An overview of the planning system in Scotland

The planning system shapes our environment and influences many aspects of the way we live. It decides how land is used, how communities take shape and how new developments will look and work. To be successful the planning system must balance economic, environmental and community priorities — it is fundamental to achieving sustainable economic growth.

This guide provides an overview of the planning system, the different roles that elected members can take, and should help you to deal with planning matters.

Planning system overview

The planning system has changed significantly since the Scottish Parliament passed the Planning etc. (Scotland) Act 2006, which established a legal framework for a modernised planning system.

This legislation seeks to make the planning system more efficient and more effective. It also seeks a system that is more enabling of development and one that takes account of the interests of individuals and communities.

A number of organisations are involved in the planning system including:

- the Scottish Government, which directs national planning policy and sets the National Planning Framework
- local planning authorities (32 councils and the two national park authorities) that are responsible for processing planning applications and making decisions in their areas
- key national agencies that provide formal advice to central government, councils and those applying for planning permission.

There are three main parts to the planning system:

- **development planning** - sets out the policies and proposals for an area’s development and provides the framework for making decisions about planning applications
- **development management** - is the process of deciding whether to grant or refuse planning permission. It is the part of the planning system with which most people are familiar
- **enforcement** - is the process for making sure development is carried out correctly and taking action when conditions of planning permission are not being followed.

Planning authorities also have other statutory powers and responsibilities such as Tree Preservation Orders and designation of conservation areas.
Elected members - roles and responsibilities

All elected members are likely to be involved in planning matters at some stage. Usually this will be through your general duties as a ward member and representing the interests of your constituents in relation to developments and planning applications.

There are several other ways that you can get involved in planning matters - through the Planning Committee, the Local Review Body, other council committees, the Executive Board or full council. In these specialist roles, elected members must represent the wider public interest and help to mediate any conflicts from the sometimes competing interests of the different parties involved.

Overall, elected members play a key role in ensuring that the planning system is successful: this is achieved through partnership working, community involvement, co-ordination of activities and meaningful negotiations with developers.

Planning Committee

Actions taken through the planning committee should support delivery of the council’s corporate objectives. Members of planning committees are involved in the approval of Main Issues Reports, Proposed Plans and the Development Plan prior to formal adoption by the council or submission to Scottish Ministers (for SDPs).

As a member of the Planning Committee you need to be familiar with the content of the reports and plans that you are asked to approve. You should take time to understand the proposals and policies in these plans and ensure that you are comfortable with what is being proposed, prior to final decisions being taken. Once decisions are taken, these plans are used as the legal framework for the development of your community and inform future decisions on planning applications.

In this role, you may be lobbied by a wide range of individuals, groups and businesses. Each representation should be considered carefully in terms of relevance to the issues involved and alongside the impartial advice from council planning officers. You must be seen to reach your decisions in an open, objective manner.

Appeals/Local Review Bodies

As part of the appeals process, elected members sit on a Local Review Body which considers certain appeals against planning decisions. Each authority will have different arrangements for their Local Review Body (LRB). If you are selected as a member of the LRB you will receive specific training prior to your involvement in the determination of any case.

Basic guidelines

Elected members with specialist roles can involve themselves in discussions with developers, their constituents and others about planning matters, but should follow these guidelines at all times.
DO
✓ inform officers about any approaches made to you and seek advice, and involve officers in discussions with developers and other interested parties
✓ be aware of what fairness and impartiality mean in your role
✓ preface any discussion with disclaimers, keep a note of meetings and calls, and make clear at the outset that discussions are not binding
✓ recognise that you can lobby and campaign but that this may remove you from the decision-making process.

DO NOT
✗ use your position improperly for personal gain or to give an advantage to your friends or close associates
✗ meet developers alone or put yourself in a position where you appear to favour a person, company or group - even a ‘friendly’ private discussion with a developer could cause others to mistrust your impartiality
✗ prejudge or be seen to prejudge an issue if you want to be a decision-maker on a proposal
✗ seek to influence officers or put pressure on them to support a particular course of action in relation to a planning application.

Good governance and your responsibilities
If you do not take on a specialist planning role you will have more scope to take a position for or against a proposed development. You should, however, avoid lobbying fellow elected members who will be involved in the decision-making process and appreciate that your views should carry no more weight than those of any other member of the public.

If you take on a specialist planning role there are restrictions on what you can and cannot do. A wide range of individuals, groups and businesses may lobby you on planning matters but you must reach your decisions in an open, objective manner. You must give careful consideration to the issues and consider these alongside the impartial advice from council planning officers.

Code of conduct
Negotiating this complex array of interests, expectations and pressures can be challenging. As an elected member you have certain responsibilities and are required to follow agreed standards of behaviour which are set out in the Councillor’s Code of Conduct (http://www.scotland.gov.uk/Publications/2010/12/10145144/0).

Declaring an interest
If you are a member of a committee which makes planning decisions it is vital that you declare any interest that you have - these may be financial, personal or social. Most interests will be personal, but there may be circumstances where you will have to consider whether the interests of others such as family, friends or business contacts require you to make a declaration.
The planning process

Development planning

Each planning authority has to prepare a Local Development Plan (LDP) for its area. The LDP sets out the authority’s policies and proposals for how land will be used, how towns and cities will develop and, once agreed, provides the framework for decisions about planning applications.

Development Plans have to be prepared in keeping with European legislation and national policy such as the National Planning Framework. Also, under the Environmental Assessment (Scotland) Act 2005, Development Plans must be subjected to a strategic environmental assessment.

The Development Plan, which is revised and updated every five years, supports the authority’s corporate objectives as set out in the Single Outcome Agreement (SOA) and should also support the development and land use implications of the Community Plan.

When preparing the Development Plan, authorities take account of resources available to implement the plan, the plans of neighbouring authorities, the regional transport strategy, river basin management plan and local housing strategy, the national waste management plan, flood risk management, climate change and carbon reduction targets and issues linked to the Control of Major Accident Hazards regulations.

In the four largest city regions (Aberdeen, Dundee, Edinburgh and Glasgow) authorities must work together to prepare a Strategic Development Plan. Strategic Development Plans and Local Development Plans go through similar preparation processes.

Certain public bodies, such as Scottish Environment Protection Agency (SEPA) and Scottish Water, have a duty to cooperate with planning authorities when development plans are being prepared. Other agencies, such as Transport Scotland, are expected to engage in the same way, although this is not a legal obligation.

Development management

Development management is the process of deciding planning applications, including the appeals and review processes. This is the part of the planning system that people are most familiar with. Legislation defines what development activities require planning permission and that decisions are made in keeping with the Development Plan.

Development is defined in the legislation as the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land. The definition also covers changes of use which may not involve physical building work. The major exception is that ‘permitted development rights’ have been created to remove the need for planning permission for certain developments.

Legislation divides development into three categories: National, Major and Local. There are different procedures for determining applications for each category.
Valid planning applications must be processed within statutory timeframes. Local developments have to be decided within two months. National and Major Developments have to be decided within four months, although this can be extended if the applicant agrees.

All authorities have an individual Scheme of Delegation which determines which applications for planning permission relating to local development are determined by planning officers and which directly involve elected members.

There are two types of planning permission - planning permission in principle and full planning permission.

Members of the public may make written representations to the planning authority within a certain timeframe outlining their views on proposed developments. In the case of objections, the reasons must be clearly stated. Anonymous letters of objections or support cannot be taken into account.

**Material considerations**

The law requires that decisions on planning applications are made in keeping with the Development Plan. However, there are some limited circumstances when it is acceptable to make a different decision and this is when material considerations indicate otherwise. There is no statutory definition of what constitutes a material consideration but there are two main tests for deciding whether a consideration is material and relevant:

- it should be related to the development and use of land; and
- it should fairly and reasonably relate to the particular application.

**Legal agreements**

Local authorities have powers to enter into legal agreements linked to new development. These can relate to:

- agreements which provide for land owners to enter into a planning obligation to restrict or regulate the development or use of land - under Section 75 of the Town and Country Planning (Scotland) Act 1997
- agreements that will help authorities to discharge their statutory functions. These agreements can include financial matters - under Section 69 of the Local Government (Scotland) Act 1973
- agreements to secure financial contributions towards constructing or improving roads - under Section 48 of the Roads (Scotland) Act 1984.

**Appeals and reviews**

An appeals process exists so that, under certain circumstances, planning decisions can be reviewed. Normally everyone involved in appeals must pay their own costs. Applicants can appeal when:
• planning permission is refused or if conditions are attached to a planning consent. If the application was considered by planning officers under delegated powers the appeal will be made to the Local Review Body. Decisions made by the Planning Committee or the full council are appealed to the Scottish Government
• a decision on a planning application has not been made within the statutory period. Or if a Local Review Body fails to give a decision on a review against the non-determination of a planning application by officers.

Enforcement
Planning authorities have an extensive range of discretionary powers to take action where planning regulations have not been followed or planning conditions have not been fulfilled.

In considering whether to take enforcement action the council has to decide if a breach of planning control would have an unacceptable impact on public amenity. Enforcement is intended to achieve acceptable development. The first step in enforcement action is to ask for a retrospective application for planning permission.

Councils also have powers to serve notices asking for more information about a development. They can stop a development that does not have permission or where the development does not follow the conditions attached to the permission which was granted. The council can issue a fixed penalty or prosecute the responsible people if the development continues. The final option available to councils is to demolish the illegal development and to recover the cost of this from the developer.