

# Hearings Process for Determination of Planning Applications

## Terms of Reference

1. The following procedure shall be adopted for the conduct of all meetings of the Planning Committee involving the 'hearings process' in respect of the determination of planning applications. The 'hearings process' will operate in any circumstances where it has been deemed that an application should be determined by the Committee.

## Order of Business

2. At the start of the meeting, and thereafter as necessary, the Chair will outline the 'hearings process' by explaining the procedure to be followed.

3. Officials representing the Executive Director of Development and Infrastructure will present the report by giving a description of the proposed development and site, together with a summary of the relevant statutory and Development Plan provisions, an assessment of any valid objections made, and clarification of the recommendations and conditions.

4. At the discretion of the Executive Director of Development and Infrastructure, in consultation with the Chair, officers from Council services, and/or representatives of agencies such as Scottish Natural Heritage, Historic Scotland, Scottish Environment Protection Agency and Scottish Water, may be invited to provide additional professional guidance in respect of technical matters.

5. Objectors will then be given an opportunity to present their case; thereafter members of the Committee may ask questions of objectors for clarification: where no objectors are present, this condition shall not apply.

6. The applicants will then be given an opportunity to present their case, which may include a response to any matter raised by objectors; again, members of the Committee will have the opportunity to ask questions of the applicants for clarification: where no applicants are present, this condition shall not apply.

7. Members of the Committee will then have the opportunity to ask any final questions, and may give any party present the opportunity to comment further on relevant matters raised during the hearings process.

8. If necessary, and at the discretion of the Chair, officials will be given the opportunity to address any salient points raised by any party present.

9. Thereafter the 'hearings process' will be complete. Committee members will then proceed to determine the application.

## Notes for Guidance and Information

10. Certain objections are not valid in planning terms, and cannot be considered by Councillors when determining the outcome of a planning application. Examples of these are:

- Issues covered by other laws, such as Licensing or Building Standards.
- Private legal disputes over boundary or access rights, or feu superior's consent.
- The background or motives of the developer.
- Concerns that the proposal is speculative, or only to make money.
- Loss of financial value of property.
- Loss of a view.

11. The standard approach for planning applications is that applicants and objectors will each be allotted five minutes to make their presentation, which should focus on matters that have already been raised in writing and should not introduce any new material. The five minute period is the total time available to each side and must be divided amongst those wishing to speak for that side (please refer to paragraph 18.3 below).

12. In exceptional circumstances, and at the discretion of the Chair, the time allotted to applicants and objectors for making presentations may be extended depending, for example, on whether the applications are of a particularly complex nature or where there are large numbers of objectors present. The Chair's discretion, if applicable, can only be notified at the start of each item during the meeting. In the case of "national developments", it is expected that this provision will be necessary due to the level of interest which is likely to be generated for the projects concerned.

13. Applicants and objectors who wish to circulate photographs and/or drawings, or to show PowerPoint slides, as part of their presentation at the meeting, must submit the information to the Clerk to the Committee no later than 16:00 two working days prior to the meeting (e.g. 16:00 on Monday for a meeting on Wednesday). In exceptional circumstances, and at the discretion of the Executive Director of Development and Infrastructure, this deadline may be extended on request. Applicants and objectors may submit information to the Clerk by e-mail (details below), or in person at the Council's Customer Services Reception. It is the responsibility of applicants and objectors to ensure that all such information is received personally by the Clerk, who will confirm receipt.

14. In cases where key agencies, such as Scottish Natural Heritage, Historic Scotland, Scottish Environment Protection Agency and Scottish Water, have formally objected to an application and have sent representatives to the meeting, they will normally be afforded additional time to present their objections and the applicants will normally be afforded additional time to respond to any points raised.

15. Objectors who wish to be heard are encouraged to appoint one or a small number of spokespersons to present their views to concentrate on the matters of main concern to them, and to avoid repetition.

16. Applicants and objectors must address all remarks through the Chair. Cross-examination of any party present shall not be permitted.

17. Applicants and objectors may present their case personally to the Committee, or may be represented by any person of their choice, other than an elected member (i.e. a Councillor) of Orkney Islands Council. In the event that a Councillor is an applicant or objector in his own right, this condition shall not apply.

18. If applicants (and/or their agents, if applicable) or objectors are unable to attend the meeting, the following options are available to them:

18.1. Ask someone to represent them at the meeting and speak on their behalf. Anyone other than a Councillor is eligible to represent applicants or objectors in this way. For example, both applicants and objectors can ask friends, relatives, neighbours, solicitors, architects, agents, etc. to represent them, although professional representation, such as by a solicitor, may result in a financial cost.

18.2. In addition to their original objection submitted during the initial consultation period, objectors can submit a further letter, of unrestricted length, detailing their objections. Applicants may also submit a letter of representation outlining the reasons why they feel the application should be granted. All such representations should be received as early as possible.

18.3. For planning applications, objectors, or applicants, can submit a further written representation, limited to 250 words, summarising their case. Such representations would be read out by the Clerk to the Committee at the meeting at the point where the applicants or objectors would, if present, be asked to make their representations. All such representations must be received by the Clerk no later than 16:00 on the day prior to the meeting. With reference to paragraph 11 above, objectors who are present at the meeting will be entitled to make full use of the time available, and any additional time taken for the Clerk to read out short statements on behalf of objectors who are not present would be added to the time made available to the applicants to make their presentation. In the case of "national developments" it is expected that a large number of representations may be received. In such circumstances, and where appropriate, the Clerk will seek to summarise the key issues raised by written representations during the meeting. However, each individual written representation will be made available to all Members of the Committee, and published in public with time allowed for Members to review these as part of the decision making process if this is considered by the Chair to be prudent and necessary.

19. The Council reserves the right to edit all letters of objection or representation received to ensure that applicants, objectors, and indeed the Council, do not breach any legislation in respect of libel or slander. Please also note that further objections in terms of the issues detailed at paragraph 10 above will not be made available to Councillors or read out to them at the meeting.

20. For the avoidance of doubt, information supplied to the Clerk, in terms of paragraphs 13 and 18.2 above, will be circulated to Councillors, applicants, agents and objectors in advance of the meeting.

Should applicants or objectors have any queries in respect of the hearings process, advice is available from the Clerk to the Committee:

Angela Kingston: telephone (01856) 873535 Ext 2239; email [angela.kingston@orkney.gov.uk](mailto:angela.kingston@orkney.gov.uk)