

To all Chairs of Scottish Community Councils

Your ref:
Our ref: B3149937

28 September 2009

CHANGES IN THE SCOTTISH PLANNING SYSTEM

You may recall that in March 2009 I wrote to you regarding major changes in the Scottish planning system which would lead to an enhanced role for Community Councils. The letter set out some initial information on the changes which were to occur between the end of February and the beginning of August 2009.

I am writing to confirm that the changes to development management, enforcement and appeals came into force on 3 August. This letter does not set out all the changes but focuses on those which may have a direct impact on the relationship between planning authorities, developers and community councils in the modernised planning system. I have included pointers to where additional information and advice are available from the Scottish Government.

Development Management

Pre-application consultation

We envisage that the main change for community councils will be under new requirements for pre-application consultation. From 3 August, any application for planning permission for a national or major development received by a planning authority is required to have had 'pre-application consultation' (PAC) with communities.

National Developments are set out in the National Planning Framework which includes works relating to the 2014 Commonwealth Games and the replacement Forth Crossing. Major developments are set out in regulations. The types of developments which are covered include: applications for 50 or more dwellings, some waste and energy infrastructure and major retail developments.

Prospective applicants for these developments are required to send relevant community councils a proposal of application notice with information on the proposed application and how they intend to consult the wider community. This must include at least one public event where members of the public may make comments and an opportunity for written comments to be made to the prospective applicant. The planning authority may require additional consultation but that is for the planning authority to decide in each instance. The developer must submit a report on the consultation with the application. If they don't do so, or don't do what is required of them, then the planning authority cannot process the application.

Once a planning application has been submitted to the planning authority, you should ensure that any representations you wish to make on the proposal are submitted to that authority as part of the process of considering the planning application.

Other changes

Of the other changes to development management, particular interest to community councils will be the following:

- Design and Access Statements – set out for certain developments how design and access for disabled people have been considered and what if any consultation there has been on these issues. These statements are now required to accompany applications for major and national developments, and in a range of sensitive areas, including conservation areas, a design statement will be required for significant (shouldn't this be local?) developments. There are some exceptions to these requirements – e.g. applications for planning permission in principle
- New weekly lists – provide more information to community councils on individual applications. Community councils retain the ability to request consultation on applications.
- More time to make representations in response to neighbour notification – changed from 14 to 21 days.
- Pre-determination Hearings – these will be required for all national and some major developments as specified in legislation. In such cases, if a community council makes a representation to the planning authority on the application then it will be given the opportunity to attend and be heard at the committee meeting. The full council will then take the decision on the application.
- Decision Notices – should your community council make a representation on an application, the planning authority must provide you with details of the decision and how to find out more information on how that decision was made.

Enforcement

A number of changes have been made in the area of planning enforcement, including requirements for authorities to have enforcement charters, for developers to notify the planning authority when they are going to start development and when they have completed it and, in certain cases, to have on-site notices with information for the public.

In addition there are new provisions for planning authorities to serve temporary stop notices, where they need to stop activity is urgent (these would need to be replaced with a stop notice proper, a process which takes slightly longer). Planning authorities also have powers to serve fixed penalty notices as an alternative to prosecution where a person fails to comply with the requirements of a planning enforcement notice.

Appeals

The structure of the new planning appeals system is designed to enable decisions to be made at the earliest opportunity. Appellants and planning authorities are expected to state their full case at the outset, removing the need for protracted processes. Another significant change is that the appellant's and the planning authority's previous right to be heard – either at a public local inquiry or a less formal hearing – has been removed. From now, the process of gathering the information needed to make a decision will be managed by the reporter appointed to consider the appeal. The new system retains an opportunity for interested parties, including community councils and local residents, who had previously commented on a planning application to participate in any subsequent appeal.

Local Reviews

Another major change related to appeals is the introduction of Local Review Bodies. Local authorities have been preparing a new scheme of delegation for applications within the class of local developments. In cases where an officer has taken a decision under the terms of the new scheme of delegation, should the applicant want to challenge it, they will have the right to request that the authority reviews the decision through a Local Review Body comprising elected members. This is a major change as previously all appeals, including on the most minor matters, were made to Scottish Ministers. As with appeals to Ministers, the period for seeking a local review is 3 months.

Sources of advice and information

Circulars explaining the new provisions can be found on the Government's website at <http://www.scotland.gov.uk/Topics/Built-Environment/planning/publications/circulars>.

In addition, a guide to the new planning system has been published. It is aimed at those who want to know more about how the planning system works or are looking to submit a planning application. It can be found on the Government's website at <http://www.scotland.gov.uk/Publications/2009/08/11133705/0>.

I enclose a link to the *Guide to the Use of Mediation in the Planning System in Scotland*, which was published in March 2009. Ministers have stated publicly their support for the application of formal mediation and mediation-style techniques to planning. It is suggested that, where used appropriately, mediation can support the delivery of planning reform by averting or minimising disputes and unlocking savings and efficiencies. The Guide provides useful information on the possible application of mediation to a range of planning situations. It also advises on how to commission the services of a mediator and provides useful contacts of where further information on mediation can be obtained. <http://www.scotland.gov.uk/Publications/2009/03/10154116/0>.

I also attach a link to the Planning Aid for Scotland website. As you may be aware, Planning Aid is a charitable organisation which provides free, independent advice, information and training on planning and environmental matters for individuals and community groups. PAS's services are delivered currently by a team of around 220 volunteers, who are all professionally qualified planners, and a small complement of paid staff. <http://www.planning-aid-scotland.org.uk/>.

What you should do now

Community Councils are already playing an enhanced role in the modernised planning system. If you have not already done so, we would therefore strongly encourage your community council to register to receive e-mail alerts for new Scottish Government Planning publications from our web site www.scotland.gov.uk/planning. This will provide you with up to date information on changes to national planning policy, advice and consultations. For those without the use of e-mail or who have difficulty accessing the internet, you should contact Louise Kowalska at the Directorate for the Built Environment on 0131 244 7610.

Please contact me if I can provide further assistance.

Yours faithfully

Graham Robinson

Graham Robinson
Planning Modernisation and Co-ordination

cc Association of Scottish Community Councils, Community Council Liaison Officers, COSLA, Heads of Planning Scotland, Planning Aid for Scotland