

# How planners make decisions

# Facts and Figures

- Every year we deal with around 5000 planning applications
- Excluding major applications, around 80% of all applications are dealt with within 2 months
- 90% of householder applications are dealt with within 2 months
- About 92% of applications are decided by Council officers rather than councillors
- Performance is analysed by Scottish Government

# Decision-making Context

- Planning decisions are quasi- judicial
- Decisions can be subject to judicial review and set aside if not determined in accordance with statutory tests
- Decisions can also be subject to appeal or review by applicant – there is no 3<sup>rd</sup> party right of appeal in Scotland.

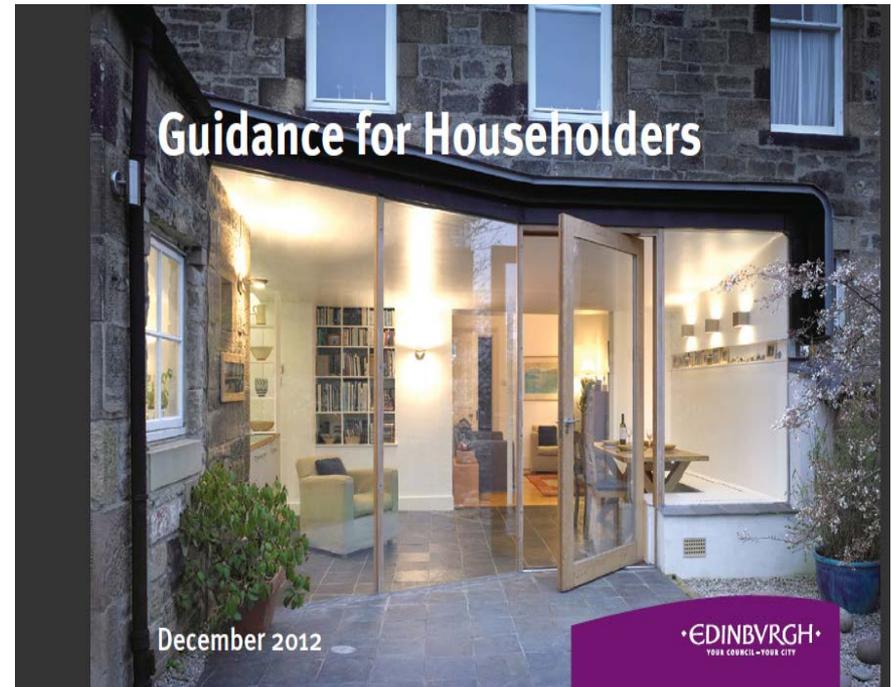


# Planning Permission Tests

- Section 25 of 1997 Planning Act (Scotland) -  
“Where, in making any determination under the planning Acts, regard is to be had to the development plan, the determination shall be made in accordance with the plan unless material considerations indicate otherwise.”
- Do the proposals harm the character or appearance of the conservation area? If they do, there is a strong presumption against granting of permission.

# The Development Plan and Guidance

- Strategic Development Plan 2013
- Edinburgh City Local Plan – statutory policies
- Local Development Plan being prepared
- Edinburgh Planning Guidance
- Government guidance



# Planning Circular 3/2013

The planning system operates in the long term public interest. It does not exist to protect the interests of one person or business against the activities of another. In distinguishing between public and private interests, the basic question is whether the proposal would unacceptably affect the amenity and existing use of land and buildings which ought to be protected in the public interest, not whether owners or occupiers of neighbouring or other existing properties would experience financial or other loss from a particular development.

# Material Planning Considerations

- Compliance with Development Plan
- Use
- Design – form, appearance, materials, massing, scale, density
- Amenity – privacy, overshadowing, noise, open space
- Sustainability
- Landscape and biodiversity
- Historic context
- Parking, access
- Developer contributions
- Likelihood of success at appeal
- Economic benefits

# Non-Material Planning Considerations

- Loss of value
- Land ownership
- Loss of private view
- Structural issues
- Precedent
- Development not needed



# Scheme of Delegation

- Gives the Head of Planning delegated powers to approve or refuse applications
- If more than 6 representations are in conflict with the recommendation, application is decided by councillors
- Councillor can ask for application to go to committee for a decision
- Contentious or complex applications will normally go to Committee.

# Planning conditions

- Conditions may allow a development to proceed which would otherwise have been refused
- Conditions need to follow the tests set out in circular 4/1998
- Conditions should not be applied slavishly or unthinkingly and as a matter of routine
- Conditions which raise public expectation but cannot then be enforced undermine confidence in the planning system
- Information up front (frontloading) often prevents the needs for too many conditions.

# Tests for conditions

- **necessary**
- **relevant to planning**
- **relevant to the development to be permitted**
- **enforceable**
- **precise**
- **reasonable in all other respects.**

# Appeals and reviews

- Applicants can appeal to Scottish Ministers if their application is refused or if the decision is not taken in time. This applies to all applications apart from local developments determined by planning officers.
- Applicants can request a review from the Edinburgh Local Review Body (LRB) if officers refuse their local application or do not deal with it in time
- The LRB is made up of 5 councillors from the Planning Committee. There are 3 LRBs.
- There is no third party right of appeal or review. The only recourse for aggrieved interested parties is through the courts.

# Appeal/LRB decisions

- In 2013/14, 60% of LRB decisions were to uphold the officers' decision. This means planning permission was refused.
- However, in the 4<sup>th</sup> quarter of 2013/14, only 45.8% of applications were upheld by the LRB.
- In 2013/14, 71.6% of appeals were dismissed
- However, in the 4<sup>th</sup> quarter of 2013/14, only 60% were dismissed.

# Developer Contributions

- Now called 'Planning Obligations'
- Must comply with the tests set out in circular 3/2012
- Framework for seeking obligations is approved by Planning Committee
- Decision not issued until legal agreement on the obligation is concluded
- Developers have a right of appeal and can ask the Scottish Government to delete or modify an obligation.

# Circular 3/2012 tests

- **necessary to make the proposed development acceptable in planning terms;**
- **serve a planning purpose (paragraph 16) and, where it is possible to identify infrastructure provision requirements in advance, should relate to development plans;**
- **relate to the proposed development either as a direct consequence of the development or arising from the cumulative impact of development in the area;**
- **fairly and reasonably relate in scale and kind to the proposed development; and**
- **be reasonable in all other respects.**

# QUESTIONS?