

Local Authorities - Your One Stop Shop for Planning Permission

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The Planning Etc. (Scotland) 2006 Act created a two tier method of appeals depending upon the type of development for which permission is being sought.

At one end are the national and major developments. At the other end are local developments. Put simply anything which is not national or major falls within local development.

National developments are developments found within the National Planning Framework for Scotland, such as a replacement Forth Road Bridge. Major developments are broadly defined by their size or energy output, such as developments of over fifty houses.

There are now two routes by which an application may be decided. The major and national developments are decided by a Local Review Body ("LRB") with a right of appeal to the Scottish Ministers. A LRB comprises of at least three members of the local authority.

Planning applications for local developments are determined by a delegated officer of the planning authority with a right of review to the LRB. The legislation refers to a "review", but I suspect most will simply regard a review as an appeal by any other name. A review may also be sought where an applicant is aggrieved at the imposition of planning condition(s), or where an application has not been determined within the statutory time-limit of two months.

A time limit to seek a review is three months. The three months run from the date of the delegated decision, or the end of the period allowed for determination of the planning application.

An application for review must be put in writing on a standard form available from the planning authority. The application requires to include a statement of the grounds for review together with all supporting documents and materials that the applicant seeks to rely upon. The notice must state what type of review procedure is being sought. There are three methods of review:

1. Written Representations; or
2. A Site Inspection of the land which is proposed to be developed; or
3. A Hearing before the Local Review Body.

On receipt of an application for review the LRB must give notice to all interested parties. The interested parties are any statutory consultees and any other person(s) who made representations in respect of the planning application. Those parties/person(s) may make representations to the LRB.

The LRB have the discretion to determine the review without any further procedure. Alternatively the LRB may conduct the review by way of the methods mentioned above.

Where the LRB decide to determine the review by written submissions they may seek further representations or information from the applicant and the interested parties before reaching a decision.

A site inspection may be accompanied or unaccompanied. If it is to be accompanied the LRB require to notify the applicant and interested parties that they may attend the site inspection. It is worth noting that if the site inspection causes the LRB to take into account new evidence, which is material to the review, the applicant and any interested parties are provided with an opportunity of commenting on that new evidence.

Where the LRB decide to hold a hearing the applicant and any interested parties are notified of the hearing. The LRB require to advise parties what procedure which will be followed and in which order they will consider matters and parties. The hearing is held in public. Whilst there is no automatic right for the applicant or others to make oral representations, in practice oral representations are common. The general aim is that the hearing will be non-adversarial. For example, cross examination is only permitted where the LRB decide cross-examination is required. The effect of all of this is that a hearing takes the form of a discussion led by the LRB.

The LRB must issue their decision in writing. The decision must contain reasons for the decision taken, including what provisions of the development plan and other material considerations have been taken into account in reaching their decision. They have the power to uphold, reverse, or even vary a decision made by the delegated officer.

Finally there is no right of appeal to the Scottish Ministers. The only right of appeal is to the Court of Session on very limited grounds.