## *Planning*

### **The planning system and the role of the Community Council**

 This section provides a brief introduction to key aspects of planning as Community Councils play a valuable role in the planning system. A number of links are included to help enhance understanding and knowledge that may be useful for Community Councils.

The planning system is a devolved matter. The Scottish planning system is overseen and operated by Scottish Ministers and planning authorities in Scotland, which are the 32 Councils and two national park authorities. The planning system is about creating better places and taking decisions on the infrastructure that is needed and assets to be protected for the benefit of future generations.

 The planning system improves places through identifying the types of development that should be supported. Development is defined in the planning act.  Development is a change to a place and may be a new building, like a house, or a use of land, for example or a change of use from a house to a shop.

 Community Councils are most likely to be involved in representing their community’s views in the preparation of local development plans and commenting on planning applications.  Particular attention should be given to providing an input into local development plans as they form the basis of all decisions made on planning applications.

 Further information about the planning system is available from the [Scottish Government’s website](https://www.gov.scot/policies/planning-architecture/).

## Key Terms used in this document:

* **Appeals** – The process of challenging certain decisions.
* **Enforcement** – Investigating development that may not have relevant permission or may not accord with permission in place.
* **Engagement** – including people and organisations in the planning system.
* **Development Management** – The process of deciding whether to grant or refuse development proposals.
* **Development Plan** – This is the National Planning Framework 4 and the Local Development Plan. The development plan forms the basis of decision making on planning applications.
* **Local Development Plan** – Sets out where development should and shouldn’t happen in the places they cover. Prepared by planning authorities.
* **National Planning Framework 4** – A long term plan for Scotland setting out where development and infrastructure is needed and contains national planning policies. Prepared by the Scottish Government.
* **Permitted Development Rights** – a range of development that may be undertaken without a planning application being needed.

## Legal framework

The planning system operates within [Town and Country Planning (Scotland) Act 1997](https://www.legislation.gov.uk/ukpga/1997/8/contents) (as amended, most recently by the Planning (Scotland) Act 2019).

The planning system in Scotland is plan-led. The law says that decisions on planning applications are to be made in accordance with the development plan, unless material considerations indicate otherwise.

## Planning Policy

National planning policy is contained within [National Planning Framework 4](https://www.gov.scot/publications/national-planning-framework-4/) (NPF4). It also sets out a spatial strategy for Scotland’s long term development. Local planning policy may be found in the local development plan (LDP).

The vision of NPF4 is to give priority to the climate emergency and nature crisis.  It signals the key priorities for ‘where’ and ‘what’ development should take place at a national level and is combined with national planning policy on ‘how’ development planning should manage change.

NPF4 is part of the development plan (See 'Development Planning’ section).  Because of this there is no need to repeat those policies in LDPs. Therefore, there is an expectation LDPs will be focussed on showing (including through maps) the spatial implications of national policy for different places. Few policies and written text are anticipated be needed in LDPs.

Policy advice on implementing planning legislation (wither the Act or secondary legislation and regulations) can also be found in planning [Circulars](https://www.gov.scot/collections/planning-circulars/) or guidance.

## Development Planning

The development plan is formed of the National Planning Framework and the local development plan (LDP) for the area.  Development plans set out how our places will change into the future, including where development should and shouldn’t happen.

LDPs should consider the ambitions and outcomes for an area, looking 20 years ahead. It is expected that LDPs will be focussed on showing the spatial implications of national policy for different places. LDPs identify sites for development as well as those that should be protected.

Community Councils should pay particular attention to inputting their community’s views into the preparation of development plans.  This is because the development plan will form the basis of all decisions made on planning applications. (See ‘Development Management’ section)

Community Councils should be aware of the Development Plan Scheme, which is published by the planning authority annually and sets out the programme for the preparation of the local development plan. It will include a Participation Statement that highlights ways that people, and Community Councils can get involved.

Development plans are reviewed on a 10 year cycle.  However, with the adoption of National Planning Framework 4, it is anticipated that all planning authorities will have a new Local Development Plan in place by 2028.

Community Councils will be able to contribute to a variety of stages of the local development plan preparation, including the evidence report and proposed plan.

Community bodies are now able to prepare local place plans.  These enable community aspirations for their place to be set out. Where available and registered these will be taken into account by the planning authority in the preparation of the local development plan.  Community Councils may also be community bodies for the purposes of [Section 19 of the Community Empowerment (Scotland) Act 2015](https://www.legislation.gov.uk/asp/2015/6/section/19) but should confirm whether that is the case before starting to prepare a local place plan.

## Development Management

Development management is the process of deciding whether to grant or refuse planning permission and other related consents. Planning applications may be approved, approved with conditions, or refused.   Primary responsibility for dealing with planning applications and local planning matters rests with the local planning authority.

Decisions on planning applications are made in accordance with the development plan and relevant material considerations. The planning authority consider what ‘weight’ to apply to material considerations in making their decision. In reaching a decision on a planning application, the planning authority is expected to have regard to all material factors, including consultee views and representations submitted to them.

Material considerations are things that essentially are relevant to the application being made and relevant to planning.  For example; littering isn’t generally controllable through the planning system so isn’t likely to be a material consideration, additional noise from a particular type of new use is potentially controllable through the planning system so could be a material consideration.

Scottish Ministers have a general power to call in any live planning application or appeal for their own determination. In practice though, Ministers will exercise this power sparingly, and only where issues of national importance are raised, recognising and respecting the important role of local authorities in making decisions on the future development of their areas.

There are different types of planning application, including applications for:

* Planning permission (some-times known as ‘full’ planning permission, and all the details of the proposal are included);
* Planning permission in principle (considers the principle of development and full details of the development are not provided); and
* Approval of matters specified in conditions attached to a planning permission in principle (which do not consider the principle of development but look at the details only).

 In addition there is a [hierarchy of developments](https://www.gov.scot/publications/hierarchy-developments-planning-circular-5-2009/) for which there are different handling procedures for the associated planning applications:

* National (defined by the National Planning Framework);
* Major (Defined by the Hierarchy of Developments; and
* Local (not National or Major).

The planning authority’s Scheme of Delegation identifies which applications will be decided by officers of the authority and which will decided by committee. For National and Major developments one procedural difference is that pre-application consultation (PAC) is required, including with the Community Councils whose area includes or adjoins the land for the proposal. The purpose of PAC is to give communities early awareness of proposals and an opportunity to engage with the prospective applicant, before the proposal is finalised for application. Though the applicant decides what the proposal in the application will be, this early engagement can help address potential concerns about a development.

The planning authority will send Community Councils in its area a ‘weekly list’ of planning applications. These lists will likely cover the whole planning authority area, not just the Community Council area. Community Councils may request formal consultation on particular applications. Planning authorities will also directly consult with Community Councils on planning applications for development likely to affect the amenity of the Community Council area.

Community Councils can choose to provide comments in response to a planning application or not.  Responses may be in support or objection to the planning application and must be made within the deadlines specified by the planning authority.

Where a site for development is allocated in the LDP this is to give confidence to communities and applicants about the anticipated use of the site. Planning applications that accord with the principle of the site allocation can be anticipated to be supported, subject to consideration of material considerations.  For example, applications for business development on a site allocated for businesses in the LDP can be supported where material considerations are also considered to be acceptable.

Issues raised by comments made about planning applications are summarised in the Report of Handling prepared by the planning authority for the case.

## Permitted Development Rights

Permitted Development Rights (PDR) refer to those types of development which are granted planning permission through national legislation, meaning they can be carried out without a planning application.

The legislation containing PDR is the [Town and Country Planning (General Permitted Development) (Scotland) Order 1992](https://www.legislation.gov.uk/uksi/1992/223/contents/made) (“the GPDO”). PDR are organised into a series of “classes”: each class specifies the type (or types) of development for which planning permission is granted. Most PDR are subject to conditions and/or restrictions. These may, for example: specify the maximum size or scale of what is permitted, restrict or dis-apply the rights in certain locations (e.g. conservation areas), or provide that the PDR only apply to certain developers (e.g. local authorities or statutory undertakers). If a developer cannot comply with the conditions and/or restrictions, then a planning application is required.

In some cases, PDR are subject to a process known as prior approval.  This comes in various formats, some with a prior notification element, whereby the planning authority can decide whether its prior approval is even required in the case. Where prior notification applies, the developer must, before carrying out the development, apply to the planning authority for a determination as to whether specified aspects of the proposed development, such as its siting and design, require approval. If they do not, or if they fail to respond in the specified period for prior notification, the applicant can proceed in accordance with the details as submitted.

Where prior approval is required, it can be granted, granted with conditions or refused by the planning authority.

## Enforcement

Where development is undertaken without the required planning permission, or where the development does not match the permission granted (including complying with any conditions attached to the consent) that development is in breach of planning control.

Planning authorities are responsible for investigating alleged breaches of planning control in their areas and, if they consider that a breach has indeed occurred, may take enforcement action to resolve the breach. Generally, planning authorities will seek to resolve breaches through discussion with the responsible person(s) in the first instance. However, where this does not resolve the matter, or the breach is considered significant, they may proceed to use formal powers to resolve the matter

Formal enforcement powers range from requiring a retrospective planning application, to requiring that unauthorised development ceases, or even that unauthorised buildings or structures be removed. Use of any formal enforcement powers is at the discretion of the planning authority and is required to be proportionate to the scale of the breach.

All planning authorities are required to publish and maintain an enforcement charter. This sets out the powers available to the planning authority, how the authority investigates and takes enforcement action, and how suspected breaches of planning control can be reported to the authority

## Appeals

There is right to appeal to Scottish Ministers against certain decisions made by planning authorities.  This includes planning, listed building and advertisement consent appeals as well as notices served by council’s including enforcement and amenity.

Applicants for planning permission may appeal: the refusal of a planning application; conditions imposed on a planning permission; or where a decision has not issued within a set timescale.

Not all appeals will be to Scottish Ministers. Depending on the type of application (National, Major, or Local), and how it was originally determined (delegated to officers or considered by elected members) the appeal will be considered locally by a Local Review Body (local developments delegated to an officer for decision), or by Scottish Ministers, frequently delegated to an appointed ‘Reporter’.  Planning applications for local developments which are decided by planning officers rather than the planning committee should be made to the planning authority’s Local Review Body.

**Methods of engagement**

Community Councils are well placed to engage with communities to understand their aspirations for their area and don’t have to wait for the formal process of the local development plan or planning application to do so.  A variety of tools are available that can be used by communities to discuss their place.  In particular the Place Standard Tool helps communities to have structure conversations about their area and use of the Place Standard is encouraged to inform the preparation of local development plans.

Further information: [www.ourplace.scot](http://www.ourplace.scot)

 **Planning Guidance**

National guidance on a variety of planning system topics is available from the [Scottish Government’s website](https://www.gov.scot/policies/planning-architecture/planning-guidance/), frequently but not exclusively published as Planning Advice Notes.

Locally produced guidance may also be published on planning authority websites.

**Other useful information**

* [PAS](https://www.pas.org.uk/) – Independent advice and training on planning and environmental matters and encourages public engagement in planning.
* [Improvement Service](https://www.improvementservice.org.uk/) – Supporting improvement national programmes, resources, capability and capacity.
* Scottish Government Planning, Architecture and Regeneration Division web page for [Regeneration](https://www.gov.scot/policies/regeneration/)
* [Transforming Planning](https://www.transformingplanning.scot/media/2236/draft-how-to-guide-pdf-format.pdf) - Scottish Government’s web page for planning system reform.
* [OurPlace](https://www.ourplace.scot/) - Information, tools and resources to help support the development

## LICENSE APPLICATIONS

Community Councils have a statutory right to be consulted on licensing – Under section 21 (1) b of the Licensing (Scotland) Act 2005 as this section places a duty on Licensing Boards to notify the Community Council of all applications they receive for premises licences. This is a new duty and a change from what was previously provided for in the Licensing (Scotland) Act 1976.

The Licensing (Scotland) Act 2005 contains provisions about notification of Board applications and objections and the link to the legislation is available online: <https://www.legislation.gov.uk/asp/2005/16/contents>

Licensing Boards are encouraged to consult widely within their respective areas and the the 2005 Act ensures that:

* Licensing Boards are required to notify the Community Council of any new premises licence application or application to substantially vary how a premises operates;
* Community Councils are able to object or offer representations to an application and request Licensing Boards hold a hearing to review a licence if it is operating outwith the premises licensing conditions or the licensing objectives;
* Local Authorities employ a Licensing Standards Officer whose duties include mediating with licensed premises to try and solve problems including those raised by Community Councils; and
* Licensing Boards are required to involve people resident in the locality in consultation on a Board’s Licensing Policy Statement or overprovision assessment, which could include reference to how it intends to involve Community Councils in Licensing Board matters.

The Scottish Government issued statutory guidance to Licensing Boards under Section 142 of the 2005 Act and this guidance is frequently referred to as “Section 142 guidance”. However, it is recognised that the Guidance cannot anticipate every possible scenario that may arise. Licensing Boards may therefore depart from the Guidance if they have reason to do so but must give the Scottish Ministers notice of the decision together with a statement of reasons for it.

The Licensing (Scotland) Act 2005 Section 142 Guidance for Licensing Boards was updated in January 2023 and is available online: <https://www.gov.scot/binaries/content/documents/govscot/publications/advice-and-guidance/2023/01/licensing-scotland-act-2005-section-142-guidance-licensing-boards/documents/licensing-scotland-act-2005-section-142-guidance-licensing-boards/licensing-scotland-act-2005-section-142-guidance-licensing-boards/govscot%3Adocument/licensing-scotland-act-2005-section-142-guidance-licensing-boards.pdf>

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