

REPORT TO: CITY DEVELOPMENT COMMITTEE - 23 AUGUST 2010

REPORT ON: CONSULTATION ON PLANNING OBLIGATIONS AND GOOD NEIGHBOUR AGREEMENTS REGULATIONS 2010

REPORT BY: DIRECTOR OF CITY DEVELOPMENT

REPORT NO: 275-2010

1 PURPOSE OF REPORT

- 1.1 The report seeks the approval of the response submitted on behalf of the Council in response to the Consultation Paper issued by the Directorate for the Built Environment, Scottish Government entitled "Consultation on Planning Obligations and Good Neighbour Agreements Regulations 2010".

2 RECOMMENDATION

- 2.1 It is recommended that the Committee notes the response submitted by the Director of City Development on behalf of the Council as outlined in Appendix A to this report in respect of the consultation paper "Consultation on Planning Obligations and Good Neighbour Agreements Regulations 2010".

3 FINANCIAL IMPLICATIONS

- 3.1 There are no financial implications arising from this report.

4 BACKGROUND

- 4.1 The purpose of the Consultation Paper is summarised below. Its full text which incorporates Draft Regulations may be found on the Scottish Government's website at

<http://www.scotland.gov.uk/Publications/2010/04/26150418/0>

Copies of the Consultation Paper have been deposited in the Members' Lounges.

- 4.2 The Consultation Paper posed a series of 20 questions relating to both sets of Draft Regulations and proposed answers for the Council to consider and agree are set out in Appendix A to this report.
- 4.3 The consultation sought comments and feedback on two sets of proposed Regulations that will further implement the Planning etc (Scotland) Act 2006. Specifically, the Regulations relate to Sections 23 and 24 of the 2006 Act which respectively amend and extend Section 75 of the Town and Country Planning (Scotland) Act 1997 dealing with Planning Agreements, and introduce Good Neighbour Agreements.
- 4.4 This consultation does not seek views on policy with regard to the use of planning agreements (or obligations as they will be known) or good neighbour agreements, or the provisions in the primary legislation regarding these measures.

Planning Agreements

- 4.5 When implemented, the revised legislation will introduce a new Section 75, meaning that, in future, planning agreements will be referred to as "planning obligations". This reflects the fact that there is an obligation on the parties to the agreement to abide by its terms. Further amendments to Section 75 will relate to the use of planning obligations. However, the underlying principles governing the use of planning obligations entered into under Section 75 will remain unchanged. These are explained in Circular 1/2010.
- 4.6 The amended provisions will:
- Specifically allow the developer/landowner to propose the obligation rather than the planning authority, ie allowing an obligation to be proposed unilaterally;
 - Specifically allow obligations involving the continuing payment of financial contributions;
 - Allow obligations to set a future date at which they would come into effect or allow for the obligation to be triggered by a specific event (for example, to take effect once a certain stage of a development was completed); and
 - Give planning authorities powers to take direct action (after giving 21 days notice) to carry out work where there is a breach of an obligation. The new provisions also provide powers to recover costs involved from the responsible person.

Good Neighbour Agreements

- 4.7 Good Neighbour Agreements (GNA) are a new element of the modernised planning system, although there have in the past been a small number of developments where agreements similar in effect to the proposed GNAs have been entered into outside the planning system. The introduction of the provisions for GNAs will establish a legislative framework for *voluntary* agreements between a developer or landowner and a local community body, such as a community council or a body or trust which the planning authority considers has a substantial connection to the land in question, eg a local heritage or conservation group (but not the planning authority). A GNA might for example, require a developer to provide information to the community council on the progress of the development and compliance with conditions.
- 4.8 GNAs are not intended to be used to secure the provision of infrastructure or community benefits and the legislation specifically precludes the use of such agreements to secure financial payments.
- 4.9 Section 24 of the Planning etc (Scotland) Act 2006 introduces the above provisions into the 1997 Act (Sections 75D, 75E, 75F and 75G). These introduce the concept of good neighbour agreements and are similar in layout and scope to the sections covering planning obligations. Section 75D sets out a framework for negotiating a GNA; 75E and 75F cover processes for a GNA to be modified or discharged by application to the planning authority and appeal (if necessary) to Scottish Ministers; while 75G covers continuing liability of former owners and others with an interest in the land.

- 4.10 The proposed Town and Country Planning (Good Neighbour Agreements) (Scotland) Regulations 2010 deal with the processes of applying for the modification or discharge of a GNA and are broadly similar in content to those relating to planning obligations. The Regulations reflect the fact that a GNA is made between a community body, rather than a planning authority, and a person with an interest in the land. Therefore, while a planning authority may be approached to consider the discharge or modification of a GNA, it is in this situation acting as a "third party" rather than having a direct interest as it would do with a planning obligation. It should be noted that either party to the GNA may approach the planning authority to request that the agreement be modified or discharged. The legislation requires that before they do so they must have attempted to agree the desired changes with the other party through informal discussions.
- 4.11 It may be that a GNA may relate to issues unconnected to the planning process or where planning permission was not necessary. Consequently, although the legislative procedures are contained in the Planning Act and the "planning authority" is referred to throughout the Regulations, the Council may wish in due course to consider how it intends to administer requests for its intervention.
- 4.12 A copy of the Council's response to the consultation paper is contained in Appendix A to this report. Due to the timescales involved for responses it was not possible to report the response to Committee in advance of submission. However, the Committee is asked to note the action taken and the terms of the response.

5 POLICY IMPLICATIONS

- 5.1 This Report has been screened for any policy implications in respect of Sustainability, Strategic Environmental Assessment, Anti-Poverty and Risk Management. There are no major issues.
- 5.2 In accordance with the Council's policy an Equality Impact Assessment of the consultation paper was undertaken using the Rapid Impact Assessment Tool to determine whether the proposals implementation by Scottish Government is likely to lead to prejudice in terms of race, ethnic background, disability, sexual orientation, gender, religion or belief and age.
- 5.3 No evidence of likely prejudice in any of the 6 strands listed above was detected.
- 5.4 The Equality Impact Assessment will be made available on the Council's website at <http://www.dundee.gov.uk/equanddiv/equipact>.

6 CONSULTATIONS

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

7 BACKGROUND PAPERS

- 7.1 Circular X/2010 containing:

i The Town and Country Planning (Planning Obligations) Regulations 2010 (Draft);

- ii The Town and Country Planning (Good Neighbour Agreement) (Scotland) Regulations 2010 (Draft).
- 7.2 Planning etc (Scotland) Act 2006.
- 7.3 The Town and Country Planning (Scotland) Act 1997 as amended.
- 7.4 Circular 1/2010: Planning Agreements.
- 7.5 Report 66/2009 "Revision of Circular 12/1996: Planning Agreements" considered by the Development Quality Committee on 16 March 2009.
- 7.6 Equality Impact Assessment.

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11 August 2010

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APPENDIX A: SUGGESTED COUNCIL RESPONSES

Summary of Proposals in the Draft Regulations	Question	Suggested Response
The Town and Country Planning (Planning Obligations) (Scotland) Regulations 2010		
<u>Regulation 3</u> sets out in detail the form and content of an application for the modification or discharge of an agreement.	Q1 Do you consider the information required to be (a) sufficient and (b) reasonable for a decision to be taken? Is there any other information that should be supplied?	Information required is basically acceptable. However where the agreement containing the planning obligation has been registered/recorded, either an Extract of the agreement should be provided or the copy provided should contain the date of registration/recording.
<u>Regulation 5</u> sets out the provisions for notifying "interested parties", ie the owner of the land and any other person against whom the obligation is enforceable.	Q2 Is the requirement to notify "interested parties" as defined in the Regulations sufficient?	No. It may be that the planning authority knows that the 'interested party' no longer resides at the address provided by the applicant. The planning authority may also know of any 'interested party' not mentioned by the applicant. Therefore consideration should be given in the Regulations to newspaper advertising and/or the placing of a site notice and the procedure for the service of notices on 'interested parties'. The applicant should be required to defray the costs of such further enquiries.
Other bodies, for example, utility providers, Transport Scotland, community bodies etc, may have a specific interest in the outcome of the application although they have no direct involvement in the agreement itself.	Q3 Should the planning authority be specifically required to inform such third parties where they have an interest?	No. If the agreement containing the planning obligation can be entered into without consultation with, or the consent of 'other bodies', there is no compelling reason why they should be notified in respect of the modification or discharge of such an agreement.

<u>Regulation 6</u> requires that the planning authority makes details of the application to modify or discharge the planning obligation available through the Register of Applications.	Q4 Do you consider that these processes (notification of interested parties and display of the information in the Register) are sufficient to ensure adequate notification?	Yes, in part. The Council's Statutory Planning Register is represented by Public Access which is publicly available to view on-line. The documentation would be lodged within the publicly available case file. However, also see response to Q2 above.
<u>Regulation 5(4)</u> notes that the planning authority does not have to make enquiries as to the identity or whereabouts of interested parties.	Q5 Where an applicant indicates that they do not have information, or that they only have partial information, regarding interested parties (for example, the names but not the addresses) should there be a requirement to check this?	No. Again this could be dealt with by newspaper advertisement or possible site notification.
<u>Regulation 5(3)</u> sets out details as to what information is supplied to interested parties, how representations may be made and within what timescale (21 days).	Q6 Do you consider that this period (21 days) is sufficient to allow interested parties to prepare and submit suitable representations?	Yes. This time period is consistent with other time periods used in the statutory planning process.
<u>Regulation 7</u> sets out that the planning authority should give notice of their decision within two months.	Q7 Do you consider the two month period allows sufficient time for proper consideration of the application?	Not necessarily. Although this period should be sufficient given the terms of the Council's Discretionary Scheme of Delegation, the Regulations should include provisions for extensions of time.
<u>Regulation 8</u> covers issues relating to the planning authority's Notice of Determination which is sent to interested parties only.	Q8 Is it sufficient to issue the notice of determination to the applicant and interested parties (as defined in the regulations)? Should the notice be sent to all parties who commented or recorded in the register of applications maintained by the planning authority under Section 36 of the 1997 Act.	It is sufficient for the Notice to be sent to the applicant and interested parties. Where the planning agreement has been recorded/registered the Notice will also be recorded / registered and therefore available to be accessed in the Register of Sasines or Land Register.
<u>Regulation 9</u> indicates that the current Appeals Regulations are to be adapted to reflect the statutory provision that an appeal to Scottish Ministers may be lodged by an applicant where a planning authority declines to discharge or modify the obligation.	Q9 Do you have any comments on the application of these regulations to this particular type of appeal?	No comment

Regulation 10 allows documents where there is agreement among parties to be changed electronically.	Q10 Do you have any views on the use of electronic communications in respect of an application to modify or discharge a planning obligation?	As far as the application for modification or discharge of a planning obligation is concerned, electronic communication should be acceptable.
The Town and Country Planning (Good Neighbour Agreement) (Scotland) Regulations 2010		
Regulation 3 lists the information to be included in an application to a planning authority for the modification or discharge of a GNA. The application <u>must</u> be accompanied by evidence that the applicant has attempted to reach agreement but has not been successful.	Q11 Do you consider the information required to be (a) sufficient and (b) reasonable for a decision to be taken? Is there any other information that should be supplied?	Response as for Q1 above. Regulations 3(2)(d) to (g) are omitted from the draft.
Regulation 5 requires the planning authority to notify "interested parties" of any application, viz, the community body and any other person against which the terms of the GNA is enforceable. Five days is allowed for notification to the parties.	Q12 Is the requirement to notify "interested parties" as defined in the Regulations sufficient?	Response as for Q2 above. Accordingly the five day period is considered to be restrictive.
Regulation 6 requires that the planning authority makes details of the application to modify or discharge a GNA available through the Register of Applications.	Q13 Do you consider that these processes (notification of interested parties and display of the information in the Register) are sufficient to ensure adequate notification?	Response as for Q4 above. However, as the GNA may not relate to a particular planning permission the Statutory Register represented by Public Access would not be relevant to such cases. Separate on-line provision would have to be made. Guidance from Scottish Government on this matter would be welcomed.
The Council does not have to make enquiries as to the identity or whereabouts of interested parties. It is simply sufficient to send notification to them at the address supplied by the applicant. The planning authority may set a date by which representations must be made.	Q14 Where an applicant indicates that they do not have information, or that they only have partial information, regarding interested parties (for example, the names but not the addresses) should there be a requirement to check this?	Response as for Q5 above.

The notification must be at least 21 days from the date of the service of the Notice.	Q15 Do you consider that this period (21 days) is sufficient to allow interested parties to prepare and submit suitable representations?	Yes
<u>Regulation 7</u> sets out that the planning authority should give notice of their decision within two months of the validation date of the application.	Q16 Do you consider the two month period allows sufficient time for proper consideration of the application?	Two months may not be sufficient for officer discussions and committee consideration as the Council has decided that there should be no delegation in respect of GNAs. Three months may be more appropriate to the Council's decision making processes.
<u>Regulation 8</u> provides that the Notice of Determination is to be issued to the community body and every interested party and set out the terms of the planning authority's decision.	Q17 Is it sufficient to issue the notice of determination only to the applicant and interested parties (as defined in the regulations)?	Response as for Q8 above. It may be advisable also for those making representations to be notified.
<u>Regulation 9</u> indicates that the current Appeals Regulations are to be adapted to reflect the statutory provision that an appeal to Scottish Ministers may be lodged by an applicant where a planning authority declines the application.	Q18 Do you have any comments on the application of these Regulations to this particular type of appeal?	No comment
<u>Regulation 10</u> allows documents, where there is agreement among parties to be exchanged electronically.	Q19 Do you have any views on the use of electronic communications in respect of an application to modify or discharge a planning obligation?	Response as for Q10 above
A Regulatory Impact Assessment is attached to the consultation paper which identifies costs and benefits associated with the introduction of the Regulations.	Q20 Do you have any comments regarding the partial Regulatory Impact Assessment?	As the Regulatory Impact Statement identifies, there will be financial implications arising from any modification or discharge affecting the required developer contributions under a planning obligation. Additional costs would be associated with advertising any appeals and undertaking direct action to rectify a breach of the terms of an obligation. Similar additional burdens would relate to GNAs.

		<p>Given the variables involved and the uncertainty as to the likely number of applicants involved it is impossible to assess the extent of additional costs - administrative and professional staff costs, advertising etc.</p> <p>The Regulations do not refer to the payment of fees by applicants. It is recommended that this is a matter to be raised in a forthcoming Scottish Government consultation paper on resourcing the development management service.</p>
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