

12th October 2022

Agenda Item No. 12 – *REVISED – re-issued 07.10.22*

Legislative Requirement to Limit the Duration of Planning Permission by Applying Time Conditions

Report by: Pam Ewen, Head of Planning

Wards Affected: All

Purpose

The purpose of this report is to update Members in respect of a change to planning legislation which came into effect on 1st October 2022 and to advise the Committee of the need to implement the requirements of the legislation in respect of the applications which the Committee has already indicated it is minded to grant, where that decision has not yet been issued.

Recommendation(s)

To agree that, in respect of the applications listed in Appendix 1 the additional conditions required to limit the life of the planning permission (also noted in Appendix 1) shall be added to those decisions.

Resource Implications

None.

Legal & Risk Implications

There are no known direct or indirect legal implications affecting Fife Council as Planning Authority in the event the Committee agree the recommendation. In the event the recommendation is not accepted, a further report on each application would require to be considered by Committee in order to add a time limit condition or conditions to comply with legislation and should such time limitation conditions not be agreed the decisions issued would not be lawful.

As in all circumstances when a refusal of planning permission is agreed or conditions imposed on an approval, the applicant has a right of appeal within 3 months of the date of decision, to the Scottish Government Planning and Environmental Appeals Division.

Consultation

Consultation was undertaken with the Head of Legal and Democratic Services, who raised no objection to the proposal.

1.0 Background

- 1.1 Section 32 of The Planning (Scotland) Act 2019 amends the provisions of Section 58 and Section 59 of The Town and Country Planning (Scotland) Act 1997 which relate to the duration of Planning Permission. The provisions of Section 32 of the 2019 Act came into effect on the 1st October 2022.
- 1.2 Under the provisions of the 1997 Act, the duration of planning permission was implied, rather than expressed in the form of a specific condition expressed as part of the decision notice issued in granting planning permission (including planning permission in principle and approval of matters specified in conditions). Where a planning authority considered that the duration of a permission should be something other than the prescribed standard time period, the legislation provided for any alternative time period to be provided by means of a Direction.
- 1.3 The provisions of Section 32 of the 2019 Act mean that the duration of planning permission must be limited by means of a condition attached to the grant of planning permission. In the vast majority of cases, the standard times for duration of planning permission would be applied, although the option to allow for different durations remains available.
- 1.4 Where a Committee has indicated that they are minded to grant planning permission, following the conclusion of a legal agreement, the planning permission is normally issued immediately after the legal agreement has been concluded. In these cases, the permission will almost always be subject to conditions and as the Committee will have considered and agreed the conditions to be attached to that grant permission, in terms of the List of Officer Powers, any change to those conditions would require further Committee authorisation.
- 1.5 The process of negotiating legal agreements is complex and can take a considerable length of time. There are currently 5 applications which a Committee has approved subject to conditions following the conclusion of a legal agreement where a decision is still to be issued. As these decisions will be issued after the 1st of October 2022, in each case a condition or conditions will require to be added to restrict the duration of the permission in order to comply with the provisions of the 1997 Act, as amended by the 2019 Act.
- 1.6 These conditions are required by legislation and as such must be applied to all decisions issued from the 1st of October 2022. The conditions to be applied would specify either the standard duration of the permission which is set out in the legislation or the duration which would previously have been applied in the form of a Direction. In the case of applications for planning permission, the standard time period prescribed is 3 years from the date of the issue of planning permission. In the case of applications for planning permission in principle, the standard time period provided for the submission of subsequent applications for Approval of Matters Specified in Conditions is 3 years. Thereafter, the standard time period provided for the duration of Approval of Matters Specified in Conditions is 2 years from the date of issue of permission.
- 1.7 In the case of a Direction, the time period to be applied will already have been considered and agreed by the Committee as part of the determination that the Committee was minded to grant planning permission.

2.0 Conclusions

- 2.1 The change in planning legislation which took effect on the 1st October 2022 requires all Planning Authorities to express the duration of a permission in the form of a condition attached to that planning permission. Whilst changes to the conditions to be attached to a permission which have been agreed by a Committee would normally require further agreement by the Committee, in this case the additional conditions are required by statute and as such Fife Council, as Planning Authority is bound to apply them.

Background Papers

- Town and Country Planning (Scotland) Act 1997 (as amended) - Section 58 & Section 59
- Planning (Scotland) Act 2019 (as amended) – Section 32
- Planning Circular 3/2013: Development Management Procedures (as amended)

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APPENDIX 1 - List of Applications and Relevant Conditions / Reasons

Application	Proposal
17/00536/FULL Gilliesfaulds Farm Carslogie Cupar	Construction of 55 houses, proposed site layout for up to a further 113 houses, provision of employment land [Class 4 Business], together with access, infrastructure, drainage, sustainable urban drainage systems, landscaping and open space.
Additional Condition / Reason	
<p>1. The development to which this permission relates must be commenced no later than 3 years from the date of this permission.</p> <p>Reason: In order to comply with the provisions of Section 58 of the Town and Country Planning (Scotland) Act 1997, as amended by Section 32 of The Planning (Scotland) Act 2019.</p>	
18/03153/PPP Development Site Motray Park Guardbridge	Planning permission in principle for major residential development and associated works including car parking, landscaping, drainage and formation of new access
Additional Condition / Reason	
<p>1. The development to which this permission relates must be commenced no later than 5 years from the date of this permission.</p> <p>Reason: In order to comply with the provisions of Section 59 of the Town and Country Planning (Scotland) Act 1997, as amended by Section 32 of The Planning (Scotland) Act 2019.</p>	
18/03578/PPP Land To North Of Grange Road Earlsferry	Planning permission in principle for major residential development with associated car parking, landscaping, drainage and formation of new accesses
Additional Condition / Reason	
<p>1. The development to which this permission relates must be commenced no later than 5 years from the date of this permission.</p> <p>Reason: In order to comply with the provisions of Section 59 of the Town and Country Planning (Scotland) Act 1997, as amended by Section 32 of The Planning (Scotland) Act 2019.</p>	

<p>18/03579/PPP</p> <p>Land To East Of Wadeslea Elie</p>	<p>Planning permission in principle for major mixed use development comprising: residential units (Class 9), associated car parking, open space, landscaping, drainage and formation of new access points, small business units (Class 4), a care home (Class 8), retirement housing (Class 8), additional parking for an existing doctors surgery and community space/facilities</p>
<p>Additional Condition / Reason</p>	
<p>1. The development to which this permission relates must be commenced no later than 5 years from the date of this permission.</p> <p>Reason: In order to comply with the provisions of Section 59 of the Town and Country Planning (Scotland) Act 1997, as amended by Section 32 of The Planning (Scotland) Act 2019.</p>	

<p>22/00833/FULL</p> <p>Land To East Of Stratheden Place Auchtermuchty</p>	<p>Erection of 21 no. dwellinghouses and associated works</p>
<p>Additional Condition / Reason</p>	
<p>1. The development to which this permission relates must be commenced no later than 3 years from the date of this permission.</p> <p>Reason: In order to comply with the provisions of Section 58 of the Town and Country Planning (Scotland) Act 1997, as amended by Section 32 of The Planning (Scotland) Act 2019.</p>	