

ENVIRONMENT, PLANNING AND TRANSPORT COMMITTEE

Date: Wednesday 17 January 2001
Time: 2.00 pm to 5.15 pm
Venue: Committee Room 3, National Assembly Building

REVIEW OF PLANNING DECISION PROCEDURES

Purpose

1. At its meeting in September, EPT asked that I undertake a review of the planning decision procedures with a view to introducing a target for the time taken for decision making. This paper recommends a target and suggests changes to the current procedures. The changes would introduce more flexibility and clarity and make it possible for decisions to be taken in a reasonable timescale. Potential changes to Standing Orders are considered and the options evaluated against human rights requirements. The review deals specifically with the handling of the types of case that are referred to a Planning Decision Committee (PDC) for decision. These are:

Appeals under Section 78 of the Town and Country Planning Act 1990 that have been recovered from the Planning Inspectorate;

Called in planning applications; and

Applications to confirm an Order made under the Transport and Works Act 1992.

Summary of Recommendations

2.

(i) a target be adopted that 80% all Section 77 and Section 78 cases are determined within 12 weeks (para 10);

(ii) Standing Orders (in particular SO 35) be amended to allow for the PDC to be selected from a standing committee made up of members of the Assembly Committee with responsibility for planning who have received the necessary training and who have signed the Code of Conduct for members, and members who have been members of the "Planning Committee" within the previous 12 months and who have received training and signed the Code of Conduct (para 17(1));

(iii) the members actually participating in the PDC should be subject to the same requirements as now in respect of the number, quorum and Party balance (para 17(2));

(iv) meetings of the PDC should be arranged by the Clerk of the "Planning Committee" on receipt of a written request from the Assembly Minister responsible for Planning. The request would set a date by which time a decision must be reached. If no decision is reached by that date, the decision would be delegated to the First Minister (para 17(3));

(v) Membership of each PDC to be able to be altered (within the constraints set out in (iii) above) up to the time that case papers would be sent to members (para 17(4));

(vi) In the event of a meeting not being held within 4 weeks of the written request from the Assembly Secretary, the decision to be automatically delegated to the First Secretary (para 17(5)); and

(vii) Changes to be made to Standing Orders to bring about the clarity sought in Annex C to this Paper.

3. The Committee will want to consider whether it accepts the main thrust of the changes set out in the recommendations as a sensible way forward. The proposed amendments to Standing Orders (which could go wider than SO 35) will need to be considered in the light of the Committee's conclusions, discussed with lawyers, and submitted to the Business Committee in accordance with SO34.

Background and Consideration

Targets

4. *Local planning authorities are required to decide 80% of planning applications within 8 weeks* from the date of receipt of a valid planning application. *In England*, Government Offices have unpublished targets to make *80% of decisions within 13 weeks of receipt of the Inspector's report and 100% within 20 weeks*. The Welsh Office had an unpublished target; if no decision was reached on an application within 8 weeks the developer and local planning authority were informed of the position and likely timescale for a decision. There are published targets for England and Wales for the handling of TWA cases. These vary between 3 months and 6 months depending on factors like whether there are objections and whether a public inquiry is deemed necessary. Assembly targets will relate to the period from the time that an inspector's report is received from the Planning Inspectorate. The Inspectorate itself has targets for dealing with cases e.g. Section 78 cases that involve a public inquiry will be determined within 31 weeks.

5. During the last two years (from 1/10/98) 11 applications called in under Section 77 have been determined. The average time taken was 11 weeks. In the same period 9 recovered appeals were determined. The average time taken was 19 weeks.

6. During 2000, 6 cases have been determined under the new arrangements set out in SO35. The 5 Section 77 cases were determined on average in 17 weeks. The one S78 case took 82 weeks. This was a large complex case that involved a number of references back to the appellant and interested parties.

7. The length of time taken on a case will depend to a large extent on the complexity of the case involved and on the number of cases under consideration. It is possible to analyse the Inspector's report, prepare a Committee Paper (and get clearance of the paper from lawyers) within 3-4 weeks. A more complex case will take some weeks more. It takes 3-4 weeks to set up a PDC meeting under the current arrangements provided there are no hold ups because of a recess for example. This means that under the existing arrangements it is extremely difficult to meet a target of 8 weeks for determination. A target of 12 weeks should be capable of being met in the case of less complex projects.

8. A list of cases in the pipeline is attached at Annex B. It is made up of 2 cases involving single dwellings. These should be capable of being handled within 8 weeks. However, many of the cases are more complex and will take longer.

9. Against this background I cannot recommend that we adopt a target of 8 weeks for most cases.

10. A target of determining 80% of cases within 12 weeks would also be difficult to achieve given the nature of the cases coming forward over the next 9 months. However, given that the time taken to determine a case is an essential component of good decision making, I believe that we should adopt a challenging target of this kind. I would nevertheless expect as many cases as possible to be determined within 8 weeks. It would however only be realistic if we could adopt a more flexible

approach than current procedures allow. It also has staffing implications that the Executive will need to address. I recommend that the Committee adopt this target subject to agreement to increased flexibility discussed below. This is slightly longer than the target given to local planning authorities but this reflects the fact that for S78 cases the Assembly acts as the final point of appeal. In those cases and S77 cases, the Assembly has to consider all views put before the inquiry in the interests of natural justice and to explain how the issues have been balanced when the decision was reached. In addition, we have to produce a detailed decision letter that may need to bear scrutiny in the courts. Local planning authorities do not have to address these issues when taking decisions.

PDC Composition

11. We have considered two main options for the composition of the PDC with OCG and evaluated these against human rights requirements:

- (1) party balance including the Assembly Minister with responsibility for planning; or
- (2) party balance excluding the Assembly Minister.

12. I conclude that whilst (2) might serve to distance the Cabinet from the decision it is still made by AMs on behalf of, and in the name of, the Assembly. Its adoption could result in difficulties for both the UK Government and the Scottish Executive. They would need to consider whether to change their arrangements to ensure different people took decisions to call in and the final decision on the called-in case. In terms of human rights it is probably just as likely to be challenged as option (1) but might have marginally less risk of successful challenge. I have considered the possibility of the PDC meeting in public also with OCG. As the decision is quasi-judicial, the presence of interested parties and the press, giving rise to the potential for influence on the decision-makers would not be appropriate. Also, the requirement that the decision should be a reasoned one makes it essential that members have the opportunity to discuss frankly the merits of conflicting evidence and arguments.

Quality of decision-making

13. I have reviewed the procedures for ensuring the quality of Inspectors' reports with the Planning Inspectorate. Particular issues covered were structure, comprehensiveness and equal opportunity considerations. This will be kept under review.

14. The work undertaken by officials to prepare the report for PDC has also been reviewed. Taking account of the need to ensure security of the process from challenge, this is already as efficient as can be provided with existing staffing.

15. The ultimate tests of quality are quality of outcome (for which it would be difficult to have an objective criteria) and security from challenge. In relation to the latter none of the 4 cases decided to

date by the PDC have been successfully challenged.

Procedures

16. The current procedures are particularly rigid. The need for a motion before Plenary; finding Members available for a PDC; and the difficulties that arise in Recess add considerably to the time taken to decide cases. The procedures themselves do not add to the quality of decision making. If we adopt a demanding target for the time taken in determining cases, we have to adopt procedures that are flexible and quick.

17. I propose:

(1) we do away with the need to have to go through the process of setting up a Committee through a procedure requiring a motion before Plenary. This would probably, but not necessarily, mean the creation of a standing committee. As now, members would be drawn from the membership of this Committee or the Committee with responsibility for planning. Some members are of the view that other AMs might also serve on a PDC. It would certainly add to the pool of potential members if we did this. We do need however to restrict membership to those who have received training and who have signed the Code of Conduct. Applicants, appellants and other interested parties will quite rightly expect however that those taking decisions on important applications will be familiar with current planning policies etc. For this reason it would be prudent to limit involvement to those members who have been members of the "Planning Committee" within the last 12 months;

(2) the PDC should be subject to the same requirements as now in respect of the number, quorum and Party balance;

(3) the meetings of the PDC should be arranged by the Clerk of the Committee on receipt of a written request from the Assembly Minister responsible for Planning. That request would also set a date by which time a decision must be reached. If no decision is reached, the decision would be delegated to the First Minister. It may be prudent to agree dates for a series of future meetings on a 6 week cycle;

(4) membership of each committee could be altered (within the overall constraints set out in (2) above) up to the time that papers are sent to members; and

(5) in the event of the Clerk being unable to make arrangements for a meeting of the Committee to be held within 4 weeks of the written request from the Assembly Minister, the decision would be delegated to the First Minister;

(6) The wording of SO35 has resulted in some ambiguity. It seems appropriate that if amendments are to be made to Standing Orders, we take the opportunity to clarify these matters. It also seems sensible to ensure that only the more important cases come before the Committee. A series of minor changes to ensure clarity are proposed in Annex C.

Future Review

18. There are legal judgements awaited that will help to clarify the requirements of the Human Rights Act. Once the outcome of these cases is known we will need to review all our procedures for taking planning decisions in order to ensure that we comply with the requirements of the legislation. This review is likely to be needed during the early part of next year.

Sue Essex

Assembly Minister for Environment

Contact Point

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ANNEX A

PROCEDURES FOR HANDLING PLANNING DECISIONS

The procedures involved are set out in Standing Order 35. They can be summarised as:

- (1) as soon as the Assembly Secretary with responsibility for planning receives the inspector's report he/she will prepare a brief statement setting out the location and nature of the development in question and send this to the members of the Planning Decision Panel and to the Clerk to EPT Committee;
- (2) within 10 days of receipt of the statement, the Clerk to EPT must provide the Assembly Business Secretary with the names of four members who appear to be qualified to serve on the Planning Decision Committee (PDC) in accordance with Standing Orders. The Business Secretary then places a motion before the Assembly for approval in plenary session. This includes a target date for the decision;
- (3) if a list of four members is not compiled for any reason, the Business Secretary will table a motion proposing that the decision be delegated in some other manner;
- (4) if a PDC is established, it's membership must reflect the balance of political parties required by Annex A of SO35;

- (5) all members of the PDC must have completed the relevant course of training;
- (6) the Committee's function will cease to exist once the Chair signs the decision letter; and
- (7) if the Committee fails to take a decision by the target date specified in the resolution, the Committee ceases to exist and the decision is delegated to the First Secretary.

ANNEX B

CASES DUE TO COME BEFORE PDC

CASE	LPA	POSSIBLE TIMING
Section 77		
Industrial, Shotwick Rd	Flintshire	Summer 2001
Shopping Direction Ext. to M&S Culverhouse X	Vale of Glam	Spring 2001
Wind Farm, Cwm Llwyd Wind Farm, Mynydd Clogau	Powys	Summer 2001
Retail, Penrhos Ind Estate	Ynys Mon	Spring/Summer 2001
Housing Development, Aberbechan	Powys	Spring 2001
Housing Development, Llandyssil, Powys	Powys	Spring 2001
Cement Kiln, Padeswood	Flintshire	Spring 2001
Marina Development, Gallows Point	Ynys Mon	Summer 2001
New highway & car parking, Brecon	BBNP	Summer 2001
Change of use, Llanerchymedd	Ynys Mon	Summer 2001

WRU Centre of Excellence	Newport	Summer 2001
Reconstruction of former dwelling and barn, Llanigon	BBNP	Summer 2001
Wind Farm, Penrefoelas	Conwy	Summer 2001
Integrated wood processing plant	Powys	Summer 2001
Wind Farm, Foel Goch	Denbighshire	Autumn 2001

Section 78

Mixed Development,	Cardiff	Autumn 2000
Whitchurch Hospital		
Wind Farm, Jordanstan	Pembrokeshire	Spring 2001
Retail Development,	Vale of Glamorgan	Spring 2001
HTV Studios		
Wind Farm, Pentrefoilas	Conwy	Summer 2001
Residential Development, St Brides, Wentloog	Newport	Spring 2001
Wind Farm, Nantcarfan,	Powys	Summer 2001
Llanbrynmair		

ANNEX C

PROPOSED CLARIFICATION

The current wording of SO35 does not provide total clarity about which cases have to be referred to PDC. The SO also requires cases to be referred to PDC which are not in themselves of national significance. The following changes would provide greater clarity, and ensure that PDC considers

only the cases that raise significant issues:

(1) When officials are examining cases it is sometimes necessary to refer back to the applicant/appellant for more information or clarification. It is not clear from SO35 whether such action comes within the definition of "decision". Redrafting of the SO should ensure that this is clarified by defining decisions as to allow references back by officials.

(2) From time to time, an appeal is recovered (from the Planning Inspectorate) by the Assembly for decision under Section 78 of the TCP Act simply because it is linked to an application for other approvals (and not because of the particular issues raised in the planning application). These could be listed building consent, compulsory purchase orders, lawful development certificates etc. As currently worded, the SO requires these cases to be determined by the PDC once they are linked to a S78 case. In such cases, it seems sensible for these not to have to be referred to a PDC for decision.

(3) As in (2) above, there are times when applications for other approvals are linked to a recovered appeal which itself raises major planning issues. We need to ensure that Standing Orders do not preclude consideration of these other approvals by the Committee.