SCOTTISH MINISTERS’ POWER TO CALL-IN PLANNING APPLICATIONS

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Scottish Ministers’ recent decision to call-in an application for the development of a golf resort and housing near Balmedie for their decision has focussed attention on the call-in process. This short briefing aims to answer some of the key questions raised about the operation of the call-in process.
INTRODUCTION

Scottish Ministers’ power to ‘call-in’ planning applications for their own decision has been the subject of considerable recent interest. This short briefing aims to provide answers to some of the key questions which have been raised about Scottish Ministers’ exercise of these powers.

WHAT IS THE POWER OF CALL-IN?

As a general rule planning applications are decided upon by the relevant planning authority, i.e. local authority. However, Scottish Ministers have the power to direct a planning authority to refer any planning application to them for their decision. This process is known as ‘calling-in’ an application.

Scottish Ministers will normally only exercise this power when planning issues of more than local importance are involved. There is no definitive list of criteria used to decide whether to call-in a planning application; each case is considered on its own merits.

WHAT IS THE LEGISLATIVE BASIS FOR THE POWER TO CALL-IN PLANNING APPLICATIONS?

Section 46 of the Town and Country Planning (Scotland) Act 1997 (c 8) (the 1997 Act) allows Scottish Ministers to direct that a particular planning application, or particular class of planning application, be referred to them for their decision. Ministers can direct that applications for outline planning permission, applications for detailed permission following the grant of outline planning permission and applications for full permission be referred to them.

Applications can be called-in by Scottish Ministers at any point during a planning authority’s consideration of that application, up to the date at which the authority formally records a decision on the grant or refusal of planning permission. The date on which planning permission is deemed to be granted or refused is not necessarily the date on which the local authority reaches its decision. Section 37(4) of the 1997 Act states that the effective date is the date on which the “planning authority’s decision bears to have been signed on behalf of the authority”.

This is normally taken to mean the date on which the decision notice is sent to the applicant (McAllister A. and McMaster R. 1999). The form that the decision notice must take is set out in Article 22 of the Town and Country Planning (General Development Procedure) (Scotland) Order 1992, as amended. Article 22 requires that the notice be made in writing, that it states the reasons for the authority’s decision and, where permission is refused or granted subject to conditions, includes a notice similar to that in Schedule 9 of the 1992 Order setting out the applicant’s right of appeal.

WHAT IS THE SCOTTISH GOVERNMENT’S POLICY ON THE CALL-IN OF PLANNING APPLICATIONS?

The Scottish Government sets out its policy on the call-in of planning applications in Scottish Planning Policy (SPP) 1: The Planning System, which states:

Planning decisions are primarily a matter for planning authorities and intervention by Ministers is generally only in circumstances where a proposed development raises an issue of national importance, or where proposals represent a significant departure from...
the approved structure plan for an area and/or national planning guidance. Ministers may also intervene where it is considered that a planning authority has failed to give full consideration to local objection. A substantial volume of objections is not, however, in itself sufficient grounds to call-in a planning application

This policy is supplemented by information in the more recent Scottish Executive Planning Circular 5/2007 (Scottish Executive 2007), which provides additional detail on the circumstances which could lead Scottish Ministers to call-in an application for their decision, namely:

- Where the proposal raises issues of national importance that would require a decision to be made at a national level.
- Where the planning authority proposes to grant planning permission against the advice of relevant national advisers (e.g. SNH, SEPA, HSE, Transport Scotland etc.), and where Ministers have not been convinced by the authority's justification for doing so.
- Where the proposal conflicts significantly with national planning (or other national) policy.
- Where Ministers are concerned that the planning authority's assessment and decision has not properly or fully justified a departure from the development plan.
- Where Ministers consider that there has been insufficient attention paid to legitimate planning concerns expressed by consultees and/or local people. (The existence of a substantial number of objections is not, in itself, sufficient grounds to merit call-in.)
- Where the planning authority's consideration of the proposal might be seen to have been influenced by a conflict of interests. (Further advice is given in Planning Advice Note 82: Local Authority Interest Developments.)

WHO DECIDES WHICH APPLICATIONS ARE CALLED-IN?

The 1997 Act, which provides the legislative basis for the call-in power, simply specifies “Scottish Ministers” as being responsible for the call-in of planning applications. It is up to Ministers to establish a decision making process for the call-in of planning applications. The Scottish Ministerial Code (Scottish Executive 2003) sets out some basic principles on Ministerial involvement in decisions on planning matters.

WHAT HAPPENS ONCE AN APPLICATION IS CALLED-IN?

Once an application is called-in, the Scottish Ministers effectively become the planning authority for that application. This means that Scottish Ministers are required to ensure that issues such as neighbour notification and public consultation are carried out as required by legislation. In practice, as many applications are only called-in once the planning authority are minded to grant permission, much of this is work will already have been carried out. Such administrative tasks and general management of the application process following a call-in are handled by Scottish Government planning officials.

Just as local authorities rely on their planning staff to consider a planning application and make recommendations, so Scottish Ministers rely on an independent Reporter working for the Directorate of Planning and Environmental Appeals, formerly the Scottish Executive Inquiry Reporters Unit (SEIRU), to examine the merits of a called-in application. The Reporter considers the application, prepares a report setting out their conclusions and recommends whether Scottish Ministers grant the application unconditionally, grant the application subject to conditions or refuse the application. The report is then submitted to Scottish Ministers who subsequently issue their decision, which does not have to follow the Reporter’s recommended course of action.

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WILL THERE BE A PUBLIC INQUIRY?

A called-in planning application is not automatically the subject of a public inquiry. Scottish Ministers must allow a public inquiry into any called-in application if this is requested by the applicant or the relevant planning authority. However, if no such request is made then it is up to Scottish Ministers to decide whether the Reporter appointed to consider the application will do so through written submissions, an informal hearing or full public inquiry.

HOW DO SCOTTISH MINISTERS KNOW WHEN TO CALL-IN A PLANNING APPLICATION?

The call-in system can only work when Scottish Ministers are aware of all the planning applications submitted to planning authorities which might meet their criteria for call-in. While individual applications can be brought to the attention of Ministers by third parties, e.g. objectors, supporters or MSPs, such an ad hoc system would result in Ministers missing many applications which could be of interest.

To ensure that all such applications are brought to the attention of Ministers, planning authorities are required by the *Town and Country Planning (Notification of Applications) (Scotland) Direction 2007* to formally notify Scottish Ministers where they are minded to grant planning permission for certain types of application, e.g. development contrary to development plans, development on green belt land or industrial, petrochemical or business developments covering more than 100 hectares. A full list of notifiable applications can be found in Annex A of *Planning Circular 5/2007* (Scottish Executive 2007).

Once Scottish Ministers have been notified they have 28 days to decide whether to call-in the application or return it to the planning authority for their own decision. Scottish Ministers can extend the 28 day period for as long as it takes them to reach a decision on whether to call-in an application.

HOW MANY PLANNING APPLICATIONS ARE CALLED-IN?

Scottish Ministers call-in very few applications each year, given that planning authorities deal with over 40,000 applications each year (Scottish Executive 2006), as shown in Table 1 below.

Table 1: Number of Applications Called in by Scottish Ministers

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<thead>
<tr>
<th>Year</th>
<th>Number of called-in applications</th>
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<tbody>
<tr>
<td>1/4/2002 - 31/3/2003</td>
<td>18</td>
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Figures supplied to SPICe by Directorate of Planning and Environmental Appeals


Scottish Government Planning Pages [Online]. Available at: http://www.scotland.gov.uk/Topics/Planning


Town and Country Planning (Scotland) Act 1997 (c 8). London: OPSI