

ABERDEEN CITY COUNCIL

COMMITTEE	Planning Development Management Committee
DATE	30 April 2020
EXEMPT	No
CONFIDENTIAL	No
REPORT TITLE	Pre-determination hearings procedure
REPORT NUMBER	GOV/20/087
DIRECTOR	To be confirmed
CHIEF OFFICER	Fraser Bell
REPORT AUTHOR	Alan Thomson
TERMS OF REFERENCE	6 and 7

1. PURPOSE OF REPORT

This report sets out the criteria for when pre-determination hearings will be triggered, and the process that will follow for reporting to this Committee and referral to full Council if appropriate.

2. RECOMMENDATION(S)

That the Committee:-

- 2.1 Note the contents of the report; and
- 2.2 Agree that the Chief Officer – Strategic Place Planning will report to this Committee when a pre-determination hearing is, or may be required, for any application with a recommendation as to :
 - (i) whether a hearing should be held for the application and
 - (ii) whether it should be determined by this Committee or by Full Council.

3. BACKGROUND

Planning (Scotland) Act 2019 changes

3.1 Section 27 of the Planning (Scotland) Act 2019, which came into force on 1st March 2020, removed the requirement that certain applications subject to a pre-determination hearing must be determined by full Council. Although the 2019 Act removed the requirement, full Council can still determine these applications or delegate to a committee if this is deemed appropriate. This would be assessed on a case by case basis.

3.2 The Council agreed the revised Scheme of Governance on the 2nd March 2020 which came fully into force on the 1st April 2020. The revised Terms of Reference now allow for PDMC to determine applications that have been subject to a pre-determination hearing.

Criteria for a pre-determination hearing

3.3 The 2019 Act did not change the criteria for when a pre-determination hearing must be held. Regulation 27 of the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013 states the circumstances when the planning authority must give the applicant and persons who have submitted representations an opportunity of appearing at a pre-determination hearing. The classes of development where there must be a pre-determination hearing (the “*statutory criteria*”) are:

- (a) national developments; and
- (b) major developments which are significantly contrary to the development plan.

3.4 In addition to the above criteria, under Section 38A(4) of the Town and Country Planning Scotland Act 1997, a planning authority may elect to give an applicant or persons who have submitted representations the opportunity of appearing at a pre-determination hearing. At the Development Management Sub-Committee on 17th June 2010, it was determined that the following criteria would trigger a report to that committee to determine whether a pre-determination hearing should be heard. The criteria (the “*discretionary criteria*”) were that the application had been subject of:

- (a) more than 20 objections; **and**
- (b) the Council had a financial interest; and/or
- (c) the application is a departure from the development plan

Proposed procedure

3.5 It is proposed that when an application triggers either statutory criteria or discretionary criteria, the Chief Officer – Strategic Place Planning will initially report to PDMC recommending whether PDMC should determine the application after the pre-determination hearing, or if it would be advisable for the pre-determination hearing and determination to be carried out by full Council. If the report is about an application that has triggered discretionary criteria, the relevant report will first ask PDMC to determine whether a pre-determination hearing is required, giving a recommendation in this regard.

3.6 This would therefore be a two-stage process for those applications meeting the criteria for a hearing, with a further report, after the hearing, making a recommendation for determining the application. If it is decided not to hold a hearing, then the application would be brought back to a future Committee with a recommendation for determination.

3.7 This proposal is recommended as providing stronger governance, greater transparency and scrutiny of decision making for these applications as they are often contentious. Although PDMC will continue to hold pre-determination hearings and subsequently determine the majority of applications, this proposal allows a mechanism for applications that have a major impact on the entire city to be referred to full Council if PDMC decide that this would be prudent.

3.8 Previously, when full Council was determining an application, there was not a legal requirement for all members to attend the pre-determination hearing. Members should note that when an application is to be determined by full Council or PDMC that all members who wish to participate in the determination should attend the pre-determination hearing as well. This represents best practice in decision making and provides consistency with Standing Order 34 (Quasi-Judicial Items of Business) that members should be present for the entire discussion.

4. FINANCIAL IMPLICATIONS

4.1 There are no financial implications arising from approval of this report.

5. LEGAL IMPLICATIONS

5.1 The new Planning (Scotland) Act 2019 removed the requirement that full Councils must determine certain applications that are subject to a pre-determination hearing. Although the Act removed the requirement, full Council can still determine an application including those subject to pre-determination hearings if this is deemed appropriate.

6. MANAGEMENT OF RISK

Category	Risk	Low (L) Medium (M) High (H)	Mitigation
Financial	No direct financial implications.	L	The criteria for pre-determination hearings are not changing, so it is not anticipated that there will be an increase in hearings.
Legal	Applicants and objectors may challenge a decision	L	By inserting this additional step of governance into the decision-making process,

	to not hold a pre-determination hearing, or the forum decision by judicial review.		decisions can be fully justified with clear reasoning and transparent discussion.
Employee	Hearings may result in increased workload for officers	L	The criteria for pre-determination hearings are not changing, so it is not anticipated that there will be an increase in hearings.
Customer	Applicants and objectors may have different views on the appropriate forum for determination of an application.	M	By reporting to PDMC, the reasons for a decision will be fully public and transparent, minimising risk of complaint.
Environment	No direct risk	L	None
Technology	No direct risk	L	None
Reputational	There may be reputational damage to the Planning Authority and to the Council more widely if it is perceived that decisions are not being taken fairly and openly.	M	The recommendations in this report will strengthen the governance arrangements and will allow PDMC to openly determine if a pre-determination hearing is required and the appropriate forum.

7. OUTCOMES

The proposals in this report have no impact on the LOIP or the Council Delivery Plan.

8. IMPACT ASSESSMENTS

Assessment	Outcome
Impact Assessment	Not required
Data Protection Impact Assessment	Not required

9. BACKGROUND PAPERS

Development Management Sub-Committee on 17 June 2010 - Guidelines: When to hold public hearings in relation to planning applications:
<http://councilcommittees.acc.gov.uk/ieListDocuments.aspx?CIId=348&MIId=1533&Ver=4>

10. APPENDICES (if applicable)

None

11. REPORT AUTHOR CONTACT DETAILS

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