

POLICY NOTE

DRAFT : THE PLANNING ETC. (SCOTLAND) ACT 2006 (SUPPLEMENTARY AND CONSEQUENTIAL PROVISIONS) ORDER 2013

Introduction

1. The above instrument was made in exercise of powers conferred by section 58(1) and (2) of the Planning etc. (Scotland) Act 2006. The instrument is subject to the affirmative procedure.

Background

2. The Planning etc. (Scotland) Act 2006 (Supplementary and Consequential Provisions) Order 2013 makes a number of technical amendments to the Town and Country Planning (Scotland) Act 1997 (“the 1997 Act”). These relate to planning applications to which the right to local review by the planning authority apply.
3. Local reviews were introduced by the Planning etc. (Scotland) Act 2006 and replace planning appeals to Ministers where an application is for local development and is delegated to an appointed person (usually an officer of the planning authority) for decision. In such cases the applicant can seek a local review by members of the planning authority where the appointed person has failed to issue a decision within the prescribed period, where that person has refused planning permission or he or she has granted it with conditions to which the applicant objects.
4. Since their introduction it has become apparent that a number amendments relating to local reviews still need to be made to the 1997 Act.

Policy Objective

5. The amendments are intended to ensure the relevant provisions of the 1997 Act apply to applications to which the right to local review applies and/or that it is clear how they apply in such cases.

The Changes

6. The amendments are as follow:
 - i) **Article 2(2)** amends section 39 on declining to determine applications. This section of the 1997 Act gives planning authorities the discretion to decline to determine subsequent similar applications in certain circumstances – in effect returning them to the applicant. This is to enable planning authorities to refuse to consider a repeat application for the same development where there have been previous refusals and nothing in the development plan or any other material considerations have changed. Part of this provision relates to where

there have been appeals to Ministers in such cases and it does not take account of cases which would be subject to local review instead.

The enables the provisions to operate for local review cases as they operate in relation to applications in respect of which there is an appeal to the Scottish Ministers under section 47.

ii) **Article 2(3)(a) and (b)** amend section 43A, which makes provision for schemes of delegation for applications relating to local development and triggering rights to local reviews instead of to appeals to Ministers. There are a number of amendments to this:

(a) Additional provisions of the Act are applied to appointed persons dealing with delegated cases, in particular as the latter need not necessarily be an officer of the planning authority e.g. power to vary applications (section 32A), compliance with call-in and other Ministerial directions (sections 43(1) and (2) and 46)) and the ability to direct on the duration of permission (sections 58, 59 and 60).

(b) Make clear the right to local review on the grounds of non-determination (i.e. where the officer has not issued a decision within a specified period) does not apply where the appointed person has declined to determine the application under section 39 or Scottish Ministers have called-in the application for their determination under section 46.

iii) **Article 2(4)** amends section 46, which relates to the call-in of applications by Scottish Ministers for their determination. This section is being amended to make clear on the face of the 1997 Act that such powers applies in relation to such applications.

iv) **Article 2(5) amends** section 59, which specifies the time period within which development granted planning permission in principle must be started and when applications for approval of matters of detail specified in conditions must be made. In respect of the latter, the current provisions specify one period in relation to when a previous application for approval was refused on appeal to Ministers, and this amendment makes clear it applies in relation to such applications refused on local review.

v) **Article 2(6) amends** section 218(1)(c), which refers to applications for planning permission deemed to have been made when an appeal against enforcement action is made on the grounds that planning permission should be granted. This ground of appeal against enforcement action has been removed previously and so Section 218(1)(c) is repealed.

Consultation

7. The principle of the introduction of local reviews was consulted on as part of the bill process for the Planning etc. (Scotland) Act 2006. These changes are

technical in nature and ensure that the existing policy and legislation on local reviews operate appropriately in relation to the rest of the 1997 Act.

Impact Assessments

8. A final Business and Regulatory Impact Assessment is attached, though these amendments are not expected to have any significant impacts on business. An Equalities Impact Assessment is also attached, though there are not expected to be any implications for equalities groups arising from these amendments.

Planning and Architecture Division
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