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Scottish Ministers' Power to Call-in Planning Applications

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The recent decision by the City of Edinburgh Council to approve a residential development at Craighouse has generated considerable interest in Scottish Ministers' power to call-in planning applications. This power allows Ministers to make the decision on a planning application, rather than the planning authority to which the application was made. This short briefing aims to answer some of the key questions raised about the operation of the call-in process.



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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. Planning authorities are required to highlight a limited number of applications, which fall into certain categories (see below), to Scottish Ministers. This allows Scottish Ministers the opportunity to consider whether to call-in the application for their own decision. This process is known as 'notifying' an application. Scottish Ministers also have the power to direct a planning authority to notify them of any application for planning permission or planning permission in principle, regardless of whether they fall into any of these categories. Scottish Ministers can then decide whether to call-in such an application. However, Scottish Ministers can also call-in any application that has yet to be determined, without the need for notification

Scottish Ministers normally only intervene in exceptional circumstances and generally only become involved in cases that raise issues of national as opposed to local significance. That said, 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 the following be called-in:

- planning permission
- planning permission in principle
- applications for planning permission or permission in principle subject to review by a local review body
- approval of detail following the grant of planning permission or planning permission in principle¹.

A Ministerial direction to notify or call-in an application can be issued 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 notice of 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. The content and format of the decision notice is established in Regulation 28 of the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013. The notice must state the reasons for the authority's decision

¹ Note – while all of these can be called-in, notification directions only apply to applications for planning permission or planning permission in principle

and, where permission is refused or granted subject to conditions, includes a notice setting out the applicant's right of review or 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 [Planning Circular 3/2009](#) (Scottish Government 2009), which states:

“6. However, there can be circumstances where proposed development raises issues of such national importance that it is reasonable for Scottish Ministers to call in a planning application from the local authority; in effect to take over the role of decision-maker. It is at Ministers' discretion whether to do so. For example, Ministers might choose to intervene in circumstances where a Government agency has expressed strong concerns about the impact of development on their national interests, or where the possible impacts or benefits of a proposed development extend well beyond the area of the local authority to the extent that they become of national importance. However, simply because a particular development proposal may be complex or controversial does not make it of strategic importance or of national interest. The existence of a substantial number of objections is not in itself sufficient ground to merit call-in for decision at a national level.”

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

As indicated above, Scottish Ministers are notified of certain types of application which might meet their criteria for call-in.

Planning authorities are required by the Town and Country Planning (Notification of Applications) (Scotland) Direction 2009 to formally notify Scottish Ministers where they are minded to grant planning permission for three types of development:

1. Development in which a local authority has an interest, where the proposed development is significantly contrary to the development plan for the area.
2. Where a planning authority is minded to grant permission for a development, or fails to attach specific conditions to a grant of planning permission, against the recommendation of a Government agency.
3. It is an opencast coal, and related minerals, development.

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.

Where a proposed development may interfere with a military explosives storage area, civil aerodrome, military aerodrome and/or military technical site, and the planning authority is minded to grant permission against the wishes of either the Ministry of Defence or aerodrome owner/operator, then a separate notification system (similar to the one described above) comes into effect. Full details of this system can be found in [Planning Circular 2/2003: Town and Country Planning \(Safeguarded Aerodromes, Technical Sites and Military Explosives Storage Areas\) \(Scotland\) Direction 2003](#) (Scottish Executive 2003).

There are also similar stand-alone directions requiring consultation and notification in relation to development near Royal Palaces and certain developments in National Scenic Areas.

Other applications which might be of interest for notification or call-in can be brought to Scottish Ministers' attention, either by their own officials or by third parties, e.g. agencies, objectors, supporters or MSPs.

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 Government 2011) sets out some basic principles on Ministerial involvement in decisions on planning matters, which are aimed at ensuring Ministers take particular care to avoid conflicts of interest when dealing with planning matters, including the granting of energy consents.

WHAT HAPPENS ONCE AN APPLICATION IS CALLED-IN?

Once an application is called-in, 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 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 (DPEA), 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 permission unconditionally, grant permission subject to conditions or refuse permission. The report is then submitted to Scottish Ministers for their decision, which does not have to follow the reporter's recommended course of action. Reporters are all experienced planning and built environment professionals. More information on called-in planning applications, appeals and development plan examinations are available on the [DPEA website](#).

COULD THERE BE A PUBLIC INQUIRY?

A called-in planning application is not automatically the subject of a public inquiry. The reporter appointed to consider the application will decide on the procedures to be used. There are several procedural options available to the reporter, which are:

- No procedure is necessary - the reporter has sufficient evidence to make a decision
- Written submissions
- Informal hearing
- Public inquiry.

The reporter may also conduct a site visit, if they consider this necessary. Where further procedure is needed, it can consist of a mixture of one or more of written submissions, site visit, hearing or inquiry sessions as the reporter sees fit.

HOW MANY PLANNING APPLICATIONS ARE CALLED-IN?

Scottish Ministers call-in very few applications each year. During the period 1 September 2011 to 23 September 2014, Scottish Ministers called in 14 planning applications². During this time, planning authorities dealt with approximately 120,000 applications for planning permission. Details of the called-in applications can be found in Appendix 1.

² Information supplied to SPICe by the Scottish Government

APPENDIX 1

Planning applications called in between 1 September 2011 and 23 September 2014			
Cases called in following standard notification procedures			
Authority	Proposal	Reason for Notification	Reason for call-in
Aberdeenshire	One wind turbine, Earlsfield Farm, Inch	Historic Scotland objection	Impact on Scheduled Monument
Western Isles	Two wind turbines at Kirkibost, Bernera	Historic Scotland objection	Impact on Scheduled Monument
East Lothian	Two wind turbines at Muirton, Drem	SNH objection	Significant impact on Special Protection Area. Case eventually withdrawn
Glasgow	Siting of 17 storage containers at flyover at Seaward Street, Glasgow	Transport Scotland objection	Impact on trunk road
Aberdeenshire	One wind turbine at Mains of Melrose, Gamrie	Historic Scotland objection	Impact on Scheduled Monument
Highland	Seven dwellings at Garafad, Staffin	SNH objection	Significant impact on National Scenic Area
Aberdeenshire	One wind turbine at Wardford Farm, Methlick	Historic Scotland objection	Impact on Scheduled Monument
Western Isles	Three wind turbines at Langass, North Uist	Historic Scotland objection	Impact on 2 Scheduled Monuments
North Ayrshire AIR case	Three wind turbines at Sorbie, Ardrossan	Glasgow Prestwick objection	Impact on safe provision of radar
Western Isles	Two wind turbines, Locheport, North Uist	MOD objection	Potential interference to the range control radars at South Uist and St Kilda
Cases called in following the issue of a notification direction by Scottish Ministers			
South Lanarkshire Council	Extension to minerals extraction at Hyndford Quarry, Lanark	Possible adverse impacts on New Lanark World Heritage Site	Possible adverse impacts on New Lanark World Heritage Site
Midlothian Council	Retail and tourist facilities at Fordel Mains, adjacent to A68, Dalkeith bypass	Possible implications for development plan policy in relation to retail transport, landscape and visual impact	Potential impact on neighbouring retail centres and significantly contrary to Development Plan, Structure Plan and SESplan
Cases called in directly by Scottish Ministers Request			
Western Isles	2 wind turbines 7 Bornish, South Uist	MOD objection	Potential for unacceptable interference to the air defence radar at South Cletraval, North Uist
Western Isles	Dark Island Hotel, Benbecula	MOD objection	Potential for unacceptable interference to the air defence radar at South Cletraval, North Uist

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RELATED BRIEFINGS

SPICe Briefing 11/30 [Town and Country Planning in Scotland](#)

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