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DEVELOPMENT MANAGEMENT PROCEDURES

circular

PLANNING SERIES

Scottish Planning Series

PLANNING CIRCULAR

DEVELOPMENT MANAGEMENT PROCEDURES

CONTENTS

Interpretation

This section sets out the meaning of various terms for the purposes of the Circular.

"the 1997 Act"	the Town and Country Planning (Scotland) Act 1997[1] (as amended)
"the 1973 Act"	the Local Government (Scotland) Act 1973[2]
"the DMR"	the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013[3]
"EIA"	environmental impact assessment under the "EIA Regulations"
"EIA Regulations"	the Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2017[4]
"Fees Regulations"	the Town and Country Planning (Fees for Applications) (Scotland) Regulations 2022[5] (as amended)
"the hierarchy"	the hierarchy of national, major and local developments. The NPF designates national developments, the Town and Country Planning (Hierarchy of Developments) (Scotland) Regulations 2009[6] describe the classes of development belonging to the category of major developments. Those Regulations also provide that all development other than national developments and major developments belong to the category of local developments.
"the Habitats Regulations"	The Conservation (Natural habitats &c) Regulations 1994[7]
"householder development"	the carrying out of building, engineering or other operations – (a) to improve, add to or alter an existing dwellinghouse; (b) within the curtilage of a dwellinghouse for a purpose incidental to the enjoyment of that dwellinghouse; or (c) to erect or construct a gate, fence or wall or other means of enclosure along the boundary of the curtilage of a dwellinghouse

[1] Town and Country Planning (Scotland) Act 1997
[2] Local Government (Scotland) Act 1973
[3] Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013
[4] Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2017
[5] Town and Country Planning (Fees for Applications) (Scotland) Regulations 2022
[6] Town and Country Planning (Hierarchy of Developments)(Scotland) Regulations 2009
[7] The Conservation (Natural habitats &c) Regulations 1994

“major accident hazard sites”	sites to which the Planning (Hazardous Substances (Scotland) Act 1997[8] and Town and Country Planning (Hazardous Substances) (Scotland) Regulations 2015[9] apply.
“the NPF”	The National Planning Framework
“neighbouring land”	a plot or area of land (other than land forming part of a road) which, or part of which, is conterminous or within 20 metres of the boundary of the land for which the development is proposed.
“PAC”	Pre-application consultation with communities under section 35B of the 1997 Act
“planning permission”	references in this circular to planning permission include planning permission in principle unless reference is made to specific provisions or requirements relating to planning permission in principle.
“regulation”	unless otherwise stated, means a regulation in the DMR
“section”	unless otherwise stated, means a section of the 1997 Act
“Section 42 application”	means an application for a new planning permission or new planning permission in principle for a development but with different conditions from those attached to a previous permission for that development. See Annex H.
“schedule”	unless otherwise stated, means a schedule to the DMR
“statutory consultee”	bodies who must be consulted on an application by virtue of the DMR, other legislation or a direction from Scottish Ministers

[8] Planning (Hazardous Substances (Scotland) Act 1997
[9] Town and Country Planning (Hazardous Substances) (Scotland) Regulations 2015

1. Introduction

1.1 This circular describes the requirements for processing planning applications contained in the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013 (as amended) and the relevant provisions of the Town and Country Planning (Scotland) Act 1997 (as amended). As well as giving an overview of the development management system, the circular will help planning authorities, applicants, communities and others to understand how the legislation works. It supersedes Circular 3/2013 on Development Management Procedures.

1.2 This circular also includes guidance on the Town and Country Planning (Charges for Publication of Notices) (Scotland) Regulations 2009 (see paragraphs 4.40 to 4.41).

1.3 This circular follows the various stages of processing: the pre-application phase; content of applications; validation and acknowledgement; processing by the authority; and decision and post-application requirements. The circular also describes the differing requirements for applications in each of the categories of development in the planning hierarchy, namely national, major and local developments.

1.4 There are references throughout this document to the provisions governing the planning hierarchy as well as to legislation for appeals and local reviews. These mechanisms are all explained in more detail in separate circulars, available at: Planning circulars: index - gov.scot (www.gov.scot)

1.5 References in this circular to planning permission include planning permission in principle unless reference is made to specific provisions or requirements relating to planning permission in principle.

1.6 Planning applications can be made online. More information can be found at eDevelopment.scot.

Pre-Application Phase

1.7 Chapter 2 of the circular promotes early and open negotiations between prospective applicants, planning authorities and other parties, such as statutory consultees, in advance of the formal application for national and major developments, and local developments where warranted. It also sets out the requirements for statutory pre-application consultation (PAC) with communities for national and major developments. This part of the circular also sets out good practice in relation to PAC.

Making a Planning Application

1.8 Chapter 3 of the circular relates to applications for planning permission, planning permission in principle, approval of matters specified in conditions (related to planning permission in principle) and the streamlined requirements for applications for permission for development previously granted planning

permission (“further applications”). Guidance is included on the content of applications.

Processing Applications

1.9 Chapter 4 of the circular explains requirements for: putting applications on the register; the list of extant applications and weekly lists; carrying out neighbour notification (the responsibility of the planning authority); and any newspaper notices which may be required.

1.10 The circular sets out the requirements for pre-determination hearings, which apply to applications for major developments which are significantly contrary to the development plan and national developments.

1.11 The requirements for reports on handling and decision notices are also included in this part of the circular.

Post Decision Provisions

1.12 Chapter 5 of the circular explains the requirements on developers for notices of initiation of development, notices of completion of development and on-site notices and covers the information which must be submitted, or displayed, in these notices. In the case of on-site notices, it sets out the classes of developments for which a notice has to be displayed. This chapter also includes guidance on notices requiring the completion of development (‘completion notices’) which may be issued by planning authorities.

Processing Agreements

1.13 Whilst not a statutory requirement, a processing agreement is a very effective project management tool, particularly for the handling of applications proposing substantial/complex development. Chapter 6 of the circular provides guidance on the preparation, form and content of processing agreements.

2. Pre-Application Phase

Background

2.1 The Scottish Government wants to encourage trust between parties, and promote open, positive working relationships from the earliest stages in the planning process and to provide, where possible, an early opportunity for community views to be reflected in proposals.

2.2 Both pre-application consultations with the community and pre-application discussions with the planning authority and statutory consultees are intended to add value at the start of the development management process. They should improve the quality of the proposal and allow prospective applicants the opportunity to amend their emerging proposals in light of community, statutory consultee and planning authority opinion. For proposed major and national developments, there are statutory requirements for consultation with communities before a planning application can be made (see paragraph 2.7).

Pre-Application Engagement Between Prospective Applicants, Planning Authorities and Statutory Consultees

2.3 The Scottish Government strongly encourages constructive pre-application discussions between the prospective applicants and the relevant planning authority, agencies and other bodies which will have to be consulted on any subsequent planning application. Such discussions are a separate activity from the statutory pre-application consultation (PAC) with communities required by legislation (detailed below). Both non-statutory pre-application discussions and statutory PAC are intended to front-load the application process.

2.4 Pre-application discussions can help to identify potential key planning issues and considerations at an early stage. They can help to clarify the information required to support a subsequent application and the potential scope of statutory consultation. In doing so, pre-application discussions can inform design development and help to improve the quality of planning applications and the efficiency of the determination process.

2.5 The Scottish Government also strongly encourages the use of processing agreements with planning applications for national and major developments and for substantial or complex local developments. These provide greater clarity about the timescales, information requirements and processes that will take place before a determination is made on such proposals. A processing agreement (see Chapter 6 for more information) is essentially a framework for project managing a complex planning application. The pre-application stage is the most appropriate and effective point to conclude the terms of a processing agreement.

2.6 Between them, pre-application discussions and processing agreements should identify upfront the information required in support of an application and when it will be submitted and considered. Those involved should ensure that any requirements for additional information are limited to what is necessary to

inform the decision, relevant to the development proposal, proportionate to the scale and complexity of likely impacts arising, and are clearly scoped to avoid unnecessary costs. Likewise, submissions should be focussed and fit for purpose and findings clearly reported.

Statutory Pre-Application Consultation Between Prospective Applicants and Communities

(Sections 35A, 35B, 35C and 39 and regulations 4 – 7B)

The Purpose of PAC

2.7 The objective of PAC is to provide a process which enables communities to:

- be better informed about major and national development proposals; and
- have an opportunity to contribute their views to prospective applicants before a formal planning application is submitted to the planning authority.

2.8 In doing so, PAC can help to: improve the quality of planning applications; address misunderstandings; highlight any issues which are particularly important to the local community; and smooth the application process itself and ultimately improve development outcomes.

2.9 The Scottish Government also encourages pre-application engagement with communities in cases where statutory PAC requirements do not apply[10].

Overview of the PAC Process

2.10 PAC is a statutory requirement for major and national developments and is to be undertaken in accordance with the procedures set out in sections 35A, 35B, 35C and 39 and regulations 4 to 7B. The key stages of the PAC process are:

- Determining whether PAC is required (paragraphs 2.19 – 2.21);
- Giving a proposal of application notice (PoAN) to the planning authority (paragraphs 2.22 – 2.28);
- Publishing newspaper notices in advance of public events (paragraphs 2.32 – 2.36);
- Carrying out statutorily required consultation activity:
  - Holding a minimum of two physical public events regarding the proposals (paragraphs 2.37 – 2.44);
  - Consulting relevant community councils (paragraphs 2.45 – 2.47);
- Carrying out any additional consultation activity beyond the statutory minimum(paragraphs 2.48 – 2.52) as required by the planning authority in its response to the PoAN;
- Making the application to the planning authority no earlier than 12 weeks from when the PoAN was given to the planning authority, and no later than 18 months from the giving of the PoAN (paragraphs 2.29 – 2.31); and

[10] Community involvement in the planning process

- Submitting a report of PAC alongside their application for planning permission (paragraphs 2.53 – 2.61).

General Considerations

2.11 PAC does not take away the need for, and right of, individuals and communities to express formal views to the planning authority during the planning application process itself. This should be emphasised by the prospective applicant during PAC. While engagement should be meaningful, the prospective applicant is not obliged to take on board community views, or directly reflect them in any subsequent application. As with any application for planning permission, the applicant has the right to choose what they wish to apply for. It is important, therefore, for communities and others to follow their interest in a proposal through to the planning application stage, when views can be made to the planning authority before it determines the application.

2.12 A range of considerations, in addition to the views of the public, will inform the development of a prospective applicant's proposals, such as planning policy, as well as financial, legal and contractual constraints. It is important to note that Scotland's planning system is plan-led, so planning policies contained in national policy and local development plans are the starting point for decisions on planning applications (See Annex A). There are opportunities for the public to engage in the development of such policy before the stage of individual applications and PAC.

2.13 Scottish Ministers expect planning authorities to develop and maintain up to date lists of bodies and interests with whom prospective applicants should consult in particular types of case (similar lists could be prepared for the purposes of pre-application discussions – see paragraph 2.3). They should draw from those resources as appropriate to the particular proposal and its potential impacts and not simply send the same list of consultees in response to each and every proposal of application notice. These lists should be available to prospective applicants, who can draft proposal of application notices in light of their content.

2.14 Prospective applicants should consider:

- The timing of their PAC with regard to pre-application discussions with the planning authority and statutory consultees. Either discussion may identify constraints or considerations, which may in some cases affect the scope to amend the proposed development.
- Approaching communities to help frame their PAC, including on when and how best to approach particular parties, such as community councils, for comment.
- The timing of:
    - events and other engagement activity;
    - information provided in support of such activities; and
    - the timing of deadlines for comments, to allow effective engagement with communities.

- Additional measures for publicising PAC activities, such as use of their own web sites to host information.
- The use of online measures, in addition to the statutory minimum requirement for physical events, which may help to broaden participation and engagement.

2.15 Prospective applicants should have meaningful and proportionate engagement with those who represent the views of potentially affected communities, guided by PAN 3/2010: *Community Engagement*, the National Standards for Community Engagement or other locally agreed or adapted framework or set of principles.

2.16 A number of tools (including those mentioned in paragraph 2.15 above) are available which provide a sound basis for prospective applicants and planning authorities to assess and respond to the need for any additional consultation requirements, as appropriate.

2.17 Information issued as part of PAC should be factually accurate, easy to understand, jargon free, accessible and relevant. It should be made available in appropriate formats and provided in good time to enable people to take part and discuss their views with others. In doing so, prospective applicants should consider the needs of different groups in the local population, such as people with disabilities, age or language related issues.

2.18. The use of online tools as an additional measure can help broaden participation and enable engagement with a wider range of people who could be affected by the proposal.

Determining whether PAC is required

(Section 35A and regulations 4 and 5)

2.19 Unless an exemption applies, all applications for planning permission or for planning permission in principle under regulations 9, 10 or 11 for major and national development require PAC between prospective applicants and communities. Applications for such developments will need to demonstrate compliance with the legislative requirements for PAC. The National Planning Framework (NPF) and the Town and Country Planning (Hierarchy of Developments) (Scotland) Regulations 2009 (SSI 2009/51) specify what development is to be treated as national or major development.

2.20 An exemption applies where an application for planning permission is made under Section 42 (a Section 42 application see Glossary) or where an exemption applies under Section 35A(1A)(b). See Annex B for more information about exemptions from PAC.

2.21 A screening process is available whereby prospective applicants can seek the planning authority's view on whether PAC is required. This will involve consideration as to whether the application is for a national development or a major development, or, where such development is involved, whether the

criteria for exemption are met. Further information on the screening process can be found in Annex B.

Proposal of application notice

(Section 35B and regulation 6)

2.22 Where PAC is required, the prospective applicant must provide to the planning authority a 'proposal of application notice' (PoAN) at least 12 weeks prior to the submission of an application for planning permission. That notice must include the following information:

i) a description in general terms of the development to be carried out;
ii) the postal address of the development site, if it has one;
iii) a plan showing the outline of the site at which the development is to be carried out and sufficient to identify the site;
iv) detail as to how the prospective applicant may be contacted and corresponded with; and
v) an account of what consultation the prospective applicant proposes to undertake, including information as to when such consultation is to take place, with whom and what form it will take. This should include any steps in addition to the statutory minimum for consultation.

2.23 Element (v) will assist the planning authority in responding to the proposal of application notice with any additional notification and consultation requirements (see paragraphs 2.48 to 2.52).

2.24 The 'description in general terms' should accurately and adequately convey to the layperson what the development involves; for example, providing information on the scale, dimensions, appearance of the development, etc. Describing a proposal for superstore with car park and petrol station as a "retail development" or erecting wind turbines as "renewables development" with "ancillary development" is unlikely to be sufficient in itself.

2.25 While there is scope for proposals to alter between PAC and an application being submitted, any subsequent application needs to be recognisably linked to what was described in the proposal of application notice. A very detailed or narrow descriptive content in the PoAN means that relatively minor changes could trigger the need to repeat PAC. A balance, therefore, has to be struck between including enough information so that members of the public can reasonably identify the proposal and raise issues (in light of the information provided, or potential issues where detail may follow in an application), without the basic proposal at PAC being so detailed it changes out of recognition when the application is made.

2.26 It is for the planning authority to satisfy itself that an application is sufficiently linked to the proposals consulted upon at the pre-application stage. An application including development of land outwith the site indicated in the PoAN may cast doubt over such a link. Prospective applicants should ensure, as far

as possible, that the site identified in PAC covers all the likely options for the final proposal.

2.27 The submission of the PoAN in accordance with the legislation is an important point as regards time limits on making applications – see paragraphs 2.29 – 2.31. Information in relation to the proposal of application notice must be placed on the list of applications (see paragraphs 4.45 – 4.46).

Planning authority response to a PoAN

(Section 35B(7) and (8))

2.28 The planning authority has 21 days from when the PoAN is given to respond regarding any additional PAC requirements (see paragraphs 2.48 – 2.52 below). In considering whether to require additional consultation, the planning authority is to have regard to the nature, extent and location of the proposed development and to the likely effects, at and in the vicinity of that location, of it being carried out. The applicant will need to have complied with such additional PAC requirements in addition to the statutory requirements before making an application.

PoAN and time limits on making planning applications

(Section 35B(3))

2.29 The statutory PAC process starts when the prospective applicant gives the PoAN to the planning authority and a number of time limits are measured from that point.

2.30 After a minimum of 12 weeks from the giving of the PoAN, and having carried out the statutory requirements and any additional requirements specified by the planning authority, an applicant can submit the application along with the required written PAC report.

2.31 An application must be made within 18 months from when the PoAN is given to the planning authority. If it is not, then the PAC measures carried out will be redundant and PAC will need to be started again from the beginning.

Newspaper Notices

(Regulation 7)

2.32 The notice for the first statutory public event must include:

a) a description of the proposed development and its location;
b) details as to how (including by what electronic means) further information may be obtained concerning the proposed development;
c) the date and place of the public event;

d) a statement explaining how, and by when, persons wishing to make comments to the prospective applicant relating to the proposal may do so; and
e) a statement clarifying that comments made to the prospective applicant are not representations to the planning authority and that there will be an opportunity to make representations on any resultant application to the planning authority.

2.33 The newspaper notice for the final public event must include all but item (d) as regards making comments – this event being primarily about feedback to the public as regards the views gathered during PAC.

2.34 Notice of these public events must be published at least 7 days in advance in a newspaper circulating in the locality of the proposed development.

2.35 Where additional events are held, notices should be published in a similar manner.

2.36 Such notices can also include, for example, reference to where further information on the prospective applicant's PAC can be found, such as a web site where applicable.

Public events

(Regulation 7)

2.37 The prospective applicant is required to hold at least two events for members of the public where they can make comments to the prospective applicant on the proposals. Whether two or more PAC public events are held, at the final event the prospective applicant is required to provide feedback to the public on the views obtained through the PAC process. There must be at least 14 days between the first and final event.

2.38 Prospective applicants will gain less, see paragraph 2.8, from poorly attended or unrepresentative PAC events. For this reason, they should ensure that processes are put in place that will allow members of the community to participate meaningfully in any public event. It is not the intention that planning authorities will routinely have a direct role in PAC activities beyond their statutory roles in screening, responding to proposal of application notices and considering PAC reports when validating applications.

2.39 The public events should, as far as possible, be accessible to all members of the public. Consideration should be given to any additional needs of specific members of the public, such as people with disabilities. Such considerations include:

- accessibility of the location and the building itself;
- access to appropriate facilities, such as toilets;
- the nature of supporting materials, presentations and engagement at the event.

2.40 It may be appropriate for the public event to take place over a number of dates, times and places. Prospective applicants must ensure that individuals and community groups can submit written comments in response to the newspaper advertisement. There should be scope for people to take information away from public events and to respond in writing later, having considered what they have seen and heard.

2.41 Presentations at events should follow the guidance at paragraph 2.17 about information. Staffing of events should include people who are knowledgeable about the proposals and about the planning issues likely to be of concern or interest to the public. PAC should not be treated by prospective applicants as merely a marketing exercise to promote the development.

2.42 There is a need to emphasise to communities that the plans presented to them may alter in some way before the final proposal is submitted as a planning application. Ideally, those consulted or who expressed views could be given a chance to comment on any significant changes to proposals being considered as a result of PAC, before the application is finalised.

2.43 The prospective applicant is required to provide feedback at the final PAC public event, and the nature of this feedback will depend on the circumstances of the case. In some cases, for example, prospective applicants may be able to indicate the changes to be made in light of earlier public comment, or the reasons why changes are not proposed. In other cases they may only be able to say what issues arising from those earlier comments they will be considering further.

2.44 Prospective applicants may, for example, want to take issues forward in future pre-application discussion with other parties, or may consider issues raised at, or submitted after, the final public event. The eventual application and PAC report will indicate the extent to which they have, or have sought to, address pre-application comments, hence the importance of the public continuing to engage at the application stage.

Consultation with community councils

(Regulation 7)

2.45 The prospective applicant must consult every community council any part of whose area is within or adjoins the land on which the proposed development is situated. This may include community councils in a neighbouring planning authority. The prospective applicant must also serve on these community councils the PoAN.

2.46 Each local authority has at least one Community Council Liaison Officer who should be able to provide contact details for Chairs and Secretaries of community councils. Neighbouring authorities should be able to assist when adjoining community councils are beyond the boundary of the planning authority in whose area the proposal is located.

2.47 When planning their PAC, it is suggested that prospective applicants contact relevant community councils as regards when and how best to seek their views.

Additional consultation activity

(Section 35B and regulation 6)

2.48 The prospective applicant should indicate in the PoAN what consultation, if any, they will undertake in addition to the statutory minimum. The planning authority must respond within 21 days of receipt of the notice as regards any additional notification and consultation it wishes to see undertaken (including that indicated by the prospective applicant) beyond the statutory minimum, in order to make it binding on the prospective applicant. If there is no response to the proposal of application notice by the planning authority within 21 days, it would be for the applicant to consider any subsequent request for additional consultation.

2.49 In requiring any additional pre-application consultation, planning authorities must have regard to the nature, extent and location of the proposed development and to its likely effects, both at that location and in its vicinity. Additional consultation requirements should be proportionate, specific and reasonable in the circumstances.

2.50 In responding to a proposal of application notice, and given their powers to require additional consultation, planning authorities should be as clear as they can as to their expectations of matters to be included in the PAC report. In this way, the prospective applicant will be more readily able to show that the required steps have been undertaken.

2.51 Planning authorities, in considering any additional consultation requirements, may want to seek the views of others, for example, the relevant community councils.

2.52 Planning authorities in responding to a proposal of application notice may wish to draw attention to the Scottish Government's Guidance on the Promotion and Use of Mediation in the Scottish Planning System (Circular 2/2021)[11]. This guidance must not be specified as a requirement for PAC, mediation being a voluntary activity.

[11] Scottish Government's Guidance on the Promotion and Use of Mediation in the Scottish Planning System (Circular 2/2021)

PAC reports

(Sections 35C and 39 and regulations 3, 7B and 9 to 11)

Content

2.53 The applicant must prepare a report of what has been done during the pre-application phase to comply with the statutory requirements for PAC and any requirements set out in the planning authority's response to the PoAN.

2.54 The statutory requirements for the form and content of the report are set out in Annex C.

2.55 The report must accompany the subsequent application for planning permission or planning permission in principle under regulations 9 to 11 (other than an application to which an exemption applies) for major or national development. The authority is required to include it on Part I of the planning register along with the application details, plans and drawings.

Role of PAC Reports

2.56 The main purpose of the PAC report is to help the planning authority to confirm that PAC has taken place in line with statutory minimum requirements and any further requirements set by the authority in its response to the proposal of application notice.

2.57 Another purpose for the PAC report is a transparency measure: to help those who engaged in PAC, and anyone else, see how that process shaped the eventual proposal. The explanation of how the prospective applicant took into account the views raised should seek to explain what changes were taken on board, and address any views which could not be accommodated.

2.58 The authority is required to include the PAC report on Part I of the public planning register along with the application details, plans and drawings.

2.59 The report is not likely to have a significant role in the determination of any subsequent application, unless it identifies issues or contains information which could be considered a material consideration in terms of the 1997 Act and to which the planning authority should give weight. Further information on what may be a material consideration is set out in Annex A to this circular.

2.60 Representations made to the prospective applicant at the PAC stage are not representations to the planning authority nor are they necessarily made on the proposals for development contained in the eventual application (see paragraph 2.11). A proposal may have altered between PAC and the application – that is the intention after all – and it is not for the planning authority to second guess the extent to which members of the public’s views on, or concerns about, the proposal as presented at PAC may have changed, or not, with regard to the proposal as set out in the eventual application.

2.61 Where parties are concerned that their views on the proposal have not been taken on board as a result of the PAC, it is important that they make representations on the proposal in the planning application to the planning authority at the planning application stage. The planning authority can then give due consideration to these views before a decision is reached on whether to grant the proposal planning permission.

Failure to Comply with PAC Requirements and Declining to Determine an Application

(Section 39)

2.62 Planning authorities must decline to determine an application where PAC requirements apply and, in their opinion, have not been complied with. Before coming to such a view the planning authority may seek additional information from the applicant. Where a planning authority declines to determine an application on these grounds, they are to advise the applicant of their reasons. The requirement to decline to determine would not apply where a screening statement has been issued by the planning authority saying PAC is not required or exemption from PAC applies and an application is made in accordance with the time limit(s) in those regards. (See Annex B, paragraphs 24 and 25).

Notices to owners and agricultural tenants

(Section 35, regulation 15 and schedule 1)

2.63 Prior to applying for planning permission or planning permission in principle under regulations 9, 10 or 11, applicants should notify all persons who (other than themselves) were the owners of any of the land to which the application relates, or were agricultural tenants at the beginning of the prescribed period (i.e. 21 days ending with the date on which the application was submitted).

2.64 Notices to owners and agricultural tenants should be in the form set out in schedule 1 and must include the name of the applicant, a description of the proposed development, its address or location and the name and address of the planning authority to whom the application has been submitted.

2.65 The applicant must submit a certificate with the planning application certifying whether there are any other owners or agricultural tenants of any of the land to which the application relates and, if so, which of these have been notified of the proposed development. The certificate must state:

a) whether or not the land or part of the land to which the application relates constitutes or forms part of agricultural land;

and, depending on the circumstances:

b) that at the beginning of the prescribed period no person (other than the applicant) was the owner of any of the land to which the application relates or an agricultural tenant; or

c) that the applicant has given notice to every person (other than the applicant) who at the beginning of the prescribed period was the owner of any land to which the application relates or an agricultural tenant; or

d) that the applicant is unable to give notice to every such person (i.e. where there are other owners and/ or agricultural tenants, he is unable to notify any or all of these people).

2.66 A certificate issued under c) or d) above must set out the name of every person to whom notice was given and the address to and date on which the notice was given. Where d) applies the applicant must certify that he has taken reasonable steps (setting out what they were) to try and ascertain the names and addresses of those to whom he has been unable to give notice. In this situation, the planning authority must publish notification in a local newspaper once an application has been received (regulation 20).

Applications for the working and winning of underground minerals

(Regulation 15)

2.67 The notification of site owners and agricultural tenants regarding applications for the working and winning of underground minerals may be both onerous and complex. In addition to those owners and agricultural tenants with rights in relation to the relevant surface land, there may be other people with ownership rights to minerals, other than those vested in the Crown (oil, gas, coal, gold and silver), who may be difficult to identify and notify.

2.68 For the purposes of these applications, regulation 15(4) amends the requirement to notify owners to relate to those who “to the applicant’s knowledge” are owners.

3. Making a Planning Application

Content of Planning Applications

General

(Regulations 9 – 12)

3.1 Applicants should use the e-form for online applications or its paper equivalent produced by the Scottish Government. The DMR contain the minimum requirements for an application and accompanying documentation (termed “the application” in this section of the circular), the receipt of which starts the period for determination. Where the planning authority uses its own application form, it must ensure that the form contains the minimum requirements set out in the DMR.

3.2 Where information is provided in accordance with the minimum statutory requirements, that establishes the validation date (see paragraphs 4.8 to 4.10) and the application must be registered as valid. Additional information might be required in order to determine an application for development in certain circumstances, but requests for such additional information should not delay the process of validation and registration and do not determine the validation date.

3.3 Applicants are encouraged to think beyond the statutory minimum requirements for an application and try to anticipate, in discussion with the planning authority, what additional information might be needed to support efficient processing of the application (see paragraphs 2.2 – 2.6).

Applications for planning permission

(Regulations 9 and 4A(3))

3.4 The required content of an application for planning permission, other than planning permission in principle, is as follows (see also paragraph 4.130 on national security):

(a) a written description of the development to which it relates;
(b) the postal address of the land to which the proposed development relates, or, if the land in question has no postal address, a description of its location;
(c) the name and address of the applicant and, where there is an agent, the name and address of that agent;
(d) a plan:
    (i) sufficient to identify the land to which it relates; and
    (ii) showing the situation of the land in relation to the locality and in particular in relation to neighbouring land;
(e) such other plans and drawings as are necessary to describe the development;

(f) where any neighbouring land is owned by the applicant, a plan identifying that land;
(g) one or other of the certificates required under regulation 15 in relation to owners and agricultural tenants;
(h) where the application relates to a national development or a major development, and no exemption applies, a written pre-application consultation report;
(i) where the application relates to an installation of an antenna to be employed in an electronic communication network, an ICNIRP[12] declaration;
(j) a design statement or a design and access statement where required by regulation 13;
(k) where the application relates to Crown land, a statement that the application is made in respect of Crown land; and
(l) any fee payable under the Fees Regulations.

3.5 Where applications are for developments to which PAC requirements apply, but reliance is being placed on an exemption, applicants are to include a statement to that effect (regulation 4A(3)).

Plans and drawings

3.6 The plans and drawings submitted must accurately describe the proposals and accord with the written description of the development. Annex D describes the main types of plan that are commonly submitted. Not every plan described in Annex D will be required in every case.

Applications for planning permission in principle

(Regulations 10 and 4A(3))

3.7 There are differences between the requirements for the content of applications and accompanying documents for planning permission in principle and those for detailed planning permission. With planning permission in principle, and with reference to the list in paragraph 3.4, there is:

- no requirement for plans and drawings (other than a location plan and any plan showing any neighbouring land owned by the applicant);
- no requirement for a design or design and access statement to be prepared; and
- a requirement to describe the location of the access points to the development from a road where this is not otherwise detailed in the application and accompanying documents.

3.8 Where a PAC exemption is being relied upon, then a statement to that effect is required under regulation 4A(3)).

[12] International Commission on Non-Ionising Radiation Protection

3.9 It is for the applicant to decide what level of detail they wish to provide. However, it is open to planning authorities to require additional information using regulation 24 (Further Information) where necessary to determine the application. While planning permission in principle is to establish the acceptability of a proposal in principle without having to develop the detailed proposals, applicants should discuss with planning authorities any additional information that is likely to be required. This may relate to matters such as design or access, transport assessment or the requirements of other legislation (for example, the EIA Regulations or the Habitats Regulations.

Further applications

(Regulations 11 and 4A(3))

3.10 Regulation 11 provides that where a previous application was granted planning permission, development has not begun and the duration of the previous permission has not expired, a further application for planning permission (or planning permission in principle) for the same development does not need to include all of the information specified in regulations 9 or 10. Regulation 11 also applies to Section 42 Applications.

3.11 The information that must still be included in such further application is:

- the name and address of the applicant, and where an agent is acting on behalf of the applicant, the name and address of that agent;
- where any neighbouring land is owned by the applicant, by a plan identifying that land;
- a certificate regarding the ownership of the proposal site and any agricultural tenants and the notification of these parties about the application;
- where the application relates to national development or major development, a pre-application consultation report (unless an exemption from such consultation applies);
- where the application relates to Crown land, by a statement that the application is made in respect of Crown land;
- any fee payable under the Fees Regulations; and
- where the application is a Section 42 Application, a statement to that effect.

3.12 The application must be in writing (which can include electronic format) and must give enough information to allow the planning authority to identify the previous grant of permission. Other than for Section 42 Applications, where a PAC exemption is being relied upon, a statement to that effect must be submitted with the application (regulation 4A(3)).

Applications for approval of matters specified in conditions

(Regulation 12)

3.13 These applications relate to conditions attached to planning permission in principle requiring the further approval, consent or agreement of the planning

authority for any detailed aspect of the development. Regulation 12 applies to all applications for approval of matters specified in conditions attached to planning permission in principle.

3.14 An application in this regard must:

- be in writing (planning authorities may have a form for such applications and applications in this regard can be made electronically);
- identify the planning permission in principle to which it relates;
- contain a description of the matter(s) to which it relates;
- contain the name and address of the applicant and, where an agent is acting on behalf of the applicant, the name and address of that agent;
- be accompanied by plans and drawings sufficient to describe the matter of the application where it involves the alteration or construction of buildings, other structures, roads or landscaping;
- where any neighbouring land is owned by the applicant, by a plan identifying that land; and
- the appropriate fee payable under the Fees Regulations.

3.15 Applications for approval of matters specified in conditions are not applications for planning permission. There are specific fees for such applications and the statutory requirements for PAC and design statements do not apply. However, neighbour notification requirements, and requirements for advertising where neighbour notification cannot be carried out do apply. The aim of these provisions is to ensure that an opportunity is provided for consultation to take place, as the key details of a development that has been approved in principle are being submitted.

3.16 Although sections 58 and 59 make provision for when planning permission would lapse if development is not begun within certain time periods, there are no time periods set during which applications can be submitted for approvals required by conditions on an extant planning permission. There is also no statutory limit on the number of such approvals which can be sought in any one application. Planning authorities may, however, impose conditions on the grant of planning permission or planning permission in principle, which make provision as to the timing of applications for further consent, agreement or approval (see Annex G for more information).

3.17 An authority may, in determining an application for approval, consent, or agreement, grant such an application subject to conditions.

Design Statements and Design and Access Statements

(Regulation 13)

3.18 All applicants, together with developers, architects, designers and agents, should take a design-led approach within the development process. Scottish Ministers recognise the need to deliver high quality and inclusive environments that can be used by everyone, regardless of age, sex or ability. In addition to their duties as public bodies under equalities legislation, Scottish Ministers

expect decision makers to seek to eliminate discrimination and promote equality. Planning's important role in the delivery of well-designed, inclusive environments is emphasised in the design series of Planning Advice Notes.

3.19 Certain applications for planning permission must be accompanied by a statement explaining the design principles and concepts that have been applied, and how issues relating to access for disabled people to the development have been dealt with.

3.20 The main aim of the statement is to inform the planning decision-making process. Statements should ensure development proposals are based on a carefully considered design process and address the needs of people with disabilities in terms of access to the development and how such arrangements will be maintained. They should allow the applicant to explain and justify their proposals and help all those assessing the application (including elected members and communities) to understand the design rationale that underpins them.

Applications requiring design or design and access statements

3.21 Applications for planning permission for national and for major developments require design and access statements.

3.22 Applications for planning permission for local development within:

(a) a World Heritage Site;
(b) a conservation area;
(c) a historic garden or designed landscape;
(d) a National Scenic Area;
(e) the site of a scheduled monument; or
(f) the curtilage of a category A listed building

will require a design statement unless the development comprises the alteration or extension of an existing building.

3.23 A design and access statement or design statement is **not** required for the following categories:

(a) a Section 42 application
(b) an application for planning permission for–
    (i) engineering or mining operations;
    (ii) householder development; or
    (iii) a material change in the use of land or buildings.
(c) an application for planning permission in principle.

3.24 Applications for marine fish farming development only require to be accompanied by a design statement where they are local developments in either a World Heritage Site, National Scenic Area or the site of a scheduled monument, or are major developments. These requirements do not apply

where the development consists of an alteration or extension of an existing marine fish farm.

3.25 Applications for planning permission in principle do not need to be accompanied by either a design statement or a design and access statement. In these circumstances, it will be for planning authorities to consider what, if any, additional information is required to enable them to consider the application and to request further information.

Preparation of design statements

3.26 Anyone involved in preparing such a statement should consider where appropriate the advice contained in Planning Advice Note 68: *Design Statements*[13]. Where Scottish Government policy relates to design, for example the National Planning Framework and the 6 Qualities of Successful Places or Designing Streets[14], this should be referenced in the statement.

3.27 A design statement is a written statement about the design principles and concepts that have been applied to the development and which:

(i) Explains the policy or approach adopted as to design and how any policies relating to design in the development plan have been taken into account.
(ii) Describes the steps taken to appraise the context of the development and demonstrates how the design of the development takes that context into account in relation to its proposed use.
(iii) States what, if any, consultation has been undertaken on issues relating to the design principles and concepts that have been applied to the development; and what account has been taken of the outcome of any such consultation.

Preparation of design and access statements

3.28 A design and access statement is a document containing both a design statement and written statement about how issues relating to access to the development for disabled people have been dealt with. It must explain the policy or approach adopted as to access and how:

(i) policies relating to such access in the development plan have been taken into account; and
(ii) any specific issues which might affect access to the development for disabled people have been addressed'.

3.29 This should explain how the applicant's policy/approach adopted in relation to access fits into the design process and how this has been informed by any development plan policies relating to access issues.

[13] Planning Advice Note 68: *Design Statements*
[14] Designing Streets

3.30 Developers should consider setting out in the statement how access arrangements make provision both to and through the site to ensure users have equal and convenient access. Where Scottish Government policy relates to access, for example the number of parking spaces for disabled people, this should be referenced in the statement.

3.31 It is not intended that the statement extends to the consideration of internal aspects of individual buildings. This is a matter better considered under building standards legislation. However, the location and design of doors and windows, etc. will depend on an understanding of the internal layout of a building and may therefore be reflected in the statement.

3.32 The statement must: 'Describe how features which ensure access to the development for disabled people will be maintained'. The arrangements for long-term management and maintenance are as important as the actual design. Therefore, content on maintenance will help the planning authority come to a view on how best, possibly through agreements or conditions, such features are to be maintained in the long term.

3.33 The statement must: 'State what, if any, consultation has been undertaken on issues relating to access to the development for disabled people and what account has been taken of the outcome of any such consultation' (see paragraphs 3.34 – 3.35).

Consultation

3.34 There is no statutory requirement to undertake formal consultation as a part of the preparation of design or design and access statements. Where consultation has been undertaken, this must be included in the statement with an indication of how this has influenced the final proposal. The statement should indicate with whom consultation was undertaken: for example, community groups, user groups or statutory consultees. Local Access Panels are a useful source to consult on access issues, as they are able to give advice based on personal experience and local knowledge. A list of access panels is available from Access Panel Network - Access Panels in Scotland[15].

3.35 PAC on national and major developments may also provide an opportunity to inform the design and access statement with the views of the community.

Presentation of information

3.36 Whilst required to be in writing, a statement can be presented in various formats. It can be presented on one or two pages, in a small booklet, an A4 or A3 document, a fold-out sheet, a display board or electronically. Within the parameters set by the 1997 Act and the DMR, it will be for the applicant to consider the most effective form of presentation. However, where both design and access must be covered then the statement should, where possible, be a single document. The precise form of a statement and the level of detail it

[15] Access Panel Network - Access Panels in Scotland

contains will vary according to the size, nature and complexity of the proposed development.

Advice and guidance on access

3.37 The general principles set out in Planning Advice Note 68 for the preparation of a design statement should be considered when a design and access statement is being prepared. Some guidance and advice is available within Scottish Government planning documents on how these issues should be addressed: Planning and architecture - gov.scot (www.gov.scot) .

3.38 As the advice and guidance contained in these documents may be material considerations, developers, architects and designers should refer to these as appropriate.

Considering the content of the statement

3.39 The design of a proposed development and its relationship to its surroundings may be a material consideration. Where a design or design and access statement is required, the information within the statement may be material and in such cases must be taken into account by the planning authority when considering the proposed development.

4. Processing Planning Applications

Schemes of Delegation

(Section 43A)

4.1 General powers to delegate decision making to committees or officers exist under the 1973 Act. However, section 43A of the 1997 Act requires planning authorities to have schemes delegating, to a person appointed for that purpose (the appointed officer), the determination of applications for planning permission for local developments or any application for consent, agreement or approval required by a condition on a grant of planning permission for a local development. These applications for local development cannot be delegated to officers for decision other than through a section 43A scheme of delegation.

4.2 Where a decision has been taken by an appointed officer under a section 43A scheme of delegation, or in cases where the applicant wishes to challenge the appointed officer's failure to determine an application so delegated, the route to challenge is a review by the local review body rather than an appeal to Scottish Ministers.

4.3 The procedures for adopting new schemes of delegation and for carrying out local reviews are set out in The Town and Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations 2013 (SSI 2013/157)[16] and the related circular (5/2013)[17].

Validation and Acknowledgement of Applications

(Regulations 9 to 12, 14 and 17)

4.4 It is for the planning authority to check whether the application meets the requirements of regulations 9, 10, 11 or 12 as appropriate. The administrative checking of applications in this regard should be carried out as soon as possible but certainly within 5 working days of receiving the application. Since neighbour notification will follow the validation process, it is important that planning applications are processed with the minimum of delay.

4.5 With reference to PAC reports, design statements and design and access statements, the crux for the purposes of validation is whether they meet the statutory requirements on form and content.

4.6 With design statements and design and access statements, assessment of the quality of the information submitted is to be addressed when considering the application, rather than during the validation process.

[16] The Town and Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations

[17] Planning Circular 5/2013: Schemes of delegation and local reviews

4.7 With PAC reports, whether the applicant might have done more to respond to any comments made is not relevant at the validation stage. Nor are qualitative judgements on how a public event was run, unless the planning authority concludes that events were so ineffectual that the applicant has failed to carry out the required step or steps (see Annex E on declining to determine applications).

4.8 The validation date, from which the time period for determination runs, is the date when the final piece of information required by regulation 9, 10, 11 or 12 as appropriate has been received by the planning authority.

4.9 The planning authority is required to acknowledge receipt of the application once the final piece of information is received. That acknowledgement must:

- include an explanation of the timescales within which the planning authority is to give notice to the applicant of its decision on the application;

and

- inform the applicant of the right to appeal to the Scottish Ministers or to require a local review of the planning authority's decision or failure to make a decision.

(See the section on Time Periods for Determination paragraphs 4.81 – 4.88 below)

4.10 The acknowledgement should also include the date of receipt of the last item of information specified in the DMR – **the validation date**. This is required so the applicant is clear about when decisions should be issued or when appeals can be made or local reviews sought on the grounds of non-determination and the time limits for pursuing such appeals or local reviews. Any confusion over the validation date, as opposed to the date of receipt of additional information, could have implications for appeals or local reviews on the grounds of non-determination being made within the relevant statutory time limits.

4.11 Where an initial application does not contain sufficient information to meet validation requirements the planning authority must notify the applicant of the information that is necessary to validate the application. Once that information is received, then an acknowledgement must be sent.

4.12 In acknowledging receipt of applications or requesting missing information authorities may at the same time to request any information beyond the statutory minimum which is required to determine the application. However, it should be clearly stated what information is required to comply with validation requirements and what is additional information required to determine the application (see paragraphs 4.8 to 4.10).

4.13 Until an application has been properly made, a planning authority is not obliged to proceed to determine it. Where there is a failure on the part of the applicant to comply with the requirements in regulations 9, 10, 11 or 12, the time period for determining the application will not start.

Declining to Determine Applications

(Section 39)

4.14 Section 39 sets out the circumstances in which planning authorities may and, in some cases, must decline to determine an application for planning permission, even where the information required by regulations 9, 10, 11 or 12 has been submitted. There is no specific time limit, in relation to when the application is made, as to when these powers can be exercised. However, the expectation is that their use should be considered upon receipt of an application. See Annex E for further details.

Notices to Neighbours and Elected Representatives and Publicity

Notices to neighbours

(Section 34 and Regulation 18)

4.15 Neighbour notification requirements apply to applications for planning permission (regulation 9), planning permission in principle (regulation 10), further applications for such permission (regulation 11) and applications for approval of matters specified in conditions attached to planning permission in principle (regulation 12). Notice is to be sent to premises on "neighbouring land". The term "neighbouring land" is defined in regulation 3 as:

> "an area or plot of land (other than land forming part of a road[18]) which, or part of which, is conterminous with or within 20 metres of the boundary of the land for which the development is proposed."

4.16 The boundary of the land for which development is proposed is determined in the circumstances of the case, but need not be a property boundary. For example, in the case of farms or estates where a building is being erected in one part of the farm or estate, it is not the whole farm or estate that is being developed so it would not make sense to use the boundary of the farm or estate as the boundary of the land for which development is proposed. In the case of a specific site for the purposes of a supermarket, industrial or business premises, for example, then the boundary of that specific site will normally be the boundary of the land for which development is proposed. With most private houses in urban areas, for example, it will probably be the property boundary. In practice the boundary of the land to be developed will normally be indicated by a red line on the application location plans.

4.17 The premises on neighbouring land to which neighbour notification should be sent do not have to be within 20 metres of the boundary of the land for which development is proposed. Such premises can be elsewhere on the neighbouring land. In using the term "area or plot", the aim is to identify this as a discrete piece of land. Where such neighbouring land consists of open fields,

[18] "road" has the same meaning as in section 151 of the roads (Scotland) Act 1984

countryside or woodland with no obvious premises on it, then an advert would be necessary.

4.18 Planning authorities should carry out neighbour notification as soon as possible after the application has been validated. This is to ensure that, given the minimum period of 21 days within which individuals can make representations, the planning authority can determine applications with the minimum of delay.

4.19 A single notice must be sent to the "Owner, Lessee or Occupier" at the address of the neighbouring land. Under regulation 18(2)(b), where there are no premises on the neighbouring land to which the notification can be sent, the planning authority must place a notice in a local newspaper in accordance with regulation 20 (see paragraphs 4.28 to 4.41 below). Regulation 20 includes certain exceptions to the requirement for newspaper notices in such circumstances. Notice must also be given to elected representatives in certain cases (see paragraphs 4.25 to 4.27). Relevant planning authorities are also required to give notice of applications to the Cairngorm National Park Authority within 5 days of the validation date where the proposed development is in the area of the Park Authority.

4.20 The notices sent to neighbours must include the following information:

- the date of the notice (notices should be dated and sent on the same date);
- the name of the applicant and the name and address of any agent;
- the planning authority reference number for the application;
- a description of the development;
- the postal address of the site or, in the absence of such an address, a description of the location of the land;
- how the application, plans, drawings and other related documents can be inspected;
- where and by when (at least 21 days after the date the notice is sent) representations can be made;
- a location plan showing the position of the proposed development in relation to neighbouring land;
- a statement of where more information can be obtained on planning application procedures; and
- in relation to applications which require PAC, a statement that despite the fact that comments may have been made to the applicant prior to the application being made, persons wishing to make representations in respect of the application should do so to the planning authority in the manner indicated in the notice.

4.21 On the last point, the requirement in regulation 18(3)(j) is to make clear that comments made to developers in the pre-application stage are not representations to the planning authority.

Notification of minerals applications

(Regulation 19)

4.22 With minerals applications, the planning authority is required, under regulation 19, to place up to 5 site notices in its district. The authority is also required to publish a newspaper notice under regulation 20(2)(c) – see paragraph 4.28.

4.23 Regulation 19(2) specifies the content of the site notice. The site notices should be in place for not less than 7 days and should state that an application has been made, briefly describing the development and its location, where further information can be obtained and where and by when (being at least 14 days beginning with the date of the notice) representations may be made to the planning authority. Regulation 19(3) covers the issue of notices being removed, obscured or defaced, and limits the authority's responsibilities where it has taken reasonable steps.

4.24 Notices should be dated the same as the day they are placed on site.

Notice to Elected Representatives

(Section 34(2A))

4.25 Where an application is made for major development, the planning authority is required to send notices to certain elected representatives (Section 34(2A)). This applies to applications for planning permission, planning permission in principle and for a consent, agreement or approval required by a condition imposed on a grant of planning permission or planning permission in principle[19].

4.26 The elected representatives are any:

- councillor of the local authority,
- member of the Scottish Parliament,
- member of the House of Commons,

representing the district to which the application relates.

4.27 There is no statutory specification of the information to go into such notice, or the timing of such notice. The notice should contain the same information as neighbour notification. It should however be issued no later than when any neighbour notification is issued or newspaper notices are published (where both apply, no later than the earlier of the two).

[19] Although not the subject of this circular, this requirement also applies regarding major developments and applications for modification or discharge of a planning obligation under section 75A(2) or for an approval required by a development order.

Publication of an application by the planning authority

(Regulations 20, 20A and schedule 4)

4.28 A notice must be published in a local newspaper in the form set out in schedule 4 where:

- it is not possible for the planning authority to carry out neighbour notification of an application under regulation 18 because there are no premises on neighbouring land to which the notification can be sent. This does not apply where all of the neighbouring land without premises is owned by the applicant or the planning authority, or where the application is for a householder development. Newspaper notices may still be required if triggered by one of the other criteria below;
- in relation to an application for planning permission or planning permission in principle (regulations 9, 10 or 11), an applicant has certified under regulation 15 that it has not been possible to notify all owners and agricultural tenants of the proposed development;
- the application is made under regulations 9, 10 or 11 and relates to a class of development likely to have a wider impact on amenity (as specified in schedule 3 – including the winning and working of minerals);
- the application is made under regulations 9, 10 or 11 and is for development which is contrary to the development plan; or
- the application is made under regulations 9, 10 or 11 and is for development in the vicinity of or relating to a major accident hazard site, and which are specified with reference to paragraphs 3, 4 and 4A in Schedule 5 of the DMR.

4.29 Special requirements apply in relation to the requirements for and the content of newspaper notices for applications in the vicinity of or relating to major accident hazard sites. Details can be found in Annex F of Circular 3/2015 on Planning Controls for Hazardous Substances[20]. The following paragraphs 4.30 to 4.35 should be read in light of these special requirements.

4.30 Where a proposed development falls within more than one of the categories listed above, the planning authority is not required to publish more than one notice. Similarly where notice of an application is published under sections 60(2)(a) and 65(2)(a) of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997[21] (publicity for applications affecting conservation areas and listed buildings), there is no need for a further notice under regulation 20.

4.31 As specified in schedule 4, the published notice must provide a description of the location and nature of the proposed development and information on how representations may be made to the planning authority.

4.32 As with notices to neighbours, where applications have been subject to PAC requirements, newspaper notices must also explain clearly that, despite any

[20] Circular 3/2015 on Planning Controls for Hazardous Substances
[21] Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997

comments made to prospective applicants during PAC, any formal representations on the application should be made directly to the planning authority within the prescribed time period.

4.33 Published notices must also include a date by which representations should be made to the planning authority. This date or period must be not less than 14 days after the date on which the notice was published.

4.34 In order to determine planning applications within the prescribed 2 or 4 months from the validation date, planning authorities should arrange for notices to be published as soon as possible, and certainly within 14 days of the validation date.

4.35 Published notices should be clear, concise and fit for purpose.

General issues regarding publicity

4.36 To avoid confusion, it would be helpful to align the dates for representations to be made in response to published notices and those sent to identified neighbours, bearing in mind the prescribed minimum periods.

4.37 In acknowledging representations, planning authorities should make people aware of their policy in relation to the publication of comments.

4.38 Where possible, notices to identified neighbours should be hand delivered or sent by first class post, since the use of second class mail could result in recipients having a significantly reduced period within which to make representations.

4.39 Planning authorities should keep a record of details of the neighbour notification, advertising and posting of site notices carried out in relation to applications. This is for the purposes of transparency and to assist in any further notification (where, for example, an EIA report is subsequently submitted under the EIA Regulations or to assist the Local Review Body in identifying whether it has to undertake any of these requirements).

Recovering costs of publicising applications

4.40 The Town and Country Planning (Charges for Publication of Notices) (Scotland) Regulations 2009[22] provide for the recovery from the applicant of costs of publicising of planning applications required by regulation 20. These regulations require that the cost of publication of a notice be divided among the applications to which the notice relates.

4.41 The planning authority must write (electronic communication is allowed where the applicant has agreed to such communication) to the applicant advising them of the costs and these regulations require the applicant to pay within 21 days of being notified. Under the 1997 Act, the planning authority cannot

[22] The Town and Country Planning (Charges for Publication of Notices) (Scotland) Regulations 2009

determine the application until these costs have been recovered from the applicant.

Lists of Applications

(Section 36A and regulations 21 to 23)

4.42 The 1997 Act and the DMR require planning authorities to have a register of applications, to prepare weekly lists and provide a list of extant applications which are all to be accessible to the public.

List of extant applications

(Regulation 21 and 22)

4.43 Regulations set out that the list of applications to be kept by the planning authority is to be kept in two sections. The first section is for:

- applications for planning permission and planning permission in principle;
- applications for such permission made to the Scottish Ministers under section 242A (urgent Crown development) of the 1997 Act for development in the planning authority's area; and
- applications for approval of matters specified in conditions attached to a planning permission in principle.

4.44 The information to be kept on this section of the list is:

(a) the reference number given to the application by the planning authority or, as the case may be, the Scottish Ministers;
(b) the site location;
(c) the name of the applicant and agent (if any);
(d) a description of the proposed development; and
(e) the date of expiry of the period allowed for representations in any neighbour notification or publication of the application.
(f) in relation to applications for approval of matters specified in conditions, a description of the matter in respect of which the application is made; and,
(g) in relation to applications made to the Scottish Ministers for urgent Crown development, an identification of the application as one made to Scottish Ministers and a statement that representations may be made to Scottish Ministers and where any such representations should be sent.

4.45 The second section of the list relates to proposal of application notices received by the planning authority in relation to requirements for PAC. This section is to include:

- the reference number given to the application by the planning authority or, as the case may be, the Scottish Ministers;
- the site location;
- a description of the proposed development; and

- details as to how the prospective applicant may be contacted and corresponded with;
- the earliest date on which an application for planning permission in respect of the development may be submitted to the planning authority (minimum of 12 weeks from submission of the notice); and
- where the planning authority gives notice to the prospective applicant about additional pre-application consultation, a specification of any additional persons to whom a proposal of application notice is to be given and any additional consultation to be undertaken.

4.46 The DMR only require the list to set out the authority's PAC requirements which go beyond the statutory minimum. However, the planning authority may wish to consider providing information on the statutorily required public event, should such information be available.

4.47 Where the Scottish Ministers have notified an application for urgent Crown development under section 242A to the planning authority, the date referred to at (e) in paragraph 4.44 will be provided by Scottish Ministers.

4.48 The list shall also contain a statement as to how further information in relation to an application may be obtained from the planning authority. The list must be updated on a weekly basis to remove determined applications and proposal of application notices that are no longer current (where an application is submitted, the prospective applicant indicates no application will be made, or 12 months has elapsed since notice was given).

4.49 Planning authorities are to make the list of applications available online. In order to ensure that the list is more widely available to the general public, it must also be accessible at its principal office and public libraries within its district. How the list is made available at these offices is a matter for the planning authority (hard copy or electronic versions for example).

4.50 The requirement to maintain the list only relates to applications and notices received by the planning authority on or after 3 August 2009[23].

Weekly lists

(Regulation 23)

4.51 A weekly list must be sent to every community council in the district of the planning authority and made available for inspection in the principal planning office and public libraries. This list shall contain all applications made to the planning authority under regulations 9, 10, 11 or 12 and to Scottish Ministers within the previous week. In addition to the relevant information requirements, the weekly list shall contain a statement as to how further information relating to the application may be obtained from the authority.

[23] Introduced by Article 5 of the Planning etc. (Scotland) Act 2006 (Development Managment and Appeals) (Saving, Transitional and Consequential Provisions) Order 2009

4.52 The “weekly list” is to contain the same information as that on the list of extant applications.

4.53 It will be for planning authorities and individual community councils to consider the most appropriate way of disseminating this information, which may be electronically.

4.54 Community councils may request formal consultation on particular applications. Even if they do not, there is also a requirement to consult them on development likely to affect the amenity in the area of the community council.

4.55 Planning authorities may wish to consider if there are other persons who should be provided with the weekly list (such as elected representatives or Police Architectural Liaison Officers, referred to in Planning Advice Note 77: Designing Safer Places [24].

Planning Registers

(Section 36, regulation 16 and schedule 2)

4.56 Schedule 2 to the DMR sets out the requirements for registering entries on applications for planning permission and planning permission in principle (paragraphs 1 to 4 of schedule 2) and for certificates of lawful use or development (paragraph 5 of schedule 2). Paragraphs 6 and 7 of schedule 2 contain provisions applicable to registers generally. Paragraph 1 of schedule 2 requires the register of applications for planning permission to be kept in two parts.

4.57 Separate provisions arising from the EIA Regulations require that the register contains relevant screening and scoping opinions and certain other information where the development is subject to EIA (see Circular 1/2017[25] on the EIA Regulations for further information).

4.58 Information on Part I of the register is to relate to those applications which have not been finally disposed of. Part II of the register relates to applications which have been determined.

Reports on handling

(Schedule 2)

4.59 For those applications for planning permission or planning permission in principle determined by the planning authority, other than by local review, Part II of the register must contain a copy of a report on the handling of the application. Planning authorities are to prepare such a report on each application which is to contain a range of information relevant to the processing of the application.

[24] Planning Advice Note 77: Designing Safer Places
[25] Planning Circular 1/2017: Environmental Impact Assessment regulations

4.60 The required contents of a report are set out in schedule 2. The format and structure of the report is a matter for the planning authority. In many cases the contents of the report should be similar to reports prepared for planning committees. Reports of handling should be proportionate to the nature, scale and complexity of the proposal.

Certificates of lawful use or development

4.61 Schedule 2 lists the information that shall be kept by the planning authority in respect of every application for a certificate under section 150 (certificate of lawfulness of existing use or development) or 151 (certificate of lawfulness of proposed use or development) of the 1997 Act. It also requires the planning authority to place information on the register where there has been an appeal to the Scottish Ministers in relation to such certificates.

Provisions applicable to registers generally

4.62 The register shall include an index which shall be in the form of a map. The planning authority should keep the register at their principal office. However, the authority may also keep copies of elements of its register relating to land in a part of a district at a place in or convenient to that area of its district.

4.63 Where the register is kept electronically, the authority may make it available for public inspection on a website maintained by the authority. The amount and quality of planning information available on planning authority websites is increasing, making the planning process more transparent and accessible. ePlanning allows the progress of applications and appeals to be tracked, comments to be made and decisions better understood.

4.64 On the issue of security sensitive material, planning authorities are not obliged to keep the contents of the register on their website. When dealing with applications where there are potentially security sensitive issues raised by plans and drawings or other information, planning authorities should consider restricting web access to such material. The latter would mean that anyone wishing to view such material has to attend the planning office to view it, and there is some opportunity to monitor access. Where information raises issues of national security, then information will be subject to more severe restrictions (see paragraph 4.130).

Timeframe for placing material on the Register

4.65 Whilst no statutory timeframe is set out, the following timings are recommended:

- The information on applications made but undetermined should be placed on Part I of the register on or before the earliest date on which neighbour notification is undertaken and/ or notice of the application is published in a newspaper;

- Any direction given under the 1997 Act or the DMR in relation to the application should be entered on Part I of the register within 7 days of receipt; and
- The information should be placed on Part II of the register within 7 days of a decision being issued by the planning authority or received from the Scottish Ministers.

Requesting Further Information on Applications

(Regulation 24)

4.66 Planning authorities can require applicants to provide any additional information, beyond that required by the regulations on the content of applications, in order to deal with the application. The time period for determining the application under regulation 26 will continue to run. Ideally, such information requirements should be discussed prior to an application being submitted so that as far as possible the application as submitted contains the information necessary to determine the application. Processing agreements provide a vehicle for this for complex or substantial developments (see Chapter 6).

4.67 Any requirements for additional information, whether they are identified at the pre-application stage or once an application has been made, should be necessary, proportionate and clearly scoped to avoid unnecessary costs to applicants and public bodies. Similarly, it is important that the information subsequently submitted meets these criteria.

Variation of Applications

(Section 32A)

4.68 Applications for planning permission (including planning permission in principle) can be varied after submission with the agreement of the planning authority. It is for the planning authority to decide what notice it gives to other parties regarding any such variation. However, if the planning authority considers the variation would result in a substantial change in the description of the development, they are not to agree to it. Another application would be required for such a variation.

4.69 The terms of an application cannot be varied after it has become the subject of an appeal to Scottish Ministers.

Consultation on Applications

(Regulations 25, 30 and 37 and schedule 5)

4.70 The DMR contain the provisions for consultation by the planning authority on applications for planning permission and planning permission in principle. They also provide (regulation 30) that the Scottish Ministers can direct that planning authorities must consult with other authorities, bodies or persons on a particular

case or class of case before planning permission can be granted. Consultees specified in the DMR may (except regarding consultation in relation to major hazards – paragraphs 3 and 4 of schedule 5) write to a planning authority to indicate that consultation with it is not required on a particular case or class of case or on development in a particular area or areas, and the planning authority will not be obliged to consult on such cases. Regulation 37 contains specific requirements for consulting the Cairngorms National Park Authority.

4.71 The planning authority must give consultees under the DMR at least 14 days to respond before they determine the application. With national or major developments, suitable timescales should be agreed in a processing agreement although such timescales cannot be less than the statutory 14 days. Where a consultee fails to respond within the timescale the planning authority is not obliged to await a response. However, planning authorities will wish to consider the potential impact of proceeding without the views of a consultee.

4.72 As well as the provisions in the DMR, requirements for consultation on planning applications are also set out in directions contained in Scottish Government circulars. There are also requirements in other legislation, such as the EIA Regulations and the Habitats Regulations, applicable in certain cases.

4.73 Where an application is for development straddling local authority boundaries, the local authorities involved should inform Boundaries Scotland - boundaries.scot@scottishboundaries.gov.uk. This is to allow Boundaries Scotland to consider the need to re-align the boundary to ensure clarity about which local government area the resulting development is located. This is especially an issue with housing developments as regards council tax, education provision and other services.

Pre-Determination Hearings

(Section 38A and regulation 27)

4.74 The opportunity to attend a pre-determination hearing is required to be offered in relation to applications for planning permission for major developments which are significant departures from the development plan and for all national developments. Their purpose is to allow the views of applicants and those who have made representations to be heard before a planning decision is taken. The planning authority has discretion over how hearings will operate in its area.

4.75 The planning authority must give the applicant and people who submitted representations to them in respect of the application an opportunity of appearing before and being heard by a committee of the authority. The 1997 Act allows the planning authority to specify the procedures for arranging and conducting hearings. This includes ensuring the matters discussed at a hearing are relevant, efficient and avoid repetition. Attendance, beyond those who have a right to appear before and be heard by the committee, is to be such as the authority considers appropriate. Further guidance on pre-determination hearing procedures is contained in Annex F.

4.76 With major developments, planning authorities are best placed to balance the range of policies and proposals and decide whether a development does or does not accord with the development plan, and are obliged to do so as part of their assessment of planning applications.

4.77 With regard to pre-determination hearings required under section 38A, authorities need to consider whether any departure from the plan is "significant". While this judgement will lie with the planning authority in the first instance, and ultimately the Courts, Scottish Ministers' general expectation is that this applies where approval would be contrary to the vision or wider spatial strategy of the plan.

Notification to Scottish Ministers

4.78 Directions requiring planning authorities to notify to Scottish Ministers specified applications or classes of applications (for example, the direction in Circular 3/2009 on Notification of Planning Applications) apply regardless of whether the appointed officer, a planning committee, full council or local review body is determining an application.

4.79 Regulation 33 enables Scottish Ministers to direct planning authorities to consider attaching conditions when granting planning permission. We envisage this power being used primarily where applications have been notified to Scottish Ministers and where call-in of an application would not be considered necessary by Scottish Ministers if a condition, which the planning authority had not previously proposed, were to be attached to the consent.

4.80 The effect would be that the planning authority could proceed to grant planning permission if, having considered the matter, the authority (i) informs Scottish Ministers that it has decided to impose such a condition, or (ii) satisfies Scottish Ministers that the condition is not necessary. This could prevent unnecessary delays in the planning process by resolving, a matter of concern without the need for an application to be called in for determination by Scottish Ministers.

Time Periods for Determination

(Regulations 14 and 26)

4.81 It is important that applications are handled and determined efficiently to support certainty and confidence in the planning system. Planning authorities and applicants should not allow applications to drift for long periods with little or no progress being made.

4.82 The following paragraphs describe the statutory time periods for determining applications, the rights to appeal and local review where decisions are not issued, and the ability for applicants and planning authorities to agree extended periods.

4.83 The planning authority has up to 4 months to determine applications for planning permission for national developments and major developments and up

to 2 months to determine applications for planning permission for local developments. Applications for approval of matters specified in conditions attached to planning permission in principle are subject to a 2 month time period. These time periods run from the date the last piece of information required by the DMR on content of applications is received, i.e. the validation date (regulation 14).

4.84 The 2 month time period for determining applications also applies where an applicant seeks the approval, consent or agreement of the planning authority as a result of a condition attached to a planning permission (including permission granted by a development order). While no formal application is required under the DMR, applicants still have a right to have a response within the specified time period and, as appropriate, a right to appeal or to seek a local review of the planning authority's decision or its failure to issue a decision.

4.85 Planning authorities must not determine applications before the end of periods allowed for representations to be made (regulation 26(3)(b) refers to the legislation imposing this restriction). These periods are those in relation to neighbour notification, site notices for underground minerals applications, advertisement in local newspapers and notices in relation to applications affecting conservation areas or listed buildings.

4.86 Where an application is subject to EIA, the EIA Regulations amend the time periods to the effect that a 4 month period for determination applies. Where the date on which the EIA report is submitted is later than the validation date, that 4 month period runs from the date on which the EIA report and accompanying documents are submitted.

4.87 Where the legislative provisions referred to at regulation 26(3)(b) prevent the planning authority from granting permission, this does not alter the period for making an appeal or seeking a review on the grounds of non-determination of the application – see the following sections on "Local reviews" and "Appeals to Scottish Ministers".

4.88 Planning authorities and applicants can agree extended periods for determining applications before this right to appeal or seek local review arises – again see the following paragraphs on "Local reviews" and "Appeals to Scottish Ministers". Whether this facility is used or not, planning authorities and applicants should ensure applications do not become inactive over sustained periods and are brought to a conclusion within a reasonable timeframe.

Local reviews

4.89 Once a decision is issued on an application for a local development delegated in accordance with a section 43A scheme of delegation, the applicant can seek a local review of a refusal or a grant with conditions. This must be done within 3 months beginning with the date of the decision notice[26].

4.90 Where a decision notice on such an application is not issued within the prescribed 2 month period, or 4 month period in EIA cases ('the period allowed for determination of the application'[27]), the applicant has 3 months beginning with the date of expiry of that period within which to seek a local review on the grounds of non-determination of the application (see footnotes 26 and 27). See paragraphs 4.8 to 4.12 on the importance of clarity of the validation date.

4.91 The planning authority and the applicant can agree in writing an extended period for determination, and the 3 months for seeking a review on the grounds of non-determination will begin with the date of expiry of the period of the agreed extension.

4.92 If the review body does not conduct a review sought on the grounds of non-determination within 3 months beginning with the date the requirement to review is made, the application is automatically refused permission. There is then a right of appeal to the Scottish Ministers. The time limit for making an appeal is 3 months.

4.93 Where the 3 month period for seeking a review on the grounds of non-determination elapses without a review being sought, the applicant would be able to seek a review of the eventual decision on the application once it is issued.

4.94 Local reviews also apply where the section 43A scheme delegates applications for approval of matters specified in conditions (regulation 12) and other applications for approval, consent or agreement sought as a result of a condition on planning permission relating to local development. Further guidance is set out in the Town and Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations 2013 (SSI 2013/157) and the related circular 5/2013.

[26] For example:
(1) The date of the planning authority's decision notice is 1 September – your full notice of local review must be received on or before 30 November (note: 1 December would be the start of the fourth month, and so too late).
(2) The planning authority has not made a decision on your planning application, and it should have done so by 15 March. You can seek a local review regarding non-determination, but the last day by which you can do so is 14 June.

[27] 'period allowed for determination" is defined in relation to applications to which local review applies in regulation 8(2) of the Town and Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations 2013 - http://www.legislation.gov.uk/ssi/2013/157/contents/made

Appeals to Scottish Ministers

4.95 In any other case (for example, a local development not delegated to an appointed officer, a national development or a major development), the applicant has a right of appeal to the Scottish Ministers against the decision of the planning authority on the application. Such an appeal must be made within a period of 3 months beginning with the date of the decision notice[28].

4.96 Where a decision notice on such an application is not issued within the appropriate 2 month or 4 month time period ('the period allowed for determination of the application'[29]), the applicant may appeal to Scottish Ministers within 3 months beginning with the date of expiry of that time period or of any extended period agreed upon in writing between the applicant and the planning authority (see footnotes 28 and 29). As with local reviews, if no appeal was sought on the grounds of non-determination, the applicant would have a right of appeal against the eventual decision. See paragraphs 4.8 to 4.12 on the importance of clarity of the validation date.

4.97 More information on appeals can be found in the Town and Country Planning (Appeals) (Scotland) Regulations 2013 (SSI 2013/ 156) and the related Circular 4/ 2013.

DECISION NOTICES

(Regulation 28)

4.98 With regard to applications for:

- planning permission;
- planning permission in principle;
- approval of matters specified in conditions attached to planning permission in principle; or
- any other consent, agreement or approval required by a condition attached to planning permission (i.e. including those that do not require a formal application under regulations 9, 10, 11 or 12),

the planning authority, within the prescribed time periods for determining the application (see paragraph 4.81 to 4.88 above), must:

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[28] For example:
(1) The date of the planning authority's decision notice is 1 September – your full notice of an appeal to Scottish Ministers must be received on or before 30 November (note: 1 December would be the start of the fourth month, and so too late).
(2) The planning authority has not made a decision on your planning application, and it should have done so by 15 March. You can appeal to Scottish Ministers regarding non-determination, but the last day by which you can do so is 14 June.

[29] 'the period allowed for determination 'in relation to applications subject to a right of appeal to Scottish Ministers is defined in regulation 3(2) of the Town and Country Planning (Appeals) (Scotland) Regulations 2013 - http://www.legislation.gov.uk/ssi/2013/156/contents/made and https://www.gov.scot/publications/planning-series-circular-4-2013-planning-appeals/ .

(a) provide a decision notice to the applicant or their agent; and

(b) inform every person who made written representations (and provided an address, including an e-mail address) on the application of its decision and where a copy of the decision notice is available for inspection.

4.99 Where 3 or more people have made representations in a single document, the planning authority is only obliged to notify the person who sent the document where they can readily identify that person from the document. Where that is not possible, the planning authority would only be required to notify the first named person on the document for whom an address (including an e-mail address) is provided.

The contents of the decision notice

(Section 37, Section 43(1A), regulation 28 and schedule 6)

4.100 Section 43(1A) requires the planning authority to include in each decision notice issued to an applicant:

- the terms of the planning authority's decision;
- any conditions to which that decision is subject (including the required conditions on duration under sections 58 and 59 applicable to planning permission and planning permission in principle)[30]; and
- the reasons on which the authority based that decision.

4.101 Additionally, section 37(2A) requires that decision notices include a statement as to whether the planning authority considers the proposed development to be in accordance with the development plan, and the authority's reasons for reaching that view.

4.102 In addition, under regulation 28, the decision notice to the applicant or agent on applications for planning permission or planning permission in principle must include:

- General Information - a description of the proposed development (including a description of any variation to the original proposal agreed with the applicant under section 32A); a description of the location including a postal address (where applicable); and the reference number of the application. The notice must also include identification of the plans and drawings showing the proposed development irrespective of whether the application has been approved, approved subject to conditions or refused;

[30] Sections 41A and 41B contain statutory requirements for conditions in relation, respectively, to noise sensitive development and provision of toilet facilities in relation to certain large developments. Section 27B has requirements for conditions on notification of completion of development where development is phased – see paragraph 5.8.

- Section 75 planning obligation - where such an obligation is to be entered into, a statement as to where the terms of the obligation(s), or a summary thereof, can be inspected.

4.103 Decision notices on applications for approval of matters specified in conditions attached to planning permission in principle shall, in addition to the minimum set out in paragraph 4.100 above, include:

- a description of the matter in respect of which approval, consent or agreement has been granted or refused;
- the reference number of the application; and
- the reference number of the application for planning permission in respect of which the condition in question was imposed.

4.104 Where a decision on any application is made to refuse or to approve subject to conditions, the decision notice must be accompanied by either:

- notification of the right to a local review by the planning authority (Form 1 of schedule 6 to the DMR); and
- a statement drawing attention to information on how to seek a local review: or
- notification of the right to appeal to the Scottish Ministers (Form 2 of schedule 6 to the DMR; and
- a statement drawing attention to where to find out more information on how to make an appeal.

Notice of Requirements for Notices

(Sections 27A, 27B and 27C and regulations 40 and 41)

4.105 Paragraphs 5.1 to 5.11 describe requirements for developers to submit notices of initiation of development and of completion of development to the planning authority and, in certain cases, have a notice on-site during development. Planning authorities are required under the 1997 Act, when granting planning permission, to give applicants notice of the requirement for a notice of initiation of development (it also makes sense to advise them of the requirements for notice of completion of development and, where appropriate, for on-site notices). The decision notice would be an appropriate mechanism for giving the applicant such notice.

Duration of Planning Permission

(Sections 58 and 59)

4.106 The following paragraphs refer to the statutory provisions as to the duration of planning permission (i.e. the time period, specified by condition, within which the development is to begin) and the powers for planning authorities to set alternative time periods.

4.107 Planning authorities should consider carefully the nature and phasing of the proposed development and issues such as the prevailing economic climate and reach a view on whether the default duration time limits are appropriate in the circumstances of the case or whether they should specify an alternative period. It is open to applicants to make a case to the planning authority to use the available discretion to set a different time period for duration. See Annex G for more information on the duration of planning permission.

4.108 Conditions relating to the duration of planning permission which are imposed, or deemed to be imposed, under sections 58 or 59 can – like any other conditions – be the subject of an appeal to the Scottish Ministers (or a review by the planning authority).

4.109 Section 59 no longer specifies default time periods for applications for approval required by conditions attached to planning permission in principle – see Annex G on powers for the planning authority to attach such conditions.

4.110 Section 58 sets out a number of specific grants of such permission to which it does not apply.

Planning Permission

(Section 58)

4.111 Section 58(1) specifies that where planning permission is granted (or deemed to be granted, as the case may be), it must be subject to a condition that the development to which the permission relates is to begin within:

a) A three year time period beginning with the date on which the permission is granted (or deemed to be granted); or
b) Such other period, whether longer or shorter, as specified by the planning authority.

4.112 In the event that planning permission is granted by the planning authority without the condition required by section 58(1), the permission is deemed to be granted subject to a three year duration condition (see section 58(2)).

4.113 Section 58(3) provides that the planning permission will lapse if the development does not begin within the relevant period.

Planning Permission in Principle

(*Section 59*)

4.114 Planning permission in principle is permission granted in accordance with the DMR and subject to a condition (or conditions) that the development in question will not be begun until certain matters have been approved by the planning authority. The procedures for seeking such approvals are set out in paragraphs 3.13 to 3.17.

4.115 Section 59(2A) specifies that where planning permission in principle is granted, it must be subject to a condition that the development to which the permission relates is to begin within:

a) A five year time period beginning with the date on which the permission is granted; or
b) Such other period, whether longer or shorter, as specified by the planning authority.

4.116 In the event that planning permission in principle is granted by the planning authority without the condition required by section 59(2A), the permission is deemed to be granted subject to a five year duration condition (see section 59(2B)).

4.117 Section 59(2C) provides that the planning permission in principle will lapse if the development does not begin within the relevant period.

Marine Fish Farming

(Regulation 36)

4.118 This regulation applies the DMR to applications for marine fish farming development subject to certain modifications.

4.119 Regulation 7 is modified so that advertising of public events for pre-application consultation is required in the district of the planning authority for the marine planning zone[31] in which the marine fish farm development is proposed, rather than in the locality in which the proposed development is situated.

4.120 Regulation 9 on the content of planning applications is modified so that the requirement to give the postal address of the site or a description of the location of the land is changed to require a description of the location of the development. Similarly, the requirement to provide a plan sufficient to identify the land to which the application relates and neighbouring land is modified to a plan sufficient to identify the location of the development. The requirement for a plan identifying any neighbouring land owned by the applicant does not apply.

4.121 The requirements in regulation 13 for a design and access statement are also modified to the extent that only a design statement would be required for marine fish farming developments, and only those which are major developments or which are a local development in a World Heritage Site, National Scenic Area or within the site of a scheduled monument. A design statement is not required for alterations or extensions to an existing marine fish farm.

[31] These are defined in the Town and Country Planning (Marine Fish Farming) (Scotland) Order 2007

4.122 Regulations 10 (Applications for Planning Permission in Principle), 18 (Notification by the Planning Authority) and 41 (Display Notices) are omitted in relation to marine fish farming developments.

4.123 Regulation 20 (Publication of application by the planning authority) is modified to the effect that all marine fish farm development applications require to be advertised (given the lack of neighbour notification).

4.124 Schedule 2 is amended so that entries in registers referring to the address or location of the land are changed to a description of the location of the development.

4.125 Schedule 5 on consultation is modified to refer to community councils whose area is adjacent to the marine planning zone in which the proposal is located, rather than community councils in whose area the proposal is located.

4.126 Regulation 36(8) makes clear that where an application relates in part to marine fish farm development and in part to other development, the modifications apply only for the purposes of that application to the extent to which it relates to marine fish farming.

Cairngorms National Park

(Regulation 37)

4.127 Regulation 37(1) modifies the validation date under regulation 14 to the date on which an application is called in by the Cairngorms National Park Authority. Consequently the time periods for determination of the application under regulation 26 run from this later date.

4.128 The planning authority is to notify the National Park Authority within 5 days beginning with the validation date where an application for development in the area of the National Park Authority is submitted.

4.129 The planning authority is required to consult the National Park Authority where it believes the development which is the subject of the application is likely to affect land in the area of the National Park.

Applications – National Security

(Regulation 38)

4.130 Regulation 38 specifies that withholding information which the applicant considers to be national security sensitive from an application does not invalidate that application. This is subject to the requirement that a written statement is included explaining that this national security consideration (as defined in regulation 38) is the reason for not submitting the information. If the planning authority is unable to determine the review without the withheld information, then the case could be appealed on the grounds of non-determination or called in for determination by Scottish Ministers, and special procedures for dealing with national security sensitive information applied.

5. Post Decision Provisions

(Sections 27A, 27B, 27C and Regulations 40 and 41, Sections 61 to 62A and Sections 150 to 155)

Notification of Initiation of Development

(Sections 27A and regulation 40)

5.1 A person who intends to start development that has been granted planning permission (including planning permission in principle) must, once they have decided the date they will start work, inform the planning authority of that date as soon as is practicable and before starting work. There is no minimum period of notice.

5.2 When planning permission is granted for the development, the planning authority must notify the applicant of the requirement to submit the notice and of the fact that failure to do so would be a breach of planning control under section 123(1).

5.3 In addition to providing the date on which development is expected to commence, the applicant is required to submit other information specified in the DMR which may be useful to the planning authority, including:

- The full name and address of the person intending to carry out the development;
- The full name and address of the landowner if they are a different person;
- The full name and address of any site agent appointed in respect of the development; and
- The date of issue and the reference number of the planning permission.

5.4 It is not the intention that a notice of initiation of development be taken as a declaration that suspensive conditions have been met. However it does, insofar as it sets out a date on which development is intended to commence, provide to a planning authority an indication of the date by which suspensive conditions should be met. It would be for the planning authority on receipt of such a notice to consider whether any suspensive conditions were attached to the development and whether compliance with such conditions should be confirmed.

Failure to submit a notice of initiation of development

5.5 Failure to submit the notice before starting work is a breach of planning control. With regard to enforcement action, an informal approach is probably sufficient to result in a notice being submitted, albeit late. Planning authorities should also bear in mind whether any suspensive conditions may apply to the development, any breach of which might necessitate further or more formal action.

5.6 It is not a breach of planning control where a developer does not commence work on the exact date specified in the notice but at some point afterwards.

There may be a number of reasons (not necessarily under the control of the developer) why work does not commence on the specified date.

Notification of Completion of Development

(Section 27B)

5.7 A person who completes a development for which planning permission (including planning permission in principle) has been given must, as soon as practicable after doing so, give notice of completion to the planning authority. Failure to comply is not in itself a breach of planning control under section 123(1). This applies where permission is given on or after 3 August 2009.

5.8 Planning permission for a phased development must include a condition that as soon as practicable after each phase, other than the last, is completed, the person carrying out the development is to give notice of that completion to the planning authority. The planning authority may take enforcement action if such a notice is not given. When the last phase is completed, the requirement to give notice of the completion of development applies.

Display of Notice While Development is Carried Out

(Section 27C and regulation 41)

5.9 For certain classes of development the developer must, for the duration of the development, display a sign or signs containing certain information. A notice would be required for any development that is either:

- national development; or
- major development; or
- a development of a class specified in schedule 3 to the DMR.

5.10 The notice must be in the form in schedule 7 to the DMR and must be: displayed in a prominent place at or in the vicinity of the site of the development; readily visible to the public; and printed on durable material. It is a breach of planning control not to display such a notice.

5.11 The requirements under sections 27A, B and C apply to developments where planning permission was given on or after 3 August 2009.

Certificates of Lawful Use or Development

(Sections 150 to 155)

5.12 See Annex F of Circular 10/2009 on Planning Enforcement[32] for guidance on certificates of lawful use or development.

[32] Circular 10/2009 on Planning Enforcement

Termination of Planning Permission By Reference to Time Limit: Completion Notices

(Sections 61 – 62A)

5.13 Paragraphs 4.106 to 4.117 outline that planning permission is granted subject to a condition that the development to which the permission relates must be begun within a specified time period. The planning permission will lapse if the development has not been commenced before the expiry of the relevant period.

5.14 Where development does start within that period, the planning permission is effectively permanent. However, planning authorities can serve a “completion notice” in respect of uncompleted developments, which results in the relevant planning permission being withdrawn if it is not complied with. Such notices are distinct from, and should not be confused with, notifications of completion of development under section 27B Act described in paragraphs 5.7 and 5.8.

5.15 A completion notice can be served where a development:

- has been commenced within the relevant time period but it has not been completed by the date on which the permission would otherwise have lapsed; and
- the authority is of the opinion that it will not be completed within a reasonable period.

5.16 A completion notice must be served on any owner or occupier of the land to which the permission relates and any other person who in the opinion of the planning authority will be affected by the notice. Recipients of a notice have a right to lodge an objection with the planning authority. A completion notice must specify the date on which it will take effect if no objections are lodged, being not less than 28 days after it was served. If any objections are lodged within that period, the notice will not take effect unless it is confirmed by the Scottish Ministers.

5.17 If a completion notice takes effect, the relevant planning permission will become invalid following the expiration of a further period specified in the notice, which must be not less than 12 months (where Scottish Ministers confirm a completion notice they may extend the ‘further period’). Planning permission is only withdrawn in respect of those parts of the development not completed by the end of the period specified in the notice; development carried out before the expiration of the relevant period will not be affected.

5.18 The procedures for serving a completion notice, and for lodging objections, are set out in sections 61, 62 and 62A.

6. Processing Agreements

The Use of Agreements

6.1 A processing agreement is an agreed framework for processing a planning application or related group of applications. The Scottish Government's expectation is that planning authorities and statutory consultees should actively promote and encourage the use of processing agreements associated with major or national developments and also substantial or complex local developments.

6.2 The Scottish Government has published a template for processing agreements:

https://www.gov.scot/publications/planning-processing-agreement-template/

6.3 Processing agreements can deliver a number of benefits[33]:

- More effective and earlier engagement of key stakeholders;
- Clarity early in the process about information requirements and any matters to be addressed by legal agreement;
- Clearer lines of communication;
- Greater predictability and certainty over the timing of key stages;
- Greater transparency in decision making for everyone involved in the process; and
- Faster decision making through effective project management with a focus on delivery;

6.4 A processing agreement does not guarantee the grant of planning consent. Associated planning applications will be considered on their merits and against the terms of the development plan and other material considerations. The agreement should be based on a shared understanding of the key stages in the process and involve key statutory consultees as appropriate at the outset.

6.5 The prescribed 'period allowed for the determination of the application' (see paragraphs 4.81 to 4.88) is not appropriate in every instance. Where the parties agree that the proposal will take longer to determine than the prescribed period, they should agree in writing to extend this period (provided for under sections 43A(8)(c) and 47(2)). This extended period has implications for when the applicant can appeal to the Scottish Ministers or seek a local review on the grounds of non-determination. Where a processing agreement incorporates such an agreed extended period there will be no right to appeal or seek a review against non-determination of the application until the expiry of the agreed extended period in the agreement.

[33] 2015 Report on the Benefits of Using Processing Agreements

Preparing an Agreement

6.6 Processing agreements should be discussed as early as possible (this will often be prior to pre-application consultation with the community). It is important that applicants are informed at the outset about the level of information required to support an application. Discussions around a processing agreement provide an opportunity to ensure expectations for supporting information are both proportionate and clearly understood. The detail of the agreement may be concluded during the pre-application consultation stage, which is likely to help front-load the planning system and see efficiency savings later in the process.

6.7 While an agreement should be put in place early in the process, it should be seen as a "live document", which is kept under review and which can be altered with the consent of the principal parties to accommodate change that may not have been anticipated at the outset. They should be promoted as a project management technique, not as lengthy complex legal contracts.

Scope

6.8 Processing agreements can cover applications for planning permission (including planning permission in principle) and any resulting agreement or approvals required by conditions imposed on permissions for national or major developments, or more substantial or complex local developments. Where appropriate, the parties may also incorporate the consideration of other consents, such as listed building consent, in the processing agreement to enable a more integrated approach to be taken. The agreement should cover all stages up to issue of the decision notice, including the signing of any related planning obligation.

6.9 The elements for inclusion in the processing agreement should be discussed at the outset. It will be for the parties involved to agree a bespoke approach to each processing agreement.

Form and Content of Processing Agreements

6.10 The Scottish Government expects processing agreements to be as concise, clear and simple as possible. The link in paragraph 6.2 includes a suggested template for such agreements, which can act as a starting point. A processing agreement should not create an additional layer of bureaucracy or be an excessively time consuming process in itself. The key objective is to establish a realistic timescale for processing which takes account of the amount of the information which needs to be considered and the process required to determine the application. The processing agreement should therefore contain any written agreement to extend the 'period allowed for the determination of the application'. The parties may decide who drafts the agreement, though in most cases this will be the planning authority.

6.11 Some likely components are set out below; however different approaches may be taken depending on the circumstances of each case.

- **Roles and responsibilities**

The agreement should set out the roles and responsibilities of all the parties in delivering the determination to timescale, including the planning authority, applicant and statutory consultees.

- **Information requirements**

Parties should agree in advance, taking into account comments from statutory consultees, the additional information beyond the validation requirements needed to determine the application. Agencies are committed to ensuring that the level of information they request is clear and proportionate. This information may be listed in the agreement to offer applicants certainty about what they need to provide and to aid efficient processing by the planning authority.

- **Decision-making framework**

The agreement may set out the management process and forum for decision-making. This could involve a project team which can agree direction and sign off completed tasks, as well as related working groups or task groups, and whether and when the application will be determined under delegated powers or by elected members.

- **Project Plan / Key Milestones**

A project plan should be included setting out a realistic overall timetable for handling the application and for the key stages or milestones. Timescales for individual stages could also be included. The views of statutory consultees should inform this. Milestones would provide a basis for monitoring progress. Review stages may also be built into the project plan. A Gantt chart may be a useful way to illustrate this.

- **Timescales**

Where the parties agree that the proposal will take longer than the statutory period to determine they should agree to extend the period after which an appeal may be made to Scottish Ministers or review sought from the planning authority against non-determination of the application, in accordance with section 47(2) or 43A(8)(c) as the case may be, and record it in the agreement. It will not be possible to appeal against non-determination in advance of that agreed timescale.

7. Enquiries

7.1 Any enquiries about this Circular should be sent to chief.planner@gov.scot. Or otherwise addressed to Chief Planner, Scottish Government, Planning, Architecture and Regeneration Division, Victoria Quay, Edinburgh EH6 6QQ.

Annex A

Defining a Material Consideration

1. Legislation requires decisions on planning applications to be made in accordance with the development plan (and, in the case of national developments, any statement in the National Planning Framework made under section 3A(5)[34]) unless material considerations indicate otherwise. The House of Lords' judgement on City of Edinburgh Council v the Secretary of State for Scotland (1998) provided the following interpretation. If a proposal accords with the development plan and there are no material considerations indicating that it should be refused, permission should be granted. If the proposal does not accord with the development plan, it should be refused unless there are material considerations indicating that it should be granted.

2. The House of Lords' judgement also set out the following approach to deciding an application:

   - Identify any provisions of the development plan which are relevant to the decision,
   - Interpret them carefully, looking at the aims and objectives of the plan as well as detailed wording of policies,
   - Consider whether or not the proposal accords with the development plan,
   - Identify and consider relevant material considerations for and against the proposal, and
   - Assess whether these considerations warrant a departure from the development plan.

3. There are two main tests in deciding whether a consideration is material and relevant:

   - It should serve or be related to the purpose of planning. It should therefore relate to the development and use of land, and
   - It should relate to the particular application.

4. The decision maker will have to decide what considerations it considers are material to the determination of the application. However, the question of whether or not a consideration is a material consideration is a question of law and so something which is ultimately for the courts to determine. It is for the decision maker to assess both the weight to be attached to each material consideration and whether individually or together they are sufficient to outweigh the development plan. Where development plan policies are not directly relevant to the development proposal, material considerations will be of particular importance.

[34] Pending the adoption of National Planning Framework (NPF) 4, from which point the NPF itself will be part of the development plan.

5. The range of considerations which might be considered material in planning terms is very wide and can only be determined in the context of each case. Examples of possible material considerations include:

- Scottish Government policy and UK Government policy on reserved matters;
- Scottish Government circulars, planning advice notes and chief planner letters;
- Local Place Plans;
- Planning policies which do not form part of the statutory development plan;
- National Park Plans;
- Draft policies which are proposed to form part of the statutory development plan;
- Environmental impacts of the proposed development;
- Design of the proposed development and its relationship to its surroundings;
- Infrastructure impacts of the proposed development;
- Planning history of the site;
- Views of statutory and other consultees; and
- Legitimate public concern or support expressed on relevant planning matters.

6. The planning system operates in the long term public interest. It does not exist to protect the interests of one person or business against the activities of another. In distinguishing between public and private interests, the basic question is whether the proposal would unacceptably affect the amenity and existing use of land and buildings which ought to be protected in the public interest, not whether owners or occupiers of neighbouring or other existing properties would experience financial or other loss from a particular development.

Annex B

Pre-Application Consultation – Exemptions and Screening

Exemptions of PAC

1. Requirements for PAC currently apply to major and national development. The Scottish Government considers exemptions from PAC requirements are justified in certain cases. These exemptions fall into two categories:

   i) Where the application is made under section 42 (Section 42 Applications), i.e. an application for a new planning permission with different conditions for a development previously granted permission[35]; or

   ii) Exemption in the circumstances specified in regulation 4A, under section 35A(1A)(b) – where PAC was carried out in connection with an earlier application for planning permission and a subsequent application for essentially the same development is to be made, subject to certain criteria.

2. The scope of section 42 applications, and the publicity and consultation requirements that apply to them, are set out in Annex H.

3. An exemption under section 35A(1A)(b) applies where all of (a) to (d) apply:

   (a) the application for planning permission relates to proposed development—

      (i) of the same character or description as development (or part of the development) in respect of which an earlier application for planning permission was made ("the earlier application"),

      (ii) comprised within the description of the development contained in the proposal of application notice for PAC given to the planning authority under section 35B(2) in respect of the earlier application, and

      (iii) to be situated on or within the same site as the development to which the earlier application related and on no other land except land which is solely for the purpose of providing a different means of access to the site of the proposed development,

   (b) there has been compliance with the PAC requirements in respect of the earlier application,

   (c) the planning authority has not exercised their power under section 39 to decline to determine the earlier application, and

   (d) the application for planning permission is made no later than 18 months after the validation date of the earlier application.

[35] This PAC exemption for 'Section 42 Applications' predates the 1 April 2022 changes.

4. The prescribed circumstances mean in effect that provided there was an earlier application for essentially the same development prior to which PAC was carried out, then as long as a follow up application is made within 18 months from when that earlier application was made, it is exempt from further PAC requirements. This applies as long as the planning authority did not refuse to deal with the earlier application ('decline to determine' it) under section 39 (see Annex E).

5. Criteria in (a) above specify that the new proposal could be different in some respects from that in the earlier application, but has to be the same character or description of development. It also has to be on or within the same site as the earlier application, though some allowance is made for a change to a means of access. The proposal would also have to be within the scope of the description of the development in the PoAN, on which PAC was carried out.

6. The exemption provided for by section 35A(1A)(b) and regulation 4A is intended to allow, for example: applicants to address grounds for refusal of permission; make amendments to address practical considerations that arise in the wake of planning permission being granted; or, where an application has to be withdrawn and a fresh one submitted, to address some aspect of the development without having to start PAC again.

7. It would be open to a prospective applicant to engage in some pre-application consultation voluntarily before making a subsequent application. They will still have to go through the planning application process, with the associated public engagement requirements on the planning authority, and there may be value in trying to identify before entering that process any issues the community have as regards the elements of the proposal that are to be changed in the new application.

8. The provisions recognise that a newer application may relate to only part of the overall development or part of the proposal site and that the applicant may be a different party.

9. Where the criteria are met, exemptions in effect apply whatever happened to the earlier application, e.g. whether it was withdrawn, refused, granted, granted with conditions, or is still live.

PAC Screening

10. PAC screening in advance of making an application is optional. There are two types: Firstly screening to ascertain whether the development is of a class to which PAC applies; and secondly, if it is, whether an exemption applies.

Screening as to whether the proposal is of a class of development to which PAC applies

11. The process is started by a prospective applicant submitting a notice to the planning authority (a 'pre-application screening notice') requiring the authority to make a statement as to whether the PAC is required before an application is made. Under section 35A(5) and regulation 5 of the DMR, the 'pre-application screening notice' must contain:

    a) a description in general terms of the development to be carried out;

    b) the postal address, if any, of the site at which the development is to be carried out;

    c) a plan showing the outline of the site at which the development is to be carried out and sufficient to identify the site;

    d) detail as to how the prospective applicant may be contacted and corresponded with; and

    e) a statement as to whether in respect of the development a screening opinion or screening direction has previously been issued on the need for environmental impact assessment (EIA), under the EIA Regulations.

12. In preparing the notice, a prospective applicant should include enough detail within the general description of the proposal to enable the planning authority to determine the class of development within the hierarchy. Any plan showing the site should be to a proper cartographic base, for example Ordnance Survey, and use an appropriate scale.

13. Point (e) is to facilitate the identification of proposals previously screened as Schedule 1 development in the EIA Regulations, which are categorised as major developments in the hierarchy.

14. Although this information should be sufficient in most cases to make a decision, the planning authority has powers under section 35A(6) to request further information where necessary to determine whether the proposal is in a class categorised as requiring PAC.

15. The authority has 21 days to respond to a screening notice, which does not include any time between requesting additional information and its receipt (sections 35A(7) and (8)). Any request by the planning authority for further information would need to be made before the 21 day period elapsed. In responding to a screening notice to request further information, the planning authority should be clear whether the request relates to information which is required to meet the content specified in legislation or merely additional information needed to help them make a decision.

16. If the proposal is not considered to be in a category for which PAC is required, and the proposal is not then altered materially prior to submission of a planning

application within 12 months from when the prospective applicant gave notice, the planning authority cannot subsequently alter its initial view. The date the prospective applicant gave notice applies to when the statutory requirement on content of such notices was met, not when any additional information requested by the planning authority, over and above the statutory requirement, was received.

17. The screening processes for EIA and for PAC are separate statutory procedures. Therefore a screening opinion under the EIA Regulations would not in itself function as a view on the need for PAC.

18. It is open to the prospective applicant to proceed with PAC without a screening notice. In most instances it should be clear whether PAC is required from the definition of major and national developments. Where a pre-application screening notice and a proposal of application notice are submitted together, they can be processed concurrently rather than consecutively.

Screening for PAC Exemption

19. The PAC exemptions under section 35A(1A)(b) described above were introduced on 1 October 2022. PAC screening can play an important role in determining whether such exemptions apply.

20. Where exemption from PAC relates to the making of a Section 42 Application, none of the criteria in regulation 4A, and described in paragraph 3 of this Annex, apply[36]. There should therefore be no need for screening to the extent that the applicant is clear they are intending to make an application for a new planning permission for the same development again, seeking only changes to the conditions attached to a previous permission. Whether making an application under section 42 would be appropriate is not a matter for PAC screening.

21. Where a screening notice is submitted regarding the section 35A(1A)(b) exemption (see paragraph 3 of this Annex), in addition to the information in paragraph 11 of this Annex, the notice must also contain—

    (a) sufficient information to enable the earlier application to be identified by the planning authority,

    (b) the information contained in the proposal of application notice given to the planning authority under section 35B(2) in respect of the earlier application, and

    (c) a statement (for the purposes of assessment of the need to comply with section 35B), confirming the date, or latest date, on which the prospective applicant intends to make that application for planning permission.

[36] Applications for planning permission under section 42 have to be made for the same development and is intended to allow only changes to or removal of the conditions attached to the previous permission to be considered. There will be limited scope for PAC to alter the development prior to such an application. See Annex H on Section 42 Applications.

22. Items (a) and (b) relate to the judgement regarding the relationship between the proposal described in the notice and the proposal as set out in the earlier application and related PoAN.

23. Item (c) relates to the time limit on exemptions, i.e. the subsequent application would, amongst other things, need to be made no later than 18 months after the validation date of the earlier application to qualify for exemption from PAC. Whilst the point at which the planning authority's screening statement is given may be within 18 months after the validation date of the earlier application, that 18 month period may elapse before the new application is made.

24. Where a planning authority issues a screening statement to the effect the PAC exemption applies, they will need to specify the date by which the application needs to be made in order to meet the 18 month time limit on such exemptions. The planning authority does not have the power to specify that the exemption only lasts for a shorter period.

25. A section 35A(1A)(b) exemption will fall if the 18 month time limit from the date the earlier application was made elapses. Where that is within the 12 month period from submission of the screening notice (see paragraph 16 of this Annex), then the exemption nonetheless falls at the end of the 18 month time limit.

Annex C

Content of Pre-Application Consultation Reports

A pre-application consultation report must contain—

(a) the dates on which, and places where, public events were held as required in accordance with regulation 7(2),

(b) a description of—

(i) any additional consultation or notification required by the planning authority in relation to the proposed application under section 35B(7),
(ii) any additional steps taken by the prospective applicant to consult with members of the public as regards the proposed development,

(c) a list of bodies, groups and organisations who were consulted by the prospective applicant,

(d) evidence as to how the prospective applicant carried out the activities described under sub-paragraphs (a), (b) and (c),

(e) copies of—

(i) any materials sent to consultees,
(ii) any materials provided to those attending a public event, and
(iii) any visual presentation shown or displayed at a public event,

(f) photographs of any display boards or models at public events,

(g) confirmation as to whether consultees and attendees at public events were informed that pre-application consultation does not remove the right or the potential need to comment on the final application once it is made to the planning authority,

(i)[37] a summary of—

(i) the written responses to consultations, and
(ii) views raised at public events, including an indication of the number of written responses received and the number of persons who attended the public events,

(j) an explanation of how the prospective applicant took account of views raised during the pre-application consultation process, and

(k) an explanation of how members of the public were given feedback on the prospective applicant's consideration of the views raised during the pre-application consultation process.

[37] There is an error in the legislation in denoting the contents of the PAC report – i.e. no (h). We have replicated that here to avoid any confusion when reading the guidance alongside the legislation.

Annex D

Plans and Drawings

1. All applications should be accompanied by a location plan and almost all will require a site plan. Where the applicant owns some or all of the "neighbouring land" (see paragraph 4.15 of the main circular), a plan showing such land must be included. The following are not statutory requirements but an indication of what planning authorities can reasonably expect by way of a minimum of information on these plans. Planning authorities may also publish their own guidance in this regard.

   Location plan – this must identify the land to which the proposal relates and its situation in relation to the locality: in particular in relation to neighbouring land. Location plans should be a scale of 1:2500 or smaller.

   Neighbouring land owned by the applicant – where required, this could be incorporated into the above plan or on a separate plan of similar scale.

   Site Plan – this should be of a scale of 1:500 or smaller and should show:

   - The direction of North;
   - General access arrangements, landscaping, car parking and open areas around buildings;
   - The proposed development in relation to the site boundaries and other existing buildings on the site, with written dimensions including those to the boundaries;
   - Where possible, all the buildings, roads and footpaths on land adjoining the site including access arrangements;
   - The extent and type of any hard surfacing; and
   - Boundary treatment including walls or fencing where this is proposed.

2. The range of other plans and drawings will depend on the scale, nature and location of the proposal. Planning authorities should consider providing guidance on the levels of information expected in different types of case. The following plans and drawings will not be required in every case, but the list indicates the sort of minimum information which should be included where necessary:

   Existing and proposed elevations (at a scale of 1:50 or 1:100) which should:

   - show the proposed works in relation to what is already there;
   - show all sides of the proposal;
   - indicate, where possible, the proposed building materials and the style, materials and finish of windows and doors;
   - include blank elevations (if only to show that this is in fact the case);
   - where a proposed elevation adjoins another building or is in close proximity, the drawings should clearly show the relationship between the buildings, and detail the positions of the openings on each property.

Existing and proposed floor plans (at a scale of 1:50 or 1:100) which should:

- explain the proposal in detail;
- show where existing buildings or walls are to be demolished;
- show details of the existing building(s) as well as those for the proposed development; and
- show new buildings in context with adjacent buildings (including property numbers where applicable).

Existing and proposed site sections and finished floor and site levels (at a scale of 1:50 or 1:100) which should:

- show a cross section(s) through the proposed building(s);
- where a proposal involves a change in ground levels, show both existing and finished levels to include details of foundations and eaves and how encroachment onto adjoining land is to be avoided;
- include full information to demonstrate how proposed buildings relate to existing site levels and neighbouring development; and
- show existing site levels and finished floor levels (with levels related to a fixed datum point off site), and also show the proposals in relation to adjoining buildings (unless, in the case of development of an existing house, the levels are evident from floor plans and elevations).

Roof plans (at a scale of 1:50 or 1:100) to show the shape of the roof and specifying details such as the roofing material, vents and their location.

Annex E

Declining to Determine Planning Applications

Repeat Applications

1. Section 39(1) contains discretionary powers for planning authorities to decline to determine repeat planning applications. Where the Scottish Ministers have, within the previous 5 years, refused permission on a similar application on call-in or appeal and, in the opinion of the planning authority, there has been no significant change in the relevant parts of the development plan or other material considerations since that decision, the planning authority can refuse to deal with the application.

2. The same discretionary power applies where more than one similar application has been refused in the previous 5 years and no appeal has been made or has been made but not determined. In these cases the above criterion relating to changes in the development plan or other material considerations relates to the period since the most recent refusal of a similar application.

3. The discretionary powers to decline to determine a repeat application also apply where an application is subject to a right to local review by the planning authority rather than a right to appeal to the Scottish Ministers. For example, where a similar application has been refused on local review within the previous 5 years and there is no change in the development plan or other material considerations, then the planning authority may decline to determine the application.

4. Section 39(2) outlines what constitutes a similar application for the purposes of planning authorities' power to decline to determine applications for planning permission. It states that applications are only to be taken as similar if the development and the land to which the applications relate are - in the opinion of the authority - the same or substantially the same.

5. Whether the development and land to which the applications relate are the same (i.e. identical) will be a matter of fact. However, whether the development and land to which the applications relate are "substantially the same" will depend upon the degree to which they differ from the proposals for which planning permission was sought by the earlier application. As section 39(2) states, this is a matter of judgement for the authority.

6. The planning authority's opinion on this will be dependent on the specific circumstances of the case, the particulars of the proposed development and its planning context. In exercising this judgement, authorities will wish to consider the extent to which there has been a change in:

    - The type of development proposed;
    - The scale of the proposed development;
    - The design and layout of the proposed development;

- The nature and scale of any mitigation proposed as part of the development; and
- The site boundaries of the proposed development

7. Whether there has been a "significant change" in the development plan which is material to the current application, or a significant change in any other material consideration, will also depend on the circumstances of the particular case and is also a matter of judgement for the planning authority. Relevant considerations will include:

    - The reasons why a similar application was refused and the policies and/or considerations on which that decision was based;
    - Any relevant planning decisions (including appeal or local review decisions) taken in the intervening period;
    - Whether, during the intervening period, any new national or local plans, policies, proposals or provisions have been published;
    - Whether such plans, policies, proposals or provisions were published in draft or finalised – and whether they have any relevance to the current application;
    - Whether such plans, policies, proposals or provisions are substantively different from any equivalents that were applicable when a similar application was refused; and
    - Whether, during the intervening period, any other developments have been approved, completed or are under construction which affect the planning context or setting of the site (e.g. the provision of new or upgraded infrastructure that is relevant to the proposed development).

8. In general terms, there is likely to have been a significant change where part of the development plan has been updated or amended (for example, the adoption of a new local development plan or the NPF becoming part of the statutory development plan) unless the provisions of the development plan which are material to the particular case are essentially unchanged.

9. These are discretionary powers. A planning authority is not obliged to decline to determine an application even if, in the opinion of the authority, it constitutes a similar application and there has been no significant change in the development plan or material considerations, and all other relevant criteria have been met.

Applications without the necessary pre-application consultation (PAC)

10. Section 39(1A) requires that planning authorities decline to determine a planning application to which the PAC requirements apply and where the applicant has not complied with those requirements.

11. The planning authority may, before declining to determine an application in these circumstances, ask the applicant to provide such additional information as they may specify. There is therefore some discretion for the planning authority to request additional information to demonstrate that the requirements have been complied with or that some previously missing aspect of required PAC had subsequently been undertaken.

12. When declining to determine an application in these circumstances, the planning authority must advise the applicant of the reasons for its opinion that the applicant has not complied with the PAC requirements. The requirement to decline to determine due to an absence of required PAC does not apply where the applicant has:

- a statement of the planning authority's opinion under section 35A(3) to the effect that the proposal is not in a class of development which requires PAC; and
- submitted the related application within 12 months after submitting the notice seeking the planning authority's opinion, and the proposal does not differ materially from the information provided in that notice.

Or

- an exemption from PAC applies under section 35A(1A)(a) or (b).

13. See paragraphs 1 to 3 in Annex B on PAC exemptions. Where an applicant is intending to rely on an exemption from PAC under section 35A(1A)(b), they are to include a statement to that effect with their application (Regulation 4A(3)[38].

No Right to an Appeal to Scottish Ministers or Local Review where a Planning Authority Declines to Determine and Application

14. Where a planning authority declines to determine an application under section 39, the applicant does not have a right to an appeal or a local review on the grounds of non-determination (Sections 43A(8A) and 47(2)). As no decision has been made to either refuse planning permission or grant it with conditions, then no right to appeal or seek local review of such decisions under sections 43A and 47 applies.

[38] Where an application is being made under section 42 (and consequently exemption from PAC applies under section 35A(1A)(a) applies), a statement to that effects is already required by regulation 11.

Annex F

Pre-Determination Hearings Procedures

1. Mandatory pre-determination hearings under section 38A will be held by a committee of the authority, in whatever format adopted by the authority. Planning authorities may consider developing, consulting on and publishing standard procedures for pre-hearing arrangements (invitations, availability of information etc.), hearing arrangements 'on the day' and any post-hearing recording and follow-up. Any hearing should take place after the expiry of the period for making representations on the application but before the planning authority decides the application.

2. Among the issues that planning authorities will wish to consider in determining their procedure for pre-determination hearings are:

    - the order of proceedings (for example, the applicant and those who made representations to address Committee in turn;
    - to avoid repetition it may be necessary to ask one objector to speak on behalf of a group of objectors rather than allowing all objectors a right to address the Committee individually;
    - the maximum time available for applicants. Rules governing witnesses and those who made representations to present their cases and respond to each other's statements;
    - the opportunity for Committee members to ask questions of applicants, consultees, objectors and supporters; and
    - the opportunity for Committee members to ask for additional advice and information from planning officials;

Other applications for which planning authorities may require Hearings

3. Under section 38A(4), the planning authority may decide to hold a hearing for any development not covered by the requirements of section 38A and to give the applicant and any other person an opportunity of appearing before and being heard by the committee. Examples of other categories of development which planning authorities might decide require hearings include applications in which the local authority has a financial interest, or applications that have attracted a given number and type of objections or applications relating to development in sensitive areas protected by statutory designations.

Annex G

Duration of Planning Permission

Introduction

1. Planning authorities will wish to give careful consideration as to the appropriate duration of a planning permission, and, in the case of planning permission in principle in particular, to the matter of time limits for making applications for approval of matters specified in conditions. The latter will be the case especially where the permission relates to development intended to take place in phases over a number of years. Examples might include large housing schemes, plot-by-plot housing schemes, business parks, or other similar development where the details of later phases are not yet known.

2. All parties should seek to avoid a scenario where it only subsequently becomes clear, after permission has been granted, that the timetable for making applications for approval of details and/or implementing the development is unrealistic.

3. In all cases, authorities will wish to allow reasonable flexibility for developers, whilst seeking to minimise uncertainty surrounding the implementation of the permission.

Background

4. Paragraphs 4.106 to 4.117 outline the relevant provisions which govern the duration of planning permission and the duration of planning permission in principle. In summary, where planning permission is granted it must be subject to a condition that development is to commence within a specified period, or the permission will lapse. In the case of full planning permission the default period is 3 years unless the planning authority specifies a different period when granting planning permission. For planning permission in principle, the equivalent default time period for commencing the development is 5 years. Again the planning authority can when granting planning permission in principle specify a different time period.

5. Amongst other things, to be a planning permission in principle a permission must be subject to one or more conditions that the relevant development cannot be commenced until certain matters have been approved. Paragraphs 3.13 to 3.17 outline the relevant procedures for seeking approval of such matters. There is no statutory time period within which applications for approval of matters specified in conditions must be applied for. However, Section 41(1)(c) provides that a planning authority may attach conditions to the grant of planning permission which relate to the timing of:

    - applications for consent, agreement or approval; or
    - carrying out other actions connected with the permission or development.

6. Under these provisions, planning authorities can impose conditions as to the timing of applications for approval of matters specified in conditions, and to set specific timings for different phases of the development. Section 41(1)(c) is applicable to all approvals required by conditions, not just those attached to planning permission in principle, that must be approved before the development, or a specified element of the development, can begin.

Setting an appropriate duration

7. As outlined, conditions specifying a longer or shorter duration than the default three or five year periods may be imposed on the grant of planning permission or planning permission in principle, under sections 58(1)(b) and 59(2A)(b) respectively. Section 58(3A) and section 59(2D) provide that such an alternative time period is one which:

    a) begins on the date the planning permission is granted; and
    b) the relevant planning authority considers appropriate, having regard to the development plan and any other material considerations.

8. Whether an alternative time period is appropriate will depend on the particular circumstances of the proposed development. Relevant considerations might include:

- The scale and complexity of the proposed development;
- Any information about the anticipated phasing of the proposed development provided with the application;
- The anticipated timing of infrastructure or other works required to enable the proposed development; and
- Prevailing economic conditions, including any impacts these might have on relevant supply chains

9. Planning authorities should discuss the matter with the applicant where a longer or shorter duration than the default time period is being considered.

10. A Section 42 application (See Annex H) can be used to apply for a new planning permission for the same development, but with different conditions – including in respect of duration. Even where such an application does not relate specifically to conditions on duration or time periods for subsequent approvals or actions, the planning authority and the applicant will nevertheless want to give consideration as to whether conditions in these regards need to be amended due, for example, to the passage of time since the earlier permission was granted.

Timescales for seeking approvals

11. As outlined in paragraphs 5 and 6 of this Annex, Section 41(1)(c) recognises, and provides for, the principle of phased development and enables the planning authority to specify specific timescales for the approval and implementation of different parts of the permission.

12. The planning authority should discuss with applicants appropriate time periods in these regards. It is open to applicants to provide information with their planning application that would assist such consideration.

13. As indicated above, such engagement can avoid problems later. Careful consideration of timetables at the point of granting permission can avoid applicants having to prepare (and authorities having to determine) section 42 applications at a later date. Doing so can also help to provide greater certainty for third parties.

14. If the intention is that a development is to be implemented in phases, or that approvals for parts of a development are to be submitted in phases, the conditions themselves need to be framed to recognise this.

15. Attention is drawn to the requirements for notices of completion of development with regard to phases of development – see paragraphs 5.7 and 5.8 of the main circular.

16. Planning authorities and applicants will wish to give consideration to the wording of individual conditions, and in particular will wish to ensure clarity as to:

- Where a further approval is required, whether this is necessary before the development as a whole can begin, or before part of the development can begin.
- Whether the matters to be approved concern the development as a whole, or whether they relate only to particular phases. For example, where a condition requires the approval of the planning authority on the 'siting, design, and external appearance of all buildings,' whether this relates to all buildings across the development as a whole, or only in relation to a particular phase of development.
- Authorities may wish to consider using an advisory note to clearly set out the timetable for making applications for approvals as specified in the conditions.
- Authorities are reminded of the need to ensure that all conditions imposed meet the tests set out in Circular 4/1998 on the Use of Conditions in Planning Permissions.

Annex H

Applications for Planning Permission Under Section 42

1. Section 42 applies to applications for a new planning permission or new planning permission in principle for a development but with different conditions from those attached to a previous permission for that development.

Background

2. Planning authorities will wish to note the following in relation to Section 42 applications:

    - Section 42(4) specifies that section 42 does not apply if the previous permission was granted subject to a condition as to the time within which the development to which it related was to be begun, and that time has expired without the development having been begun.
    - The effect of granting permission for a section 42 application is such that a new and separate permission exists for the development. The planning authority must refuse the application if it decides that planning permission should be subject to the same conditions as the previous planning permission. The previous planning permission remains unaltered by, and is not varied by, the decision on the section 42 application.
    - The need to attach to the new permission any of the conditions from the previous permission which it is intended should apply to the new planning permission.
    - The need to secure any section 75 legal obligation (or other agreement) to the new permission, where it is intended this should still apply.
    - Unless legislation states otherwise, the statutory requirement on applications for planning permission and planning permission in principle apply, as the case may be, to applications under section 42 for planning permission or for planning permission in principle.

Key Differences in Statutory Requirements for Applications under Section 42

3. As indicated, statutory requirements concerning the consultation and publicity of planning applications, and in respect of decision notices etc., apply to section 42 applications unless otherwise stated. The key differences are:

    - There is no requirement for pre-application consultation on section 42 applications (section 35A);
    - There are specific requirements concerning the content of section 42 applications (regulation 11(2) of the DMR; and
    - A flat-rate fee applies to section 42 applications.

4. Requirements set out in other legislation apply as for any application for planning permission and include, for example, the requirements of Habitats Regulations and the provisions of the EIA Regulations.

Determining a Section 42 application

5. In determining a Section 42 application, authorities may consider only the issue of the conditions to be attached to any resulting permission. However, in some cases this does not preclude the consideration of the overall effect of granting a new planning permission, primarily where the previous permission has since lapsed or is incapable of being implemented.

6. Where it is considered that permission should be granted subject to different conditions (see paragraph 2 of this Annex), a new permission would need to be granted with all the conditions to which the development should be subject attached.

7. If it is considered that planning permission should be granted subject to the same conditions as the previous permission, the section 42 application should be refused. The making, granting, or refusal of a section 42 application does not alter or affect the previous permission or its conditions.

CIRC.

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