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Aberdeenshire
COUNCIL



LRB in Aberdeenshire

19 April 2017



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Local Review Body in Aberdeenshire

Presentation by Mark Myles - Planning Adviser (LRB)

Introduction

- Context to LRB's
- Legislative Framework
- Schemes of Delegation
- Notice of Review
- Make up of the LRB
- Review Procedure
- Role of Planning & Legal Advisors
- LRB Decisions
- Aberdeenshire LRB
- Common Issues
- Future Challenges & Changes
- Questions & Discussion



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Context to LRB's

- Modernising the Planning System (the previous reforms!)
Consultation on 'Rights of Appeal in Planning' (April 2004)
2005 White Paper – first reference to LRB
- The Planning etc (Scotland) Act – December 2006
- Hierarchy of Developments (s26A) and 2009 Regulations
- Local Developments (s43A)
- Introduced August 2009



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Legislative Framework

- Section 43A of the Act – Local Developments: Schemes of Delegation
- Town & Country Planning (Schemes of Delegation & Local Review Procedure) (Scotland) Regulations 2013 (replaced earlier 2008 version)
 - Introduced further changes/refinements
 - Local authority & member applications and financial or ownership interest
 - Hearing Statements – must now set out case in full
 - Non determination period extended from 2 to 3 months
- Chief Planner emphasised ‘de novo’ approach (letter issued to Heads of Planning - July 2011)
- Circular 5/2013 (replaced 7/2009)



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Schemes of Delegation

- Every authority must prepare at intervals no greater than every 5 years
- Aberdeenshire Council's (complicated?)
- Balance between delegation and members input
- Direct impact on LRB v Area Committee (DPEA)
- Lack of awareness from public and even many agents
 - e.g. 'I want to speak at the committee!' and also number of 'no remit' cases submitted to DPEA



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Notice of Review

- Refusal of planning permission by an 'Appointed officer'
- Granted subject to a condition(s)
- Non-determination ('double' deemed refusal - DPEA) – 1 so far in Aberdeenshire
3 month deadline for all above
- Applicant – all matters intends to raise in the review including all documents!
- S43B) – new matters restricted unless material to the determination of the case
Front loaded – as may be no further opportunity to comment



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Make up of the LRB

- Regulation 7 – must be a minimum of 3 members
- Varies widely across Scotland
- Aberdeenshire – 6 substantive members (1 from each area) and a substitute from each area
- Members don't take part if proposal is within their ward
- Reviewed Options in 2016 – considered 2, 3 or even 6 LRB's!



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Review Procedure

- Importance of first meeting
- Is further information/procedure required? If yes – what?
- Written submissions
- One or more hearing sessions
- Site inspection (accompanied or unaccompanied)
- Appoint Assessor – specialist/technical matters



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Role of Planning & Legal Advisers

- Scottish Government Advice – prepared and agreed by LRB Forum
- ‘Independent’
- Advise and inform but do not lead the LRB
- Guide LRB through documents and respond to factual issues
- Not justifying LRB decision but ensuring it is in compliance with Act/Regulations



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LRB Decisions

- Robust decision making – Regulation 22
- Development Plan Policies/Material Considerations
- Decision Notice reflects what was decided
- Reasons/Conditions
- Legal Challenge (ECHR Article 6 (1) Compliance)
Carroll v Scottish Borders Council
- Experience of Aberdeenshire LRB (a lot better than most!)



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Aberdeenshire LRB

- Scotland wide - 500-550 submitted per year (545 in 2015/16)
Average 60.2% - original decisions upheld
- Aberdeenshire (63 in 2015/16 – highest number in Scotland)
81% of original decision upheld
- Compare with DPEA planning appeal statistics –
Scotland 47% original decision upheld (344 appeals in 2015/16)
Aberdeenshire 45.8% (48 appeals in 2015/16) – also highest no. in Scotland



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Local Review Bodies (LRBs)¹

Planning Authority	2016/16			2014/15			2013/14			2012/13		
	Number of applications	Overall Average Time (weeks)	% Original decision upheld	Number of applications	Overall Average Time (weeks)	% Original decision upheld	Number of applications	Overall Average Time (weeks)	% Original decision upheld	Number of applications	Overall Average Time (weeks)	% Original decision upheld
Aberdeen City	28	7.3	76.9%	25	5.8	72.0%	2	31.0	50.0%	3	5.0	33.3%
Aberdeenshire	63	15.3	81.0%	60	19.5	76.7%	47	26.1	78.7%	49	26.9	71.4%
Angus	14	11.4	64.3%	15	11.3	80.0%	20	7.7	85.0%	18	7.8	83.3%
Argyll & Bute	2	8.3	100.0%	12	30.4	91.7%	14	16.3	84.3%	20	11.0	70.0%
Cairngorms NP ¹	0	-	-	0	-	-	0	-	-	n/a	n/a	n/a
Clackmannanshire	2	9.8	50.0%	1	27.9	0.0%	1	15.9	100.0%	3	12.6	0.0%
Dumfries & Galloway	10	17.0	80.0%	12	14.3	83.3%	21	14.2	76.2%	17	16.0	88.2%
Dundee City	2	12.0	50.0%	7	16.2	100.0%	4	17.1	25.0%	9	15.9	68.7%
East Ayrshire	10	12.2	50.0%	11	13.5	90.9%	21	14.6	68.7%	21	9.1	61.9%
East Dunbartonshire	10	15.3	40.0%	9	11.0	66.7%	7	11.7	57.1%	10	13.6	40.0%
East Lothian	12	10.0	50.0%	7	11.0	57.1%	12	12.8	58.3%	10	9.7	50.0%
East Renfrewshire	20	8.4	60.0%	8	8.8	75.0%	6	7.4	50.0%	12	8.6	66.7%
Edinburgh, City of	54	7.0	48.1%	77	7.1	51.9%	75	6.4	62.7%	71	7.7	52.1%
Falkirk	5	24.7	0.0%	8	25.2	37.5%	3	17.6	33.3%	1	15.9	100.0%
Fife	29	13.7	58.6%	47	16.9	63.8%	51	16.4	47.1%	42	16.3	47.6%
Glasgow City	36	9.3	52.8%	35	8.9	68.6%	20	8.7	72.5%	26	9.7	42.3%
Highland	44	8.6	88.6%	34	16.3	55.9%	28	14.8	35.7%	21	10.0	42.9%
Inverclyde	8	13.2	37.5%	8	13.6	50.0%	9	13.7	44.4%	6	19.4	83.3%
Loch Lomond & The Trossachs NP	2	47.2	50.0%	4	14.1	25.0%	0	-	-	1	16.1	100.0%
Midlothian	13	9.8	30.8%	16	10.4	25.0%	16	11.7	31.3%	14	11.1	35.7%
Moray	27	9.8	37.0%	14	11.0	78.6%	22	7.0	50.0%	28	8.6	42.9%
Na h-Eileanan Siar	2	16.4	50.0%	3	11.6	0.0%	1	5.4	0.0%	1	9.3	0.0%
North Ayrshire	4	8.8	100.0%	8	5.6	62.5%	9	7.0	77.8%	14	9.9	64.3%
North Lanarkshire	2	7.9	50.0%	5	6.0	80.0%	2	7.1	0.0%	1	2.7	100.0%
Orkney Islands	12	10.6	58.3%	3	11.3	66.7%	4	15.5	75.0%	7	15.4	28.6%
Perth & Kinross	53	19.9	87.9%	42	18.5	69.0%	56	16.2	51.8%	60	15.4	70.0%
Renfrewshire	4	15.6	100.0%	3	13.1	100.0%	3	10.9	68.7%	8	9.7	100.0%
Scottish Borders	22	8.1	27.3%	27	7.1	63.0%	39	8.1	48.7%	19	8.4	73.7%
Shetland Islands	6	15.8	33.3%	6	19.2	33.3%	0	-	-	2	15.4	0.0%
South Ayrshire	17	10.0	35.3%	19	11.1	52.6%	22	10.2	72.7%	23	8.0	74.0%
South Lanarkshire	3	8.0	68.7%	7	8.5	85.7%	4	10.2	100.0%	1	10.7	0.0%
Stirling	6	18.4	66.7%	5	18.6	60.0%	7	10.4	85.7%	7	16.4	28.6%
West Dunbartonshire	1	9.3	100.0%	1	12.0	0.0%	1	5.0	0.0%	0	-	-
West Lothian	24	7.3	66.7%	15	7.0	60.0%	16	8.8	75.0%	12	6.7	50.0%
SCOTLAND^{2,3}	545	11.7	60.2%	554	13.0	64.3%	543	12.8	59.8%	537	12.6	59.2%

1. The Cairngorms National Park Authority (CNPA) do not receive planning applications directly but are notified of applications which have been made to those planning authorities within the park boundaries. The CNPA may then decide to call applications in for their determination. Planning applications may therefore have already been in the system for a number of weeks before being transferred to the CNPA. The percentage of Cairngorms applications processed in under 2 and 4 months are lower than those of the other planning authorities due to the reasons stated above. The CNPA do not have delegation powers.

For further explanation please see Cairngorms Statement.

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Breakdown of LRB cases within Aberdeenshire Areas

[illegible]



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Common Issues

- Importance of RoH – particularly when refusing ‘the appeal statement’
- Reference to/copies of other material considerations/supporting documents e.g. Conservation Area Appraisal, Planning Advice, Policy Interpretation Notes
- Reasons for refusal – different wording & references/merging of issues & policies
- Technical issues/reasons for refusal – pressures to meet 2 month target so often not fully addressed and ends up at LRB
- Further information requests from LRB – opportunity to strengthen/expand case!



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Future challenges and changes

- Aberdeenshire LDP 2017
- New Council (need for urgent member training to be able to sit on LRB)
- Changes to Scheme of Delegation?
- Changes to structure/number of LRB's?
- Further Planning Review (Places, People & Planning Consultation) –
 - LRB's here to stay - proposals to increase their remit (adverts, LB, Cons Area Consent, Certificate of Lawfulness?)
 - Major developments that accord with the Development Plan
 - Compulsory training for members
 - Fees for all appeals (LRB & DPEA)



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Questions & general discussion