

# West Lothian Council Local Review Body

## Guidance Notes

### Introduction

These Guidance Notes relate to the process of review of a decision by the council's Appointed Person on an application for certain types of planning permission for local developments. They are a summary of the relevant legislation and statutory guidance, details of which are given at the end of these Notes. They are not intended to be a substitute for those detailed rules and should not be regarded as a replacement for them. The first four pages deal with the submission of the Notice of Review form, and the remaining pages deal with the procedures which apply after that has been done.

### Categories of Development

There are three categories of developments which may require planning permission – national, major and local. “National developments” are specified by the Scottish Government and “major developments” are defined in statutory regulations. “Local developments” are those which do not fall into the categories of either “national development” or “major development”.

### Decision Making

For local developments, the council has established a set of rules which allow applications to be decided by an employee of the council, called the “Appointed Person”. Those rules are called a “Scheme of Delegations”. Where a decision is taken by the Appointed Person under that set of rules and applicants do not agree with the decision, there is a right to request a review of the decision by the Local Review Body, which is a committee of the council.

### Notice of Review

A “Notice of Review” form is available to allow applicants to request a review by the West Lothian Council Local Review Body of such a decision. That decision may be a refusal of permission, or a grant of permission but subject to planning conditions. It also allows applicants to apply for a review where the appointed person has not reached a decision within the prescribed period.

**You must use the form provided, and if you do not, then you may find that you have not made a valid application for review, and you may run out of time to do so.**

### **When to Use This Form**

The Notice of Review form should be used if:-

- the application is for a local development,
- the application is for planning permission, planning permission in principle, further applications on existing permissions, or approval of matters specified in conditions,
- the application has been delegated to the Appointed Person for determination under the council's Scheme of Delegations, and
- the application has been refused by the Appointed Person, has been granted subject to conditions that are not acceptable, or has not been determined within the prescribed period (two months after validation date).

There is no fee to be paid with the application.

### **When Not to Use This Form**

This form should not be used for applications for other categories of development (major or national developments). Neither should it be used for other types of planning applications, such as an application for mineral development, listed building consent, hazardous substances consent, conservation area consent or consent to display advertisements. For those other categories of development and types of planning permission there is instead a right of appeal to the Scottish Ministers by submitting the relevant appeal form to the Scottish Government's Directorate for Planning and Environmental Appeals (DPEA).

Some decisions on local developments are also subject to a right of appeal to the Scottish Ministers. The council's Scheme of Delegations contains procedures which allow applications to be taken away from the Appointed Person and decided by a committee of councillors called the Development Management Committee. Decisions on applications within the category of local developments which have been determined by elected members would be appealed to Scottish Ministers and not to the Local Review Body.

### **Appeal or Review?**

At the time of acknowledging receipt of the application, applicants will be told that at the end of the process there will either be a right to appeal to the Scottish Ministers or a right to request a review by the Local Review Body. The council will not be able to say at the outset which will apply because some decisions on local development applications may still be decided by a council committee, and the method of decision-making will not be known until near the end of the process. Any decision notice issued by the council must be accompanied by a notice

advising applicants that they have a right to either appeal the application to Scottish Ministers or request a review by the Local Review Body.

In cases where the planning authority may receive an application for planning permission for a local development and the proposal to which the application relates also requires another type of consent that does not attract the review procedures (e.g. listed building consent), it may be necessary to follow two separate appeal paths. The council's Scheme of Delegations will explain if that is necessary.

### **Time Limits**

As well as complying with the statutory rules about the information it must contain, a request for a review by the Local Review Body must be served on the council within three months of either the date of the decision notice or from the date of expiry of the two month period allowed for determining the application. If it is late or does not contain the necessary information, the application for review will be rejected. If there is still time then it can be re-submitted with the missing information added.

### **The Local Review Body**

Reviews are determined by the West Lothian Council Local Review Body. It is a committee of the council and when it meets to consider a review case, there will be no less than three elected members present. Officers of the council will also be present to advise the committee members and to record their decisions.

While reviews are conducted in public, neither the law nor statutory guidance gives an automatic right for an applicant or third party to take part in the Local Review Body meetings. That will only happen later in the process, if certain types of procedure are followed.

Reviews are conducted in a fair, transparent and equitable manner, and in accordance with the legislative rules and the council's own internal rules and procedures ("Standing Orders").

Any documents or notices to be sent to the Local Review Body should be sent to the address which appears at the end of these Notes. The Local Review Body is administered by the council's Committee Services and relevant contact details also appear at the end of this document.

### **Submitting a Notice of Review**

Before submitting the Notice of Review, applicants should ensure that all the required information within the form has been completed and that all the required documents are available to be submitted with it. Under the terms of the regulations governing the local review procedure, the minimum information which must be in or with a Notice of Review is:-

- name and address of the applicant,
- date and reference number of the application which is the subject of review,
- name and address of any representative of the applicant and whether correspondence should be sent to the representative rather than the applicant, and
- a statement setting out the applicant's reasons for requiring the review and by what procedure (or combination of procedures) the applicant wishes the review to be conducted.

All matters which applicants intend to raise in the review, along with all documents, materials and evidence which are to be relied on, must be sent with the Notice of Review. The Local Review Body is entitled to ask applicants to submit extra copies of documents, and applicants should check the Notice of Review carefully to determine what is needed at the outset. That usually requires ten copies to be submitted so that the council has enough copies to use for members of the committee. Applicants may also be asked for further copies at a later stage in the process.

The statutory regulations allow further documents or information to be submitted and considered at a later stage only in very limited circumstances, so it is important that the Notice of Review is used to make as full a statement of the review application as possible.

The statement should clearly set out the reasons for seeking a review and all matters that applicants consider should be taken into account in determining the review.

Applicants should avoid raising any new material which was not before the Appointed Person at the time the application was decided (or at the time of expiry of the period of determination).

New material will not be permitted unless the Local Review Body is satisfied:-

- that the new material could not have been raised before the decision was taken or the time for the decision ran out, or
- that it was not raised before that time as a consequence of "exceptional circumstances".

**The Local Review Body will not automatically examine your application for planning permission, or anything else in the planning file, such as plans, drawings, and technical assessments. This**

is because of the way that the statutory regulations are worded. The only things from the application file which will be there automatically are the “Report on Handling” and anything referred to in that document.

The Report on Handling is a document to be prepared by the Appointed Person once a decision is made on your application, and it will set out the Appointed Person’s view of the application and any objections and representations; the supporting information submitted; the relevant Development Plan policies and other policy documents; and the reasons for the decision.

You may therefore wish to inspect the Report on Handling and include in your Notice of Review comments and observations about what is in that document.

The form should be submitted together with the necessary supporting statement, documents and evidence within the statutory time limit. Insufficient or inaccurate information or failure to complete all parts of the form may result in a delay in the review process, or possibly invalidate the review completely.

There is no fee payable.

### **Time Limits for Conducting the Review**

Where applicants seek a review on the ground that the Appointed Person has not determined the application on time, the Local Review Body has two months to conduct the review. If that does not happen then the review is deemed to have been refused, and there is then a further right of appeal to the Scottish Ministers.

In other types of review cases, there is no time limit set down in the legislation for a decision to be made. Some simple cases may be decided without much, or any, additional procedure, but others will require one or more procedural stages to be followed and so may take several months to complete.

### **After Submitting the Notice of Review**

The Notice of Review will be checked to make sure that the required information and documentation have been provided. If there are any problems identified then applicants will be contacted and informed of what is missing. Until all the information and documentation required by law is provided, the Notice of Review will not be deemed to have been served on the council and will not be processed any further. Committee Services officers will do what they reasonably

can to assist, but it is the responsibility of applicants to make sure the form and other documentation are properly completed and served on the council within the time limit set by the Scottish Parliament.

Once the required information and documentation have been served on time, the review application will have been validated.

### **Acknowledgement**

Once the review application has been validated, a period of 14 days is allowed for an acknowledgement to be sent to the applicant and to inform “interested parties” that the application has been made. That is done by Committee Services, and not by applicants.

Those who are informed that the application has been made are the Appointed Person, any person or body consulted by the Appointed Person and who made representations as part of the decision-making process, and any other person who made representations (usually, but not always, objectors).

Applicants may be asked at this stage, or later in the process, to submit extra copies of some or all of the documents lodged.

### **Notice to Interested Parties**

The notice sent to those interested parties will be sent either by post or by newspaper advertisement (depending on how they were notified of the original application). It will tell them about the application, that any representations previously made will be considered automatically by the Local Review Body, where the review papers can be inspected, and that they have the opportunity to make further representations to the Local Review Body on the application.

### **Representations by Interested Parties**

Interested parties will have 14 days to lodge further representations about the review, and those representations will be sent by the Local Review Body to the applicant for comment.

Interested parties should avoid raising any new material which was not before the Appointed Person at the time the application was decided (or at the time of expiry of the period of determination). New material will not be permitted unless the Local Review Body is satisfied:-

- that the new material could not have been raised before the decision was taken or the time for the decision ran out, or

- that it was not raised before that time as a consequence of “exceptional circumstances”.

### **Response by Applicant**

Any further representations by interested parties are sent by the Local Review Body to the applicant, and applicants are allowed 14 days to make comments on those representations by sending them to the council.

### **The Review Documents**

When a review application is validated, the council will obtain from the Appointed Person the decision notice and the “Report on Handling” and any documents referred to in it. The Report on Handling is the Appointed Person’s report setting out the material which was considered in the decision-making process, the parties who were consulted or who made representations, the investigations carried out, and the reasons for the decision taken. It is sometimes called the “Handling Report” as well. That document may be available from the Appointed Person before the review application is lodged.

To the Report on Handling and the decision notice are added the Notice of Review, any documents sent with it, and any representations and comments made by interested parties and the applicant after the review has started. These are collectively called “the Review Documents”. A request may be made to an applicant at this stage in the procedure to lodge extra copies of certain documents, and the regulations allow that to be demanded of an applicant.

### **Publication and Inspection of the Review Documents**

The Review Documents, along with any procedure notices sent during the review, are to be made available for inspection at an office of the council throughout the review process. That address appears at the end of these Notes.

They are to be open for inspection by any person, and, where practicable, the Local Review Body will allow copies of any of the review documents to be taken.

There is no statutory requirement for review papers to be published online. A list of review applications will be made available on the council’s website but the Review Documents themselves will not be available online until approximately five days before the Local Review Body meeting.

### **Notification of First Meeting**

Meetings of the Local Review Body have been timetabled to take place monthly, except for the summer and Christmas holiday months. A date will be assigned for the review to come before the Local Review Body for the first time, allowing for the time needed to carry out the steps set out earlier in these Notes. That will be the review application's "First Meeting".

The date will be assigned as early as is practicable. That is unlikely to be at the time the first acknowledgement of the application is sent, but notification of the date for the First Meeting should be sent within 28 days of the review application being made.

### **First Meeting**

In advance of the First Meeting the members of the Local Review Body will be given a copy of the Review Papers together with a short covering report explaining the case and the issues involved. These papers will be available on-line approximately five days before the meeting. Applicants will be told of that date and have papers made available to them.

At the First Meeting the Local Review Body must consider whether it has sufficient information available to allow it to make a decision immediately. If it does, then it will proceed to determine the review at that same meeting.

If it does not have sufficient information then it must decide what more is needed and what procedure should be followed. Many cases will need more information to be obtained.

Meetings are held in public and any person can attend and listen to any review case. However, there is no automatic right to be heard at meetings of the Local Review Body at this stage, although that may arise later depending on the procedures followed.

### **Further Procedures**

If a decision cannot be made at the First meeting, the Local Review Body has to make decisions about the procedures it will follow. It can follow one or more of these procedures:-

- written submissions,
- site visit (accompanied or unaccompanied),
- adjourned First Meeting(s),
- pre-examination meeting, and/or
- Hearing Session(s).

It will decide in each case what the appropriate way to proceed is, and will take into account any views expressed by the parties to the review as to what procedure they wish to have adopted.

It may adopt one type of procedure and adjourn the meeting, and then at the adjourned meeting it has to decide if enough information is now available for a decision to be taken. If not, it may decide to adopt another form of procedure. The result may be that a case is adjourned on more than one or on several occasions until the Local Review Body is satisfied it is in a position to make a decision.

### **Written Submissions**

If the Local Review Body decides to ask for written submissions, it must decide what matters are to be covered, and who is to be asked (along with the applicant) to comment. The notice will state what action is needed and will set time limits.

Anyone who sends written submissions in response to such a notice must send copies to all parties named in the notice and then the other parties have 14 days to comment in response.

At the end of that exchange the review case will be brought back before the Local Review Body for it to consider again.

### **Site Visits**

If the Local Review Body decides that an inspection of the property covered by the review application is necessary, then it will hold a site visit. That site visit may be “accompanied” visit or “unaccompanied”.

If the visit is to be unaccompanied then the applicant has to be told of that decision but there is no requirement to state when that will happen. Other interested persons do not have to be told, but any decision to hold site visit will in any event have been taken at a public meeting.

During an unaccompanied site visit there must be no communication about the case between the members of the Local Review Body and the parties. The purpose of the visit is to enable the Local Review Body members to see the site for themselves, and not to allow the parties to make representations to the members. It ensures that all of the Local Review Body members see and hear the same things, and it makes the process as transparent as possible by ensuring that decisions are not made on the basis of some information which might not have been known to everyone involved.

If the visit is to be an accompanied site visit then the Local Review Body will tell the applicant and the interested parties that they intend to do so and will inform them of the arrangements for the meeting. Those parties then have the opportunity to attend the site visit but the Local Review Body is entitled to proceed without any party who fails to appear. These types of site visits will not happen often, and will be organised where the Local Review Body feels that some explanation on site by one of the parties would be helpful. The process to be followed will be explained to everyone in advance.

Once the site visit has taken place, the review case will be brought back before the Local Review Body for it to consider again.

### **Pre-examination Meeting**

As well as adjourning the First Meeting the Local Review body may in some cases decide to hold a Pre-examination Meeting. The purpose of that is to consider the manner in which the review, or any part of it, should be carried out, and to give the parties the chance to comment at a meeting and to participate verbally in the decision.

The applicant and the interested persons will be given reasonable notice of the meeting arrangements and the procedure to be followed at the meeting.

Should any party fail to appear then the Local Review Body is entitled to proceed in their absence.

### **Hearing Session**

The Local Review Body may decide that the issues raised in the review application require a Hearing Session to take place. Scottish Government Guidance suggests that Hearing Sessions will be needed in only a small minority of cases.

The rules about how Hearing Sessions are to be conducted are set out in regulations, and they set out in detail what has to happen in preparation for the Hearing Session. For instance, those involved will be required to send in written statements in advance along with copies of documents and other evidence. The Hearing Session itself is to take the form of a discussion led by the Local Review Body. The matters to be discussed will have been specified in advance, and there is a general right to be present, to be represented and to lead evidence but only a restricted right to cross-examine witnesses.

The Local Review Body may decide that it needs expert advice on a particular issue to be examined at a Hearing Session and it may appoint an “Assessor” to provide the members of the Local Review Body with the necessary expertise.

The Local Review Body has the power to proceed with a Hearing Session in the absence of anyone entitled to appear there.

### **Decision and Decision Making**

The Local Review Body will approach each case in the same way. It has a framework or checklist to help it make decisions, and that is designed to make sure that all of the relevant factual and legal considerations are looked at before any decisions are taken. A copy of that is available on the council’s website, from Committee Services, and will be sent to applicants when they are notified that their case is about to be heard.

Whatever procedure is adopted by the Local Review Body, once it has determined the review application it must send a Decision Notice to the applicant and any party who has taken part in the review process. The required contents of the Decision Notice are set out in regulations.

The Local Review Body has three choices in the decision it can make:-

- to uphold the determination made by the Appointed Person,
- to reverse the determination made by the Appointed Person, or
- to vary the determination made by the Appointed Person.

If the decision is to reverse or vary the determination by the Appointed Person then the Decision Notice will specify any planning conditions which are to apply and any legal agreement which requires to be entered into between the applicant and the council.

A legal agreement may be required to secure payment of developer contributions. These are payments due by applicants when a decision to grant planning permission is taken, to pay towards additional infrastructure such as new schools, or cemeteries. If the Local Review Body thinks that a review should be upheld then any decision it takes will be subject to the council’s policies on payment of these contributions.

Occasionally a legal agreement might be needed for a different purpose, and that will be explained in the decision letter.

The Local Review Body will set a timescale for completing any legal agreement required, and if that timescale is not met then the case will be referred back to the Local Review Body and may be refused.

### **Further Appeal**

There is no right of appeal to the Scottish Ministers against the Local Review Body's decision.

If the decision is to uphold or vary the Appointed Person's decision then the validity of that decision may be challenged on limited grounds by starting a court action in the Court of Session within 6 weeks of the date of the decision.

Anyone who is aggrieved by a decision of the Local Review Body should take independent legal advice about the options open to them by way of court action and other routes under the planning legislation.

### **Electronic Communication**

The Notice of Review form and any associated documents required to be sent with the form may be sent electronically. The legislation specifically allows that to happen subject to certain rules and conditions. The council as planning authority, and any other party involved in the review process, must consent to this method of communication, or else may be deemed to have agreed to receive it electronically (e.g., if the council has already used electronic communication to send a document). The document sent by means of electronic communication must be capable of being accessed by the recipient, it must be legible in all material respects, and it must be sufficiently permanent to be used for subsequent reference – in other words, all the information must be available to the recipient to no lesser extent than it would if sent by hard copy.

### **Legislation, Guidance and Other Information**

The main Act is the Town and Country Planning (Scotland) Act 1997, as extensively amended by the Planning, etc. (Scotland) Act 2006). The starting point is section 17 of the 2006 Act which added new sections 43A and 43B to the 1997 Act.

The Local Review Body is set up and run according to the rules in The Town and Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations 2008 (SSI 433/2008).

The Scottish Ministers have issued statutory guidance on Schemes of Delegations and Local Reviews in Planning Circular 7/2009.

The different categories of development are regulated by the Town and Country Planning (Hierarchy of Developments) (Scotland) Regulations 2009 (SSI 51/2009). Those regulations contain a list of developments which are “major developments”, and allow the Scottish Government to designate certain developments as “national developments”. Those which are currently designated are on the Scottish Government website. Those developments which are left are “local”.

The council's Scheme of Delegations, through which the power to make some decisions is conferred on council officers, can be accessed through the council's website.

The dates for meetings of the Local Review Body are on the council's website as well, or available from Committee Services.

The members of the Local Review Body are issued with papers for each meeting approximately one week before the meeting takes place. Just after that, an agenda for each meeting will be published on the council's website. The agenda and papers for each meeting are available for inspection at the council's office (address below) before and after the meeting takes place under the rights conferred by the 2008 regulations and by sections 50A to 50K of the Local Government (Scotland) Act 1973.

### **Contacts**

The Notice of Review application form, these Guidance notes and the decision-making framework used at meetings of the Local Review Body are available from the council's offices in Livingston (Civic Centre) and Linlithgow (County Buildings) or can be accessed through the council's website. Notices of Review and accompanying documents should be submitted to the following address. The application cannot presently be submitted online but electronic communication is possible under the statutory regulations which apply (see above).