Planning Committee

2.00pm, Wednesday, 14 October 2020

Scottish Government Consultation on Proposed Changes to Pre-Application Consultation Requirements in Planning – proposed response

Executive/routine	Routine
Wards	All
Council Commitments	

1. Recommendations

1.1 It is recommended that the Committee:

　1.1.1 approves the content of the consultation response attached at Appendix 1; and

　1.1.2 agrees that this will be sent to Scottish Government as the City of Edinburgh Council's formal response to the Consultation on Proposed Changes to Pre-Application Consultation Requirements in Planning.

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Executive Director of Place

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Report

Scottish Government Consultation on Proposed Changes to Pre-Application Consultation Requirements in Planning – proposed response

2. Executive Summary

2.1 This report seeks approval of the Council's response to the Scottish Government's consultation on Proposed Changes to Pre-Application Consultation Requirements in Planning.

2.2 Requirements already exist for pre-application consultation (PAC) with local communities on national and major developments. These requirements were introduced in 2009, as part of the implementation of the Planning etc. (Scotland) Act 2006.

2.3 The proposed changes to PAC are part of a wider package of measures on improving community engagement in planning matters and building public trust.

2.4 This consultation response supports the need for greater accountability and transparency in the process.

3. Background

3.1 The Planning (Scotland) Act 2019 was passed by the Scottish Parliament in June 2019. This will determine the future structure of the modernised planning system.

3.2 The detail of how the new Act's provisions will work in practice will be contained within secondary legislation and guidance, which will be developed over the coming months.

3.3 The proposals for changes to PAC come, in part, from the report by the independent panel assigned to review the Scottish Planning system: 'Empowering Planning to Deliver Great Places' (May 2016). The report referred to concerns that PAC can be a 'tick box' exercise and that there was a lack of feedback to communities on their views at the pre-application stage – i.e. prior to the finalised application being made.

3.4   This consultation presents options for greater transparency and clarity around the PAC process. It seeks views on the detailed legislative proposals for PAC, the approach to engagement with disabled people during PAC, and on the content of guidance on PAC.

3.5   The results of consultation will assist in finalising the changes to legislation and guidance on PAC.

3.6   It should be noted that the consultation is concerned only with the PAC process. The wider package of measures on improving community engagement in planning matters and building public trust includes aspects of local place plans and innovative methods of early community engagement in areas of change. The Council's approach to the use of Place briefs is one aspect of that package.

4.   Main report

4.1   This Scottish Government consultation on PAC requirements in Planning is welcomed as the Council supports meaningful community engagement at an early stage in the Planning process.

4.2   Early engagement must be wide reaching involving the wider community, proportionate to the scale of the development and responsive to the comments received to ensure it is meaningful and not a tick box exercise, which is a concern that has previously been expressed.

Public Events

4.3   Currently prospective applicants are required to hold at least one physical public event as part of PAC. During the Covid-19 emergency this requirement is suspended temporarily, and online alternatives are being promoted through guidance.

4.4   In order to help address concerns about PAC being a 'tick box' exercise, and concerns about a lack of feedback to the public on the views they have submitted (prior to the application being made), the Scottish Government is proposing to make a second public event mandatory as part of the PAC process.

4.5   From our experience of major development proposals in Edinburgh, exemplar engagement should have several events. The proposal here is that the second event would provide feedback to the community following receipt of comments after the first event. The developer would need to clearly set out the purpose of the first event to ensure the second event is meaningful. It seems reasonable that a second public event would feedback on the comments received at the first event, with the developer explaining how they intend to address (or explain why they are not addressing) the issues raised.

4.6   During the Covid-19 emergency, the Planning Service has agreed a number of online PAC events with prospective developers in line with Scottish Government advice. There has been no formal evaluation but there have been very few issues reported to the Planning Service about online consultations.

4.7   Online events are accessible to a wide range of people including the "hard to reach" groups; those with children/the young/disabled/shift workers who may find it difficult to attend events due to the timing or locality. However, there may still be barriers to engagement for people without access to the internet. The Scottish Government recognises that it is unlikely that a move to online engagement will in itself be a solution for issues around engagement in planning. The Council would encourage more use of online consultation events but that other forms of engagement should be explored to meet local requirements.

Availability of documents

4.8   Likewise, currently prospective applicants conducting PAC are required to make information on the proposal available to members of the public in a physical format (paper copies). During the Covid-19 emergency the option was allowed to provide information by electronic means (online).

4.9   The Council would support the continued practice of online documents but the availability from the prospective applicant of hard copies (paper) for specific requirements in the community. Experience has shown that developers provide more information when consultation is online. There is a high level of online access amongst Edinburgh households but for those without personal access, it is recommended that one solution would be the continued use of online access in libraries.

PAC Content

4.10   In order to improve the consistency and transparency of PAC reports, and the PAC process itself, the Scottish Government is proposing to specify the content of PAC reports in regulations. The Council agrees with this proposal.

4.11   The Council would also agree that there needs to be consistency between the Planning Advice Note (PAN) and the subsequent application. However, the Council considers that this requires further clarification from Scottish Government. For example, following the PAC process the description of the proposal may change. If the Council did not accept these minor changes, then the applicant would need to be very vague in their PAN description, which would then lead to an inadequate description at the application stage.

Pre-application Consultation with Disabled People

4.12   It is proposed to prepare guidance relating to the inclusion of consultation with Access Panels at the PAC stage. The inclusion of Access Panels at the PAC stage would greatly assist in designing prospective developments. The Council would welcome this proposal.

General Comments

4.13   The PAC is not material to the determination of a planning application. It engages the community at an early stage in the planning process. Guidance must be clear in setting out the scope of early engagement to ensure expectations from the community are reasonable and managed.

4.14 At present PAC reports are submitted by developers but may not always be a true reflection of the views expressed by the community. However, there is no statutory recourse if this is the case. The current practice of advertising public events in the local newspaper should be removed from the process. This is costly and disproportionate to the audience it reaches. The practice is considered outdated. Instead, it is suggested that events could be advertised on the Planning Authority website, alongside weekly lists.

Conclusion

4.15 To encourage greater community engagement early in the planning process and manage expectations, the Scottish Government must recognise the need to update practices and guidance and move towards to the use of online technology to encourage efficiencies and reach wider audiences.

5. Next steps

5.1 The consultation response will be submitted once it has been approved by Committee.

5.2 The consultation closes on 6 November 2020 and the responses received by the Scottish Government will inform changes to legislation and guidance on PAC.

6. Financial impact

6.1 None

7. Stakeholder/Community Impact

7.1 Community groups can respond directly to the Scottish Government's consultation. This is actively being encouraged through Planning Aid Scotland (PAS).

8. Background reading/external references

8.1 Scottish Government consultation paper http://www.gov.scot/publications/proposed-changes-pre-application-consultation-requirements-planning-consultation/pages/1/

9. Appendices

9.1 Appendix 1 – Consultation on Proposed Changes to Pre-Application Consultation Requirements in Planning - Response by the City of Edinburgh Council.

Appendix 1:

Scottish Govt Consultation: Proposed Changes to Pre-Application Consultation Requirements in Planning

September 2020

Requirements on the Provision of Information on PAC Proposals

Currently the prospective applicant conducting PAC is required to make information on the proposal available to members of the public. This has generally been taken to be in physical ('hard copy') formats from a physical location.

During the COVID-19 emergency the option was allowed to provide information by electronic means (online).

The intention is that such information should be required to be available in 'hard copy' and electronic formats (that is members of the public can choose the format).

Q1. Do you agree with the proposal to require the PAC information, which is to be made available to the public, to be available both by electronic means and in 'hard copy' format?

YES

Please comment and explain your view

The Council would support the continued practice of online documents but the availability from the prospective applicant of hard copies (paper) for specific requirements in the community. Experience has shown that developers provide more information when consultation is online. There is a high level of online access amongst Edinburgh households but for those without personal access, it is recommended that one solution would be the continued use of online access in libraries.

Hard Copies (papers) should be only be available upon request directly to the developer. Some community councils will find it useful to have hard copies to facilitate their discussions.

The Council supports the move towards greater use of online technologies.

Public Events

Currently prospective applicants are required to hold at least one physical public event as part of PAC. During the COVID-19 emergency this requirement is suspended temporarily, and online alternatives promoted in guidance.

We would be interested to hear of people's experience of online events as part of a PAC process.

Q2. Please give us details of your experience using online alternatives to public events during the COVID-19 emergency.

Please comment and explain your view

There have been very few issues during Covid as a result of switching to online only consultations. However, post Covid, the Council would encourage more use of online consultation events but that other forms of engagement should be explored to meet local requirements.

If the aim is to try to engage "hard to reach" groups, going online is accessible to a wide range of groups/age profiles as there is no requirement to physically attend the event (those with children/young/disabled/shift workers may find it difficult to attend events due to timing/locality). However, there may still be barriers to engagement for people without access to the internet. It is recommended that one solution would be the continued use of online access in libraries.

We have successfully held online meetings of Planning Committee, Development Management Sub-committee and the Local Review Bodies with webcasting and recordings available for later viewing on the Council website.

Often the issue at public events is who is representing the developer, and can they answer all the questions. Online events may make it easier for the developer to resource attendance from a range of experts in this type of engagement.

The proposal is that in order to help address concerns about PAC being a 'tick box' exercise, and concerns about a lack of feedback to the public on the views they have submitted (prior to the application being made), an additional public event should be required as a minimum in PAC.

As we have yet to evaluate the use of online public events in PAC, this additional public event would be a physical event.

It is proposed that a minimum period of seven days between the required public events is specified. Also, a second newspaper notice with details of the second event and PAC must be published after the first public event.

Q3. Do you agree with the proposal to make a second physical public event a minimum requirement of PAC?

YES

Please comment and explain your view

At present PANs do the minimum. Exemplar engagement should have several events, the Council supports this proposal in principle. However, the proposal here is that the second

event would provide feedback to the community. The developer would need to clearly set out the purpose of the first event to ensure the second event is meaningful.

There is no need for any Newspaper Advert – this is an outdated practice. It is disproportionately costly in comparison to the audience it reaches. Events could be advertised on the Planning Authority website, alongside weekly lists.

Q4. Do you agree that a second physical public event required as part of PAC must include feedback to the public on their earlier engagement in PAC?

YES

Please comment and explain your view

It seems reasonable that a second public event would feedback on the comments received at the first event and how the developer intends to address (or explain why they are not addressing) the issues raised.

Q5. Do you agree with the proposed minimum time period between the required public events in PAC?

NO

Please comment and explain your view

From our experience, this seems like too short timescale for the developers to process the community feedback in a meaningful way and consider how this may be addressed.

Q6. Do you agree with the proposed requirement for an additional newspaper notice for the second required public event?

NO

Please comment and explain your view

See response to Qu 3, there shouldn't be any Newspaper notices due to the cost versus very limited reach of them. This is an outdated practice. We should be considering alternative more effective promotion in general.

PAC Report – Content

In order to improve the consistency and transparency of PAC reports, and the PAC process itself, the proposal is to specify the content of PAC reports in regulations. Guidance will still be used to elaborate on the requirements.

The proposed precise wording is specified in the draft regulations accompanying the consultation paper (Annex A). Basically, the proposed content is:

the dates on which and places where public events were held,

a description of any additional steps taken by the prospective applicant to consult with members of the public as regards the proposed development,

a list of bodies, groups and organisations who were consulted by the prospective applicant,

evidence of the prospective applicant carrying out the activities described under sub-paragraphs (a), (b) and (c),

copies of—

(i) any materials sent to consultees,

(ii) any materials provided to those attending a public event, and

(iii) any visual presentation shown or displayed at a public event.

photographs of any display boards or models available at public events,

confirmation as to whether consultees and attendees at public events were informed that pre-application consultation does not remove the right or the potential need to comment on the final application once it is made to the planning authority,

a summary of—

(i) the written responses to consultations, and

(ii) views raised at public events,

an explanation of how the prospective applicant took account of views raised during the pre-application consultation process, and

an explanation of how members of the public were given feedback on the prospective applicant's consideration of the views raised during the pre-application consultation process.

Q7. Do you agree with the proposed list of required content for PAC reports?

YES

Please comment and explain your view

No comment.

PAC Exemption – who is making the application

The proposal is that only the party who made the earlier application would be entitled to an exemption from PAC for a second application, perhaps amended in some respects, for the same basic proposal.

Q8. Do you agree with the PAC exemption being limited to the same applicant who made the earlier application?

NO

Please comment and explain your view

Exemption should relate to same nature of "development" not the identity of the applicant, which is not a planning matter. Planning permission runs with the land.
However, it does need to be clear <u>who</u> is applying – in our experience, this is important information to assist the understanding of the community.

PAC Exemption - The circumstances in which a second application is made

It is proposed that a second application should not be able to get exemption from PAC requirements where the planning authority declined to determine the earlier application (that is the planning authority refused to deal with it under Section 39 of the Town and Country Planning (Scotland) Act 1997).

That means, subject to meeting the other criteria, a second application would be able to get an exemption where the earlier application is either:

withdrawn;

refused;

granted;

appealed;

called-in for determination by Scottish Ministers; or

still before the planning authority.

Q9. Do you agree with the circumstances regarding an 'earlier application' (withdrawn, refused etc.) in which a second application would be able to get exemption from PAC?

YES

Please comment and explain your view

Agree, provided it is for essentially the same development.

PAC Exemption - Relationship between the proposals

In order to qualify for PAC exemption there needs to be a relationship between the two development proposals contained in the earlier and second applications.

The consultation paper discusses some of the issues in this regard. The intention is to use an existing definition from the regulations on planning application fees which applies to fee exemptions. That is:

"development of the same character or description as development to which an earlier application relates and to no other development' and where "the application relates to the same site as that to which the earlier application related, or to part of that site, and to no other land except land included solely for the purpose of providing a different means of access to the site."

Both of these aspects of development and land would need to be met to qualify for exemption from PAC.

Q10. Do you agree with the approach to linking the description of the proposal in the earlier application and that in the second application for the purposes of a PAC exemption?

YES

Please comment and explain your view

Agree that there needs to be a degree of consistency between the PAN and the subsequent application.

However, further clarification is required. For example, an applicant submits a PAN with a description, but following the PAC process the description of the application alters slightly. If the Council didn't accept these minor changes, then the applicant would need to be very vague in their initial PAN description, which would then lead to an inadequate description at the application stage.

The Council also accepts applications for a part of the site covered by a PAN, i.e. the application site does not have to match the size of the PAN boundary, or there could be multiple applications for different elements/uses within a PAN site. This needs further consideration.

PAC Exemption - The Relationship with the Proposal of Application Notice

We also consider it appropriate that both applications should fall within the scope of what was considered at PAC.

So, the proposals in both applications must also be within the scope of the description of development contained in the proposal of application notice (PAN), served on the planning authority in relation to the earlier application.

Q11. Do you agree that the exemption from PAC should be linked to the content of the PAN served in relation to PAC for the earlier application?

YES

Please comment and explain your view

No further comment.

PAC Exemption - Time Limit

We are proposing that any exemption from PAC for a second application be time limited – that is, it cannot be divorced in time too much from the PAC done prior to the earlier application.

Such a time limit would need to allow an opportunity for the earlier application to be processed. Running the period from, for example, the date of decision on that earlier application, would be somewhat open ended.

We propose that to qualify for an exemption from PAC, the second application would need to be made within 18 months from the date the earlier application was made to the planning authority.

Q12. Do you agree with the proposed time limit on exemptions from PAC?

NO

Please comment and explain your view

From experience of many major development proposals in Edinburgh, we would suggest 12 months. This would be easier to monitor, more consistent with meaningful community engagement and would encourage developers to bring forward development proposals more quickly.

Timing and Transitional Arrangements

We intend to bring into force the new time limit on making applications to which PAC requirements apply at the same time as the proposed changes in this paper.

Section 18 of the Town & Country Planning (Scotland) Act 2019 specifies that applications to which PAC applies must be made within 18 months from the date the proposal of application notice (PAN) is given to the planning authority.

The intention is to have a transitional arrangement so that in cases where the PAN was given before the new requirement comes into force, the prospective applicant has 18 months from that coming into force date to make an application. So, for example, prospective applicants do not suddenly find themselves with no time left to make an application.

The requirements for making information available in hard copy and electronic formats, having an additional public event and complying with requirements on the content of PAC reports would apply to cases where the PAN was given on or after the coming into force date of the new regulations.

Exemptions from PAC would be available in qualifying cases from the coming into force date of the regulations.

Q13. Do you agree with the proposed transitional arrangements for bringing into force the new PAC requirements, including the time limit for making applications to which PAC requirements apply?

YES

Please comment and explain your view

But as previously stated this should be 12 months, which also has the potential to reduce the number of speculative PANs, which causes anxiety and uncertainty in communities.

Pre-application Consultation with Disabled People

During the passage of the Bill which became the Planning (Scotland) Act 2019, the issue of statutory consultee status for Access Panels was discussed. Whilst the Scottish Government could not support the amendment in this regard, Kevin Stewart MSP, Minister for Local Government, Housing and Planning indicated that involvement at the pre-application stage represented the best opportunity for these parties to influence proposals, and that the Scottish Government would consider this further.

We propose guidance on highlighting the importance of pre-application consultation with these parties, and will consider what we can say about how best this might be achieved. The general requirements in the PAC report should then indicate what was done and how any issues raised were considered in finalising the proposal.

Q14. Please give us your views on the proposed approach to pre-application engagement with disabled people.

Please comment and explain your view

The inclusion of Access Panels at PAC stage would greatly assist. Planners are not qualified in matters concerning disability and in order to understand such matters it is necessary to look through the prism of representatives of those with disabilities.

PAC Guidance

As indicated above, the intention is to produce guidance supporting the revised PAC arrangements. In addition to engagement with Access Panels, this would include matters such as: the issues to be considered when holding and scheduling public events; consideration of the nature of local communities and approaches to engagement; and the use of information technology in supporting statutory requirements. Reference would be made to existing good practice guidance on effective engagement with communities.

Q15. Please tell us what issues you think should be covered in guidance for PAC.

Please comment and explain your view

The primary purpose of any guidance should focus on the overall objective of delivering great places. However, it would be useful to include information on the suitability of locations for public events – preference should be given to libraries, community centres and public buildings. These buildings will be barrier free and therefore accessible.

Impact Assessments

Included with the consultation paper are partial versions of the following assessments:

Business and Regulatory Impact Assessment (BRIA)

Combined Equalities and Child's Rights and Welfare Impact Assessment (EQIA/ CRWIA)

There is also a screening paper regarding an Island Communities Impact Assessment. Based on the information we have identified, we do not consider there to be a significant impact on island communities in particular arising from the proposed changes.

Q16. Please give us any views you have on the content of these partial BRIA and combined EQIA/CRWIA.

Please comment and explain your view

No comment

Q17. Do you have or can you direct us to any information that would assist in finalising the BRIA and combined EQIA/ CRWIA?

Please comment and explain your view

No comment

Q18. Please give us your views on the Island Communities Impact Assessment screening paper and our conclusion that a full assessment is not required.

Please comment and explain your view

No comment

Q19. If you consider that a full Island Communities Impact Assessment is required, please suggest any information sources that could help inform that assessment.

No comment

General Question

Q20. Please give us any general comments on the PAC proposals or related issues not covered by earlier questions.

The PAC is not material to the determination of a planning application. It engages the community at an early stage, but it can unreasonably raise expectations. Exemplar consultation by developers often results in more engagement but lead to more objections. Developers are unlikely to encourage more engagement for this reason.

There is no way at present to check if the developer PAC feedback reflects the actual view expressed by the community. Our experience is that we receive comments that the PAC is not an accurate reflection of the comments made, but there is no recourse.

Guidance on the PAC process should be explicit about the purpose, but also about what can be reasonably expected from the process.

More consideration should be given as to how to engage the 'hard to reach' sectors of society.

Need to remove the reliance on advertising in the newspaper – this is an outdated practice.

End.