

Guide to the planning system for Community Councils

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Introduction

This training guide aims to give Community Council members an understanding of our current planning system. It aims to help you understand what the planning system seeks to achieve and introduces the processes involved in decision-making.

The purpose of planning is to manage the development and use of land in the long-term public interest.

The planning system is established through legislation, which sets out certain actions and activities planning authorities in Scotland are responsible for. The legislation gives the context for delivering new development in the right places.

Planning can be central to the delivery of great places and homes, enable economic growth and is a force for positive, collaborative change that can achieve better outcomes for communities.

Community Councils have an important role to play in the planning system.

By taking a proactive role in planning matters this will help ensure that your communities are consulted on development plans and proposals that could have an impact on the area and that their views are shared with the planning authority.

This guide also provides you with links to other sources of information on the planning system that may be of particular interest.



Introduction

The three key strands...

It is through the planning system that decisions are made, in the public interest, on how best to meet the needs of our communities – whether that be for new housing, business and industry, retail and leisure, education and other social facilities. It also has a key influence on how we travel within and between our communities.

The aim is to achieve the right development in the right place, protecting valued urban and rural areas and the environment from inappropriate forms of development or use of land.

Planning has evolved over many decades, with the current system having three key strands:

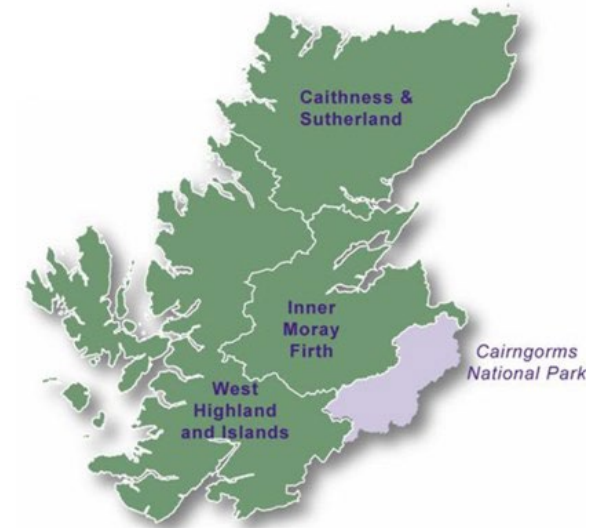


Development Plans

What is a Development Plan?

A development plan sets out policies and proposals for land use in its area. It sets out the long-term vision for where development should and shouldn't happen in the places it covers. With effect from the adoption of National Planning Framework 4 by Scottish Ministers on 13 February 2023, the National Planning Framework is part of the overall Development Plan.

The Highland Council prepares Local Development Plans (LDPs) and associated Supplementary Guidance. Local Development Plans are updated every 5-10 years, are map based and reflect the unique characteristics of the places and communities they cover. Along with the National Planning Framework, Local Development Plans provide the most important statutory, spatial framework for making planning applications and other investment decisions. They set out the preferred locations for new homes, businesses and other land uses and protect places of value to people or wildlife.



All planning decisions are made using the context of the development plan and these are the documents the policies of which must be referenced when planners make decisions on planning applications, applicants submit their development proposals and community groups or members of the public comment on applications.

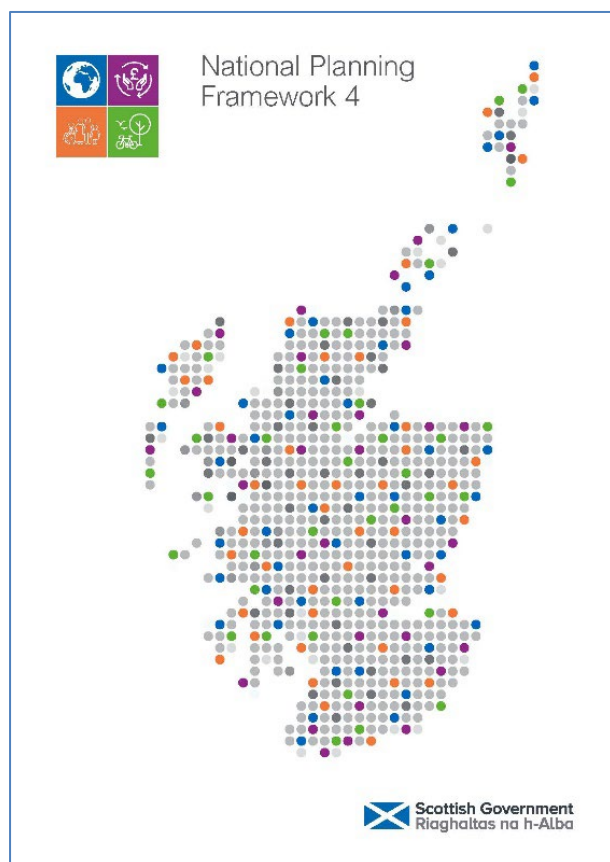
A key aspect to remember is that planning permission should only be granted where the development accords with the development plan or, if it doesn't, where there are good 'material considerations' to set aside the provisions of the development plan.

There are also a [Delivery Programme for NPF4](#) and [Delivery Programmes for our LDPs](#).

Community Council participation at the plan making stage is therefore vitally important.

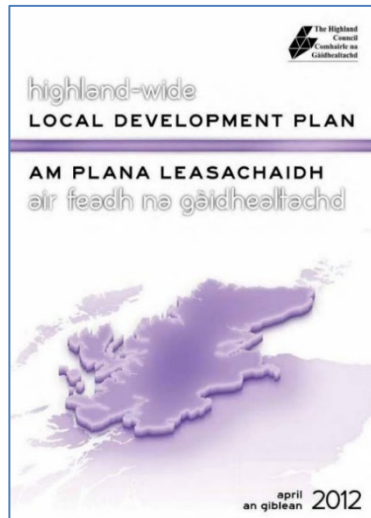
National Planning Framework (NPF)

The National Planning Framework (NPF) is a long-term plan for Scotland, that sets out where national developments and infrastructure is needed to support sustainable and inclusive growth and also guides all types and scales of development. NPF4 was adopted by the Scottish Ministers on 13 February 2023, following approval by the Scottish Parliament. The full Adopted NPF4 can be [viewed here](#). It is part of the Development Plan.



- In Part 1 of NPF4, an overarching spatial strategy for Scotland’s future outlines that Scotland is facing unprecedented challenges, reiterates that decision making requires to reflect the long-term public interest, sets out Spatial Priorities that support the planning and delivery of sustainable places, which will reduce emissions, restore and better connect biodiversity, create liveable places where residents can live better healthier lives, and create productive places with a greener fairer and more inclusive wellbeing economy.
- In Part 2 of NPF4, there are planning policies for the development and use of land that are to be applied in the preparation of local development plans, local place plans, masterplans and briefs, and for determining the range of planning consents.
- In part 3 of NPF4, there is a series of annexes that provide the rationale for the strategies and policies of NPF4 and detail of National Developments, which outline how the document should be used, and set out how the Scottish Government will implement the strategies and policies contained in the document.

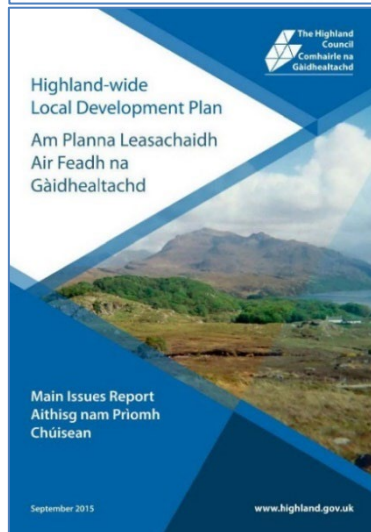
Highland-wide Local Development Plan



The [Highland-wide Local Development Plan \(HwLDP\)](#) was adopted in 2012 and set out our vision for the whole of the Highland area (*excluding the area covered by the [Cairngorms National Park \(external link\)](#) which has its own plan*) and how land can be used by developers. The Plan set out a vision statement and spatial strategy for the area, taking on board the outcomes of public consultation undertaken during preparation of the plan.

The HwLDP continues to be used alongside the more recent National Planning Framework 4 (NPF4), the Area Local Development Plans and our [A-Z of development guidance](#)

We did start the process of reviewing the [HwLDP with a Main Issues Report consultation](#) in 2016. However, that review was placed on hold and the Council now expect to take forward review of the HwLDP through a new Highland Local Development Plan, under new arrangements for Local Development Plan preparation, starting work on that in 2023.



We prepared an [Indicative Regional Spatial Strategy for Highland](#) during 2022-21 as part of our submissions to Scottish Government, to be taken into account in their preparation of NPF4. It is not part of the Development Plan but provides a more recent vision and strategy than that of the HwLDP. We expect to update and formalise the Regional Spatial Strategy during 2023-24 and feed it into the new Highland Local Development Plan.

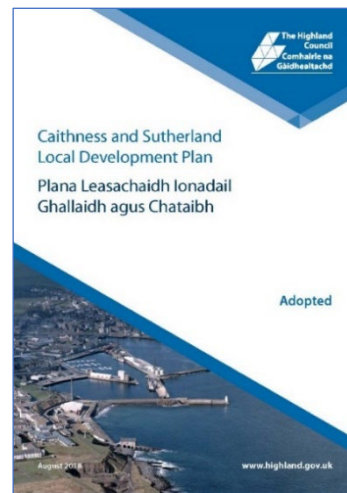


Area Local Development Plans in Highland

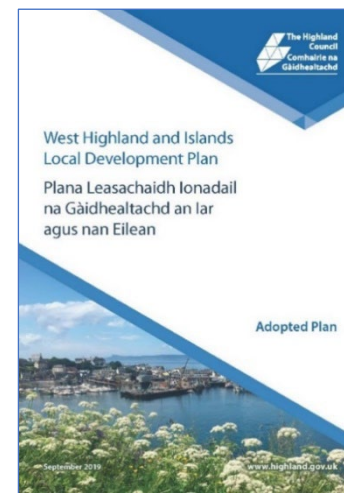
There are three 'area' Local Development Plans that provide policies and proposals for their areas, particularly for specific sites and settlements. Each plan was the subject of extensive public consultation. The IMFLDP was adopted in 2015, CaSPlan in 2018 and WestPlan in 2019. The IMFLDP is at an advanced stage of review and, following public consultation on a Proposed Plan in 2022, is being submitted for Examination in 2023. The Proposed Plan is a material consideration.



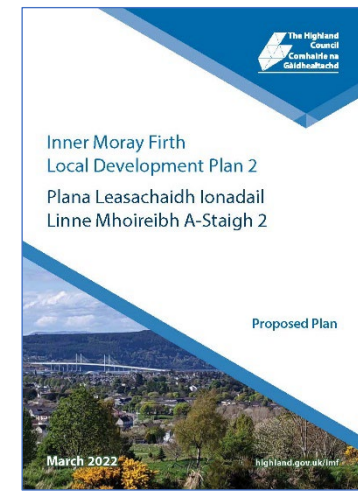
[Inner Moray Firth Local Development Plan \(IMFLDP\)](#)



[Caithness and Sutherland Development Plan \(CASPlan\)](#)



[West Highland and Islands Local Development Plan \(WestPlan\)](#)



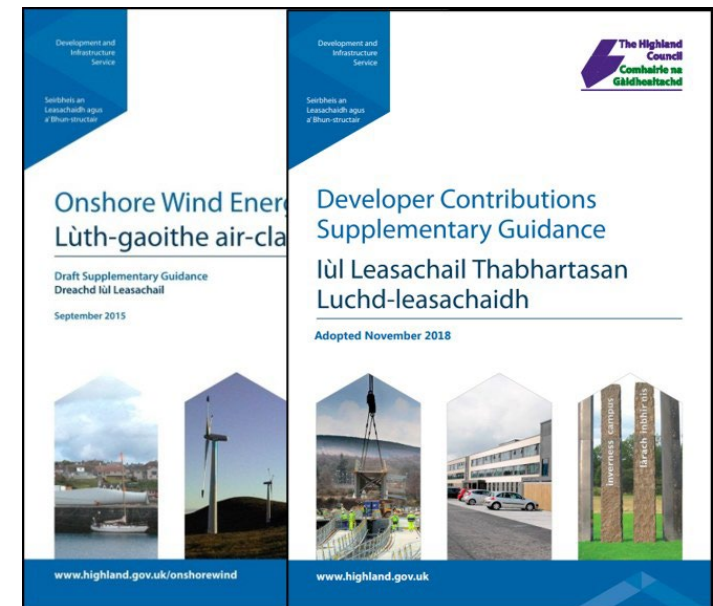
[Proposed IMFLDP](#)

All planning applications within the Cairngorms National Park are decided against the [Cairngorms National Park Local Development Plan](#) (and associated guidance), whether it is the CNPA or the Highland Council making the decision.

Supplementary Guidance

Supplementary Guidance is prepared to provide extra information and guidance as part of the overall Development Plan. They can give guidance on Highland-wide policy matters, examples are:

- Onshore Wind Energy Supplementary Guidance
- Developer Contributions Supplementary Guidance
- Rural Housing Supplementary Guidance



They can also include additional guidance for specific areas of land – called Development Briefs.

In addition to formal Supplementary Guidance, the Council also has some other, 'non-statutory' planning guidance.

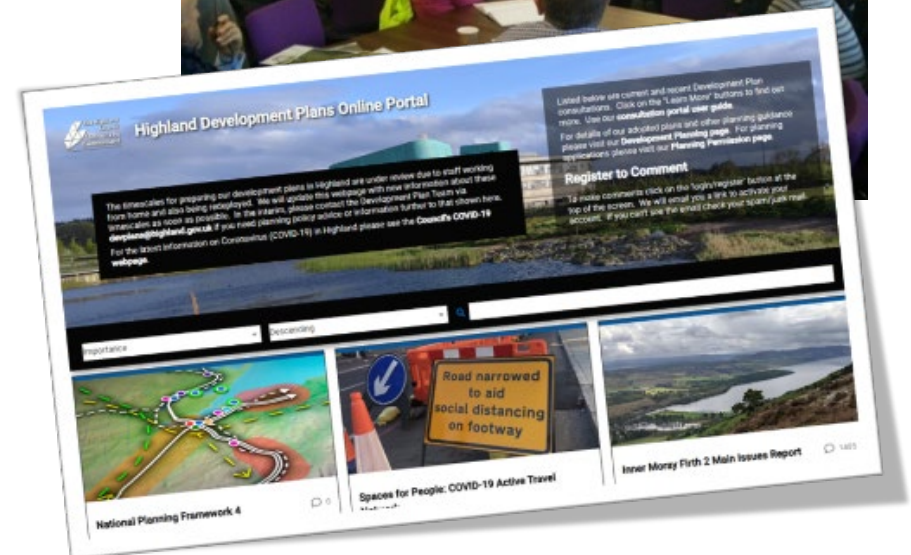
Engaging in Development Plans

Community Councils have a key role in responding to the consultations on these documents and also in encouraging their residents to get involved. We want communities to have ownership of the plan for the future of their area, and to support the aspirations they have and the new or improved services they seek.

- This is a key opportunity to influence the future of places.
- Engagement and consultation is central to preparing Development Plans.
- These Plans have a key role as part of wider Place Planning.

Community Councils should engage early to make the most of their input:

- Register your Community Council with our online consultation portal consult.highland.gov.uk to be kept up to date with the progress on each plan.
- You can check the up-to-date [Development Plans Newsletter](#) – an annual Newsletter telling you how and when you can get involved at each stage. From time to time we will ask for your feedback on our Participation Statement in the Newsletter, setting out how we intend to engage with people in preparing Development Plans.
- Follow us on Twitter: @PlanHighland
- Like us on Facebook: @HighlandLDPs



The forthcoming, new Highland Local Development Plan will replace all of our existing Local Development Plans.

Place Based Approach

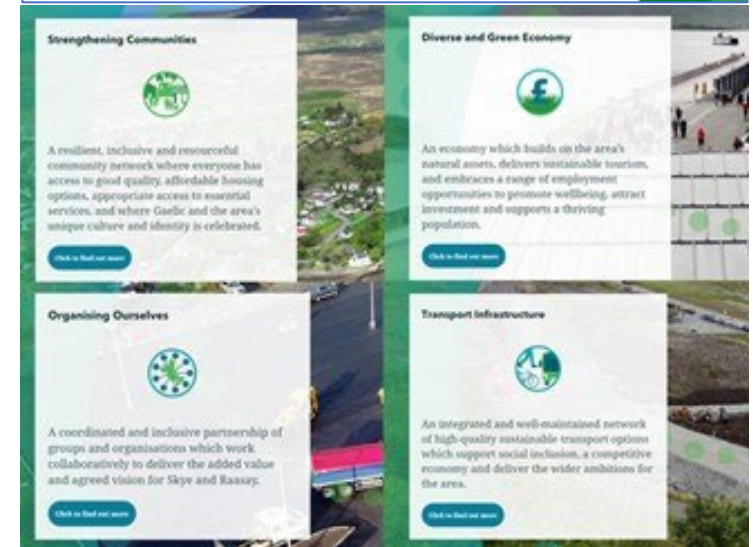
The Scottish Government's Place Principle requests that all those responsible for providing services and looking after assets in a place need to work and plan together, and with local communities, to improve the lives of people, support inclusive and sustainable economic growth and create more successful places.

We have been heavily involved in developing a place based approach for the Council and partners and implementing this across various parts of Highland. This is helping to better organise how partners invest in a place and the benefits and impact that any intervention has for the people and place in the area.

Our place plans are already having an impact on funding bids at the UK and Scottish Government level.

Examples of supporting a cross-sector, collaborative approach to places in Highland include [Fort William 2040](#), [Skye and Raasay Future](#), [Northwest2045](#) and the upcoming [Inverness Strategy](#).

Rolling out similar partnership initiatives and also building on existing arrangements (e.g. Cairngorms National Park Plan) will enable local solutions to local circumstances and support the leveraging of inward investment and improvement opportunities.



Local Place Plans

Local Place Plans (LPP's) are community led plans providing proposals for the development and use of land. They allow communities to submit ideas and proposals for their area that can be taken into consideration while the Local Development Plan for their area is being prepared.



They are more than just a plan: they can help a community understand what it wants to be like in the future, and for working together with The Highland Council and others to make positive change happen.

Communities are well placed to express their aspirations for the future of their local places. Many have already been actively involved in shaping the places where they stay through community-led design processes leading to the preparation of community-led plans. These processes can take a variety of forms from small workshops to large scale community-led design events.



For more guidance on how to prepare, submit and register a Local Place Plan, please see our [Local Place Plans webpage](#).

See also our [Development Plans Newsletter](#) for information on best timing for LPPs, in order to be taken into account by the Council when preparing the Local Development Plan.

Development Management

Development management is essentially the process of deciding to grant or refuse planning permission and other related consents.

As a Community Council, it is the development management process that you are likely to encounter most regularly.

What is Development?

'Development' is defined as:

"the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land"

Planning Permission is only required for development that fits within the definition set out in the Act. This is pretty wide ranging, but it is nonetheless confined to the definition.

There are exceptions including:

- Maintenance
- Internal alterations
- Use of land/buildings within the curtilage of a house for any purpose incidental to the enjoyment of that house
- Works undertaken by the roads authority within the road boundary
- Use of land for agriculture and forestry
- Demolition (in most cases)



When is permission required?

Some examples where planning permission is required for development are:

- Erecting a building
- Altering or extending a building
- Changing the use of land or buildings e.g. from residential to office use.
- Carrying out engineering or excavation works
- Any quarrying activity
- Erecting wind turbines, solar and/or photovoltaic panels



Permitted Development

Some development can be undertaken without planning permission – these are usually as a result of permission being deemed to be granted under the Permitted Development Regulations.

Householder Permitted Development Rights are granted to allow private householders to carry out certain small-scale developments to their houses and gardens and, in limited circumstances, to flats without having to apply for planning permission.

These rights only apply to domestic properties and not to commercial or industrial premises.

This includes some changes of use; for example, Class 3 (food and drink) back to Class 1 (shop).



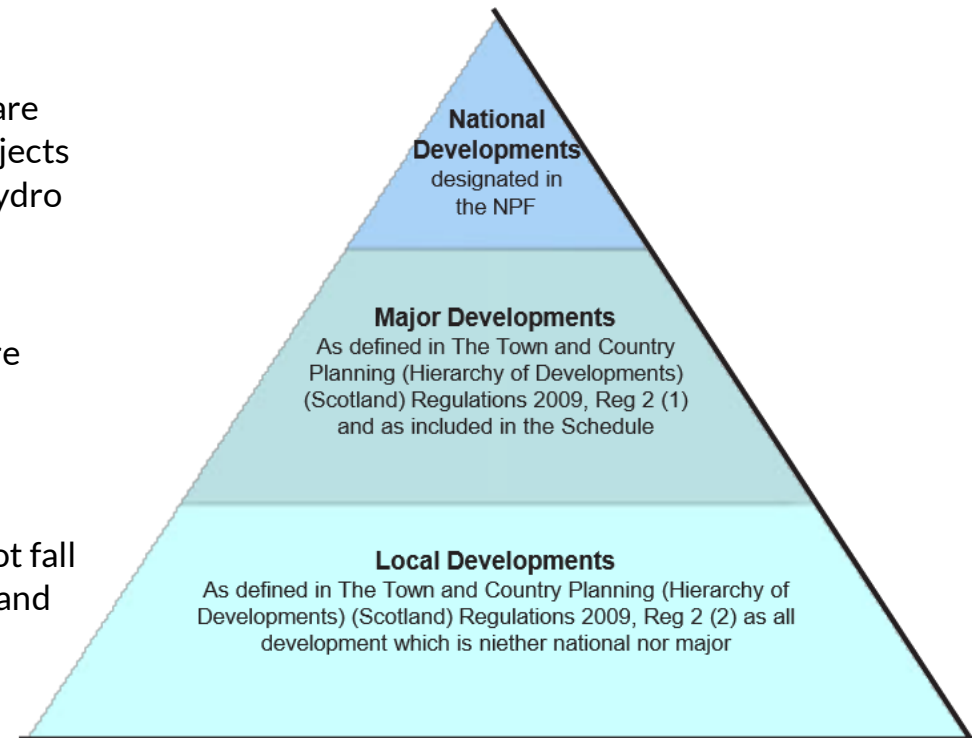
Development Hierarchy

There are different procedures in place for determining applications for the different categories of development.

The different categories mean that applications are treated in a way which is suited to the size and complexity of the proposed development and the issues they are likely to raise.

Development hierarchy:

- **National developments** are large scale developments which are identified in the National Planning Framework. These are projects such as Strategic Transmission Infrastructure and Pumped Hydro development.
- **Major developments** for example developments of 50 or more houses, business space over 10,000m² and wind farms with a generating capacity of over 20MW.
- **Local developments** are all types of development which do not fall into the national or major categories such as smaller housing and business development and householder development.



Proposal of Application Notice (PAN)

All National and Major developments are required to submit a [Proposal of Application Notice \(PAN\)](#) at least 12 weeks before submitting a planning application. The statutory requirements include [publicity and consultation](#) to make communities aware of, and have an opportunity to comment on, the development at the earliest stage in the process. This makes sure that issues raised can be taken into account by the applicant in the submission of any subsequent planning application. Community Councils are required to be consulted. MPs and MSPs are also made aware.

These consultations are undertaken by the developer and not the Council. Any feedback on the proposal should be fed back to the developer, not the Council. At the time of making the application, the developer must submit a pre-application consultation report that should detail both the input and outcome of any consultation carried out.

Every proposal of application notice is reported to the Planning Applications Committee. Committee Members have an opportunity to comment on what might need to be considered by a prospective developer. This is in addition to any pre-application advice that may have been provided at officer level.

A [weekly list of Proposal of Application Notices](#) is published on our webpages.



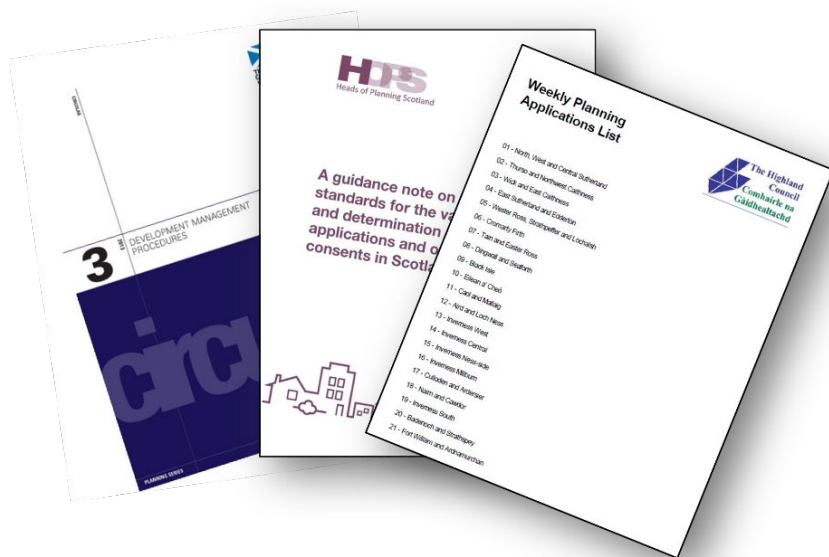
What's the application process?

Most planning applications we receive are made on-line through the Government e-Planning Portal eDevelopment.scot

Planning applications can either be in full, where all the details of a proposal are provided, or in principle, where only limited information such as an outline plan may be required. A planning permission in principle will be followed up by further applications for Matters Specified in Condition (MSC). Both FUL or PIP are planning permissions. MSCs are not.

Applications can also be made to modify conditions – a S42 application. If granted this is effectively a revised planning permission.

When we receive an application, it is processed and assigned a reference number. This reference denotes the year, the application number and an identified suffix. An application for planning permission will end with FUL and one in principle will end in PIP. Other common ones will be S42, LBC for listed building consent and ADV for advertisements.



Following receipt an application is passed to our Planning Support Officer team to 'validate'. This relates to the technical checks required to make sure that all information that is required, by law, is there.

This is pretty minimal, and we often ask for additional information.

The application is then passed to the Area Planning Team Leader to allocate to the officer.

The consultations will then be undertaken along with the neighbour notification and the advert (if required) placed in the local press.

After the case has been validated it will be [published on our website](#) and on our [Weekly Lists](#) where the basic information of the case and details of the case officer can be found.

Consultees

There are a number of consultees in the planning process. These can be broken down into whether they are statutory or non-statutory.

A statutory consultee... as the name suggests... are those set out in legislation.

They include:

- Transport Scotland - where development is close to the trunk road network
- HSE - where near a CoMAH site
- SEPA in certain circumstances
- NatureScot - where it impacts on SSSI
- Historic Environment Scotland - where it impacts a Category A or B listed building or affects the setting of a Scheduled Monument etc.

A non-statutory consultee would be one that we **choose** to consult, such as:

- our transport planning team
- our flood risk management team
- our access officer, forestry officer, conservation officer or archaeology officer
- environmental health
- fisheries board etc.



Community Council as a consultee

Community Councils are able to comment on any planning application.

There are very specific circumstances in which the Community Council has a right to be a **statutory consultee in the development management process**.

These are:

- **Where the community council, within 7 days of receipt of the weekly list, informs the planning authority that it wishes to be consulted;**

AND/OR

- **The development is likely to affect the amenity in the area of the Community Council.**

Whether considered a statutory consultee or not your views are important to the process and will be taken into account regardless. The key difference for a Community Council as to whether it is a statutory or non-statutory consultee can be found in the Council's [Scheme of Delegation](#). This establishes, where a Community Council, as a statutory consultee, objects to a proposal it must be determined by Committee rather than by officers.

If a Community Council wishes to be consulted on a particular application, a request can be made following the application appearing on our published [Weekly Lists](#). The Weekly lists contains a list of applications validated during that week and appears in Pdf format and can be searched easily by Ward.

The Community Council should make a request by emailing epc.Planning@highland.gov.uk with the application reference number. Again, where the intention is to be a statutory consultee this should be done within 7 days of the application appearing on the Weekly List. Requesting a consultation provides a further 14 days to comment.

Community Councils should therefore ensure that their method of working allows them to respond within the consultation period. It may be possible to agree an extension to the timescales in which to comment with the case officer, although it needs to be recognised that there are statutory timescales in which an application must be determined by the Council.

Material considerations

Material planning considerations are matters the Council must take into account when deciding planning applications. They are not set out in legislation but have been arrived at through the implementation of policy and legal interpretation over the years.

Material considerations can also be set out in policy i.e. the criteria and or tests within policy, so is often a good place to start to look for them.

Servicing and amenity considerations are all important and relevant.

Examples of material planning considerations are:

- siting, design and materials
- parking provision and access
- residential amenity (overshadowing, noise)
- drainage and infrastructure
- impact on existing trees, proposed landscaping

Examples of non-material considerations are:

- private legal issues between neighbours e.g. land/boundary disputes, damage to property or private rights of access
- ownership of land (*note that planning permission relates to the land and not to the person seeking planning permission*)
- loss of a view
- loss in the value of your property
- covered by other regulations (e.g. building regulations)

These lists are not exhaustive.

More information can be found on the [Planning Aid Scotland website \(external link\)](#)

[Considerations that are not material planning considerations will not be taken into account](#)

Assessment and recommendation

On receiving a new application, the case officer will:

- Check that all the information required to make a decision on the application is there and if not request the additional information (called Reg 24 request);
- Check that the development doesn't fall within a category that would be subject to Environmental Impact Assessment (EIA);
- Consider whether affecting a Natura site/protected species generally;
- Visit the site;
- Agree a processing agreement/extension of time if going to take longer than 2 to 4 months to determine.

At the end of the consultation period, having visited the site (in most cases), and received comments from the consultees and the public, an initial assessment is made of the proposal and compatibility with the development plan and other material considerations.

Discussion on the proposal and the need for any further information and/or amendments required would be undertaken at this stage.

If changes are made and these are significant, then there is potential for further neighbour notification and in some cases re-advertisement and potentially re-consultation.

Further assessment is then undertaken. This may be an iterative process until the point that it is time to write the Report of Handling.

The statutory period for deciding valid planning applications is two months for local developments and four months for national and major developments unless the applicant agrees to an extension of that time.

Committee or Delegated decision?

The way in which a decision is made depends on the type of application and/or the level of public interest.

The recommendation may also dictate the type of Report of Handling produced as well as the forum for deciding the application, either through the Scheme of Delegation to officers or to Committee.

The default is always to delegate, with around 97% of all applications dealt with in this way.

It is a statutory requirement to have a [Scheme of delegation](#). The aim is to streamline the process as much as possible. It is the responsibility of the members of the Planning Application Committees (PACs) to determine those applications not delegated to officers under the Council's Scheme of Delegation or reserved to full Council.

The criteria for consideration by Committee is where the application relates to:



- **Major Development**
- **Housing development over 30 units**
- **Five or more reps from different addresses**
- **Statutory consultee objection**
- **Manager's discretion**
- **Refusal – where two Ward Members call-in**
- **Where two Ward Members call-in within 14 days of its publication on the Weekly List**

Committee or Delegated decision?

The triggers for reporting an application to committee are contained in the Scheme of Delegation.

As of May 2022, these triggers include:

1. development of a certain scale that is proposed for grant;
2. applications that have received a certain number of objections;
3. Member call in of a delegated application.

Full details of those applications that must be reported to Planning Applications Committee.

In addition to determining planning applications, there will sometimes be other types of application on the agenda to determine (e.g. applications for listed building consent, conservation area consent, confirmation of tree preservation orders etc). Also included are decisions on applications where an appeal has been submitted to the Scottish Government.

The Council has two planning application committees, covering north and south of the Council's area and there are usually around 8 meetings each calendar year.

- [North Planning Applications Committee \(NPAC\) \(Caithness, Sutherland, Wester Ross, Skye and Lochalsh, Easter Ross & Black Isle\)](#) and;
- [South Planning Applications Committee \(SPAC\) \(Inverness, Lochaber, Badenoch & Strathspey, Nairn\).](#)

Each ward is represented on the Planning Applications Committee for its area by an elected member (sometimes 2 members).

Decision

Whether a Committee decision or one taken by officers under the Scheme of Delegation, the Report of Handling will contain all the information that is considered relevant to the determination of the application and which development category (major/local) it falls into. The reason(s) why the application has been reported to committee will also be stated where this applies.

This will include:

- the results of public participation and statutory consultations (a full copy of all representations can be obtained from the online application file by inserting the application ref number into the [Highland Council public access](#) search facility);
- a summary of development plan policies and other material planning considerations;
- a planning appraisal leading to a conclusion and recommendation.

There are three possible decision outcomes:

- **Grant (Approve in the case of MSC)**
- **Grant subject to conditions**
- **Refuse**

If it is recommended to grant the application subject to conditions, the **conditions** to regulate the development will be listed. If the application is recommended for refusal, the **reasons for refusal** will be listed. Once concluded and the decision is issued to the applicant, the consultees and anyone who has made representation will be informed of the outcome.

The decision will also be included within our published [Delegated Decisions](#) weekly list.

In many circumstances a recommendation will be accompanied by a request for a legal or some other form of agreement for [developer contributions](#). The decision will not be issued until this has concluded. Agreements and obligations also need to meet with prescribed legal tests.

Listed Buildings

A Listed Building is building or structure that is of special architectural or historic interest.

Listed buildings are a highly visible and accessible part of our rich heritage that help to create Scotland's distinctive character and sense of place. In the Highland Council area we have 3050 listed buildings which form a significant heritage resource. Individually and collectively these buildings enrich our landscapes and townscapes and (indirectly or directly) provide significant economic benefits to local communities.

Buildings are listed by Historic Environment Scotland (HES), with three categories of designation.

- **Category A:** buildings of special architectural or historic interest which are *outstanding* examples of a particular period, style or building type.



Eilean Donan Castle, A-Listed

Listed Buildings

- **Category B:** buildings of special architectural or historic interest which are *major* examples of a particular period, style or building type

Inverness High School, B-Listed



- **Category C:** buildings of special architectural or historic interest which are *representative* examples of a period, style or building



*Church-Hill House, Kingussie; C-listed,
Building at Risk - scheduled for renovation.*

It is important to note that the category is advisory only and has no legal weight. Category does not materially affect how the Council manage change and all listed buildings, regardless of category, are treated equally.

It is, however, the case that Category C listed buildings may have more scope (internally and externally) for sensitive alteration than a Category B or A listed building.

Listed Buildings

What is covered by Listed?

Listing covers both the exterior and the interior of the building regardless of category.

It is *never* the case that only the front or principal elevation of a building is listed. Also covered by the listing is any object or structure that is fixed to the building. In addition, the listing will apply to buildings or structures which are not physically attached but which are part of the curtilage (or land) of the listed building, as long as they were erected on or before 1 July 1948. This might include boundary walls, gates, gate-piers or ancillary buildings.

More information can be found on the Historic Environment Scotland website: ['What is Listing?'](#)



Fernaig cruck-framed barn, B-listed

Listed Buildings

Listed building consent (LBC) is the mechanism by which planning authorities ensure that any changes to listed buildings or their settings are appropriate and sympathetic to their character.

It is the planning authority's statutory responsibility to preserve and enhance listed buildings, but we aim to do so proactively and flexibly to secure a positive, sustainable and viable future.

It's a criminal offence to demolish, alter materially or extend a listed building without Listed Building Consent.

Listing does not rule against alterations or even extensions being possible, but it does place a particular focus on sensitivity, subtlety, appropriate design and materials and this can make renovating or altering a listed building a complex and potentially costly process.

Listed buildings on the Buildings at Risk Register (currently 172) may be assessed with more flexibility, as to preserve a heritage building it is always best to have it used and occupied.

When is permission needed?

You must get Listed Building Consent from the Council if you wish to alter or extend (internally or externally), or demolish (all or part), of a listed building. Listed Building Consent is free, and the process is similar to applying for planning permission. For external alterations it is likely that both Listed Building Consent and planning permission will be required.

The Council is required to consult Historic Environment Scotland on all LBC applications for Category A and B listed buildings, demolitions, and Council-owned listed buildings.

Repair and maintenance works of a small scale and if replacing old materials for new on a 'like-for-like' basis often do not need Listed Building Consent. It is, however, always best to check with the planning authority as every listed building is different and assessed on its own merits.

Listed Buildings

Permission to demolish a listed building will not be granted unless it can be shown that there is no viable alternative. If LBC is granted, Historic Environment Scotland must be notified so that they can make a record of the building.

A current significant issue for listed buildings is thermal efficiency, and sometimes renewable energy. Every building has to be assessed on its own merits, but sensitive proposals for insulating, double-glazing and heating/energy can be considered positively.

Detailing and materials are key elements to be considered in any proposal, to maintain the traditions and integrity of a listed structure; upvc windows and externally applied insulation, for example, will not be considered acceptable.



Gesto Farm on Skye, B-listed

Conservation Areas

A conservation area is defined as 'an area of special architectural or historic interest, the character or appearance of which it is desirable to preserve or enhance'.

Highland currently has 30 conservation areas.

They vary in character from city and town centres and rural villages to cultural landscapes such as Culloden Battlefield. (see [Maps of conservation areas | Conservation areas | The Highland Council](#)).

Conservation areas include many of Highland's most historic, attractive, and important places; places that make an immeasurable contribution to Highland, identify sense of place and play a fundamental role in the local economy.

The planning authority is responsible for designating and amending conservation areas.



It is important to note that new development is *not* unacceptable or undesirable in a conservation area. On the contrary, new development (including high quality modern/contemporary design) is often important in ensuring that the area remains vibrant and relevant. It is also the case that conservation area designation can act as a catalyst for regeneration. Change, however, must be sensitive, appropriate, and carefully managed as even small, unsympathetic alterations that individually may appear minor can incrementally and over time cause substantial and irreversible damage to the special character of an area.

In a conservation area it is both the buildings and the spaces between them that contribute to the area's architectural and historic interest and planning control is directed at maintaining the area's integrity.

Conservation Areas

The Council has a duty to consider whether development proposals will preserve or enhance the character or appearance of the area. In order to satisfy this test, the majority of development proposals will need to demonstrate how the proposal relates, responds and reflects the character and appearance of the conservation area. Proposals must utilise good design and high-quality materials.

In conservation areas there are very few permitted development rights and so the majority of works undertaken require planning permission.

For example:

- Demolition of buildings – demolition requires a separate consent, called Conservation Area Consent. Applications for Conservation Area Consent should always be accompanied by a planning application that details the proposal for the cleared site. Failure to apply for such consent is an offence;
- Householder development including house extensions, roof alterations, changes to windows and doors, stone cleaning and painting of the exterior, satellite dishes, provision of hard surfaces, the erection or alteration of gates, fences and walls;
- Additional control over ancillary buildings (such as sheds/garages) and raised decking/platforms and;
- Works to trees, including lopping, topping and felling.



Conservation Areas

In order to establish the special qualities of a conservation area that are desirable to preserve and enhance, the Council has a duty under the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 to publish a character appraisal and management plan for each conservation area.

Plans have been completed for Inverness: Riverside, Tain, Grantown-on-Spey, Wick Pulteneytown and Culloden Muir with several others currently at various stages of being drafted for approval.

These important documents help guide the successful management of change in each conservation area.



Conservation Areas

Other Heritage Designations

When considering development proposals, we must also have regard to the protection and preservation of a range of other heritage features, including:

- Battlefields as included in Scotland's Inventory of Historic Battlefields
- Gardens and Designed Landscapes as included in Inventory of Gardens and Designed Landscapes
- Scheduled Monuments and their setting
- Historic Marine Protected Areas
- Undesignated archaeological sites and historic landscapes. Over 60,000 sites have been identified in the Council's Historic Environment Record, with more added on a regular basis. Information on all heritage designations, features and sites can be found on the Highland Historic Environment Record [Home - Highland Historic Environment Record](#)



Environmental Impact Assessments (EIA's)

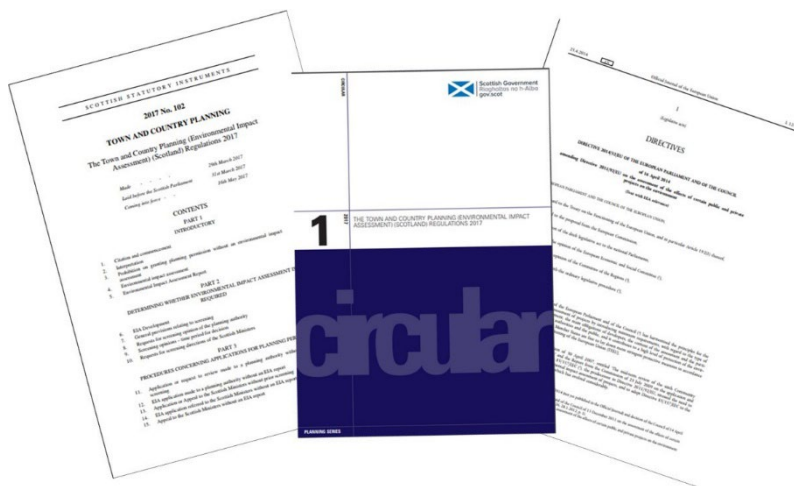
EIA stands for Environmental Impact Assessment, and it originates from EC Directive 85/337/EEC that came into force since 1985.

The main aim of the EIA Directive is to ensure that the authority granting consent for a particular project makes its decision in full knowledge of any likely significant effects on the environment.

The Directive sets out a procedure that must be followed for certain types of projects before they can be given 'development consent'.

The first Regulations came into effect in 1988.

There is a legal duty to consider the likely significant effects on the environment.



We do this firstly by Screening a development.

If it is an EIA, then we would undertake to provide a Scoping response.

An Environmental Impact Assessment Report (EIAR) would be required to accompany the application and for this to be fully assessed in coming to a decision.

Habitat Regulations

The Habitats Regulations cover the requirements for:

- protecting sites that are internationally important for threatened habitats and species – i.e. European sites
- a legal framework for species requiring strict protection – i.e. European Protected Species

This places a duty on the Council, as competent authority, to ensure that development proposals do not have an adverse impact on a European site. This is sometimes referred to a Natura site. Where a development has a relationship to the site that may impact on its integrity, the Council is required to undertake what is known as an appropriate assessment. This is generally contained as an appendix to Reports.

It is not possible to make a decision on an application, to either approve or refuse, until sufficient information has been presented in order to come to an appropriate assessment.

The Council will generally rely on the advice of NatureScot to do this.

The Council is also required to ensure that consideration is given to the protection of European Protected Species before a decision is made on a development that may impact on them.

In addition to this, legislation and policy will require us to take into account all protected species and our biodiversity more generally.



Protection of Trees

The Planning Act contains provision for protecting trees through the serving of Tree Preservation Orders (TPOs) on individual trees, groups of trees or woodlands. Once the order is confirmed it is an offence to carry out tree works without first making an application and receiving written permission.

Trees are also automatically protected within Conservation Areas and there is a similar tree work application process when works are proposed.

You can view and search our full screen map of Tree Preservation Orders by clicking on the caption at the bottom of the image.

Recent certified orders along with a full screen map of preservation orders can be viewed on our webpage - [Protected trees](#).

Trees are a material consideration in the planning process and Local Development Plan policies provides protection for ancient woodland as well as other important woodlands and individual trees.

For more information on trees in the planning process, please see the [Trees, Woodlands and Development Supplementary Guidance](#)



Control of Adverts

Many signs on buildings along with banners, placards and A boards will fall within the Control of Advertisements Regulations.

Adverts and signs within the road verge

Where control applies, our considerations relate to the effect on amenity and road safety only.



Planning Enforcement

The purpose of planning enforcement is to mitigate any adverse effects caused by unauthorised development.

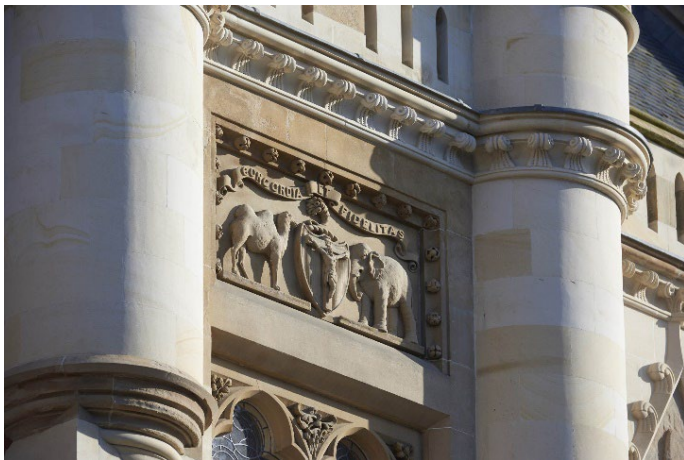
Planning enforcement is one of the more complex parts of the planning system.

As we have already covered, planning permission is needed for most development that takes place, with exception of some minor works known as 'permitted development'.

Consent is also needed for:

- Most work carried out to a listed building (internal and external)
- The display of most advertisements and signage
- All work carried out to trees in a Conservation Area or covered by a Tree Preservation Order

Sometimes a developer will undertake work without permission or fail to keep to the terms of the permission they have been given. This is a breach of planning control.



We have statutory powers to investigate breaches of planning control and the conditions attached to planning consents, and to take formal action where a satisfactory outcome cannot be achieved by negotiation.

However, enforcement is a discretionary power.

Most planning breaches, other than those relating to listed buildings, trees and advertisements, do not initially constitute a criminal offence.

There are also issues often perceived to be 'planning matters' over which we have no control.

Reporting breaches and the Enforcement Charter

We use a priority system for investigating complaints based on matters such as the effect of the breach and its significance on neighbours. Priority will be given to the following breaches of planning control, including:

- unauthorised development causing immediate or potentially serious harm;
- unauthorised works to listed buildings;
- unauthorised felling of protected trees;
- breaches of condition for major developments;
- breaches of planning conditions adversely affecting amenity and/or resulting in continuing harm.

When we receive a report of a potential breach it will be registered on our system.

The first action undertaken is to establish whether the reported potential breach relates to planning matters and whether a breach of planning control has indeed occurred.

If the case is not related to planning matters and/or a breach of planning control has not occurred, it will be closed, and a letter or email explaining why will be sent to the complainant.

If a breach has occurred, we will decide on an early course of further investigation and any necessary action.

In many cases where a breach has taken place, there is no adverse effect on the character of the surrounding area, or on residential amenity. We may then decide not to take formal enforcement action.

Reporting breaches and the Enforcement Charter

Any action taken has to be proportionate to the scale of the breach.

Where a breach has occurred and we are taking action, we will usually try to resolve the matter through negotiation, rather than immediate statutory action.

This may involve a retrospective application or a requirement to take steps to address specific problems with a development. In cases where a breach is serious or must be brought under control and it cannot be resolved informally, we will take appropriate formal action.

We have powers to enter land, to serve notice on owners/occupiers and, where necessary to take Direct Action. There is also scope to consider prosecution. However, our approach to regularising development is heavily influenced by Government guidance and national advice.

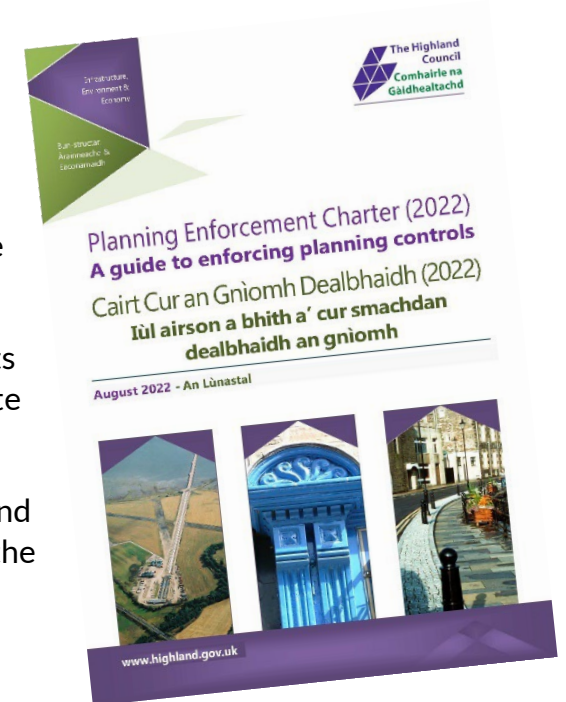
This informs our [Planning Enforcement Charter](#).

This requires us to take action that is proportionate to the nature of the breach, always acting in the public interest.

Our Charter explains how the enforcement process works, our roles and responsibilities and the service standard that we have set ourselves.

It also aims to set out what happens at each stage of what can be a lengthy process and highlights the role that the public play in reporting unauthorised development and assisting us to investigate breaches of planning control.

The aim of this Charter is to ensure that our procedures are fair, reasonable, consistently applied and transparent. This will mean that interested parties are fully aware of the procedures involved in the process, the powers available to the Council and equally importantly the limits of those powers.



Effective enforcement

How breaches are brought to our attention

Members of the public and Community Councils have a vital role to play in reporting breaches of planning control and provide valued support by reporting possible breaches of planning control, particularly given the extent of the geographical area we cover. Any concerns should be raised with us at the earliest opportunity. To report a breach please use our [Report a Breach of Planning Control](#) online form.

What we will not investigate

Complaints are often received regarding matters that are not breaches of planning control. The Council will advise you if it is not appropriate to take any action.

Complaints may sometimes involve matters that are more appropriately dealt with by other Council Services such as Environmental Health (for example noise or odour nuisance), or external agencies such as the Scottish Environment Protection Agency. In these instances, we will pass it to the relevant service / agency, and we will inform you who we have contacted on the matter.

The following are examples of matters that we are unable to address:

- Neighbour nuisance, boundary disputes or disputes over the ownership or control of land. These issues are civil matters and should be dealt with by the parties involved or referred to a solicitor, or if the property is owned by the Council, the Council's Community and Place Service,
- A dangerous building or technical building issue relating to building standard regulations,
- A matter relating to the management of a building site or behaviour of builders or contractors,
- Parking disputes, including with contractor vehicles, unless parking provision is addressed through a planning condition,
- Fly tipping,
- Any other matter covered by other substantive legislation such as noise, smells or operating hours, which are not controlled by a planning condition.

We will not investigate anonymous complaints. An exception would be where public safety is considered to be at risk, or where the breach affects a protected site or building.

High Hedges

Where the enjoyment of property is being spoiled by a high hedge on neighbouring land, the first course of action is for the property owner to first speak with the neighbour to try and resolve the issue.

If this fails, an application can be made to the Council for us to issue a High Hedge Notice.

An application must include evidence that attempts have been made to resolve the issue.

If this has not been demonstrated an application will be dismissed.

The hedge must be all of these:

- Made up of 2 or more trees or shrubs rising to a height of 2 metres off the ground
- Cutting out light into your home

Further advice can be found on our [High Hedge disputes webpage](#).

Reviews and Appeals

There are two routes for appealing a planning application. Under recent modernisation of the planning system, now instead of just appeals there are **reviews** and **appeals**.

Reviews are determined by the Council's Review Body.

Appeals are submitted to Scottish Ministers and handled by the Directorate for Planning and Environmental Appeals (DPEA). The majority of **appeals** are determined by a Reporter appointed by Scottish Ministers. Those not delegated to a Reporter are determined by Ministers themselves.

The thinking behind this change was that it is a good idea to keep decision making on a certain scale of planning applications local.

The council's Decision Notice and other letters about the application will make it clear to the applicant whether the right to challenge the decision is by local review or by appeal to Ministers.

Current Notices of Review are published on our [Planning Review Body](#) webpage.

Decisions and new Appeal cases can be located on the DPEA [Planning Appeals On-line](#) webpage.

Planning Review Body

Introducing the Planning Review Body (PRB) was a means of devolving certain appeal decisions to committees of elected members to keep decision making local. These are known as **Notices of Review**. Each planning authority has a Review Body.

Highland Council's Review Body currently comprises [8 elected members from across Highland](#).

The function of the Review Body is to determine requests by applicants to review local applications that have either:

1. **Been refused by officers;**
2. **Been approved by officers subject to conditions;**
3. **Not been determined by officers within two months of the date of submission.**

Only local scale planning applications delegated to officers for determination can be the subject of a Notice of Review.

On PRB agendas there will be challenges to officer decisions refusing planning permission, conditions attached to the grant of planning permission and the non-determination of applications within the statutory time limit.

All challenges to any major scale planning application or a local scale planning application determined by PAC will remain as appeals and will be determined by Reporters/Scottish Ministers.

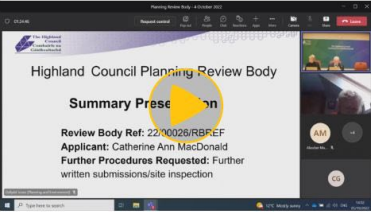
The PRB can decide to **dismiss** a Notice of Review (the decision will remain the same as the officer's determination or, in the case of non-determination by the officer, this will be a refusal of planning permission) or **uphold** a Notice of Review (a grant of planning permission).

Planning Review Body - 5 October 2022

Wed, 5 Oct 2022 - 2:00 pm

[Agenda](#) [Resources](#) [Feedback](#)

Agenda



- Start of webcast
- Start of Meeting
- 1. Apologies for Absence
- 2. Declarations of Interest
- 3. Confirmation of Minutes

Planning Review Body

Determination of Notices of Review

At the PRB meeting, each Notice of Review will be taken in turn and in each Notice of Review members will be asked if the information they've been provided with is sufficient to determine the Notice of Review.

If Members of the PRB are not satisfied that they have sufficient information to enable them to determine a Notice of Review, further procedure will be required: additional written submissions, a site visit, and/or a hearing.

There is guidance from the [Scottish Government's Chief Planner](#) on how Notices of Review are to be determined. This confirms that Notices of Review must be determined in accordance with the Development Plan unless material considerations indicate otherwise (s25 1997 Act) i.e. the same test as for determining applications at PAC.

Once the debate has concluded, the Chair will ask for a motion.

If there is an amendment as well as a motion, there will be a vote.



More advice of planning obligations can be found on [Planning Circular 3/2012: planning obligations and good neighbour agreements \(revised 2020\)](#)

Current Notices of Review can be found on the Council's [Planning Review Body](#) webpage.

Appeals

The appeals process was revised under the 2009 modernisation of the planning system. Now there are appeals (*major developments and applications refused by PAC*) and reviews (*local developments determined (or not determined within the statutory period) by officers*).

When applications are determined by PAC and the officer's recommendation to grant has been overturned, the Members that moved/seconded the refusal will be involved in preparing the Council's response to the appeal. This may mean giving evidence before a Scottish Government appointed Reporter at a hearing or an inquiry.

The majority of appeals are determined by a Reporter appointed by Scottish Ministers.

If the Reporter decides that he/she/they does/do not have sufficient information to determine the appeal following receipt of the appeal documentation from the Appellant and the Council's response, he/she/they may require there to be further procedure (written submissions/hearing/inquiry) before determining the appeal.

Those appeals not delegated to a Reporter for determination are determined by Ministers themselves following receipt of the Reporter's report and recommendation.

Reasons for Refusal

It is important that, when refusing planning applications, the reasons given must be defensible and withstand scrutiny. Many aspects of planning are subjective – choice of design, for example, can raise strong feelings of support or outright disgust. Provided the reasons given for a decision are complete, precise and relevant, based on reasonable planning grounds and supported by reliable evidence then they will be defensible.

Appeal Procedure

Appellants now have **3 months** (*rather than 6*) from the date the decision notice is notified to them to lodge an appeal. From notification that an appeal has been lodged, the Council has 21 days to lodge its response to the appeal.

Once the Reporter has decided that he/she/they have received sufficient information to allow the appeal to be determined, the decision will be issued (along with any related decision on a claim for expenses). This decision is confirmed to the appellant and reported to the appropriate Planning Applications Committee.

Further useful sources of information

Further useful sources of information can be accessed via the links below:

[A Guide to the Planning System in Scotland](#) available on the Scottish Government website – however, please note that this Guide dates from 2009, since which a number of changes have been or are being introduced to the System, particularly through [Planning Reform](#).

[A Guide to planning appeals in Scotland](#)

[Planning Aid Scotland](#) also provide free and impartial planning advice to individuals and community organisations to get involved in decision-making in the planning system.

[Local Place Plans - Planning circular 1/2022](#)

[Development Management procedures - Planning circular 3/2022](#)

[The use of conditions in planning permissions – Planning circular 4/1998](#)

[Schemes of delegation and local reviews - Planning circular 5/2013](#)

[Planning appeals – Planning circular 4/2013](#)

[Environmental Impact Assessment regulations – Planning circular 1/2017](#)



**The Highland
Council
Comhairle na
Gàidhealtachd**
