



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

A Guide to the New Development Management System

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1. Introduction

Legislation

1.1 The planning system is in the process of being changed. A series of Regulations which commenced in April and on 3 August 2009, have resulted in the biggest change to the planning system in 60 years, implementing most of the provisions of the new Planning Etc (Scotland) Act 2006. A summary of the main changes relating to the submission and determination of applications is included below. Some further changes, including changes to 'permitted development' rights have still to be introduced. For the latest news, including the latest implementation timetable, please refer to the [Scottish Government](#) website, which includes guidance on [transitional arrangements](#). These are procedures arising from the introduction of the new planning system to be used when dealing with, for example, applications which were received before 3 August 2009, but which are determined after that date.

Culture Change

1.2 Changes to legislation alone will not deliver planning reform. Positive changes to processes and behaviours are required of all the organisations and individuals that operate and interact with the system. To find out about

'culture change', including a series of joint actions by the Scottish Government, local and national park authorities, agencies and the private sector to deliver more effective working together to deliver an improved planning system, please refer to the Planning Modernisation section of the [Scottish Government](#) website.

2. The Planning Hierarchy

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

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

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

2.3 **Major** developments are prescribed in [The Town and Country Planning \(Hierarchy of Developments\) \(Scotland\) Regulations 2009](#) and are as set out in appendix A at the end of this guidance note.

2.4 Applications for **extensions** to existing major developments proposed must in themselves exceed the thresholds for that application to be considered major.

2.5 With certain exceptions, including planning permission in principle, planning applications for national and major developments must be accompanied by a **Design and Access Statement**. Planning's important role in the delivery of inclusive environments is emphasised in the Government's policy statement [Designing Places](#) and related advice in the design series of Planning Advice Notes, most notably [PAN 68: Design Statements](#). The detailed requirements for design and access statements are to be found in the [The Town and Country Planning \(Development Management Procedure\) \(Scotland\) Regulations 2009](#)

2.6 Planning applications for major development must be subject to **pre-application consultation** with the local community. This does not apply to applications for the approval of matters specified in conditions attached to planning permissions in principle.

2.7 The determination of applications for both national and major developments will be determined by the Development Control Committee or by the full Council, with the exception of most refusals of major developments where it is considered that insufficient information has been submitted. In these cases the decision is delegated to officers.

2.8 **Local** developments are developments which are neither national nor major.

3. Pre-Application Consultation between Developers and the Community

3.1 **Pre-Application Consultation** (PAC) is required for planning applications for major and national categories of development. This involves submitting a **Proposal of Application Notice** (PAN) to the Council and any Community Council in the area at least 12 weeks ahead of any application. The Notice gives comprehensive details of what sort of consultation will be undertaken and must be agreed with the Council who may require additional steps to be taken. Planning applications for major development must include a **Pre-Application Consultation Report** which demonstrates that the minimum statutory requirements and any other requirements specified by the Council have been undertaken.

3.2 Any application requiring such a PAC Report cannot be progressed until the Report evidencing that the statutory requirements have been met is provided to the Council.

3.3 Prior to submitting a PAN a prospective applicant may ask the Council for a **Pre-Application Screening Notice** confirming whether or not statutory pre-application consultation is necessary.

3.4 More detailed advice on statutory pre-application consultation can be obtained from our [guidance note](#).

4. Discretionary Pre-Application Advice from the Council

4.1 The Council encourages prospective applicants to seek written advice from its planning staff in advance of making an application for any scale of development. This is particularly important in identifying key determining issues at an early stage and ensuring the correct supporting information accompanies an application when it is submitted. There is a [pre-application advice leaflet](#) available which explains the service which is provided.

5. Making an Application

5.1 Applicants are now encouraged to make applications on-line through the Scottish Government's [e-Planning](#) website

Different Types of Application

5.3 The Regulations introduce the following new categories of application: Planning Permission in Principle (PPP) replaces outline planning permission. The minimum requirement for plans is a location plan identifying the application site and the means of access to the site. No design and access statement is required. However, Pre-Application Consultation is required if it is a national or major application. Applications for the "approval of matters specified in conditions applied to a PPP" have replaced "reserved matters" applications. They are not however "planning applications" as regards the

requirements of the Regulations in respect of Pre-Application Consultation and Design and Access Statements.

5.4 There continues to be provision for full applications for planning permission (including changes of use), further applications (to continue an unexpired permission) and applications which may be required due to conditions imposed on a planning permission. Applications for advertisement consent, listed building consent, conservation area consent and hazardous substances consent are not affected by the new legislation.

Supplementary Documents and Further Information

5.5 The Regulations do not specify which supplementary documents should accompany an application beyond those specified as statutory minimum requirements for validation purposes. Details of further documents likely to be needed are given in the Application Guidance Notes on the [ePlanning website](#). The Council encourages applicants in pre-application discussions to establish what the Council's requirements are in terms of essential further information.

Design and Access Statements

5.6 This is a new statutory requirement which applies to planning applications for national and major developments only, but does not relate to applications for planning permission in principle (PPP) or to applications for the approval of matters specified in conditions applied to a PPP.

5.7 Design Statements (as opposed to Design and Access Statements) are required for applications for planning applications for local developments in sensitive areas such as Conservation Areas, National Scenic Areas and within the curtilage of a Category 'A' listed building. Further information is to be found in paragraph 2.5 above.

5.8 Neither type of statement is required in respect of changes of use or 'householder' type developments.

Owner Notification by the Applicant

5.9 This is still a statutory requirement.

Neighbour Notification

5.10 The responsibility for Neighbour Notification transferred to the Council in respect of applications submitted on or after 3 August 2009.

5.11 The process of Neighbour Notification takes place as soon as possible after a valid application has been received, not before.

5.12 The Council will send out Notices to those having an interest in land coterminous with or within 20 metres of the boundary of the land for which development is proposed. This applies if there are premises on that land to which a notice can be delivered. Where there are no such premises on all or part of the neighbouring land, the Council must advertise the application in the local press. In practice, most applications are advertised in this way.

5.13 Under the Regulations, the cost of this advertisement must be borne by the applicant. The amount payable varies from week to week as it has to be calculated by dividing the cost of the advertisement by the number of applications advertised. This sum must be paid within 21 days of being notified to the applicant. The Council cannot determine the application until this sum has been paid.

5.13 Those notified have 21 days to make representations from the date the notification is posted and those who make representations to a prospective applicant under statutory pre-application arrangements may still object to the application when it is submitted.

6. Processing an Application

Weekly Lists

6.1 The preparation and publication of a Weekly List of new applications for distribution to Community Councils continues, but with some changes. The Weekly List is also made available in all public libraries

Lists of Extant Applications

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

Statutory Register

6.3 The need to maintain a Register of determined and undetermined applications continues. The Council considers that [PublicAccess](#) represents its Statutory Register and this replaces the practice of maintaining a paper-based Register system, which will still exist for applications made before 3 August 2009.

Press Publicity

6.4 Press Notices will continue to be required for the purposes of public advertising in the following circumstances. However, the Regulations introduce new arrangements for the recovery of the advertising costs from the applicant in specified circumstances:

- Listed Building and Conservation Area Consent applications; and applications for planning permission which affect the setting of a listed building or affect a conservation area (**cost paid by the Council**)
- Departures from the development plan (**fee payable by the applicant**);

- Schedule 3 (formerly “bad neighbour”) developments (**fee payable by the applicant**);
- Where there are no premises on the neighbouring land to which the notification can be sent (**fee payable by the applicant**);
- Where owners cannot be identified for notification by the applicant (**fee payable by the applicant**);
- Environmental Impact Assessment (EIA) category applications (**fee payable by the applicant**);
- Applications for Hazardous Substances Consent.

6.5 Under the Regulations, the cost of the advertisement, where denoted above, must be borne by the applicant. The amount payable varies from week to week as it is calculated by dividing the cost of the advertisement by the number of applications advertised. This sum must be paid within 21 days of being notified to the applicant. The Council cannot determine the application until the fee has been paid.

Reports of Handling

6.5 This new requirement is, in effect, the officer's report on an application. It is required to be placed on the statutory Register and contain a minimum level of information set out in the Regulations. The Reports of Handling are available on the Council's website through [PublicAccess](#).

Time Periods for Determination

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

- **four months** for national, major or EIA developments;
- **two months** for all other categories.

6.7 The periods may in certain cases be extended by mutual written agreement.

Power to Decline to Determine Repeat Applications

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

Statutory Pre-Determination Hearings and Decisions by Full Council

6.9 These are new processes and relate to all national category applications and major category applications, where the application is a **significant departure from the development plan**. The Hearings are held before a Committee and the applicant and those making representations have a right to be heard. For such applications the Full Council makes the decision, as opposed to a Committee.

7. Decision Making

Decision Notice

7.1 Decision Notices now contain a fuller range of information including for all decisions the reason for the decision and will be accompanied by a note advising on rights of appeal or review. This will differ according to the type of application.

7.2 The Council will expect all submitted plans to be accurately labelled as plans relevant to the decision have to be specified in the decision notice.

Duration of Planning Permission

7.3 For all applications for planning permission this is now **three years** (previously five years) although the Council has powers to decide on a different duration. In the case of a planning permission in principle, this three year period relates to the submission of an application for the “approval of matters required by conditions attached to the permission in principle” (previously referred to as “reserved matters”).

7.4 In addition, a planning permission in principle will also expire if the development is not started within **two years** from the grant of the last approval of matters specified in conditions. Again the Council can apply different time periods.

Rights of Appeal/Review

7.5 In respect of applications where the right of appeal or review arose **on or after 3 August 2009** there is a **three month** period within which the decision may be appealed or reviewed (previously six months).

Schemes of Delegation

7.6 The Council is operating a new statutory Scheme of Delegation from 3 August 2009. That part of the scheme which is required by the 2006 Planning Act has been approved by the Scottish Ministers. The Scheme of Delegation authorises which categories of local development may be decided by officers on the Council's behalf and which categories must go to Committee for a decision.

7.7 Those planning applications for Local Developments decided within the Scheme of Delegation under the 2006 Planning Act can, if the applicant wishes, be reviewed by the Council's Local Review Body (see below).

7.8 In addition, the Council has adopted a revised discretionary Scheme of Delegation under the Local Government Act 1973 which gives delegated authority to officers across a range of other development management functions, including the determination of applications for advertisement and listed building consent.

7.9 The 2006 Planning Act provides that Committee can decide to determine an application that could otherwise be delegated under its statutory approved Scheme of Delegation. Where this happens a statement of the reasons for the decision to determine the application at Committee must be made and copied to the applicant.

7.10 The Council's statutorily approved Scheme of Delegation under the 2006 Planning Act and the discretionary Scheme of Delegation under the 1973 Local Government Act may be downloaded from its [Website](#).

8. Post Decision

8.1 The Council's **Local Review Body** (LRB) will meet monthly. The following general principles apply:

- Local Reviews will replace the current appeal to the Scottish Ministers, for local development applications decided by planning officers under the statutorily approved Scheme of Delegation under the 2006 Planning Act;
- Local Reviews will also replace the current appeal to the Scottish Ministers for Local developments where the request for review is on the basis of non-determination within 2 months (i.e. on the basis of a 'deemed refusal') providing that the deemed refusal falls within the Scheme of Delegation under the 2006 Act.
- The LRB will consist of three elected members constituted as a Committee of the Council and meetings must be in public;
- The method of determination from within options set out in the Regulations is at the discretion of the LRB (see below) and the LRB can, if deemed appropriate, decide a case on the basis of the review documents only;
- There is no automatic right for applicant or others to be make oral representation;
- The review process must be fair and transparent;
- Where an application for a Local Development has not been determined within two months, and a "Notice of Review" is served by the applicant, and where the review by the LRB is not carried out within two months, the applicant may then appeal to the Scottish Ministers.
- The LRB will be supported by the Committee Services and legal officers of the Council.

- The LRB will also receive professional planning advice where required from an 'Assessor' who has had no involvement in the case under review.

The Review Process

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

The Regulations relating to local review are complex and are set out in the [Town and Country Planning \(Schemes of Delegation and Local Review Procedure\) \(Scotland\) Regulations 2008](#)

Appeals to Scottish Ministers

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

- determined by officers **outwith** the statutorily approved Scheme of Delegation;
- not determined within the statutory period but fall **outwith** the statutorily approved Scheme of Delegation;
- determined by elected members i.e. by committee or the full Council
- "national" and "major" applications

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

Site Notices

8.4 Notices of Ongoing Development (NOD) are required to be displayed on site by the applicant for:

- **national** and **major** categories of development;
- **Schedule 3** (similar to the previous "bad neighbour") developments.

from the date of commencement of the development to the date of completion of the development. This is to raise awareness of the detail of a planning permission and, in particular, the conditions which apply in respect of a sensitive development. Schedule 7 of the Development Management Procedure Regulations sets out a template for the NOD and this will be included with the decision notice. A downloadable version of this is also available on the Council's website.

9. Enforcement

Notices of Initiation and Completion of Development

9.1 This new requirement applies to all forms of development receiving planning permission under the Regulations. It will ensure that the Council is aware that development is underway to assist in the monitoring of compliance with the terms of the planning consent.

9.2 The Council intends to issue notices with approval decisions which should then be completed and returned to the Council at the appropriate stages in the development. Downloadable versions of these are also available on the Council's website.

Fixed Penalty Notices

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

Circular Advice

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

APPENDIX A CATEGORIES OF MAJOR DEVELOPMENT

| <i>Description of development</i> | <i>Threshold or criterion</i> |
|--|---|
| 1. Schedule 1 Development. Development of a description mentioned in Schedule 1 to the Environmental Impact Assessment (Scotland) Regulations 1999(a) (other than exempt development within the meaning of those Regulations). | All development. |
| 2. Housing Construction of buildings, structures or erections for use as residential accommodation. | (a) The development comprises 50 or more dwellings ; or (b) The area of the site is or exceeds 2 hectares . |
| 3. Business & General Industry, Storage and Distribution Construction of a building, structure or other erection for use for any of the following purposes— (a) as an office; (b) for research and development of products or processes; (c) for any industrial process; or (d) for use for storage or as a distribution centre. | (a) The gross floor space of the building, structure or other erection is or exceeds 10,000 square metres ; or (b) The area of the site is or exceeds 2 hectares . |
| 4. Electricity Generation Construction of an electricity generating station. | The capacity of the generating station is or exceeds 20 megawatts . |
| 5. Waste Management Facilities Construction of facilities for use for the purpose of waste management or disposal. | The capacity of the facility is or exceeds 25,000 tonnes per annum . In relation to facilities for use for the purpose of sludge |

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| | treatment, a capacity to treat more than 50 tonnes (wet weight) per day of residual sludge . |
| <p>6. Transport and infrastructure projects</p> <p>Construction of new or replacement roads, railways, tramways, waterways, aqueducts or pipelines.</p> | The length of the road, railway, tramway, waterway, aqueduct or pipeline exceeds 8 kilometres . |
| <p>7. Fish Farming</p> <p>The placing or assembly of equipment for the purpose of fish farming within the meaning of section 26(6) of the Act.</p> | The surface area of water covered is or exceeds 2 hectares . |
| <p>8. Minerals</p> <p>Extraction of minerals.</p> | The area of the site is or exceeds 2 hectares |
| <p>9. Other Development</p> <p>Any development not falling wholly within any single class of development described in paragraphs 1 to 8 above but including development comprising a combination of those classes of development.</p> | <p>(a) The gross floor space of any building, structure or erection constructed as a result of such development is or exceeds 5,000 square metres; or</p> <p>(b) The area of the site is or exceeds 2 hectares.</p> |

USEFUL WEBLINKS

Primary Legislation

[Planning Etc \(Scotland\) Act 2006 – Explanatory Note](#)

Development Management

[The Town and Country Planning \(Development Management Procedure\) \(Scotland\) Regulations 2009 – Executive Note](#)

[Town and Country Planning \(Charges for Publication of Notices\) \(Scotland\) Regulations 2009 – Executive Note](#)

[The Town and Country Planning \(Hierarchy of Developments\) \(Scotland\) Regulations 2009 – Executive Note](#)

[The Town and Country Planning \(Schemes of Delegation and Local Review Procedure\) \(Scotland\) Regulations 2008 – Executive Note](#)

[The Town and Country Planning \(Appeals\) \(Scotland\) Regulations 2009 – Executive Note](#)

[The Town and Country Planning \(Inquiries Procedure\) \(Scotland\) Amendment Rules 2009 – Executive Note](#)

[The Town and Country Planning \(Temporary Stop Notice\) \(Scotland\) Regulations 2009 – Executive Note](#)

[The Town and Country Planning \(Amount of Fixed Penalty\) \(Scotland\) Regulations 2009 – Executive Note](#)

[The Environmental Impact Assessment \(Scotland\) Amendment Regulations 2009 – Executive Note](#) (Amendments to the EIA regime as a result of changes to planning procedures on applications, appeals etc.)

[The Town and Country Planning \(General Permitted Development\) \(Domestic Microgeneration\) \(Scotland\) Amendment Order 2009 – Executive Note](#)

Commencement Orders and Savings, Transitional and Consequential Amendments

[Orders have been grouped together where relevant rather than in strictly date or number order]

[The Planning etc. \(Scotland Act 2006 \(commencement No.1 \) Order 2007](#)

[The Planning etc. \(Scotland Act 2006 \(commencement No.2 \) Order 2007](#)

[Planning etc. \(Scotland\) Act 2006 \(Consequential Provisions\) Order 2007/176 – Executive Note](#)

(various provisions including some on national planning framework and on removal of notice of intention to develop legislation for development by planning authorities]

[The Planning etc. \(Scotland Act 2006 \(commencement No.5 \) Order 2008](#)

(Commencement for the enabling of orders and regulations to be made)

[The Planning etc. \(Scotland Act 2006 \(commencement No.7 \) Order 2009](#)

[Planning etc. \(Scotland\) Act 2006 \(Saving and Transitional Provisions\) Order 2009/101 – Executive Note](#)

(Various including hierarchy, pre-application consultation, local developments and schemes of delegation)

[The Planning etc. \(Scotland Act 2006 \(commencement No.8 \) Order 2009](#)

(Powers to make regulations on fees and charges)

[The Planning etc. \(Scotland Act 2006 \(commencement No.9 \) Order 2009](#)

[The Planning etc. \(Scotland\) Act 2006 \(Consequential Amendments\) Order 2009 – Executive Note](#)

[The Planning etc. \(Scotland\) Act 2006 \(Development management and Appeals\) \(Saving, Transitional and Consequential Provisions\) Order 2009 – Executive Note](#)

[The Town and Country Planning \(Miscellaneous Amendments\) \(Scotland\) Regulations 2009 – Executive Note](#) - (Various – in effect the majority of the remaining development management provisions on application procedures, appeals, local reviews and enforcement)

CONTACT DETAILS

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