

MIDLOTHIAN COUNCIL

PLANNING SERVICE PROCEDURE MANUAL

MAKING COMMENT ON A PLANNING APPLICATION

Level of Authority: Planning Manager

Date agreed: 1 July 2017

This note provides clarification on the processes of commenting on a planning application.

1 Introduction

- 1.1 On receipt of a valid planning application Midlothian Council will process and assess the application in accordance with the Town and Country Planning (Scotland) Act 1997 as amended by the Planning (Scotland) Act 2006 (“the Act”) and the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013 (“the Regulations”). The Act requires decisions on planning applications to be made in accordance with the development plan unless material considerations indicate otherwise.
- 1.2 Representations made by interested parties, whether objections or in support, require to be taken into consideration as part of the planning application decision making process.
- 1.3 Comments received by representors in relation to a planning application will be made publicly available on the planning application case file, which can be viewed via the Council’s website www.midlothian.gov.uk. However, the Planning Service will not display private phone numbers or representors’ signatures in accordance with its redaction policy, a copy of which is available via the Council’s online planning pages at www.midlothian.gov.uk.

2 How to make a comment on an application

- 2.1 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 5 minutes to complete.
- 2.2 Alternatively, comments can be sent by letter to the Planning Service, Fairfield House, 8 Lothian Road, Dalkeith, EH22 3ZN. Letters should quote the application reference number and clearly state that they are a comment on a

planning application to ensure they are linked to the correct case file and given due consideration in the assessment of the application.

- 2.3 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.
- 2.3 Petitions submitted in support or against an application will be treated as one representation with multiple signatories. The applications 'Report of Handling' will reference the submission of the petition. Only the lead signatory/person submitting the petition will receive an acknowledgement.
- 2.4 Comments made verbally over the phone or at the Council's reception will not be considered in the assessment of an application.
- 2.5 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.

3 What is a valid objection to an applications

- 3.1 The Council can only take into account '*material planning considerations*' when looking at comments made on an application. For example:
 - Local Development Plan policy;
 - The proposed land use;
 - The siting, design, scale, form and materials of the proposed development;
 - The impact the proposed development will have on the amenity or privacy of neighbouring properties;
 - The effect the proposed development will have on the setting of a listed building, conservation area or area of great landscape value;
 - Highway safety, means of access and/or parking provision;
 - The potential impact on flooding/drainage.
 - Development Briefs;
 - Supplementary Planning Guidance (SPG);
 - Scottish Government Planning Policy and Advice;
 - The individual circumstances of the applicant;
 - The individual circumstances of the application;
 - The individual circumstances of the site;
 - The planning history of the site (previous grants or refusals of planning permission); and
 - Representations submitted to the Council by third parties.
- 3.2 '*Non material planning considerations*' which cannot be considered include the following:
 - Perceived loss of property value;
 - Issues covered by separate legislation, i.e. not planning legislation;

- Private disputes between neighbours'
- Loss of a view;
- Land ownership disputes;
- Personal morals or values of the applicant/developer.

3.3 The weight given to each comment depends on its relevance to planning matters and its relevance to the proposal subject to consideration. It is for the decision maker to determine the weight given to each comment.

3.4 Anonymous comments will not be considered or taken into account in the assessment of an application.

4 Considering late representations

4.1 The assessment and determination of a planning application is subject to notification and consultation procedures as set out in the Act and the Regulations.

4.2 The Act requires the planning authority to “take into account any representations relating to that application which are received by them before the expiry of any period prescribed” by the Act and Regulations (21 days for notifications and 14 days for consultations). Furthermore, the Act states “no such application shall be determined until after the expiry of any period which may be so prescribed”. (*The notification and consultation requirements vary for listed building consent applications, advertisement consent applications and applications to modify or discharge a planning obligation*).

4.3 It is Midlothian’s practice to consider any representations received prior to the final drafting of an application’s ‘report of handling’, which is either the Committee report or the delegated officer’s report which sets out the planning assessment of the application. This in effect means that representations received after the prescribed period are considered if the officer’s assessment of the application has not been concluded. Representations received after the publication of the Committee agenda, but before the meeting of the Committee, are assessed and if appropriate the Committee are verbally updated at the meeting. The Committee (the decision maker) has the discretion to decide if they wish to consider ‘late’ representations received after the prescribed period. It is expected that it will wish to do so where the representation is material and could affect the planning assessment of the application. This would be consistent with the planning authority’s statutory duty to take into account all considerations which are both material and relevant to the application known at the time. In exceptional circumstances, this may mean that officers recommend that an application be deferred to a future meeting pending further detailed assessment. If deadlines for the submission of late representations are strictly adhered to there is a risk that the planning authority would be failing in its duty to consider all relevant material considerations.

5 Local Review Body - Comments in response to a notice of review

- 5.1 Where an application for planning permission falling within the Council's scheme of delegation has been:
- refused by an appointed officer;
 - granted permission subject to conditions; or
 - has not been determined within the prescribed period (almost invariably two months) but is of a class of application that falls within the scope of the scheme of delegation

The applicant may submit a 'notice of review' requiring the planning authorities Local Review Body (LRB) to review the application. The LRB comprises a panel of elected members.

- 5.2 The Town and Country Planning (Schemes of Delegation and Local Review Procedures) (Scotland) Regulations 2013 and Scottish Government guidance in Circular 5/2013: Schemes of Delegation and Local Reviews provides the legislative and regulatory framework for the relevant administrative procedures in determining a notice of review.
- 5.3 As part of the review process those parties who have made representations on the original application are notified of the review in accordance with the LRB regulations and any further submissions are considered by the LRB. The regulations do not state whether new representations received from parties who did not make comment on the original application shall or shall not be considered and as such it is for the decision maker to decide what weight is given to such representations. Comments already made on the application are considered by the LRB as part of the review.