the internet?</p> <p>b Should such lists be distributed free of charge to amenity societies currently dependent upon the Edinburgh Gazette for information?</p>	<p>a Relates to Q15 above. Dundee City Council's Weekly List of new applications is available both on the Internet and in hard copy.</p> <p>b Yes (see also Q14 above). Dundee City Council consultees have the option of receiving a printed version. This would apply across the board to include those who frequently rely on the Edinburgh Gazette (eg Scottish Civic Trust, Royal Fine Art Commission for Scotland).</p>

<p>Q17 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.</p>	<p>Yes. However, the opportunity should be taken to review and update the list of "Bad Neighbour" developments, deleting the term "Bad Neighbour" which in many instances is an inappropriate description. Again this may have an impact on performance returns. (See also Q11 above).</p>
<p>Q18 Do you agree that applicants for proposals contrary to an adopted development plan should bear the cost of advertising?</p>	<p>In principle, yes, although issues of procedure would need to be clarified eg currently departures are identified after an application is validated and all fees submitted.</p>
<p>Q19 Do you agree that costs for advertising listed building and conservation area developments should remain with planning authorities?</p>	<p>No. No distinction is seen between these categories of application and others requiring advertisement. (See also Q14 above).</p>
<p>Q20 Would wider use of site notices add to the effectiveness of informing the public?</p>	<p>No. These are administratively problematic and do not appear to give any added value to consultation.</p>
<p>Q21 Should official consultation responses be open to all as soon as they are made?</p>	<p>Yes, provided the objector is advised that full details of their objection including name and address would be in the public domain as soon as it is lodged. However, objection letters are frequently withdrawn following the submission of amended plans and exposure of name and address could potentially lead to unwelcome unsolicited contact by an aggrieved applicant.</p>
<p>Q22</p> <p>a Should there be standard ways to make comments on applications electronically?</p> <p>b Should there be a national form for comments?</p> <p>c Should the comments be publicly available?</p>	<p>a Yes. This practice is already available and capable of development as part of our internet and document management strategy.</p> <p>b No. Comments are mostly locally generated and are specific to a particular proposal and/or local circumstance. The public seems to prefer expressing their views in their own hand.</p> <p>c Yes (See Q21 above).</p>

<p>Q23 Do you agree that the full record of relevant factors in deciding applications, and the reasons for decisions, should always be publicly available?</p>	<p>Yes. Essential in the interests of transparency and accountability. All the Council's officer reports in relation to all categories of application are written and cover all relevant aspects and are public documents.</p>
<p>Q24 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?</p>	<p>Yes. For same reasons as for Q23. There is potential for the development of this in an IT Strategy.</p>
<p>Q25 a We think more information should be made available on planning agreements and entered in the planning register. Do you agree?</p> <p>b What level of information should be recorded?</p>	<p>a Agree in part. The broad "Heads of Agreement" should be specified at the time the resolution by Council is taken. Part I of the Statutory Register should formally record these facts. However, the detailed draft agreements are subject to frequent change prior to the voluntary agreement being signed and cannot be specified in full until concluded. Thereafter the full Section 75 Agreement can be placed on Part II of the Statutory Register.</p> <p>b Broad "Heads of Agreement" only. (See above).</p>
<p>Q26 We think that six months for making appeals is too long and suggest that it be reduced to two months. Do you agree?</p>	<p>Yes. Such a delay can create uncertainty and possibly stifle acceptable forms of development.</p>
<p>Q27 How can we make appeal inquiries more accessible and less intimidating?</p>	<p>Agree with this concern. More encouragement could be given to "informal hearings" (already provided for but more popular in England) confining inquiries for the most complex cases. The administrative burden of inquiries is considerable and should be simplified. The Involvement of Counsel and senior lawyers can be intimidating for lay witnesses and changes to Inquiry Rules could consider restricting their use. The Scottish Executive should consider restricting the authoritative right to a public inquiry currently available to appellants except perhaps where the proposal is particularly complex and/or has generated significant public interest.</p>

<p>Q28 a Do you agree that enforcement notices should be neighbour notified?</p> <p>b Should there be other changes in public information on enforcement, particularly to publicise any action being taken by the planning authority?</p>	<p>a Refer to Q12a.</p> <p>b Each Council should have an approved and published enforcement policy, a procedural manual and a frequent and public reporting arrangement. The statutory Enforcement Register could be given more prominence eg via the Internet and more informed liaison could perhaps take place between planning authorities; the Procurator Fiscal Services and the legal community.</p>
<p>Q29 a Do you have views on the use of mediation in planning?</p> <p>b When could it be recommended?</p> <p>c How could it be funded and arranged?</p>	<p>Mediation by private sector agencies operating as honest brokers between applicants and objectors at the pre-application or application stage may have a place but should be detached from the decision-making process and decision makers, be completely privately funded and based on the professional competency of the mediator. If introduced, regulation would be an issue and any charges would be a matter wholly for those using such a service.</p>
<p>Q30 Do you see value in a national consultative group to review current problems and help promote best practice and policy development?</p>	<p>Yes, provided it is truly representative of all sides of the debate and geared to a relevant agenda.</p>
<p>Q31 We think that a working group should keep abreast of electronic opportunities for better access to planning information and services, co-ordinating progress across Scotland and drawing attention to good practice. Do you agree?</p>	<p>Yes. A Working Group co-ordinated by the Scottish Executive Development Department is already in place and the Planning and Transportation Department is represented on it. This is proving an excellent introduction to best practice and available software. This issue is high in the Development Quality Action Plan list of priorities and is linked to corporate objectives for encouraging on-line communication, participation, greater efficiency in document handling and in the management of an even more effective and efficient development quality service.</p>

Q32 We propose to explore ways to co-ordinate national and local planning helpline services. Do you agree?

Yes. The feasibility of linking the Scottish Executive's Planning Helpline with the Council's Helpline Service could be explored.