Pre-Determination Hearings

April 2015
Preamble

This Development Management Practice Note is designed to guide planning officers and relevant users through the requirements of pre-determination hearings and deals primarily with procedures as well as good practice. It forms part of a series of new practice notes stemming from the Planning Act (Northern Ireland) 2011 (the 2011 Act) and any related subordinate legislation. The emphasis is very much on advice but where explicit legislative requirements must be followed these will be made clear.

Where appropriate this practice note will therefore highlight:

- Relevant legislation;
- Procedural guidance;
- Definitions;
- Best practice examples / relevant case law

This practice note is not intended to replace the need for judgement by planning officers and those making planning applications. Nor is it intended to be a source of definitive legal advice. Reference should be made to the actual legislation referred to in this document and if any discrepancy or conflict exists between the Practice Note and legislation the provisions of the legislation will prevail.
1.0 Introduction

1.1 The Department wishes the planning system to be inclusive, allowing the views of those who have made representations to be heard before a planning decision is taken. A council has discretion as to how pre-determination hearings will operate in this respect.

2.0 Legislative Context

2.1 Section 30(1) of the 2011 Act allows the Department to make regulations or a development order requiring a council to give the applicant and any specified persons the opportunity to appear before and being heard by a committee of the council. Regulation 7 (1) of the Planning (Development Management) Regulations (Northern Ireland) 2015 (the Development Management Regulations) sets out that Section 30 of the 2011 Act will apply to development falling within the major category which have been subject to notification to the Department, but which have been returned to the council for determination. Sections 30 (2) and (3) allows a council to determine the appropriate method for the hearing and who in addition to the applicant or specified persons can also participate.

2.2 The requirement for a pre-determination hearing in this circumstance is irrespective of the officer’s recommendation as to whether the application should be granted or refused and the number of representations received.

2.3 A council may, if it chooses, also hold pre determination hearings for other applications that it has received. Section 30 (4) allows a council to give an applicant or other specified persons an opportunity to be heard by the committee for applications not provided for in regulations or a development order. If a council chooses to hold a pre determination hearing in these circumstances the council in line with Section 30 (3) can allow those it considers appropriate to attend and participate.
3.0 When to hold a pre-determination hearing

3.1 Any hearing should take place after the expiry of the period for making representations on the application, but before the council decides the application. There is a mandatory requirement for a hearing if a major application has been subject to notification and returned to the council for processing under Regulation 7 of the Development Management Regulations. However a council may also convene a pre determination hearing for any other application if it so chooses as per Section 30 (4) of the 2011 Act.

3.2 For major applications it will be for the planning committee to decide whether it wishes to have a hearing on the same day as the related planning application is to be determined or to hold a separate hearing. The scale and complexity of the planning issues will have to be considered in determining which is more appropriate.

3.3 Major applications that present a range of issues that are of interest to a substantial proportion of the council areas population may be best conducted at a separate meeting. This will allow a full exploration of the proposal by committee members without impacting upon the scheduled meetings of the planning committee that will determine other applications. A procedural meeting may be needed prior to this in order to agree and finalise arrangements.

3.4 In holding a separate hearing the planning committee procedures could be the same as for the normal planning committee meetings (e.g. number of individuals to speak on either side, time available to speakers etc.). The assigned planning officer should produce a case officer report detailing the processing of the application to date and the planning issues to be considered. It may provide a recommendation, however in convening a separate meeting councils may choose to allow the meeting to be used simply to hear the interested parties views and statutory consultees, and for members of the committee to
seek clarification from these parties on the facts surrounding the development. No decision may be reached at that meeting as committee members and planners may wish to consider the views made prior to making a determination at the scheduled committee meeting. The Committee may consider that such applications present issues of such significance to the district that the determination should be undertaken by the full council and not by the committee. However it is advised that if this approach is adopted that it should be under exceptional circumstances.

3.5 Applications that present less complex issues should usually be decided at a scheduled planning committee. The hearing can be held on the same day as that to determine the application. In these instances the case officer report to councillors should also contain a recommendation.

3.6 In mandatory and non mandatory cases, it would be for an individual council to judge when a significant body of relevant planning objections was a sufficient material consideration to warrant a pre-determination hearing, taking account of:

- the relevance of the objections in planning terms;
- the extent to which relevant objections are representative of the community, particularly in the context of pre-application community consultation; and
- the numbers of representations against the proposal in relation to where the proposal is and the number of people likely to be affected by the proposal.
4.0 **Procedures and Attendance**

4.1 The 2011 Act allows the Council to specify the procedures for arranging and conducting a pre determination hearing. Section 30 (2) states:

> The procedures in accordance with which any such hearing is arranged and conducted (including, without prejudice to the generality of this subsection, procedures for ensuring relevance and avoiding repetition) and any other procedures consequent upon the hearing are to be such as the councils considers appropriate.

4.2 This may include:

- The order of proceedings
- The maximum number of speakers on either side
- Time limits for contributions
- Opportunities for contributors to respond to others comments
- Question/cross examination by elected members and other contributors
- Members seeking additional technical advice

4.3 The council must give the applicant and those who submitted representations to them in respect of the application an opportunity of appearing before a committee of the council and being heard. Section 30 (3) of the 2011 Act leaves any attendance at the hearing to the councils discretion other than those afforded the mandatory opportunity under Section 30 (1) of the 2011 Act. This discretion allows the council to also consider if they require further representation from statutory consultees.

4.4 The objective of the meeting will be to focus on the material planning considerations and explore these to facilitate the planning committee in making its determination of the application.
4.5 The scope and complexity of applications to be brought before a council will vary considerably. Any procedures adopted by a council will have to reflect this and it is not therefore considered appropriate to specify a maximum number of speakers at the pre-determination hearing. However it is advised that a council should allow representatives of objectors and the applicant to speak and to be subject to questions by councillors so that they can clarify issues before making a determination. Planning officers will also need to the present, along with representatives of consultees to present their conclusions and answer any points of clarification councillors may have. In the interests of expediency and efficiency, it is advised that councils limit the number of speakers and the time each speaker has. Where a group wishes to have its views expressed they should agree a spokesperson to make their representation with the council beforehand. A time limit should also be attached for each representation. It will be up to each council to determine how long this should be, but it is common for this to be limited to three minutes.

4.6 Annex 1 outlines a potential procedure and guidance notes for these hearings

5.0 Councillors

5.1 It will be for each council or a committee of the council to reach a view on the planning application. Decisions on planning applications should not be taken until all the evidence has been presented at the relevant planning committee meeting and fully considered. Members of the committee should not have previously expressed a view on the merits of the application.
Annex 1

Procedure Prior to a Pre Determination Hearing

The following is a suggested procedure for holding a pre determination hearing:

1. The Planning officials shall agree with the Chair of the Planning Committee whether the hearing should take place at a scheduled planning committee meeting or at a special meeting and will identify an appropriate venue for the meeting.

2. In complex cases the planning officials in conjunction with the planning committee clerk, may hold a ‘procedural meeting’ to advise the parties about the procedures, to encourage them to co-ordinate their responses to avoid repetitious statements and to agree the order of speaking.

3. The council will circulate the hearing procedure and inform parties of the date, time and venue.

4. The case officer will prepare a case officers report covering.......... 

Procedure at the Hearing

1. If possible and practicable to do so the clerk or administrator will identify those parties present who wish to participate in the hearing. Copies of the hearing procedures should be given to those wishing to participate. A list of participants shall be passed to the chair.

2. The chair will open the hearing by welcoming those parties present and will ask for confirmation of

   1) The identity of those involved
   2) that all persons wishing to participate in the hearing procedure
   3) that all participants understand the procedure.

3. The Chair will remind parties to focus their comments on the views which they have already expressed in writing. New information should
only be presented for the purposes of clarification and if this happens the other parties to the hearing will be allowed to respond this new information.

4. The planning officer will introduce the application, giving a brief description of the proposed development and the application site, the planning policies against which the application is to be assessed and any other material considerations relevant to the application.

5. The applicant(s) will have the opportunity to present their case (in no more than xxx minutes). After the applicant(s) presentation members of the Committee may ask questions of the applicant(s).

6. Third parties who have submitted written objections within the appropriate time frame will have the opportunity to make their representations (in no more than xxx minutes). After the third parties presentation members of the committee may ask questions of the third parties.

7. The Committee Chair will ask whether there are any other members of the public who have made objections to the application within the appropriate time frame and have given notice that they wish to speak for such a period as the Committee Chair permits and the committee will have the opportunity to ask questions.

9. At the committee, and at the committee’s request, any other relevant officer of the Council or statutory consultee present will have an opportunity to identify any concerns they wish to raise.

10. The applicants will be given the opportunity to respond to issues raised by members, officers or third parties which were not originally covered in the applicant’s original presentation.

11. After all the parties have concluded their presentations the Chair will establish if the Committee has had its requirements for information met. The Chair will also ask if the parties are satisfied with the way in
which the hearing has been conducted and their responses will be included in the minutes of the meeting.

12. The Chair will indicate that the hearing has been completed and all parties will return to the public gallery. The planning officer will detail the appraisal of, and present the recommendation on, the application, after which the Committee will consider and determine the application.

Guidance Notes

- Applications subject to hearings will normally be scheduled first on a Committee agenda to minimise waiting time by the parties involved.
- Applicants and objectors are expected to take a maximum of ....... to make their presentations – this timeslot being divided among those wishing to speak for each party. If any party wishes to speak for longer then they should indicate this prior to the presentations commencing. The Committee shall decide whether to allow a longer period. Any extension of time should not exceed five minutes.
- Electronic submissions must notify the clerk at least two clear working days prior to the hearing so that arrangements can be made.
- It should be noted that if a hearing has been arranged and all the interested parties (ie applicant, objector(s) and any third parties) have been invited to attend or be represented, then the hearing will proceed irrespective of the absence of any of the invited parties when the application comes to be considered. Should a party invited to attend or be represented be unable to be present, then a third party may submit a short written statement summarising their views, which will be read to the meeting by the clerk on their behalf at the appropriate stage in the proceedings. The Committee will hear the parties present and then determine the application.
- All parties who have made representations on an application will be advised by the council of the decision on the application.
• If the decision on an application is deferred by the committee then further speaking at the pre determination hearing will only permitted when it is considered the application has been materially altered.