

Notice of Review Form

Guidance Notes

Section 43A(8) of The Town and Country Planning (Scotland) Act 1997 (as amended) in respect of decisions on Local Developments.

The Town and Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations 2008.

Circular 7/2009 Schemes of Delegation and Local Reviews

Introduction

These Guidance Notes should be read in conjunction with Circular 7/2009 Schemes of Delegation and Local Reviews.

The 'Notice of Review' form allows you to request a review by the planning authority ('local review body') of a decision made by an officer appointed to determine a planning application for a 'local development'¹. It also allows you to apply for a review where in such a case the appointed officer has not reached a decision within the prescribed period.

Local developments are those which do not fall into the categories of either "national development" or "major development" as defined in the Town and Country Planning (Hierarchy of Developments) (Scotland) Regulations 2009

Where an officer is appointed to determine a planning application, the case is often referred to as a 'delegated application'. Planning authorities are required to identify the classes of applications that would be suitable for delegation to an appointed officer under a framework known as a 'scheme of delegation'.

When To Use This Form

This form should be used if you have submitted an application in the category of local developments; your application has been delegated to an appointed officer for determination under the planning authority's scheme of delegation and, your application has:

- been refused by an appointed officer;
- been granted subject to conditions that you do not agree with; or
- not been determined within the prescribed period (two months after validation date) by the appointed officer.

You can use this form if you seek a review on any of the following application types to which the review provisions relate:

- Applications for planning permission;
- Applications for planning permission in principle;
- Applications for approval of matters specified in conditions; and
- Further applications.

¹ Section 43 (A) (17) of the Act provides that the applicant has a right to appeal to Scottish Ministers in such cases where, if within two months after submitting a Notice of Review, the local review body has not commenced the review process.

This form can only be used to request a review of your application if it is served on the planning authority within three months of either the date of the decision notice or from the date of expiry of the 2 month period allowed for determining the application (Regulation 9 (2) *The Town and Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations 2008*).

When Not To Use This Form

This form should not be used for other types of planning application including proposals which fall under the category of major or national developments. Neither should it be used for other types of applications, such as an application for mineral development, listed building consent, hazardous substances consent, conservation area consent or consent to display advertisements. Such applications and permissions can be appealed to Scottish Ministers by submitting the relevant appeal form to the Scottish Government's Directorate for Planning and Environmental Appeals (DPEA).

Decisions on applications within the category of local developments which have been determined by elected members would be appealed to Scottish Ministers. A review should not be requested where an appeal to Scottish Ministers is available.

Local Review Bodies

Reviews are determined by a Local Review Body. A Local Review Body is a committee of the planning authority and contains no less than three elected members. While reviews are to be held in public, neither the primary legislation nor the regulations convey an automatic right for an applicant or third party to make oral representations. Local reviews are conducted in a transparent and equitable manner. For further information on the structure and procedures for Local Review Bodies please refer to guidance issued by the Convention of Scottish Local Authorities (Cosla) and the Improvement Service or contact your Planning Authority.

Appeal or Review?

At the time of acknowledging receipt of your application, the planning authority will advise you that you will either have a) a right to appeal the application to Scottish Ministers or, b) request a review by the local review body in the event that the planning authority fails to determine your application within the statutory period. Only one of the procedures for challenging the decision will be available to you. The planning authority may not however, be able to advise you of the exact procedure for challenging the decision on your application until your application has been progressed further. This is because the planning authority's scheme of delegation may contain procedures that would prevent an application (that was originally delegated to an appointed officer) from being determined by an appointed officer. For example a procedure may require that, where the delegated application has received substantial objections or following the call-in request of an elected member(s), the application is to be determined by the planning committee.

If the planning authority has failed to determine your application within the prescribed period and you are unsure of the correct procedure to follow in respect of an appeal to Scottish Ministers or a review by the planning authority, you should contact the planning authority for advice before completing this form.

A decision notice must in, the case of refusal or approval subject to conditions, be accompanied by a notice advising you that you have a right to either appeal the application to Scottish Ministers or request a review by the local review body.

In cases where the planning authority may receive an application for planning permission for a local development and the proposal to which the application relates also requires another type of consent that does not attract the review procedures e.g. listed building consent, it may be necessary for both applications to be determined by Scottish Ministers. The planning authority should be able to advise you on this matter.

Submitting a Notice of Review

Before submitting this form to the planning authority, you should ensure that you have completed all the required information within the form. Under the terms of the regulations governing the local review procedure, the minimum information which you must provide with your Notice of Review is:

- The name and address of the applicant;
- The date and reference number of the application which is the subject of 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; and
- A statement setting out the applicant's reasons for requiring the review and by what procedure (or combination of procedures) the applicant wishes the review to be conducted.²

All matters which you intend to raise in the review, along with all documents, materials and evidence which you intend to rely on must accompany your Notice of Review.

The local review regulations provide that you may submit further documents or information at a later stage only in very limited circumstances, so it is important that you make your full case at the outset.

Your included statement should clearly outline the reasons for seeking a review and all matters you consider should be taken into account in determining the review. You should not however, raise any new material which was not before the appointed person at the time your application was decided (or at the time of expiry of the period of determination) unless you can demonstrate:

- that the new material could not have been raised before that time; or
- that it not being raised before that time is a consequence of exceptional circumstances.

You should submit this form, together with the necessary supporting statement, documents and evidence. Insufficient or inaccurate information or failure to complete all

² It is expected that the majority of cases coming before the local review body will be accompanied by sufficient information in order for the review to be determined quickly. However, in some cases, including those involving non-determination of the planning application, it might be necessary for the local review body to obtain additional information. Further information may be required by one or a combination of procedure, such as:- written submissions; the holding of one or more hearing sessions and/or inspecting the land which is the subject of the review case.

parts of the form may result in a delay to the review of your application, or possibly invalidate your review request.

Time Limits for Conducting the Review

Where an applicant seeks a local review on the grounds that the appointed officer has not determined the application, if within two months after submitting a Notice of Review, the local review body has not commenced the review process, the planning authority shall have deemed to refuse the application, and you will automatically have a right to appeal to Scottish Ministers under section 47(1) of the Act.

Electronic Communication

The Notice of Review Form and any associated documents required to be sent with the form may be sent by electronically (Regulation 22 *The Town and Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations 2008*). The requirements in the regulations that any document is to be in writing will be fulfilled using this method, subject to certain criteria being met. These criteria relate to where the recipient (the planning authority) consents to this method of communication, or is deemed to have agreed to receive it electronically (i.e. if they have already used electronic communication to send a document). The document sent by means of electronic communication must be capable of being accessed by the recipient, legible in all material respects i.e. all the information must be available to the recipient to no lesser extent than it would if sent by hard copy, and must be sufficiently permanent to be used for subsequent reference.