

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

The Town and Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations 2008.

LOCAL REVIEWS AND
DUNDEE CITY COUNCIL'S LOCAL REVIEW BODY
A Users Guide

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This Guide is not an authoritative interpretation of the law. Independent professional advice is advised.

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1 Modernising Planning Appeals

1.1 In modernising the planning system in Scotland, the Scottish Government encourages Councils to introduce a level of decision making on planning applications which is appropriate to local circumstances. Dundee City Council has operated such an approach for many years through a process which delegates decision making across a range of minor applications to its officers. This process continues with the approval of the Council's Mandatory Scheme of Delegation which became operational on 3rd August 2009. Under this Scheme where an officer decides a "local" category application under the delegated powers specified in the Scheme the applicant, if he/she takes issue with the decision, will no longer be entitled to appeal to Scottish Ministers. Instead the applicant will be entitled to request that the Council's Local Review Body (LRB) reviews the decision.

1.2 This short guide

- describes what Local Review Bodies are;
- introduces Dundee City Council's Local Review Body;
- outlines how the LRB will decide Review cases;
- will describe what a typical Decision Notice will contain; and
- provides Weblinks and contact details.

2. Local Review Bodies

2.1 The legislation provides that Local Review Bodies will

- be required by all Councils in Scotland;
- be a Committee of the Council;
- comprise at least three elected Members (i.e. Councillors);
- meet in public.

2.2 The LRB can undertake Reviews only in respect of "local" class developments which have been decided by officers under the Council's mandatory Scheme of Delegation.

2.3 The LRB can also undertake a Review of a case where the officer has failed to take a decision within the period specified in the legislation (i.e. normally two months although this can vary upwards). The LRB has two months in which to decide that Review. Any subsequent non-determination by the LRB may in turn be appealed to Scottish Ministers. For other Review cases there is no statutory time limit on the LRB's deliberations.

2.4 An LRB can, depending on the circumstances of a case decide it on the basis of the Notice of Review (see later), other papers submitted by the applicant and the officer's report (known as the Report of Handling). These collectively are known as Review Documents.

2.5 Alternatively the LRB can choose to determine the Review by means of either

- (a) requesting and sharing additional written material (written submissions); or
- (b) a meeting of relevant persons with an interest in the Review case where oral representations are shared (Hearing Session); or
- (c) a Site Inspection; or
- (d) a combination of the above.

2.6 Although the applicant can express a preference, the decision on the method of Review rests with the LRB.

2.7 Whichever method is selected, all information provided to the LRB is shared and if towards the end of the process new evidence is submitted, a decision cannot be taken until that material too has been circulated and comments invited.

- 2.8 In respect of technically difficult cases the LRB can appoint an expert Assessor to advise it. For all cases LRBs are likely to be supported by appropriate legal, administrative and planning advisers.
- 2.9 At the end of the process a comprehensive written Decision Notice is sent to the applicant with a copy to those who participated in the Review case.
- 2.10 This decision is final (except as outlined in Para. 2.3 above) although the decision can be challenged in the Courts on points of law alone.
- 2.11 It is important to note that the operations of the LRB's are totally independent from a Council's other decision making arrangements for planning applications. The Councillors who comprise LRBs must not under their strict Code of Conduct have expressed an opinion on the planning application concerned.
- 2.12 The diagram at Annex A to the guide summaries the Review process.

3. **Dundee's Local Review Body**

- 3.1 Dundee's Local Review Body, formed on 1st July 2009 comprises three Elected Members of the Council.
- 3.2 A further six Elected Members will be substitutes in the event of the unavailability of any member of the LRB.
- 3.3 A Chair and Depute Chair of the LRB have been appointed.
- 3.4 All members of the LRB and substitutes have received training.
- 3.5 The LRB will meet on a monthly basis and these meetings will be entered into the Council's calendar of business. The meetings will be held during the day and will be open to the public. A meeting will not be convened if there is no business for the LRB to conduct.
- 3.6 For each Review case the LRB will as far as practicable comprise the same group of members for the duration of the case.
- 3.7 The Council has decided that in the interests of impartiality and independence no Ward Members for the Ward in which the Review case is located should sit on that particular Review panel.
- 3.8 The LRB will be supported by administrative and legal officers and by an independent planning adviser who has had no involvement in the processing or deciding the application which is the subject of the Review. This officer will advise the LRB on the planning background of the case and answer technical questions but will not be in a position to make recommendations.

4. **Requesting a Review (Notice of Review)**

- 4.1 Decisions Notices issued since 3rd August 2009 contain information as to whether that decision is capable of either being
- (a) appealed to Scottish Ministers; or
- (b) reviewed by the Council's Local Review Body.

This will depend on the scale of the proposal and the method by which the decision was taken e.g. either by officers under the Council's mandatory Scheme of Delegation (Reviews) or for other kinds of applications decided by officers (Appeal) or by Elected Members in the Development Quality Committee (Appeal).

- 4.2 Any request for a Review MUST be made within three months of the date of the Decision Notice.

- 4.3 The request for Review can be made where the application has been refused or granted with conditions where the applicant wishes one or more conditions to be the subject of review.
- 4.4 In addition, a request for a Review may be submitted where the officer has not determined the application within the period prescribed in the legislation (normally two months). However such an application must be one which would have fallen within the terms of the Council's mandatory Scheme of Delegation.
- 4.5 Requests for Reviews must be made using the form supplied by the Council. Forms and Guidance Notes may be obtained from

The Clerk to the Local Review Body
Support Services Department
Dundee City Council
21 City Square
Dundee DD1 3BY

or

may be downloaded from the Council's website at:

<http://www.dundee.gov.uk/plantrans/localreviewbody/>

5. The Review Process

- 5.1 When the Notice of Review and supporting documents are received by the LRB they will be checked and acknowledged in writing by the Clerk to the LRB. The applicant/agent will be advised if for any reason the Review request cannot be accepted or where additional information is required.
- 5.2 The Review case will be allocated a reference number which should be quoted on all correspondence with the LRB.
- 5.3 The Clerk to the LRB will circulate the Notice of Review to all those who made representations on the original application inviting further representations within 14 days. If further representations are received these will be circulated to the applicant/agent allowing time for their response to be received in writing (14 days).
- 5.8 Once this process has been completed the applicant/agent and interested parties will be advised when the Local Review Body will meet to consider how they intend for the Review to be conducted.
- 5.9 At this meeting the LRB will decide either:
- a) to determine the Review at that meeting on the basis of the Review Documents alone; or
 - b) to obtain further information through a Written Representation procedure (see Section 6) or by a Hearing's procedure (See Section 7); OR
 - c) a Site Inspection; or
 - d) a combination of the above
- 5.10 The applicant/agent or interested parties will not have the automatic right to present information or evidence orally to the meeting. Parties will be guided in this by the LRB and its legal adviser. However it is likely that such exchanges will only be permitted in the context of Hearing procedures (Section 7).
- 5.11 If the LRB decide the case at this meeting they will discuss the case and announce its decision and give a summary of the reasons for it. A formal written decision will be issued in due course (Section 8).
- 5.12 If the LRB decides to adopt an alternative method of Review, parties (present and absent) will be advised by the Clerk as to the procedures which will follow.

- 5.13 IT SHOULD BE NOTED THEREFORE THAT THE LRB WILL NOT BE IN A POSITION TO DISCUSS THE CASE TO A CONCLUSION AT A SINGLE MEETING WHERE THEY HAVE DECIDED IN PUBLIC TO ADOPT ONE OF THE METHODS OF REVIEW OUTLINED IN PARA. 5.9b),c) or d). ABOVE.

6 Written Submissions Procedures

- 6.1 If the LRB decides to invite the applicant/agent and other interested parties, and persons/organisations to submit information or representations it will issue a Written Submissions Procedure Notice.
- 6.2 When/if further representations are received these will be circulated and a further period of 14 days allowed for the submission and circulation of further comments.
- 6.3 When this process has been completed the LRB will formally meet in public to decide the case and verbally announce its decision and the reasons for it. A written decision will follow.
- 6.4 Parties will be informed of the date/time of this meeting.

7 Hearings Procedures

- 7.1 It is anticipated that most Reviews will be decided on the basis of the Review Documents alone or by the Written Submissions procedure. The use of Hearings Procedures are anticipated for technically complex cases or where the Hearing of oral evidence is essential to the determination of the Review case.
- 7.2 The Regulations governing Local Reviews include specific Rules which will govern Hearings procedures. Hearings are intended to provide a framework within which the LRB can hear evidence on specific matters which the LRB will define. Hearings sessions are not intended to be adversarial and will take the form of an organised discussion on a topic basis led by the Chair of the LRB.
- 7.3 The LRB will issue to the applicant/agent and other interested parties/persons a Hearing Session Procedure Notice which will set out:
- The date and time of the Hearing
 - The matters which will be discussed at the Hearing
 - The procedure for the submission and circulation of Hearing Statements and other documents in advance of the date of the Hearing.
- 7.4 It is important that those in receipt of a Hearing Session Procedure Notice to respond to it. Failure to do so may mean that a party's opportunity to participate in the Hearing is prejudiced.
- 7.5 Prior to the Hearing the LRB may convene a Pre Examination Meeting to discuss the efficient and effective conduct of the Review. Although this meeting is most likely to apply to Hearings cases, it can also apply to Written Representations cases.
- 7.6 For particularly complex technical cases the LRB may exceptionally appoint an Assessor to advise it on complex matters. Parties will be advised if the LRB decide to appoint an Assessor.
- 7.7 Again, when this process has been completed, the LRB verbally announce its decision and the reasons for it. A written decision will follow.
- 7.8
- ## **8 Site Inspections**
- 8.1 The LRB can decide a case by Site Inspection or to combine this method with other methods of determination in making a decision.

- 8.2 Site inspections can either be accompanied or unaccompanied by parties to the Review and the method of inspection will be advised to parties in writing with further details as necessary.
- 8.3 A Site Inspection is to allow LRB members to see the Review site and its surroundings . The LRB cannot hear or otherwise receive evidence on a site visit.

9. The Role of Local Review Body Members

- 9.1 The composition of the Dundee's Local Review Body is outlined in Section 3 above. None of the members of the LRB will have played any role in influencing or deciding the application which is the subject of the Review. If they have had a connection in any way with the application, the applicant or any person with an interest in the application or the Review they are obliged to declare it in advance and take no part in the Review process. This is to ensure that the Review is conducted independently, openly and fairly.
- 9.2 All members of the LRB, substitute s and advising officers have received comprehensive training by independent consultants.
- 9.3 In preparing for and debating a Review case the LRB members be required to read, analyse and assess all the Review Documents submitted by the applicant and interested parties . These will include the
- √ Review Form and the documents accompanying it
 - √ submissions made by interested parties
 - √ the Report of Handling of the officer who decided the application and all the documents referred to in that report
 - √ the original application form and plans
 - √ the decision notice
 - √ the policies and proposals of the development plan relevant to the Review
 - √ information noted on site inspections
 - √ other information and documents which may have been submitted during the course of the Review and which the LRB considers are relevant to the case.
- 9.4 All LRB Meetings will be formally constituted committee meetings of the Council. Minutes of the meetings will therefore be published by the Council.

10. The Role of Council Officers

- 10.1 As indicated the LRB will be supported by a Clerk, a Legal Adviser and a Planning Adviser. The Clerk will administer the receipt and circulation of papers; making arrangements for meetings; coordinating site inspections; and for issuing the written decision on behalf of the LRB. The Clerk will attend all meetings of the LRB to take minutes and notes.
- 10.2 The Legal Adviser will attend all meetings of the LRB to offer advice on procedures and the content and interpretation of the legislation.
- 10.3 The Planning Adviser will be a qualified senior planning officer will have had no involvement in the processing or deciding the application which is the subject of the Review. The planning Adviser will attend all meetings of the LRB will when called on by members advice the LRB on the planning background of the case and respond to queries of a technical planning nature. However the planning Adviser will not be in a position to make recommendations as to how the LRB should be decided. That is a matter solely for the members of the LRB alone based on the evidence they have read, heard, and discussed in public. .

11. How the Review will be considered and decided

- 11.1 Verbally, and in public, at the meeting of the LRB at which the case is to be determined the members of the LRB, guided by the Chair, will discuss the proposal, the relevant provisions of

the development plan, the other material planning considerations which the LRB consider relevant, and the weight to be attached to those considerations against the provisions of the development plan. The LRB will then come to its conclusions and will verbally announce its decision and the reasoning behind it. Although the LRB will try to announce its decision at this meeting there can be no guarantee that this will be possible in every case. If the announcement of a decision is not possible this will be carried over to the next standing meeting of the LRB.

- 11.2 Details of the date, time and venue for the meeting at which this discussion will take place will be formally notified to the applicant and those with an interest in the Review in advance. The meeting will be open to the press and public and will normally take place at the Council's offices on City Square Dundee during the day. If the LRB considers that because of the complexity of the case a hearings procedure is necessary separate rules apply and these will be advised to parties in advance.
- 11.3 A Hearing will be necessary if the LRB considers that it wishes to hear any oral evidence in connection with the Review as the giving of oral evidence at the meeting will not be permitted. It is therefore important that those with matters to raise do so when the Notice of Review is circulated and written responses asked for.

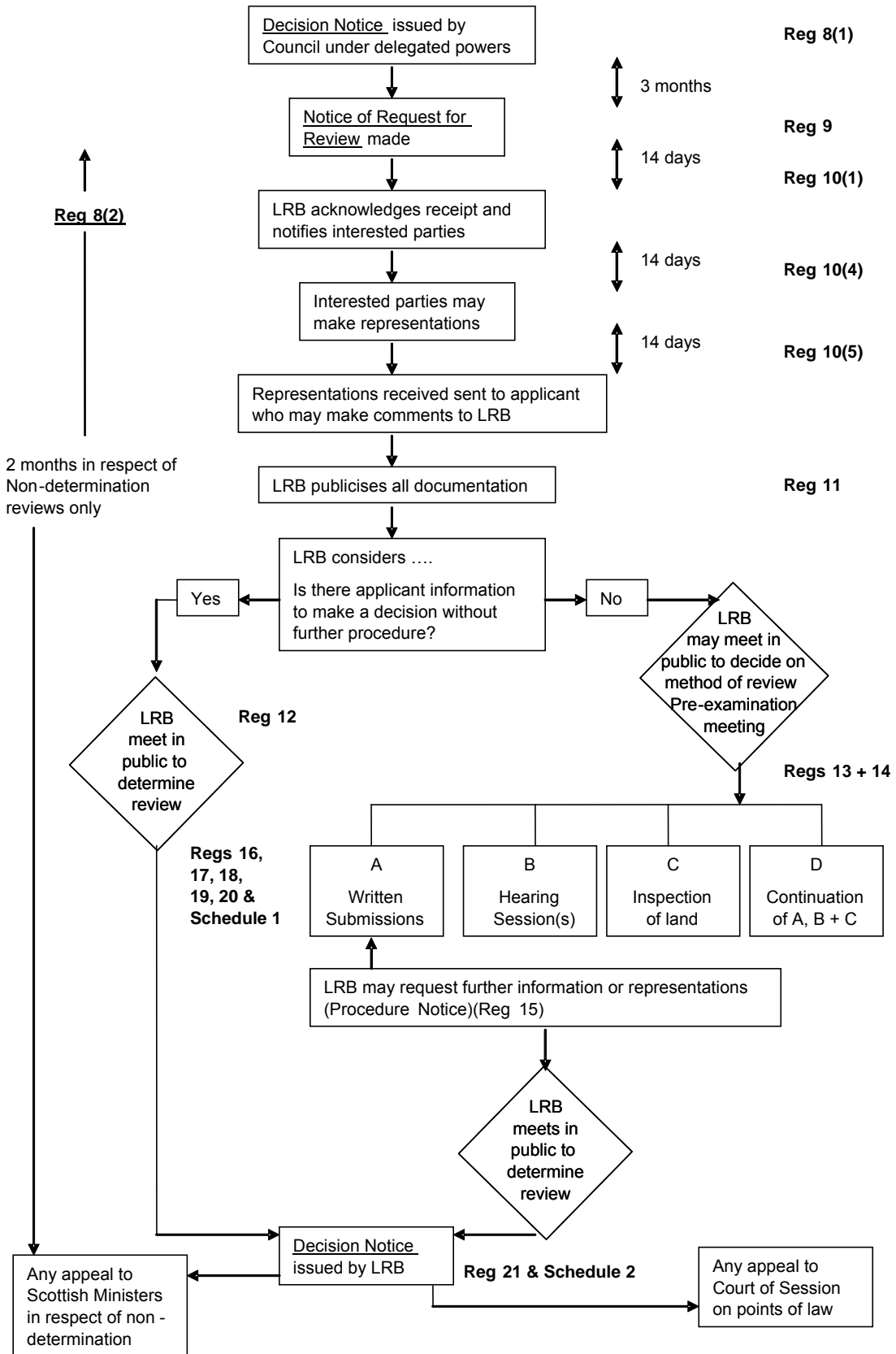
9 The Local Review Body's Written Decision

- 9.1 Following the conclusion of the procedures selected and undertaken for a particular Review case and after the decision has been announced in public, a written decision will be issued shortly afterwards.
- 9.2 The LRB has the power to uphold, reverse or vary the original determination on the application and the terms of the written decision will reflect the issues discussed at the meetings of the LRB which considered the Review in public.
- 9.3 The Review Decision Notice will contain statements relating to the terms in which the LRB has reviewed the case, its decision and the reasons for the decision. Reference will be made to the provisions of the development plan and other material considerations which were taken into account.
- 9.4 The Review Decision Notice will be signed by The Clerk to the Local Review Body on behalf of the LRB and sent to the applicant/agent with a copy sent to parties who participated formally in the case.
- 9.5 The LRB's decision is final although the applicant/agent will receive with the Decision Notice an indication as to how any appeal to the Court of Session (on points of law only) may be made.
- 9.6 An exception to the above is that in a case of non determination (see Para 4.4) where the LRB fail to reach a decision in 2 months, there is the option for the applicant to appeal to Scottish Ministers, requesting that they reach a decision. In other cases there is no statutory time limit restricting the timescale within which the LRB must reach a decision.

ANNEXES

- A Summary of Review Process
- B Useful Websites
- C Dundee City Council Contacts

ANNEX A SUMMARY OF LOCAL REVIEW PROCESS



Annex B

Useful Weblinks

Town and Country Planning - (Schemes of Delegations and Local Review Procedure) (Scotland) Regulations 2008

http://www.opsi.gov.uk/legislation/scotland/ssi2008/ssi_20080433_en_1

Circular 7/2009 - Schemes of Delegation and Local Reviews

<http://www.scotland.gov.uk/Publications/2009/07/07115301/0>

Dundee City Council's Scheme of Delegation approved by Scottish Ministers

<http://www.dundee.gov.uk/citydevelopment/planningdiv/legupdateschemedel/>

Report No 292-2009 "Planning Local Review Body" approved by the Policy and Resources Committee - 1 July 2009

<http://www.dundee.gov.uk/reports/agendas/pr010709.pdf> (Page 90)

Background Report 195-2009 "Local Review Body" approved by the Policy and Resources Committee - 27 April 2009

<http://www.dundee.gov.uk/reports/agendas/pr270409-p1.pdf> (Page 43)

ANNEX C

Clerk to the Planning Local Review Body
Support Services Department
Dundee City Council
21 City Square
Dundee DD1 3BY
Telephone: 01382 434816
Fax: 01382 434666
e-mail anne.singleton@dundee.gov.uk

Charlie Walker
Acting Team Leader (Development Management)
City Development Department
Dundee House
50 North Lindsay Street
DUNDEE DD1 1LS
Tel: 01382 433378
Fax: 01382 434013
e-mail: charles.walker@dundee.gov.uk
