



THE MORAY COUNCIL DEVELOPMENT MANAGEMENT SERVICE

ePLANNING: REDACTION AND COPYRIGHT POLICY (2015)

1 Introduction

- 1.1 This policy is prepared to reflect the Moray Council's approach to publicise information online regarding valid applications for planning permission and other related consents through the Council's Public Access facility available at <http://public.moray.gov.uk/eplanning/>
- 1.2 This policy applies to information contained within valid applications for planning permission and other related consents including Advertisement Consent, Listed Building Consent, Prior Notification/Prior Approval and Certificates of Lawfulness, etc whether submitted in electronic format through the Scottish Government's ePlanning Service at <https://eplanning.scotland.gov.uk/WAM/> or submitted in electronic or paper format to the Council direct (whereupon the latter will be converted into electronic format). This information includes application particulars (forms and drawings) and supporting documents together with representations and consultations received in response to the submission. Formal decision notices together with the associated report (for Committee decisions) or Report of Handling (for delegated decisions) prepared in support of the Council's decision, whether to approve or refuse the application, can also be viewed online together with appeal and notice of review submissions and decision letters.
- 1.3 With greater commitment to, and increased use of, electronic communications in the planning system, it is important that publication of planning information, in particular sensitive personal data is processed in accordance with the Data Protection Act 1998 and other statutory requirements and advice.
- 1.4 This policy has been prepared following publication of Scottish Government's *Publishing Planning Applications Online – Data Protection Guidance for Planning Authorities* (August 2013) [the guidance] prepared in consultation with the Information Commissioner's Office which provides general advice on the processing of personal information and how to comply with the Data Protection Act 1998.
- 1.5 This policy reflects decisions of the Council to publicise planning information, namely application particulars and decision documents (from April/August 2009), consultation responses and representations received on applications

(from November 2011) and following consideration of revised guidance, revised arrangements for the presentation and handling of planning information online (September 2014).

- 1.6 This policy supersedes the Council's previous policy, as published in April 2011, about procedures for handling and publishing planning information online.
- 1.7 It is important to note that the publishing of planning information on the Council's website, including comments and views as expressed in documents and correspondence (whether in written and/or electronic format) and as submitted by applicants and other contributors does not mean that the Council, as planning authority agrees or endorses these comments or views, or confirms any statements of fact to be correct.

2 ePlanning

- 2.1 The Planning etc. (Scotland) Act 2006 introduced changes designed to modernise the planning system, including aims to encourage greater engagement with the community and promote openness and transparency in the planning process. ePlanning is designed to support the modernisation of the planning system with the use of information technology to support and deliver an online planning service, both to facilitate the submission of applications electronically and to manage, exchange and publish planning information online. The objective is to create an end-to-end ePlanning service which will be open and transparent, with planning information available and accessible online.
- 2.2 Under the Town & Country Planning (Scotland) Act 1997 as amended, the Moray Council has a legal duty to make available certain details about applications, both before and after they are determined i.e. the requirement to maintain and make a planning register available for public inspection. Part 1 of the register contains documents that must be made available up until the application and where relevant, until any appeal or local review is determined. Part 2 contains documents that must be made available after a decision is made.
- 2.3 Regulations including the Town & Country Planning (Development Management Procedures) (Scotland) Regulations 2011 allow for planning registers to be made available on a planning authority's website and for statutory procedures associated with the processing of applications to be undertaken electronically.
- 2.4 The Council's Public Access facility available at <http://public.moray.gov.uk/eplanning/> acts as a planning register and also enables planning documents, once published, to be accessed online both before and after a planning decision has been made.
- 2.5 The Council's initial approach to online publication of planning information (from April/August 2009) focussed primarily on fulfilling planning register

requirements i.e. application forms and certificates, drawings describing the development and other supporting documentation submitted with the proposal, together with formal decision documents and Committee reports and/or Reports of Handling prepared in support of the Council's decision.

- 2.6 Although there is no statutory requirement to do so, the Council's Planning & Regulatory Services Committee agreed, in November 2010, to undertake further publication of planning information, in particular publication of planning consultation responses and representations, whether made in support of, or in objection to any formal application for planning permission, the latter as received from members of the public and other interested parties in response to formal procedures for notification and advertisement of the application where required.
- 2.7 The guidance confirms that decisions on what and how planning information is published online remains a matter for each individual planning authority to determine and promotes a "best practice" approach to publication. Although the range of planning information as published by this Council remains unchanged, the Moray Council agreed in September 2014 to revise its arrangements for handling and publishing planning information online after taking into account the guidance and Data Protection Act principles.
- 2.8 When publishing documents, the guidance indicates that information should be provided to all contributors about how personal data will be treated before and after a decision. In addition, the inclusion of personal and sensitive information whether in Committee reports and/or Reports of Handling should be treated in the same manner. Authorities are also advised that they should avoid publishing unnecessary personal information where, for example, there is no reason for documents including reports to include the names and addresses of those who have submitted representations.
- 2.9 In September 2014 the Council agreed to continue the practice of including names and addresses of parties submitting representations on applications within any Committee report: in these circumstances and to ensure that data protection principles are followed, the guidance advises that at the post-decision stage, such information should be removed i.e. by redaction (see below) and a statement is added to the report to confirm this action. This practice has been adopted upon issue of Committee decisions made on applications from November 2014.
- 2.10 To respect data protection principles, the practice of including a list of names and addresses of parties submitting representations within Reports of Handling (for delegated cases) ceased with effect from February 2015.

3 Data Protection

- 3.1 With the move to have more planning information accessible online, there is a responsibility on all staff who handle, store and publish planning information to ensure that it is done correctly and in line with Data Protection Act principles which seek to protect people's personal information from misuse.

- 3.2 All information received by the Council, as planning authority will be captured, scanned and where necessary, redacted i.e. the removal or “masking” of personal or sensitive information (see Redaction below) prior to being published online through the Council’s Public Access facility available at <http://public.moray.gov.uk/eplanning/> to ensure that the information as published/displayed does not breach Data Protection Act obligations imposed on those who record and use personal information.
- 3.3 To be open about how information will be used and to observe the principles embodied within the Data Protection Act, the guidance affirms that applicants and contributors should be made aware of which elements of their personal information will be published and how it will be handled.
- 3.4 To reflect these requirements the following statements will be included in formal correspondence issued by the Council as planning authority:
- a) in relation to the formal registration/acknowledgement of an application *“Please note that when you submit an application, information about the application will appear on the Council’s planning register and will be published on the Council’s website at <http://public.moray.gov.uk/eplanning/> (You can also use this site to track progress of your application and view details of any consultation responses and representations (whether in support or objection) received on the proposal). In order to comply with the Data Protection Act, personal information including signatures, personal telephone and email details will be removed prior to publication using “redaction” software to avoid (or mask) the display of such information. Where appropriate other “sensitive” information within documents will also be removed prior to publication online.*

Where provided, for example on the application form, an applicant’s home address will be published on the website. Once a decision has been made on the application, the address details will be removed (i.e. redacted) and/or the application form will be withdrawn from display.”

b) in relation to formal consultations issued in respect of an application *“Please note that information about the application including consultation responses and representations (whether in support or objection) received on the proposal will be published on the Council’s website at <http://public.moray.gov.uk/eplanning/> (You can also use this site to track progress of the application and view details of any consultation responses and representations (whether in support or objection) received on the proposal). In order to comply with the Data Protection Act, personal information including signatures, personal telephone and email details will be removed prior to publication using “redaction” software to avoid (or mask) the display of such information. Where appropriate other “sensitive” information within documents will also be removed prior to publication online.”*

c) upon acknowledgement of representations (received prior to expiry of period made available for persons to comment on an application) *“Please note that information about the application including consultation responses and representations (whether in support or objection) received on the proposal will be published on the Council’s website at*

<http://public.moray.gov.uk/eplanning/> (You can also use this site to track progress of the application and view details of any consultation responses and representations (whether in support or objection) received on the proposal). In order to comply with the Data Protection Act, personal information including signatures, personal telephone and email details will be removed prior to publication using "redaction" software to avoid (or mask) the display of such information. Where appropriate other "sensitive" information within documents will also be removed prior to publication online.

Whilst taking into account your comments, please note that name and address details will be removed (redacted) prior to publication and where any information is included from which an individual may be identified this too will require to be removed prior to publication. In addition, no name and address details of parties submitting representations will be included in any Report of Handling prepared in support of the Council's decision on an application determined under delegated powers. In the case of an application to be determined by the Planning & Regulatory Services Committee, the Committee has agreed that a list(s) of names and addresses of parties submitting representations on the application will be included in any report prepared and submitted for the Committee's consideration but once a decision is made, the report will be re-published with the list(s) removed (i.e. redacted).

d) in relation to notices issued to notifiable neighbours
"Please note that information about the application including consultation responses and representations (whether in support or objection) received on the proposal will be published on the Council's website at <http://public.moray.gov.uk/eplanning/> (You can also use this site to track progress of the application and view details of any consultation responses and representations (whether in support or objection) received on the proposal). In order to comply with the Data Protection Act, personal information including signatures, personal telephone and email details will be removed prior to publication using "redaction" software to avoid (or mask) the display of such information. Where appropriate other "sensitive" information within documents will also be removed prior to publication online.

Whilst taking into account your comments, please note that name and address details will be removed (redacted) prior to publication and where any information is included from which an individual may be identified this too will require to be removed prior to publication. In addition, no name and address details of parties submitting representations will be included in any Report of Handling prepared in support of the Council's decision on an application determined under delegated powers. In the case of an application to be determined by the Planning & Regulatory Services Committee, the Committee has agreed that a list(s) of names and addresses of parties submitting representations on the application will be included in any report prepared and submitted for the Committee's consideration but once a decision is made, the report will be re-published with the list(s) removed (i.e. redacted).

When submitting comments, you should avoid making personal comments or expressing opinions about others. Where so expressed, such comments will not be published. The Council may decide to remove (redact) such remarks

or request that you revise your comments and re-submit an acceptable version which can be made public. “

e) in relation to formal responses issued by the Council on pre-application advice and enquiries

“Please note that when you submit an application, information about that application will appear on the Council’s planning register and will be published on the Council’s website at <http://public.moray.gov.uk/eplanning/> (You can also use this site to track progress of the application and view details of any consultation responses and representations (whether in support or objection) received on the proposal). In order to comply with the Data Protection Act, personal information such as signatures, personal telephone and email details will be removed) prior to publication (using “redaction” software to avoid (or mask) the display of such information. Where appropriate other “sensitive” information within documents will also be removed prior to publication online.

Where provided, for example on the application form, an applicant’s home address will be published on the website. Once a decision has been made on the application, the address details will be removed (redacted) and/or the application form will be withdrawn from display.”

f) for general correspondence issued before, during or after an application has been submitted (or determined) (dependent on type of correspondence)

“Please note that when you submit an application, information about the application will appear on the Council’s planning register and will be published on the Council’s website at <http://public.moray.gov.uk/eplanning/> (You can also use this site to track progress of the application and view details of any consultation responses and representations (whether in support or objection) received on the proposal). In order to comply with the Data Protection Act, personal information including signatures, personal telephone and email details will be removed prior to publication using “redaction” software to avoid (or mask) the display of such information. Where appropriate other “sensitive” information within documents will also be removed prior to publication online.

g) for Committee reports, the following statement will be included in any report considered by the Committee

“Following the determination of this application, all name and address details will be/have been removed (i.e. redacted) in accordance with the Data Protection Act (Paragraph 3 of Minute, Planning and Regulatory Services Committee, 16 September 2014 refers) “

h) for Reports of Handling (for delegated decisions) the following statement will be included

“Name and address details of parties submitting representations withheld in accordance with the Data Protection Act “

3.5 The above statements (at g) and h) above) and redaction of name and address details for Committee reports and Reports of Handling will be applied retrospectively to all decisions currently published online since 2009, in order to satisfy the requirements of the Data Protection Act. Given the number of

decisions involved, this work will be undertaken in a phased manner and will take time to complete.

- 3.6 The Data Protection Act requires personal data processed for any purpose(s) not to be kept any longer than is necessary for that purpose(s). Documents containing personal data will be removed from public online display once a decision has been made and/or where there are no further opportunities for challenge. At this stage, personal data which must be retained to comply with the Local Government (Access to Information) Act 1985 will be archived offline and/or kept for the retention period stated in accordance with the Council's Records Retention & Disposal Schedule (unless with agreement of the owner of the personal data, retention may be longer than that stated within the published schedule).
- 3.7 Details of consultations and representations will be published as soon as practicable after receipt (but only after redaction has been applied) and remain available online until a decision on the application has been issued. Thereafter, the information will no longer be accessible or displayed online, to respect Data Protection principles.
- 3.8 Following receipt of a valid appeal (to Scottish Ministers) or Notice of Review (to the Moray Local Review Board), details of the representations and consultations will be (re)published and accessible online for the duration of the appeal/review process. Once a decision letter for the appeal/notice of review has been issued, the documents will no longer be accessible to view online other than those required to fulfil the requirements of the planning register. In the case of appeals, the Directorate for Planning and Environmental Appeals (DPEA) also publish planning appeal information on their website.
- 3.9 Although documents may be withdrawn and no longer accessible online, this does not mean they will be destroyed, unless in accordance with the Council's file retention schedule.
- 3.10 Where a data protection breach occurs or errors in published data are identified, the breach will be expeditiously corrected by Council staff. Where deemed to be significant, the incident will be reported to the Council's Data Protection Officer and the Information Commission for Scotland.

4 Redaction

- 4.1 The Council will take extreme care when publishing personal information on its Public Access facility available at <http://public.moray.gov.uk/eplanning/> and will avoid publishing the following personal information data of an applicant or contributor by the use of the process of redaction i.e. where certain information will be "masked" so as not made visible to view in any copy of a document published online:
- names and addresses;
 - signatures (hand written and electronic);
 - personal telephone numbers including mobile phone numbers (but not commercial or business phone numbers);

- personal email addresses (but not commercial or business email addresses);
 - dates, certificates or previous consents that can be used to trace identification back to an individual.
- 4.2 Personal information includes any expression of opinion about the individual and any indication of intentions anyone may have in respect of the individual. This would cover any comments or opinions that could lead to the identification of an individual and may also include descriptive or geographical data which may identify a specific property and as a result, a specific individual.
- 4.3 In addition the following sensitive personal data will be redacted in relation to an individual's
- racial or ethnic origin;
 - political opinions;
 - religious or similar beliefs;
 - membership of a trade union;
 - physical or mental health (including evidence to support a reduction in the planning fee);
 - sexual health;
 - commission or alleged commission of an offence; and
 - legal proceeding or sentencing for any offence.
- 4.3 Other information which should be regarded as sensitive, and which will be redacted will include
- personal information collected in order to comply with the diversity monitoring requirements of the Race Relations (Amendment) Act 2000, the Sex Discrimination Act 1975, and the Disability Discrimination Act 2005;
 - sensitive (or confidential) information or data from Environmental Impact Assessments (EIAs) or similar documents submitted in support of the application, for example information identifying specific sites or locations of protected birds and mammal species, etc;
 - sections within studies, design statements, reports, impact assessments etc that are thought to be exempt under the Freedom of Information (Scotland) Act 2002 or the Environmental Information (Scotland) Regulations 2004;
 - details of applications which are accompanied by a statement that the public disclosure of information would be contrary to the national interest (which may result in plans, drawings or other information being withheld from display).
- 4.4 In addition, the Council will use its discretion to apply redaction prior to publication to any comments or information it considers to be derogatory or defamatory in character, including the use of salacious, slanderous, erroneous or pejorative words or phrases. Where the decision is made not to publish such information, the contributor will be advised and asked to re-submit an acceptable version, which can be made public.

5 Copyright

5.1 The following should be considered as “literary works” for the purposes of the Copyright Designs and Patents Act, 1988:

- hand drawn drawings, CAD drawings and site plans;
- additional information and reports accompanying the application;
- objector’s comments;
- supporter’s comments;
- officer’s’ comments; and
- where there is an appeal or review, the appellant’s case and other person’s representations.

5.2 The owner of the copyright has the exclusive rights to copy the work, to issue copies of the work to the public and to communicate the work to the public. To make such information available on its website without permission of the owner of the copyright (usually the author of the letter, drawings, plans, etc) may constitute an infringement of the owner’s copyright. Public downloading of the information may also be infringing copyright of the work.

5.3 The permission from the owner of the copyright is deemed to have been implicitly given to the Moray Council, as planning authority when submitting an application (whether online through the Scottish Government’s ePlanning portal or in paper) that such material will be republished online and viewable publicly via the Council’s Public Access facility.

5.4 In addition, the following statement is published on the Council’s Public Access facility available at <http://public.moray.gov.uk/eplanning/> (on the web page where you can view planning application documents):

Plans, drawings and other material submitted to the local authority are protected by the Copyright, Designs and Patents Act 1988 (Section 47). You may only use material which is downloaded and/or printed for consultation purposes, to compare current applications with previous schemes and to check whether developments have been completed in accordance with approved plans.

Further copies must not be made without the prior permission of the copyright owner.

5.5 Ordnance Survey (OS) maps and maps created from OS material are subject to Crown Copyright. All OS mapping made available via the Council’s Public Access facility available at <http://public.moray.gov.uk/eplanning/> is subject to Crown Copyright. The use of mapping is limited to view for the purpose of site locating. OS mapping must NOT be copied, published, reused, sub-licensed, sold, demonstrated, lent or otherwise transferred or exploited without prior written permission of OS and/or copyright owner. Further information regarding Ordnance Survey Licensing may be found at:- <http://www.ordnancesurvey.co.uk/business-and-government/licensing/index.html>

- 5.6 Under agreement with One Scotland Mapping, the Moray Council as planning authority must ensure that OS Maps of 1:10,000 or larger when submitted as part of a planning application and scanned for republication via the Council's Public Access facility available at <http://public.moray.gov.uk/eplanning/> are appropriately watermarked and must cover at least 10% of the visible map image. This requirement applies to any valid application received online from April 2009 and for all valid paper applications received from April 2009 which, when scanned, are made electronic and published online.
- 5.7 Publishing a hard copy OS map does not require a mandatory watermark but the Council's Agreement with One Scotland Mapping makes it a recommendation. Once published on the Council's Public Access facility available at <http://public.moray.gov.uk/eplanning/> electronic publishing conditions contained in this policy and One Scotland Mapping apply.

DATED: 1 May 2015

SIGNED: Jim Grant, Head of Development Services, The Moray Council