



GOVERNMENT OF BERMUDA

Ministry of Home Affairs

Department of Planning

A Guide to How Planning Applications are Decided

In 2014, the Development and Planning Act 1974 (the “Act”) was amended allowing the Development Applications Board (the “Board”) to delegate to the Director of Planning (the “Director”) its power to grant or refuse planning permission.

Pursuant to Section 5A of the Act, on 5 February 2020 the Development and Planning (Delegation) Notice 2020 was published in the Official Gazette and a written direction was issued by the Board setting out which applications are to be determined by the Board and which would be determined by the Director. This written direction sets out the following:

Classes of Applications for Determination by the Board

1. Applications which are subject to one or more objection(s)¹
2. Applications which include an Environmental Impact Statement
3. Applications which, in the opinion of the Director, are of national interest
4. Applications where the decision of the Director would be in conflict with the advice of another Government department or non-governmental body provided in response to a consultation from the Department of Planning within the requested timescale (typically 21 days)
5. Applications for development which does not achieve the minimum setback to a lot line and does not include acknowledgement(s) from the affected neighbour(s)*
6. Applications for the creation of undersized lots where more than one building (not being a building ancillary to another) did not exist on that land before 3 August 1965 (see Section 37 of the Development and Planning Act 1974)*

**For applications falling with Class 5 or Class 6, decisions to refuse such applications will normally be made by the Director and decisions to approve such applications will normally be made by the Board.*

¹ An objection must meet all criteria set out by Section 18 of the Development and Planning (Application Procedure) Rules 1997 and, for the purposes of this Direction, any objection which does not raise any material planning grounds shall be excluded from being counted as an objection, at the discretion of the Director.

Individual Applications

The Director may refer any other application which, for any reason, the Director considers ought to be determined by the Board. This will typically include proposals for development which may affect a feature of conservation or historic value, development of more than one storey within a setback and development which incurs into a setback by more than 50%, having regard to site-specific circumstances including variances in grade, existing structures, boundary features and existing and proposed landscaping.

Notwithstanding the above, the Board may, under Section 5A(2) of the Act, refer any application to the Board for determination which would normally be delegated for determination by the Director. Any request for referral by the Board must be made in writing by the Chair (or Deputy Chair if the Chair is not available) to the Director within 14 days of the date advertised. All referrals must relate to material planning considerations and be detailed in the written referral. If such a request is made after the 14-day period, the decision as to whether the application shall be determined by the Board or the Director shall be at the discretion of the Director.

In addition, any application may be referred to the Director for determination at any time upon the mutual written agreement of the Chair (or Deputy Chair if the Chair is not available) and the Director.

Timing and Reporting of Decisions

The Department aims to determine all applications in a timely manner. However, regardless of the process by which applications are processed, applications are assessed thoroughly by technical officers and decisions cannot be issued until the expiration of the statutory advertisement period. Once the period for the receipt of objections and responses from consultees has expired, technical officers will make an audit of the application against the provisions set out above to determine whether the application is to be decided by the Board or the Director.

Applications Determined by the Board

Meetings of the Development Applications Board are typically held fortnightly and, once a determination has been made by the Board, the decision letter will be issued by the Department. All agendas and minutes (once confirmed) are posted on the Department of Planning website (<https://planning.gov.bm>) and the front reception area of the Department for public review and the signed copy of the minutes will be attached to the electronic file of each application which was discussed at that meeting.

Applications Determined by the Director

Decisions made by the Director under delegated powers can be made at any time following the expiration of the advertisement period, receipt of all consultee responses or expiration of the deadline for receipt of consultation responses. This process allows less complex applications to be processed in a more efficient manner, however, such

applications will be subject to the same level of public consultation and assessment by technical officers as applications referred to the Board.

In order to ensure quality in decision-making, all applications which are subject to delegated powers are referred to the Senior Planning Officer following the completion of the technical officer's report for review. The technical officer's report will include a full assessment of the proposal and a recommendation, including any conditions. The Senior Planning Officer will check the contents of the report and either refer the application back to the technical officer for further review or revision or confirm their agreement of the report. Once signed by the Senior Planning Officer, the report will be referred to the Director of Planning for further review.

The Board will be notified of all decisions which have been issued by the Director within two weeks.