

## 4. Planning Appeals and Local Reviews

**This sheet is aimed at anyone who is involved in or wants to know more about planning appeals and local reviews.**

**Update:** The Scottish planning system is currently undergoing reform process. In September 2015, the Scottish Government appointed an independent panel to undertake a review of the planning system. Subsequently, a Scottish Government consultation paper was published with a response deadline of 4 April 2017. It is expected that a new planning Bill will go before the Scottish Parliament in late 2018. Full details of the reform process are available at this [link](#). In the meantime the planning system operates as set out below.

### 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](#) (DPEA).

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.

### What is a Local Review?

If a Local planning application is refused using delegated powers, the appeal is decided by the local review process. The Local Review Body, which determines the review, is made up of at least three elected members who were not involved in the original decision.

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.

### Can anybody request a Planning Appeal or 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.

Remember there is the opportunity for third parties to group together to present their case. Often a well prepared joint submission may have more impact than less well presented cases submitted by a range of participants.

## **What is the deadline for submitting a Planning Appeal or Local Review**

The time-limit to appeal or review has three month from the date of the decision. It is essential to submit the relevant documents within this timescale or the appeal/local review will not be accepted.

## **What is a non-determination appeal?**

If a planning application has not been determined by the planning authority within two months for a Local development and four months for a National or Major development, a planning appeal or local review can be requested on the basis of non-determination.

## **How do I request an appeal?**

This is done by completing a Notice of Appeal form. 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.

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

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 introduced 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 form. 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 and Material Considerations (*see our information sheets 1 and 3, on The Development Plan and Material Considerations*).

### **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 and Material Considerations (*see our information sheet 1: The Development Plan and 3: Material Considerations*).

### **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 the Reporter will hold a meeting early on in the process to set out key dates and identify interested parties i.e. those who wish to give evidence at the Inquiry. Attending the meeting can help your preparation for the inquiry.
- Good preparation is essential – you should look to focus on planning matters such as Development Plan policy and relevant material considerations.
- Statement of Case – this stage is the opportunity to set out in writing the key matters and documents that you will want to refer to in your precognition.
- Precognition – you will be required to produce a precognition that sets out the evidence you intend to present at the inquiry. As this is limited to a maximum of 2000 words it should be concise and focus on the key issues.
- When presenting evidence - speak clearly and slowly and remember that the inquiry is a forum to resolve conflicting opinions.
- When being cross examined remain calm, be assertive and take your time to answer. Avoid interrupting or losing your temper and remember if you don't understand the question ask for clarification.

### **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?**

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 4 2013 – Planning Appeals](#)
- [Circular 5 2013 – 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 PAS help?**

If you are still unsure or need independent advice, then PAS may be able to help. Contact our **planning helpline** on **0300 323 7602\*** (\*calls cost no more than a national call rate).

[www.pas.org.uk](http://www.pas.org.uk)