

Heads of Planning

29 July 2011

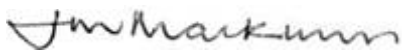
Dear Colleagues

Local Review Procedures

The issue of whether, or not, reviews by Local Review Bodies (LRBs) should be conducted by means of a full consideration of the application afresh (De Novo), or whether they are solely a review of the appointed officer's decision has been raised regularly by delegates of the Local Review Body forum.

By way of clarification and in the interests of consistency, Annex A sets out the Scottish Government's position on this matter and confirms that the 'de novo' approach should be adopted in determining cases brought before LRBs.

I hope this information is helpful in setting out the Scottish Government's position on this particular matter.



Jim Mackinnon
Chief Planner

Background

1. The Local Review Body Forum has discussed the decision making role of the local review body (LRB). Some planning authorities believe that the LRB is required to review the delegated decision which was taken by an officer of the authority whilst others believe that the LRB must consider the merits of the planning proposal afresh, bearing in mind the development plan and all material considerations (the 'de novo' approach). This was also raised at the various stakeholder events that contributed to the Scottish Government's one year review of planning modernisation¹.

Consideration

2. Although termed a 'review' the decision of the planning authority when acting as the local review body is still the decision of the authority on a planning application and the same considerations would apply to the factors that require to be taken into account when making a decision as they would in the case of a first determination.
3. Section 37(2)2 requires the planning authority to have regard to the provisions of the development plan and other material considerations. Section 43A (5) makes it clear that requirements to have regard to the development plan and any other material consideration remain in place. In addition section 43B (2) makes it clear that the requirement to have regard to the provisions of the development plan and other material considerations is unaffected.
4. Section 43A does not contain the same wording as section 48(1) - which sets out that Scottish Ministers (when dealing with an appeal) may deal with the application as if it had been made to them in the first instance - but it is the Scottish Government view that it is not necessary to state this because the application was made to, and is being determined by, the planning authority.
5. The planning authority have powers under section 43A (15) to reverse, vary or uphold a determination made by a planning officer. These mirror the powers of Scottish Ministers on appeal.

Conclusion

6. The consideration of an application by an LRB is in effect consideration of an application by the planning authority and should be treated accordingly. The Scottish Government therefore considers that, based on the above argument, the 'de novo' approach should be adopted in determining cases brought before LRBs.
7. This approach is also consistent with the approach to appeals adopted by DPEA. Consistency of handling of cases regardless of whether they are determined by LRB or DPEA would, in our view, promote confidence in the planning process.

Scottish Government
29 July 2011

¹ <http://www.scotland.gov.uk/Topics/Built-Environment/planning/modernising/progress/DMReview>

² References to sections refer to sections of the Town and Country Planning (Scotland) Act 1997 as amended by the Planning etc (Scotland) Act 2006.