



The Planning System in Scotland: An Induction Pack for Elected Members

May 2007





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SCOTTISH EXECUTIVE



Introduction

As a Councillor, you will become involved in planning issues on a regular basis –through membership of committees or sub-committees with responsibilities for planning decisions, and/ or through planning issues affecting your ward.

Many Councillors find being involved in planning issues to be rewarding, come to relish the challenges and opportunities to shape their communities for the better, and end up sitting on planning committees for many years. However, the planning system can initially be confusing and complex. It raises issues of probity, conflicts of interest and conduct and is an area of decision making in which Councillors must be impartial, and be seen to be acting impartially. Potentially it is one of the more difficult subjects that you need to master in order to serve the needs of your ward and the Council.

This Pack will help you understand what the planning system seeks to achieve and will introduce the processes involved in decision-making. It is not intended to turn you into a planning expert, but rather to provide some basic information that will help you to begin to deal with planning matters and understand the role of planning in achieving Council policy goals.

The Pack also provides you with a guide to other sources of information on the planning system. These will help you find out about the aspects of planning that are of particular interest to you.

In addition to these sources of information and help, your Council's planning officers will be pleased to answer any queries that you may have.

Overview of the Planning System

The planning system is concerned with the future development and use of land and buildings. It acts in the public interest to ensure that needs and requirements for housing, employment, education, retail, leisure and transportation facilities and other infrastructure requirements are met through development in the right place. The aim is to ensure that development and changes in land use occur in suitable locations and are sustainable. It also seeks to protect our urban and rural areas and the environment from inappropriate forms of development or use of land. Consequently the planning system has a significant impact on our quality of life, by shaping the environment in which we live, work, shop, learn, travel and spend our leisure time. Planning can also make a major contribution to community planning and other local agendas such as regeneration initiatives.

The statutory planning system in Scotland is currently going through fundamental reform and modernisation. The Planning etc. (Scotland) Act 2006 was completed in December 2006. During 2007 and 2008 secondary legislation and guidance containing the detail of how the new system will be implemented will be developed in consultation with stakeholders. As a Councillor you will be part of this exciting programme of change over the next few years. The changes in the system will help Councils adopt a more positive approach to planning and development. This Pack outlines the current statutory system because it is the system you will be operating in initially, but intended changes to the system are highlighted where relevant.

The primary objectives of the planning system are defined by the Scottish Executive as:

- To set the land use framework for promoting sustainable economic development
- To encourage and support regeneration, and
- To maintain and enhance the quality of the natural heritage and built environment

This may appear as an agenda that few would dispute but development and land use change inevitably creates conflicts between competing interests. Councils and Councillors must represent the wider public interest and help mediate such conflicts through the planning system. Planning must involve partnership working, community involvement, co-ordination of activities and meaningful negotiations with developers and other interested parties to maximise its effectiveness.

Resolving debates over particular planning applications can be very difficult. There will not always be an obviously correct decision for a planning authority to take. For example a planning application to redevelop part of a large area of run-down playing fields with a decrepit pavilion for housing might propose a package of improvements to the pavilion and enhanced sports fields, although covering a smaller area. This could attract equally large numbers of supporters and objectors. The supporters might include users of the existing inadequate, damp changing facilities and water logged dog-fouled pitches and these people would welcome new facilities. Objectors may oppose the loss of any part of the large open space despite the proposed quality improvements. Also, the new facilities might be supported by one planning policy and the partial loss of playing fields restricted by another planning policy.

The planning system supports economic competitiveness, social justice, regeneration, environmental quality and integrated transport. Planning also has an important role in helping to deliver sustainable development, including reducing energy consumption and addressing the causes and impacts of climate change. Supporting increased accessibility for disabled people is also becoming increasingly important.

Examples of the contribution of planning to these wider agendas include:

Sustainable development – sustainable development integrates economic and social objectives with environmental considerations. In relation to planning it is not essentially or exclusively about preventing inappropriate development. It is about ensuring development in the right place and of the right design and quality. Planning also encourages the reuse of previously developed land and buildings in preference to the use of green field sites for new development, encourages development locations that will minimise the use of private cars and maximise the use of public transport, it conserves historic buildings and areas and protects the natural environment.

Economic competitiveness – planning should ensure an adequate supply of industrial and commercial land and premises for businesses and help remove infrastructure or other constraints to economic development.

Social justice – planning should feature as part of an integrated approach to social justice by giving a high priority to accessibility when considering locations for development, promoting the provision of appropriate local facilities where they are lacking, and aiding the creation and maintenance of pleasant, healthy, safe and crime free environments. An example of the contribution of planning to social justice could be when a suitable site for significant housing development in a small town is owned by a developer who wishes to build large detached houses aimed at second-home owners. The town has a shortage of houses for local residents, most of whom cannot afford to buy the proposed new dwellings. The Council can work with local people, community groups and the developer to provide affordable homes within the development. You can press for that to happen.

Regeneration – planning is an essential part of regeneration due to its influence on the economic, social and environmental aspects of places. You can lobby within the Council for areas in your ward that have problems to become targets for regeneration initiatives or supportive planning policies.

An example of this type of Council-led initiative include strategies which have helped communities suffering from social exclusion to reverse their fortunes by devising planning policies that encourage private sector investment. This might involve a mix of new private housing, both social and for sale; a new superstore or an adjacent business park to create local employment; or a new road or rail service to improve accessibility.

Environmental quality – a key objective of planning is to protect and enhance environmental quality by ensuring that the potential adverse effects of development are fully identified, assessed and minimised prior to decisions being taken. For example, planning applications for certain categories of development that can have a serious impact on the environment such as open cast coal mining may have to provide an Environmental Impact Assessment (EIA). Also, development plans are subject to Strategic Environmental Assessment (SEA) and appropriate assessment.

In recent years increasing priority has been given to design quality. Good design should be the aim of everyone in the planning and development process, and is important at all scales of development. The drive for quality should not focus solely on buildings. It should also be concerned with the way that buildings, old and new, work together and create the spaces and sense of place that have such an influence on the quality of life for communities.

Integrated Transport – planning and transportation are closely linked and much importance is placed on strengthening these links to provide more efficient and environmentally sustainable developments that place less reliance on the use of private cars. This requirement has been boosted by greater emphasis on and concerns about energy consumption and climate change.

At local level, the planning system should encourage economic development, bringing together the land requirements for housing, education provision, matching transportation provision with future development, facilitating the provision of waste management facilities, ensuring continuity of affordable housing supply and provision of social, leisure and recreational facilities.

For further information see SPP1: The Planning System at www.scotland.gov.uk/planning



The Planning Process

Public perception of planning is often based on contact with the system through a planning application but the scope of the planning system is much wider. To understand the various individual components it helps to appreciate how those relate to each other.

The planning system is based on two fundamental processes:

Development Planning - the forward planning process through which future land requirements are analysed, sites allocated for new development and policies for assessment of individual development proposals are established.

Development Management - the mechanism through which future development and change in land use are managed and regulated based on the need for planning permission. This was previously known as Development Control.

It is crucial to appreciate that the processes and levels of planning are strongly inter-linked and are reflected in planning decisions. A range of bodies and organisations are involved in the delivery of the planning system. An understanding of “who does what” is essential.

Scottish Executive

The role of the Scottish Executive in the planning system is to:

- Maintain and develop the legal framework within which the system operates
- Establish national planning policy on a wide range of issues which is set out in a series of Scottish Planning Policies (SPPs) which are replacing National Planning Policy Guidelines (NPPGs)
- Provide best practice advice on a wide range of planning topics through Planning Advice Notes (PANs)
- Approve Structure Plans
- Make decisions on some major planning applications and, through the Inquiry Reporters Unit (SEIRU), decisions on appeals against planning decisions taken by the local authorities or appeals where Councils have not taken a decision within a specified period
- Produce the National Planning Framework (NPF) which looks at Scotland from a spatial perspective and provides a national context for development plans and planning decisions and informs the spending programmes of the Executive, public agencies and local government

The National Planning Framework, SPPs, NPPGs and PANs can be viewed on the Scottish Executive website (www.scotland.gov.uk/planning).

Planning authorities

The planning system is predominately delivered by councils, through their role as planning authorities. Each of the 32 local authorities is a planning authority, and in addition, the two national park authorities have some planning powers and are therefore planning authorities.

Planning authorities:

- Prepare and maintain up to date development plans (structure and local plans). These plans establish future development requirements to meet regional and local needs, identify where the development should be located and the infrastructure requirements to support growth and regeneration. They include general development policies that reflect national planning policy and local circumstances.
- Make decisions on applications for planning permission and other related consents and enforce planning controls.

Planning authorities are involved in delivering many statutory and non-statutory responsibilities, covering diverse topics such as Tree Preservation Orders, identification of public rights of way and designation of conservation areas. Planning has also become an increasingly important means of improving equal opportunities and access for disabled people. It contributes to community planning and regeneration initiatives. Improvements to the local environment and more environmentally sustainable forms of development are also promoted through the planning system.

Council services such as corporate policy, legal, financial, education, housing, transport, environmental and economic development have important interactions with planning. There is also an important interaction between development planning and community planning. While both mechanisms have distinct purposes, they must both feed into each other. For example, any land use or development implications from the community planning process, such as the identification of the need for a new school, would be fed into the development plan process.

Other Key Stakeholders

A wide range of other public bodies and agencies are involved in the planning system. These organisations often have statutory responsibilities for specific topic areas, with implications for planning decisions. As statutory consultees, they offer specialist advice to the planning authorities. Such bodies include:

- **Scottish Natural Heritage (SNH) – www.snh.org.uk**

SNH is responsible for the conservation and enhancement of natural heritage - the wildlife, the habitats and the landscapes. SNH provides advice on specific development proposals in response to requests from planning authorities and developers. It also works with planning authorities to ensure that planning policies are developed in ways which maximise opportunities to enhance the natural heritage.

- **Historic Scotland – www.historic-scotland.gov.uk**

Historic Scotland is responsible for safeguarding the historic environment and promoting its understanding and enjoyment. Historic Scotland works with planning authorities on historic environment issues including the protection of scheduled ancient monuments, listed buildings and conservation area. It also advises authorities on decisions relating to listed building consent, conservation area consent and archaeology.

- **Scottish Environment Protection Agency (SEPA) – www.sepa.org.uk**

SEPA is Scotland's environmental regulator and adviser. It regulates activities that may pollute land, air or water, the storage, transport and disposal of waste, flooding and radioactivity. It is involved with the planning system at all levels.

- **Health and Safety Executive (HSE) – www.hse.gov.uk**

The Health and Safety Executive is responsible for health and safety regulation. It advises planning authorities on relevant issues including hazardous substances consent.

- **Scottish Enterprise – www.scottish-enterprise.com**

Scottish Enterprise is the economic development agency that aims to improve performance, to help the people and businesses of Scotland succeed and build a world-class economy.

- **Communities Scotland – www.communitiesscotland.gov.uk**

Communities Scotland is the national agency responsible for policies and programmes relating to housing and community regeneration. Its objectives include increasing the supply of affordable housing and improving opportunities for people living in disadvantaged communities.

- **Scottish Water – www.scottishwater.co.uk**

Scottish Water provides water and wastewater services throughout Scotland, investing in infrastructure, improving water quality and wastewater treatment and connecting new developments to the system.

- **Transport Scotland – www.transportscotland.gov.uk**

Transport Scotland is responsible for helping to deliver the Scottish Executive's transport capital investment programme and overseeing the safe and efficient operation of trunk roads and rail networks.

- **Architecture & Design Scotland – www.ads.org.uk**

Architecture and Design Scotland (A+DS) is a non-departmental public body, which acts as a national champion for good architecture, design and planning in the built environment.

A number of voluntary or private organisations, which are often national campaigning bodies, regularly interact with the planning authorities. Examples of these include the Royal Society for the Protection of Birds (RSPB) (www.rspb.org.uk), Friends of the Earth Scotland (www.foe-scotland.co.uk), Scottish Architectural Heritage Society and local branches of the Civic Trust.

Community councils are also statutory consultees on planning applications and can comment on applications in, or affecting their area. You are likely to have contact with the community councils as well as with members of the public and applicants for objectors to planning applications. If you attend meetings at which particular planning applications are being discussed it is important to avoid being drawn into discussions that could compromise your involvement in subsequent decision making by the Council.

Planning Aid for Scotland (PAS) is a voluntary organisation offering both an independent source of free professional advice and training programmes on planning matters to members of the public and community organisations who are unable to afford the services of a planning consultant. PAS plays an increasingly important role in community engagement on planning matters.

See www.planningaidscotland.org.uk for more information.



Code of Conduct

The Councillor Code of Conduct explains the responsibilities of elected members. A set of guidelines come with the Code and together these set out standards for your personal conduct as a Councillor.

The Code of Conduct provides a positive framework for your decision making as a Councillor, helping you to navigate a maze of potential conflicts of interest. Before the introduction of the Code the only guidance was the threat of being personally surcharged for wrongful spending by the Council as a result of collective decision making. This changed with the establishment of the Standards Commission under the terms of The Ethical Standards in Public Life etc (Scotland) Act 2000 and the publication of the Code.

The Code of Conduct is particularly relevant to planning, as consideration of planning matters can generate pressures for you from many directions, which will be stronger than those you will encounter on most other Council business. This section of the induction pack deals directly with issues, concerns and conflicts that you may encounter. The application of the Code to your wider role as a Councillor is addressed in the general 2007 Councillor Induction Pack.

Key Issues

Public perception and its relationship to probity, openness and accountability is the most important factor for you to be aware of. The Code of Conduct states:

"The key test that has to be applied is the objective one of whether a member of the public, acting reasonably and knowing all the relevant facts, would think that a particular interest in relation to any matter being considered at a Council meeting could unduly influence the Councillor."

In other words, it is up to you to assess how your decisions may be interpreted and to ensure that you do not create an adverse public perception of your behaviour or engage in inappropriate or illegal actions.

Whether you are a member of the planning committee considering applications or a local member putting forward an opinion about a particular application, it is essential that your conduct is directed by the Code. The Code is realistic however, and recognises that some decisions that you take may prove unpopular with the public.

When you attend a planning committee meeting the considerations will be:

- Do you need to declare an interest, yours or any other party's?
- If you do declare an interest, should that interest prevent you from taking part in the discussion and/or the decision making?
- Have you pre-empted your involvement in the debate over a planning application by stating your position in support of/against a particular application or a local plan proposal in advance of formal consideration of that application or proposal by the planning committee or full Council?

This third point is also relevant to Councillors who have publicly declared their support for, or opposition to, a particular project during their election campaign that may subsequently come before them at committee as a planning application or local plan proposal.

When deciding whether you should declare an interest and take part in a committee discussion or the wider consideration of a particular planning application or local plan proposal, bear in mind that interests are not just financial or business. They can also be personal or social

For example, a conflict of interest could be as obvious as you and a relative owning land that is the subject of a planning application, or less clear-cut such as a close friend being a leading objector to a controversial local plan proposal. It is important therefore to recognise that potential conflicts might arise in circumstances that are not explicitly dealt with by the Code.

Planning - A Councillor's Perspective

A wide range of individuals, groups and businesses will lobby you on planning matters. Each representation should be considered carefully. Weigh them in terms of relevance to the issues involved and use this information alongside the impartial advice from Council planning officers. You must be seen to reach your decisions in an open, objective manner.

Developers will sometimes subject you to a sustained campaign, providing information and attempting to persuade you of the merits of their case. This lobbying may be highly professional. This can also be true of objector's groups.

The often competing interests of the different groups and individuals that may contact you must also be assessed against the overall aims of the Council as well as planning policy, as the planning function does not exist in isolation from the wider corporate agenda of the local authority. For example, a planning application for a new superstore may be part of a wider economic regeneration effort, led by the Council with other partners or a housing development that includes a higher than normal percentage of social and affordable housing may form the core of the local housing strategy to enable young families and other local people to afford a home.

Planning applications should be decided on their merits but the context can be shaped by many dynamic factors. Indeed the development plan against which applications are judged is the result of you and your colleagues' or predecessors' previous consideration of these factors, ranging from social inclusion to sustainability. It is important to consider applications in this context

Inevitably, people will have many different expectations of you in your role as a Councillor. Your local community council may expect you to support whatever position they have taken on big or controversial applications, or even to defend their stance on a small, but to them significant, application for a house extension. Commercial interests might expect you to promote development generally as a good thing for your area. Individual interest groups, such as local conservation societies, will assume that you share their concern about existing buildings or places.

The responsibility for your actions, for the positions you take and for your decisions lies entirely with you. Negotiating this complex array of interests and pressures can be a daunting task, especially when dealing with planning issues and the possibility of conflicts of interest. The Code of Conduct is an invaluable tool for determining the parameters of your involvement in the decision making process.

Planning is a large and dynamic local government responsibility. The Scottish planning system is currently undergoing a series of major changes and faces many challenges. In the interim period, this may create uncertainties for you and Council planning officers. You can help them to help you by working with them in a positive partnership to make your Council's planning service the best it can be. You can also ask officers for advice when you have queries or problems, give them support when they are under pressure from angry objectors or planning applicants and keep them informed of what is happening in your ward that might be relevant to their work. You will find this relationship mutually rewarding and that it will help generate benefits for your ward.

In common with many local government services the overall performance of each planning authority is monitored annually through measurement against Scottish Executive defined performance indicators and targets. As a Councillor, you have shared responsibility for the performance of your Council. This means you should be aware of the potential impact of your influence on meeting these targets. If for example you might wish put a motion to the planning committee to postpone a decision on a planning application to allow you longer to think about it this could result in a failure to meet the performance target for deciding that application. The changes being made to the planning system are intended to enhance the effectiveness of the system, and as such, particular attention will be focussed on performance issues over the next few years.

Development Planning

The development plan is central to the planning system as the basis for decisions on planning applications and to guide the location and nature of future development.

The development plan actually consists of two statutory documents. These are the:

- Structure Plan, and
- Local Plan

Structure Plans set strategic, long term development policies and are prepared by planning authorities either for their entire area alone or in partnership with neighbouring Councils, for example Glasgow and the Clyde Valley or Dundee and Angus. Structure plans require the approval of the Scottish Ministers before they become operational. They establish the scale of development required to meet anticipated needs, particularly in housing, industrial/ commercial and infrastructure, over a period of up to 20 years. For example, a structure plan may for example state that 1200 houses should be developed in a particular town or area over a ten-year period but it will not normally identify which sites should accommodate these houses. That task is for local plans.

Further information on structure plans is found within Planning Advice Note (PAN) 37: Structure Planning (www.scotland.gov.uk/planning).

Local Plans are detailed and site specific, identifying the sites to be allocated for specific forms of development and contain policy criteria against which planning applications will be assessed. They should be reviewed every 5 years. They are legally obliged to conform with the relevant structure plan.

In common with structure plans, local plans follow lengthy preparation process. That process usually involves initial identification of key issues to be addressed in the new plan; preparation and publication of a consultative draft plan, followed by a finalised local plan which will normally be the subject of a Local Plan Inquiry prior to adoption. Each of these stages includes extensive consultation and opportunities for community participation in shaping the content of the plan.

Further information on local plans is found within Planning Advice Note (PAN) 49: Local Planning (www.scotland.gov.uk/planning). Additional information is also found on the website of Planning Aid for Scotland (www.planningaidscotland.org.uk).

If you are a member of the planning committee, you will be involved in developing and agreeing draft plans prior to their formal adoption (for local plans) or submission to the Executive for approval (for structure plans). Indeed even if you are not a member of the Council's planning committee, in some local authorities you will also be involved as these plans are so important that they will be presented to the full Council for final decisions.

The statutory requirements and opportunities for public involvement in the preparation of structure and local plans are a key feature of development planning. Councils will seek the active engagement of local communities in the preparation of development plans, and as the elected representative of those communities you should be centrally involved.

A key feature of the current modernisation of the planning system is based on giving local communities a more central role in shaping their environment through greater involvement in the preparation of development plans. The principal thrust of these changes centres on more meaningful and positive engagement with local communities as opposed to simply providing opportunities through which they may become involved.

For further information see Planning Advice Note (PAN) 81: Community Engagement (www.scotland.gov.uk/planning).

The real significance of the development plan is that it forms the policy basis for planning decisions on planning applications. Planning legislation requires all decisions on planning applications to be made in accordance with the development plan unless material considerations indicate otherwise. The allocation of land for development in local plans is effectively committing the Council to the principle of future development on specific sites. For example, if the Local Plan has allocated a site for housing, the Council will not be in a position to refuse planning permission in the future for a housing development on the grounds that it is an inappropriate location for housing. In this type of situation debate on planning applications should focus on matters such as the design of the development, its layout, phasing and infrastructure like roads and drainage.

The status of the development plan system is critical because it raises issues which can occasionally lead to poor decisions on planning applications by Councillors. The problem has primarily been one of Councillors approving a Local Plan, which is often a complex and lengthy document, without fully appreciating its detailed content and significance for future planning decisions. As a Councillor, key decisions on the content of development plans will arise on relatively few occasions during the life of a Council, but they will rank as some of the most important decisions you will make during your time as a Councillor. The content of the development plan may have a profound effect on the future quality of life for the communities that you represent. Accordingly, the advice on development plans is to be fully aware of the detailed proposals and policies in these plans and ensure that you are comfortable with what is being proposed, prior to final decisions on these plans being taken. Before you approve any draft local or structure plan documents read them thoroughly and ask Council planning officers to answer queries you have in advance of the plan being discussed at a Committee or a Council meeting.

Your Council's planning officers will help you with analysis of issues and recommendations but you will also have to use your judgement of that advice to make the right decisions for your area.

Over the next few years significant changes will be made to the current development plan system. It is intended to replace the current two tier system of Structure and Local Plans with a system of single tier Local Development Plans in most areas while retaining a streamlined two tier format in four city regions (Glasgow, Edinburgh, Aberdeen and Dundee). Within these 4 areas Strategic Development Plans will replace Structure Plans. However, it should be noted that the existing development plans will remain in force until replaced by the new plans.

Development Management

Development management (historically referred to as development control) is the part of the planning system that you will encounter on the most frequent basis. There are 3 main elements to the development management system:

- Applications for planning permission and other consents
- An appeals system through which decisions on planning applications may be challenged and reviewed
- An enforcement system which provides a range of powers to planning authorities to ensure that breaches of planning control are dealt with

This section describes the planning application and associated decision-making process. The legal basis for this part of the system is complex – even for lawyers, and the information here is a simplification of statutory requirements and provisions. More detailed information is available from individual planning authorities and the Scottish Executive websites.

Planning Applications

Managing or regulating new development through the granting or refusal of planning permission is based on a statutory definition of development. This is *“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.”*

Any development within this definition must have planning permission from the planning authority prior to work beginning. It is important to note that in addition to the more obvious requirement to obtain planning permission for the construction of new buildings such as houses, shops, and offices, the second half of the definition refers to changes of use of land and buildings where no physical building work is actually involved. The only exceptions to this general requirement are:

“Exempted developments” which are operations and uses of land that are explicitly excluded from the statutory meaning of development. They include work for the maintenance and improvement of houses affecting only the interior or not involving material changes to the external appearance; works or building within the garden of a house incidental to the enjoyment of the house; repairs to infrastructure services; use of land for agriculture or forestry and most associated buildings.

“Permitted developments” which are minor works such as some small house extensions, temporary uses of land and many engineering operations, that are development but do not require permission from the planning authority.

There are two types of planning permission:

- Outline planning permission establishes the principle of a particular type of development on a site. This is used in circumstances where the likelihood of planning permission being granted is uncertain or in the case of major development proposals to avoid the initial high costs of detailed design work.
- Full planning permission – this type of application provides the full details of the proposed development.

In addition, there are a number of more specialist forms of permission, these include:

- Listed building consent
- Conservation area consent
- Advertisement consent
- Approval of reserved matters (linked to outline planning permission)
- Hazardous substances consent

Planning applications are made on forms supplied by the planning authority and accompanied by drawings and plans. Applications for more significant development proposals will also be accompanied by documentation such as Design Statements, Environmental Statements, Retail Impact Assessments and Transport Assessments. These all provide additional information to support decision-making. Environmental Statements are part of the Environmental Impact Assessment process, providing an objective assessment of the potential effects of a proposed development on the environment, including measures proposed to moderate or minimise any adverse impacts.

Process

Valid planning applications are registered at the beginning of what is normally a two month statutory period in which the planning authority is expected to issue a decision, unless the applicant agrees to an extension of that time. If the planning authority fails to issue a decision within that timescale, the applicant has a right of appeal to the Scottish Executive.

An application will only be considered valid if it is accompanied by all the appropriate documents and the fee charged by the Council for that category of development. At the time of registration, the application will also appear on a list of planning applications received during that week which is widely distributed and often published in local newspapers and Council websites. Further publicity for planning applications may be given for certain types of development through public notices published in local newspapers. Neighbour notification alerts those in close proximity to a site that a development is proposed and provides basic information, including how to obtain further information and make representations to the planning authority.

As a Councillor, in most authorities, you will receive a copy of the weekly list in which applications in your ward will be identified. Members of the public may make written representations to the planning authority outlining their views on proposed developments. Normally these should be made within 14 to 21 days of an application being registered by the Council. In the case of objections, the reasons for objection must be clearly stated. Anonymous letters of objections or support will not be taken into account.

Information on planning applications is available from the Council and all key documents and plans or drawings are available for public inspection. In many Councils this information may also be viewed on the Council's website. The e-planning initiative, which is helping planning authorities to introduce online planning services, will extend internet access to planning application details in due course. Under the Freedom of Information Act all the material in planning application files, including internal Council documents, is open to public scrutiny.

The planning authority undertakes consultations on planning applications with other departments of the Council and external bodies known as statutory consultees. The range of bodies consulted varies according to the nature of the development proposals. The statutory consultees are primarily those bodies listed within the Planning Process section of this Pack. Consultations with other departments of the Council will include Transportation/ Roads, Environmental Health, Housing, Education, Social Work and Leisure & Recreation – depending on the nature of the development proposed. Such consultations have an important role within the planning authority in bringing together various functions or services to provide a single response. This helps achieve the objectives of the Council’s corporate agenda in a consistent way.

On receipt of all consultation responses and following careful consideration of the application, the planning officer will prepare a written report with recommendations on the application that refers to relevant development plan policies, objections, letters of support and consultation responses. Most decisions on planning applications are delegated to planning officials, but for certain applications the report is presented to the planning committee for decision.

Each Council has its own scheme for delegated decision making. In many planning authorities all routine or straightforward non-controversial applications are delegated to officials to allow committees to concentrate on applications involving major or controversial developments. Part of the scheme of delegation will include arrangements for the scrutiny of delegated decisions by Councillors. As a Councillor, you will find it helpful to be familiar with the arrangements for delegated decision making operated by your Council. This will be explained to you as part of your induction following your election to the Council.

All decisions on planning applications, whether made by the planning committee or officers under delegated powers, must be made in accordance with the development plan unless other material considerations indicate otherwise. It is important to appreciate that planning decisions may only be made on valid planning grounds and these are referred to as material considerations.

There are two main tests in deciding whether a consideration is material and relevant. It should serve or be related to the purpose of planning and should therefore relate to the development and use of land, and it should fairly and reasonably relate to the particular application. It is for the decision maker to assess both the weight to be attached to each material consideration and whether individually or together they are sufficient to outweigh the provisions of the development plan. Where development plan policies are not directly relevant to a development proposal or where there is no conflict with declared policy objectives, material considerations will be of particular importance.

The range of considerations which might be considered material is, in practice, very wide and falls to be determined in the context of each case. Examples of possible material considerations include:

- Scottish Executive policy and UK Government policy on reserved matters
- National planning policy and advice as set out in the NPF, SPPs, NPPGs, PANs and circulars
- European policy, where relevant
- A draft structure or local plan
- National Park Plans, Area Waste Plans and Community Plans

- The environmental impact of the proposal
- The design of the proposed development and its relationship to its surroundings
- Access, provision of infrastructure and planning history of the site
- Views of statutory and other consultees, and
- Legitimate public concern or support expressed on relevant planning matters

This list is not exhaustive but it does represent the considerations taken into account in most planning decisions. The relative weighting given to these various considerations is a matter for professional judgement in each case.

The matters below are examples of issues that are **not** considered to be material considerations.

- The protection of private interests, e.g. loss of views or competition between businesses
- The personal circumstances of the applicant
- Moral considerations, e.g. sex shops, betting offices or religious objections to licensed premises
- Political considerations or ideological dislikes, e.g. construction of private schools or hospitals
- The cost of the development
- The applicant's lack of ownership of the site (note that planning permission relates to the land and not to the person seeking planning permission), and
- Issues covered by other legislation, e.g. building safety, which is the responsibility of building standards

In distinguishing between public and private interests, the basic question is whether the proposal would unacceptably affect the amenity and existing use of land and buildings which ought to be protected in the public interest, not whether owners or occupiers of neighbouring or other existing properties would experience financial or other loss from a particular development.

In determining a planning application, there are 3 types of decision available to the planning authority. These are:

- To grant unconditional planning permission
- To grant permission subject to conditions
- To refuse planning permission

Most applications are granted permission subject to conditions. Conditions enable many developments to proceed where it would otherwise have been necessary to refuse planning permission. While the power to impose planning conditions is very wide, it needs to be exercised in a manner that is fair, reasonable and practicable. Planning conditions should only be imposed where they are:

- Relevant to planning
- Relevant to the development to be permitted
- Enforceable
- Precise
- Reasonable, and
- Necessary

Application of these criteria creates an effective basis for the control and regulation of development, which does not place unreasonable or unjustified burdens on applicants and the current or future owners of application sites. The sensitive use of conditions can also improve the effectiveness of development management and enhance public confidence in the planning system. It is important however that planning authorities have appropriate resources in place to monitor and enforce conditions.

Further information can be found in Circular 4/1998 on The Use of Conditions on the Scottish Executive website (www.scotland.gov.uk/planning).

Planning authorities also have the power to enter into an agreement with applicants to overcome obstacles to the grant of planning permission. These are called Section 75 agreements. An agreement should be for a planning purpose, bear a relationship to the proposed relationship, relate to the development in scale and kind, and be reasonable.

Public Involvement And Councillor Probity

The following scenario illustrates some of the potentially complex issues that may confront you in your interaction with the public, the planning system and wider Council policies.

A major new road may improve access to jobs for the residents of a community that was previously isolated by poor road links and where unemployment is high. The same road might have to be partly built in an Area of Great Landscape Value and involve the compulsory purchase and demolition of several houses and small business premises. The Council and your party support this project for the greater good and to reduce social exclusion but there are hundreds of objections from your constituents and some from environmental pressure groups who don't like the loss of landscape and are opposed to new roads. Planning policies support the road and a vociferous part of the public oppose it. Council policies make regeneration of this community a priority.

The Councillor Code of Conduct does not prohibit a councillor, either as a member of a planning committee or as a local elected member, from discussing the details of a planning application. Applicants, their agents (planning consultants, architects, engineers, etc.), neighbours, local community groups and campaigners all have a legitimate voice that should be heard by Councillors.

Councillors can discuss the merits of, or concerns about, an application but you must be seen to be acting with due propriety at all times. It may be advisable to have a Council planning officer in attendance when discussing a planning application with interested parties. At all times the role of campaigning Councillor and Committee member must be separated.

If you want to express an opinion prior to a planning issue coming before Committee then the Code offers the following advice:

"A Councillor should not organise support or opposition, lobby other Councillors or act as an advocate to promote a particular recommendation on a planning application, where the Councillor has a responsibility for dealing with the planning application. If the Councillor does so, then s/he should declare an interest and not take part in the debate and withdraw from the meeting room."

Each planning authority has its own process for dealing with public engagement, some offer an opportunity for objectors and supporters to address the planning committee directly, others operate a hearing system, committee site visits can also be used for listening to alternative viewpoints. The common thread is that you must not be seen to prejudge a planning application or development plan matter if you sit on the planning committee.

Officer Recommendations

For applications that are to be decided at the planning committee, planning officers prepare a report with a recommended decision for each planning application. Planning committees do not always accept the advice being offered by the Council's planning officers. On these occasions it is essential, that the committee clearly states the reasons for its course of action and that these are explained in the decision notice which is issued to the applicant.

In the event of an appeal against a refusal of planning permission, the Councillors who propose and second a motion to refuse consent contrary to officer recommendation may be called as witnesses at the hearing or inquiry. In this situation it is important to appreciate that assistance from your planning officials will not always be available. They are often subject to the Royal Town Planning Institute Code of Professional Conduct that may preclude further involvement in cases where their professional opinion has not been accepted. In such circumstances, assistance and advice will normally be available from planning authority lawyers and/or in some cases private planning consultants employed by the planning authority to deal with the case. In some authorities planning officers will prepare the case for written submission appeals based on the planning authority's decision even if it is against their recommendation.

A range of improvements to the handling of applications for planning permission will be introduced over the next two years. These include:

- A hierarchy of categories of development, greater public participation and scrutiny of proposals for all major developments, most EIA developments, proposals which are significantly contrary to development plans and larger scale bad neighbour developments
- Revised arrangements for neighbour notification, to be carried out by planning authorities
- Provisions for schemes of delegation and for the planning authority to review decisions on applications determined under a scheme of delegation
- More publicly available information on planning cases revised appeal arrangements, reducing the ability of the applicant to introduce new material
- Revised appeal arrangements, reducing the ability of the applicant to introduce new material
- New arrangements for planning agreements between developers and planning authorities to deliver community benefits, now called planning obligations
- The introduction of good neighbour agreements where significant developments are proposed, and
- The introduction of a requirement for design and access statements to accompany certain planning applications

Appeals

Any applicant that has been refused planning permission or had conditions imposed on a planning permission can appeal against this decision to the Scottish Ministers. It is also possible to appeal an application that has not been decided within the relevant timescale (usually 2 months).

The Scottish Executive Inquiry Reporters Unit (SEIRU) handles all appeals. Appeals are normally delegated to a Reporter to consider the case and make a decision. However, where the proposed development raises issues of national interest the final decision may rest with the Scottish Ministers.

Appeals can be determined using one of three types of procedure. These are:

Written representations in which the arguments of all parties are submitted to the SEIRU Reporter in writing and the decision is made solely on the basis of these submissions. This is the method most commonly used. Often written appeals are the quickest way of obtaining a decision. They are useful for relatively simple cases.

Hearing – This combines many of the advantages such as speed and relative informality of written representations but with the benefit of a hearing - a structured discussion led by the Reporter and based on written material produced by the parties in advance. In many ways hearings suit appeals concerning planning issues of moderate impact or those where the parties concerned do not want the formality of a Public Inquiry. A hearing is informal and generally avoids the cost of barristers. Although the system cannot prohibit participants being represented by a lawyer, questions to participants have to be put through the chair.

Public Local Inquiry – This is the most formal method of determining an appeal and is normally used for complex or relatively large-scale developments. The format of the inquiry, which is governed by statutory procedures, allows for formal cross-examination of witnesses on their evidence. Solicitors or barristers often represent appellants and planning authorities at public inquiries.

It should be noted that the right of appeal is confined to the original applicant only and does not extend to third parties, e.g. statutory consultees or objectors. The decision in an appeal is not subject to any further appeal or challenge except on legal technicalities to the Court of Session. The Court of Session will review the procedural aspects and not the planning merits of such cases.

Councillors on planning committees should always bear in mind the possibility of an appeal when considering planning applications, especially because the costs of an appeal can be awarded against any of the parties who are shown to have acted unreasonably. Particularly where a public inquiry is involved, the potential cost of a decision that cannot be substantiated could be very expensive for the public purse.

Changes to this system will be introduced as part of the modernisation programme, placing greater emphasis on the review of decisions.

More information on appeals can be found at www.scotland.gov.uk/Topics/Planning/Appeals

Enforcement

Planning authorities have an extensive range of discretionary powers to deal with circumstances where planning controls have not been adhered to, planning conditions have not been fulfilled or where there is a suspicion that this may have occurred. Members of the public often bring suspected breaches of planning control to the attention of councillors or the planning officers. However, it is important to appreciate that many such cases are not straightforward and are often based on genuine misunderstandings, particularly relating to conditions attached to planning permissions

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 and not as a punishment for the person responsible for the breach. Given that it is not always apparent if a breach of planning control has been deliberate or based on a misunderstanding, the use of statutory powers is regarded as a last resort and only applied after the developer has been given the opportunity to rectify the breach.

A builder may for example have planning consent to construct 3 small houses in the grounds of large derelict house that has a number of attractive mature trees. The trees are protected by planning conditions and are to be retained after the new houses are completed. While the new houses are being built a gale damages one of the trees and the builder notices it appears to be diseased. He asks an arborist to inspect all of the trees. The arborist reports that two of them are diseased, unsafe and should be felled. The builder fells the diseased trees but does not obtain an agreement from the planning authorities. Neighbours complain to the Council. The Council's Enforcement Officer investigates, establishes the facts and agrees with the builder that the felled trees will be replaced with new semi-mature trees. No enforcement action is necessary

As there is also a right of appeal against enforcement action, the resolution of cases can be time consuming and costly to pursue. However, there is a general consensus that enforcement and perceived lack of action by planning authorities, represents a current weakness within the planning system. For this reason, further changes to the system are anticipated within the next few years. These will include provisions for temporary stop notices, which can be used to stop unauthorised development where there is a danger that it might damage the environment or amenity; fixed penalties as an alternative to prosecution for breaches of planning control; and enforcement charters in which planning authorities will set out how they intend to carry out their enforcement role.

GLOSSARY OF PLANNING TERMS

Appeals

Applicants aggrieved by the decision of a planning authority to refuse planning permission or grant planning permission subject to conditions have a right of appeal to the Scottish Ministers. Other appeals include those related to listed building consent, advertisement control and enforcement action. They may also appeal if the planning authority has failed to make a decision within the required period. Responsibility for determining most appeals is delegated to the Scottish Executive Inquiry Reporters Unit (SEIRU).

Appropriate Assessment

Assessment of development plans required under Article 6 of the Habitats Directive where the proposals in the plan may affect a European protected site or species.

Environmental Impact Assessment (EIA)

An important procedure for ensuring that the likely effects of new development on the environment are fully understood and taken into account before planning permission is granted.

Material Considerations

A planning matter which is relevant to a planning application. Can include national policies, comments by the public and other people the planning authority has consulted, and issues such as the design of a proposal or its effect on the environment. Legally, decisions on planning applications must be based on the Development Plan unless material considerations indicate otherwise. Details of what constitutes a material consideration can be found in Paragraph 50 of SPP1.

National Park Authority

There are currently two designated National Park Authorities in Scotland: Loch Lomond and the Trossachs National Park and the Cairngorms National Park.

Neighbour Notification

A means by which people with an interest in neighbouring land or property in the immediate physical proximity to development proposals are informed that a development plan identifies that site or that a planning application has been submitted, allowing neighbours to make comments.

Planning Agreement

An agreement under Section 75 of the Town and Country Planning (Scotland) Act 1997 between a planning authority and an applicant to regulate or restrict development.

Planning Committee

A group of elected members, Councillors, in a local authority who have the responsibility of taking decisions on planning applications or planning policy, including development plans.

Representations

A comment made on a planning issue by a member of the public, statutory consultee and other stakeholder. Representations include objections and letters of support.

Scottish Executive Inquiry Reporters Unit (SEIRU)

A unit in the Scottish Executive, whose Reporters assess objections to development plans and take decisions on most planning appeals on behalf of Scottish Ministers.

Scottish Ministers

The group of Ministers that collectively comprise the Scottish government. While the general term Scottish Ministers is used, decisions on strategic development plans and on a limited number of planning applications which raise national issues are taken by an individual Minister.

Strategic Environmental Assessment (SEA)

A process for identifying and assessing the significant environmental effects of a strategy, plan or programme so that they may be taken into account before the plan is approved or adopted. All development plans must meet the requirements for SEA.

SOURCES OF INFORMATION

This section identifies key sources of information on planning and related matters. These relate in the main to sources of information on the Scottish planning system, although a number include material of relevance to planning throughout the UK.

Royal Town Planning Institute (RTPI) (www.rtpi.org.uk)

Publications

- RTPI Code of Professional Practice, 1995
- *Professional Practice and Maladministration*, RTPI Practice Advice Note No. 7
- *Personal Safety at Work: risk assessment, avoiding conflict and carrying out safer site visits and meetings*, RTPI, Good Practice Note 3
- *Guidelines on Effective Community Involvement and Consultation*, RTPI, Good Practice Note 1 (November 2005)

Royal Town Planning Institute in Scotland (www.scotland.rtpi.org.uk)

The *Scottish Planner* is the bi-monthly journal of the Institute in Scotland and is distributed to all RTPI members in Scotland free of charge, as well as a number of relevant organisations, the media and members of the Scottish Parliament.

The publication deals predominantly with Scottish planning matters and covers a wide variety of planning and planning-related topics which are likely to be of interest to Scottish members.

Planning magazine

Planning - is the official journal for the Royal Town Planning Institute (RTPI) and is widely regarded as the number one magazine serving the natural and built environment.

Planning Resource – from Haymarket, publishers of *Planning* – in association with RTPI. Predominantly English news items. Substantial section of development control and planning appeal casework. Sign-up facility for email alerts.

PlanningMatters - an on-line knowledge and learning resource, developed by the RTPI, that is designed to support planners carry out their day-to-day jobs and to facilitate their ongoing professional and personal development. *PlanningMatters* acts as both a job support tool and a precise planning profession learning tool. There are over 120 modules on a wide range of planning topics. Modules are specifically designed to be bite-sized nuggets that provide a good insight into the subject, rather than to be a detailed, or expert-level training course. Access to more detailed and technical material is referenced in every *Planning* module. Modules are available for purchase, although many local authorities have purchased a license agreement allowing unlimited access.

Planning Aid for Scotland (www.planningaidscotland.org.uk)

Planning Aid for Scotland (PAS) is a national charity that delivers free and independent advice, information, support and training on planning and environmental matters to members of the general public and community organisations. Advice and training is given through qualified and experienced town planners and trainers. It operates through a professional staff of five based in Edinburgh.

The two principal aims of PAS are to ensure that everyone has access to planning advice, regardless of their ability to pay, and to educate people to understand the planning system and their participatory role within that system.

The PAS website contains a considerable amount of information on the operation of the planning system in Scotland and information sheets on various topics are printable from the website. This can be accessed via the 'Information' section of the site.

Among the topics covered are access to planning information; planning permission and appeals; development plans; development control; listed buildings and conservation areas; and, enforcement action. There is also a very useful glossary of planning terms.

Scottish Executive (www.scotland.gov.uk/planning)

The Scottish Executive has overall responsibility for the law on planning. It provides advice and establishes national planning policy and advice on best practice.

The following documents provide useful background on the new planning system, which will be introduced gradually over the next two to three years.

- Indicative Implementation Timetable
- Brief Guide to the Planning Act
- General presentation on Modernising the Planning System, with speaking notes

Scottish Parliament (www.scottishparliament.gov.uk)

The Scottish Parliament produces research briefings and fact sheets for use by MSPs in support of parliamentary business. These are prepared by the Scottish Parliament Research Centre (SPICe) and offer an impartial insight into a range of planning and related matters. SPICe briefings papers can be searched by topic or date and cover a wide variety of areas.

Planning Authority Websites

These will all have links to the Planning service for the authority and usually contain copies of the development plan, development briefs, supplementary planning guidance and other relevant council planning policy and guidance. Planning committee agendas and reports are often also available online. A number of local authorities produce guidance of interest and relevance to a more general audience. An example of a local authority website containing wide-ranging information on planning is the [City of Edinburgh Council \(www.edinburgh.gov.uk\)](http://www.edinburgh.gov.uk).



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