



North Ayrshire Council
Comhairle Siorrachd Àir a Tuath

Committee Services

Procedures for the Conduct of Pre-Determination Hearings (Planning)

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Preamble

1. Background

- 1.1 Section 38A of the Town and Country Planning (Scotland) Act 1997, as introduced by the 2006 Act, deals with planning applications for developments where a pre-determination hearing is required.
- 1.2 The type of development which will fall into this category will be:-
 - (i) national developments and
 - (ii) major developments (as defined in Regulation 2 of the Town and Country Planning (Hierarchy of Developments) (Scotland) Regulations 2009) where the proposals are significantly contrary to the Council's Development Plan.
- 1.3 Section 38A(1) states that "a planning authority are to give the applicant and any person so prescribed an opportunity of appearing before and being heard by a Committee of the Authority".
- 1.4 Section 56 6(A) of the Local Government (Scotland) Act 1973 stipulates that, for the purposes of such applications coming before the planning authority, "The function of the planning authority shall be discharged only by the authority". This means that the full Council should determine such planning applications and not merely its Planning Committee

2. Purpose of the Hearing

- 2.1 The purpose of the pre-determination hearing is to afford parties to an application (i.e. the applicant and any objectors or supporters) the opportunity of presenting their issues to the Planning Authority.
- 2.2 The Council as Planning Authority has discretion over how hearings will operate in its area. The arrangements in place in North Ayrshire are as set out in the following procedure.

Before the Pre-Determination Hearing

3. Notification

- 3.1 The Council as Planning Authority must give the applicant and those who have submitted representations on the application an opportunity of appearing before it and of being heard at a pre-determination hearing.
- 3.2 An invitation will be issued in writing to the applicant and objectors to be represented at the pre-determination hearing. This invitation will be issued approximately 16 days prior to the hearing.

- 3.3 In the event of there being a substantial number of objectors to an application, the Council's discretion will be used as regards the most reasonable and practicable method of inviting objectors to be represented at the hearing. This may include advertising the hearing and/or asking objectors to liaise with representative bodies of objectors, such as community councils, action groups or residents' groups.

4. Confirmation of Attendance

- 4.1 Objectors and applicants invited to attend the pre-determination hearing will be required to confirm their attendance 8 days prior to the date of the hearing.
- 4.2 The pre-determination hearing will proceed provided that representatives of the applicant and/or representatives of objectors confirm their attendance and appears before the hearing.
- 4.3 The requirement for a pre-determination hearing to take place will fall only in the event of both the applicant and the objectors intimating that they do not wish to be heard.

At the Pre-Determination Hearing

5. Order of Hearing

- 5.1 The applicant/applicant's representative(s), if present, will be invited to address the hearing in support of the application. Up to 3 people may speak on behalf of the application and such individuals may include the applicant, an agent, supporter or other representative appointed by the applicant. The applicant and/or any parties speaking on behalf of the applicant will be limited to a maximum period of 15 minutes in total to present their case.
- 5.2 The objectors/objectors' representative(s), if present, will then be invited to address the hearing in support of objections. Up to 3 people may speak in support of objections to the application. The objectors will be limited to a maximum period of 15 minutes in total to present their case.
- 5.3 Elected Members will then have an opportunity to ask questions of those individuals who have addressed the hearing in support of the application or their objections to it.
- 5.4 There is no opportunity for the applicant/applicant's representative(s) to cross-examine the objectors/objector's representative(s), nor may the objectors/objectors' representative(s) cross-examine the applicant/applicant's representative(s).

6. Presentation Methods

- 6.1 The use of audio-visual materials is permitted to both objectors and applicants.

- 6.2 Arrangements to facilitate the use of presentation equipment should be discussed with Committee Services at the earliest opportunity and presentation materials provided at least two working days in advance of the pre-determination hearing. Committee Services may be contacted at committeeservices@north-ayrshire.gov.uk by telephoning 01294 324131.
- 6.3 Advice should also be sought from Committee Services on the circulation of any documents or photographs at the pre-determination hearing.

Determination of the Application

7. Conclusion of the Pre-Determination Hearing

- 7.1 The purpose of the pre-determination hearing is to allow the applicant and/or objectors to be heard in support of their application or objections, respectively.
- 7.2 At the conclusion of the pre-determination hearing, the meeting will be brought to a close by the Chair.

8. Determination of the Application

- 8.1 In terms of Section 56 6(A) of the Local Government (Scotland) Act 1973, the Council as Planning Authority will determine the application. The determination meeting is conducted separately, either immediately following the conclusion of the pre-determination hearing or at another time specified by the Council.
- 8.2 The determination meeting is open to the public, but there is no further opportunity for any parties to address the meeting in support of the application or their objections.
- 8.3 The Planning Officer will present a report to the Council, detailing the provisions of the Development Plan with regard to the application, setting out any material planning considerations and responding to any representations by statutory/non-statutory consultees and other interested parties.
- 8.4 Elected Members may ask questions of the Planning Officer.
- 8.5 Elected Members will then debate the application, having regard to the submissions made at the pre-determination hearing and the recommendation of the Planning Officer.
- 8.6 The Council will then move to determine the application. The application may be approved with or without conditions or refused on planning grounds.
- 8.7 The applicant has the right of appeal to the Scottish Ministers.

9. Webcasting

- 9.1 It should be noted that, whilst Pre-Determination Hearings are not webcast, other meetings of the full Council, including Determination Meetings are now filmed for live and subsequent broadcast via the Council's internet site. At the start of the meeting, the Provost will confirm if all or part of the meeting is being filmed.
- 9.2 Generally, the press and public seating areas will not be filmed. However, signage within the Council Chambers advises that by entering the Council Chambers and using the press or public seating area to observe the proceedings, members of the public are consenting to being filmed and consenting to the use and storage of those images and sound recordings and any information pertaining to them for webcasting or training purposes and for the purpose of keeping historical records and making those records available to the public. The signage also advises any member of the public with queries regarding this and, in particular, who believes that use and/or storage of any particular information would cause, or be likely to cause, substantial damage or distress, to contact Committee Services.
- 9.3 You should be aware that the Council is a Data Controller under the Data Protection Act 2018. Data collected during the webcast will be retained in accordance with the Council's published policy, including, but not limited to, for the purpose of keeping historical records and making those records available via the Council's internet site.

Useful Contacts

Scottish Government Development Department Planning Division
Victoria Quay
Edinburgh EH6 6QQ
Tel 0845 774 1741
Requests for Planning Policy documents 0131 244 7066
<https://www.gov.scot/publications/planning-core-documents-library/>

Planning Aid for Scotland
3rd Floor, 125 Princes Street
Edinburgh EH2 4AD
Tel: 0131 220 9730
<https://www.pas.org.uk>

Development Management (Economic Growth)
Economy and Communities Service
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