

PE1560/B

Directorate for the Built Environment
Architecture and Place Division

T: 0131-244 7825 F: 0131-244 7949
E: david.reekie@scotland.gsi.gov.uk



Public Petitions Clerks
The Scottish Parliament



31 July 2015

Dear Ms Robinson

Petition PE1560

Calling on the Scottish Parliament to urge the Scottish Government to eliminate or amend the Notice of Review period of 3 months in order that the Council Complaint Procedure can be concluded prior to a request for a Local Body Review

Thank you for your letter of 13 May, on behalf of the Public Petitions Committee, seeking the Scottish Government's view on whether it considers the matters raised by the petitioner to be of concern and, if so, to advise what could be done to address these.

It may be helpful firstly if I clarify the process a planning authority will follow in determining a planning application:

A planning application for a local development may be determined initially either by a delegated officer or by the planning committee of the relevant planning authority. Any subsequent application for review against a refusal of permission made by a delegated officer is determined by the Local Review Body (LRB) and an appeal against a refusal by the planning committee is determined by the Scottish Ministers or a Reporter on their behalf. An LRB is made up of members of the planning authority; i.e. councillors who are members of the planning committee, who may appoint an impartial planning advisor to assist them in reaching a decision.

Planning authorities are required, under section 43 of the Town and Country Planning (Scotland) Act 1997 (as amended by the Planning etc. (Scotland) Act 2006), to prepare a scheme of delegation (SoD). This sets out the circumstances under which a planning application for a local development may be determined by a 'delegated officer' appointed by the planning authority to take such decisions on their behalf.

Each scheme of delegation can set out criteria for those applications which the planning authority reserves the right to determine through the planning committee. It is for the planning authority in preparing its SoD to decide what criteria it wishes to put in place. Different planning authorities can, and do, have different criteria in place, typically including the situation where an application has attracted more than a certain number of objections.

I understand the role of ward councillors in determining an application was discussed at the Petitions Committee meeting on 12 May. It is our understanding that the Aberdeenshire scheme of delegation sets out, or set out at the time the application in question was made, that where a ward councillor has objected to an application in their ward area, that application will be 'called-in' for determination by the planning committee. This is an example of local criteria set by the individual planning authority; it is not a statutory requirement. The ward councillors do not determine the application.

Report on Handling

When the planning authority, or a delegated officer acting on their behalf, determines an application, they are required to publish a 'report on handling' in the Register of applications which the planning authority maintains. If an application for review of the delegated officers decision is made, the report on handling and any other documents referred to in that report are provided to the Local Review Body.

An applicant seeking review of a delegated officer's decision by an LRB does so by giving a 'notice of review'. All matters which the applicant intends to raise in the review must be set out in, or accompany, the notice of review. It would be open to the applicant in giving notice of review to include any comments or concerns they may have on the report on handling at that time.

The determination of planning applications

The Scottish planning system requires decisions on planning applications to be made in accordance with local plans unless there are material planning considerations that would justify a departure from the local plan. A 'material consideration' is a planning issue which is relevant to the application and can include national policy, comments by the public and by organisations the planning authority has consulted, the design of the proposed development, and the effect of the proposed development on the environment for example. The planning authority must decide how important the material considerations are and what weight to attach to any material consideration in any particular case. In a review of a case by an LRB, it would be for the LRB to consider whether any matters raised by the applicant were material considerations and therefore to be taken into account in reaching their decision.

The complaints procedure

As the Committee will be aware, the local authority complaints process is separate and distinct from the planning process. Handling of complaints would be an operational matter for the relevant local authority.

Similarly, the criteria and timescales applied by the Scottish Public Services Ombudsman SPSO to consideration of complaints are operational matters for the SPSO. The Scottish Government is however aware that the SPSO's guidance indicates that a complaint to the SPSO should be made after the planning process is completed. In our view, where an applicant seeks a review of a delegated officer's decision by an LRB, the planning process can be considered to be completed once the LRB has issued their decision.

Three month period for lodging an appeal or notice of review

Finally, turning to the specific suggestion that the three month period for seeking a review of a delegated officers decision by an LRB should be extended, it may be helpful if I explain that this time period is set out in primary planning legislation and is the same as the period set for making an appeal to Scottish Ministers against a decision by the planning committee.

Prior to August 2009, this period was set at six months. The time period was however reduced to the current three month period through amendment to the Town and Country Planning (Scotland) Act 1997, which were considered by the Scottish Parliament in approving the Planning etc. (Scotland) Act 2006. The policy intention in making those changes was to reduce uncertainty for the public and planning authorities as to the on-going intentions of the applicant, whilst at the same time allowing the applicant sufficient time to consider whether they wished to pursue an appeal.

In conclusion, the Scottish Government considers there is no need to change procedures at the present time for the reasons set out above. In particular:

- There is an existing opportunity through the planning system for the applicant to request a review and to make submissions to the LRB; and,
- If the applicant is still dissatisfied with the outcome of the LRB review, they have the opportunity to make a complaint and, if necessary, to apply to the SPSO to consider the matter further.

I hope the Petitions Committee finds this helpful.

Yours sincerely

David Reekie
Development Management Team
Planning & Architecture