

Guidance Notes for LABSS Dispute Resolution Enquiry Submission Form

The Scottish Government Building Standards Division (BSD) supports the adoption of the Local Authorities Building Standards Scotland (LABSS) Dispute Resolution Process and requests that all applicants use it when they consider it necessary.

The SBSH is the administration and management centre for the system. This includes carrying out all necessary consultations with bodies such as the Scottish Government Building Standards Division (BSD) and Scottish Fire and Rescue Service (SFRS).

1. At any time during the verification process, the applicant / developer / relevant person may dispute the position adopted by the local authority, on a matter of:
 - a technical or procedural interpretation, or
 - a determination by the local authority on a proposal for an alternative design proposal which is contrary to the Technical Handbooks.by completing LABSS Dispute Resolution Enquiry Submission Form.

NOTES:

- a) It is confirmed that this process is intended to address areas of interpretation and determination which arise both before a warrant has been approved and before a completion certificate has been accepted.
- b) When the issue being raised is a procedural interpretation, it is not appropriate to submit a direct request to the BSD for a Ministerial View. The process for a Ministerial View is as prescribed under Regulation 20 of The Building (Procedure) (Scotland) Regulations 2004.
- c) When the issue being raised is for an alternative means of compliance, particularly where it involves Section 2 (but not exclusively Section 2), it is at the building standards managers' discretion, against whom the dispute is being raised, whether to accept the enquiry through this process or to consider that it be dealt with more appropriately by a direct request to the BSD for a Ministerial View. The process for a Ministerial View is as prescribed under Regulation 20 of The Building (Procedure) (Scotland) Regulations 2004.

NOTE - When a Ministerial View is sought the DRP stops until such time as a decision is made on the View. Thereafter, the DRP can be determined having due regard to the View decision.

2. Upon receipt, the dispute is referred to the local authority's most senior building standards practitioner for a local authority determination. Depending on the complexity or type of dispute, the local authority may consult with the BSD, generally on matters referring to a Technical, Procedural or Alternative Approach Dispute.
3. If the applicant remains dissatisfied with the determination by the Originating Authority, the dispute is then escalated to the Local Consortium Group. For example, if the development is in Edinburgh, the views of Scottish Borders, Fife, Midlothian, East Lothian and West Lothian Councils are sought. It is expected that responses shall be provided within 10 working days. Each response should be independent of other local authorities' decisions and provide justifications for the decision.
4. Where the Originating Authority's determination is supported by the Local Consortium Group the dispute resolution case will be closed.

“Supported” in this case means that there must be a majority agreement with the Originating Authority from members within the local consortium group. The Originating Authority may alter their position having heard the views of their local Consortium partners. Where it is not possible to reach a majority view at this stage the case is escalated to Note 6 of this process (see below).

NOTE: Originating Authority means the local authority against whom the dispute was lodged.

In all cases the decision will be advised to the applicant, to the BSD, and through the CTWG to all local authorities in Scotland to aid consistency in interpretation.

5. At this stage, should the applicant be dissatisfied with the local consortia decision, they may request that the Originating Authority contact the BSD to clarify the intent of the Standards when dealing with a Technical matter or the intent of guidance when dealing with a Procedural matter.
6. Where there is disagreement, i.e. the Originating Authority determination is not supported within the Local Consortium, the case is then referred to all local authorities through their Regional Consortium Groups by the Lead Consortia Technical Rep. It is expected that responses shall be provided within 20 working days.

The Originating Authority gathers the views from the Consortia Groups but, thereafter, passes the case to the SBSH who will analyse the feedback and establish an interpretation within 10 working days. The BSD and the Scottish Fire and Rescue Service (as well as other consultees deemed relevant to the case) will also be consulted if thought necessary.

In analysing the feedback and establishing an interpretation, the SBSH will have due regard to the unanimous or the majority views of the Consortia Groups who responded to the consultation. In this instance a determination can be made on the basis of a majority view rather than a unanimous view.

7. In either event, the LABSS determination will close the case and the applicant will be so advised. Should the applicant be dissatisfied with the LABSS decision, they may request that the SBSH on behalf of LABSS contact the BSD to clarify the intent of the Standards when dealing with a Technical matter or the intent of guidance when dealing with a Procedural matter.
8. In all cases the decision will be passed to all local authorities to aid consistency in interpretation. The BSD is informed of all LABSS interpretations. In relaying the final decision, and the reasons behind it, to all verifiers and members the SBSH shall arrange for the full Annex B form (Stages 1 to 5 - see below) to be published on SBSH website members area with a copy also supplied to the BSD.
9. In relaying the final decision, and the reasons behind it, the Originating Authority against whom the dispute was raised shall arrange for a partial Annex B form only (Stages 3,4 and 5 - see below) to be passed to the applicant / developer / relevant person to confirm the decision.
10. The SBSH can be contacted at any time during the process to assist in the administration of it.
11. Any communication to the SBSH should be to the generic email address sbsh@fife.gov.uk

FOOTNOTE A: It should be noted that, after following this process, if a warrant is refused by a verifier, the right of appeal is to the Sheriff Court as with any “normal process”.

FOOTNOTE B: If at any time during the process a complaint is lodged through the local authority’s formal complaints procedure, then the local authority formal process takes

precedence over the LABSS Dispute Resolution process which is terminated. However, a local authority may still seek the views of its peers to establish support for its position.

FOOTNOTE C: When the applicant chooses to request a statement of the BSD position, this may comprise an opinion (not necessarily in writing) or a written opinion but where a formal Ministerial View is sought, the process is as prescribed under Regulation 20 of The Building (Procedure) (Scotland) Regulations 2004 – the View process does NOT cover any dispute referring to a Procedural Interpretation.