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3. Planning Appeals and Local Reviews

This sheet explains the role of planning appeals and local reviews. It also describes how you can access more information and be involved.

What is a Planning Appeal?

If a planning application for a “National Development” or “Major Development” is refused, granted subject to conditions or where no decision is made within the specified time limit, the applicant has the right to appeal to Scottish Ministers. The majority of appeals involve Scottish Ministers delegating appeals to a “Reporter” of the [Directorate of Planning and Environmental Appeals](#).

What is a Local Review?

Planning authorities (your local Council or National Park Authority) are required to produce a “Scheme of Delegation” which sets out a list of “Local Developments” that can be determined by an “appointed person” (i.e. a planning officer who works for the Council) as opposed to elected members at a committee.

If a planning application for a Local Development is determined by an appointed person i.e. refused, granted subject to conditions, or where no decision is made within the specified time limit (“non-determination”), the applicant can require the decision to be reviewed by a Local Review Body. A Local Review Body is made up of elected members who were independent (not involved in) of the original decision.

How has the Planning Appeal process in Scotland changed?

The Planning etc. (Scotland) Act 2006 introduced a number of important changes to the appeals process to ensure that the planning system becomes more efficient, but retains a high level of quality in decision making. The main changes are as follows:

- There is no longer a right for applicants to have an appeal determined by Scottish Ministers where a local review applies. Appeal is now restricted to National and Major Developments or Local Developments which are not delegated to an appointed person.
- Review of decisions on Local Developments will be determined by a Local Review Body. Only where a review has been requested in the absence of a decision within two

months, can it then be appealed to Scottish Ministers if the Local Review Body in turn takes more than two months.

- The time limit for making a decision, which triggers a right of appeal or review on the grounds of non-determination is now two months for a Local Development and four months for a National or Major Development.
- The time-limit to appeal or review has changed from six months to three months.
- No new material may be introduced unless requested by the reporter or Local Review Body. This means that appeals and requests for Local Reviews must include all the relevant information at the outset.

The appeal procedure for listed building consent, conservation area consent, advertisement control and hazardous substances consent remains unchanged at present. However, the Scottish Government intends to review this in the future.

Can anybody appeal or request a Local Review?

In Scotland there is no “third party right of appeal”. This means that only the applicant can appeal a planning decision or ask for a local review.

If you are an “interested party”, i.e. you made formal representations about the application in the first instance you will be notified of the appeal or review arrangements.

How do I request an appeal?

This is done by completing a “Notice of Appeal”. Information on rights of appeal will be included with the decision notice for any application and apply to refusal of planning permission, the terms of a planning condition, or the non-determination of the application within the statutory time limit.

Notice of Appeal forms can be provided by your planning authority. You can also submit an appeal online using the forms and guidance on the Scottish Government’s [e-planning website](#).

The Notice of Appeal **must** set out all the matters and supporting information you wish to raise including the documents you intend to rely on. This may be your only opportunity to provide supporting information, as additional matters can only be raised when requested by a reporter. It is therefore **essential** that you are well prepared and your Notice of Appeal covers all the matters you feel are important.

Who determines the format of a Planning Appeal?

The reporter has the final decision on determining the format of the appeal which may be one or more of the following: public inquiry, hearing, written submission, site inspection.

How do I request a Local Review?

This is done by completing a Notice of Review. Information on a Notice of Review will be included with the decision notice for any application and apply to refusal of planning permission, the terms of a planning condition or the non-determination of the application within the statutory time limit.

Forms will be provided by your planning authority. The Notice of Review **must** set out all the matters you wish to raise and include all the documents you intend to rely on, as additional matters can only be raised when requested by the Local Review Body.

Who determines the procedure for a Local Review?

The Local Review Body has the final decision, which may involve obtaining further information by one or more of the following: written submission, one or more hearing sessions, site inspection. However, they may proceed to make a decision without further information by any of these means.

How do I prepare for a Written Submission? (Appeals and Local Reviews)

A written submission provides you with the opportunity to present your case in writing. Whether you are the applicant, supporter or objector, it is important to bear the following in mind:

- Be aware of deadlines
- Summarise the main points you intend to cover at the outset
- Use clear headings, appendices and organise your submission so it doesn't lose your key arguments with excessive detail
- Clearly state the changes you want or don't want and refer back to your original submission when necessary
- Be aware of the important role of the Development Plan (see separate information sheet) and Material Considerations (see separate information sheet).

How do I prepare for a Hearing? (Appeals and Local Reviews)

A hearing is designed to allow a structured discussion about the matters and issues surrounding the appeal or review. Unlike an inquiry, cross-examination will not usually be permitted at a hearing. Whether you are the applicant, supporter or objector, it is important to bear the following in mind:

- You will receive a notification (and in the case of appeals a "Procedure Notice") which sets out the issues and evidence that is to be considered at the hearing. You should refer to this in your preparation.

- Be aware of deadlines. The timetable of events will be set out in the notice.
- You may be required to submit a Hearing Statement, which outlines your case in relation to what is covered in the notice.
- Preparation is essential, so that you focus on the issues that will be discussed at the hearing and get your point across effectively.
- At the hearing it is important to remain calm. Try not to let emotions get the better of you.
- Bear in mind that there could be a number of people such as objectors or supporters dealing with the same interests. Co-ordination with others who share your views may help to strengthen your case.
- Be aware that not everything relies on the hearing alone. As the hearing is used to gain more information, the ultimate decision will take account of your original submissions.
- Be aware of the important role of the Development Plan (see separate information sheet) and Material Considerations (see separate information sheet).

How do I prepare for a Public Inquiry? (Appeals only)

Similar to a hearing, a public inquiry will only examine the further information which is sought and set out in a Procedure Notice. Whether you are the applicant, supporter or objector, it is important to bear the following in mind:

- Be aware of deadlines.
- Pre-inquiry meeting – in certain cases a pre-inquiry meeting will be held. Attending the meeting can help your preparation.
- Precognition – you will be required to produce a precognition that outlines the evidence you intend to give at the inquiry. As this is limited to a maximum of 2000 words it should be concise and focus on the key issues.
- Good preparation is essential – you should look to focus on planning matters such as Development Plan policy and relevant material considerations.
- When presenting evidence - speak clearly and slowly and remember that the inquiry is a forum to resolve conflicting opinions.
- When being “examined” (i.e.) asked questions – remain calm, be assertive and take your time to answer. Avoid interrupting or losing your temper.

What are the outcomes of a Planning Appeal?

Once an appeal is determined, it can have four outcomes:

1. The appeal is “dismissed”, meaning that the reporter does not agree with the appeal and confirms the original decision.
2. The appeal is “upheld”, meaning that the reporter agrees with the appeal and the original decision will be reversed and approved with or without conditions.
3. The original decision is varied. For example, the reporter may decide to amend a planning condition.
4. A decision is made on a non-determined application.

A small number of appeals are retained by Scottish Ministers for their own decision. In such cases a reporter will produce a report and recommendation to Scottish Ministers who decide to accept or reject the recommendation and uphold or dismiss the appeal.

What are the outcomes of a Local Review?

Similar to Scottish Ministers, a Local Review Body has the powers to uphold, dismiss or vary a determination or decide on a non-determined case. This will be provided in a “Decision Notice” which includes a list of reasons on which the decision was based.

Where can I obtain further information?

- Contact your planning authority
- [Contact the Directorate for Planning and Environmental Appeals](#)

Relevant Scottish Government Publications:

- [Circular 1 2009 – Development Planning](#)
- [Circular 6 2009 – Planning Appeals](#)
- [Circular 7 2009 – Schemes of Delegation and Local Reviews](#)

Note - This information sheet contains only a brief outline of the appeal and local review process. More detailed information is contained within the above Circulars.

How can Planning Aid for Scotland help?

If you are still unsure or need independent advice, then Planning Aid for Scotland may be able to help. Contact our **Advice Service**, which is **free of charge** to individuals and community groups, on **0845 603 7602**, or refer to our information leaflet which is available on our website at www.planningaidscotland.org.uk.