

ANGUS COUNCIL
DEVELOPMENT MANAGEMENT REVIEW
COMMITTEE

Users Guide

July 2010

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1. MODERNISING PLANNING APPEALS

Part 3 of the Planning etc (Scotland) Act 2006 introduced a number of important changes to the planning appeal system in Scotland. At the centre of these are the provisions covering new schemes of delegation for local developments and the opportunity to seek a review of a decision by the planning authority in certain circumstances where an appeal to Scottish Ministers is will no longer be available.

Angus Council introduced a level of decision making on planning applications which is appropriate to local circumstances, in December 2008. Angus Council approved a revised Scheme of Delegation (**Report No 1241/08 refers**). With effect from 3 August 2009, where an officer decides a "local" category application under the delegated powers specified in the Scheme the applicant, if he/she takes issue with the decision, will no longer be entitled to appeal to Scottish Ministers. Instead the applicant will be entitled to request that the Council's Development Management Review Committee reviews the decision.

This short guide

- describes what Local Review Bodies are;
- introduces Angus Council's Development Management Review Committee;
- provides assistance in the completion of the form requesting a Review;
- outlines how the Development Management Review Committee will decide Review cases;
- describes what a typical Decision Notice will contain; and
- provides relevant Weblinks and contact details.

2. LOCAL REVIEW BODIES

The Planning (Scotland) Act provides that Local Review Bodies (LRB's) will

- be required to be established by all Councils in Scotland;
- be a Committee of the Council;
- comprise at least three elected members (i.e. Councillors);
- meet in public.

The LRB can undertake Reviews only in respect of "local" class developments which have been decided by officers under the Council's approved Scheme of Delegation.

The LRB can also undertake a Review of a case where the officer has failed to take a decision within the period specified in the legislation (i.e. normally two months although this can vary upwards). The LRB has two months in which to decide that Review. Any subsequent non-determination by the LRB may in turn be appealed to Scottish Ministers. For other Review cases there is no statutory time limit on the LRB's deliberations.

A LRB can, depending on the circumstances of a case, decide it on the basis of the Notice Review Form, other papers submitted by the applicant and the officer's report (known as the Report of Handling). These collectively are known as Review Documents.

Alternatively the LRB can choose to determine the Review by means of either:

- (a) requesting and sharing additional written material (written submissions); or
- (b) a meeting of relevant persons with an interest in the Review case where oral representations are shared (Hearing Session); or
- (c) a Site Inspection; or
- (d) a combination of the above.

Although the applicant can express a preference, the decision on the method of review rests with the LRB.

Whichever method is selected, all information provided to the LRB is shared and if towards the end of the process new evidence is submitted, a decision cannot be taken until that material also has been circulated and comments invited.

In respect of technically difficult cases the LRB can appoint an expert assessor to advise it. For all cases LRBs are likely to be supported by appropriate legal, administrative and planning advisers.

At the end of the process a comprehensive written decision notice is sent to the applicant with a copy to those who participated in the Review case.

This decision is final (except as outlined in Para. 2.3 above) although the decision can be challenged in the courts on points of law alone.

It is important to note that the operations of the LRBs are totally independent from a Council's other decision making arrangements for planning applications. The Councillors who comprise LRBs must not, under the terms of the Code of Conduct, have expressed an opinion on the planning application concerned.

The diagram at Annex A to this guide summarises the Review process.

3. ANGUS COUNCIL'S DEVELOPMENT MANAGEMENT REVIEW COMMITTEE (DMRC)

The DMRC was established on 14 May 2009 and comprises five Elected Members of the Council.

All Elected Members on the Development Standards Committee are substitutes in the event of the unavailability of any member of the DMRC.

A Convener and Vice Convener of the DMRC have been appointed.

All members of the DMRC and substitutes have received training.

The DMRC meets on a regular basis. Meetings are normally held during the day and are open to the public. A meeting will not be convened if there is no business for the DMRC to conduct.

For each Review case the DMRC will, as far as practicable, comprise the same group of members for the duration of the case.

The DMRC will be represented by administrative and legal officers and by a planning adviser who has had no involvement in the processing or deciding the application which is the subject of the Review and will advise the DMRC on the planning background of the case but will not be in a position to make recommendations.

4. REQUESTING A REVIEW (NOTICE OF REVIEW)

Decisions Notices on planning applications determined by the Planning Authority on or after 3rd August 2009 will contain information as to whether that decision is capable of either being:

- (a) appealed to Scottish Ministers; or
- (b) reviewed by the Council's DMRC.

This will depend on the scale of the proposal and the method by which the decision was taken e.g. either by officers under the Council's Scheme of Delegation (Reviews) or for other kinds

of applications decided by officers (Appeal) or by Elected Members in the Development Standards Committee (Appeal).

Any request for a Review **MUST** be made within three months of the date of the Decision Notice.

The request for Review can be made where the application has been refused or granted with conditions where the applicant wishes one or more conditions to be the subject of review.

In addition, a request for a Review may be submitted where the officer has not determined the application within the period prescribed in the legislation (normally two months). However such an application must be one which would have fallen within the terms of the Council's Mandatory Scheme of Delegation.

Requests for Reviews must be made using the **Notice of Review form** supplied by the Council. Forms and Guidance Notes, including an Information Leaflet, may be obtained from:

Head of Law and Administration
Angus Council
Angus House
Orchardbank Business Park
Forfar
DD8 1AN

or

may be downloaded from the Council's website at:

<http://www.angus.gov.uk/ccmeetings/membership/devmgtreview.htm>

5. THE REVIEW PROCESS

When the Notice of Review and supporting documents are received by the Clerk they will be checked and acknowledged in writing. The applicant/agent will be advised if for any reason the Review request cannot be accepted or additional information is required.

The Review case will be allocated a reference number which should be quoted on all future correspondence with the DMRC.

The Clerk to the DMRC will circulate the Notice of Review to all those who made representations on the original application inviting further representations within 14 days. If further representations are received these will be circulated to the applicant/agent allowing time for their response to be received in writing (14 days).

Once this process has been completed the applicant/agent and interested parties will be advised when the DMRC will meet to consider how they intend the Review to be conducted.

At this meeting, the Development Management Review Committee will decide either:

- (a) to decide the Review at that meeting on the basis of the Review Documents above;
or
- (b) to obtain further information through a Written Representation procedure (see Section 6 or by a Hearings procedure (see Section 7).

The applicant/agent or interested parties will not have the automatic right to present information or evidence orally to the meeting. Parties will be guided in this by the DMRC and its legal adviser. However it is likely that such exchanges will only be permitted in the context of Hearing procedures (Section 7).

If the DMRC decide the case at this meeting they will discuss the case and issue a formal written decision in due course (Section 8).

If the DMRC decides to adopt an alternative method of Review, parties (present and absent) will be advised on the procedures which will follow.

6. WRITTEN SUBMISSIONS PROCEDURES

If the DMRC decides to invite the applicant/agent and other interested parties, and persons/organisations to submit information or representations it will issue a Written Submissions Procedure Notice.

When/if further representations are received these will be circulated and a further period of 14 days allowed for the submission and circulation of further comments.

When this process has been completed the DMRC will formally meet in public to decide the case.

Parties will be informed of the date/time and place of this meeting.

7. HEARINGS PROCEDURE

It is anticipated that most Reviews will be decided on the basis of the Review Documents alone or by the Written Submissions procedure. The use of Hearings Procedures are anticipated for technically complex cases or where the Hearing of oral evidence is essential to the determination of the Review case.

The Regulations governing Local Reviews include specific rules which will govern Hearings procedures. Hearings are intended to provide a framework within which the DMRC can hear evidence on specific matters which the DMRC will define. Hearings sessions are not intended to be adversarial and will take the form of an organised discussion on a topic basis led by the DMRC members.

The DMRC will issue to the applicant/agent and other interested parties/persons information which will include:-

- The date and time of the Hearing
- The matters which will be discussed at the Hearing
- The procedure for the submission and circulation of Hearing Statements and other documents in advance of the date of the Hearing.

It is important that those in receipt of a Hearing Session Procedure Notice respond to it. Failure to do so may mean that a party's opportunity to participate in the Hearing is prejudiced.

Prior to the Hearing the DMRC may convene a Pre-examination Meeting to discuss the efficient and effective conduct of the Review. Although this meeting is most likely to apply to Hearings cases, it can also apply to Written Representations cases.

For particularly complex technical cases the DMRC may appoint an Assessor to advise it on complex matters. Parties will be advised if the DMRC decide to appoint an Assessor.

8. SITE INSPECTIONS

The DMRC can decide a case by Site Inspection or to combine this method with other methods of determination in making a decision.

Site inspections can either be accompanied or unaccompanied by parties to the Review and the method of inspection will be advised to parties in writing with further details as necessary.

9. THE DEVELOPMENT MANAGEMENT REVIEW COMMITTEE'S DECISION

Following the conclusion of the procedures selected and undertaken for a particular Review case the DMRC will issue its decision in writing.

The DMRC has the power to uphold, reverse or vary the original determination on the application.

The Review Decision Notice will contain statements relating to the terms in which the DMRC reviewed the case, its decision and the reasons for the decision. Reference will be made to the provisions of the development plan and other material considerations which were taken into account.

The Review Decision Notice will be signed by the Head of Law and Administration on behalf of the DMRC and sent to the applicant/agent. Other parties will be informed that a Review decision has been made.

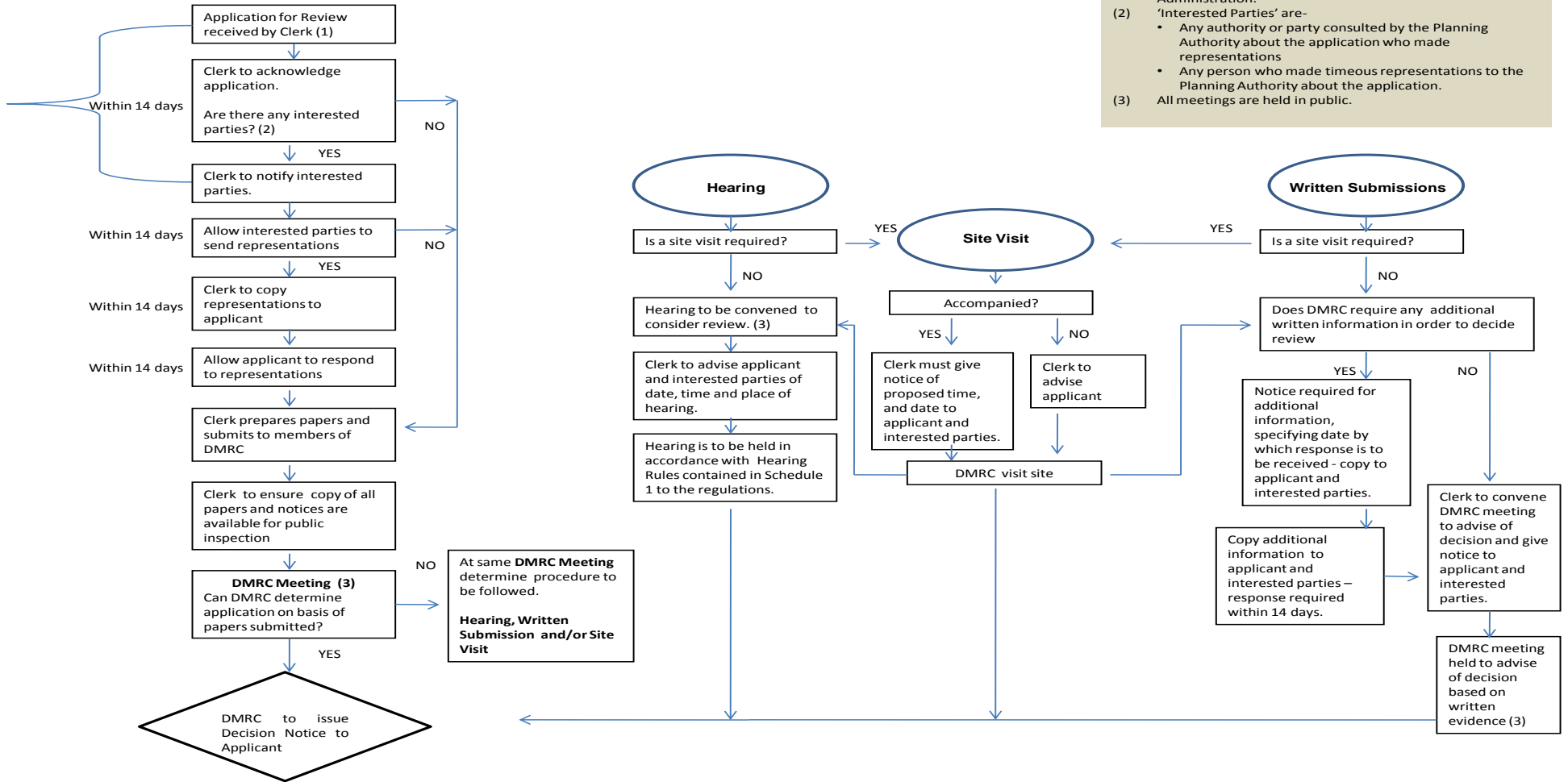
The DMRC's decision is final although the applicant/agent will receive with the Decision Notice an indication as to how any appeal to the Court of Session (on points of law only) may be made.

An exception to the above is that in a case of non determination (see Para 4.4) where the DMRC fail to reach a decision in 2 months, there is the option for the applicant to appeal to Scottish Ministers, requesting that they reach a decision. In other cases there is no statutory time limit restricting the timescale within which the DMRC must reach a decision.

ANNEXES

- A Summary of Local Review Process
- B Useful Weblinks
- C Angus Council Contacts

DEVELOPMENT MANAGEMENT REVIEW COMMITTEE BODY FLOW CHART



- NOTES**
- (1) Form to be requested and sent out by Law and Administration.
 - (2) 'Interested Parties' are-
 - Any authority or party consulted by the Planning Authority about the application who made representations
 - Any person who made timeous representations to the Planning Authority about the application.
 - (3) All meetings are held in public.

USEFUL WEBLINKS

Relevant publications on the Council's Website will be continuously updated and refreshed as the process of change proceeds.

Legislation

Copies if the legislative documents can be accessed at www.opsi.gov.uk

- The Town and Country Planning (Scotland) Act 1997
- The Planning Etc (Scotland) Act 2006
- The Planning Etc (Scotland) Act 2006 (Commencement No 7) Order 2009
- The Town and Country Planning (Hierarchy of Developments) (Scotland) Regulations 2009
- The Town and Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations 2008
- The Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2008

Circular Advice from Scottish Ministers

- Circular 5/2009 Hierarchy Regulations
<http://www.scotland.gov.uk/Publications/2009/07/03153122/0>
- Circular 7/2009 Schemes of Delegation and Local Review Procedure Regulations
<http://www.scotland.gov.uk/Publications/2009/07/07115301/0>
- Circular 4/2009 Development Management Procedures
<http://www.scotland.gov.uk/Publications/2009/07/03153034/0>
- Circular 6/2009 Planning Appeals
<http://www.scotland.gov.uk/Publications/2009/07/03100023/0>

Selected Angus Council Weblinks

- Weekly List of New Applications
<http://www.Planning.angus.gov.uk/publicaccess/tdc/weeklylist>
- Planning Register/Public Access
- Schemes of Delegation and Local Review Bodies
<http://www.angus.gov.uk>
- Council Meetings, Minutes and Reports
<http://www.angus.gov.uk/ccmeetings>

CONTACTS

For further information about planning modernisation, culture change or the new legislation please contact:

In respect of the Review Process

Elaine Whittet, Committee Officer, Angus Council, Orchardbank, Forfar DD8 1AN

Tel: 01307 476265

e-mail: WhittetE@angus.gov.uk

In respect of and Legal/legislation issues

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