

The Development Planning Process

Introduction

The development process in the UK, including Scotland, is plan-led. ‘Development’ comprises most changes to the use of the land surface. There is a ‘development plan’ against which proposals are assessed, and consent is either given or refused, having taken into account other plans and considerations. Unless a proposed change is ‘permitted development’ making changes without consent is potentially an offence. There is the right of appeal against planning decisions.

The main legislation covering planning is the Town and Country Planning (Scotland) Act 1997 (as amended), which sets out the whole planning process, and the Planning (Scotland) Act 2019, which provides for the drawing up of development plans.

Development Plans

The key document in making most planning decisions, as prescribed by ss25 and 37(2) of the Town and Country Planning (Scotland) Act 1997 as amended, is the ‘development plan’, currently for Contin the Inner Moray Firth Local Development Plan (2024) at https://www.highland.gov.uk/info/178/local_and_statutory_development_plans/202/inner_moray_firth_local_development_plan (IMFLDP). This sits within the context of the National Planning Framework 4 (2023) at <https://www.gov.scot/publications/national-planning-framework-4/> and the two documents must be read together. Guidance from the Chief Planner (a Scottish Government officer) is relevant <https://www.gov.scot/publications/chief-planner-letter-transitional-arrangements-for-national-planning-framework-4/>. IMFLDP and other local development plans are in the process of being subsumed into a single Highland Local Development Plan, see https://www.highland.gov.uk/download/downloads/id/30004/development_plans_newsletter_2025.pdf

Other Plans

There are two other relevant plans.

There is an Area Place Plan for Wester Ross, Strathpeffer and Lochalsh, which includes Contin. (<https://highlandcpp.org.uk/wp-content/uploads/2025/04/Wester-Ross-Strathpeffer-and-Lochalsh-Area-Place-Plan.pdf>). There is no statutory support for Area Place Plans and therefore no final version appears to have been issued.

As requested by The Highland Council and using powers under the Planning (Scotland) Act, we have also developed a Local Place Plan just for the Contin Community Council area <[link here](#)>. This is still at ‘draft’ stage, pending receipt of comments from the Council. This is very much a first attempt, and we would hope to develop this further in response to feedback from residents.

Although these other plans are not the main reference for determining a planning application, they are ‘material considerations’, see below.

Permitted Development

Some developments are permitted by law and do not need explicit planning permission, thus reducing pressure on the system and expediting non-contentious development (such as putting up a small garden shed, or installing a water main). Permitted developments are described in the Town and Country Planning (General Permitted Development) (Scotland) Order 1992, as amended. There is guidance for householders here <https://www.gov.scot/publications/circular-1-2024-householder-permitted-development-rights/> and for non-domestic activities here <https://www.gov.scot/publications/circular-2-2024-non-domestic-permitted-development-rights/>.

Permitted developments include site investigation works for developments that will require permission, and also underground works such as laying cables and pipes for utilities.

Making Decisions

For activities not covered by permitted development rights, development decisions are made by The Highland Council under powers granted by the Town and Country Planning (Scotland) Act, except for electricity generating sites (including batteries) of 50 MW capacity and above, and overhead power lines at 132 kV and above.

Although the Council is the determining authority, elected Councillors are assisted by technical officers who are planning specialists, and who will form an initial decision.

Certain organisations are ‘statutory consultees’ and will be consulted for all relevant applications. Statutory consultees may include the likes of SEPA, NatureScot, Historic Environment Scotland and Scottish Water.

Contin Community Council is consulted on all applications within our area, and on larger scale projects (such as wind farms) that may affect our area although they are located outside it. We can comment and even recommend rejection, but we do not make the decision.

Planning decisions are intended to be apolitical and are made using a quasi-judicial process. This considers compatibility with the Plans listed above, ‘material considerations’, representations received from consultees and the public, and the balance of benefits outweighing any dis-benefits. The area and local place plans are included in material considerations, which are discussed more fully at <https://www.pas.org.uk/wp-content/uploads/2023/04/3.-Material-Considerations-04-2023.pdf>.

There is a substantial body of case law that supports these decisions.

If powers have been delegated, the initial decision by officials may also be the final decision. Otherwise, the recommendation from the planning officials is reviewed and approved (or not) by the relevant planning committee, which comprises elected Councillors. Particularly significant decisions may go to the full Council. Delegation is described here https://www.highland.gov.uk/downloads/file/25340/scheme_of_delegation.

Councillors may accept or reject the recommendations of their planning officials, but decisions must still be consistent with planning law and precedent. Councillors may, for example, decide that the various factors in a decision should be weighted differently, taking full account of all the circumstances identified to them.

Decisions may impose conditions on the development and may incorporate agreements between the developer and The Highland Council. An applicant has the right to appeal against a refusal of planning permission.

Material considerations

Section 25 of the Town and Country Planning (Scotland) Act 1997 states that a Planning Authority's decision on a planning application must be made in accordance with the Development Plan – unless material considerations indicate otherwise. Two main tests are used when deciding whether a consideration is material and relevant:

- It should serve or be related to the purpose of planning. This means it should relate to the development and use of land.
- It should fairly and reasonably relate to the particular application.

Some discussion of what might be material considerations is given here

<https://www.pas.org.uk/wp-content/uploads/2023/04/3.-Material-Considerations-04-2023.pdf> .

Some things are not accepted as material considerations (taken from the link above), including

- Private impacts on a third party, e.g. devaluation of property, private property rights including boundary and access disputes;
- Private interests, e.g. loss of a view, competition between businesses;
- Moral considerations (e.g. to betting shops), or religious objections (e.g. religious objection to working on Sunday);
- Political considerations or ideological dislikes, e.g. private hospitals.

Electricity Consents

Applications for electricity generating sites (including batteries) of 50 MW capacity and above, and overhead power lines at 132 kV and above are determined under the Electricity Act 1989. The determining authority is 'the Scottish Ministers', who exercise their authority via the Energy Consents Unit. Note that this is UK legislation, not Scottish legislation, but the determining power is devolved. The determining process is essentially the same as for planning applications under the Town and Country Planning (Scotland) Act and the same considerations apply. There is guidance on the process at <https://www.gov.scot/policies/energy-infrastructure/energy-consents/> , but this is out of date and will be changed once legislative changes that are in process are complete.

The Highland Council is a statutory consultee for Electricity Act applications.

Underground cables are permitted development and require no planning permission, although works ancillary to the installation of underground cables may require permission.

Appeals, Inquiries and Judicial Reviews

If an application is rejected, the applicant has the right of appeal. Under certain circumstances, including an appeal, a planning application under either regime will go to a Public Local Inquiry, chaired by a Reporter appointed by the Government, who will recommend a decision having heard evidence. A Reporter's decision can be over-ruled by the Scottish Ministers. As a last

resort, a Judicial Review by the Court of Session can be requested, but the Court will consider only matters of procedure, not the decision itself.

The Highland Council does not have the right to appeal against a decision made by the Scottish Ministers (perhaps via the Energy Consents Unit, or by over-riding a Reporter's decision), but it does have the right to request a judicial review and has done so in the past.

Acknowledgement and Disclaimer

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This note is summary and cannot be regarded as a definitive statement of the law. Specialist advice should be sought for any particular purpose. Although due care has been taken when compiling this note, no responsibility for its accuracy is accepted either by Contin Community Council or by Planning Aid Scotland,

Planning law and guidance changes from time to time and there are changes known to be in the pipeline. This version believed correct on 7 October 2025.

John Heathcote 7/10/2025.