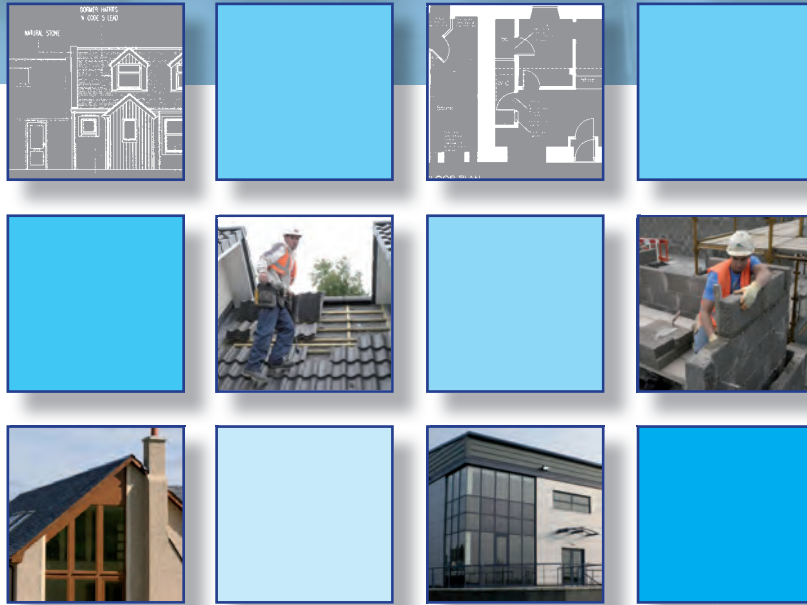


# Planning and Building Standards Services GUIDANCE



## Planning Application Decision Making Process

December 2011



Enterprise Resources

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## 1.0 Introduction

- 1.1 The Council's system for processing planning applications is governed by the Town and Country Planning (Scotland) Act 1997 as amended by the Planning etc. (Scotland) Act 2006. The system involves a combination of delegation to officers to allow the determination of small-scale, straightforward applications, together with the referral of larger, more significant proposals to an appropriate committee.
- 1.2 The purpose of this guide is to clearly set out the application processing system in relation to local, major and national developments as defined in the Hierarchy of Development (Scotland) Regulations 2009. An appeal against the refusal of planning permission, non-determination or condition relating to a local development determined or that could be determined under delegated powers must be the subject of a review by the Local Review Board set up by the Council. All other appeals will continue to be dealt with by the Scottish Government. Major and national developments (the latter being identified in the national planning framework) may require pre-determination hearings and must be the subject of formal pre-application consultation.
- 1.3 This guide is intended to advise on the remits and procedures relating to each of the different methods of determining planning applications, together with details of the criteria and procedures relating to hearings and site visits. Good practice in relation to procedures is also given. Advice in relation to appeal procedures is contained in a separate document.
- 1.4 The procedural guide covers the following:
  - The weekly list
  - Delegated decisions
  - Area committees
  - Planning committee
  - Full Council
  - Presentation of items to committee
  - Hearings
  - Site visits

## 2.0 The weekly list

### General

- 2.1 The Planning and Building Standards Service publishes a weekly list of planning applications registered in the previous week. This provides basic details relating to the application, including reference number, applicant, site location and description of the proposal. It also states whether the application is likely to be determined under the Scheme of Delegation, by Area Committee, Planning Committee or has the potential to go to the full Council. This list is sent to Council Members and Community Councils and is available through the Council's web site.

### Referral of scheme of delegation applications to committee

- 2.2 In terms of S43(6) of the 1997 Act, as amended by the 2006 Act, the Planning Authority may, if it sees fit, determine an application at committee which would otherwise be dealt with under the Scheme of Delegation.
- 2.3 If a Member has any queries about, or objections to, an application, he/she should approach the team leader or area manager to discuss the application within 10 days of the week-ending date of the Weekly List to try and resolve matters before requesting that an otherwise delegated application be dealt with by committee.
- 2.4 Only if a Member is still concerned after having discussed the application with the team leader or area manager, should a request be made to the team leader or manager to consider referring the application to committee for consideration. This will help ensure that applications are dealt with as quickly as possible and are not unnecessarily delayed by requiring a committee decision.

## 3.0 Delegated decisions

### Powers

- 3.1 Under the Council's Scheme of Delegation, prepared in terms of S43A of the 1997 Act as amended by the 2006 Act, the Executive Director (Enterprise Resources) and Head of Planning and Building Standards Services have delegated powers to deal with applications where there are no more than five objections where approval is recommended (or where a refusal is entirely consistent with policy). For the purposes of clarification, letters of support or comment are not counted as objections. When counting the number of objections received, we will include all individual letters from any one person or household, as well as those received from separate addresses. With regard to signatories of organised petitions, assuming contact names and addresses are provided, these will be counted as individual objections. Delegated applications mainly involve;
- householder proposals;
  - small scale residential, industrial and commercial proposals; and
  - shopfronts and advertisement proposals.
- 3.2 Certain applications are excluded from the Scheme of Delegation by the 2006 Act and associated Regulations. These are:
- Applications by the Council
  - Applications by a Member of the Council
  - Applications relating to land owned by the Council or relating to land in which the Council has a financial interest
- 3.3 In addition, applications from officers of the Planning Service, or a close family relative where objections are received, or a close family relative of a member of the Council where objections are received, are excluded from the Scheme of Delegation.
- 3.4 Approximately 90% of all applications are dealt with by the Scheme of Delegation, with decisions being issued on a daily basis.

### Delegated approvals

- 3.5 The Executive Director ( Enterprise Resources) and Head of Planning and Building Standards Services have authority to grant the types of local and other development types of applications listed below, with 'Local Development' category highlighted:
- (a) Householder applications not attracting more than five objections including house extensions and alterations, dormer windows, garages, accesses, walls, fences and other means of enclosure and applications made under Article 4 Directions in Conservation Areas (or as may be amended) or where permitted development has been removed by planning condition. An Article 4 Direction is used to remove permitted development rights for specified types of development [e.g. house extensions, erection of fences, window alterations etc.] in Conservation Areas or other areas where the Council wishes to protect amenity. This means that an application is then required for work that would not normally need planning permission; (Local Development)

- (b) Small scale residential applications involving up to 10 units not attracting more than five objections and entirely consistent with Development Local Plan policy; (or up to one hectare if in principle) (Local Development)
- (c) Small scale industrial, business and general industry, storage and distribution and commercial applications subject to a maximum of up to 2,000 square metres or up to 5,000 square metres in designated industrial estates or business parks; or up to one hectare where the application is in principle; not attracting more than five objections and not involving more than a 50% increase in floorspace of existing buildings; (Local Development)
- (d) Small scale applications relating to institutional uses, such as hospitals, health centres, nursing homes involving up to a 50% increase in floorspace (including extensions and/or new build), entirely consistent with policy and not attracting more than five objections; (Local Development provided floorspace does not exceed 5,000 square metres or site area exceeds two hectares).
- (e) All amended applications for development in categories (c) and (d) not attracting more than five objections and involving changes to previously approved plans relating to changes to layouts, building details, house types, materials, accesses and boundary treatments; (Local Development provided site area does not exceed two hectares, housing development does not exceed 49 units and institutional and commercial developments floorspace does not exceed 5,000 square metres).
- (f) Applications following the approval of a planning application in principle or detailed planning applications not attracting more than five objections, provided the proposal is mainly consistent with the terms and conditions of any previous consent; (Local Development provided site area does not exceed two hectares, housing development does not exceed 49 units and institutional and commercial developments floorspace does not exceed 5,000 square metres)
- (g) Alterations to shop fronts not attracting more than five objections; (Local Development)
- (h) Sub-division of an existing house or conversion of existing buildings to form dwellings in existing residential areas and not attracting more than five objections; (Local Development)
- (i) Listed Building applications and applications for conservation area consent not attracting more than five objections and where there are no policy implications; (see Note 1 below)

Note 1: As the appeal process differs for a listed building applications and conservation area consent applications, all refusals of listed building and conservation area consent applications and associated planning applications will be considered by the Planning/Area Committee to ensure that any appeal/review against the decisions is considered by the same body for both applications.

- (j) Advertisement applications not attracting more than five objections;

- (k) All renewals of planning permission (Local Development provided site area does not exceeds two hectares, housing development does not exceed 49 units and institutional and commercial developments floorspace does not exceed 5,000 square metres) for conservation area consent or listed building consent not attracting more than five objections;
- (l) Small scale changes of use not attracting more than five objections and entirely consistent with Development Plan policy; (Local Development)
- (m) Sub-division of industrial, business, commercial or other non-residential properties not attracting more than five objections and entirely consistent with Development Plan policy; (Local Development)
- (n) Telecommunications applications not attracting more than five objections and entirely consistent with Development Plan policy; (Local Development)
- (o) Small scale housing proposals (of up to 10 units) householder developments and change of use proposals which are not significantly contrary to development plan policy where there are no objections; (Local Development)
- (p) Alterations or deletion of conditions (including existing mineral consents and the review of old mineral permissions) not attracting more than five objections; (Local Development)
- (q) Extraction of minerals where the site area is less than two hectares not attracting more than five objections and entirely consistent with Development Plan policy; (Local Development)
- (r) Waste transfer stations/recycling operations with a capacity of less than 25,000 tonnes per annum or sludge treatment of less than 50 tonnes (net weight) per day of residual sludge not attracting more than five objections and entirely consistent with Development Plan policy; (Local Development)
- (s) Minor engineering operations which are entirely consistent with Development Plan policy not attracting more than five objections; (Local Development)
- (t) Transport and infrastructure projects where the length of the road, railway, tramway, waterway, aqueduct or pipeline does not exceed eight kilometres not attracting more than five objections and entirely consistent with Development Plan policy; (Local Development)
- (u) Other development (including mixed use projects) not covered by any of the above uses where the gross floor space of any building, structure or erection constructed is under 2,000 square metres or under one hectare where the proposals are in principle and which are entirely consistent with Development Plan policy and not attracting more than five objections. (Local Development)
- (v) Wind turbines (up to and including three) which are entirely consistent with Development Plan policy and not attracting more than five objections (Local Development provided the capacity of the generating station is less than 20 megawatts)

3.6 In addition to the above, the Scheme of Delegation also covers the handling of the following applications:

- (1) Overhead electricity lines and electricity sub-stations and gas governor stations;
- (2) Fulfillments of conditions attached to planning permissions;
- (3) Cutting down, topping, lopping or destruction of trees covered by a confirmed Tree Preservation Order or within a Conservation Area.

### **Delegated refusals**

3.7 The scheme of delegation also covers the refusal of the following applications:

- (a) Refusals of advertisement and shopfront applications;
- (b) All categories of delegated applications (except listed building/conservation area consent and associated planning applications) where the refusal is consistent with Development Plan policy

### **Delegated statutory notices**

3.8 The issue of minor approvals and statutory notices including:

- (a) Certificates of lawful use or development;
- (b) Applications for minor variations of planning consents;
- (c) Prior notifications for agricultural developments;
- (d) Discontinuance notices;
- (e) Prior Notifications for demolition;
- (f) Prior Notifications for gas and electricity works

### **Delegated consultations**

3.9 Authority to reply on behalf of the Council to planning consultations from adjacent authorities and the Scottish Government on matters which do not have significant policy implications.

### **Section 75 Planning Agreements**

3.10 Authority to conclude Section 75 planning agreements and other minor legal agreements in relation to delegated planning applications (including determining applications for discharge or variation of Section 75 planning agreements or other minor legal agreements).

### **Other matters**

3.11 Other matters which are delegated are set out below:

- (a) To determine the need for screening and requirements for scoping for an Environmental Assessment and Strategic Environmental Assessment;
- (b) To determine the requirements for a Retail Assessment and matters to be contained in any scoping report;
- (c) To discharge the Council's planning enforcement function, including the service of any notices, for example enforcement, stop, amenity notices and other notices and also the authority to decline to take enforcement action where appropriate;

- (d) To deal with written submissions, hearings and public inquiries in connection with:
- appeals to the Scottish Ministers against refusal of consent
  - deemed refusal appeals (pending consideration by relevant committee if appropriate)
  - applications subject to a 'call-in' by the Scottish Ministers
  - reviews to the Local Review Body
- (e) To add rights of way to the Register for South Lanarkshire Council and, in that connection, to apply, in consultation with the Head of Legal Services, for a Declarator in the appropriate Sheriff Court where any person with an interest in the land objected;
- (f) In cases of immediate threat, to promote Tree Preservation Orders following consultations with the Chair and/or Depute Chair of the Planning Committee and the Local Members;
- (g) Other matters such as responding to:
- Pre-application screening proposals
  - Proposals of application notices
  - Negotiating processing agreements
- (h) To determine, in consultation with the Chair or Depute Chair of the Planning Local Review Board, whether applications for review in terms of Section 43B of the Town and Country Planning (Scotland) Act 1997 and any subsequent or amending legislation and or regulation are competent and relevant and, if necessary and appropriate, to make further enquiry of the applicant and, thereafter, to make further determination on competence and relevance.

## 4.0 Area committees

### Application types

- 4.1 Area Committees deal with the same types of applications that the Executive Director and Head of Planning and Building Standards Services have delegated powers to determine, but where:
- the applications have attracted more than five objections
  - the applications are excluded from the Scheme of Delegation by the 2006 Act and associated Regulations (see paragraphs 3.2 and 3.3)
  - the applications are referred to committee in terms of S43 (6) of the 1997 Act, as amended by the 2006 Act (see paragraphs 2.2 - 2.4)

### Representations

- 4.2 Representations to an application must be made in writing or electronically. All representations will be referred to in the officer's report, and where applications are required to go to committee, copies made available for inspection by Members prior to Committee. Letters of representation are in the public domain.
- 4.3 Representations must be received a minimum of five working days prior to the committee date and late representations will not be considered.

### Powers

- 4.4 The Area Committees have powers to make decisions on the planning applications listed above, except where the committee's decision would be contrary to established Council and Local Plan policies and standards or where the application raises new planning issues. In these circumstances the application would be referred to the Planning Committee.
- 4.5 Area Committees have the power to determine all applications coming before them, including:
- those where the officer's recommendation is not accepted (provided it does not raise a policy issue).
  - those where there has been a division over a decision.

## 5.0 Planning committee

### Application types

5.1 The Planning Committee deals with all national and major planning applications as set out in the planning legislation, including:

- All developments which require an Environmental Impact Assessment by virtue of Schedule 1 of the Environmental Impact Assessment (Scotland) Regulations 1999;
- Housing proposals comprising 50 or more units, if detailed, or if the site is or exceeds two hectares if in principle;
- Business and general industry, storage and distribution developments involving over 10,000 square metres of new floorspace or where the site area is or exceeds two hectares;
- The construction of an electricity generating station which has a capacity of or exceeds 20 megawatts;
- Waste management facilities where the capacity is or exceeds 25,000 tonnes per annum or 50 tonnes (wet weight) – per day of residual sludge;
- Transport and infrastructure projects, where the length of the road, railway, waterway, aqueduct or pipeline exceeds eight kilometres
- Minerals where the site is or exceeds two hectares
- Other development (including mixed uses) where the gross floor space of any building, structure or erection which is constructed is or exceeds 5,000 square metres or the site area is or exceeds two hectares.

5.2 In addition, Planning Committee also deals with:

- educational and institutional developments, other than extensions to existing facilities;
- housing proposals of between 11-50 units if in detail and sites of between one and two hectares in size if in principle;
- industrial, commercial, business and general industry, storage and distribution involving increases in floor space between 2,000 square metres & 10,000 square metres or 5,000 – 10,000 square metres in designated industrial estates or business parks or where the site is between one and two hectares in size if in principle;
- applications that are contrary to Strategic or Local Development Plan Policy and which have a recommendation for approval;
- other development (including mixed uses) where the gross floor area of any building, structure or erection is between 2,000 – 5,000 square metres or the site area is between one and two hectares;
- any application generating significant levels of concern, or policy issues, where the Head of Planning and Building Standards Services in consultation with the Chair of the Planning Committee so determines

## **Representations**

5.3 Refer to Section 3, Area Committees, paragraph 3.2 Representations.

## **Powers**

5.4 The Planning Committee has powers to determine all planning applications submitted to it with the exception of planning applications which require a pre-determination hearing under Section 38A(1) of the 2006 Planning Act, i.e. proposals that are significantly contrary to the development plan and national developments. Such applications will require to be referred to the full Council for a final decision. A 'significant departure' to the development plan is considered to be where an approval would be contrary to the vision or wider spatial strategy of the plan.

## 6.0 Full Council

- 6.1 Full Council meetings require to take a decision on planning applications which are required to have a pre-determination hearing under Section 38A (1) of the 2006 Planning Act, i.e. applications significantly contrary to the development plan. This is irrespective of whether or not the offer of a pre-determination hearing has been taken up. Full Council also has to consider such applications whether or not they are recommended for approval or refusal. In addition, the full Council will also take a decision on any national developments identified within South Lanarkshire.

## 7.0 Presentation of items to committee

### Prior to committee

- 7.1 A local Member, who is not a member of the Planning Committee, but wishes to speak about an item in his/her ward should raise this with the Committee Chair in advance of the meeting.

### Committee business

- 7.2 Although the Chair can vary the order of business, items will normally be taken in the order set out in the agenda papers. The only exception to this is where an application has been removed from the agenda. In this case, the Committee Chair will advise at the start of the meeting that an application has been removed. Continuations of applications should be raised at the correct point on the agenda.

### Committee procedure for dealing with planning applications

- 7.3 The planning officer will always speak to applications with a recommendation for refusal and on any contentious applications. Consideration of applications will proceed in the following order:
- (a) The Committee Chair will introduce the item and announce details of the applicant, site location, description of proposal and recommendation.
  - (b) The Committee Chair will either:
    - move the recommendation (if a simple, straightforward proposal) or
    - invite the Planning Officer to speak on the proposal.
  - (c) The Planning Officer will briefly summarise the proposal, highlight objections and responses to them, note any important conditions or refusal reasons and finish by making a recommendation to grant or refuse consent.
  - (d) The local Member(s), if appropriate, will then be given an opportunity to speak about the proposal.
  - (e) The Committee Chair will invite other Committee Members to comment.
  - (f) The Planning Officer should be invited to comment or respond to questions raised by any Member.
  - (g) The Committee Chair should move the recommendation on completion of debate.
  - (h) If a Committee Member moves an amendment against the recommendation and is seconded, the matter should go to the vote. Note: Area Committees have powers to determine all applications where there has been a division over a decision (refer to Page 9). The outcome of the vote will be recorded as the Committee's decision. Where a decision is taken contrary to officer recommendation, the Member moving the amendment will require to give his/her reasons for refusal or appropriate planning conditions, which will be recorded in the minutes of the meeting. In the event that an officer's recommendation is not accepted and an application is refused, the officer cannot handle any subsequent planning appeal.

## 8.0 Hearings

### Criteria

- 8.1 In terms of planning legislation, a pre-determination hearing must be offered in respect of major developments where they are significantly contrary to the terms of the development plan, and in respect of national developments. Administrative arrangements will be put in place to allow these applications to be considered and heard by the Planning Committee and then referred to the Council for determination.
- 8.2 In all other instances, the only request for a hearing which will be considered is:
  - (1) where, in the view of the Head of Planning and Building Standards Service, in consultation with the Committee Chair, an application has attracted a substantial body of objection relative to the proposal/location and the officer's recommendation is to grant planning consent.
- 8.3 In the above situation, the hearing will be before the appropriate committee and a request for a hearing must be made and received by the Executive Director (Enterprise Resources) or Head of Planning and Building Standards Services a minimum of two working days before the committee meeting at which the application is due to be considered.

### Administrative arrangements

- 8.4 Where objections are lodged to an application and the officer's recommendation is to grant planning consent for a proposal which is significantly contrary to the development plan, the Planning Service will supply any necessary information to Corporate Resources (Administration Services) who will make the appropriate arrangements. This may involve the issue of "early notification" letters to those invited to participate in the hearing advising of the likely date when the application will be considered and enclosing a copy of the "Procedure for Hearings".
- 8.5 Once the date has been confirmed formal invitations will be issued to objectors, applicant, agent etc. confirming arrangements for the committee meeting at which they can be heard and, if appropriate, a list will be provided of individual objectors with whom it is suggested they liaise to appoint up to three spokespersons. Administration Services will forward a copy of the committee report to nominated spokespersons on both sides once committee papers have been issued to Members.
- 8.6 The hearing will take place at the next available meeting of the appropriate committee which will make the final determination on that application. Alternatively, a special meeting of the full Council or committee may be called.
- 8.7 Where an application is subject to a hearing to be held by the Planning Committee or Full Council, the local Members for the ward within which the application falls will be invited to attend the meeting if they are not already a member of that committee. The local Members will not be co-opted onto the committee, but will be entitled to speak on the application.

## Procedure for hearings

- 8.8 The procedure for hearings will generally follow this order:
- Both applicant and objectors will be invited to address the committee in turn.
  - The applicant's side should be represented by a maximum of three people unless there are special circumstances which merit additional technical or specialist involvement.
  - Where individual members of the public, organisations or companies are objectors, they should be represented by a maximum of three people to speak on behalf of all objectors.
  - At the hearing, firstly the applicant will be asked to present his/her case with the objector(s) allowed to ask questions immediately thereafter. The objectors will then be invited to present their case with the applicant being allowed to ask questions.
  - Both sides will have a maximum of 10 minutes to present their full case regardless of the number of individuals who speak for each side. A further five minutes will be allowed for each side to ask questions of the other.
  - Committee members may ask questions of both applicants and objectors on conclusion of the presentation by each side.
  - Applicant and objectors will then be asked to withdraw from the committee table although they may remain in the committee room or chamber, but seated on the public benches.
  - The Local Members, if not members of the committee, will be invited to address Committee on that particular item if they so wish. Thereafter, the Member will return to the public benches.
  - The planning officer will then sum up the proceedings.
  - The committee will be invited to discuss the matter and arrive at a decision.
  - At the conclusion of the hearing, the Committee Chair should clearly state what decision has been taken and if the application has been granted or refused.
- 8.9 Where proposals raise substantial new policy issues, in exceptional circumstances, the Committee Chair may relax the guidelines to allow a longer period for debate. Similarly, where any Environmental Assessment has been lodged with an application, the issues which it raises may merit longer presentations and discussions.

## 9.0 Site visits

### Criteria

- 9.1 If an elected Member requests a site visit before determining an application at committee, a request for a site visit must be made in writing and must be received by the Executive Director (Enterprise Resources) or Head of Planning and Building Standards Services, a minimum of two working days before the appropriate committee meeting at which the application is due to be considered.
- 9.2 A request for a site visit will only be granted where in the view of the Head of Planning and Building Standards Services, in consultation with the Committee Chair, a site visit is required to assess a proposal in greater depth or detail than is provided by the officer's report and accompanying plans and photographs.

### On site

- 9.3 The site visit does not constitute a formal meeting, no record of attendance is kept and while the applicant will be advised that the site visit is taking place, he/she need not be present and cannot address committee members or make representations to them. Members may discuss the proposal and request information from officers on the visit, but no decision is taken. The application will be determined at the next appropriate committee meeting.



Enterprise Resources