

# EAST AYRSHIRE COUNCIL

## GUIDANCE NOTES FOR APPLICANTS AND AGENTS ON THE PROCESSING OF PLANNING APPLICATIONS

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**Legislation referred to is as follows;**

1997 Act: Town and Country Planning (Scotland) Act 1997 (as amended)

2006 Act: Planning etc.(Scotland) Act 2006

2008 DM Regs: Town and Country Planning (Development Management Procedure)(Scotland) Regulations 2008

## 1. **Pre-application screening notice**

The new planning system seeks to encourage improved trust and a more open positive working relationship from the earliest stages. Where possible it also seeks to provide an early opportunity for community views to be reflected. Pre application discussions are intended to add value at the start of the Development Management process by improving quality of proposals which can be amended to accommodate community opinion.

The Council is keen to give a degree of certainty to developers by encouraging the submission of processing agreements on major planning applications. Please ensure this is included in any pre-application discussions with officers in Planning and Economic Development.

Pre-application consultation (PAC) is only applicable for national and major developments. These types of developments are defined in the Town and Country Planning (Hierarchy of Developments) (Scotland) Regulations 2009. The submission of a Pre-Application Screening Notice is **optional**. It is open to a prospective applicant to proceed with Pre-Application Consultation without a screening notice, if the applicant is content that Pre-Application Consultation is required. A prospective applicant, if unsure, that their development falls into one of the types of development categorised as either national or major development, which would be the subject to the pre-application consultation under Planning etc.,(Scotland) Act 2006, Section 35A(1), can submit a **pre-application screening notice**. The prospective applicant for planning permission for a development may by this Notice, require the Planning Authority to state whether or not in the Planning Authority's opinion the development is a national or major development, which requires a PAC. This process is started by the applicant/agent submitting this Notice.

A Pre-Application Screening Notice has been drafted by East Ayrshire Council for your assistance. All sections and information including appropriately scaled ordnance survey based plans, require to be completed and submitted to East Ayrshire Council as the level of information is prescribed by the Planning etc. (Scotland) Act 2006, section 35A(1). If you do not complete all sections of this Notice fully, the Council will not be able to respond to you in the prescribed timescales, and may require to send this Notice back to you for correction. Thereafter the correctly completed Notice would then require to be re-submitted to the Council.

The Council has 21 days from receipt of a correctly completed Screening Notice to respond to you and advise you whether your proposal is a defined national or major development requiring Pre-Application Consultation in terms of the Town and Country Planning ( Development Management Procedure) (Scotland) Regulations 2008. It should be noted that the planning application Screening process is separate from the screening process associated with Environmental Impact Assessments.

## 2. **A Proposal of Application Notice (Reg 6 DM regs)**

A Proposal of Application Notice is only applicable for national and major developments. These are defined in the Town and Country Planning (Hierarchy of Development)(Scotland) Regulations 2009. Pre-Application Consultation (PAC) is required with the community on all major and national developments.

A prospective applicant is required to provide to the Planning Authority a "Proposal of Application Notice" at least 12 weeks prior to the submission for planning permission. A copy of the form to be used for this Notice is available from East Ayrshire Planning.

The Planning Authority has 21 days to respond to this Notice. The Planning Authority can advise the applicant that the level of pre-application consultation is acceptable or whether further consultation requires to be undertaken with the community and in this instance the Planning

Authority will advise what form and with whom the further consultation should be undertaken. Once the period of pre-application consultation (12 weeks) has taken place, a prospective applicant can submit their planning application for a major or national development to the Planning Authority with an accompanying PAC report. There is no specified time limit when a PAC is undertaken and when the related planning application must be made to the Planning Authority, although where a Planning Authority screening statement indicates PAC is **not** required, a planning application must be made within 12 months for this screening statement to apply.

The reason for a Proposal of Application Notice to be submitted is to provide the Planning Authority with an opportunity to advise whether the applicants' proposed PAC is satisfactory or if additional notification and consultation above the statutory minimum is required. The minimum level of consultation is set out in the 2006 Act section 35B(4) and East Ayrshire guidance sets out the minimum consultation activity. Advice is available on the content of PAC, not only covering the minimum requirements but also additional consultation activity to ensure a good level of community consultation. A list of local bodies can be made available for prospective applicants to identify other local organisations, aside from Community Councils, who operate within the area where the new planning application will be located.

The form made available by East Ayrshire Council complies with the minimum requirements of the 2006 Act and **all** parts of the form must be completed in **full** including, for example, the post code. If the form is not completed correctly, it will be sent back to the prospective applicant and the missing information must be supplied before the 21 day period starts.

Within 21 days a response must be given by the Planning Authority as to whether the level of PAC is acceptable. The Planning Authority may advise the applicant that it considers that there are other persons who should receive a copy of the Proposal of Application Notice and of any other consultation that must be undertaken, including its form.

The minimum consultation activity for a prospective applicant is as follows:-

- (i) Must consult every community council any part of whose area is within or adjoins the land where the proposed development is situated. This may include Community Councils within a neighbouring planning authority. The applicant is required to serve on the relevant Community Council the "Proposal of Application Notice";
- (ii) Holding at least one public event at a venue to be reasonably accessible to disabled people.
- (iii) Advertisement in local paper at least 7 days in advance of public event. The content of this advertisement is set out in the Development Management circular para. 2.22 and on page 5, later on in this document.

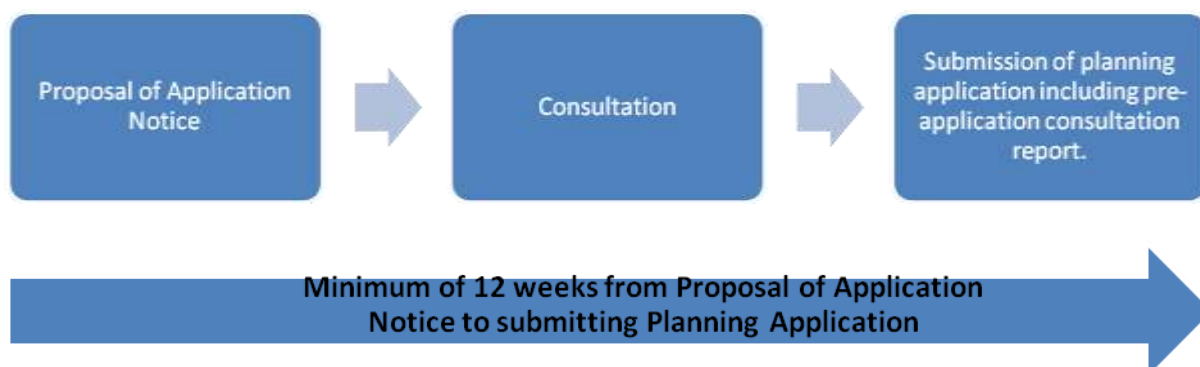
It should be noted that the Planning Authority is required under the Development Management Regulations to place a Proposal of Application Notice on the "list of applications" , which is a new list of current/pending planning applications on the Council's website.

### 3. Pre-application consultation – guide

Under the Town and Country Planning (Development Management Procedure)(Scotland) Regulations 2008 developers require to undertake early **community consultation** prior to the submission of a national or major planning application. The National Planning Framework sets out what developments are classed as 'National' developments. Appendix 1 of this Guide includes an extract from the Town and Country Planning (Hierarchy of Development) (Scotland) Regulations 2009, which sets out the classes of development that are categorised as 'Major' developments.

If a prospective applicant is unsure their development is subject to the pre-application consultation requirement of the Planning etc.(Scotland) Act 2006, Section 35A(1) they can submit a Pre-Application Screening Notice to the Planning Authority. The Planning Authority must respond to the Pre-Application Screening Notice within 21 days stating either that pre-application consultation will either be necessary or not. An application form for pre-application screening is available on the Council's web site.

This Guide has been put together to assist you in undertaking pre-application consultations. It includes both the statutory requirements and also additional consultations which East Ayrshire Planning and Economic Development may recommend that you undertake.



Further to the above noted **Community consultation** the Council would also encourage prospective applicants to engage in early pre-application discussions with the Planning Service, other relevant Council departments and other relevant agencies (i.e. Transport Scotland, Historic Scotland, Scottish Natural Heritage, Scottish Environmental Protection Agency etc). This type of consultation should be undertaken as good practice prior to submission of a Proposal of Application Notice as it will influence layout and design considerations and could avoid the requirement for further community consultation if a proposal changes to a material extent

#### **Proposal of Application Notice should include the following:**

##### **Statutory**

- Address and contact details of agent and applicant, including company websites, e-mail addresses, highlighting name of main contact.
- Full address of development
- A plan showing the location and outline of the site (Scale 1: 2500)
- Description of development proposals
- Account of minimum consultation activities

##### **East Ayrshire Council additional requirements**

- List of other parties receiving a copy of completed Proposal of Application Notice form

- Layout plans (indicative)
- Development Programme (indicative)

**The Council has prepared a Proposal of Application Notice Form for prospective applicants to fill in, which is available on our website.**

**What is required in terms of consultation?**

***Statutory requirement***

1. A copy of the Proposal of Application Notice must be sent to any Community Council(s) any part of whose area is within or adjoins the land where the proposed development is situated. East Ayrshire Council Planning and Economic Development Division recommend that you send a copy of the Notice to both the Chairperson and Secretary / Planning contact (if available). A list of Community Councils is available on request from Planning and Economic Development.
2. If part of the site is within another Local Authority area please contact the relevant Council to direct you to the appropriate Community Council(s).
3. If you are unsure which Community Council area your site lies within please contact the Planning and Economic Development Division for clarification.
4. One public event must be undertaken where members of the public have the opportunity to make comments to you either verbally or in writing in respect of the development proposals.
5. An advertisement must be placed in a local newspaper, which is circulated within the area the development proposals are situated at **least 7 days** prior to the aforementioned public event.

|                     |   |
|---------------------|---|
| Cumnock Chronicle   | 49 Ayr Road, Cumnock KA18 1ED 01290 421633        |
| Kilmarnock Standard | 25 Portland Gate, Kilmarnock KA7 1JN 01563 525115 |

**The advertisement must contain the following information:**

- (i) A description of and location of the proposed development
- (ii) Details as to where further information on the proposed development may be obtained
- (iii) The date, time and venue of the public event
- (iv) A statement explaining how and by when persons wishing to make comments on the proposed development can to the prospective applicant.
- (v) A statement that comments made to the prospective applicant are not representations to East Ayrshire Council and if the prospective applicant submits a planning application there will be an opportunity to make direct representations to East Ayrshire Council's Planning and Economic Development Division.

**East Ayrshire Council additional requirements**

East Ayrshire Council will assess each Proposal of Application Notice to ensure that the statutory minimum requirements have been achieved, however the following additional consultation activity is recommended as good practice for prospective applicants

6. At least one meeting with Community Council prior to the public event. A minute of this meeting should be taken and agreed with Community Council and included within the PAC report. It is recommended that Community Councils are approached early with a view to establishing if there are other local groups that should be included in the consultation process.
7. Invite all adjoining neighbours (including non-domestic) to the public event(s) by writing to them informing them of development proposals and what opportunities they have to comment on proposals to prospective applicants and the relevant timescales.
8. The Council may require that additional consultation activity is undertaken and each applicant will be advised accordingly. This would be dependent on the nature and location of the proposals

Following the completion of pre-application consultation the applicant must prepare a written report, known as a Pre-Application Consultation Report, (PACR), to be submitted to the Planning & Economic Development Division with the planning application. The following list of information is required to be included within the report:-

| Information  | Included with PAC Report |
|--|--------------------------|
| 1 Specify who has been consulted   | <input type="checkbox"/> |
| 2 Set out what steps were taken to comply with statutory requirements  | <input type="checkbox"/> |
| 3 Set out what steps were taken to comply with the requirements of the planning authority  | <input type="checkbox"/> |
| 4 Set out how the applicant has responded to comments made, including whether and the extent to which proposals have changed as a result of Pre-application consultation (PAC)   | <input type="checkbox"/> |
| 5 Provide appropriate evidence that the various prescribed steps have been undertaken (i.e. copies of advertisements for public events and reference material made available at such events)                             | <input type="checkbox"/> |
| 6 Demonstrate that steps were undertaken to explain the nature of Pre-application Consultation (PAC) i.e. that it does not replace the application process whereby representations can be made to the planning authority | <input type="checkbox"/> |

**All PACRs require the above information before planning applications will be registered.**

**With regard to Community Engagement, attention is drawn to PAN 81, “Community Engagement, Planning with People”**

## Appendix 1

### Schedule in 2009 No. 51 TOWN AND COUNTRY PLANNING

The Town and Country Planning (Hierarchy of Developments) (Scotland) Regulations 2009

#### Major Developments

| <b>Description of development</b>   | <b>Threshold or criterion</b>  |
|---|--|
| 1. Schedule 1 development<br>Development of a description mentioned in Schedule 1 to the Environmental Impact Assessment (Scotland) Regulations 1999(a) (other than exempt development within the meaning of those Regulations).  | All development.   |
| 2. Housing<br>Construction of buildings, structures or erections for use as residential accommodation.  | (a) The development comprises 50 or more dwellings; or<br>(b) The area of the site is or exceeds 2 hectares.   |
| 3. Business & General Industry, Storage and Distribution<br>Construction of a building, structure or other erection for use for any of the following purposes—<br>(a) as an office;<br>(b) for research and development of products or processes;<br>(c) for any industrial process; or<br>(d) for use for storage or as a distribution centre. | (a) The gross floor space of the building, structure or other erection is or exceeds 10,000 square metres; or<br>(b) The area of the site is or exceeds 2 hectares.  |
| 4. Electricity Generation<br>Construction of an electricity generating station.   | The capacity of the generating station is or exceeds 20 megawatts.   |
| 5. Waste Management Facilities<br>Construction of facilities for use for the purpose of waste management or disposal.   | The capacity of the facility is or exceeds 25,000 tonnes per annum.<br><br>In relation to facilities for use for the purpose of sludge treatment, a capacity to treat more than 50 tonnes (wet weight) per day of residual sludge. |
| 6. Transport and infrastructure projects<br>Construction of new or replacement roads, railways, tramways, waterways, aqueducts or pipelines.  | The length of the road, railway, tramway, waterway, aqueduct or pipeline exceeds 8 kilometres.   |
| 7. Fish Farming<br>The placing or assembly of equipment for the purpose of fish farming within the meaning of section 26(6) of the Act.   | The surface area of water covered is or exceeds 2 hectares.  |
| 8. Minerals<br>Extraction of minerals.  | The area of the site is or exceeds 2 hectares.   |
| 9. Other Development<br>Any development not falling wholly within any single class of development described in paragraphs 1 to 8 above.   | (a) The gross floor space of any building, structure or erection constructed as a result of such development is or exceeds 5,000 square metres; or<br>(b) The area of the site is or exceeds 2 hectares.                           |

#### Interpretation

“the Act” means the Town and Country Planning (Scotland) Act 1997;

“industrial process” means a process, other than a process carried out in or adjacent to, a mine or quarry, for or incidental to–

(a) the making of any article or part of any article including a ship or vessel or a film, video or sound recording;

(b) the altering, repairing, maintaining, ornamenting, finishing, cleaning, washing, packing, canning, adapting for sale, breaking up or demolition of any article; or

(c) the dressing or treatment of minerals;

“site” means the land to which development relates.

#### 4. **Notice for service on owners and tenants of agricultural land**

Under section 35 of the 2006 Act, an applicant is required to give notice to a Planning Authority in a form as set out in schedule 1 of the Development Management regulations to any person (other than the applicant) who at the beginning of the prescribed period is the owner of any land to which the application relates or an agricultural tenant.

Applicants and agents are to complete and submit the appropriate owner notification certification. This form is available with the planning application forms and on the Council’s website and accords with the DM regulations.

Where the applicant / agent is unable to give notice to other owners / agricultural tenants, they must certify to the planning authority that they have taken reasonable, specified steps to ascertain these names and addresses. In this situation the planning authority will publish a press advert following receipt of the application.

#### 5. **Design and Access Statements (Regulation 13)**

The Development Management regulations require that certain applications for planning permission are to be accompanied by either a Design Statement or a Design and Access Statement. Advice and guidance on this topic is available in Scottish Government Planning documents and in documents provided by other agencies (see links below). The content of statements will be a material consideration and will be taken into account by the Council when considering certain types of development proposal. Where a Design or Design and Access Statement is required by planning legislation but is not included with the planning application, it will not be possible to validate the application. Guidance on when such statements are required, or not, is set out below:-

Applications requiring a Design & Access Statement in East Ayrshire -

- Applications for planning permission for national and major development

Applications requiring a Design Statement in East Ayrshire (with the exception of alterations or extensions to an existing building) -

- Applications for planning permission for Local Developments within:-
  - A conservation area
  - An historic garden or designed landscape
  - The site of a scheduled monument
  - The curtilage of an ‘A’ listed building

Design and Design & Access Statements are **not** required for the following categories of development -

- Application for planning permission for development of land without complying with conditions subject to which a previous planning permission was granted, (known as a Further Application)
- An application for planning permission for;
  - Engineering or mining operations
  - House alterations and extensions



- Material changes in the use of land or buildings
- An application for planning permission in principle (although the Council may request a statement in certain circumstances)

A Design Statement is a written statement about the design principles and concepts that have been applied to the development which:-

- Explains the design policy or approach adopted and how development plan design policies have been taken into account
- Describes the steps taken to appraise the context of the development and how the design of the development takes that context into account in relation to its proposed use
- States what, if any, consultation has been undertaken on the design principles and concepts that have been applied to the development and what account has been taken of the outcome of any such consultation

A Design and Access Statement contains all of the information in a Design Statement (noted above) but also a written statement about how issues relating to access to the development for disabled people have been dealt with, including the following:-

- Policy or approach to access for disabled people (external layout only)
- How development plan access policies have been taken into account
- How specific issues affecting access for disabled people have been addressed
- How access arrangements ensure equal access 'through' and 'to' the development
- Number of parking spaces for disabled people
- Describe long term management and maintenance arrangements for any access features for disabled people
- State what, if any, consultation has been undertaken on access for the disabled people. Undertaking such consultation is not a statutory requirement but where it has been undertaken it must be included in the statement with an indication of how it has influenced the proposal. Local access panels are a useful source to consult on on design due to personal experience and local knowledge (see link below)

In preparing Design or Design and Access Statements developers may find the following links helpful;

PAN 68 Design Statements (August 2003)

<http://www.scotland.gov.uk/Publications/2003/08/18013/25389>

PAN 78 Inclusive Design (March 2006)

<http://www.scotland.gov.uk/Publications/2006/03/07164427/0>

Inclusive Design Handbook SABSM (February 2009)

Available as an E-book at <http://www.accessibilitybydesign.co.uk/scottish/>

Design and Access Statements – How to write, read and use them (CABE 2007)

<http://www.cabe.org.uk/publications/design-and-access-statements>

Link to toolkit for design statement preparation

<http://www.designstatement.co.uk/>

Scottish Disability Equality Forum

<http://www.sdef.org.uk>

East Ayrshire Access Panel

[susan.fulton@east-ayrshire.gov.uk](mailto:susan.fulton@east-ayrshire.gov.uk)

*Please note that Regulation 9(d) of the Town and Country Planning (Development Management Procedure)(Scotland) Regulations 2008 confirms that if an applicant is seeking planning permission for the “installation of an antenna to be employed in an electronic communication network” then, to be valid, that application must be accompanied by an ICNIRP declaration.*

**6. Notice for Publication in newspaper (Reg. 20 and Schedule 4 )**

Where it is not possible to carry out notification (neighbour notification) because there are no premises situated on neighbouring land to which the notification can be sent, the applicant has submitted a planning application for planning permission, planning permission in principle or a further planning application (temporary consent) and has certified that he/she is unable to give notice to every such person(owner), or the application is for Schedule 3 classes of development ( previously known as bad neighbour development), or the development does not accord with the provisions of the development plan, the Planning Authority **must** publish a notice in a local newspaper in which the neighbouring land is located.

The Town and Country Planning (Charges for Publication of Notices) (Scotland) Regulations 2009 provides for the recovery of the cost for these notices in the newspaper. The Planning Authority are to notify the applicant in writing of the cost of publication of the notice and the applicant must pay to the Planning Authority within 21 days of being notified. The cost to EAC Planning & Economic Development to publish this notice is £100. The application will not be determined until the Planning Authority has received this payment.

**7. Variation of applications after submission (S32A of 1997Act)**

Section 32A of the 1997 Act (as amended by the 2006 Act) allows for applications to be varied after submission (and before determination) with the agreement of the Planning Authority. However, this does not apply where the proposed variation is considered by the Planning Authority to be substantial. In such cases a further planning application would be required to take forward such a variation. It is also not possible to vary an application which is the subject of an appeal.

**8. Decision Notices**

Your notice will provide you with notice of whether you have approval or refusal of your application. If approved, it will set out the conditions which relate to this decision and it is expected that in carrying out the development the terms of the conditions are adhered to at all times. The decision notice will also set out the reasons for these conditions and the reasons for the decision. If your application has been refused, the reasons for the refusal of permission will be clearly set out.

The requirements for Notices of Initiation and Completion of Development will be attached to the decision notices. Copies of forms will be provided for you to complete and return to the Planning Authority together with details of the circumstances when a site notice is required. Please see below.

Whether your application was determined under delegated powers or by a Committee of the Council will determine the route of any appeal/review. This will be clearly set out in your decision notice.

**9. Notification of Initiation of Development (Regulation 37 and S27A of 1997Act)**

Regulation 37 requires that a person who intends to carry out development for which planning permission has been granted must, as soon as practicable after deciding on a date on which to initiate the development, and before commencing the development, give notice to the Planning Authority as to the date of commencement of the development. The Planning Authority is obliged to direct the attention of the applicant to this requirement and to point out that failure to comply would represent a breach of planning control. The Council will therefore be including a condition on planning approvals to the above effect and attaching a 'Notification of Initiation of

Development' form for the applicant to complete and return prior to commencement of development

**10. Display of Site Notice (Regulation 38 and Schedule 7 DM Regs)**

Regulation 38 requires that in respect of developments belonging to the categories of 'National' developments, 'Major' developments and development within Schedule 3 of the Development Management regulations (previously referred to as Bad Neighbour Developments), the applicant is to display a notice on site until the development is completed.

There is a prescribed template for this notice (Schedule 7 in the Regulations) which will be attached to the relevant decision notices and will also be available on the Council web site, entitled "Notice to be displayed while development is in progress". The requirement for the display of such a notice will be confirmed within the relevant decision notice.

The Site Notice is to include the following information; details of the address or location of the development, whether or not there are any conditions, the name and address of the developer, the date on which planning permission was granted, the body that approved the application (i.e. the planning authority or the Scottish Ministers), the relevant reference number, the description of the development and the address and contact details of the planning authority or Scottish Ministers as appropriate.

The notice is to be completed and printed on durable material. It is to be displayed in a prominent place (readily visible to members of the public) at or in the vicinity of the site while the development is in progress.

**11. Notification of Completion of Development (S27B of 1997 Act)**

The 1997 Act (as amended) requires that a person who completes development for which planning permission has been given must, as soon as practicable after doing so, give notice of completion to the Planning Authority. Where a development is to be carried out in phases then any such permission granted is to be subject to a condition that as soon as practicable after the phase is completed the person carrying out the development is to give notice of that completion to the Planning Authority. East Ayrshire Council Planning and Economic Development Division has prepared a Notification of Completion of Development form for the applicant/developer to complete and this will be sent out to all applicants/agents if planning permission is granted with the decision notice.

The Council will include a standard condition on planning approvals requiring formal notification of completion of the development. This notification is to include the reference number of the planning permission, the site address and the date of completion of either the relevant phase or of the whole development

**12. Non Material Variations (NMV) of Planning Permission (S64 of 1997 Act)**

Legislative changes arising from the 2006 Act and 2008 DM Regulations do not alter the arrangements for seeking Non Material variations to approved planning permission under S64 of the 1997 Act.