



Law Society
of Scotland

Consultation response

Proposed changes to pre-application consultation requirements in planning

6 November 2020



Introduction

The Law Society of Scotland is the professional body for over 12,000 Scottish solicitors. With our overarching objective of leading legal excellence, we strive to excel and to be a world-class professional body, understanding and serving the needs of our members and the public. We set and uphold standards to ensure the provision of excellent legal services and ensure the public can have confidence in Scotland's solicitor profession.

We have a statutory duty to work in the public interest, a duty which we are strongly committed to achieving through our work to promote a strong, varied and effective solicitor profession working in the interests of the public and protecting and promoting the rule of law. We seek to influence the creation of a fairer and more just society through our active engagement with the Scottish and United Kingdom Governments, Parliaments, wider stakeholders and our membership.

Our Planning Law Sub-committee welcomes the opportunity to respond to Scottish Government's consultation *Proposed changes to pre-application consultation requirements in planning*¹. We have the following comments to put forward for consideration.

General comments

We support the improvements which the consultation proposes. We note that the Digital Planning Taskforce is a key part of the implementation of the 2019 Act and we support a shift towards digital delivery where possible, while recognising that an alternative is required for those who cannot access electronic information and/or digital platforms.

Consultation

Q1. Do you agree with the proposal to require the PAC information, which is to be made available to the public, to be available both by electronic means and in 'hard copy' format?

We support the proposal that PAC information be made available by electronic means. We recognise that there needs to be measures in place for those who cannot access the information electronically and note that the option to be able to obtain by request a hardcopy of PAC papers, particularly plans and drawings, can be helpful.

However, we consider that there are opportunities to streamline current arrangements. For example, the costs of publishing notices in newspapers are significant and in the experience of our members, has little response.

¹ <https://consult.gov.scot/planning-architecture/pre-application-consultation-requirements/>

Alternatives include local targeted media and inclusion in weekly lists issued by planning authorities (which we understand currently provide details of PANs). The option for telephone contact to discuss an application appears to have been successful where this has been offered (for example, Aberdeenshire).

Q2. Please give us details of your experience using online alternatives to public events during the COVID-19 emergency.

In our experience, online alternatives to public events have generally been well received and have a number of benefits over physical events. Online events seem to have been more focussed events and may enable more people to attend than could attend in person events. We note that recorded virtual events are of particular assistance as it means those who have been unable to attend the event 'live' can still engage in the process by viewing the recording.

Q.3 Do you agree with the proposal to make a second physical public event a minimum requirement of PAC?

While we recognise the merit in having a second event to review feedback given earlier in the PAC process, virtual sessions appear to have been more effective than physical events.

Q4. Do you agree that a second physical public event required as part of PAC must include feedback to the public on their earlier engagement in PAC?

We support the provision of feedback to the public but question how this feedback is expected to be presented, particularly at a physical public event.

Q5. Do you agree with the proposed minimum time period between the required public events in PAC?

While recognising that this is a minimum period, we suggest that it may be more appropriate for the minimum period to be 14 days to enable feedback to be fully considered and reported on to the public.

Q6. Do you agree with the proposed requirement for an additional newspaper notice for the second required public event?

As referred to above, newspaper notices are generally costly and appear to attract little response. We consider that alternatives should be explored, for example, local targeted media, including the use of online advertising, and inclusion in weekly lists issued by planning authorities (which we understand currently provide details of PANs).

Q7. Do you agree with the proposed list of required content for PAC reports?

We support the move towards improved consistency and transparency in the content of PAC reports.

While the applicant will be asked to provide an explanation of how they took account of views raised during the PAC process, there is no means to check if this fully reflects the views expressed. There may be a benefit

in providing an opportunity for stakeholders to comment on a PAC report. For example, community councils as statutory consultees could be given a right to comment on a PAC report.

In reference to paragraph 29(k) of the consultation document, we suggest that it is made clear that any further views raised at the second (or final) event are to be responded to through the finalised application and related PAC report.

Q8. Do you agree with the PAC exemption being limited to the same applicant who made the earlier application?

We note that planning permission runs with the land and relates to a particular development rather than to an individual. On this basis, it seems inappropriate to limit the PAC exemption to the same applicant.

Q9. Do you agree with the circumstances regarding an earlier application (withdrawn, refused etc.) in which a second application would be able to get exemption from PAC?

Yes.

Q10. Do you agree with the approach to linking the description of the proposal in the earlier application and that in the second application for the purposes of a PAC exemption?

Yes.

Q11. Do you agree that the exemption from PAC should be linked to the content of the PAN served in relation to PAC for the earlier application?

Yes. We note that a planning application may only cover part of the full site set out under the PAN and it is not clear from the consultation document as to how such situations would be treated.

Q12. Do you agree with the proposed time limit on exemptions from PAC?

We suggest that 12 months may be more appropriate than 18 months. This would remain consistent with recent engagement on the proposed application with the community.

Q13. Do you agree with the proposed transitional arrangements for bringing into force the new PAC requirements, including the time limit for making applications to which PAC requirements apply?

Yes, subject to our comments around timing at question 12.

Q14. Please give us your views on the proposed approach to pre-application engagement with disabled people.

It is important that disabled people and their representative groups and organisations are able to effectively participate in pre-application consultation processes. Steps should be taken to facilitate engagement with

organisations for disabled people, organisations of disabled people, and with individual disabled people who may not be members of such organisations but are likely to have relevant views.

We welcome the proposal to issue guidance on pre-application engagement with disabled people, and to require the PAC report to indicate what steps have been taken to engage with disabled people and how issues raised were considered in finalising the proposal. The proposed guidance should highlight the importance of ensuring that engagement takes place in a way that is fully accessible and supports participation. The full range and diversity of disabilities should be recognised, both in ways to notify disabled people and to support them in expressing their views. Newspaper notices will be inappropriate to reach some. Public events may be inaccessible to some, or require support and appropriate facilities to allow for meaningful attendance. Compliance with the UN Convention on the Rights of Persons with Disabilities requires that where support is needed to facilitate participation in the same way as people without disabilities, that support must be provided.

We note the proposed shift towards digital delivery where possible. Whilst digital delivery may improve access, including for some disabled people, it is essential that electronic formats and digital platforms are fully accessible and that suitable alternative formats are made available to ensure that disabled people do not face barriers to engagement.

Q15. Please tell us what issues you think should be covered in guidance for PAC.

In addition to the matters addressed at question 14, we consider that there would be merit in consideration being given by the Scottish Government and potentially guidance being produced for prospective applicants around how to engage with sectors of the population that may be harder to reach, for example, young people and the elderly.

Q16. Please give us any views you have on the content of these partial BRIA and EQIA/CRWIA.

No comment.

Q17. Do you have or can you direct us to any information that would assist in finalising the BRIA and EQIA/ CRWIA?

No comment.

Q18. Please give us your views on the Island Communities Impact Assessment screening paper and our conclusion that a full assessment is not required.

No comment.

Q19. If you consider that a full Island Communities Impact Assessment is required, please suggest any information sources that could help inform that assessment.

No comment.

Q20. Please give us any general comments on the PAC proposals or related issues not covered by earlier questions.

No comment.

For further information, please contact:

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