

CHANGES TO THE SCOTTISH PLANNING SYSTEM

A BRIEF GUIDE (Amendment No. 2)

A recent White Paper announced changes to the existing system designed to streamline the whole process. In future, planning applications will be categorised in one of 3 ways :

National developments - specified in National Planning Framework 2 (NPF2) – e.g. Forth Bridge

Major developments - 50 houses or more **OR** 5 acres of business development

Local developments – comprising about 90% of all applications and ranging from a new conservatory, or a house extension which adds a new bedroom, through a steading conversion and going right up to a development of 49 houses.

NATIONAL AND MAJOR DEVELOPMENTS

Cannot be delegated to planning officers (see below). They must give a Proposal of Application Notice 12 weeks before application - copy to relevant Community Council (CC). They will all have to be subject to Pre-Application Consultation' with communities, including consultation with the relevant CC(s). Consultation must include publicity in a local newspaper and at least one advertised public event , where members of the public can make comments. (The planning authority **may** require additional consultation – decided on a case-by-case basis.) The developer must then submit a report on that consultation with the planning application. National and major developments will go to full Shire Council for decision.

DECISIONS DELEGATED TO PLANNING OFFICERS

The intention is that planning officers shall handle as many Local applications as possible, rather than sending many of them to Area Committee for decision as happens now. This is called the Scheme of Delegation (SOD). In theory, any Local development can, in future, be decided by a planning officer, under SOD, after discussion with the elected members for the relevant area – even for a big scheme of 40 new houses. In practice, many will not be delegated. An application will not be delegated where :

-the planner wishes to approve but there are **five or more** valid objections (see definition below)

-the application is **contrary** to the Development Plan **but the planner wishes to approve it**

-the application is **contrary to Plan**, the planner is **therefore refusing** but at least **2 elected members wish to refer** it to Area Committee

-the application is **by the Council itself** or where **Council land is involved**

-there are **fewer than 5** valid objections but **2 of the elected members request that it be referred to** Area Committee

-the application is **by an elected member**

-there is an **unresolved objection from a consultee** such as SNH or a Community Council

-it is **for a Listed Building** or in a Conservation Area

In all these above-noted exceptions (and one or two more) , the application will still go to Area Committee for decision.

A VALID OBJECTION IS ONE WHICH IS :

In writing and from a postal address ; competent, i.e. on planning grounds (not, for example, ..'Stewart Milne will make a huge profit..') ; from an individual in a **separate household** (man's letter and wife's letter equals one) ; received within 21 days from neighbour notification or public advertisement. (NOTE : Petitions will count as ONE objection.)

CHANGES

- The first major change is that, when a delegated decision is not to the liking of the applicant, he will **appeal, not to the Executive** in Edinburgh (where it would be examined by a Reporter), but **to the Local Authority itself , who have established a Local Review Body (LRB)** for that purpose. That LRB consists of 6 elected members, (1 from each of the Council's 6 areas) with the assistance of a planning officer and a legal eagle to guide them on technical matters. The time in which an appeal can be submitted is reduced from 6 months to 3 months
- When an application has been refused and is appealed to the LRB, objectors will have **only 14 days** to submit any further brief statement . That means that, especially for individual and CC objectors (who don't have consultants to do it for them), the whole case needs to be set out at the initial objection stage. (See details in Note 1 below)
- The LRB will review the documents , the process followed, whether each issue has been given due weight, the decision itself and make a judgment, against which there will be **no further appeal : the decision is final**, unless the applicant wishes to pursue in the Court of Session (millionaires only !).
- The LRB **may** sometimes ask for more information in writing, or by asking the applicant and objectors to address it, i.e. to have a 'hearing'. The LRB has discretion in these matters as well as on the subject of site visits. There is **NO automatic right to address the LRB.**
- The LRB will have one elected member from each area as a permanent member and there will be two understudies from each area to cover holidays , for example. If an elected member has been involved in discussion with the planners over an application, he will NOT sit on the LRB if there is an appeal. Similarly, the planner involved in making the original decision will not sit in as the expert adviser to the LRB when it hears the appeal.

The LRB will sit in public and will issue its decision in writing and give reasons for it.

If the LRB does not make a decision within 2 months, the applicant can appeal to the Executive.

If an application goes to Area Committee (e.g. if it is a Major development or is one of the above-noted exceptions), the appeal process will remain as it always was, it goes to Edinburgh for a Reporter's examination, but the 3 month period still obtains and further evidence will be limited.

APPEALS TO THE EXECUTIVE

Where an appeal does go to Scottish Ministers, there will be limited scope to introduce new material and the Reporter will decide whether proceedings will be by written submissions, informal hearing or formal Inquiry. (Previously the applicant had the option.) The Reporter can decide on a combination of those methods and will decide precisely which aspects of the application are to be considered by hearing or inquiry.

There will no longer be a right to be heard and written precognitions will be limited to 2,000 words.

OTHER CHANGES

The recommendation is that objections must be received **within 21 days instead of 14 as it (theoretically) is now**. In practice this is a bigger change than it sounds as the local authority has always been very lenient in this respect, accepting representations right up to the point at which applications go to Committee – often literally months after the 14 day cut-off. The Council has indicated that there may be a degree of flexibility (in applying the new 21-day rule) for statutory consultees, including Comm. Councils, or for big developments, **but NOT for personal objectors**.

Previously all recommendations for refusal of permission went to Area Committee, but not now - see above.

Letters of representation will be published, via the web, **as soon as they are received** (instead of with the report to Area Committee).

In future, Neighbour Notification will be the responsibility of **the Council, not the applicant**. If there are no premises within 20 metres of the site, the application will be advertised in a local newspaper (only one advert in future). Bad Neighbour developments, as they were previously known, are now called Schedule 3 developments.

The Council will now publish a **weekly list of applications not yet determined**.

When planning permission is granted, the developer will have **3 years in which to start the work**, not 5 years as was the rule in the past.

GENERAL

The time allowed for the Council to determine an application will be : **2 months for a Local** development and **4 months for Major / National** ones.

The new scheme of delegation was operative from Sept 1st. The public consultation will not be required for applications made before Aug 3rd. There will **always** be a Pre-Determination Hearing (PDH) for National developments and for Major developments which are significantly contrary to the Development Plan. The Council also has discretion to hold a PDH for some Local applications if it deems them controversial e.g. the subject of many objections– just as it did for Meikle Carewe wind turbines and the Blairs development .

Exactly as prevails now, the Development Plan (DP) is the primary consideration in the decision making on any application. The new DP consists of the new Structure Plan (72,000 houses, Development corridors etc) plus the old Local Plan (ALP). The new Local Development Plan (LDP) will replace ALP in 18 months or two years.

The Council will monitor the working of the Local Review Body and will review its operations after one year.

If a developer puts in an application which is refused, follows it with an identical applications which is also refused, the Council can decline to determine a third one

NOTES

1. The '14 day' rule actually works like this : The applicant (who is appealing to the LRB) has to state his reasons and say on what grounds he is appealing in a Notice of Request. The Council will then inform any objectors and state where they can inspect the relevant documents and the 14 days starts from the date the objector gets the notification from the Council. If an objector does make any comments within the 14 days, the applicant is then shown what has been said and he has a further 14 days to respond to it.

If any of the above details change, further amendments will be made to this guide.