

Local Review Bodies

This fact sheet is intended for the use of town planners working for planning authorities. The concept of this fact sheet is to provide key information on the subject, combined where relevant with instruction on how to undertake specific actions or tasks.

What is a Local Review Body?

Local Review Bodies (LRBs) were introduced in 2009. The purpose of a LRB is to review a decision on a planning application for certain types of development taken by officers under delegated powers. LRB members are elected members. This is not the same as a planning committee considering an officer's recommendation. Requests for review must be made within 3 months of the decision. Reviews can only be requested where planning permission has been refused or where conditions have been imposed on a consent. If an applicant does not request a review of the officers' decision within 3 months, then the officers' decision will stand and there is no other route to review/appeal the decision unless the decision taken is challengeable on a point of law. In the significant majority of cases the decision on the review taken by the LRB will be final.

The Planning etc (Scotland) Act 2006 introduced a hierarchy of three development categories, each of which has implications for how an application is progressed through the planning system. The Town and Country Planning (Hierarchy of Development) (Scotland) Regulations 2009 set out the relevant details of which types of development fall within each category.

The categories of development are as follows:-

National Developments

National developments are defined in the National Planning Framework 2 and are strategic projects of national significance.

Major Developments

There are nine classes of major development including developments of 50 or more houses, business space of over 10,000sqm and wind farms with a generating capacity of more than 50mw.

Local Developments

Local developments are all types of development which do not fall into the national or major categories. Although local developments are at the lower end of the development ladder in terms of size and scale they will not necessarily be insignificant. For example, local developments might include residential development of up to 49 units. There are no regional variations.

Applications for national and major developments are decided by planning authorities and where they are refused applicants will have a right of appeal to the Scottish Ministers through the Directorate for Planning and Environmental Appeals.

Subject to the terms of Planning Authorities' individual Schemes of Delegation applications for local developments are mainly decided by an officer of the council (a planning officer) using delegated powers.



Where an application relating to a local development is refused by the planning officers the applicant will have a right of review to the council's Local Review Body (LRB).

There is no legally imposed timescale on the time to be taken by the LRB to determine a review against a refusal of planning permission or a condition imposed on a consent.

Where the planning officer does not decide the application within a period of two months, (known as deemed refusal) the applicant can also ask the LRB to review the application. When reviewing a deemed refusal the LRB has two months in which to determine the review. This period cannot be extended, but it is the only circumstance where a specific time limit is placed on the LRB. If the LRB does not decide the review within a period of two months from the valid submission of the Notice of Review to the Planning Authority, the LRB will be deemed to have refused the application. In that case the applicant will have a right of appeal to Scottish Ministers.

Who will operate LRBs?

An LRB will be made up of a minimum of three elected (or appointed) members of the Planning Authority. Each Planning Authority will have both their own Scheme of Delegation and standing orders relating to the operation of the LRB. All meetings must be held in public and documented as any other committee.

What will the LRB consider?

Section 48 of the Town and Country Planning (Scotland) Act 1997 (as amended by Section 17 of the Planning etc (Scotland) Act 2006) provides, that where an appointed person:

- refuses planning permission for a local development
- grants planning permission for a local development subject to conditions; or
- has not determined a planning application for a local development within the 2 month period.

The applicant may require the LRB to review the case, but only where the initial decision has been taken or should have been taken by an officer acting under delegated authority.

What will an LRB not consider?

Decisions cannot be delegated to officers where:

- the application is made by the planning authority;
- the application is made by a member of the planning authority; and / or
- the application relates to land in the ownership of the planning authority or to land in which the planning authority have a financial interest.

Therefore LRBs will not be involved in dealing with applications that fall into any of these categories. LRBs are restricted to only considering planning applications for certain local developments. They do not consider other types of application that will be submitted to the planning authority, including

applications for: Advertisement Consent; Listed Building Consent; Conservation Area consent; and Hazardous Substances Consent.

Where an applicant is unhappy with a decision on these applications an appeal to the Scottish Ministers is the designated way forward.

How can an LRB consider applications for Review?

The first stage in the process is the submission by the applicant of a “Notice of Review”. In submitting this notice the applicant must provide all information they seek to rely on to support their case and also state their preferred procedure for consideration of the case by the LRB. However, it is for the LRB to determine the appropriate method of carrying out the Review.

Cases may be considered using one of or by a combination of procedures including:

- written submissions consisting of required additional information in written form;
- holding of one or more hearing sessions where oral evidence will be heard on specified matters and from specified parties;
- a site inspection, where the LRB can make an accompanied or unaccompanied visit to the site and its surroundings.

The LRB may, if it decides to do so, hold a pre-examination meeting to determine how the review or any part of the review into any case should be conducted. This will be held in public with the applicant and interested parties being advised of the time, date and venue. The LRB fixes the matters to be discussed and procedures to be followed at the meeting.

Advice on procedure and on planning matters can be provided to members of the LRB during its consideration of a case by appointed advisors (as with any other committee). It is crucial to the credibility of the process that these advisors are independent of the original decision taken by the appointed person **otherwise the impartiality of the process will not be seen to be achieved.**

Provision is made within the Regulations for LRB’s to obtain specialist advice in the event that this is required to allow a particular case to be considered.

Decisions and decision-making

The final stage in the review process will be the issuing of the decision notice in accordance with legal requirements. The decision notice must include a statement of the terms in which the LRB has determined the review and a statement on what basis the LRB reached that decision. All parties involved in the review will be notified of the LRB decision.

As with all decisions on planning applications, the LRB’s decision has to be based on the terms of the development plan and other relevant material planning considerations. The relevant parts of the development plan upon which a decision is to be based and such other matters of significance to the decision should be clearly set out in the decision notice issued by the LRB.

Can an LRB decision be challenged?

In most cases, the decision that is arrived at by a Local Review Body (LRB) will be final because there is no right of appeal for an applicant from the LRB to the Scottish Ministers. The exception to this rule is where an LRB has failed to reach a decision in respect of a deemed refusal within two months of the request for a review. In these cases the applicant can appeal to the Scottish Ministers.

Although the LRB's decision is final, the applicant does have the ability to question the validity of the decision by an action in the Court of Session. These are unlikely to be common events albeit it is important that the processes set out and the decisions taken are sufficiently robust in order to avoid such occurrences.

The Court of Session can hear challenges to the validity of planning decisions or actions either by way of a statutory appeal (usually by the applicant) or by way of judicial review.

It is however of note that should successful court action be raised the application would be referred back to the LRB in order to have it reconsidered. The court will not substitute an alternative decision on the merits of any proposal.

Acknowledgement

This fact sheet was written by TPS Planning on behalf of the Improvement Service.

This fact sheet was published in February 2011 as part of a series of fact sheets by the Improvement Service.