

A Summary Guide to the New Development Management and Related Regulations for Applicants and Agents

Version2

19 August 2009



Town and Country Planning (Scotland) Act 1997 as amended by the Planning Etc (Scotland) Act 2006

- * *The Regulations are complex and readers should be aware that this Guide is not totally comprehensive.*
- * *This document is not to be taken to be an authoritative interpretation of the law. It is recommended that the Act, Regulations and Circulars are consulted and that independent legal or planning advice is obtained as necessary.*

1 Modernising Planning

Legislation

- 1.1 As you will know the planning system is in the process of being changed. The latest milestone in planning modernisation is the laying in the Scottish Parliament of eight sets of Regulations. As they come into force in April and August 2009, they will result in the biggest change to planning in 60 years, implementing most of the provisions of the new Planning Etc (Scotland) Act 2006. A summary of the main changes relating to the submission and determination of applications is included below. For the latest news, including the latest implementation timetable, please refer to the Scottish Government website <http://www.scotland.gov.uk/Topics/built-environment/planning>. Updates are also available on the Council's website at <http://www.dundecity.gov.uk/plantrans/planningdiv/>.

Cultural Change

- 1.2 Changes to legislation alone will not deliver planning reform. Positive changes to processes and behaviours are required of all the organisations and individuals that operate and interact with the system. To find out about 'cultural change', including a series of joint actions by the Scottish Government, local and national park authorities, agencies and the private sector to deliver more effective working together to deliver an improved planning system, please refer to the Planning Modernisation section of the Scottish Government website <http://www.scotland.gov.uk/Topics/built-environment/planning>.
- 1.3 Further Weblink references and contact details are provided at the end of this guide.

2 The Planning Hierarchy

2.1 Applications have been divided into different categories to ensure that they are dealt with in a way appropriate to their scale and complexity and to allow decisions to be taken at the most appropriate level. There are three categories allocated in the hierarchy of developments:

- "national" development;
- "major" development; and
- "local" development.

2.2 "National" developments are described in the National Planning Framework (NPF2), a document prepared by the Scottish Parliament. There are currently no "national" category developments within the Dundee area.

2.3 "Major" developments are prescribed in Regulations by Scottish Government. These are:

- Development classed within Schedule 1 in the Environmental Impact Regulations;
- Housing development of >50 units, or on sites of more than two hectares;
- Business, industrial or storage and distribution uses where the gross floor area is greater than 10,000m², or the site more than two hectares;
- Other development, including combinations of the above classes, with gross floor area over 5,000m², or on a site of two hectares or more;

(NB: This is not a comprehensive list).

2.4 Extensions to existing "major" developments proposed must in themselves exceed the thresholds for that application to be considered "major";

2.5 With certain exceptions, applications for "national" and "major" developments must be accompanied by a Design and Access statement (see below);

2.6 Applications for major development must be subject to pre-application consultation with the local community (see below).

2.7 There is no scope for local additions to or removals from the "major" development list. Applications for both "national" and "major" developments will be determined by a Committee.

2.8 "Local" developments are developments which are neither "national" or "major".

3 Statutory Pre-Application Consultation

3.1 These sections of the Regulations relating to Pre-application Consultation came into force on 6 April 2009, and have the following effect:

Statutory Pre-Application Consultation is required for "major" and "national" categories of development. This involves submitting a Proposal of Application Notice (PAN) to the Council and any Community Council in the area at least 12 weeks ahead of any application. The Notice gives comprehensive details of what sort of consultation will be undertaken and must be agreed with the Council who may require additional steps to be taken. Applications for "major" development submitted after 3 August must include

- a Pre-Application Consultation Report which demonstrates that the minimum statutory requirements and other requirements specified by the Council have been undertaken.
- 3.2 Any application requiring such a Report cannot be progressed until the Report evidencing that the statutory requirements have been met is provided to the Council.
- 3.3 Prior to submitting a PAN a prospective applicant may ask the Council for a Screening Notice confirming or otherwise that statutory pre-application consultation is necessary.
- 3.4 For further information consult the Council's Website at <http://www.dundee.gov.uk/plantrans/legupdatepreapp>
- 3.5 In respect of "national" and "major" applications, the Council will wish to enter into Processing Agreements. These are voluntarily concluded between the Council and the applicant and relate to issues such as information requirements, timescales and responsibilities of parties. A Processing Agreement is a form of "project managing" major applications.

4 Discretionary Pre-Application Consultation

- 4.1 The Council positively encourages applicants and prospective applicants to enter into discussions with its planning staff in advance of making an application for any scale of development and to maintain close contact with the appointed case officer throughout the processing of the application.

5 Making an Application

- 5.1 Applicants are now encouraged to make applications on-line via the following Scottish Government hosted Website: <https://eplanning.scotland.gov.uk/WAM/>
- 5.2 Various categories of Form and Guidance Notes are available on the Council's Website and applicants should use these forms to make applications, as applicable. PLEASE READ AND FOLLOW THE GUIDANCE NOTES CAREFULLY.

Different Types of Application

- 5.3 The Regulations introduce the following new categories of application:
- Planning Permission in Principle (PPP) replaces outline planning permission; as a minimum requirement no plans are needed other than a location plan identifying the application site; no design and access statement is required; Pre-Application Consultation (see above) if it is a "national" or "major" category application is required.
 - Applications for approval of matters specified in conditions applied to a PPP; replaces Reserved Matters applications.
- 5.4 There continues to be provision for full applications for planning permission (including changes of use), further applications (to continue an unexpired permission) and applications which may be required due to conditions imposed on a planning permission. Applications for advertisement consent; listed building consent; conservation area consent and hazardous substances consent are not affected by the new legislation.

Submission Documents and Further Information

- 5.5 The Regulations do not specify which supplementary documents should accompany an application beyond those specified as statutory minimum requirements for validation purposes. The Council therefore encourages applicants in pre-application discussions to establish what the Council's requirements are in terms of essential further information.

Design and Access Statements

- 5.6 This is a new statutory requirement for "national" and "major" applications only but does not relate to applications for planning permission in principle in these categories.
- 5.7 Design Statements (as opposed to Design and Access Statements) are required for applications for "local" developments in sensitive areas. Conservation Areas in the curtilage of a Category A listed building are examples.
- 5.8 Neither type of statement is required in respect of changes of use and householder type developments.
- 5.9 Further information on the form and content of both types of statement are available from the City Development Department.

Owner Notification by the Applicant

- 5.10 This is still a statutory requirement.

Neighbour Notification

- 5.11 The responsibility for Neighbour Notification transfers to the Council in respect of applications submitted on or after 3 August 2009.
- 5.12 Amended Application Forms and Guidance Notes will be available from the Council's website from Monday 27th July 2009. The link to the relevant webpage is <https://www.dundee.gov.uk/forms/planningapps.php>.
- 5.13 The process of Neighbour Notification takes place as soon as possible after a valid application has been received, not before.
- 5.14 The Council will send out Notices to those having an interest in land coterminous with or within 20 metres of the boundary of the land for which development is proposed. Where there are no premises on this land and where the Council is unable to identify a relevant address to which notification can be sent, it will advertise this in the local press. The cost of this advertisement must under the Regulations be borne by the applicant. The Council has decided that this will be £100 and this charge must be paid before the Council can fully determine the application.
- 5.15 Therefore it would help the Council if applicants could supply with their application a list of names and addresses of those with interests in neighbouring land to avoid the need for the advertisement process.

- 5.16 Those notified will have 21 days to make representations (14 days previously) and those who make representations to a prospective applicant under statutory pre-application arrangements may still object to the application when it is submitted.

6 Processing an Application

Weekly Lists

- 6.1 The preparation and publication of Weekly Lists of new applications continues.

Lists of Extant Applications

- 6.2 This is a new requirement and is required to be published on-line. The Council complies with this requirement in its existing on-line database *Public Access* which is available also via computer terminals in local libraries. It also contains a map-based facility representing the Index to the List.

http://bwarrant.dundee.gov.uk/publicaccess/tdc/tdc_home.aspx

Statutory Register

- 6.3 The need to maintain a Register of determined and undetermined applications continues. The Council proposes that *Public Access* represents its Statutory Register and will, in future, gradually move towards the use of this facility at its planning reception area and away from the practice of maintaining a paper-based Register system.

Press Publicity

- 6.4 Press Notices will continue to be required for advertising. However the Regulations introduce new arrangements for the recovery of the costs involved :

- Listed Building and Conservation Area Consent applications;
- departures from the development plan (£100 fee payable by the applicant);
- "bad neighbour" developments (£100 fee payable by the applicant);
- where those with interests in neighbouring land cannot be identified (£100 fee payable by the applicant);
- where owners cannot be identified ; (£100 fee payable by the applicant);
- environmental assessment category applications;
- applications for Hazardous Substances Consent.

Reports of Handling

- 6.5 This is a new term for the officer's report on an application. It is required to be placed on the statutory Register and contain a minimum level of information set out in the Regulations. The Council already practices the preparation of comprehensive written reports on all applications and makes these available on its Website (*Public Access*).

Time Periods for Determination

- 6.6 This links to the ability to appeal to Scottish Ministers or the Local Review Body where the Council has failed to reach a decision within specified periods:

- a four months for "national", "major" or EIA developments;
 - b two months for other categories.
- 6.7 The periods may in certain cases be extended by mutual written agreement.
- 6.8 Where a Processing Agreement specifies a required longer period, this is the timescale which is relevant to making an appeal.

Power to Decline to Determine Repeat Applications

- 6.9 The Act contains provisions for Councils to decline to determine planning applications. This relates to where repeat applications are being submitted and links to the determination and appeal history of similar applications during the previous two years.

Statutory Pre-Determination Hearings and Decisions by Full Council

- 6.10 These are new processes and relate to all "national" category applications and "major" category applications, where the application is a "significant" departure from the development plan. The Council's definition of "significant" is contained in its Scheme of Delegation.

The Hearings are held before a Committee and the applicant and those making representations have a right to be heard.

For such applications the Full Council makes the decision, as opposed to a Committee.

7 Decision Making

Decision Notice

- 7.1 Decision Notices in future will contain a fuller range of information including for all decisions the reason for the decision and will be accompanied by a note advising on rights of appeal or review. PLEASE NOTE THAT THIS WILL BE DIFFERENT FOR DIFFERENT CATEGORIES OF APPLICATION.
- 7.2 The Council will expect all submitted plans to be accurately labelled as plans relevant to the decision will be specified in the decision notice for enforcement purposes.

Duration of Planning Permission

- 7.3 For applications for planning permission this will in future be three years (as opposed to five years) although the Council has powers to decide on a different duration.
- 7.4 A planning permission in principle will expire if the development is not started within two years from the grant of the last approval of matters specified in conditions. Again the Council can apply different time periods.

Rights of Appeal/Review

- 7.5 In respect of decisions made after 3 August 2009 there will be a three month period within which the decision may be appealed or reviewed (previously six months).

Scheme of Delegation

- 7.6 The Council will be operating within a statutory Scheme of Delegation from 3 August onwards. This Scheme has been approved by Scottish Ministers for approval and will authorise what categories of "local" scale development may be decided by officers on the Council's behalf and which categories must go to Committee for a decision. The Scheme is very similar to the scheme previously operated by the Council.
- 7.7 Those applications decided within the Scheme of Delegation can be, if the applicant wishes, reviewed by the Council's Local Review Body (see below).
- 7.8 The Council's statutorily approved Scheme of Delegation may be viewed on its Website at <http://www.dundee.gov.uk/plantrans/legupdateschemedel/>
- 7.9 In addition, the Council has adopted a revised discretionary Scheme of Delegation under the Local Government Act which gives delegated authority to officers across a range of development management functions.

The Council's discretionary Scheme of Delegation may be viewed on its Website as above.

- 7.10 The Act provides that Committee can decide to determine an application that could otherwise be delegated under its statutory approved Scheme of Delegation. Where this happens a statement of the reasons for the decision to determine the application at Committee must be made and copied to the applicant.

8 Post Decision

- 8.1 The Council's Local Review Body (LRB) is in the process of being formed and trained. The following general principles apply:
- Local Reviews will replace the current appeal to the Scottish Ministers, for "local" category applications decided by planning officers under the statutorily approved Scheme of Delegation;
 - The LRB will consist of at least three elected members constituted as a Committee of the Council;
 - Meetings must be in public;
 - Method of determination from within option set out in the Regulations is at the discretion of the LRB (see below);
 - The LRB can alternatively decide a case on the basis of the review documents only;
 - No automatic right for applicant or others to be make oral representation;
 - The process must be fair and transparent;

- Where an application has not been determined within two months, and a "Notice of Review" is served by the applicant, and where the review by the LRB is not carried out within two months, the applicant may then appeal to the Scottish Ministers.
- The LRB will be supported by the Committee Services and legal officers of the Council. The LRB will also receive professional planning advice from an officer who has had no involvement in the case under review.

The Review Process

- "Notice of Review" must be served by the applicant on the planning authority within three months of decision or the date of expiry of period allowed for determining the application;
- Applicants must include, inter alia, reasons for requiring review; preferred method of review; matters to be raised and documents to be used. Further information will only be accepted where requested by LRB;
- The LRB will make interested parties, statutory consultees and objectors aware of the review request;
- 14 days is allowed for further representations (the applicant may see these and make further comment);
- LRB may then determine the review on the basis of the review papers alone or, decide that further information is required through an alternative review procedure, ie
 - written submissions procedures; or
 - a hearing; or
 - site visit or a combination.
- The LRB may hold a pre-examination meeting to help it to decide which procedure to follow.
- Regulations cover matters such as how to deal with the introduction of new evidence;
- The written Decision Notice issued by the LRB must include an outline of the issues considered at the review and the reasons for the decision;
- If the applicant wishes to question the validity of the decision, application may be made to the Court of Session within six weeks.
- Other than for non-determination reviews there is no statutory timescale within which the LRB must make a decision.

Further information on Dundee City Councils LRB may be found at <http://www.dundee.gov.uk/plans/trans/legupdateschemedel/>

Appeals to Scottish Ministers

8.2 Appeals to Scottish Ministers will be the recourse for those applications:

- determined by officers **outwith** the statutorily approved Scheme of Delegation;
- undetermined within the statutory period but which do not fall within the statutorily approved Scheme of Delegation.
- applications determined by elected members
- all "national" and "major" applications

- 8.3 The changes to the planning appeal system introduced by the 2006 Act include the removal of the automatic right to appear before and be heard by a person appointed by Scottish Ministers; a restriction on the introduction of new material in the appeal process; and confirmation that it will not be possible to vary a proposal once an appeal has been made.

Site Notices

- 8.4 These are required for:

- "national" and "major" categories of development;
- "bad neighbour" developments.

from when the development is undertaken to the date of completion of the development.

- 8.5 This is to raise awareness of the detail of a permission and in particular the conditions which apply in respect of a sensitive development.

- 8.6 Schedule 7 of the Development Management Procedure Regulations sets out a template for the Notice. The Council intends to lodge this template on its Website.

9 Enforcement

Notices of Initiation and Completion of Development

- 9.1 This is a new requirement.

- 9.2 These are required for all proposals receiving planning permission under the Regulations. This is in order that Councils are aware that development is underway and in due course completed as a guide to effective enforcement of conditions.

- 9.3 The Regulations provide no templates for Notices and the Council will issue Notices for eventual completion with all decision notices issued.

Fixed Penalty Notices

- 9.4 The 2006 Act introduced fixed penalty notices for failure to comply with enforcement notices and failure to comply with breach of condition notices. The Regulations fix the amount of the fines as £2,000 and £300 respectively.

Circular Advice

- 9.5 Please note that the Scottish Government intends shortly to issue a replacement for Circular 4/1999 "Planning Enforcement" providing a comprehensive guide to all enforcement matters including all the new statutory provisions.

USEFUL WEBLINKS

Please note that this Guidance Note will be placed on the Council's Website when we are in a position to update its content if necessary in the light of final Circular advice from Scottish Government, when the Council's Scheme of Delegation has been approved by Scottish Ministers, and when the Local Review Body has been formed. Relevant publications on the Council's Website will be continuously updated and refreshed as the process of change proceeds.

Legislation

- The Town and Country Planning (Scotland) Act 1997
http://www.opsi.gov.uk/acts1997/ukpga_19970008_en_1
- The Planning Etc (Scotland) Act 2006
http://www.opsi.gov.uk/acts/acts2006/pdf/asp_20060017_en.pdf
- The Planning Etc (Scotland) Act 2006 (Commencement No 7) Order 2009
http://www.opsi.gov.uk/legislation/scotland/ssi2009/ssi_20090100_en_1
- The Town and Country Planning (Hierarchy of Developments) (Scotland) Regulations 2009
http://www.opsi.gov.uk/legislation/scotland/ssi2009/ssi_20090051_en_1
- The Town and Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations 2008
http://www.opsi.gov.uk/legislation/scotland/ssi2008/ssi_20080433_en_1
- The Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2008
http://www.opsi.gov.uk/legislation/scotland/ssi2008/ssi_20080432_en_1

Circular Advice from Scottish Ministers

- Circular 5/2009 Hierarchy Regulations
<http://www.scotland.gov.uk/Publications/2009/07/03153122/0>
- Circular 7/2009 Schemes of Delegation and Local Review Procedure Regulations
<http://www.scotland.gov.uk/Publications/2009/07/07115301/0>
- Circular 4/2009 Development Management Procedures
<http://www.scotland.gov.uk/Publications/2009/07/03153034/0>
- Circular 6/2009 Planning Appeals
<http://www.scotland.gov.uk/Publications/2009/07/03100023/0>

Selected Dundee City Council Weblinks

- Weekly List of New Applications
<http://www.dundee.gov.uk/plantrans/planningportal/>
- Planning Register/Public Access
http://bwarrant.dundee.gov.uk/publicaccess/tdc/tdc_home.aspx
- Schemes of Delegation and Local Review Bodies
<http://www.dundee.gov.uk/plantrans/legupdateschemedel/>
- "The Development Quality Service - A Users Guide"
http://www.dundee.gov.uk/dundee/uploaded_publications/publication_832.pdf
- Public Participation and Applications for Planning Permission
http://www.dundee.gov.uk/dundee/uploaded_publications/publication_833.pdf
- Statutory Pre-Application Procedures
<http://www.dundee.gov.uk/plantrans/legupdatepreapp/>

CONTACTS

For further information about planning modernisation, culture change or the new legislation please contact:

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