

GUIDANCE NOTE ON PROCEDURES FOR SOUTH AYRSHIRE LOCAL REVIEW BODY

INTRODUCTION

The Planning etc (Scotland) Act 2006 and the Town and Country Planning (Schemes of Delegation and Local Review Procedure (Scotland) Regulations 2013, together provide for the establishment of a Committee of the Council, to be known as a Local Review Body.

New consolidated Regulations came into force on 30th June 2013 and includes the Local Review Procedure (Scotland) Regulations 2013 which supersedes the Local Review Body Procedure (Scotland) Regulations 2008.

Where an application for planning permission for local development has been determined by an appointed officer in accordance with the Council's Planning Scheme of Delegation, the applicant will be entitled to seek a review of that decision by the Local Review Body ("Review Body"). Similarly, if an application which falls within the scope of the Scheme of Delegation for decision by an appointed officer has not been determined within the prescribed period (2 months) the applicant may seek a review by the Review Body of that "deemed refusal".

Review Body Meetings are held on a three weekly cycle.

PART 1 – REVIEW PROCEDURES

1. General

- 1.1 All meetings of the Review Body will be held in public. All decisions taken by the Review Body will take place in public.
- 1.2 The Review Body at any meeting shall comprise not fewer than 3 members drawn from the pool of 8 members of the South Ayrshire Local Review Body. Wherever possible, the same members will be asked to attend second and subsequent meetings dealing with a particular case. However, in view of the time limits within which some of the Reviews require to be determined, this will not always be possible, and the Review Body on the day will require to rely on the written materials available in each case so far.
- 1.3 Meetings of the Review Body will deal with more than one case in many instances. Persons attending Review Body meetings are asked to respect that fact.
- 1.4 There is no automatic right for the applicant or others to make oral representations to the Review Body.
- 1.5 The Review Body will be advised by a Solicitor from the Council's Resources, Governance and Organisation Directorate.
- 1.6 The Review Body will also be advised by a Planning Officer from the Council's Economy, Neighbourhood and Environment Directorate. This adviser will have had no direct involvement in the application which is the subject of a Review.
- 1.7 All parties to the review will be notified in writing of all meetings of the Review Body at which their review will be considered.

2. Request for Review

- 2.1 An applicant may request a review by submitting to the Review Body a Notice of Review. A standard form Notice of Review is available for applicants from the Planning Service, and by accessing the Council's website www.south-ayrshire.gov.uk/planning/
- 2.2 The Notice of Review must be served on the Review Body within three months of the date of the decision notice (in the case of a refusal or a grant subject to conditions) or from the date of expiry of the period allowed for determining the application (currently set as three months following the validation date of the application) (in the case of non-determination).

Notices of Review received by the Review Body outwith the 3 month statutory period will automatically be invalid and will not be considered by the Review Body.

- 2.3 The Notice of Review must include sufficient information to allow the Review Body to review the case. The information to be provided is:-
- The name and address of the applicant.
 - The date and reference number of the application which is the subject of the review.
 - The name and address of the representative of the applicant (if any) and whether any notice or correspondence required in connection with the review should be sent to the representative rather than the applicant.
 - A statement setting out the applicant's reasons for requiring the review.
- 2.4 The applicant shall state by what procedure(s) (including written submissions, a site inspection and one or more hearings) the applicant wishes the review to be conducted. However it should be noted that the decision on the procedure or procedures to be followed in each case lies with the Review Body.
- 2.5 The applicant should state in full the reasons for seeking a review and must set out in the notice of review all matters (including documents, material and evidence) that the applicant intends to rely on. Unless the Review Body decides otherwise, the applicant may not have a further opportunity to add to the statement of review at a later date and in many cases a decision will be taken based on the information provided in and with the Notice of Review.

2.6 In addition new material (including plans) which was not provided to the planning officer at the time of the determination now under review will **not** be permitted unless the applicant can demonstrate that it could not have been introduced earlier in the process, or that it arises due to exceptional circumstances.

3. Initial Procedure

3.1 On receipt of a valid Notice of Review the Notification Procedure will take place. The Review Body will write to "interested parties" to make them aware of the Notice of Review. Interested parties include any statutory consultees or other parties who have made, and not withdrawn, representations (eg objections) in connection with the application. Interested parties are entitled to make further representation in writing to the review body within 14 days of notification, and any such further representation will then be copied to the applicant by the Review Body and the applicant, in turn, will have a further 14 days to make comments to the Review Body.

3.2 In cases where the review follows a failure by the appointed officer to determine the application, the Review Body shall obtain a Review Report from the Appointed Officer as part of the initial procedure and shall copy this to the applicant and any interested parties, who shall then have a period of 14 days to comment in writing. The Review Report and any comments from the applicant or interested parties shall form part of the review documents.

3.3 After this process is completed, the relevant papers will be issued for the next available meeting of the Review Body. These papers will also be published in terms of the Regulations and applicants and persons making representations should be aware of this.

3.4 At the first meeting to consider a review case the Local Review Body may determine that the review documents provide sufficient information to enable them to determine the review, whereupon they may determine the review without further procedure.

3.5 In the event that the Review Body decide at the first meeting that they require further procedure before they can determine the Review, then they will consider what further procedure is required.

4. Subsequent Procedure

4.1 Where the Review Body decide that further procedure is required, the Review Body may decide to hold a pre-examination meeting to consider what further procedures to follow in the review or may decide to obtain further information by means of the procedures set out in the Regulations.

4.2 Accordingly the Review Body may decide to seek further information by one or more of the following methods:

By means of written submissions;

By the holding of one more hearing sessions; and/or

By an inspection of the land to which the Review relates.

4.3 Further procedures will be carried out in terms of the Regulations and as set out in the following procedure notes.

5. Written Submissions

- 5.1 Where the Review Body decides that the review should proceed by means of written submissions, a written notice (a "procedure notice") will be sent to the relevant parties requesting the relevant information. To comply with deadlines for issuing papers, parties will normally be given 14 days to respond with written submissions.
- 5.2 In the event that the written submissions are not received, or are received outwith the relevant time limit, the Review Body may decide to determine the review without the information or otherwise as it deems fit. Persons who have good reason for not complying with the time limit are asked to communicate with the Clerk to the Review Body in advance.
- 5.3 Persons submitting written submissions will be required in terms of the procedure notice to serve copies on the other parties (and at the addresses) specified in that notice. Proof of posting or electronic transmission will be required in advance of the next meeting.
- 5.4 Other parties will be deemed to have received the written submissions within two working days (if by post) or within 12 hours (if by electronic transmission). They will then require to submit any further comments within a further period of 14 days, to the Review Body, with a copy of such comments being sent to the applicant and to the other parties (and at the addresses) specified in the procedure notice.
- 5.5 The Review Body shall consider the written submission received at its next available meeting and shall either determine the review or decide that further procedure is needed.

6. Hearings

- 6.1 Where a Review Body decide they wish to hold a hearing session, this will be fixed for as early a date as is practicable, and notified to the applicant, any interested party who made representations in relation to specified matter to be considered at the hearing session, and any other body or person from whom the Review Body wish to receive further representation or to provide further information on specified matters.
- 6.2 The procedure for hearing sessions shall be as set out in the hearing session rules in forming Part 2 of this Guidance Note.
- 6.3 Only the applicant plus those persons or bodies notified in accordance with part 5.1 and who have, within 14 days of such notification, informed the Review Body in writing of their intention to appear at the hearing session are entitled to appear. This may include the appointed officer or another officer from the planning service.
- 6.4 All parties entitled to appear at the hearing session shall be given reasonable notice (usually at least 14 days) of the date, time and place fixed for the hearing session.

- 6.5 The Review Body shall set out in writing to the parties the matters that are intended to be considered at the hearing session and only those matters will then be considered at the hearing session.
- 6.6 A person entitled to appear at a hearing session must provide to the Review Body, the applicant and all other parties entitled to appear, in advance of the hearing session, a hearing statement which shall contain an outline of the case they intend to put forward, and copies of all documents to be relied upon (unless already made available and published as part of the review process).
- 6.7 The Review Body may appoint an assessor to advise it on specified matters, generally of a specialist or technical nature. An assessor may be an external consultant or an expert from within the Council who has not had a previous involvement in the application. Where an assessor is appointed those entitled to appear at the hearing session will be advised of the name of the assessor and the matters which they are appointed to advise on. The assessor may make a written report to the Review Body after the close of the hearing session.
- 6.8 On conclusion of a hearing session, the Review Body shall either determine the review or decide that further procedure is needed.

7. Site Inspections

- 7.1 The Review Body may at any time determine that a site inspection is necessary.
- 7.2 A site inspection may be unaccompanied or accompanied by the applicant and any other interested party. The applicant and any interested party will be notified of any proposed accompanied site inspection. However, the Review Body is not required to defer an inspection if any persons to whom notice was given is not present at the appointed time.

The intention to make an unaccompanied site inspection will be intimated to the applicant.

- 7.3 The purpose of the site inspection will be to inspect the site and its surroundings and a planning officer may attend to assist in pointing out relevant features of the site. No discussion on the merits of the review will take place.
- 7.4 The review shall not be determined at a site visit but shall be continued to a future meeting of the Review Body for determination.

8. New Evidence

If, having carried out any further procedures as set out above, the Review Body proposes to take into account any new evidence which is material to the review, it will first allow the applicant and any other relevant party an opportunity to make representations on that evidence.

9. Post Determination Procedures

- 9.1 Following determination of the review, the Review Body shall issue a decision notice, which will include a statement of the reasons on which the Review Body based that decision. The detail of the notice shall normally be delegated to the appropriate officers acting in consultation with the Chair of the Review Body.
- 9.2 The decision notice will be issued as soon as is practicable following the determination of the review and normally within 21 days. In complex cases or those which involve the parties entering into a legal agreement, the Review may be continued to a subsequent meeting before issue of the final decision letter. In these cases, the Review Body may, on request, issue a letter indicating that it is minded to grant planning permission.
- 9.3 All decisions of the Review Body will be made available on the Planning area of the Council's website as soon as is practicable. (www.south-ayrshire.gov.uk/planning/)

PART 2 – HEARING SESSION RULES

1. Except as otherwise provided in these Hearing Session Rules, the Review Body shall determine the procedure at a hearing session.
2. The Review Body, having considered any submission by the persons entitled to appear at the hearing session, are to state at or before the commencement of the hearing session the procedure which the Review Body propose to adopt and in particular are to state:
 - (a) the order in which the specified matters are to be considered at the hearing session; and
 - (b) the order in which the persons entitled to appear at the hearing session are to be heard in relation to a specified matter (a different order may be chosen for different specified matters).

The normal order will be as follows:

- (i) applicant
 - (ii) appointed officer
 - (iii) interested parties.
3. Any person entitled to appear may do so on that person's own behalf or be represented by another person.
4. Unless the Review Body determines otherwise, each person appearing at the hearing session shall be afforded 5 minutes to present their case. Thereafter members of the Review Body shall, through the Chair, ask such questions of any parties as they deem appropriate in relation to the review.
5. Where there are two or more persons having a similar interest in the issues being considered at the hearing session, the Review Body may allow one or more persons to appear on behalf of some or all of any persons so interested.
6. A hearing shall take the form of a discussion led by the Review Body and cross-examination shall not be permitted unless the Review Body consider that cross-examination is required to ensure a thorough examination of the issues. Cross examination or further statements or contributions by parties will not normally be permitted, except (a) where new evidence has been introduced in terms of Regulation 17 or (b) in exceptional circumstances as deemed appropriate by the Review Body.
7. Subject to paragraph (8) a person entitled to appear at a hearing session shall be entitled to call evidence.
8. The Review Body may refuse to permit:
 - (a) the giving or production of evidence;
 - (b) the cross-examination of persons giving evidence; or
 - (c) the presentation of any other matter,

which the Review Body consider to be irrelevant or repetitious.

9. The Review Body may proceed with a hearing session in the absence of any person entitled to appear at the hearing session.
10. The Review Body may from time to time adjourn the hearing session. Notice of the date, time and place of the adjourned hearing session will be given to the persons entitled to appear at the hearing session. If the date, time and place are announced before the adjournment, then no further notice will be given.

July 2013