



# Planning etc. (Scotland) Act 2006

## 2006 asp 17

### PART 3

#### DEVELOPMENT MANAGEMENT

##### *Determination of applications*

#### 14 Pre-determination hearings

(1) After section 38 of the principal Act insert—

##### **“38A Pre-determination hearings**

- (1) Regulations or a development order may provide that, before determining an application for planning permission for a development of a class prescribed in the regulations or order, a planning authority are to give the applicant and any person so prescribed an opportunity of appearing before and being heard by a committee of the authority.
  - (2) The procedures in accordance with which any such hearing is arranged and conducted (including, without prejudice to the generality of this subsection, procedures for ensuring relevance and avoiding repetition) and any other procedures consequent upon the hearing are to be such as the authority consider appropriate.
  - (3) Any right of attendance at the hearing (other than for the purpose of appearing before and being heard by the committee) is to be such as the authority consider appropriate.
  - (4) In relation to an application other than is provided for in regulations or a development order under subsection (1), a planning authority may elect to give the applicant and any other person an opportunity such as is mentioned in that subsection; and if the authority do so elect, subsections (2) and (3) apply accordingly.”.
- (2) In section 56 of the Local Government (Scotland) Act 1973 (c. 65) (arrangements for discharge of functions by local authorities), after subsection (6) there is inserted—

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“(6A) A local authority’s function of determining an application for planning permission for a development of a class mentioned in section 38A(1) of the Town and Country Planning (Scotland) Act 1997 (c. 8) shall be discharged only by the authority.”.

## 15 Additional grounds for declining to determine application for planning permission

Section 39 of the principal Act (power of planning authority to decline to determine application) is amended as follows—

(a) for subsection (1) substitute—

“(1) A planning authority may decline to determine an application (in this subsection referred to as the “current application”) for planning permission for the development of any land—

(a) if—

- (i) in the period of two years ending with the date on which the current application is received, the Scottish Ministers have refused a similar application referred to them under section 46 or have dismissed an appeal against the refusal of, or an appeal under section 47(2) in respect of, a similar application, and
- (ii) in the opinion of the authority there has not, since the Scottish Ministers refused the similar application or dismissed the appeal, been any significant change in the development plan (so far as material to the current application) or in any other material consideration,

(b) if—

- (i) in that period of two years the planning authority have refused more than one similar application,
- (ii) there has been no appeal to the Scottish Ministers against either (or as the case may be any) of those refusals, and
- (iii) in the opinion of the authority there has not, since the more (or as the case may be most) recent of the refusals, been any significant change in the development plan (so far as material to the current application) or in any other material consideration,

(c) if—

- (i) in that period of two years the planning authority have refused more than one similar application,
- (ii) there has been an appeal to the Scottish Ministers against either (or as the case may be any) of those refusals but as at the time the current application is received no such appeal has yet been determined, and
- (iii) in the opinion of the authority there has not, since the more (or as the case may be most) recent of the refusals, been any significant change in the development plan (so far as material to the current application) or in any other material consideration,

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- (d) if—
  - (i) in that period of two years there have been appeals under section 47(2) in respect of more than one similar application but as at the time the current application is received no such appeal has yet been determined, and
  - (ii) in the opinion of the authority there has not, since the more (or as the case may be most) recent of the appeals was made, been any significant change in the development plan (so far as material to the current application) or in any other material consideration, or
- (e) if—
  - (i) in that period of two years two similar applications have been made to the planning authority,
  - (ii) the planning authority have refused one of those applications and there has been an appeal under section 47(2) in respect of the other but as at the time the current application is received the appeal under that section has yet to be determined as has the appeal (if any) against the refusal, and
  - (iii) in the opinion of the authority there has not, since the refusal or since the appeal was made (whichever was the more recent), been any significant change in the development plan (so far as material to the current application) or in any other material consideration.

(1A) A planning authority or the Scottish Ministers must decline to determine an application for planning permission for the development of any land if, in their opinion—

- (a) compliance with section 35B was required as respects the development, and
- (b) there has not been such compliance.

(1B) But before deciding whether, under subsection (1A), an application must be declined the authority or as the case may be the Scottish Ministers may request the applicant to provide such additional information as they may specify.

(1C) Where, under subsection (1A), a planning authority or the Scottish Ministers decline to determine an application they are to advise the applicant of the reason for their being of the opinion mentioned in that subsection.

(1D) Subsection (1A) is subject to section 35A(9).”,

- (b) subsection (3) is repealed, and
- (c) the title of the section becomes “**Declining to determine an application**”.

## 16 Manner in which applications for planning permission are dealt with etc.

In section 43 of the principal Act (directions etc. as to method of dealing with applications)—

- (a) in subsection (1)—
  - (i) after paragraph (a) insert—

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- “(aa) for enabling the Scottish Ministers to give directions to the planning authority requiring them, in respect of any such development, or in respect of development of any such class, as may be specified in the directions—
- (i) to consider, where the authority are minded to grant planning permission, imposing a condition specified in, or of a nature indicated in, the directions; and
  - (ii) (unless the directions are withdrawn) not to grant planning permission without first satisfying the Scottish Ministers that such consideration has been given and that such a condition either will be imposed or need not be imposed;”,
- (ii) after paragraph (b) insert—
- “(bb) for enabling the planning authority, in the course of their consideration of an application, to require from the applicant particulars, documents, materials or evidence which they consider they require to enable them to deal with the application (being particulars, documents, materials or evidence additional to any which, by virtue of section 32(2), as the case may be, was included in, accompanied or was provided in support of anything in, or relating to, the application);”, and
- (iii) in paragraph (f), for the words from “the planning authority” to “order” substitute “, or enabling directions to be made requiring, the planning authority to give to the Scottish Ministers and to such other persons as may be prescribed by or under the regulations, order or directions”,
- (b) after subsection (1) insert—
- “(1A) Any notice given by virtue of paragraph (d) or (e) of subsection (1)—
- (a) is to include a statement of—
    - (i) the terms of the planning authority’s decision,
    - (ii) any conditions to which that decision is subject, and
    - (iii) the reasons on which the authority based that decision,
 and
  - (b) may include such other information as may be prescribed by the regulations or the order.”, and
- (c) after subsection (2) add—
- “(3) Paragraphs (a) and (f) of that subsection shall apply in relation to applications under section 75A(2) as they apply in relation to applications for planning permission.
- (4) For the purposes of the application provided for in subsection (3), the reference in paragraph (a) of subsection (1) to restricting the grant of planning permission is to be construed as a reference to restricting the giving of any agreement under subsection (2) of section 75A or the making of any determination under subsection (4) of that section.”.

## 17 Local developments: schemes of delegation

After section 43 of the principal Act insert—

### “43A Local developments: schemes of delegation

- (1) A planning authority are—
  - (a) as soon as practicable after the coming into force of section 17 of the Planning etc. (Scotland) Act 2006 (asp 17), and thereafter—
    - (i) whenever required to do so by the Scottish Ministers, or
    - (ii) subject to sub-paragraph (i), at such intervals as may be provided for in regulations under this section,  
to prepare a scheme (to be known as a “scheme of delegation”) by which any application for planning permission for a development within the category of local developments or any application for consent, agreement or approval required by a condition imposed on a grant of planning permission for a development within that category is to be determined by a person appointed by them for the purposes of this section instead of by them, and
  - (b) to keep under review the scheme so prepared.
- (2) Other than for the purposes of subsections (8) to (16) or section 47, the determination of any person so appointed is to be treated as that of the authority.
- (3) References in subsection (1) to a development do not include references to a development of a class mentioned in section 38A(1).
- (4) Without prejudice to subsection (1)(a)(ii), regulations under this section may make provision as to—
  - (a) the form and content of, and
  - (b) the procedures for preparing and adopting,  
a scheme of delegation.
- (5) Where an application for planning permission falls to be determined by a person so appointed, sections 37(1) to (3), 38, 39, 41(1) and (2) and 42 and Part 1 of Schedule 3 apply, with any necessary modifications (including, in the case of that Part, the modification mentioned in subsection (18)), as they apply to an application which falls to be determined by the planning authority.
- (6) The planning authority may, if they think fit, decide themselves to determine an application which would otherwise fall to be determined by a person so appointed.
- (7) Any such decision must include a statement of the reasons for which it has been taken; and a copy of the decision is to be served on the applicant.
- (8) Where a person so appointed—
  - (a) refuses an application for planning permission or for consent, agreement or approval,
  - (b) grants it subject to conditions, or
  - (c) has not determined it within such period as may be prescribed by regulations or a development order,  
the applicant may require the planning authority to review the case.

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- (9) Where a requirement to review is made by virtue of paragraph (c) of subsection (8), the person so appointed is, for the purposes of the review, to be deemed to have decided to refuse the application.
- (10) Regulations or a development order may make provision as to the form and procedures of any review conducted by virtue of subsection (8).
- (11) Without prejudice to the generality of subsection (10), the regulations or order may—
- (a) make different provision for different cases or classes of case,
  - (b) make different provision for different stages of a case,
  - (c) make provision in relation to oral or written submissions and to documents in support of such submissions,
  - (d) make provision in relation to time limits (including a time limit for requiring the review), and
  - (e) require the planning authority to give to the person who has required the review such notice as may be prescribed by the regulations or the order as to the manner in which that review has been dealt with.
- (12) Any notice given by virtue of paragraph (e) of subsection (11)—
- (a) is to include a statement of—
    - (i) the terms in which the planning authority have decided the case reviewed, and
    - (ii) the reasons on which the authority based that decision, and
  - (b) may include such other information as may be prescribed by the regulations or the order.
- (13) The provision which may be made by virtue of subsections (10) and (11) includes provision as to—
- (a) the making of oral submissions, or as to any failure to make such submissions or to lodge documents in support of such submissions, or
  - (b) the lodging of, or as to any failure to lodge, written submissions or documents in support of such submissions,
- and, subject to section 43B, as to what matters may be raised in the course of the review.
- (14) The provision which may be made by virtue of subsections (10) and (11) includes provision that the manner in which the review, or any stage of the review, is to be conducted (as for example whether oral submissions are to be made or written submissions lodged) is to be at the discretion of the planning authority.
- (15) The planning authority may uphold, reverse or vary a determination reviewed by them by virtue of subsection (8).
- (16) Subject to subsection (17) and except as provided under section 239, the decision of a planning authority in a case reviewed under this section is final.
- (17) Where a requirement to review is made by virtue of paragraph (c) of subsection (8) and the planning authority have not conducted the review within such period as may be prescribed by regulations or a development order, the authority are to be deemed to have decided to refuse the application and section 47(1) is to apply accordingly.

- (18) The modification is that, in paragraph 1(6) of Schedule 3, for paragraph (b) there is substituted—
- “(b) is to be regarded for the purposes of section 43A as a condition imposed by a decision of the appointed person, and may accordingly be the subject of a review under subsection (8) of that section.”.

**43B Matters which may be raised in a review under section 43A(8)**

- (1) In a review under section 43A(8), a party to the proceedings is not to raise any matter which was not before the appointed person at the time the determination reviewed was made unless that party can demonstrate—
- (a) that the matter could not have been raised before that time, or
- (b) that its not being raised before that time was a consequence of exceptional circumstances.
- (2) Nothing in subsection (1) affects any requirement or entitlement to have regard to—
- (a) the provisions of the development plan, or
- (b) any other material consideration.”.