

Leadership Advisory Panel

10.00am, Tuesday, 31 March 2020

Planning Contingency Measures

Executive/routine	
Wards	Citywide
Council Commitments	N/A

1. Recommendations

- 1.1 It is recommended that the Leadership Advisory Panel:
- 1.1.1 notes this report and approves the measures proposed in paragraphs 4.7 – 4.8.1 in relation to decisions normally taken by the Planning Committee and the Development Management Sub-Committee; and
 - 1.1.2 notes the intention to delegate authority to the Chief Planning Officer to make decisions in consultation with the Convenor and or Vice Convenor of Planning Committee and the Development Management Sub Committee.

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Planning Contingency Measures

2. Executive Summary

- 2.1 The situation with Coronavirus continues to develop by the day and we continue to follow the latest advice from the Scottish and UK Governments. This is an unprecedented time and our services will be severely tested.
- 2.2 In the interim it is necessary to consider emergency measures to ensure that the Council is able to meet its statutory obligations in relation to making planning decisions. This report outlines the option open to the Council to ensure smooth transitional period.

3. Background

Planning Committee and Development Management Sub-Committee

- 3.1 The Council acts as Planning Authority under the Town and Country Planning (Scotland) Act 1997 and the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997.
- 3.2 Planning officials have the ability to progress a range of decisions through the Council's Scheme of Delegation and through what is known as the Statutory Scheme of Delegation.
- 3.3 In the main, delegated powers in respect of planning fall within the Council's overall Scheme of Delegation to officers set out in terms of the Local Government (Scotland) Act 1973. The Planning etc (Scotland) Act 2006 requires planning authorities to draw up a statutory scheme of delegation in respect of local developments. In planning terms, developments now fall within three categories – national developments, major developments and local developments. The statutory scheme in its current form was adopted by the Council, after the required referral to Scottish Ministers in 7 February 2019.
- 3.4 These schemes of delegation allow a range of decisions to be made by the Chief Planning Officer in respect of Planning Policy, Local Development Plan (LDP) Preparation, Planning applications and other applications associated with the planning system (such as listed building consent, advertisements, certificates of

lawful use or development, etc.), Planning Enforcement, Landscape (including trees), Planning Appeals, Legal Agreements, and other matters related to the planning system. Under these schemes of delegation, it is not possible to determine an application or make a planning decision under delegated authority if such a decision would be made the scheme of delegation.

- 3.5 While most decisions on applications are made under delegated authority, there are around 200 per annum which must be made at the Development Management Sub-Committee, because they sit outwith the scope of the Schemes of Delegation. Often this will be because of the numbers of representations in relation to the applications.
- 3.6 If these applications have to be put on hold until a committee decision is made, this could slow development in Edinburgh and reduce the city's resilience in its economy being able to recover from the Coronavirus measures.
- 3.7 Though the risk is relatively low, there is also potential that if applications are not determined within four months for major applications or two months for local applications, developers will exercise their right of appeal for non-determination.
- 3.8 The Planning Local Review Body is made up of Councillors to provide an independent review of decisions on planning applications. It is not possible to delegate its functions.
- 3.9 City of Edinburgh Council has taken the decision to cease committee meetings until, at least, the end of April 2020.
- 3.10 At present the Planning service is functioning, with staff working from home. The performance of the service is continuing to be monitored to ensure impacts from the Coronavirus measures and the Council's response to these are identified and taken account of.

4. Main report

- 4.1 In the coming weeks and possibly months a number of measures will be required to ensure that the Council and the Planning Service is able to maintain some level of business as usual.
- 4.2 It is proposed that, in this period, council officers will operate a risk-based approach and where possible all applications will be determined through delegated authority. Where decisions need to be taken in relation to Planning Policy, the Development Plan, Planning Enforcement, Landscape (including trees), Planning Appeals, Legal Agreements, and other matters related to the planning system it is similarly proposed that decisions will be taken under delegated authority.

- 4.3 It will not be possible to determine a range of applications submitted from 23 March because planning legislation requires a range publicity for them. Depending on the type of application such publicity includes:
- publication of a weekly list of applications submitted and decisions made;
 - advertisements;
 - site notices; and
 - neighbour notification via letters.
- 4.4 In addition, there is a requirement that application details are made available at the Council's principal office (Waverley Court) and public libraries.
- 4.5 Because of coronavirus measures, it is not possible for the publicity associated with applications to be properly carried out. As a result, it will not be possible to determine applications until these have been published, and any resulting representations considered accordingly. In relation to these matters, the Council has contacted the Scottish Government via Heads of Planning Scotland to suggest that these should be addressed by Government to ensure that application processing can continue. Where possible, the Planning Service will seek extension of time to applications to help avoid potential appeals for non-determination.
- 4.6 However, the Planning Service will continue to process planning and related applications which have already been submitted and have had necessary publicity carried out, and will, where possible, continue to make delegated decision on these.
- 4.7 A number of applications will, however, fall outwith the scope of the Schemes of Delegation. In addition, decisions may be needed on other matters such as Planning Policy, the Development Plan, Planning Enforcement, Landscape (including trees), Planning Appeals, Legal Agreements, and other matters related to the planning system. In these circumstances it is proposed to temporary change the Council Scheme of Delegation to Officers to allow the following:
- 4.7.1 "During the period of the where the Council's Leadership Advisory Panel is in operation as a result of Coronavirus measures, in relation to the Chief Planning Officer, the requirement for decisions to be made by Planning Committee or Development Management Sub-Committee shall not apply and instead, decisions which would otherwise be required to be made at either Committee shall be made by the Chief Planning Officer, in consultation with the Convener or Vice-Convener or both the Convener and Vice-Convener of either Committee (as appropriate), and subject any such decision having regard to the public interest and that decision being reported to the next meeting of the Planning Committee or Development Management Sub-Committee."

4.8 In relation to the Statutory Scheme of Delegation for Local Developments this matter is being pursued with Scottish Government. If it necessary to also change this scheme, approval for the following addition to the scheme is sought:

4.8.1 “During the period of the where the Council’s Leadership Advisory Panel is in operation as a result of Coronavirus measures, in relation to the Chief Planning Officer, the requirement for decisions to be made by the Development Management Sub-Committee shall not apply and instead, decisions which would otherwise be required to be at Committee shall be made by the Chief Planning Officer, in consultation with the Convener or Vice-Convener or both the Convener and Vice-Convener the Development Management Sub-Committee, and subject any such decision having regard to the public interest and that decision being reported to the next meeting of the Planning Committee or Development Management Sub-Committee.”

4.9 Such an approach would allow decisions, so far as practical, to continue to be made.

5. Next Steps

5.1 If these changes are accepted, decision making will be made in accordance with these amendments and subject to necessary approval by the Ministers in respect of the Statutory Scheme.

6. Financial impact

6.1 Many of the planning applications that normally require to be determined by Committee are for the largest developments in Edinburgh. These may be relatively at early stages of the design process and if planning decisions can be made as early as possible, it will allow developers to continue their work so that when the coronavirus measures reduce or end, development within the city can more readily continue. This approach therefore helps the resilience of the City’s economy.

7. Stakeholder/Community Impact

7.1 The contents and recommendations neither contribute to, nor detract from, the delivery of the three Public Sector Equality Duties.

7.2 The contents and recommendations described in the report do not deliver any outcomes relating to the ten areas of rights, nor do they enhance or infringe them.

7.3 There is no environmental impact arising from the contents of this report.

8. Background reading/external references

8.1 None.

9. Appendices

9.1 None.