

South Ayrshire Council

Report by Chief Executive to South Ayrshire Council of 8 October 2015

Subject: Review of Planning Decision Process

1. Purpose

- 1.1 The purpose of this report is to advise Elected Members of the circumstances and processes leading to a determination notice being issued without reasons, the outcome of the Judicial Review challenge and process changes being implemented to minimise likelihood of repetition.

2. Recommendation

2.1 It is recommended that the Council:

- (1) notes the circumstances and processes leading to a determination notice being issued without reasons;**
- (2) notes the outcome of the Judicial Review challenge; and**
- (3) approves the process changes already implemented to minimise the likelihood of repetition.**

3. Background

- 3.1 Members were previously advised (Council 21 May 2015) that a Decision Notice in respect of a planning application for a retail supermarket at the Holmston Roundabout had been issued without reasons being stated in the Notice and the Council's decision was then subject to challenge via a petition for judicial review.
- 3.2 The Executive Director - Resources, Governance and Organisation was granted delegated authority to progress matters in the best interests of the Council.
- 3.3 Officers were requested to give full consideration to the circumstances and processes leading up to the determination decision by the Council on 2 October 2014, and to the subsequent issues leading on from the Decision Notice issued on 20 January 2015 and the subsequent challenge by way of a Judicial Review and report on the outcome of these deliberations following completion of the ongoing legal process.

4. Proposals

- 4.1 A review of the current process for issuing of Decision Notices and the sufficiency of reasons in Decision Notices has been undertaken by the Planning Manager/ Executive Director – Economy, Neighbourhood and Environment and reviewed by Chief Executive/ Executive Director – Resources, Governance and Organisation in light of failure to include reasons in a respect of a recent application. The check that reasons had been entered onto the Decision Notice did not work in this case.
- 4.2 Errors in relation to Decision Notices are uncommon in South Ayrshire with 6 from 6,000 issued with errors since April 2009. To provide a further check on quality, the Development Management Co-ordinator reviewed every tenth decision notice over July and August 2015 for errors or other quality issues. No errors and no issues were found. Where an error is identified then it is established practice to withdraw the Decision Notice from the planning register, notify the applicant, request return of the original Decision Notice and re-issue a corrected notice. These errors are generally recognised as administrative errors and this is understood to be common practice across Scotland.
- 4.3 In this case, it was not considered appropriate to re-issue the Decision Notice with reasons included.

Current Process

- 4.4 Decision Notices are generated via the Uniform System using information from the Report of Handling. Reasons for approval are provided as generic drop down options from the data entered into the database. All Reports of Handling are reviewed by an appointed officer other than the case officer – manual intervention in the Decision Notice is required only when the decision that is taken is contrary to the recommendation in the Report of Handling.
- 4.5 The content and recommendations in all Reports of Handling are checked by two officers.
- 4.6 The responsibility for issue of competent Decision Notices lies with individual case officers; quality assurance of all Decision Notices would require one full time equivalent senior officer to undertake this review. This is contrary to modernising practices introduced in 2009 to avoid duplication, to streamline processes, and to make case officers responsible for their case work.
- 4.7 A more proportionate response is to focus on the decision notices where the decision by Members is contrary to officers' recommendation. From the beginning of June, an additional procedural step has been introduced and a co-ordinator now checks these Decision Notices.

Sufficiency of Reasons

- 4.8 There is a statutory requirement for transparency of the planning process and decision making. The decision notice should be read alongside the Report of Handling and the minute of the meeting, where relevant, to understand the considerations forming the decision taken.
- 4.9 The reasoning for the recommendation by officers is clearly outlined in the Report of Handling. Where decisions are taken contrary to officer recommendation then the Decision Notice would set out the fully minuted reason for the decision.

4.10 Officers have recognised that Elected Members may need help to provide planning reasons for a decision which is contrary to officers' recommendation and the following changes have been introduced:

- (1) Councillors will be advised that if they are considering moving against recommendations then they could discuss these with the planning officers in advance of the meeting
- (2) Pre-Regulatory Panel briefings will be held for all Regulatory Panels.
- (3) Panel/ Council meetings will be adjourned if there is a motion/ amendment against officers' recommendation. This could delay a decision to a future date.
- (4) Reasons for overturning an officer recommendation will be reviewed by Planning and Legal officers during the adjournment.
- (5) Approvals or refusals contrary to recommendation should include clear, succinct planning reasons which counter each of the reasons for refusal/ approval set out in the Report of Handling and these contrary reasons should be fully minuted.
- (6) The minuted reasons will be recorded on a checklist. This checklist will be counter-signed by a Co-ordinator/Planning manager at the time of issuing the Decision Notice confirming that the reasons have been included in the Decision Notice.

Judicial Review Update

4.11 Members granted delegated authority to the Executive Director- Resources, Governance and Organisation, to take decisions on behalf of the Council in respect of the judicial review proceedings raised by BNP Paribas on behalf of Ediston Properties, who own the Heathfield retail estate. Following discussions between the representatives of the Council and BNP Paribas, the judicial review challenge was withdrawn on the basis of an out-of-court settlement on expenses only, and the petition was dismissed by the court on 10 June 2015

5. Resource Implications

5.1 *Financial*

Costs including out of court settlement and Council legal expenses, were met from the Planning Service budget.

5.2 *Legal*

Not applicable.

5.3 *Human Resources*

Not applicable

6. Risk

6.1 Failure to address the recommendations and findings may result in further legal challenge in respect of planning applications.

7. Equalities

- 7.1 The proposals in this report have been assessed through the Equality Impact Assessment Scoping process and there are no significant positive or negative equality impacts of agreeing the recommendations, therefore an EQIA is not required. A copy of the Equalities Scoping Assessment is available as [Appendix 1](#)

8. Sustainable Development Implications

- 8.1 This Report does not propose or seek approval for a plan, policy, programme or strategy or document otherwise described which could be considered to constitute a plan, programme, policy or strategy.

9. Options Appraisal

- 9.1 An options appraisal has not been carried out in relation to the subject matter of this report.

10. Link to Council Plan

- 10.1 The proposals contained in this report link to the Council Plan strategic objective: 'Improve the way that we work as a Council'.

11. Results of Consultation

- (1) There has been no public consultation on the contents of this paper.
- (2) Consultation has taken place with Councillor Bill Grant, Portfolio Holder for Economic Development, Tourism and Leisure.
- (3) Consultation has not taken place with Trade Unions.

12. Next steps for decision tracking purposes

- 12.1 If the recommendations above are approved by Members, the Chief Executive will ensure that the following steps are taken within the following timescales, with progress reported to Council in the 'Council and Leadership Panel Decision Log' at each of its meetings until such time as the steps are completed:

<i>Steps to be taken</i>	<i>By what date</i>
Process changes as noted above	Already implemented, no further action.

Background Papers **Report to South Ayrshire Council of 21 May 2015 - Judicial Review of Planning Decision for the Planning Application 14/00692/APPM for Retail Supermarket Development at Holmston Roundabout, Ayr (Members only)**

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