

PROCEDURES FOR THE HANDLING OF PLANNING APPLICATIONS



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1 Introduction

1.1 This note sets out the Council's approved procedures for the handling and determination of planning applications. This note only relates to procedures around the handling of a planning application relevant to its determination. This note does not cover all planning procedures that are followed by the Council. Procedures related to matters other than application determination are set out in a variety of Service Standards and Protocols, copies of which can be found at: Information and Guidance Related to Planning Applications.

1.2 This note provides information and procedures on the following aspects related to the determination of a planning application:

1.2.1 An explanation of different types of planning applications and who will determine these different application types.

1.2.2 An explanation of what's involved with the assessment of a planning application and how representations of objection and support are considered.

1.2.3 An explanation of the procedures that will be followed before a Panel Hearing.

1.2.4 An explanation of the procedures that will be followed at a Panel Hearing and during determination of a planning application.

1.2.5 An explanation of the procedures that will be followed if a site visit is undertaken.

1.2.6 An explanation of what will happen after a decision is taken.

1.3 Planning decision making is based upon principles of fairness, impartiality and transparency. The procedures set out in this note have been formed so that they adhere to these principles.

1.4 The procedures set out in this note reflect the Scheme of Delegation for the determination of planning applications approved by Scottish Ministers on 5 December 2013 and adopted by the Council on 19 December 2013.

1.5 This Procedure Note also includes the following Annexes:

- **Annex A** - A copy of the adopted scheme of delegation for the determination of planning applications.
- **Annex B** - List of common material considerations and matters not normally forming a material consideration.
- **Annex C** - Definition of a competent objection to a planning application and how electronic submissions will be handled.
- **Annex D** - A protocol for procedures during site visit.

2 What Types of Planning Application are there?

2.1 An applicant can submit a planning application for one of 3 types of development proposals:

- (a) Local Development;
- (b) Major Development; and
- (c) National Development.

2.2 A full explanation of how each of the 3 types of development are defined is provided in Scottish Planning Series Circular 5 2009: Hierarchy of Developments.

3 Who will determine 'Local Development' Planning Applications

3.1 A Local Development planning application will usually be determined by appointed Planning officers. A decision taken by an appointed Planning officer is referred to as a 'delegated decision'. Appointed Planning officers are the Planning Manager, Planning Coordinators and Supervisory Planners. The case officer that has handled the planning application will not be the same officer that determines that planning application. This means that there will always be two Planning officers involved in the determination of a delegated planning application (the case officer and the appointed officer). The responsibility for determination, however, rests with the appointed officer.

3.2 The Council's Planning Scheme of Delegation, as approved by Scottish Ministers and set out in Annex A, specifies the only occasions where a 'Local Development' application must be determined by the Council. These applications will be reported to the Regulatory Panel and thereby qualify for a Hearing. These are where:

3.2.1 5 or more competent written objections have been received from separate householders or separate premises.

3.2.2 The proposals are considered to be significantly contrary to the provisions of the Development Plan.

3.2.3 A competent written objection has been received from the Community Council within whose boundary all or part of the application site lies, and the appointed officer is minded to recommend a determination, which is contrary to the views expressed by the said Community Council.

3.2.4 The application relates to land in the ownership of the Planning Authority or to land in which the Planning Authority has a financial interest and one or more objection has been received.

3.2.5 The application is made by the Planning Authority and one or more objection has been received.

3.2.6 The application is made by an Elected Member of the Planning Authority.

4 Who will determine 'Major Development' Planning Applications?

4.1 A 'Major Development' planning application will always require to be reported to the Regulatory Panel and thereby qualify for a Hearing. Where a 'Major Development' planning application is considered to be significantly contrary to the development plan, a pre-determination Hearing shall be conducted by the Regulatory Panel prior to determination of the application by the Planning Authority (ie - Full Council). On these few occasions, the pre-determination Hearing and subsequent determination by full Council shall usually be made with one meeting immediately following the other.

4.2 The pre-determination Hearing is a meeting of the Regulatory Panel to which all other members of the Council are invited and in which they may participate. This meeting is chaired by the Chair of the Regulatory Panel and will follow the procedures set out in this Procedure Note in relation to Hearings. Once the pre-determination hearing is complete, the Regulatory Panel meeting comes to an end. The Council's normal practice is then to immediately convene a meeting of the Council in order to determine the application. The Provost of the Council chairs this meeting in accordance with Standing Orders Relating to Meetings.

5 Who will determine 'National Development' Planning Applications?

5.1 A National Development planning application will require a pre-determination Hearing before the Regulatory Panel, prior to determination of the application by the Planning Authority (ie - Full Council). The procedures set out in paragraph 4 also apply to National Development planning applications.

6 How will other Planning Related Applications be considered?

6.1 The above procedures apply specifically to planning applications. Other type of planning related applications are, however, submitted to and considered by the Council – for example, listed building consent, advertisement consent, conservation area consent, certificates of lawfulness and prior notifications. These types of application will be considered and determined by the appointed officer under delegated powers, as described above.

7 How will Planning Applications be assessed?

7.1 The Report of Handling

7.1.1 If a planning application is determined under delegation, the considerations relevant to determination are set out and assessed within a 'Report of Handling'. The Report of Handling also lists all the relevant plans and reports that were assessed and sets out a range of regulatory requirements and information.

7.1.2 If a planning application is determined by the Regulatory Panel or full Council, the senior appointed officer (Planning Manager) brings forward a recommendation to the Panel that is set within a Report of Handling. The Report of Handling takes the same form as Reports of Handling relevant to planning applications determined under delegation.

7.2 How are Planning Applications Assessed?

7.2.1 Whether an application is determined under delegation or by the Regulatory Panel/ full Council the decision requires to be made based upon proper planning reasons. Legislation requires that planning applications are determined in accordance with the development plan unless material considerations indicate otherwise. Where the development plan (Local Development Plan) is up to date this will usually be the central basis upon which a decision will be made. A copy of the Local Development Plan for South Ayrshire can be found: <http://www.south-ayrshire.gov.uk/planning/planlpdocuments.aspx>.

7.2.2 A 'material consideration' is a matter that is relevant to the planning application being assessed. There are no absolute definitions as to what constitutes a material consideration and whether something is material will vary from case to case. Likewise the weight that can be given to that consideration will vary from case to case. Relevance and weight that can reasonably be attached to any matter is a matter of planning judgement, although it would be through legal challenge to the Court of Sessions that would ultimately determine if a matter is legally 'material' or not. Annex B provides a list of common material considerations and also a list of matters that are not usually material considerations.

7.2.3 Representations on a planning application, either in objection or in support, can be a material consideration provided that the matters raised reasonably relate to a material consideration relevant to the planning application. What constitutes a competent written objection is set out in Annex C along with some advice on the submission of community council representations.

7.2.4 If a planning application is determined at Regulatory Panel the Report of Handling remains the main articulation of the assessment relevant to the determination made by the Regulatory Panel.

7.2.5 Consideration and determination of a planning application requires to be undertaken with impartiality. In exercising planning judgement and maintaining impartiality, Planning officers are subject to the Royal Town Planning Institute Code of Professional Conduct and can be subject to disciplinary action by the Institute. At the same time as approaching their considerations with impartiality, Planning officers require to form a view on the merits of a proposal. It is often the case that the merits of a case are particularly weighted in one direction, at other times considerations are more finely balanced.

7.2.6 Councillors also require to undertake their decision making with impartiality – this is reflected in the Councillors' Code of Conduct. South Ayrshire has an approved Protocol that provides guidance to Councillors to enable them to engage with planning applications prior to their determination in a way that ensures consistency with the Councillors' Code of Conduct. A copy of the Protocol can be found [here](https://www.south-ayrshire.gov.uk/committees/) : <https://www.south-ayrshire.gov.uk/committees/>

7.3 How Submissions on a Planning Application Can Be Heard at Panel

7.3.1 In order to be heard at the Panel Hearing, objectors/ supporters must first have submitted a competent written representation. Parties shall be given not less than 12 clear days' notice of the date of the Panel hearing. The term 'clear days' includes weekends and public holidays. The obligation of the Council to provide this period of notice will be deemed fully satisfied if notice has been posted on the day falling 14 days prior to the date of the hearing or emailed before midnight on the day falling 13 days prior to the date of the hearing. The notice will provide a hyperlink to the agenda for the meeting and a copy of the Report of Handling. The Report of Handling also refers to any objections/ support and provides a link to these representations.

7.3.2 Only the relevant parties (applicant, objector and supporters) will be so notified. At that time, the parties will be advised that they may make a brief oral submission at the Panel hearing or make a further written submission to be received by the Planning service at least seven days prior to the Panel Hearing. It is important that all parties understand that they can either address the Panel or make a further written submission, but they cannot do both. If parties choose to make further written submission it must not introduce new information. Any relevant party wishing to make an oral presentation must first complete Registration to be Heard at Panel Form, copies of which are available on the [Councils website](#).

7.3.3 Following publication of the Report of Handling, members of the Regulatory Panel will receive a short information briefing prior to the Regulatory Panel meeting. The Regulatory Panel are reminded not to express a view, or to discuss the merits, or otherwise, of the planning application.

8 What happens when an application is considered at a Panel Hearing?

8.1 Order of Proceedings

8.1.1 The procedure at the Hearing will be as follows:

- (i) applicant to make statement in support of his/ her application;
- (ii) supporter(s) to make statement;
- (iii) objector(s) to make statement;
- (iv) any local ward Councillor who wishes to address the Panel in opposition to or support of the application;
- (v) Planning officer(s) to address the Panel;
- (vi) applicant to sum up his/ her case, provided remaining allocated time is available; and
- (vii) Panel Members may seek further clarification from the Planning officer(s) and discuss the application. All questions are put through the Chair to the Planning officer(s), but there may be circumstances where the Planning officer(s) recommend that the question should be more appropriately addressed by the applicant or an objector or supporter.

8.2 Duration of Submissions

8.2.1 Applicants and objectors will both be required to limit their submissions to no more than 5 minutes. This limit may be extended, with the prior agreement of the Chairperson of the Panel, to up to 10 minutes where a group of two or more objectors/ supporters have appointed a spokesperson or representative to make the submission on behalf of the group.

8.2.2 Applicants (or their representatives) shall have 5 minutes in total to present their case, including any summing-up. **This time limit will be strictly enforced** such that applicants (or their representative) who take their full allotted 5 minutes to present their case at the beginning of the hearing will not be permitted to sum-up. National or major applications usually involve planning proposals that are complex and take some time to be explained and presented. For such proposals, the Chairperson may at his/ her discretion afford more than 5 minutes. Where agreed by the Chair, in respect of applications for national, major developments and significant local development, an applicant or objector can make to reference to multi-media submission (already lodged with the planning application).

8.2.3 Where a local ward member (Councillor) addresses the Panel, this submission should not exceed 5 minutes. The Councillor should advise Committee Services of his/ her intention to make a submission in advance of the Panel meeting. Once the local ward member has made their submission they must leave the room.

8.2.4 To ensure fairness and consistency these time limits will be strictly enforced.

8.3 Protocol for Submissions

8.3.1 Presenting parties must adhere to the following rules:

- (i) oral submissions shall relate to the written submissions already lodged by the person making the oral submission;
- (ii) no new information shall be submitted in the form of new lines of argument, nor in the form of any maps, diagrams, photographs, physical objects or any other documentary material;
- (iii) no witnesses shall be called
- (iv) the submission of clearly frivolous or vexatious points, and of plainly repetitious material will not be accepted;
- (v) abusive behaviour or the making of abusive personal comments about other parties will not be accepted.

8.4 The Planning Advisors' Presentation and Advice Given to the Panel

8.4.1 Each planning application will be presented to Panel by a senior Planning officer - a Chartered Planner from the Council's Planning service. The Planning officer's presentation to Regulatory Panel will explain the proposals and describe the site and surrounding and may clarify matters raised by an applicant/ objector/ supporter. The presentation will not present the Report of Handling or the merits of the case. During the Planning officer(s') presentation application plans and associated documentation together with officers' site photographs may be displayed electronically for information and clarity purposes.

8.4.2 The Planning officer will be familiar with the proposals and the site and will usually be the most appropriate person able to advise the Panel on questions that they may have. The chief Planning officer (usually the Planning Manager) may provide advice to support or explain the recommendation and will advise the Panel/ Council to ensure that due planning process is followed.

8.4.3 The Planning officers will provide impartial planning advice to the Panel, to assist the Panel in reaching a determination of the planning application.

8.5 Consideration by the Panel

8.5.1 Having considered the Report of Handling and heard any submissions made to the Panel through the Hearing session, the Members of the Panel may then seek further advice from Planning officer(s) and other Council officer(s) (including officers of the Ayrshire Roads Alliance) who may be present before determining the application.

8.5.2 Where a Councillor wishes to make a motion or amendment contrary to the recommendation in the Report of Handling, the Chair of the Panel will generally require the mover to reduce the motion or amendment to writing for circulation to the Panel members, in accordance with Standing Orders relating to Meetings. Usually an adjournment will be requested and agreed to allow officers and advisers to ensure that the motion or amendment is competent on planning and legal grounds. The lead Planning officer will provide advice to members on their intended motion or amendment. The chief Planning officer may consult, as appropriate, with the legal officer present. To ensure that the motion or amendment is competent in planning and legal terms it may be necessary to continue the consideration of the application to a future meeting of the Panel. The written amendment/ motion will be recorded by the Committee Clerk in conjunction with the lead planning advisor and this will then form the basis for the minute of the meeting.

8.5.3 In normal course, the Panel, having considered all of the written evidence and other submissions at the Hearing, shall proceed to a decision forthwith. However, the Panel may agree to continue consideration of the application where further information, relevant to the determination, is sought by the Panel or where a site visit is considered necessary before determination can be made.

8.5.4 Where, in the case of 'National Developments' or certain 'Major Developments', the application requires a pre-determination hearing, by the Regulatory Panel, prior to determination of the application by the Council as Planning Authority, all other members of the Council shall be invited to attend and participate in the pre-determination hearing process.

The application shall then be referred on to the Planning Authority (ie - Full Council) immediately thereafter for determination. Only those Members who have been present at the pre-determination hearing will be entitled to participate in the determination of the planning application.

9 Arrangements for the Handling of Representations

9.1 Since the modernisation of planning procedures (including e-planning), all planning and related applications received after 3 August 2009 are held and processed as electronic files. Information on these same applications, including comments made by the public and those who may have been consulted on the proposal by the Planning Authority, can be viewed via the Council's website. The website also affords the opportunity for members of the public to comment directly on planning application proposals on-line.

9.2 Once a Panel report is issued, no further public representation can be made unless a representation has already been received from that person. The opportunity for on-line comment will therefore cease at that stage.

9.3 In the interests of efficiency and adopting 'paper-light' processes, the Council in issuing Regulatory Panel reports on planning applications will provide electronic links to the representations made on applications to the Panel report for distribution to Panel Members. Summary reference is always made in the report to all representations, including those made on-line and similarly, all relevant matters arising from all forms of representation including on-line submissions will be addressed within the Panel report.

9.4 All other interested parties, (ie - applicants/ agents and representees), will receive correspondence on the Panel arrangements and a hyperlink to the Panel report. Representations, including those made on-line, will be available for inspection on the Council's website, but, in the interests of data protection, will be taken down from the website 3 months after the decision has been issued.

10 What Happens after a decision?

10.1 The decision of the Regulatory Panel or the Planning Authority shall be notified to parties; normally within 5 working days.

10.2 Where, a 'Local Development' application has been determined by an appointed officer under delegated powers, any appeal against a refusal of planning permission or any conditions that may be attached to a grant of planning permission; shall take the form of a Review to be considered by the Council' Local Review Body.

10.3 Appeals against a decision taken by the Regulatory Panel on a 'Local Development', as well as those for 'Major and National Developments', will be determined by Scottish Ministers. Further information on the appeal process can be found at the Scottish Government's Directorate for Planning and Environmental Appeals website at <http://www.dpea.scotland.gov.uk/>

Annex A Scheme of Delegation

A.1 The appointed person has the delegated authority to determine all applications for planning permission, planning permission in principle, matters specified in conditions and further applications, including the unconditional approval of applications, approval with conditions, and the refusal of permission **Except** in the following circumstances:

- (1) The application is defined as national development in terms of Section 3A (4) (b) of the Planning etc. (Scotland) Act 2006.
- (2) The application is defined as major development in terms of Regulation 2 (1) of the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2008.
- (3) 5 or more competent written objections have been received from separate householders or other premises.
- (4) In the case of planning applications which relate to land in the ownership of the planning authority or to land in which the planning authority have a financial interest, 1 or more competent written objections have been received.
- (5) The proposals are considered to be significantly contrary to the provisions of the development plan.
- (6) A competent written objection has been received from the Community Council within whose boundary all or part of the application site lies, and the appointed officer is minded to recommend a determination which is contrary to the views expressed by the said Community Council.
- (7) The application is made by a member of the Planning Authority.

A.2 The appointed persons for the purposes of Section 43A of the Town and Country Planning (Scotland) Act 1997 shall be the Council's Executive Director - Economy, Development and Environment, the Head of Community, Enterprise and Development, the Planning Manager, the Team Leaders or the Supervisory Officers within the Planning service.

Annex B Material Considerations

B.1 The Council is required to take decisions on planning applications in accordance with the provisions of the South Ayrshire Local Development Plan, unless material considerations indicate otherwise.

B.2 'Material considerations' are not defined by legislation, but over time, legal precedent has indicated that they should relate to the proposed development and the use of land. More information on material considerations can be found in Annex A of Circular 3/2013 Development Management Procedures.

B.3 The most common material considerations may include the following, although the list is not exhaustive:

- Government policy and advice. This can be found in the Scottish Planning Policy (SPPs), Government Circulars and Planning Advice Notes (PANs).
- Previous appeal decisions
- Loss of daylight or overshadowing
- Overlooking/ loss of privacy
- Highway issues: traffic generation, vehicular access, highway safety
- Noise and disturbance resulting from proposed use
- Odour resulting from proposed use
- Infrastructure capacity
- Impact on natural and cultural assets e.g. wildlife designations or historic sites (listed buildings/ conservations areas)
- Loss of trees
- Layout, design and visual appearance of development
- Risk of flooding
- Impact on landscape
- Light pollution

B.4 Matters which cannot normally be taken into account may include:

- Personal circumstances and/ or ownership of land
- Matters controlled by other legislation e.g. building standards
- Private legal issues between neighbours – for example, land/ boundary disputes, damage to property, private rights of access, covenants etc.
- Loss of value of property

- Loss of a view
- Potential problems arising from the construction period of any works, e.g. noise, dust, construction vehicles, hours of working. These matters are controlled by the Council's Environmental Health Service.

Annex C Definition of Competent Written Objection

C.1 A competent written objection shall comprise a letter which provides the name and address of the objector and a signature. In the case of an objection submitted by e-mail the objector shall provide a name and full home address. The letter/ email shall set out the grounds for objection. The Planning Manager shall have the authority to disregard those objections considered to be clearly frivolous, vexatious and/ or abusive. Objections cannot be considered confidentially.

C.2 A petition of objection will only qualify as a single objection, with only the originator of the petition having the right to be heard, if the application is the subject to a hearing. If the originator of the petition is not apparent, the petition will be treated as a single written objection, but no person named on the petition shall have the right to be heard unless he/ she has also submitted an individual competent written objection.

Objections submitted by Community Councils

C.3 In accordance with the provisions of the Scottish Government Planning Advice Note No.47:

'Community Councils and Planning' (paragraph 14) community councils should limit their attention to proposals which raise issues of genuine community interest. Accordingly, when submitting an objection to a planning application, a community council will be expected to indicate the nature and extent of any local community consultation it has undertaken in the preparation of such objection

C.4 In respect of an application to which a community council is objecting, it is suggested that the community council takes on a co-ordinating role in contacting other objectors, thereby assisting in the effective presentation of the objectors' case to the Regulatory Panel.

Annex D Protocol at Site Visits undertaken by the Regulatory Panel

D.1 The purpose of the site visit is to allow the members of the Panel present at the hearing to attend the site and to view the location of the proposed development. When the decision is being taken to hold a site visit, the reason for the site visit shall be given and minuted, and the proposed date for the site visit will normally be announced.

D.2 The parties shall be entitled to be present. However, no further submissions will be heard from the parties and parties must check with the Planning service, Burns House, by telephoning (01292) 616107, as to the anticipated timing of the visit on the date set.

D.3 Members may put questions for clarification to the officers of the Council and to the relevant parties.

D.4 In normal course, the site visit shall take the form of a meeting of the Regulatory Panel reconvening on site, with full powers to take a decision, unless the Regulatory Panel meeting is a pre-determination hearing. If, exceptionally, there may be practical difficulties in completing the decision-making on site, the Panel (either at the hearing or on site) may decide that there be a re-convened meeting at the County Buildings, in which case the additional procedure set out below shall apply.

Re-convened Meeting

D.5 When it is decided to hold a re-convened meeting at County Buildings, the consideration of the planning application will normally resume at the first scheduled meeting (meetings are generally held on a 4-weekly cycle) following the site visit.

D.6 Parties will have been advised at the hearing or at the site visit of the date and time of the re-convened meeting and shall be entitled to be present. No further submissions shall be taken.

D.7 Only those Members who were present at the hearing and at the site visit will be entitled to participate in the determination of the planning application.

D.8 The Panel will proceed to determine the application at the re-convened meeting, following the normal voting procedures, if appropriate unless, exceptionally, another continuation is required, the reason(s) for which shall be given and minuted, or, in the event that the Regulatory Panel meeting is a pre-determination hearing, in which case the Panel will make a recommendation to the Planning Authority in accordance with procedure.

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