



THE SCOTTISH PLANNING SYSTEM: A HANDBOOK

Report by Chief Officer Place

1 PURPOSE OF REPORT

- 1.1 The purpose of this report is to provide an introduction to the planning system for elected members.

2 BACKGROUND

- 2.1 Elected members have an important role to play in the planning system through their duties as ward members and through their position on the Planning Committee and Local Review Body.
- 2.2 To assist the new Committee officers have prepared advice for elected members '*The Scottish Planning System: A Handbook*', a copy of which is attached to this report – the document will also be published on the Council's website and will hopefully be of use to Community Council's and other interested parties.

3 THE PLANNING SYSTEM IN SCOTLAND

- 3.1 The attached publication provides guidance with regard:
- Planning – purpose and significance;
 - The planning process – summary;
 - Development plans;
 - Development management;
 - Appeals and reviews;
 - Enforcement; and
 - Code of Conduct.

4 RECOMMENDATION

- 4.1 It is recommended that the Committee notes the contents of the report.

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The Scottish Planning System: A Handbook

Midlothian Council
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Midlothian 

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Introduction

“The planning system is concerned with the future development and use of land and buildings. It is about where development should happen, where it should not, and how it interacts with its surroundings.”

- **PAS, February 2022**

The Scottish Planning system has been through a process of review over the last three years. The reform has required substantial changes to legislation including the Planning (Scotland) Act 2019, which was passed by Scottish Parliament in June 2019, and makes some significant changes to the Town and Country Planning (Scotland) Act 1997.

The planning system raises complex issues and is an area of decision-making in which elected members must be impartial and balance competing demands.

This guide aims to help the reader to understand what the planning system seeks to achieve and introduces the processes involved in decision-making. It is not an exhaustive document, but rather intends to summarise the main areas which planning covers.

A page containing links to useful sources of information on the planning system is included at the end of the guide.

What is the purpose of planning?

“...to manage the development and use of land in the long-term public interest”

- **Planning (Scotland) Act 2019**

The planning system is established through legislation, which sets out certain actions and activities that planning authorities in Scotland are responsible for. The legislation gives the context for delivering new development in the right places. As such, planning can enable great places through managing change that impacts upon our environment, our communities and our health and wellbeing.

The [Town and Country Planning \(Scotland\) Act 1997](#) is the primary legislation for planning in Scotland. The [Planning \(Scotland\) Act 2019](#) is the most recent amendment to planning legislation. The changes in the system look to strengthen the influence and perception of planning to place it centrally in the service coordination and the decision making process required to deliver great places. At the same time, the changes seek to streamline procedures and reduce bureaucracy. The 2019 Act initiates a broad range of changes to be made across the planning system including:

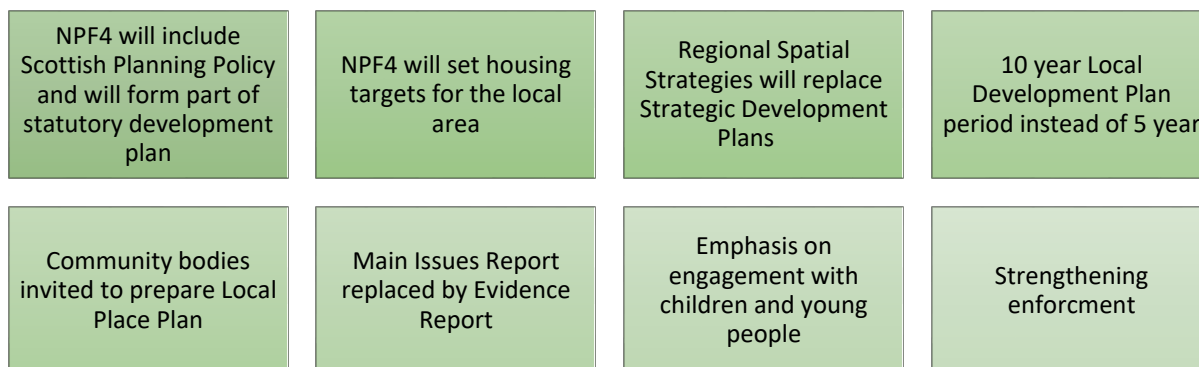


Figure 1: Examples of changes brought about by Planning (Scotland) Act 2019

The detail of how the above will work in practice is contained in secondary legislation and guidance. For further information and updates on the progress with implementing the act see the Scottish Government's [Transforming Planning website](#).

The National Planning Framework (NPF4) and Local Development Plan form the Development Plan by which planning applications must comply and are assessed. While the Regional Spatial Strategy and Local Place Plans are considered in the preparation of the Local Development Plan, they do not form part of the Development Plan. What's more, the 2019 Act removes the statutory weight of Supplementary Guidance once NPF4 is adopted. Councils may still prepare guidance, however it is no longer part of the Development Plan or a material consideration in determining planning applications.

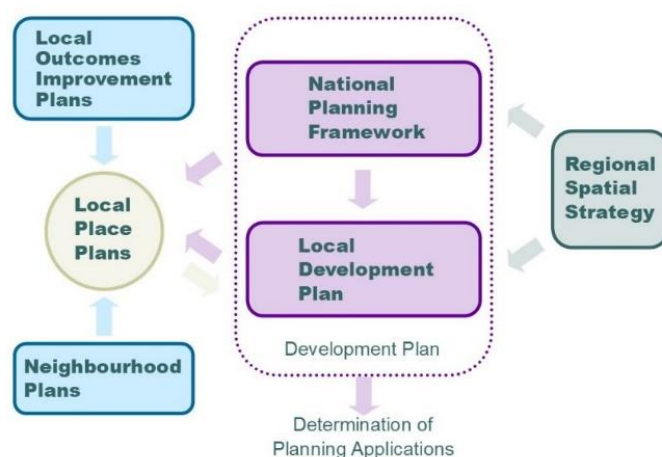


Figure 2: The Scottish Planning System

The planning system seeks to:

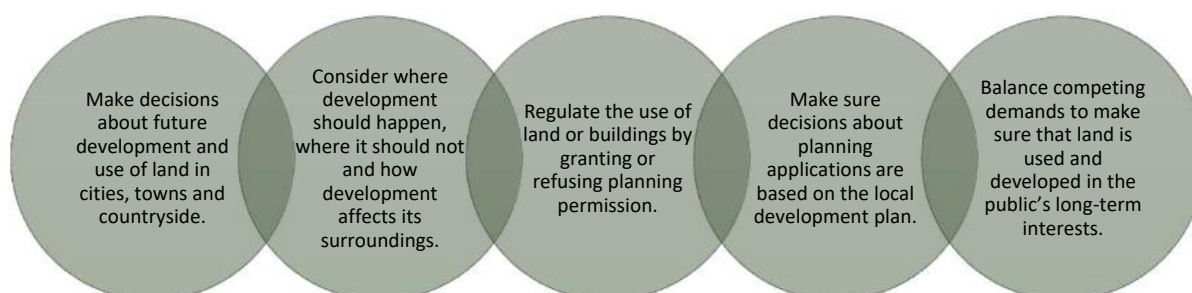


Figure 3 Aims of the planning system

Consequently the planning system has a significant impact on our quality of life, by shaping the environment in which we live, work, shop, learn, travel and spend our leisure time. Actions taken through the planning system can therefore make a major contribution to councils' corporate objectives and that of other public service partners.

Councils, and therefore elected members, must represent the wider public interest and help mediate such conflicts through the planning system. Partnership working, community involvement and meaningful negotiations with developers are essential to achieve a successful planning system.

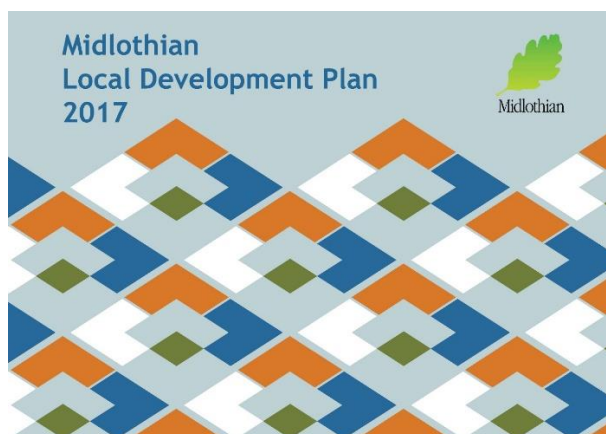
A Summary of the Planning Process

Planning is far more than simply deciding whether or not a development should be granted planning permission. The two primary elements of the Scottish planning system are development plans and development management.

In summary, **development plans** guide the future use and appearance of our surrounding environments. Development plans set out the long term vision for where development should and should not happen (e.g. housing and employment land allocations) and how development should interact with its surroundings.

All local authorities have a legal duty to prepare a Local Development Plan (LDP) for their area. The Planning (Scotland) Act 2019 introduces key changes to the LDP preparation process with the objective of making them more inclusive of local communities and with more focus on the delivery of the plan. The law also requires that planning applications are determined in accordance with the LDP, unless material considerations indicate otherwise.

The current [Midlothian Local Development Plan](#) (adopted in 2017) sets out the development strategy for Midlothian for the next 10 years, including the housing and economic land requirements identified in the Strategic Development Plan. It also sets out the detailed policies used to determine planning applications in Midlothian. The next LDP will be prepared under new Planning (Scotland) Act 2019 legislation and will take account of NPF4 which, together, will form the next Midlothian Local Development Plan.



Development management is the process of deciding whether to grant or refuse planning permission and other related activities including enforcement of planning controls.

The Scottish planning system categorises planning applications into three categories – national, major and local. Applications in each category are treated differently due to the size and complexity of the development and the likely arising issues.

The majority of planning applications dealt with are for local developments. These include changes to individual houses, small developments for new housing and retail. Major developments include applications for 50 or more dwellings, certain waste, water, transport, energy-related developments and larger retail developments. National developments are significant developments of national importance (ranging from single large scale projects to collections and networks of several smaller scale proposals) and are identified in the National Planning Framework.

The above being said, planning authorities deal with more than development planning and development management and are responsible for other duties including:

- Enforcement;
- Tree Preservation Orders;
- Identification of Public Rights of Way; and
- Designation of conservation areas.

The council's planning service also contributes to community planning, economic and regeneration initiatives and can promote improvements to the local environment by encouraging environmentally sustainable forms of development. The most recent significant role of planning is to ensure that development happens in such a way that the Scottish Government's Net-Zero Carbon target by 2045 and, more locally, Midlothian Council's target by 2030, are met.

Key Players in the Scottish Planning System

Aside from the local planning authority, there are a number of other key “players” in the Scottish planning system ranging from the Scottish Government which provides the main legislative framework for planning, to public bodies and agencies who have statutory responsibilities for certain topics. The main “players” in the Scottish planning system are:

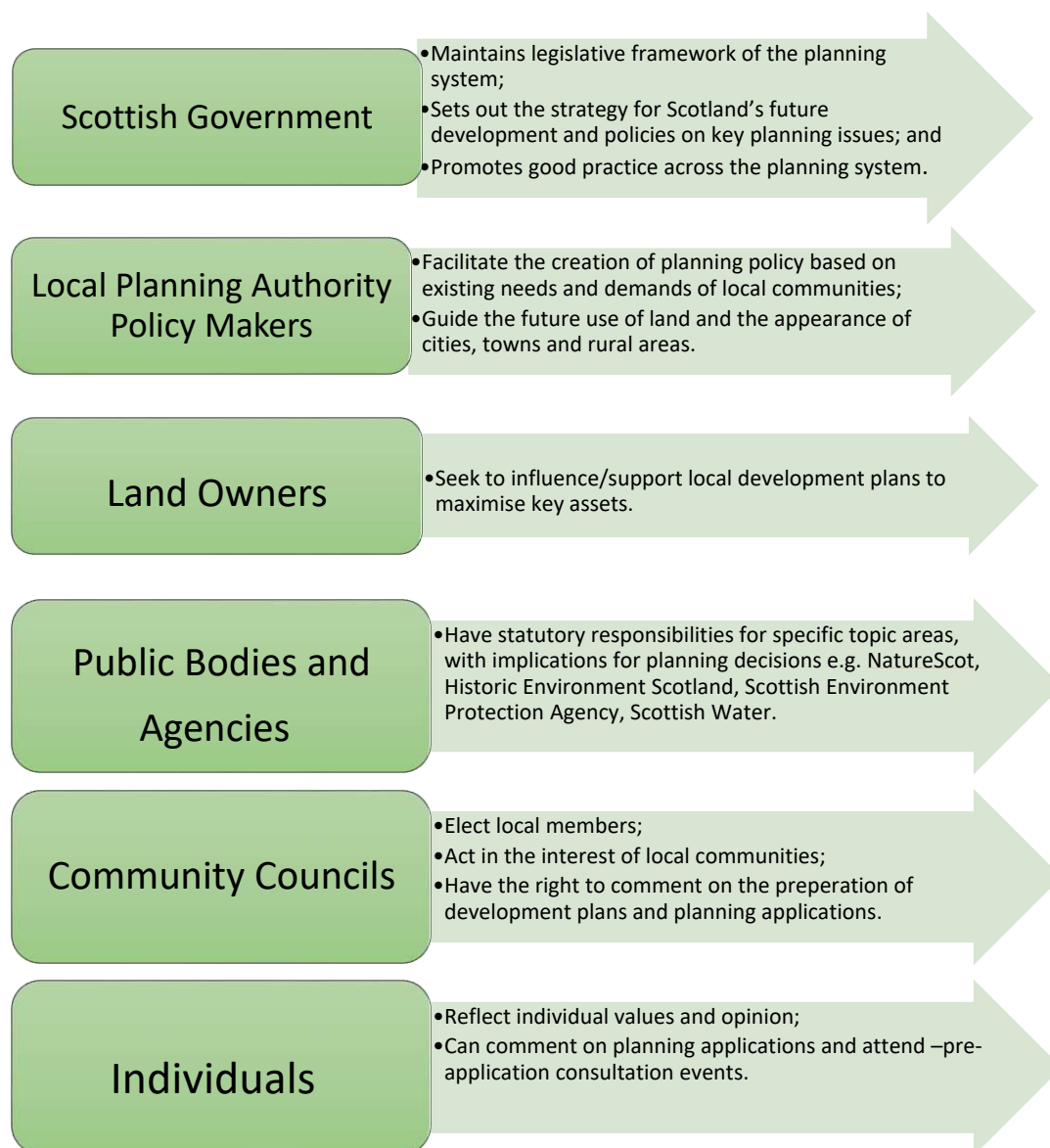


Figure 4 - Parties and organisations involved in the Scottish planning system

Development Plans

The development plan process is central to the planning system.

Development plans set out how places should change and what they could be like in the future. They set out the preferred locations for new homes, businesses and other land uses and protecting places of value to people or biodiversity. Plans may also describe how any new or improved facilities such as roads, schools and parks will be provided. Local authorities can enter into legal agreements with developers to secure financial contributions to such infrastructure. The Local Development Plan (LDP) is the primary document that is used to assess an application for development.

A key change in the Planning (Scotland) Act 2019 is that the National Planning Framework (NPF) will now be part of the statutory development plan for planning purposes. This means that national policies will have a stronger role in informing day to day decision making. The Draft NPF4 was published in November 2021 and is due to be adopted by Scottish Ministers in the summer of 2022.

Draft NPF4 is broken into five parts:

- Part 1 – A National Spatial Strategy for Scotland 2045
- Part 2 – National Developments
- Part 3 – National Planning Policy Handbook
- Part 4 – Delivering Our Spatial Strategy
- Part 5 – Annexes (including Housing Numbers)

The policies in Part 2 are split into four themes:

- Sustainable Places (universal policies)
- Liveable Places (including the concept of 20 minute neighbourhoods)
- Productive Places
- Distinctive Places



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¹ Draft NPF4 Themes- [Draft NPF4 | Transforming Planning](#)

The current LDP for Midlothian was adopted in 2017. The next LDP will be prepared under new Planning (Scotland) Act 2019 legislation and will take account of NPF4 which, together, will form the Development Plan.

The new LDP will also take account of the Edinburgh and South East Scotland Regional Spatial Strategy (RSS) which replace the previous Strategic Development Plans (South East Scotland Strategic Plan or SESplan in the case of Midlothian).

The new LDP will also need to consider any Local Outcome Improvement Plans (LOIP) as well as any approved Local Place Plans which is one of the new requirements of the Planning (Scotland) Act 2019.

Local Place Plans

*“Local Place Plans are **community-led plans** setting out proposals for the development and use of land. Introduced by the 2019 Act, these plans will set out a community’s aspirations for its future development. Once completed and then registered by the planning authority, they are to be taken into account in the preparation of the relevant local development plan.”*

– Planning Circular 1/2022: Local Place Plans

Local Place Plans (LPPs) are a way for communities, working with local authorities and other public sector organisations, to bring forward proposals that reflect National and Local Outcomes.

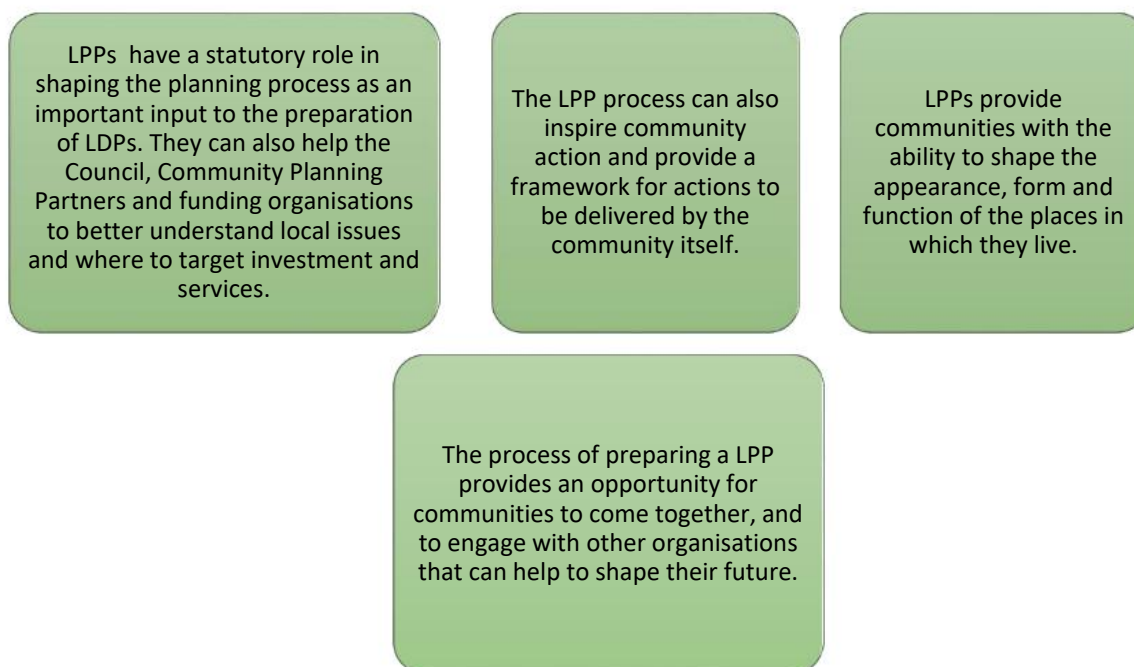


Figure 5: Benefits of preparing the Local Place Plan

LPPs are prepared by a Community Council or a 'community-controlled body' (as defined by the [Community Empowerment \(Scotland\) Act 2015](#)). The council will register valid LPPs and are required to maintain an up to date register of LPPs and have regard to approved LPPs when preparing the next Midlothian LDP.

A number of matters relating to the preparation, submission and registration of Local Place Plans have been set out in the [Town and Country Planning \(Local Place Plans\) \(Scotland\) Regulations 2021](#). More information on how these regulations are to be applied in a local context can be found in circular [1/2022: Local Place Plans](#).

Preparation of the Local Development Plan

The plan preparation process has changed with the introduction of the Planning (Scotland) Act 2019. The timeframe of the new style LDPs has been increased to ten years from the previous five with opportunity for interim reviews on certain matters such as housing and now has a streamlined, front-loaded preparation process. Below outlines the plan preparation process under the new Act. Transitional arrangements allow Planning authorities whose LDP review had reached, or will reach the Proposed Plan stage before NPF4 is approved and published, to continue preparing their replacement plan under the existing legislation. Midlothian will prepare its next LDP under the new legislation.

Also, under the Environmental Assessment (Scotland) Act 2005, development plans must be subjected to a strategic environmental assessment which monitors the likely impacts of the plan on the environment. When preparing an LDP, authorities must also have regard to matters including the resources available to implement the plan, the plans of neighbouring authorities, the regional transport strategy, river basin management plan and local housing strategy, the national waste management plan and issues linked to the Control of Major Accident Hazards regulations, Flood Risk Management (Scotland) Act 2009, and Climate Change (Scotland) Act 2009.

Every year the Planning Service prepares a Development Plan Scheme (DPS) which sets out the timetable for plan preparation and for how and when people can get involved in plan preparation. Midlothian Council's current [Development Plan Scheme 14 \(DPS14\)](#) to Planning Committee in March 2022.

Figure 6 provides an overview of the new LDP process as set out in the Planning (Scotland) Act 2019.

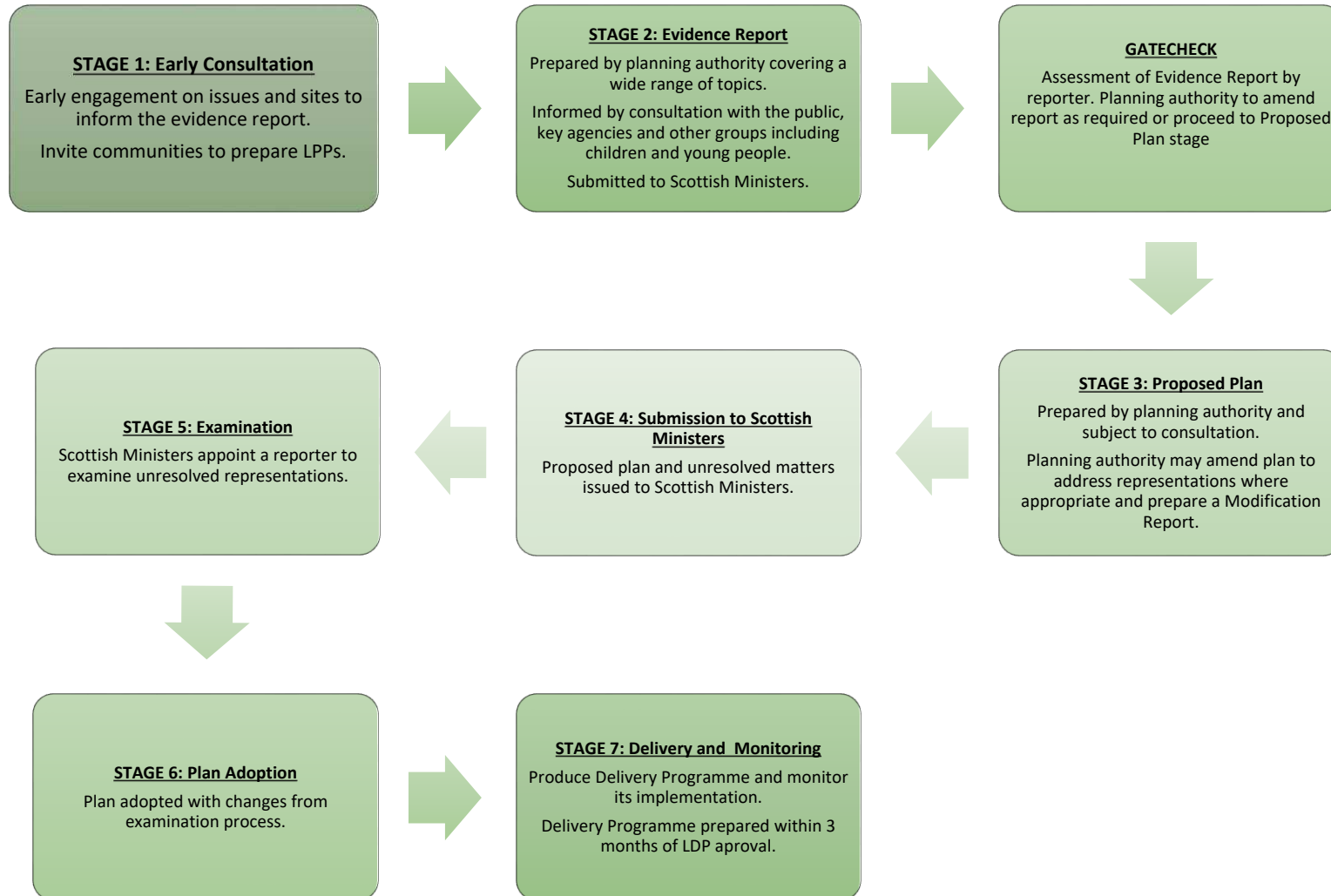


Figure 6 - LDP preparation process

The Role of Elected Members and Communities in Local Development Plan Preparation

Elected Members provide community leadership and guidance and facilitate communication between the community and the Council. Elected Members have an important role to play in policy making requiring the identification of community needs, setting objectives to meet those needs, establishing priorities between competing demands and allocating resources.

The Local Development Plan (LDP) plays a significant role in the planning system as it forms the policy basis for planning decisions on planning applications. When an adopted LDP allocates land for development, allocations is effectively establishing the principle of future development on particular sites.

As an elected member, key decisions on the content of the development plan will probably arise during the life of a council, and they will rank as some of the most important decisions they will make. The content of the LDP may have a profound effect on the future quality of life for the communities that they represent.

Engaging with Communities in Local Development Plan Preparation

There are minimum legal requirements for engaging people in the preparation of LDPs, but authorities are encouraged to go beyond these to promote wider public awareness and engagement.

Every year, authorities must publish a Development Plan Scheme. This includes a participation statement which sets out how and when people can get involved in plan preparation. Members of the public and Community groups should be encouraged to read the Development Plan Scheme and provide feedback on the proposed engagement strategy.

The main formal opportunities for public engagement and plan preparation are:

- The Local Place Plan process;
- The preparation of the Evidence Report. The council will engage with the public at large and specifically with children & young people, Gypsy/Travellers, disabled people and community councils as required by the Planning (Scotland) Act 2019; and
- Following the publishing of the proposed LDP.

Throughout all stages of LDP preparation, consultation and engagement activities are monitored and updated. A summary of these activities are included within the annual Development Planning Scheme. Occupiers and neighbours affected by specific proposal sites in the proposed Local Development Plan will be notified via the formal Neighbour Notification process.

Another way in which communities can get involved in development plan preparation, is through Local Place Plans (LPPs) (see Local Place Plan section above). These community-led plans present communities with the responsibility and opportunity to agree and manage their own consultation and engagement activities as part of the LPP preparation process.

The [Place Principle](#) promotes a shared understanding of place, and the need to take a more collaborative approach to a place's services and assets to achieve better outcomes for people and communities. The principle requests that all those responsible for providing services and looking after

assets in a place need to work and plan together, and with local communities, to improve the lives of people, support inclusive and sustainable economic growth and create more successful places.

An example of a Place Principle tool designed to support communities, public, private and third sectors to work efficiently and effectively together to assess the quality of a place, is the Place Standard Tool. This simple tool is available for anyone to use and can be used to facilitate conversation about the quality and future of a place. It is expected that this tool will be utilised by community bodies to inform their Local Place Plans (LPPs) and may also be utilised by Midlothian Council's Development Planning Section to aid conversations with members of local communities during the consultation phases of the next LDP.



Figure 7: Example of a completed Plan Standard Tool ²



Figure 8: Themes of the Place Standard Tool ³

² <https://blogs.gov.scot/planning-architecture/2015/12/10/place-standard-launch>

³ <https://www.keepsotlandbeautiful.org/environmental-services/the-place-standard-tool/>

Key Agencies

Certain public bodies are designated as key agencies in planning legislation. These include NatureScot, Scottish Water, Scottish Environment Protection Agency (SEPA), Scottish Enterprise, NHS, Public Health Scotland, Scottish Forestry and regional transport partnerships (South East Scotland Transport Partnership (SEStran) in the instance of Midlothian Council). Although these key agencies have a duty to engage with local planning authorities during the development plan preparation stages, the likes of Historic Environment Scotland, Transport Scotland and Forestry and Land Scotland do not have the same obligation as they form part of the Scottish Government.

Key agencies are involved in all stages of the plan-making process. They provide information to inform environmental reports, help shape the vision and policies in a development plan and help the planners make decisions about where to allocate land for new development.

Delivery Programmes

Development plans are most directly implemented through the development management process. However, they should also have a significant influence on many decisions affecting the places in your authority area.

The preparation of a Delivery Programme is a statutory requirement for planning authorities. The Delivery Programme sets out the timescales and actions, responsible bodies and the necessary infrastructure requirements associated with implementing the development strategy of the plan. The Delivery Programme provides a baseline to assess the progress in implementing the plan and helps to coordinate public services and other key stakeholders in improving and investing in our future communities.

When preparing their Delivery Programme, authorities must consult the key agencies, Scottish Ministers and anyone the authority proposed to specify by name in the Delivery Programme. A planning authority must prepare their Delivery Programme within three months of plan approval or adoption and must be kept under review at least every two years. Midlothian Council's most recent Delivery Programme⁴ (2020) can be viewed [here](#).

⁴ Going forward, the Action Programme will be referred to as the Delivery Programme as per Planning (Scotland) Act 2019 stipulations.

Development Management

The most well-known part of the planning system is very likely to be that of development management. This is also the area of planning that most elected members will have exposure to.

The three main responsibilities of any planning authority's development management section are:

- Assessing planning applications and other related consents;
- Appeals and reviews;
- Enforcement.

When is a Planning Application Needed for Development?

Planning applications are required for works that constitute 'development'. Development means the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land. Therefore, anyone wanting to carry out an activity which is covered by the definition will need to obtain planning permission prior to work beginning. It should be noted that in addition to the more obvious requirement to obtain planning permission for the construction of new buildings or alterations to existing buildings, the second half of the definition refers to changes of use which may not involve physical building work.

Permitted Development rights allow some development work to be undertaken without the need for planning permission. This means that in certain circumstances some developments have 'deemed permission' and there is no need for planning permission. [Regulations](#) established by the Scottish Government tell councils what constitutes development and what is permitted development and the council has no flexibility on this matter.

Information on what is permitted development can be found at: [Do I Need Planning Permission](#). It is always advised that this information is checked prior to the start of any works. Further information can be found of the [Scottish Government Householder Permitted Development pages](#).

A Duty Planning service is available at Midlothian Council and can be contacted via email ⁵ for any general planning application enquiries and if a member of the public is unsure if they require planning permission.

Midlothian Council also offer a free pre-application enquiry service to allow prospective applicants to obtain informal advice on the acceptability of a proposal. An officer will look into the proposal in further detail and offer comment on the relevant planning policies, any potential issues and the likelihood of an application being supported.

The pre application enquiry form can be found here:

https://www.midlothian.gov.uk/info/200167/planning_applications/118/planning_guidance

⁵ dutyplanningofficer@midlothian.gov.uk

What Types of Planning Permissions does the Council deal with?

There are two types of planning permission – planning permission in principle and detailed planning permission.

Other types of consent related to development include:

- Advertisement Consent;
- Conservation Area Consent;
- Listed Building Consent;
- Certificate of Lawfulness (retrospective, proposed and existing use);
- Prior Notification;
- Works to Trees Application; and
- Mineral Works.

Planning permission in principle is usually for larger and more complex proposals. Planning permission in principle looks to establish the principle of planning permission. This application type is usually submitted with minimal details and would be assessed on the principle basis. Should the principle be acceptable, then planning permission in principle would be granted subject to conditions; these condition would be required to be addressed by an application for Approval of Matters Specified in Condition Application.

Detailed planning applications are the most common type of planning application. These require details and plans of the proposal along with supporting documentation.

Planning permission can be granted, granted subject to conditions, or refused.

Where an application for planning permission is required, legislation divides development into three categories. This is known as the hierarchy of development. The three categories are national, major and local. There are different procedures in place for determining applications for the different categories of development.

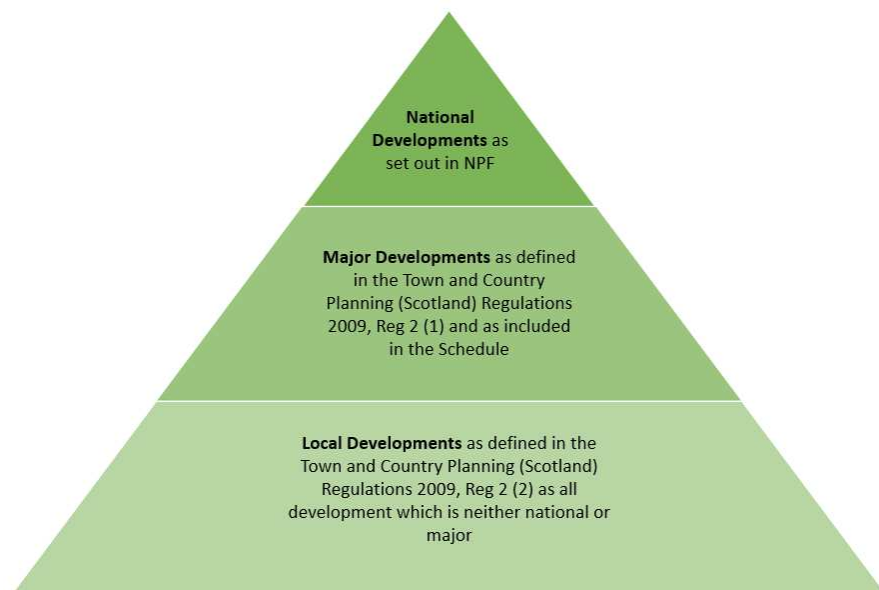


Figure 9: Hierarchy of Development

National developments are determined by the Scottish Government and are those that are needed to support the delivery of the spatial strategy. These are mainly large public works set out in the National Planning Framework. Examples of such developments contained within Draft NPF4 are High Speed Rail and the Central Scotland Green Network.

Major developments are defined in the [Town and Country Planning \(Hierarchy of Development\) \(Scotland\) Regulations 2009](#). There are nine classes of major development including developments of 50 or more houses, business space over 10,000m² and wind farms with a generating capacity of more than 50MW.

Local developments are all other types of development which do not fall within the national or major development thresholds.

How to Apply for Planning Permission

It is encouraged that planning applications and applications for other consents are submitted online, rather than on paper. Applications can be made through the [edevelopment portal](#). Applications can also be submitted via email or by post and access to PDF copies or paper copies of the application forms and guidance notes can be found on the [edevelopment portal](#). The Duty Planning Officer can also arrange for paper forms to be posted out if required.

A **major development planning application** will always require to be reported to the Planning Committee. Where a major development planning application is considered to be significantly contrary to the development plan, a pre-determination hearing shall be conducted by the Planning Committee prior to determination of the application by the Planning Authority.

Local Development planning applications are more often than not, determined under delegation by an appointed planning officer. However, it is noted that there are instances where elected members may call-in a local development or householder planning application to be determined by the Planning Committee. Members may call in any planning application within the first month or they can call-in a planning application that has been circulated around members; it is noted that only the Committee Chair or the Local Ward Member of the ward that an application is located can 'call-in' an application to Planning Committee. Reasons for a planning application to be circulated include:



Figure 10: Reasons that a local development planning application could be called to Planning Committee

The Decision-Making Process

If the proposal is for a major or national development the applicant will need to submit a Proposal of Application Notice to the local authority 12 weeks prior to the submission of any planning application. This will involve carrying out pre-application consultation (PAC) with the community and may include preparing a design and access statement (where required) setting out information about the design of the proposal and how the needs of disabled people have been considered. A report summarising the PAC process, feedback from local residents and how these have been taken into account the proposal is required to be submitted with the formal application.

In addition, applications for national and major development proposals may also be accompanied by more extensive documentation including:

- Planning Statements;
- Environmental Impact Assessments;
- Retail Impact Assessments for large retail projects;
- Transport Impact Assessments;
- Education Impact Assessments;
- Ecological Surveys; and
- Flood Risk Assessments.

The above assessments all provide additional information to facilitate better informed decision-making.

Certain developments may trigger obligations of European legislation, for example a requirement to undertake an Environmental Impact Assessment or Habitats Regulations Appraisal, may also apply to individual applications. These are legal requirements and may apply to local, major or national applications, depending on the likely environmental impact of the proposed development.

Planning application decisions require to be made based upon valid planning reasons. The first place to start in determining a planning application involves making an assessment as to whether the proposal complies with the Development Plan, or not. Where the Development Plan is up to date, this will usually be the central basis upon which a decision will be made.

As mentioned above, the way in which a decision is made also depends on the type of application

The statutory period for deciding valid planning applications is **two months for local developments** and **four months for national and major developments**, unless the applicant agrees to an extension of that time. An application will only be considered valid if it is accompanied by all the legally required documents and the fee charged for that category of development.

Information on planning applications is available on Midlothian Council's website and all key documents and plans or drawings are available online. Should there be any issues viewing or accessing planning applications online, they can contact the Duty Planning Officer or Planning Case Officer who will try and find a way for the relevant planning application to be viewed.

Once the application has been made valid, the application will appear on a list of planning applications and pre-application consultations received during that week, which is widely distributed and published in local newspapers and on council websites and the [public information notices for Scotland website](#). Legislation now requires elected members to be specifically notified of major planning applications. Further publicity for planning applications may be given for certain types of development through public notices published in local newspapers and neighbours are notified directly by the council about applications adjacent to their property.

The Planning, Sustainable Growth and Investment Service publishes a weekly list of planning applications registered in the previous week. This provides basic details relating to the application, including reference number, applicant, site location and description of the proposal. It also states whether the application is likely to be determined under the Scheme of Delegation, by Area Committee, Planning Committee or has the potential to go to the full Council. This list is sent to Council Members and Community Councils and is available through the Council's web site.

The way in which an application is assessed and determined depends on the type of application.

Generally, in assessing a planning application; the starting position is to establish whether the proposal complies with the adopted local, strategic, national planning policies and policies in the Development Plan as well as any emerging new plans which have already been through at least one stage of public consultation. Once the principle has been covered, all other material planning considerations are taken into consideration.

Material Considerations

A material consideration is a matter that is relevant to the planning application being assessed. There are no absolute definitions of what is a material consideration and it may vary from case to case, but include:

- Planning history and any pre-application advice;
- Statutory and non-statutory consultees;
- Written representations;
- Other Planning Guidance and legislation including circulars, orders, statutory instruments, guidance and advice;
- Previous appeal decisions;
- Principles of Case Law held through the Courts;
- Loss of sunlight/daylight;
- Overshadowing/loss of outlook to the detriment of residential amenity (though not loss of view as such);
- Overlooking and loss of privacy;
- Lack of amenity;
- Road/access issues: traffic generation, vehicular access, pedestrian safety;
- Noise or disturbance resulting from use, including proposed hours of operation;
- Smells and fumes;
- Capacity of physical infrastructure, e.g. in the public drainage or water systems;
- Deficiencies in social facilities, e.g. spaces in schools;
- Storage & handling of hazardous materials and development of contaminated land;
- Loss or effect on trees;
- Adverse impact on nature conservation interests & biodiversity opportunities;
- Effect on listed buildings and conservation areas;
- Incompatible or unacceptable uses;
- Local financial considerations offered as a contribution or grant;
- Layout and density of building design, visual appearance and finishing materials; and
- Inadequate or inappropriate landscaping or means of enclosure.

Arguably, the most difficult planning decisions are those where the planning merits of the case are in favour of granting permission, but there are large numbers of local public objections to the proposed development. This is when elected members are required to decide how important these material considerations are, bearing in mind the provisions of the local development plan.

Members of the public may make written representations to the planning authority outlining their views on proposed developments. Normally these should be made within 21 days of an application being registered by the council. In the case of objections, the reasons for objection must be clearly stated. Anonymous letters of representations will not be taken into account.

The council can undertake consultations on planning applications with other departments of the council and external bodies known as statutory consultees. The range of bodies consulted varies according to the nature of the development proposals. The statutory consultees are primarily those key agency bodies listed in the 'Development Plans: Key Agencies' section, above.

Consultations with other departments of the council can include Policy and Road Safety, Protective Services, Education, Housing, Communities Lifelong Learning and Education, Social Work and Lifelong Learning, depending on the nature of the development proposed. Such consultations have an important role within the authority in bringing together various functions or services to provide a single response.

A general overview of the planning application determination process is shown in Figure 11, below.



Figure 11: The planning application determination process

How to Comment on a Planning Application

Comments can be made on an undetermined planning application via the council's online planning pages at www.midlothian.gov.uk using the application reference number or other search criteria to locate the relevant planning application. Prior to making a comment online for the first time representors are required to 'register' following the guidance provided. This registration process takes less than five minutes to complete.

In order for concerns or comments to be considered in determining a planning application then they must be made in writing and be otherwise competent.

Comments made on an undecided planning application are treated as a representation and will be acknowledged and considered in the assessment of the application. However each representation cannot be responded to individually.

Petitions submitted in support or against an application will be treated as one representation with multiple signatories. The application's 'Report of Handling' will reference the submission of the petition. Only the lead signatory/person submitting the petition will receive an acknowledgement.

Comments made verbally over the phone or at the Council's reception will not be considered in the assessment of an application.

Comments made on one planning application cannot be transferred to another application; including an application for a similar/amended development proposal on the same site.

The council can only take into account material planning considerations when looking at comments made on an application.

Midlothian Council have adopted appraisals for six of Midlothian's conservation areas. The appraisals are a material consideration in the determination of planning applications and identify key characteristics of each individual conservation area. The appraisals can be found [here](#).

Historic Environment Scotland are a statutory consultee for some categories of listed building consent applications and have produced guidance notes on managing changes to historic buildings. This information can viewed [here](#).

Developer Contributions

Where development, either individually or cumulatively, is identified to give rise to an infrastructure requirement (which should usually be identified through the Local Development Plan) developers can be required to provide or make financial contributions towards the delivery of new or improved infrastructure. Such payments are known as developer contributions (also often referred to as 'Section 75 agreements') and are regularly required for facilities including schools, transportation infrastructure, community facilities and the provision of affordable housing.

Example

If a land owner was to build 100 new houses, then potentially those houses would accommodate 100 new families. If the local school has insufficient capacity, the school system would have to absorb the additional children arising from the development, and additional school accommodation would need to be built. A financial contribution by the developer to cover the cost of the additional school accommodation would be required.

The subject of developer contributions requires to be approached carefully as an obligation must meet all of the following five tests as set out in Circular 03/2012:

- necessary to make the proposed development acceptable in planning terms;
- serve a planning purpose and, where it is possible to identify infrastructure provision requirements in advance, should relate to development plans;
- relate to the proposed development either as a direct consequence of the development or arising from the cumulative impact of development in the area; and
- fairly and reasonably relate in scale and kind to the proposed development be reasonable in all other respects.

Contributions are most usually secured through a formal legal agreement which binds the land (a Section 75 agreement). There is a formal process whereby a party to an agreement can seek to have it modified or discharged. There is an associated right of appeal to Scottish Ministers against the refusal of such a modification/discharge. Councils cannot just seek contributions which do not meet the above tests and equally should not refuse planning permissions where the developer is not willing to make contributions which do not meet the above tests or which cannot be justified.

Further information can be found in [Planning Circular 03/2012](#) on the Scottish Government website.

Officer Recommendations

For both major and local planning applications, planning officers will prepare a report with a recommended decision. The report to accompany a major planning application will be longer than a report for a local application and will appear on the Planning Committee Agenda.

The Planning Committee does not always accept the advice being offered by the planning officers and on these occasions, it is essential that the reasons for this are clearly stated and that these are explained in the decision notice which is issued to the applicant or may need to be defended at appeal.

Conditions

Many applications are granted permission subject to conditions. Conditions enable developments to proceed where it would otherwise have been necessary to refuse planning permission. While the power to impose planning conditions is very wide, it needs to be exercised in a manner which is fair, reasonable and practicable and meets the terms of the use of the conditions circular. Planning conditions should only be imposed where they are:

- necessary;
- relevant to planning;
- relevant to the development to be permitted;
- enforceable;
- precise; and
- reasonable in all other respects.

Application of these criteria creates an effective basis for the control and regulation of development, which does not place unreasonable or unjustified burdens on applicants and the current or future owners of application sites. The sensitive use of conditions can also improve the effectiveness of development management and enhance public confidence in the planning system.

Further information can be found in [Circular 4/1998 The Use of Conditions in Planning Permissions](#) on the Scottish Government website.

Appeals and Reviews

If the applicant does not agree with the planning officer's or Planning Committee's decision or does not agree with a condition attached to the planning permission, they can ask for a review or appeal of the decision. They can also request a review or appeal if the council doesn't make a decision within the time period set by legislation. No one other than the applicant has the right to ask for a review or appeal.

Where a planning application for a local development is decided by officers under delegated powers, applicants have the right to have the decision to refuse permission, or impose conditions on a consent, reviewed by the Local Review Body. Applicants can also ask for a review where the application is not determined within the statutory time period. Only the applicant may request a review or appeal against the decision on a planning application.

Where a planning application is determined by the planning committee, applicants have the right to appeal against a refusal or conditions attached to the planning permission. These appeals are made to the Scottish Government and dealt with by the Directorate for Planning and Environmental Appeals (DPEA). This route of appeal also applies where an authority has not made a decision on a planning application within the statutory period or if a Local Review Body fails to give a decision on a review against the non-determination of a planning application by officers.

Local Review Bodies

Midlothian Council's Local Review Body (LRB) consists of a panel of elected council members supported by a Planning Advisor. The quorum of members is three. On occasion, the LRB may request advice from experts on particular subjects if required, e.g. transportation or environmental health.

It is important to note that there is no automatic right for the applicant, or others, to make oral representations at the public LRB meeting and the method of determination is at the LRB's discretion – i.e. this could be a written submission or a hearing.

If an elected member is selected to be a member of the LRB, they will receive specific training prior to their involvement in the determination of any case.

Where an application has not been determined within two months and a 'Notice of Review' is served by the applicant, but the review is not carried out within two months, the applicant may then appeal to the Scottish Ministers.

Key features of the review process are shown in Figure 12, below:

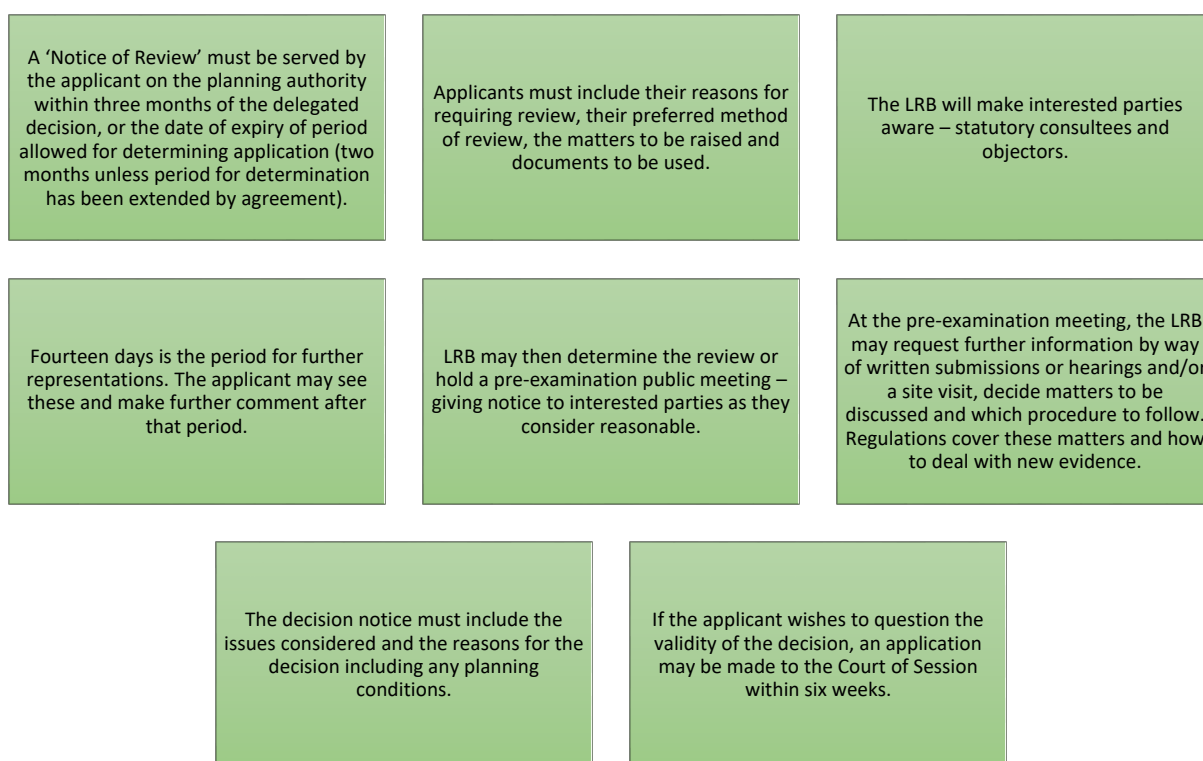


Figure 12 - Key features of the LRB review process

Appeals to Scottish Ministers

The Directorate for Planning and Environmental Appeals (DPEA) handles all planning appeals that are submitted to Scottish Ministers. For **appeals relating to planning permissions**, the time limit to submit is within three months of the planning authority's decision or, in the case of non-determination, within three months of the date by which the decision should have been made under the statutory timescales.

For **most other consent type appeals** (including listed building, conservation area and advertisement consents) the above three month time limit applies, but there is no option to seek a review by the Local Review Body, and an appeal cannot therefore be made on such a body's failure to reach a decision.

If you want to **appeal against a notice served by the council** (for example, an enforcement notice), an appeal will have to be made before the date that the decision notice is due to come into effect. This date will be clearly stated on the decision notice itself.

The decisions on most appeals are made by a Reporter from the DPEA. In a small number of cases Scottish Ministers make the final decision following the submission of the report and recommendation from a Reporter. The decision by the Reporter or Scottish Ministers is final, subject only to challenge in the Court of Session by an aggrieved party.

The format of how the appeal is made is determined by the Reporter. These formats can be:

- **Written representations** - It involves the person making the appeal and the council stating their cases in writing, with an opportunity to comment on each other's statements.
- **A Hearing** - An oral process, where those involved will state their case in person, in front of the reporter. A hearing takes the form of a structured discussion led by the reporter.
- **Public Inquiry** - A public local inquiry is normally a more formal event, where witnesses give evidence to the Reporter.

Awards of Expenses

Everybody who participates in an appeal process is normally expected to cover their own expenses. Expenses can sometimes be awarded against a party taking part in the appeal if they have behaved unreasonably, and this **unreasonable behaviour** has resulted in unnecessary expenditure. Scottish Ministers have the power to determine this. If the appellant feels that the other party has acted unreasonably which has incurred unnecessary expense for the appellant, they can put forward an expense claim for an award of expenses. Further guidance can be found on these matters in [Circular 6/1990: awards and expenses](#).

Examples of **unreasonable behaviour** can include:

On the part of the planning authority:

- failing to give complete, precise, and relevant reasons for refusal of an application reaching their decision, without reasonable planning grounds for doing so;
- refusing an application because of local opposition, where that opposition is not founded upon valid planning reasons;
- refusing an application for planning permission solely on the grounds that it does not accord with the provisions of the development plan and without having had regard to other material considerations; or
- imposing conditions on a grant of planning permission which clearly fail to meet the criteria set out in [Circular 4/1998](#) or which so limit an appellant's freedom to dispose of his property as to amount to an unreasonable restriction.

On the part of either party:

- introducing a new matter (e.g. a new reason for refusal or new ground of appeal) at a late stage in the proceedings;
- refusing to co-operate in setting a date for an inquiry or accompanied site inspection; or
- refusing to supply adequate grounds of appeal or to co-operate in settling agreed facts or supplying relevant information which unnecessarily prolongs the proceedings.

Elected members on planning committees and Local Review Bodies should always bear in mind the possibility of an appeal or legal challenge when considering planning applications and reviews, especially because the costs of an appeal can be awarded against any of the parties who are shown to have acted unreasonably.

Enforcement

Potential breaches of planning permission are often brought to the attention of the council by members of the public. Many cases are not straightforward and more often than not, are based on genuine misunderstandings, particularly relating to conditions attached to a planning permission.

In investigating a complaint, the council will need to establish whether there is a breach of planning control at all. If a breach is identified the council will choose what the appropriate steps would be. If something is built without permission, but would have been likely to have been granted permission, the council may ask the person responsible to make a 'retrospective' planning application. This will then be decided in the same way as all other planning applications. If the council grants planning permission, there may be conditions attached. In some instances whilst it may be identified that there is a breach and that planning permission would have been required, the council will take the view that taking further action would not be proportionate or expedient. Formal enforcement action is discretionary.

In some instances the council will serve a Planning Contravention Notice (PCN) asking for more information about and alleged breach of planning control. Conditions are frequently attached to planning permissions to regulate the development. If a condition is identified as being breached and it is considered expedient to enforce that condition the council can serve a Breach of Condition Notice (BCN). There is no right of appeal against such a notice. Failure to comply with a BCN is an offence and there is the option for the council to serve a Fixed Penalty Notice (FPN).

In instances where a use or building is unauthorised an enforcement action is considered expedient an enforcement notice will most usually be served to remedy the breach of planning control. There is a right of appeal to the Scottish Ministers against such a notice. In cases where particularly serious harm is identified the council may choose to serve a Stop Notice which would require immediate cessation of the use or works. A Stop Notice is served alongside an enforcement notice. There is no right of appeal against a stop notice although there are potential compensation liabilities for a council arising from a stop notice if the associated enforcement notice is quashed on appeal. In respect of unauthorised works to a listed building the council may serve a listed building enforcement notice and in respect of untidy land an Amenity Notice.

Midlothian Council has a published planning enforcement charter, setting out how the enforcement system works. The latest planning enforcement charter for Midlothian Council can be found [here](#). It is anticipated that a new updated Charter will be published in 2022.

Code of Conduct for Councillors

The **Councillors' Code of Conduct** explains the responsibilities of elected members. It provides a positive framework for a councillor's decision making, helping to navigate through a range of potential conflicts of interest. The Standards Commission was established under the terms of the Ethical Standards in Public Life etc (Scotland) Act 2000 and it publishes the Code.

The Code of Conduct is particularly relevant to planning, as consideration of planning matters can generate pressures for councillors from many directions, which will be much stronger than those encountered on most other council business. This section deals directly with issues, concerns and conflicts that may arise while dealing with planning matters.

Key Principles

The Code is underpinned by the nine key principles of public life in Scotland:

- Duty;
- Selflessness;
- Integrity;
- Objectivity;
- Accountability & Stewardship;
- Openness;
- Honesty;
- Leadership; and
- Respect.

It is the duty of a councillor to always have regard to and follow these principles. Members should not persuade others to act in a way that would be contrary to these key principles.

If one or more of the key principles are breached, this does not necessarily mean that the code itself has been breached. However, the key principles can be used by the Ethical Standards Commissioner's office and the Standards Commission to assist with interpretation of alleged breaches of the substantive sections of the Code.

Councillors have a personal responsibility to ensure they are complying with the provisions of the Code, regardless of whether they are a member of the planning committee, Local Review Body or full council. In doing so, councillors may need to exercise their judgement and consider how a member of the public, with knowledge of the relevant facts, would reasonably regard their actions or decision-making as a councillor. This is not equal to a member of the public disliking a councillor's decision or an opinion in the course of their work, rather, it is about whether the councillor has have acted properly and in accordance with the Code.

There are a number of considerations that a councillor will need to make when attending a planning committee, Local Review Body or full council meeting. These are as follows:

- Does an interest need to be declared – either the councillor's or any other party's?
- If an interest has been declare, should that interest prevent the councillor from taking part in the discussion and/or the decision-making?

- Has the councillor pre-empted their involvement in the debate over a planning application by stating their position in support of/against a particular application or a Local Development Plan proposal in advance of formal consideration of that application or proposal?

This third point is also relevant to councillors who have publicly declared their support for, or opposition to, a particular project during their election campaign that may subsequently come before them at committee as a planning application or Local Development Plan proposal.

When deciding whether they should declare an interest and take part in a committee discussion or the wider consideration of a particular planning application or Local Development Plan proposal, a councillor must bear in mind that interests are also considered to be personal or social, not just financial or business.

For example, a conflict of interest could be as simple as the councillor's relative owning land that is the subject of a planning application, or is an objector to a controversial development. It is important therefore to recognise that potential conflicts might arise in circumstances that are not explicitly dealt with by the Code.

For more detailed information on the Code, please visit [The Standards Commission for Scotland website](#).

Useful Links

Scottish Government

www.gov.scot/policies/planning-architecture/
www.transformingplanning.scot/
[Planning circulars: index - gov.scot \(www.gov.scot\)](#)

Architecture and Design Scotland (A+DS)

www.ads.org.uk

PAS (formerly known as Planning Aid Scotland)

www.pas.org.uk
<https://www.pas.org.uk/advice>

Scottish Parliament

<https://www.parliament.scot/parliamentarybusiness/research.aspx>

Heads of Planning Scotland

<https://hopscotland.org.uk/>

Key Agencies

[NatureScot](#)

[Historic Environment Scotland](#)

[The Scottish Environment Protection Agency](#)

[Scottish Water](#)

[Scottish Enterprise \(only in its area of jurisdiction\)](#)

[Transport Scotland](#)

[South-East of Scotland Transport Partnership \(SEStran\)](#)

[Health Boards](#)

[Public Health Scotland](#)

[Scottish Forestry](#)

[Forestry and Land Scotland](#)