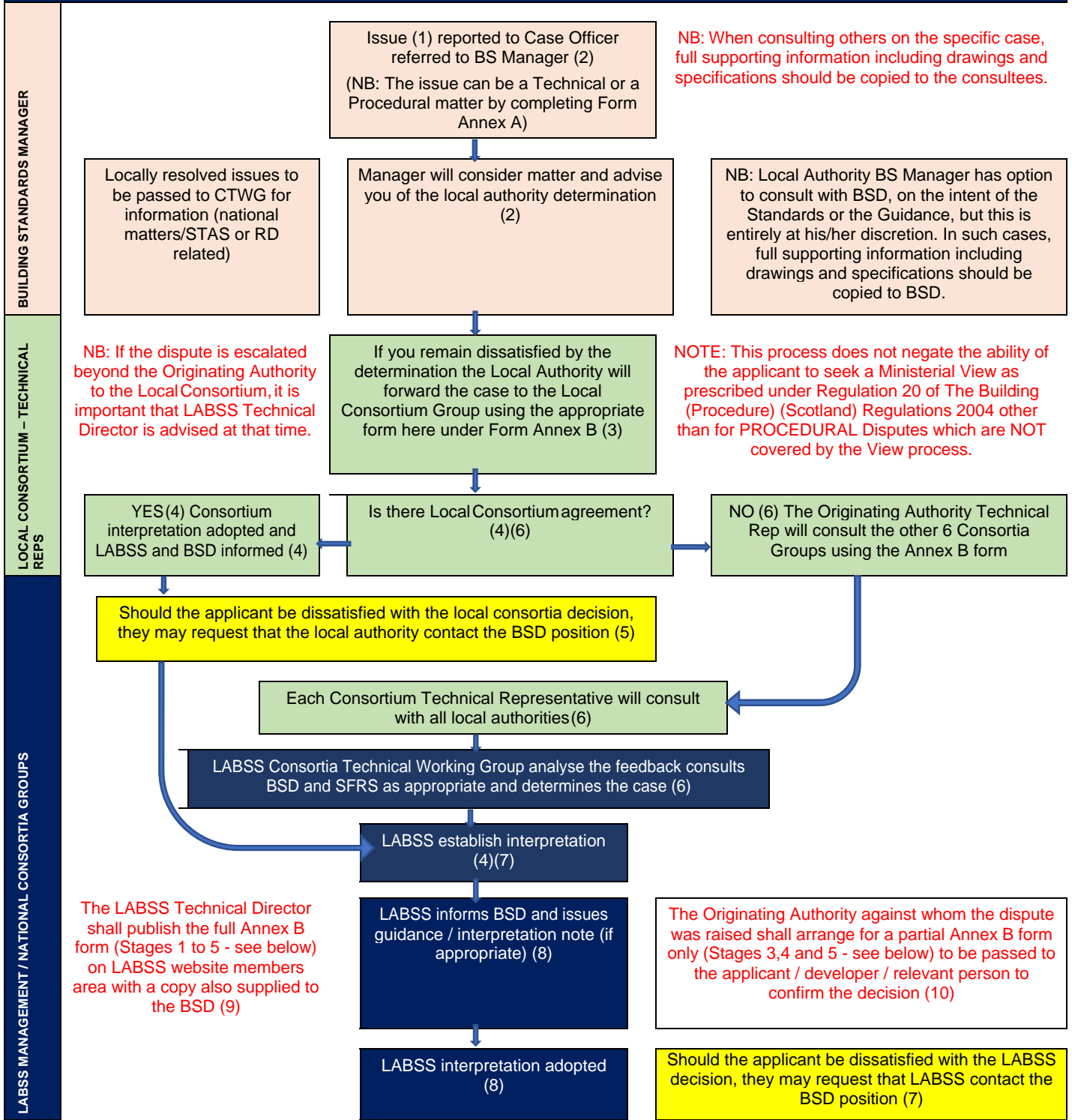


## CONSULTATION / DETERMINATION PROCESS FOR DISPUTE RESOLUTION AND FOR TECHNICAL OR PROCEDURAL INTERPRETATION OR FOR ALTERNATIVE DESIGN APPROACH ENQUIRIES (including in association with STAS submissions)



|   |
|---|
| Actions by Local Authority Building Standards Manager                             |
| Action by Local Authority in association with the Local Consortium                |
| Action by LABSS Management / Consortia Groups / Consortia Technical Working Group |
| Action by Applicant   |

**EXPLANATORY NOTES:**

**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.**

1. At any time during the verification process<sup>(a)</sup>, the applicant / developer / relevant person may dispute the procedures 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 Form Annex A attached hereto<sup>(b)</sup>

**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. For issues involving proposals other than associated with a STAS or RD application, 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 Building Standards Division of the Scottish Government (BSD), generally on matters referring to a Technical, Procedural or Alternative Approach Dispute.

**NOTE: see Section 1(b) above in respect of Procedural Disputes which are NOT covered by the View Process.**

When a dispute involving proposals associated with a STAS or RD application is received, the dispute is referred to the 7 Consortia Groups for a LABSS determination – see Notes 6 – 8 below. Depending on the complexity or type of dispute, the LABSS may consult with the Building Standards Division of the Scottish Government (BSD).

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.
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 position of ALL Consortium Members within the local consortium group. This can mean that the Originating Authority alters 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 LABSS,
- to the BSD, and

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 Consortia Technical Rep. It is expected that responses shall be provided within 20 working days.

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

- I. \*NOTE: Where the issue is other than a technical matter the case will be passed to the LABSS Management Board for consideration and final determination.
  - II. NOTE: In analysing the feedback and establishing an interpretation, the CTWG (or the LABSS Management Team in appropriate circumstances – non-technical) 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 from the 7 Consortia Groups.
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 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 LABSS Technical Director shall arrange for the full Annex B form (Stages 1 to 5 - see below) to be published on LABSS 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 LABSS Technical Director can be contacted at any time during the process to assist in the administration of it.

**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 in 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.

*PLEASE NOTE THE NEED FOR FULL SUPPORTING INFORMATION FOR USE BY CONSULTEES WHEN ANY DISCUSSION OF THE CASE SPECIFICS IS BEING UNDERTAKEN*

| Enquiry Submission Form - Annex A: *delete as appropriate                              |      |     |
|--|------|-----|
| Query on a Verification Procedural Interpretation                                      | *Yes | *No |
| Query on a Verification Technical Interpretation                                       | *Yes | *No |
| Submission of an Alternative Design Approach which varies from the Technical Handbooks | *Yes | *No |

If you disagree with the technical or procedural interpretation that the Building Standards Authority is adopting in the consideration of a building warrant that you have submitted or will require to submit you may request an interpretation through Local Authority Building Standards Scotland (LABSS).

**OR**

If you disagree with an interpretation that the Building Standards Authority is adopting in the consideration of a building warrant that you have submitted or will require to submit on an alternative design approach that you are proposing which varies from the Technical Handbooks you may request an interpretation through Local Authority Building Standards Scotland (LABSS).

**This request must be submitted to the Building Standards Authority that is considering your proposal, preferably by email**

\*\*Please complete this form as appropriate

|                      |                                   |
|----------------------|-----------------------------------|
| <b>Name</b>          | Malcolm Crawford                  |
| <b>email address</b> | Malcolm.crawford@taylorwimpey.com |
| <b>Date</b>          | 22/02/21                          |

**Please explain the interpretation that you are querying and what you consider the decision should be.**

Section 4 specifically refers to access to a building and the relevant technicalities associated with appropriate access.

The front path and disabled access comply with 4.3.11.

Regulation 4.3.11 is being imposed on a secondary rear path to a mid-terraced house. The rear path has been designed at 1in10 to access bins from a building, a simple garden path.

Regulation 4.3.11 (stipulating that a gradient more than 1in12 is not recommended) should not be applied to this secondary garden path.

**Thank you.**

**You will receive an acknowledgement of receipt from your Local Building Standards Authority with contact details.**

**The procedure that will now be followed is as detailed here in the CONSULTATION / DETERMINATION PROCESS FOR DISPUTE RESOLUTION AND FOR TECHNICAL OR PROCEDURAL INTERPRETATION OR FOR ALTERNATIVE DESIGN APPROACH ENQUIRIES**



**Consultation Form - Annex B \* Complete as appropriate**

**CONSULTATION / DETERMINATION PROCESS FOR DISPUTE RESOLUTION AND FOR TECHNICAL OR PROCEDURAL INTERPRETATION OR FOR ALTERNATIVE DESIGN APPROACH ENQUIRIES (including in association with STAS submissions)**

**CONSULTATION PROCESS FOR USE WITH LABSS CONSORTIA GROUPS; LABSS CTWG; BSD TECHNICAL and PROCEDURAL GROUP AND WITH SFRS (IF APPROPRIATE)**

**STAGE 1: MAKING THE CASE**

| <b>Regulation 9<br/>Provisions on which a determination is sought including the relevant Guidance Clause as appropriate</b>   | <b>Describe the applicant / developer / relevant person case</b>  | <b>Verifiers Position</b><br>*alternative compliance recommendations read with site specific conditions where appropriate                                       |
|---|---|---|
| *This area to be completed by the receiving Local Authority   | *This area to be completed by the Local Authority in association with the applicant / developer / relevant person having due regard to Form Annex A   | *This area to be completed by the receiving Local Authority   |
| <p>Standard 4.3<br/>Every building must be designed and constructed in such a way that every level can be reached safely by stairs or ramps.</p> <p>4.3.11 Pedestrian ramps<br/>Surfaces with a gradient of 1 in 20 to not more than 1 in 12 are considered to be ramps and recommendations are made on such surfaces to ensure the safety and amenity of users. Gradients of more than 1 in 12 are considered too steep to negotiate safely and are not recommended. Steep gradients require both greater effort to ascend and more care when descending. As</p> | <p>Section 4 specifically refers to access to a building and the relevant technicalities associated with appropriate access.<br/>The front path and disabled access comply with 4.3.11.<br/>Regulation 4.3.11 is being imposed on a secondary rear path to a mid-terraced house. The rear path has been designed at 1in10 to access bins from a building, a simple garden path.<br/>Regulation 4.3.11 (stipulating that a gradient more than 1in12 is not recommended) should not be applied to this secondary garden path.</p> | <p>Standard 4.3 is applicable to all ramps within the curtilage of a dwelling, not just the principle access to the dwelling as suggested by the developer.</p> |



Local Authority Building Standards Scotland [LABSS]

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|--|--|--|
| a general principle, the steeper the gradient of a ramp, the shorter the flight should be. A pedestrian ramp should be constructed in accordance with the following table:<br>More than 1 in 12 not recommended. |  |  |
|  |  |  |
|  |  |  |
|  |  |  |

| TYPICAL EXAMPLE OF A PREVIOUS CASE  |   |  |
|---|---|--|
| Regulation 9<br>Provisions on which a determination is sought including the relevant Guidance Clause as appropriate   | Describe the applicant / developer / relevant person case   | Verifiers Position<br>*alternative compliance recommendations read with site specific conditions where appropriate   |
| <p><b>Technical Standard 4.2<br/>Access within buildings</b><br/>Every building must be designed and constructed in such a way that:</p> <p>a. in non-domestic buildings, safe, unassisted and convenient means of access is provided throughout the building</p> <p>4.2.10 Fixed counter installations at service points<br/>Fixed counter installations such as a reception desk or a serving counter in a bar or restaurant should be accessible to a person who is standing, regardless of stature, or seated in a wheelchair.</p> <p>To allow this, surfaces should be provided at two levels. For standing users, this should be within a range of 950mm to 1.1m in height. For seated users, this should be 750mm above floor level, with a knee recess below of at least 500mm deep and at least 700mm high and a clear manoeuvring space in front of the surface of at least 1.2m deep. The knee recess is particularly important where activities such as writing may take place, such as at a bank counter. Where depth of the surface will permit, the knee recess should be provided to both sides of the counter.</p> <p>Where only one such counter is proposed a portion of the surface, not less than 900mm wide or, where practical in larger installations, 1.5m wide, should be installed at lower height. Where a number of similar counters are proposed, at least one counter should be installed at the lower height.</p> | <p><b>Alternative counter design proposal based on BS 8300:2001</b><br/>So as to satisfy the relevant guidance clause, 4.2.10, it is proposed to utilise a counter design, that adopts the design guidance provide by the relevant clauses of BS 8300: 2001, as follows:<br/><b>Accessible Counter height -750mm</b><br/><b>Reason for Decision</b><br/>Guidance given in BS 8300 indicates that a height of 750mm is within the reach range of both wheelchair users and standing people. Reference can be made to Annexe F, Table F.2, Table F.3, clause 4.4.4.3 and Figure 5 and Figure 20.<br/>Table F.2 indicates that a counter height of 750mm will enable a wheelchair user to access service from the side where the extended reach range does not exceed 310mm.</p> | <p>The site-specific characteristics shall be assessed by the verifier and approval granted only if the location of the till pod does not prevent access by a person in a wheelchair when using the service point side-on.</p> |



**STAGE 2: CONSULTATION WITH LOCAL CONSORTIUM (OR WITH 7 CONSORTIA GROUPS IF NEEDED)**

**(Comments sought from Other Consortium to allow the LABSS Position to be determined)**

\*This area to be completed by each Consortium Lead / Technical Lead (include all comments from other consortia)

|   |   |
|---|---|
| <p>Group 1: Southwest Scotland Building Standards Consortium (SWSBSC)</p> |   |
| <p>Group 2: Highlands and Islands consortium (H&amp;I)</p>                | <p><b>Highland</b><br/>Our view is that Western Isles' interpretation of the ramp being too steep at 1:10 and possibly dangerous is correct and would accept steps instead.</p> <p><b>Orkney</b><br/>Our view is that, in the case of a house, Standard 4.3 applies to:<br/> <ul style="list-style-type: none"> <li>(a) ramps forming part of an accessible route required by Standard 4.1 (see 4.1.3, in particular),</li> <li>(b) ramps connecting levels within the house as required by Standard 4.2 (see 4.2.6 and 4.2.7), and</li> <li>(c) ramps between the house and any facilities required by building regulations, e.g., outdoor drying space under Standard 3.11.</li> </ul> <p>Above list is not necessarily exhaustive, but we would suggest that a path leading solely to a solid waste storage point within the curtilage of an individual house is outside the scope of Standard 4.3. Emphasis on solely – it is noted that some of the paths shown in site plan appear to serve both a bin area and an outdoor drying space at the back of the house.</p> <p>(Why anyone would want to build a 7m long 1:10 ramp is beyond us, but that is a different matter.)</p> <p><b>Shetland</b><br/>Whilst we would recommend that all ramps follow the guidance to standard 4.3 where possible. Unlike standard 3.11 which specifically requires access to for example, drying facilities (including an outdoor drying space), in this particular instance the ramp leads to a solid waste storage point that is no longer a requirement for a dwelling and so we would reluctantly accept the proposal.</p> </p> |

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|   | <p><b>Western Isles</b><br/>Given that guidance clause 4.3.11 states that gradients of more than 1 in 12 are considered too steep to negotiate safely, our view is that the 1 in 10 gradient ramp should be replaced by steps which follow the relevant guidance.</p>   |
| <p>Group 3: Southeast Scotland Building Standards Consortium (SESBSC)</p> | <p><b>City of Edinburgh Council</b><br/>I've had a mixed response for this one but when I tally up the responses then Edinburgh would agree with the developer in that we would view the path through the garden as landscaping and not applicable to 4.3.</p> <p>To give you some background to the feedback, some pointed out 4.3 is for all ramps and states: <i>“Every building must be designed and constructed in such a way that every level can be reached safely by stairs or ramps”</i>. Furthermore:</p> <p>4.3.0 <i>“Stairs and ramps should be constructed to be within limits recognised as offering safe and convenient passage and designed so that any person who is likely to use them can do so comfortably and safely, with the minimum amount of difficulty”</i></p> <p>4.3.11 <i>“Gradients of more than 1 in 12 are considered too steep to negotiate safely and are not recommended”</i></p> <p>However, other comments were that it does not state <i>all</i> ramps, and the gradient limit of 1:12 is worded as a “recommendation”. Some also pointed out 4.3 would be satisfied where access to and within the house is compliant. Also solid waste storage is no longer a requirement for a dwelling, therefore access to it is not required. So you could turf the whole of the back garden, for example, in which case we would not be having this discussion.</p> <p>Mike Dowie</p> <p><b>Midlothian Council</b><br/>At Midlothian, we would generally apply that if the access to the main entrance has been achieved, both in terms of general access and access for the disabled, we would accept the design.</p> <p>We would normally consider all other paths in the garden to be landscaping that we do not control.</p> |

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|   | <p>However, we do acknowledge the requirement to dispose of the bin might be an issue. Is there a hard standing for the bin at the rear of the garden or is it highlighted elsewhere? If it is provided at the rear, there could be an argument that the requirement for the home owner to access a suitable path at the rear is an amenity requirement in relation to the emptying of bins. Could the hard standing for the bins simply be relocated to the front if this is the case?</p> <p>Steven Fleming</p> <p><b>West Lothian Council</b><br/>West Lothian would agree that the guidance applies to the ramped access serving the refuse storage areas and providing access from a public footpath even if this is not the main access. We have had similar situations and where the ramp can't be compliant so steps have been introduced.</p> <p><b>East Lothian Council</b><br/>No response</p> <p><b>Scottish Borders Council</b><br/>We would support Fife Council in this case, where the gradient of a ramp applies to all ramps, not just the principle entrance ramp.</p> <p>David</p> |
| <p>Group 4: Tayside consortium (TC)</p>       | <p>The majority view from the Tayside Consortium is that the proposals comply. There was concern about access to the bin store however this no longer applies to houses. It may be that the guidance was intended to apply to all ramps and stairs around buildings, but the guidance does not technically say that.</p>   |
| <p>Group 5: Clyde Valley consortium (CVC)</p> | <p><b>East Renfrewshire Council</b><br/>We would agree with the developer that the rear pathway is to a secondary entrance and does not require to comply with the more onerous gradient associated with the designated accessible entrance.</p> <p><b>East Dunbartonshire Council</b><br/>EDC can understand both sets of views in this respect. However it was the general consensus that whilst efforts would be made to have alternative routes comply with the max 1:12 slope this would not always be</p>  |



|   |   |
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|   | <p>possible due to the terrain where some dwellings are constructed. Therefore we would agree with the developer on this occasion.</p> <p><b>Argyll and Bute Council</b><br/>Hi John</p> <p>AB&amp;C are of the opinion that as the bin can be located elsewhere (and there is no requirement for a bin to be provided to a house) then we would accept the proposal submitted by Taylor Wimpey as landscaping.</p> <p>Would you insist on protective barriers to terraced gardens?</p> |
| Group 6: Central Authorities consortium (CAC) |   |
| Group 7: Grampian consortium (GC)             | <p>Comments from Grampian group as follows.</p> <p>City no response.</p> <p>Moray and Shire A ramp should be in accordance with the guidance a slope steeper than 1;12 is considered too steep.</p> <p>Regards Bill</p>   |



**STAGE 3: LABSS POSITION FOLLOWING CONSULTATION  
(EITHER FOLLOWING LOCAL CONSORTIA DECISION OR NATIONALLY WITH 7 CONSORTIA)**

\*This area to be completed by LABSS Management / CTWG

**LABSS Position following Feedback:**

The responses from verifiers are noted as is the range of opinions.

In outlining the LABSS position, it is necessary to explain further the LABSS interpretation of the intent of mandatory standard 4.3 which states:

‘Every building must be designed and constructed in such a way that every level can be reached safely by stairs or ramps’

In the context of this standard, ‘building’ is a defined term and covers a wide range of work and would include a bin store. It therefore follows that the guidance within clause 4.3.11 should apply to a ramp serving the bin store or indeed should steps be provided, these should follow the guidance, such as within clauses 4.3.3, 4.3.4 etc.

This interpretation is supported by the wording provided in the introduction to standard 4.3 which states ‘private stair means a stair wholly within a dwelling. It may also apply to any stair within the curtilage of a single dwelling, which is not accessible to the public.

While the above extract relates to the definition of a ‘private stair’, it does confirm that a stair in a garden does need to meet the relevant guidance clauses for stairs. It is therefore logical to extend this principle to a ramp should it be formed as an alternative to steps.



**STAGE 4: CONSULTATION REVIEW WITH BSD and SFRS**

**Comments sought from BSD Technical/Procedural group**

\*This area to be completed by LABSS in association with BSD

Having reviewed the information provided, Building Standards Division does not raise any issue with the LABSS decision.

**Comments sought from SFRS or other relevant consultees (if appropriate)**

This area to be completed by LABSS in association with SFRS

Not applicable.



## STAGE 5: CONSULTATION REVIEW FINAL DECISION

### Final Decision

This area to be completed by LABSS in association with BSD

This will be confirmed:

- by LABSS and added to the LABSS Website, and
- by BSD Standard Decision Letter (if appropriate)

For the reasons outlined in stage 3, the verifier's position is supported and the applicant's position rejected.