



**WEST LOTHIAN COUNCIL**

**CHANGES TO STANDING ORDERS AND SCHEME OF ADMINISTRATION FOR  
DEVELOPMENT MANAGEMENT COMMITTEE AND LOCAL REVIEW BODY**

**REPORT BY CHIEF EXECUTIVE**

**A. PURPOSE OF REPORT**

To seek approval of changes proposed to Standing Orders arising from the consideration by Development Management Committee and the Local Review Body of repeat or duplicate planning and/or review applications.

**B. RECOMMENDATIONS**

1. To note the issues raised by committee consideration of repeat/duplicate planning applications and/or review applications
2. To agree the changes to Standing Orders and the Scheme of Administration set out in the appendix to enable those applications to be determined
3. To make appointments required as a result of any changes approved
4. To agree that those changes should take effect on 3 December 2018 to ensure they apply to the next meetings of the two committees concerned and allow training to take place where required

**C. SUMMARY OF IMPLICATIONS**

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|------------|--|--|
| <b>I</b>   | <b>Council Values</b>  | Focusing on our customers' needs; being honest, open and accountable; making best use of our resources         |
| <b>II</b>  | <b>Policy and Legal (including Strategic Environmental Assessment, Equality Issues, Health or Risk Assessment)</b> | Local Government (Scotland) Act 1973; Standing Orders for the Regulation of Meetings; Scheme of Administration |
| <b>III</b> | <b>Implications for Scheme of Delegations to Officers</b>  | None   |
| <b>IV</b>  | <b>Impact on performance and performance Indicators</b>  | Not relevant   |
| <b>V</b>   | <b>Relevance to Single Outcome Agreement</b>   | Not directly relevant  |
| <b>VI</b>  | <b>Resources - (Financial, Staffing and Property)</b>  | Within existing resources  |

|             |                              |   |
|-------------|------------------------------|---|
| <b>VII</b>  | <b>Consideration at PDSP</b> | Partnership & Resources PDSP, 5 October 2018  |
| <b>VIII</b> | <b>Other consultations</b>   | Group Leaders; Chairs of Development Management Committee and Local Review Body; Head of Planning, Economic Development & Regeneration Services; Legal Services; Committee Services |

## **D. TERMS OF REPORT**

### **1 Background**

- 1.1 Development Management Committee (DMC) determines applications for planning permission other than those dealt with under delegated powers and those within the remit of the West Lothian Planning Committee. Appeals from its decisions go to the Scottish Government's Planning and Environmental Appeals Division (DPEA). The council's Local Review Body (LRB) determines applications for review of planning decisions taken by officers under delegated powers. Each committee has nine members. Eight councillors sit on both those committees. One councillor sits only on DMC. One other councillor sits only on LRB.
- 1.2 There is almost no cross-over of business between the two committees. However, on rare occasions an application dealt with by one of them may be resubmitted and find its way, along a different decision-making path, to the other committee. On other occasions an application determined by one of those two committees and resubmitted may find its way back to the same committee again.

### **2 The problem**

- 2.1 Those unusual cases require members to consider their position under the Councillors' Code of Conduct. Members require to ensure a fair hearing of all applications. They require to approach each case before them with an open mind and determine it on its own merits. They have to apply the objective test and consider how a reasonable member of the public would view their taking part in making a decision on what may be an identical application within a short period of time. They may well be able to conclude that in all the circumstances their participation is not affected. Equally, on occasions they may feel that the appropriate thing to do is to declare and withdraw.
- 2.2 Where sufficient members feel constrained to withdraw it may not be possible to have a quorum of members present. In some very exceptional cases it may not ever be possible to ensure that a quorum is present. Without a quorum, the item of business cannot be determined. If a timeous decision is not made then a right of appeal or review may arise through non-determination and without the appropriate committee having had a chance to make a decision for the council as planning authority.

### **3 The options**

- 3.1 A number of options were considered to address the problem:-
  - Allow substitutes to attend. The council has a longstanding policy not to allow substitutes at planning committees. Substitutes are allowed to cover for members who are unable to attend a meeting rather than for members who declare an interest and withdraw. They also require to substitute for a whole meeting and not for an individual item of business

- Adjust membership numbers and/or members appointed to each. There is a common view that the number of members on each committee is appropriate to ensure a spread of members, responsibilities and to enable a quorum to be present in normal circumstances. To reallocate members would not avoid the problem of a repeat application coming back to the same committee
- Referral of affected cases to the West Lothian Planning Committee. That committee exists solely to give a hearing to parties before full council makes a decision on applications for major developments which are significantly contrary to the development plan. The quorum is one quarter of the full membership of the council. It only meets when it has business to consider
- Full delegation to officers to determine those repeat cases. This would involve officers making assumptions about the personal decisions members will make about their participation. It would also represent a departure from the internal rules about applications finding their way to DMC rather than being determined under delegated powers
- A small pool of additional “auxiliary” members is appointed to both committees to be called upon in these exceptional circumstances to ensure a quorum. It means only an occasional commitment by the extra members and roughly maintains the present size and make-up of the committees

3.2 After consideration and consultation the last of these options is recommended. It would only be utilised when one of these exceptional cases has been on an agenda for one of the two committees and has not been determined for want of a quorum. It would not be a pool of substitutes to be called on by members themselves. Officers would not be involved in trying to anticipate the decisions members may take in relation to the Code of Conduct.

#### **4 The changes**

- 4.1 The appendix shows the changes required to give effect to this proposed new arrangement. The same changes are suggested for both committees. The adjustment to the Standing Orders for meeting quorums is to make it clear what happens when any meeting is inquorate for just one item of business.
- 4.2 The number and choice of members is very much for council. However, members may wish to consider the appointment of two additional members from the three political groups.
- 4.3 One of these cases is due to come to DMC in December. For that reason, it is suggested that the changes take effect on 3 December. That will also allow members to be appointed to fill the auxiliary places and for any training required to take place.

#### **E. CONCLUSION**

Making these changes will address an unexpected and comparatively rare problem in disposing of planning business at committee.

#### **F. BACKGROUND REFERENCES**

- 1 Standing Orders for the Regulation of Meetings

## 2 Scheme of Administration

Appendices/Attachments: 1. Changes to Standing Orders and Scheme of Administration

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Graham Hope, Chief Executive

Date of meeting: 20 November 2018

## APPENDIX

### PROPOSED CHANGES TO STANDING ORDERS

#### 26 QUORUM

A quorum of the Council shall be one quarter of Members. If a quorum is not present within 15 minutes of the scheduled start time, the meeting shall be adjourned until the date and time that is determined by the Chair at the time or afterwards. If a quorum is not present for individual items of business, those items shall be continued to a meeting on a date and time to be fixed by the Clerk, in consultation with the Chair. The meeting shall proceed to deal with the remaining items of business.

#### 42 QUORUM - COMMITTEES

A quorum of a Committee shall be as detailed in the Council's Scheme of Administration. If a quorum is not present within 15 minutes of the scheduled start time, the meeting shall be adjourned until the date and time that is determined by the Chair at the time or afterwards. If a quorum is not present for individual items of business, those items shall be continued to a meeting on a date and time to be fixed by the Clerk, in consultation with the Chair. The meeting shall proceed to deal with the remaining items of business.

#### 48 QUORUM - SUBCOMMITTEES

A quorum of a Sub-Committee shall be three Members. If a quorum is not present within 15 minutes of the scheduled start time, the meeting shall be adjourned until the date and time that is determined by the Chair at the time or afterwards. If a quorum is not present for individual items of business, those items shall be continued to a meeting on a date and time to be fixed by the Clerk, in consultation with the Chair. The meeting shall proceed to deal with the remaining items of business.

### DEVELOPMENT MANAGEMENT COMMITTEE

#### A REMIT AND POWERS

- 1 With the exceptions of applications referred to the West Lothian Planning Committee and the council's functions under the High Hedges (Scotland) Act 2013, in relation to matters which are the responsibility of the council's Planning Service:-
  - a) Determination of planning and other regulatory applications
  - b) Issuing of notices, certificates and orders
  - c) Taking enforcement action, including emergency or urgent action, in relation to allegations of breach of consent, permission or other controls
- 2 Considering and approving appeal submissions in cases where a decision was previously made by the committee contrary to officers' recommendations.
- 3 Authorising the making of representations, including objections, on behalf of the council in relation to applications in neighbouring council areas where the council has been consulted.
- 4 Responding on behalf of the council to statutory consultations and notifications of licence applications for windfarm developments.

## **B MEMBERSHIP**

- 1 Core membership of 9 members (3 Labour, 3 SNP, 2 Conservative, 1 Independent).
- 2 Auxiliary membership of X members (X Labour, X SNP and X Conservative) to be called on in the circumstances described in G7, below.
- 23 All members (core and auxiliary) require to undergo induction and regular refresher training as arranged by the relevant Depute Chief Executive, and shall not sit at meetings of the Committee unless they have attended such training to the satisfaction of the Clerk.

## **C QUORUM AND VOTING**

- 1 3 members, whether core or auxiliary.
- 2 Voting at meetings of Development Management Committee shall be conducted by a roll call vote.

## **D SUBSTITUTES**

- 1 Substitutes are not allowed.

## **E MEETINGS (SUBJECT TO STANDING ORDER 41)**

- 1 Scheduled meetings every 4 weeks, or as near thereto as is practicable, throughout the calendar year, including the summer recess.
- 2 Where there is no business to be brought to a scheduled meeting, the Clerk, in consultation with the Chair, and prior to the notice calling the meeting being issued, may cancel that scheduled meeting.
- 3 Additional meetings may be arranged by the Clerk, in consultation with the Chair, in the circumstances described in G7, below.

## **F REPORTING ARRANGEMENTS**

- 1 Minutes to be reported to and approved at the next meeting of the Committee.

## **G MISCELLANEOUS**

- 1 Site visits for members of the Committee are to be arranged by the Depute Chief Executive for Education, Regulatory and Area Services in consultation with the Chair. Not all sites will be visited, and attendance at site visits is not compulsory for members of the Committee.
- 2 The Scheme of Delegations to Officers confers on the Depute Chief Executive for Education and Planning and the Head of Planning, Economic Development & Regeneration a power to determine applications in certain circumstances. Decisions proposed to be made by officers shall, where required by the Scheme of Delegation, be circulated to members on a weekly list, and items of business will only be brought to the Committee when called to committee or in other circumstances where those delegated powers do not apply.
- 3 The Depute Chief Executive for Education, Regulatory and Area Services is responsible for issuing Advice Notes to applicants and objectors explaining the rules about objections and hearings at meetings of the Committee, advising interested parties of the date of the meeting when their case will be brought to Committee, and for preparing a list of those who desire to, and who are entitled to, appear at those meetings.
- 4 Hearings at meetings of the Committee are conducted in accordance with a standard

procedure. The procedure will be notified to interested parties in advance of and at meetings of the Committee by the Depute Chief Executive for Education, Regulatory and Area Services.

- 5 Where Members move a position against officers' recommendations or against the terms of the development plan then those who move and second the motion shall provide a statement of their planning reasons for that position before a vote is taken, and the Clerk shall note and minute those reasons.
- 6 For appeal submissions in cases where the decision was contrary to officers' recommendation the Depute Chief Executive for Education, Regulatory and Area Services, in consultation with the Chief Solicitor, shall prepare, or procure the preparation of, the appeal submission. Prior to submitting the statement of the Council's case, the Chair and ward Members shall be consulted. If required, the submission may be made through the use of Standing Order 31.
- 7 On occasion, a quorum of core members may not be available due to the withdrawal of members under the Councillors' Code of Conduct. Where an item of business cannot be transacted in those circumstances it shall be continued to a meeting on a date and time to be fixed by the Clerk, in consultation with the Chair. The auxiliary members shall be summoned to that meeting along with those core members who indicate to the Clerk that they are able to take part. The meeting shall only deal with such an adjourned item or items of business.

## **LOCAL REVIEW BODY**

### **A REMIT AND POWERS**

- 1 Determination of requests for review of decisions by the Council's Appointed Person to refuse, or grant subject to conditions, applications for planning permission for local developments covered by the Council's statutory Scheme of Delegations, and for the non-determination by the Appointed Person of such applications, all under the Planning etc. (Scotland) Act 2006 and regulations made thereunder.

### **B MEMBERSHIP**

- 1 Core membership of 9 members (3 Labour, 3 SNP, 2 Conservative, 1 Independent).
- 2 Auxiliary membership of X members (X Labour, X SNP and X Conservative) to be called on in the circumstances described in G11, below.
- 23 All members (core and auxiliary) require to undergo induction and regular refresher training as arranged by the relevant Depute Chief Executive and shall not sit at meetings of the Committee unless they have attended such training to the satisfaction of the Clerk.

### **C QUORUM AND VOTING**

- 1 3 members, whether core or auxiliary.
- 2 Voting at meetings of the Local Review Body shall be conducted by a roll call vote.

### **D SUBSTITUTES**

- 1 Substitutes are not allowed.

### **E MEETINGS (SUBJECT TO STANDING ORDER 41)**

- 1 Scheduled meetings every 4 weeks, or as near thereto as is practicable, throughout the calendar year, excluding the Christmas holiday period and the summer recess.
- 2 Where there is no business to be brought to a scheduled meeting, the Clerk, in consultation with the Chair, and prior to the notice calling the meeting being issued,

may cancel that scheduled meeting.

- 3 Additional meetings may be arranged by the Clerk, in consultation with the Chair, in the circumstances described in G11, below.

## **F REPORTING ARRANGEMENTS**

- 1 Minutes to be reported to and approved at the next meeting of the Committee.

## **G MISCELLANEOUS**

- 1 The Local Review Body is a Committee required by statute to deal with requests for review of certain decisions made under delegated powers to the Council's "Appointed Person". Its procedures are governed by the Town and Country Planning (Schemes of Delegations and Local Review Procedure) (Scotland) Regulations 2008, as amended.
- 2 To be able to take part in the decision-making process, members require to have attended all stages of the committee's consideration of an application, including site visits.
- 3 Where required by a decision of the Local Review Body, or under delegated powers, site visits for Members of the Committee are to be arranged by the Clerk in consultation with the Chair.
- 4 The administration of the Local Review Body's business is to be carried out by the Committee Services Manager.
- 5 Legal advice is to be made available to the Local Review Body at its meetings by the Chief Solicitor, and the officer providing that advice must not have been involved in the case at any earlier stage.
- 6 Planning advice is to be made available to the Local Review Body at its meetings by the relevant Depute Chief Executive, and the officer providing that advice must not have been involved in the case at any earlier stage. The advice provided is to be limited to advising on the content of the development plan, national planning advice and guidance, council Supplementary Planning Guidance and council policies, and not on the merits of the case.
- 7 Training for Members is to be organised by the relevant Depute Chief Executive.
- 8 Decision letters are framed and sent by the Clerk, and, where required by a decision of the Local Review Body, the Clerk shall sign and issue planning permission.
- 9 Where a section 75 or other legal agreement is required, the Clerk shall instruct the Chief Solicitor to take the appropriate action before planning permission is issued.
- 10 If required, and where not provided by legislation, procedures at meetings of the Local Review Body are to be set by the Chief Solicitor in consultation with the Chair.
- 11 On occasion, a quorum of core members may not be available due to the withdrawal of members under the Councillors' Code of Conduct. Where an item of business cannot be transacted in those circumstances it shall be continued to a meeting on a date and time to be fixed by the Clerk, in consultation with the Chair. The auxiliary members shall be summoned to that meeting along with those core members who indicate to the Clerk that they are able to take part. The meeting shall only deal with such an adjourned item or items of business.