

Local Government, Housing and Planning Committee
Tuesday 27 May 2025
16th Meeting, 2025 (Session 6)

Note by the Clerk: negative instruments

Overview

1. At this meeting, the Committee will consider the following Scottish Statutory Instruments (SSIs), which are subject to the negative procedure.
2. Both instruments relate to changes to planning fees. Further information about each instrument is provided in the Annexes to this paper:
 - **Annexe A** – [Town and Country Planning \(Fees for Appeals\) \(Scotland\) Regulations 2025](#) (SSI 2025/124)
 - **Annexe B** – [Town and Country Planning \(Fees for Local Reviews\) \(Scotland\) Regulations 2025](#) (SSI 2025/126)
3. The Delegated Powers and Law Reform Committee considered the instruments at its meeting on 6 May and [reported on them](#) the following day. Its report confirms that it had no points to raise in relation to any of the instruments and that it agreed not to draw them to the attention of the Parliament.
4. The Local Government, Housing and Planning Committee received correspondence from the Law Society of Scotland (**Annexe C**) and Homes for Scotland (**Annexe D**) on the instruments on 15 May.
5. The Local Government, Housing and Planning Committee considered the instruments at its meeting on 20 May. It agreed to invite the Minister for Public Finance, Ivan McKee MSP, to give evidence to the Committee on the instruments.
6. On 22 May, the Scottish Government wrote to the Convener (see **Annexe E**) providing an update on errors contained in the [Town and Country Planning \(Fees for Appeals\) \(Scotland\) Regulations 2025](#) (SSI 2025/124) and the intention to lay another instrument.
7. After hearing from the Minister, the Committee is invited at the next agenda item to consider the instruments and decide what, if any, recommendations to make.

Procedure

8. Under the negative procedure, an instrument is laid after it is made and is subject to annulment by resolution of the Parliament for a period of 40 days beginning on the day it is laid.
9. Once laid, the instrument is referred to:

- the Delegated Powers and Law Reform Committee, for scrutiny on various technical grounds; and
 - a lead committee, whose remit includes the subject-matter of the instrument, for scrutiny on policy grounds.
10. Any MSP may propose, by motion, that the lead committee recommend annulment of the instrument. If such a motion is lodged, it must be debated at a meeting of the Committee, and the Committee must then report to the Parliament (by the advisory deadline referred to above).
11. If there is no motion recommending annulment, the lead committee is not required to report on the instrument.

Committee consideration

12. So far, no motion recommending annulment of either instrument has been lodged.
13. Members are invited to consider the additional information obtained from the Minister during the meeting and decide whether to make recommendations in relation to the instrument.
14. If members have no points to raise, the Committee should note the instrument (that is, agree that it has no recommendations to make).
15. However, should a motion recommending annulment of either of the instruments be lodged later in the 40-day period, it may be necessary for the Committee to consider the instrument again.

Background information on planning appeals

16. When a planning authority refuses planning permission, or grants permission subject to conditions the applicant considers unreasonable, the applicant has a statutory right to appeal that decision. There are two planning appeal systems currently in operation in Scotland, both of which operate under the provisions of the Town and Country Planning (Scotland) Act 1997, as amended, and associated regulations. These are:
- **Local Review:** Every Planning Authority is required to produce a “scheme of delegation” which sets out a list of local developments that can be determined by an appointed person, normally a planning officer, rather than Councillors at a committee. If a planning decision was taken by a planning officer under a scheme of delegation, then any appeal will be made to the Council’s Local Review Body and not to Scottish Ministers. A local review body is made up of at least three councillors who were not involved in the original decision. Local review bodies were established by the Planning etc. (Scotland) Act 2006, prior to which all appeals were made to Scottish Ministers.

The Scottish Government provides further information on the operation of the local review process in [Circular 5/2013: Schemes of Delegation and Local Reviews](#).

- **Scottish Ministers:** If a planning decision was taken by councillors then any appeal against that decision will be made to Scottish Ministers. Planning appeals made to Scottish Ministers are considered by a Reporter appointed by the Planning and Environmental Appeals Division (known by the acronym of its previous incarnation - DPEA). In most instances the appeal decision is made by the Reporter on behalf of the Scottish Ministers. However, in a small number of cases the Reporter does not issue the decision but submits a report with a recommendation to the Scottish Ministers, who make the final decision. Most appeals are decided by means of written submissions.

It is worth noting that a right of appeal to Scottish Ministers (previously the Secretary of State) against a refusal of planning permission, or the attachment of conditions to an award of planning permission, has been a feature of the modern Scottish planning system since it was established under the Town and Country Planning (Scotland) Act 1947.

17. Currently, there is no charge to an applicant who lodges an appeal or local review request. The costs of administering the appeal or review are met by the Scottish Government or planning authority. SSI 2025/124 and SSI 2025/126 propose the introduction of fees for appeals and local reviews respectively.

Clerks to the Committee
May 2025

Annexe A - Town and Country Planning (Fees for Appeals) (Scotland) Regulations 2025 (SSI 2025/124)

Title of instrument: [The Town and Country Planning \(Fees for Appeals\) \(Scotland\) Regulations 2025](#)

Laid under: Section 252 of the [Town and Country Planning \(Scotland\) Act 1997](#)

Laid on: 28 April 2025

Procedure: Negative

Deadline for Committee consideration: 2 June 2025

Deadline for Chamber consideration: 6 June 2025

Commencement: 9 June 2025

Purpose of the instrument

18. The accompanying [Policy Note](#) explains that the Regulations set out the fees which Scottish Ministers can charge for appealing planning decisions.
19. The Policy Note highlights the importance of ensuring that the planning system is appropriately resourced. It notes that whilst “most calls for additional resources financed through fees have been focused towards income for planning authorities, Scottish Ministers through the Planning and Environmental Appeals Division (‘the DPEA’) of the Scottish Government play a crucial role in making decisions on appeals.” On that basis, the view of the Scottish Government is that the DPEA should also be appropriately resourced through fee income.
20. The Policy Note further explains that “appellants enjoy the benefit of an appeal right where the planning merits are considered afresh on appeal by an independent decision maker.” The costs of running this appeals system are currently borne by the taxpayer but in the view of Scottish ministers, “appellants should bear a reasonable and proportionate share of such costs.”
21. The Regulations contain four tables setting out in detail the proposed level of fees for appeals relating to a range of different applications including for example, residential and non-residential developments, new and existing dwellings, agricultural buildings and energy infrastructure, fish and shellfish farming, and change of use of buildings and land. Depending on the numbers and types of buildings or dwellings involved along with other criteria including the size of the site area, these range from £83 to a maximum of £71,424.
22. The accompanying [Business and Regulatory Impact Assessment \(BRIA\)](#) provides the following examples of the planning appeal fees, set at 40% of the original application fee:

- an appeal related to a householder development of a single dwelling would incur a £143 fee.
- an appeal against refusal of an application for the erection of one house would incur a £286 fee.
- in most cases, categories of development for which the fee is based on site or floor space area would incur a fee of £238 per 100 square metres of floor space or 0.1 hectare of site area.

23. The BRIA also states that “the maximum planning application fee in Scotland is over half of that in the rest of the UK. When combining the maximum application and appeal fee in Scotland, the total is still £100,000 less than the maximum fee in England.”

24. On 22 May, the Scottish Government wrote to the Convener highlighting an error in the instrument and noting that a new instrument will be laid (**Annexe E**).

Consultation and impact assessments

25. The Policy Note provides a summary of consultation undertaken on the instrument, impact assessments carried out, and the anticipated financial effects. Three separate consultations were undertaken in 2017¹, 2019² and 2024³ with some respondents being opposed to the introduction of fees for appeals on the basis that they could “act as a barrier to justice and investment” and “create a two-tier system where only those who can afford to can appeal a decision.” However, of those in support, “many highlighted that this would help cover the administrative costs involved in administering the appeal process and that it may encourage the submission of better quality applications and collaboration with the planning authority to make proposals acceptable.”

26. A [Child Rights and Wellbeing Impact Assessment \(CRWIA\)](#) was published alongside the Policy Note. It confirms that “no aspects of the proposal are relevant to the UNCRC requirements and the impact on children’s rights has been assessed as neutral.”

27. In respect of financial implications, the Policy Note confirms that a [Business and Regulatory Impact Assessment \(BRIA\)](#) has been completed. It further confirms that:

“The impact of this policy on business is that an applicant who wishes to appeal against a planning decision taken by a planning authority will now be required to pay a fee in certain circumstances as set out in the regulations. It should be noted that this will only apply to a small proportion of proposed

¹ [Places, people and planning: consultation on the future of the Scottish planning system - gov.scot](#)

² [Planning Fees - Planning performance and fees: consultation - gov.scot](#)

³ [Investing in planning - resourcing Scotland's planning system: consultation - gov.scot](#)

developments each year as recent statistics indicate that over 92% of planning applications are approved each year.”

28. The Policy Note also confirms that “the full range of impact assessments has been considered during the consultation process and in drafting these regulations.” The Scottish Government sought views on draft impact assessments during the consultation, including its decision “to screen out the following impact assessments: Data Protection Impact Assessment; Child Rights and Wellbeing Impact assessment; Consumer Duty; Equality Impact Assessment; Fairer Scotland Duty; Islands Communities Impact Assessment; and Strategic Environmental Assessment.” The views provided in response to the consultation did not lead the Scottish Government to change its decision and the impact assessments have therefore been “screened out.”

Scottish Government Policy Note

The Town and Country Planning (Fees For Appeals) (Scotland) Regulations 2025 (SSI 2025/124)

29. The above instrument was made in exercise of the powers conferred by section 252 of the Town and Country Planning (Scotland) Act 1997 and all other powers enabling them to do so. The instrument is subject to negative procedure.

Summary Box

30. The Town and Country Planning (Fees for Appeals) (Scotland) Regulations 2025 set out the fees which Scottish Ministers can charge for appealing planning decisions.

Policy Objectives

31. It is important to ensure that the planning system is appropriately resourced. While most calls for additional resources financed through fees have been focused towards income for planning authorities, Scottish Ministers through the Planning and Environmental Appeals Division (‘the DPEA’) of the Scottish Government play a crucial role in making decisions on appeals. On the same basis, we consider that they too should be appropriately resourced through fee income.
32. Appellants enjoy the benefit of an appeal right where the planning merits are considered afresh on appeal by an independent decision maker. At present, the costs of running this appeals system (as a proportion of the DPEA workload) are borne by the taxpayer at large.
33. We consider that appellants should bear a reasonable and proportionate share of such costs.

UN Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024 Compatibility

34. In accordance with section 23(2) of the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024, the Scottish Ministers certify that, in their view, the Town and Country Planning (Fees for Appeals) (Scotland) Regulations 2025 is compatible with the UNCRC requirements as defined by section 1(2) of the Act.

EU Alignment Consideration

35. This instrument is not relevant to the Scottish Government's policy to maintain alignment with the EU.

Consultation

36. The introduction of fees for appealing planning decisions has featured in 3 public consultations in 2017⁴, 2019⁵ and most recently from February to May 2024⁶. Views have been sought on the principle of introducing fees for appealing decisions and the detail of how fee levels should be set.

37. Some respondents to the Investing in Planning Consultation stated their opposition to the introduction of fees for submitting a planning appeal. Those opposing the introduction of fees for appealing planning decisions considered that this could act as a barrier to justice and investment, and one respondent considered that introducing fees would create a two-tier system where only those who can afford to can appeal a decision.

38. Of those in support, many highlighted that this would help cover the administrative costs involved in administering the appeal process and that it may encourage the submission of better quality applications and collaboration with the planning authority to make proposals acceptable.

39. We consider it is important to ensure that the planning system is appropriately resourced and that applicants rather than the taxpayer contribute to the costs of the determination of appeals which has until now been provided free of charge.

Impact Assessments

40. The full range of impact assessments has been considered during the consultation process and in drafting these regulations. We sought views on draft impact assessments during the consultation, including our decision to screen out the following impact assessments: Data Protection Impact Assessment; Child Rights and Wellbeing Impact assessment; Consumer Duty; Equality Impact

⁴ Places, people and planning - <https://www.gov.scot/publications/places-people-planningconsultation-future-scottish-planning-system/>

⁵ Planning performance and fees: consultation - gov.scot - <https://www.gov.scot/publications/planning-performance-fees-consultation/pages/6/>

⁶ Investing in Planning - <https://www.gov.scot/publications/investing-planning-consultationresourcing-scotlands-planning-system/>

Assessment; Fairer Scotland Duty; Final Impact Assessment; Islands Communities Impact Assessment; and Strategic Environmental Assessment.

41. The views provided in response to the consultation have not led to us change our decision and the impact assessments have been screened out and the relevant documentation completed.

Financial Effects

42. A [Business and Regulatory Impact Assessment \(BRIA\)](#) has been completed and is attached.

43. The impact of this policy on business is that an applicant who wishes to appeal against a planning decision taken by a planning authority will now be required to pay a fee in certain circumstances as set out in the regulations. It should be noted that this will only apply to a small proportion of proposed developments each year as recent statistics indicate that over 92% of planning applications are approved each year.

Scottish Government

Planning, Architecture and Regeneration Directorate

28 April 2025

Annexe B - Town and Country Planning (Fees for Local Reviews) (Scotland) Regulations 2025 (SSI 2025/126)

Title of instrument: [The Town and Country Planning \(Fees for Local Reviews\) \(Scotland\) Regulations 2025](#)

Laid under: Section 252 of the [Town and Country Planning \(Scotland\) Act 1997](#)

Laid on: 28 April 2025

Procedure: Negative

Deadline for Committee consideration: 2 June 2025

Deadline for Chamber consideration: 6 June 2025

Commencement: 9 June 2025

Purpose of the instrument

44. The accompanying [Policy Note](#) explains that the Regulations “set out the fees payable for local reviews conducted by virtue of section 43A(8)(a) or (b) of the Town and Country Planning (Scotland) Act 1997.”

45. The Policy Note further explains that an applicant has a right to a review of a case by the planning authority (a ‘local review’) where an application is for a proposal in the category of local development falling within the scheme of delegation and has been:

- refused by an appointed officer;
- granted subject to conditions; or
- not been determined within the period allowed for determination.

46. This service is currently provided free of charge, but the Scottish Government intends to introduce fees “in order to ensure that the planning system and in particular authorities are appropriately resourced.” The Policy Note states that “the fee levels for local reviews and appeals to Scottish Ministers are to be set at the same level, however, separate regulations are required to bring these into effect.”

47. The Schedule to the Regulations contains two tables setting out in detail the proposed level of fees for local reviews relating to a range of different applications including for example, residential and non-residential developments, new and existing dwellings, agricultural buildings and energy infrastructure, fish and shellfish farming, and change of use of buildings and land. Depending on the

numbers and types of buildings or dwellings involved along with other criteria including the size of the site area, these range from £143 to a maximum of £71,424.

48. The accompanying [Business and Regulatory Impact Assessment \(BRIA\)](#) states that:

“It is necessary for local authorities to receive the necessary resource required to support Local Review Bodies in determining cases for review, without drawing resource from the tax payer. Authorities are expected to see an increase in financial provision as a result of these changes which should, in turn, improve the quality of the planning system across Scotland.

Whilst the introduction of these fees means that applicants will now have to pay for a service that they did not previously have to, this should be considered in the context of the generally much greater overall cost of a development, and balanced by an increase to both performance levels and the service delivered by authorities.”

Consultation and impact assessments

49. The Policy Note provides a summary of consultation undertaken on the instrument, impact assessments carried out, and the anticipated financial effects. Three separate consultations were undertaken in 2017⁷, 2019⁸ and 2024⁹ with some respondents being opposed to the introduction of fees for local reviews on the basis that they could “act as a barrier to justice and investment” and “create a two-tier system where only those who can afford to can appeal a decision.” However, of those in support, “many highlighted that this would help cover the administrative costs involved in administering the local review/appeal process and that it may encourage the submission of better quality applications and collaboration with the planning authority to make proposals acceptable.”
50. A [Child Rights and Wellbeing Impact Assessment \(CRWIA\)](#) was published alongside the Policy Note. It confirms that “no aspects of the proposal are relevant to the UNCRC requirements and the impact on children’s rights has been assessed as neutral.”
51. In respect of financial implications, the Policy Note confirms that a [Business and Regulatory Impact Assessment \(BRIA\)](#) has been completed. It further confirms that:

“The impact of this policy on business is that an applicant who wishes to seek a local review in relation to a planning decision taken by a planning authority will now be required to pay a fee in certain circumstances as set out the regulations. It should be noted that this will only apply to a small proportion of proposed developments each year as recent statistics indicate that over 92%

⁷ [Places, people and planning: consultation on the future of the Scottish planning system - gov.scot](#)

⁸ [Planning Fees - Planning performance and fees: consultation - gov.scot](#)

⁹ [Investing in planning - resourcing Scotland's planning system: consultation - gov.scot](#)

of planning applications are approved each year. As well as being of direct benefit to authorities, insofar as these additional resources help support ongoing performance improvement, the proposed changes stand to also benefit applicants in that respect.”

52. The Policy Note also confirms that “the full range of impact assessments has been considered during the consultation process and in drafting these regulations.” The Scottish Government sought views on draft impact assessments during the consultation, including its decision “to screen out the following impact assessments: Data Protection Impact Assessment; Child Rights and Wellbeing Impact assessment; Consumer Duty; Equality Impact Assessment; Fairer Scotland Duty; Islands Communities Impact Assessment; and Strategic Environmental Assessment.” The views provided in response to the consultation did not lead the Scottish Government to change its decision and the impact assessments have therefore been “screened out.”

Scottish Government Policy Note

POLICY NOTE

THE TOWN AND COUNTRY PLANNING (FEES FOR LOCAL REVIEWS) (SCOTLAND) REGULATIONS 2025 SSI 2025/126

53. The above instrument was made in exercise of the powers conferred by section 252 of the Town and Country Planning (Scotland) Act 1997 and all other powers enabling them to do so. The instrument is subject to negative procedure.

Summary Box

54. The Town and Country Planning (Fees for Local Reviews) (Scotland) Regulations 2025 set out the fees payable for local reviews conducted by virtue of section 43A(8)(a) or (b) of the Town and Country Planning (Scotland) Act 1997.

Policy Objectives

55. It is important to ensure that the planning system is appropriately resourced. Where an application for planning permission, or for consent, agreement or approval required by a condition on such permission, is for a proposal in the category of local development falling within the scheme of delegation and has been:

- refused by an appointed officer;
- granted subject to conditions; or
- has not been determined within the period allowed for determination,

the applicant has a right to a review of the case by the planning authority (a ‘local review’).

56. Currently this service is provided free of charge, however in order to ensure that the planning system and in particular authorities are appropriately resourced we intend to introduce fees for local reviews in cases where the application has been refused. The fee levels for local reviews and appeals to Scottish Ministers are to be set at the same level, however, separate regulations are required to bring these into effect.

UN Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024 Compatibility

57. In accordance with section 23(2) of the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024, the Scottish Ministers certify that, in their view, The Town and Country Planning (Fees for Appeals) (Scotland) Regulations 2025 are compatible with the UNCRC requirements as defined by section 1(2) of the Act.

EU Alignment Consideration

58. This instrument is not relevant to the Scottish Government's policy to maintain alignment with the EU.

Consultation

59. The introduction of fees for local reviews/planning appeals has featured in 3 public consultations in 2017¹⁰, 2019¹¹ and most recently from February to May 2024¹². Views have been sought on the principle of introducing fees for appealing decisions and the detail of how fee levels should be set.

60. In responding to the Investing in Planning Consultation, some respondents restated their opposition to the introduction of fees for local reviews/planning appeals. Those opposing the introduction of such fees considered that this could act as a barrier to justice and investment, one respondent considered that introducing fees would create a two-tier system where only those who can afford to can appeal a decision.

61. Of those in support, many highlighted that this would help cover the administrative costs involved in administering the local review/appeal process and that it may encourage the submission of better quality applications and collaboration with the planning authority to make proposals acceptable.

62. We consider it is important to ensure that the planning system is appropriately resourced and that applicants rather than the taxpayer contribute to the costs of

¹⁰ Places, people and planning - <https://www.gov.scot/publications/places-people-planningconsultation-future-scottish-planning-system/>

¹¹ Planning performance and fees: consultation - gov.scot - <https://www.gov.scot/publications/planning-performance-fees-consultation/pages/6/>

¹² Investing in Planning - <https://www.gov.scot/publications/investing-planning-consultationresourcing-scotlands-planning-system/>

the determination of local reviews and appeals which until now has been provided free of charge.

Impact Assessments

63. The full range of impact assessments has been considered during the consultation process and in drafting these regulations. We sought views on draft impact assessments during the consultation, including our decision to screen out the following impact assessments: Data Protection Impact Assessment; Child Rights and Wellbeing Impact assessment; Consumer Duty; Equality Impact Assessment; Fairer Scotland Duty; Islands Communities Impact Assessment; and Strategic Environmental Assessment. The views provided in response to the consultation have not led us to change our decision and the impact assessments have been screened out and the relevant documentation completed.

Financial Effects

64. A Business and Regulatory Impact Assessment (BRIA) has been completed and is attached.

65. The impact of this policy on business is that an applicant who wishes to seek a local review in relation to a planning decision taken by a planning authority will now be required to pay a fee in certain circumstances as set out the regulations. It should be noted that this will only apply to a small proportion of proposed developments each year as recent statistics indicate that over 92% of planning applications are approved each year. As well as being of direct benefit to authorities, insofar as these additional resources help support ongoing performance improvement, the proposed changes stand to also benefit applicants in that respect.

Scottish Government
Planning, Architecture and Regeneration Directorate
28 April 2025

Annexe C – Letter from the Law Society of Scotland

15 May 2025

Dear Convener,

We welcome the opportunity to consider and respond to the Local Government, Housing and Planning Committee of the Scottish Parliament's consideration of two Scottish Statutory Instruments- The Town and Country Planning (Fees for Appeals) (Scotland) Regulations 2025¹³ and the Town and Country Planning (Fees for Local Reviews) (Scotland) Regulations 2025¹⁴ (the regulations).

The members of our Planning Law sub-committee have the following comments to put forward for consideration.

General Comments

We note the Scottish Government's intention, as specified within the policy notes for both these regulations, behind the introduction of fees for planning appeals and reviews to ensure that the Planning and Environment Appeals Division (DPEA) and planning authorities are properly resourced.

We previously stated in our response to the Scottish Government's 2024 consultation Investing in Planning, our neutrality toward the principle of planning fees provided that these did not impact the attractiveness of Scotland to carry out development or form a barrier to justice.¹⁵

We would highlight that potentially large fees for appeals for certain types of development might disincentive development in Scotland when these fees are not payable elsewhere in the UK as well as hindering access to justice.

We would suggest that the Scottish Government consider undertaking an evaluation to ensure that fees are set an appropriate level, to ensure that these regulations do not have unintentional negative impacts on the development industry.

Equally, we would reiterate the importance of ensuring access to justice is not diminished. Consideration should be given to a mechanism for the waiving of fees in certain circumstances. Consideration should also be given towards creating provision for a refund mechanism for fees where appropriate.

The regulations are set to come into force on 9 June 2025, and are currently subject to the negative procedure for SSIs. The short timescale and nature of the negative procedure therefore affords MSPs very limited scope for scrutiny at the committee stage.

¹³ The Town and Country Planning (Fees for Appeals) (Scotland) Regulations 2025

¹⁴ The Town and Country Planning (Fees for Local Reviews) (Scotland) Regulations 2025

¹⁵ Investing in Planning: A consultation on resourcing Scotland's planning system

Given the potential significant impact of these regulations on planning fees, we would suggest consideration should be given towards establishing a public information campaign, to raise awareness and understanding of the new fees.

We again note the intention of these regulations as stated in the policy note is to resource the DPEA and planning authorities. We reiterate our comments in our response to the Scottish Government's 2024 consultation Investing in Planning,¹⁶ regarding consideration from the Scottish Government regarding ringfencing of funds received from fees for the purpose of resourcing the planning system. We would welcome clarity from the Scottish Government on whether they have considered making such a commitment.

The Town and Country Planning (Fees for Appeals) (Scotland) Regulations 2025

We note that the different fees are proscribed for appeals in detailed planning permission and planning permission in principle. For appeals to Scottish Ministers in relation to planning permission in principle (PPIP) the fee is £35,712 but for a detailed PPIP application, the appeal fee increases to £71,424. We cannot see how the inclusion of the details of an application would justify the doubling of the fee.

Appeals in relation to matters specified in conditions attached to a PPIP have maximum fee of £50,000, which increases in stages to £69,142. We cannot see how a fee of that level can be justified for a Matters Specified in Conditions (MSC) approval given that the key issues will have been determined at the PPIP stage.

The Town and Country Planning (Fees for Local Reviews) (Scotland) Regulations 2025

We would highlight that the regulations purport to apply a higher fee for residential developments over 50 dwellings. However, due to the hierarchy of development, an application for 50 or more dwellings would be prevented from accessing the LRB. Should committee members have further questions, we would be happy to provide further detail on these regulations.

¹⁶ Investing in Planning: A consultation on resourcing Scotland's planning system

Annexe D – Letter from Homes for Scotland

Introduction of fees for planning appeals

The home building sector in Scotland has concerns about the proposals within the following regulations:

[The Town and Country Planning \(Fees for Appeals\) \(Scotland\) Regulations 2025](#)

[The Town and Country Planning \(Fees for Local Reviews\) \(Scotland\) Regulations 2025](#)

It is requested that the Local Government, Housing and Planning annul the Regulations, or at the very least amend the proposed fees to allow for an element of cost recovery but not prevent the appeal process from being an arbitrator which, as it stands, ensures fairness and consistency within the planning system and supports equitable access to the appeals process. If fees are set and are too high they will act as a barrier to justice and investment.

The right of appeal is an essential element of checks and balances in a fair system and in ensuring access to justice. The costs associated with submitting an appeal are already great and even greater when the costs of the delayed development and associated sales are considered alongside the societal and economic impact of the delay in delivering homes.

Summary

- Either annul the Regulations or set reasonable fees to ensure that the option to appeal a refusal is affordable;
- Past appeal success rates are 52%, suggesting that not all local authority decisions are correct;
- Introduce an option to waive the appeal fee where the application was refused contrary to officer recommendation;
- Introduce an option for the fee associated with an appeal to the Directorate for Planning and Environmental Appeals to be refunded by the Council if successful.

Past consultation on appeal fees

The Scottish Government's 2024 on Investing in Planning the prospect of charging fees for planning appeals was considered and the Scottish Government stated "We do not intend to propose that the fee for appealing a refusal of planning permission should achieve full cost recovery...". The maximum fees for most appeals to Directorate for Planning and Environmental Appeals (DPEA) are now proposed to be set at £71,424. That is well beyond the cost of staffing that appeal and could be a deterrent to develop in Scotland if costs are prohibitive, particularly SME builders. There are no fees in England.

The Scottish Government published the [responses to the Investing in Planning consultation](#) in August 2024. A range of organisations responded but only 13 of the 24 planning authorities suggested that a fee should be applied to a planning appeal and most of them supported it being a percentage of the original application fee, however only 10 proposed appeal fees of between 20-40% of the application fee. Others offered alternatives, no view or did not answer the question.

Suggested fees

Should the Committee seek to propose a fee it is requested that this is proportionate to the work associated with reviewing supporting information and the scale of the application. The volume of supporting information and officer report does not vary substantially for a major and local housing application. Given that the information being reviewed and period for doing so before coming to a determination will be similar it is suggested that there is a fixed fee for major or local applications. The following is suggested:

The fees associated with appeals would be:

- a) £286 for each of the first 10 dwellinghouses;
- b) £3,000 for local developments of 11-49 dwellinghouses;
- c) £10,000 for major developments of 50 or more dwellinghouses

The fee associated with a planning permission in principle would be as follows:

- a) Where only one dwellinghouse is to be created, £286,
- b) Where more than one dwellinghouse is to be created and the site area does not exceed 1.0 hectares, £286 for each 0.1 hectare of the site area,
- c) Where 11-49 dwellinghouses are to be created and the site area does not exceed 2.5 hectares a fee of £3,000 is payable.
- d) Where 50 or more dwellinghouses are to be created and site area exceeds 2.5 hectares, a fee of £7,500 is payable.

The above suggested fees reflect the volume of supporting information likely to be submitted in support of the suggested number of homes.

Appeal success rates

DPEA Statistical Data between 1st April – 30th September 2024 included data on 66 planning permission appeals that were determined. In this six-month period 34 (52%) were allowed. Whilst not all of these are residential they will be major developments and demonstrate that there are instances where a council decision is overruled. In the interest of fairness there should be provision for Councils to refund the application fee for appeals to the DPEA if the appeal is successful.

It is unlikely that the appellant can obtain the appeal fee under a claim for expenses given that these are rarely successful because they are based on the requirement to show that the planning authority had behaved unreasonably. By refusing an application they may not have acted unreasonable in a planning sense but arrived at a decision that the applicant deems unreasonable and wishes to seek a review through the appeal process.

It is not suggested that there is a refund option for appeal fees under the Local Review Body option. Such a provision may influence Councillor determination of appeals if they knew that the Council could be obliged to pay up to £3,000.

There are also instances where applications are refused contrary to officer recommendation and consultee responses, for example transport concerns or affordable housing requirements. Whilst these are few and far between there should be provision for the appellant to lodge an appeal without requiring to pay a fee.

Conclusion

The home building sector recognise the need to adequately resource the planning system, however this should not be at the expense of providing a fair and affordable system that ensures that there is access to an appeal system that can provide justice where a decision is deemed by the applicant to be incorrect. It is about providing the right checks and balances.

Homes for Scotland would welcome the opportunity to discuss any of the above further if beneficial.

Annexe E – Letter from the Scottish Government on Town and Country Planning (Fees for Appeals) Scotland Amendment Regulations 2025

22 May 2025

Dear Ariane,

I am writing to make you aware that we have a negative SSI that is going to breach Standing Orders. The **Town and Country Planning (Fees for Appeals) Scotland Amendment Regulations 2025** are scheduled to be laid on 29 May, with a coming into force date of 8 June.

The Town and Country Planning (Fees for Appeals) Scotland Regulations 2025 were laid before the Scottish Parliament on 28 April and are due to come into force on 9 June. The SSI introduced fees for planning appeals. It sets the level of such fees at 40% of what the original planning application fee was.

It has come to the Scottish Government's attention that the SSI contains two errors in relation to the fee to be paid where there is an appeal in respect of a 'certificate of lawful use or development' (CLUD). These need to be addressed in order to ensure that appellants pay the correct fee in all cases contrary to the policy intention, the SSI provides that:

- There is a fee for an appeal against non-determination of a CLUD (for all other appeals against non-determination, there is no fee).
- The fee for CLUD appeals is the same as the original application fee (rather than 40% of the application fee).

If not addressed, these errors would result in appellants paying more than was intended.

We apologise for any inconvenience this may cause.

Please let me know if there are any issues, or if you need anything further from us at this stage.

Yours sincerely

Chris Sinclair
Policy Manager
Planning, Architecture and Regeneration Directorate