



The Scottish Government
Planning and Environmental Appeals Division

Planning And Environmental Appeals Division: Guidance On Taking Part In Planning Appeals and Other Cases

February 2021

Taking part in planning and environmental appeals and other cases

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1. What is the DPEA?

The Planning and Environmental Appeals Division (DPEA), a division of the Scottish Government Legal Directorate, considers and makes decisions and recommendations on a range of planning and environmental matters on behalf of Scottish Ministers. For more information about DPEA's objectives, core values, achievements, and more detail about the people who make up DPEA, please see our [Annual Review](#).

2. What does the DPEA do? - Appeals

A reporter appointed by Scottish Ministers decides most appeals. In a small number of cases, Ministers will make the decision after receiving the appointed reporter's report and recommendations. Reporters, who are normally very experienced planners, lawyers or architects are appointed by Ministers to each case, either to make a decision on behalf of Ministers or to report to Ministers with a recommendation. They are issued with [guidance notes](#) providing information about administrative processes and practices.

The majority of appeals will follow the procedures set by [The Town and Country Planning \(Appeals\) \(Scotland\) Regulations 2013](#). But some other appeal types are covered by other legislation, and so follow different processes. Whatever the process for any appeal, core principles of fairness and robust decision-making will be at the heart of it.

The Town and Country Planning (Appeals) (Scotland) Regulations 2013 set out the processes for certain types of appeals against decisions made or notices served by a planning authority. These can be where a planning authority have:

- Refused an application;
- Granted an application subject to conditions;
- Not given notice of their decision on the application within the period prescribed in regulations.

In addition, an appeal may be made against a notice that has been served by a planning authority.

The types of appeals that are covered by this legislation are:

Consent type appeals	Notice types appeals
<ul style="list-style-type: none"> • Planning permission appeals • Listed building consent appeals • Conservation area consent appeals • Planning obligation appeals • Good neighbour agreement appeals • Certificate of lawful use or development appeals • Tree works consent appeals • Advertisement consent appeals 	<ul style="list-style-type: none"> • Enforcement notice appeals • Listed building enforcement appeals • Conservation area enforcement appeals • Advertisement enforcement notice appeals • Advertisement discontinuance notice appeals • Amenity notice appeals • Tree replacement enforcement notice appeals
<p>Other appeal types received by DPEA under different legislations - Community Asset Transfer Requests, which are covered by the Community Empowerment (Scotland) Act 2015 and High Hedge Appeals which are covered by the High Hedges (Scotland) Act 2013</p>	

The planning appeal regulations are also used where a planning application is called in for a decision by the Scottish Ministers. This process is known as ‘calling-in’ an application. Scottish Ministers will normally only do this if the application conflicts with national policy or is nationally significant. There is no definitive list of criteria used to decide whether to call-in a planning application - each case is considered on its own merits. A substantial volume of objections is not, however, in itself sufficient grounds to call-in a planning application.

Similarly in cases where an appeal is already before DPEA, Scottish Ministers may decide to recall the appeal for their own determination. This process is known as ‘recalling’ an appeal, and the power is used sparingly and normally only in circumstances where a proposal raises issues of genuine national interest.

3. What does the DPEA do? – Non-Appeals Casework

In addition, DPEA also undertake examinations for various types of applications/orders which are referred to us from Scottish Government departments where we are asked to

hold an examination and report to Scottish Ministers for their decision on the application/order. These types of case include, but are not limited to:

<ul style="list-style-type: none">• Wind farm applications made under Section 36 of the Electricity Act 1989, where the capacity of the proposed wind farm will be above 50 megawatt• Electricity line applications made under Section 37 of the Electricity Act 1989. Electricity lines will not be less than 132 kilovolts.	<ul style="list-style-type: none">• Compulsory Purchase Orders• Roads Orders• Stopping Up Orders• Necessary Wayleave Applications• Core Paths Plans
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If you are looking for advice on these types of cases, please go to section 13 below.

DPEA are also involved in the examination of Local Development Plans. Further information on local development plan examinations can be found [here](#).

4. What can be appealed to Scottish Ministers?

There are a number of circumstances where an appeal can be made to Scottish Ministers on land use planning matters. These can be grouped into two broad categories:

- Certain decisions made on applications: where the applications has been made to the planning authority but the person who made the application doesn't agree with the decision (or the planning authority hasn't made a decision). The most common of these appeals follow from applications for planning permission and listed building consent.
- Formal notices requiring action: where the planning authority has served a notice requiring somebody to carry out a specific action, or for particular activities to be stopped. These include appeals against several types of enforcement notice relating to alleged breaches of planning control, and notices requiring action to improve the condition of land.

5. Who can make an appeal to Scottish Ministers?

For most case types, the people who are entitled to make an appeal to the Scottish Ministers is limited to the person who made the application to the planning authority, or, in the case of notice types appeals, any person who is named on the notice served by the planning authority, or any other person with an interest in the land.

The exception to this is where an appeal is being lodged in relation to a high hedge application – in these cases the people who can make an appeal are either the person who

owns the land on which the high hedge is situated (high hedge owner), or the person(s) whose property is affected by the high hedge (also known as the high hedge neighbour).

6. What cannot be appealed to Scottish Ministers?

Having the right to challenge a decision on a planning application does not always mean making an appeal to the Scottish Ministers. When a proposal is for a small-scale 'local development' – and it falls under the planning authority's scheme of delegation' for local developments – the responsibility to decide the planning application sits with a planning authority official, rather than elected councillors. In those cases, the planning authority official's decision can be challenged by the person who made the application by requesting a review by the planning authority's local review body, and not by making an appeal to the Scottish Ministers. The local review body is made up of a group of three or more elected members of the planning authority.

The planning authority's decision notice or other correspondence about the application will make it clear whether the right to challenge the decision is by local review or by appeal to Ministers. Information about where an appeal should be lodged, the scheme of delegation, or about requesting a local review, can be obtained from the planning authority.

There is one exception, where a local review case can be appealed to the Scottish Ministers:

- If an applicant asked for a local review because the planning authority official had not decided the planning application within 2 months; and
- The local review body then also failed to make a decision within a further 3 months;

7. What happens when an appeal is lodged?

The person making the appeal, and also the planning authority, will state their full case at the outset. This is called front-loading the system. It is important that appellants raise all relevant issues when they make their appeals, because there might not be another opportunity later. Once an appeal is made, the planning authority must provide its full response within 21 days, and appellants can only respond to that if there are new issues raised by the planning authority in its response which were not raised in the planning authority's earlier decision notice on the related application.

The Town and Country Planning (Appeal) (Scotland) Regulations 2013 (link provided in section 2) set a structured timetable with clear deadlines for people to provide information to the reporter.

When an appeal is lodged it is allocated to a case officer, who is responsible for administrating all documentation and submissions in relation to a case, maintaining the file

for the reporter and publishing documents to DPEA's website. They will be your point of contact throughout the case and all correspondence will be with them.

8. What are the timescales for considering appeals?

We aim to ensure that all of our work is dealt with as swiftly as possible. Scottish Ministers set target timescales in which reporters should determine appeals and expect 80% of appeals to meet the targets. The timescales are set by the method of determination and all begin from date of receipt of appeal, as set out below.

No further procedure – 8 weeks

Site inspection – 12 weeks

Further written submissions – 20 weeks

Hearing session – 26 weeks

Inquiry session – 32 weeks

These timescales apply only to cases decided by the reporter, and not to cases ultimately decided by Scottish Ministers.

9. Who can participate in an appeal?

The opportunities for people other than the appellant and the planning authority to participate will depend on the type of appeal and the procedures being followed. Anyone who has already written to the planning authority on an application, known as interested parties, will have their comments passed onto the reporter (by the planning authority or Scottish Government department) to be considered in a subsequent appeal.

Interested parties will also be informed if and when an appeal is made, will have the chance to give further comments to the reporter and might also be invited to participate in any further appeal procedures. There will normally be a timetable, setting a firm deadline for people to provide their comments. Their comments will also be made available to the appellant and the planning authority, and will be published on DPEA's online appeal case file which can be viewed [here](#). For further information on how your personal data will be dealt with by DPEA, please see section 26.

10. Which matters are considered in an appeal?

The issues that can be raised and considered in an appeal will depend on the type of appeal. For example, an appeal which is seeking listed building consent will focus on the impact on the listed building. And appeals against notices served by planning authorities (for example, an enforcement notice) have standard grounds of appeal which can be argued. The guidance notes which accompany the appeal forms explain how to state grounds of appeal.

The various appeal forms and guidance notes can be found here -

<http://www.gov.scot/publications/planning-appeals-forms-guidance-list/>

When a planning permission appeal is made, the appellant cannot change the description of the proposed development – it must be the same proposal that was ultimately considered previously by the planning authority, using the same plans. Also, appellants and planning authorities are not expected to raise any new matters in an appeal that had not been available to the planning authority when it dealt with the application – unless they can prove that those matters could not have been raised with the planning authority at the earlier stage, or that there are some exceptional circumstances why they are being raised at a late stage. Where the appellant seeks to vary the proposed development from that considered by the planning authority, they will be advised that variation is not permitted.

We will suggest that, should the appellant wish to amend or revise the proposal, then this should be done by making a new planning application to the planning authority.

As a general rule for applications and appeals seeking planning permission, the law requires that decisions are made in line with the development plan for the area, unless there are ‘material considerations’ that outweigh the provisions of the plan. Relevant issues will relate to the development and use of land, and to the development proposed.

Material considerations cover a wide range including Scottish Planning Policy, the National Planning Framework, a proposed strategic or local development plan as well as community plans, the environmental impact of the proposal as well as legitimate public concern or support expressed on relevant planning matters. Further information on what constitutes material considerations can be found [here](#).

Reporters can **only** consider evidence placed before them. They do not actively seek evidence and will normally take evidence before them at face value unless significantly unclear, disputed or clearly factually inaccurate.

11. Which documentation will be submitted by the planning authority?

The planning authority are required to submit the following documentation to the DPEA alongside their response to the appellant's grounds of appeal.

<ul style="list-style-type: none">• A note of the matters which the authority consider require to be taken into account.• A note of which procedure, if any, the authority would wish the appeal to be conducted by (for more information on procedures, please see sections 18-22).• A copy of any Report of Handling prepared in respect of the application.• Full copies of all representations and consultations received in consideration of application	<ul style="list-style-type: none">• A copy of the documents (other than those already submitted by the appellant as part of their appeal) which were before the authority and which were taken into account in reaching their decision.• The conditions, if any, which the authority consider should be imposed in the event that the reporter/Scottish Ministers decide that permission/consent be granted.
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Please note this list is not exhaustive.

The appellant is then given the opportunity to comment on any new matters raised in the authority's response which had not been raised in the decision notice, and submit any documents or evidence that they intend to rely on in support of such comments.

Once the planning authority's response to the appeal has been received, and where there are a large number of parties with an interest in a case, DPEA may write to those who submitted representations to the planning authority about the application or representation to DPEA about the appeal to ask them to confirm whether they wish to take part in any further procedure in the appeal, that is, whether they wish to 'opt in'. Those who 'opt in' will be notified of any further procedure in the appeal.

12. What do you need to do in the initial stages?

If you are not the appellant, but wrote to the planning authority in relation to the application, you will be termed an 'interested party' in the terms of the planning

regulations. The planning authority are required to notify all interested parties of the lodging of an appeal within 14 days. Interested parties are entitled to make further representation directly to DPEA within 14 days of receiving notification from the planning authority that an appeal has been lodged.

All representations and consultation responses previously received by the planning authority in relation to the application are sent to DPEA as part of the planning authority's response to the appeal and the contents will be taken into account by the reporter. Similarly, Scottish Government departments send all received documentation and correspondence to DPEA when referring a case for examination.

It is not necessary to resubmit the same matters to DPEA as you submitted in your representation to the planning authority, you only need submit a further representation where you wish to add further/new information. Your contact details will be added to our case management system for the life of the appeal, and for 12 weeks afterwards (to allow for any judicial review process) before being deleted in line with our data protection policy. Further information can be found in DPEA's privacy notice which is available to view [here](#).

If you are able, any supporting documentation should be submitted in electronic format rather than hard copy. [Submitting documents electronically](#) helps to speed up the appeal process, allows information to be copied easily to others and makes it more cost effective and efficient for all parties involved.

Late representations are usually only accepted in exceptional circumstances, or where it can be proven that the information being submitted could not have been submitted at an earlier stage, and is solely at the discretion of the appointed reporter.

Once the timescale for receipt of representations has expired, all representations are sent to the appellant and planning authority for their comments within 14 days, and are published to the DPEA's website.

DPEA’s data protection policy ensures that some information is removed (redacted) from your submissions before they are published to the website. The list below is not exhaustive, but some sensitive/confidential information that may be removed from the published version of your representation includes:

<ul style="list-style-type: none"> • Personal email addresses (business addresses will not be redacted) • Signatures • Personal telephone numbers • Personal financial information • Information relating to police investigations/criminal records 	<ul style="list-style-type: none"> • Medical records or personal medical/health information • Information which identifies the location of nesting/den sites of protected species of birds/animals • Where a party indicates that they will be away on holiday, or their house will be empty for a period of time. • Party indicates that they are frail/infirm.
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In addition to sensitive/personal information, case officers will also keep a close eye out for any comments or information that could potentially be construed as defamatory. This can be a very subjective matter and there is no definitive list of what would be construed as defamatory, but some commonly identified defamatory comments are:

- Inappropriate reference to other parties.
- Inappropriate comments about the planning authority – regarding their handling of the case, or about the particular planning officer, particularly if they are mentioned by name.
- We usually find that a good indicator of defamatory comments is to consider whether you would be happy to have someone refer to you in a similar manner – if not, it may potentially be defamatory and will therefore be removed from the published document.

DPEA’s aim is to ensure that anything that is abusive, indecent, unlawful or defamatory is not displayed on our website. However, individuals must take personal responsibility for the comments that they make and submit.

The measures that are applied to the redaction of personal/sensitive/defamatory information from documentation only apply to the version that is published to our website.

The version sent to the appellant and planning authority for comment, added to the case file, and therefore considered by the reporter will remain unredacted.

It is not possible to submit a ‘confidential’ representation – legislation requires DPEA to share your representation with the reporter, the appellant and the planning authority. No information that is to be considered by the reporter can be kept confidential from the appellant and planning authority. If someone submits something with a request that it remain confidential, they will be written to advising that this is not possible, although we can make sure that it is not published on our website. We will inform them that it is required to be sent to the appellant and planning authority, alongside the reporter and ask whether they are content that we proceed on that basis. If a party is not content with these proposed actions, their correspondence/document is returned to them and not added to the appeal file, nor taken into account in determination of the appeal.

13. What happens when a reporter is allocated to an appeal?

The vast majority of appeals are considered and decided by Scottish Government reporters. The reporter is appointed by Scottish Ministers to make the decision on their behalf.

A very small number of appeals are not delegated to reporters for decision, but instead are ‘recalled’ by Scottish Ministers who will make the final decision. In those cases, the appeal will still be examined by a reporter, who will then write a report and make recommendations for Ministers to consider before they make their decision.

Appeals and applications that are referred to DPEA by other Scottish Government departments for examination are always decided by Scottish Ministers, such as those cases listed in Section 3.

The reporter appointed to determine/examine the appeal will manage the whole process and consider what action is needed to gather enough information to make a decision. The will make their decision as soon as they are able to do so. However, it is sometimes necessary to obtain some further information on a particular matter before the appeal can be decided. When this happens, the reporter may choose to carry out one or more of these further procedures:

<ul style="list-style-type: none">• Inspection of the site• Hearing session	<ul style="list-style-type: none">• Further written submissions• Inquiry session
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The reporter will choose the most effective and efficient method for obtaining the information needed. Either a hearing or inquiry session will involve people presenting their

case in person in front of the reporter. The reporter will ensure that everyone is aware of what is expected of them.

While ultimately it is the reporter's role to decide whether (and, if so, what) further procedure is needed to inform the decision on an appeal, both the appellant and the planning authority are entitled to express an opinion on which procedure (or combination of procedures) they think there should be.

Occasionally, depending on the scale and/or complexity of an appeal, more than one reporter may be appointed.

14. What happens when a non-appeal case is referred to DPEA?

The initial exchange of information required in the relevant application/order regulations will be completed before the file is referred to DPEA. Cases that are referred to DPEA by other Scottish Government departments for examination are always decided by Scottish Ministers. See Section 16 for further information on what matters are considered in a non-appeal case.

As soon as possible upon receipt of a request to hold an examination, we will write to all parties who submitted representations on the case (objectors, supporters, consultees) advising that Ministers have decided that an examination should be held and asking whether they wish to take part in any further procedure. This is also known as the opt-in process. If you opt-in we will inform you of all arrangements as appropriate. People who do not opt-in may not have the opportunity to participate in further procedures, however, their representation will be fully taken into account by the reporter. All parties will be given details of the DPEA website where they can follow the progress of the case and will be advised that the date and venue for the inquiry will be published in a local newspaper. All parties will also be informed of the outcome of the case, regardless of their participation in any further procedure.

15. Who can participate in non-appeal case types?

In practice, anyone who wishes to participate and appear at inquiry will usually be allowed to do so.

When it comes to Compulsory Purchase Order cases, the rules give special status to 'statutory objectors', who are owners, lessees, occupiers and others with an interest in the land which is being compulsorily acquired, and whose objection has not been withdrawn. Those entitled to appear at the examination for CPO cases are:

- the acquiring authority;
- any statutory objector; and

- anyone else whom the reporter has asked to serve a statement of case.

Any other person or organisation may appear or be represented at the examination at the discretion of the reporter.

16. Which matters are considered in a non-appeal case type?

The term “non-appeal case types” applies to such a wide range of cases, all with different legislations/regulations, that it is not easy to succinctly sum up what is considered in these case types, and so this section is neither explicit nor prescriptive. Regardless of the legislation or process being followed all parties will be kept informed of the processes for the case in which they are involved, and notified of what it expected of them.

In general, a lot of similar matters are considered in non-appeal case types as are considered in appeals - Scottish Planning Policy, the National Planning Framework, proposed strategic or local development plans as well as community plans, the environmental impact of the proposal as well as legitimate public concern or support expressed on relevant matters.

Some applications/orders are only sent to DPEA if there are objections that have been made and not withdrawn. In the absence of any objections, DPEA will not be involved in the process – likewise, if a case is referred to us, and all objections are then withdrawn in the course of our consideration of the case, no examination is necessary and the case is sent back to the referring client division. In these types of cases, the examination (and subsequent recommendations to Scottish Ministers) focuses upon the objections to be considered, in the context of wider policy considerations, rather than the principle of the application/order in general.

Where some applications and orders differ from appeals is in the ability to amend the proposal as a result of objections or discussions with other parties. It is also not unusual for further assessments or appraisals to be carried out after the application or order has been made. Parties will be kept informed of any additional material submitted during a non-appeal case type examination, and be provided with the opportunity to make comment.

The reporter appointed to carry out the examination of the case will consider the application/order and supporting documents, the representations and responses from consultees and will identify the main issues in the case and make a provisional assessment of the appropriate procedure for examination of those issues.

17. What do you need to do in the initial stages of a non-appeal case type?

If you wish to participate in further procedure, you should respond to the initial opt-in correspondence from DPEA requesting confirmation of this. Should the reporter feel that a

pre-examination meeting is required, you will also be asked whether you wish to participate in this. Parties should note that should they opt not to participate in further procedure, their initial representation/objection will still be fully taken into account by the reporter.

18. What happens when a site inspection is held?

Site Inspection

A site inspection may take place to allow the reporter to familiarise themselves with the area and the site. It is usually unaccompanied and can be carried out at any time during the examination. Where there are difficulties obtaining access or identifying particular features the reporter may invite the parties to attend an accompanied site inspection at a specified time and meeting place.

There will be no discussion on site relating to the merits or otherwise of the case. Attendees can point out and/or ask the reporter to view any particular physical characteristics of the site/surrounding area but cannot express views about how this supports or negates the case. All arguments for or against the case must be set out in parties' written submissions (unless the reporter indicates otherwise).

19. What happens when further written submissions are requested?

Further Written Submissions

At any stage of a case the reporter may ask one or more parties for further written submissions on a particular topic or topics (sometimes known as a procedure notice or further information request). The reporter identifies the issues requiring further information, identifies the parties to be involved in the exchange and sets the deadline for receiving these. DPEA will initially contact the relevant parties requesting the information the reporter requires. This request will list the matters about which the reporter requires further information, those parties who are to provide the information and those parties who are being invited to comment on any response. Deadlines for submissions will also be confirmed by DPEA at the time of the request.

Each party taking part in a further written submission request should send any document(s) they are lodging to all other parties named on the procedure notice request (a list of contact details of parties will be provided with the request). They should send a copy to DPEA at the same time and confirm that these exchanges have taken place.

20. What happens when a pre-examination meeting (PEM) is held?

Pre-examination Meetings

The reporter may require that a pre-examination meeting (PEM) is held. These may be held virtually or in-person. The purpose of a PEM is to discuss the administrative arrangements for any further procedures (further written submissions, hearing and/or inquiry sessions) that are to be held and to discuss how the case can be conducted in the most efficient manner. DPEA will set the date, time and venue for the meeting and will give notice of the arrangements to the parties.

The PEM is a public meeting and so members of the public can attend. It should be noted, though that only those who submitted responses for/against the original proposal (interested parties) will be invited to provide their views on the proposed arrangements for further procedure. No discussion on the merits of the appeal will be discussed at the PEM, only the procedural aspects of making arrangements for any further submissions or oral sessions that will be held. The reporter will set the agenda for the PEM. Amongst other things the agenda will identify the reporter's provisional views on the issues requiring no further procedure and the issues requiring further information or evidence and the reporter's proposed procedures for dealing with them. The reporter will give parties the opportunity to make representations on the identification of the issues, the proposed method of procedure and the arrangements for site inspections. At the PEM, the reporter will consider parties' representations on the procedure to be adopted and likely duration of proceedings and will fix a timetable for the case and the dates of any oral sessions. For appeals, the decision with regards to further procedure rests with the reporter alone. For non-appeal cases, there may exist the right to be heard, in which case parties may be able to insist on an oral process.

Following the PEM, the reporter will issue a note of the meeting that records the matters discussed and the reporter's decision on the procedure to be adopted. It will also contain dates for submission of any statements, documents and precognitions required by the reporter. Parties must advise DPEA within 14 days of receiving the note of the PEM whether or not they intend to participate in any hearing and/or inquiry sessions and, if so, in which they intend to participate.

No further submissions are required in advance of a PEM.

An explanation of the purpose of a PEM is available at this link <https://dpea.public-tv/core/portal/webcasts> in the DPEA Guide to Appeals Videos section. Full length webcasts of recent PEMs are also available on the page.

21. What happens at a hearing?

Hearings



These sessions, which may be held virtually or in-person, are held as a means of enabling the reporter to have a full understanding of the issues before them and to gain any extra information they need to make their decision (or recommendation to the Scottish Ministers). They are a more informal alternative to an inquiry session and generally make it easier and more comfortable for those taking part.

A hearing session may be held where:

- the reporter needs to enhance their understanding by asking questions, seeking explanations of evidence or opinions;
- where there is some dispute but where cross examination of professional or other witnesses is not necessary; or
- where the evidence to be examined is largely a matter of opinion rather than settled fact, such as design or policy issues or impact on the surroundings, and which could benefit from being explored through discussion led by the reporter to enable them to reach their own opinion.

Anyone entitled to appear at the hearing session may do so on their own behalf or be represented by another person.

Regardless of whether someone represents themselves, or has an agent to do so on their behalf, they are expected to treat other parties with respect during proceedings, and it is conventional to address the reporter as Sir or Ma'am.

Where two or more persons or bodies have a similar interest in the issues being considered at the hearing session, the reporter may allow or encourage one or more of them to appear on behalf of some or all.

A hearing takes the form of a round-table discussion that is chaired by the reporter. This is guided by an agenda that is circulated in advance. At the start the reporter will welcome participants and observers and explain the procedure to be followed. They will normally set out their understanding of what the examination is about and the main issues to be discussed.

Formal cross examination is not permitted but questions can be asked of other parties through the reporter.

Parties may be asked in advance to provide a hearing statement, a list of documents to be referred to or relied on, and a list of the names and relevant qualifications of those who will take part to represent each side. The hearing statement is a written statement which fully sets out the case relating to the matters to be discussed at the hearing session. Only those listed as taking part in the hearing session will normally be allowed to join the discussion and ask questions. The hearing is public and members of the public may observe.

DPEA do not normally advertise hearing sessions in the local press, as this is not required by planning legislation.

Each party taking part in a hearing session should send their statements and any document(s) they are lodging to all other parties taking part in the same session. They should send a copy to DPEA at the same time and confirm that these exchanges have taken place.

An agenda of topics to be discussed at the hearing session will be circulated by DPEA in advance of the hearing session.

The hearing venue layout will be arranged to facilitate discussion – generally one large table placed in a central position in the room, around which the reporter and other participants sit. Seating is usually provided separate from this table for any observers who wish to attend. The need for a public address/amplification system may be considered for larger appeal types and it has become commonplace to webcast oral sessions.

Microphones and camera equipment will be placed to ensure coverage, without being intrusive.

On the first day of the hearing, it will be opened by the reporter who will welcome parties, introduce themselves and invite would-be participants to identify themselves. Following this, the reporter will explain the procedures to be followed and the issues to be discussed.

A hearing is a discussion among parties, and the reporter's role is to lead the discussion, investigate the facts and obtain the information necessary to determine the appeal, giving all participants the opportunity to present their own case and respond to the cases of others. The reporter will encourage interested parties to contribute to the discussion, for example by inviting comments from a local perspective.

However, if a reporter feels that they have enough information and that participants have had a fair opportunity to speak, they will move the discussion onto the next topic.

Before the end of the hearing session, the reporter will decide whether there is to be an inspection of the site, specific to the matters which are the subject of the hearing session, accompanied by the parties involved in the hearing session. This may be in addition to an earlier inspection of the site made by the reporter. If appropriate, the reporter may allow further limited discussion of relevant matters on site before formally closing the hearing session.

An explanation of the purpose of a Hearing is available at this link <https://dpea.public-i.tv/core/portal/webcasts> in the DPEA Guide to Appeals Videos section. Full length webcasts of recent Hearings are also available on the page.

22. What happens at an inquiry?

Inquiries



An inquiry, which may be held virtually or in-person, is a more formal event, where witnesses give their evidence in front of the reporter and can be cross-examined by other parties similar to what you might see in the law courts.

An inquiry session may be held where:

- there is a dispute between the parties on complex or technical matters and the evidence needs to be thoroughly tested by cross-examination to enable the reporter to reach clear conclusions either on an important material consideration, or whether the proposal is in accord with a key provision of the development plan;
- essential facts are in dispute and cross-examination is necessary to clarify matters; or
- where there is a conflict of professional opinion or evidence and the reporter would find it helpful for that evidence to be tested by cross-examination.

Anyone entitled to appear at an inquiry session may do so on their own behalf or be represented by another person.

Regardless of whether someone represents themselves, or has an agent to do so on their behalf, they are expected to treat other parties with respect during proceedings, and it is conventional to address the reporter as Sir or Ma'am.

Where two or more persons or bodies have a similar interest in the matter under inquiry, the reporter may allow or encourage one or more of them to appear for the benefit of some or all.

Parties may be asked to provide an inquiry statement on the matters to be discussed, including a list of witnesses. It can be helpful to receive as much information about witnesses' availability as possible, as this assists the reporter to schedule the evidence to be heard, especially where an inquiry may last longer than 1 day.

Parties may also be asked to provide any supporting documents not already received that they intend to rely on, including a comprehensive list of said documents.

As required by planning legislation, a notice is placed in the local press in advance of the inquiry to advise that it will be taking place.

Finally, about 2 weeks prior to the inquiry, parties will be required to submit a document called a precognition. This is a written statement of their evidence that will be read out by each witness at the inquiry. A precognition must not, unless the reporter agrees otherwise, contain more than 2000 words. It will rarely be appropriate to depart from the 2000 word limit.

Each party taking part in an inquiry session should send the statements, document(s) and precognitions they are lodging to all other parties taking part in the same session. They should send a copy to DPEA at the same time and confirm that these exchanges have taken place.

An agenda of topics to be discussed at the inquiry will be circulated by DPEA in advance of the inquiry.

The inquiry venue layout will be suitably arranged, usually in a rectangular layout of tables. The main party groups will usually be facing each other with the reporter at the head of the room facing the public seating. Interested parties should be seated alongside, but separate from, the main party that reflects their position (e.g. objectors alongside the planning authority, supporters alongside the appellant in an appeal). There should be a specific, separate table for the witness giving evidence, placed for audibility. The need for a public address/amplification system may be considered for larger appeal types and it has become commonplace to webcast oral sessions. Microphones and camera equipment will be placed to ensure coverage, without being intrusive.

On the first day of the inquiry, it will be opened by the reporter who will welcome parties, introduce themselves and invite would-be participants to identify themselves. Witnesses should also be identified and introduced. Following this, the reporter will explain the procedures to be followed and the issues to be discussed.

In particular, the reporter will state:(a) the order in which the specified matters are to be considered at the inquiry session; and
(b) the order in which the inquiry participants will be heard in relation to a specified matter (a different order may be chosen for different specified matters).

The legislation for inquiry sessions does not specify an order of appearance of parties. However, evidence is normally heard in the following order:

1. Appellant/Applicant
2. Anyone else who supports the development
3. Parties who are opposed to the development

In some instances, it will be appropriate to start with the planning authority's evidence e.g. an enforcement notice appeal.

Where an inquiry session is likely to last more than one day, some assistance on timing (including the site visit) will be given at the outset to interested parties who wish to contribute, and it should be made clear that their normal place in the sequence will be towards the end of the inquiry, but that there is no obligation on them to attend throughout the entire inquiry. However, if they wish to be able to question a particular witness opposed to them, they will need to be present at the time that evidence is given.

The usual way that the reporter hears evidence from a witness is as follows:

1. Evidence in chief – the witness reads out their precognition that has previously been supplied to the DPEA and all other parties.
2. Cross-examination – the opposing party will have an opportunity to cross examine the evidence put forward by the witness and ask questions to test the robustness of the evidence.
3. Reporter's questions – the reporter then has an opportunity to ask questions of the

witness that have not already been covered in evidence and cross examination, but that they require in order to determine the case.

4. Re-examination – the witness may be asked some further questions by their own advocate or solicitor and is intended to deal with matters raised during cross-examination. No new matters should be introduced at this stage.

If any person entitled to appear at the inquiry session fails to do so, the reporter may proceed with the inquiry session as his/her discretion.

Before the end of the inquiry session, the reporter will decide whether there is to be an inspection of the site, specific to the matters which are the subject of the inquiry session, accompanied by the parties involved in the inquiry session. This may be in addition to an earlier inspection of the site made by the reporter.

It is normally expected that the Inquiry Session rules and procedure set out here will be applied by analogy to non-appeal casework, tailored to reflect the particular circumstances of the case and where no other procedure rules apply. Compulsory Purchase Order inquiries have procedural rules which can be adopted for other Order inquiries.

An example of the different stages of an inquiry session is available at this link <https://dpea.public-i.tv/core/portal/webcasts> in the DPEA Guide to Appeals Videos section. Full length webcasts of recent inquiries are also available on the page.

The case officer is responsible for making the arrangements for the procedures listed above. Where the reporter requires further information from you or wishes you to attend a site inspection, hearing or inquiry, you will be sent a letter detailing the exact nature of the request and the required timescales.

If no information is requested from you, this does not mean that your concerns are being treated differently or with any less weight. It simply means that the reporter has fully understood your position and does not need to ask you anything else.

When all procedures have completed, the reporter may request closing submissions, which is a written summary of a party's case, and will provide a timescale for doing so. Normally the requirement for closing submissions will have been discussed at a hearing or inquiry session. Closing submissions should be based on the evidence brought out during hearing or inquiry sessions. New matters should not be introduced at the stage of closing submissions. The appellant will normally be allowed to make their closing submission last.

23. What will happen when a claim for award of expenses is lodged?

You can submit an expenses claim against a person or organisation if you think they have acted unreasonably and caused you unnecessary expense.

After getting an expenses claim, the person or organisation who the claim is made against (the 'opposing party') will be given 14 days to provide any comments.

Claims for award of expenses may only be made if another party to the appeal has acted unreasonably, and this caused the party making the claim to incur unnecessary expense, either because it should not have been necessary for the case to come before Scottish Ministers or because of the manner in which the party against whom the claim is made has conducted their part of the proceedings.

This list is not exhaustive, but some examples of unreasonable behaviour could include:

- The planning authority's failure to give complete, precise and relevant reasons for the refusal of an application;
- Pursuing an appeal in circumstances where there is no reasonable likelihood of success, which may have been made clear from a decision on a previous appeal in respect of the same site/same development, and there has been no material change in circumstances;
- Introducing a new matter at a late stage in the proceedings;
- Refusing to supply adequate grounds of appeal or supplying relevant information which unnecessarily prolongs proceedings;
- Refusing to co-operate in setting a date for a hearing or inquiry session or accompanied site inspection;
- Failing to comply with the requirements of statutory procedural rules by, for example, not providing a statement when required to do so, or failing to submit written submissions within the prescribed time limits; or
- Failure to comply with procedural requirements to the serious prejudice of another party and leading to the adjournment of any hearing or inquiry sessions.

Expenses claims are separate to the appeal. If you are awarded expenses this does not necessarily influence the decision made on the appeal.

You can find more information on expenses in this [Planning Circular](#).

24. How will we find out the decision?

After the appeal processes are complete, the reporter will prepare and issue a decision notice. This will spell out the terms of the decision and also the reasons for it. The notice will be sent to the appellant and to the planning authority. Everyone who has participated in the appeal will be told about the decision. The decision notice will also be published on the online case file.

The reporter will either 'allow' or 'dismiss' the appeal.

Allow the appeal This might mean granting a consent (for example, giving planning permission), contrary to the planning authority's earlier decision. Or it could mean that some or all of the grounds of appeal against an enforcement notice have been successful. An appeal can also be 'Allowed in part' where some parts of the proposal have been allowed, but others dismissed.

Dismiss the appeal This means that the appeal has not been successful. So if the appeal was made against a planning authority's decision to refuse planning permission, the reporter will also have refused permission. And if the appeal was against an enforcement (or similar) notice, then that notice must now be adhered to.

Where Scottish Ministers have 'called in' or 'recalled' a decision for their own determination or where cases have been referred to DPEA by other Scottish Government departments, the reporter will submit their report of recommendations to Scottish Ministers. Ministers do not have to agree with the reporter's recommendation. The report is not published at this time. Once the Ministers make their decision, they will inform the parties involved in the case and both the report and decision will be published to the DPEA website at the same time.

25. How do I challenge Reporters' and Scottish Ministers' decisions?

We have provided guidance on how to challenge Reporters' and Scottish Ministers' decisions to the Court of Session - <https://www.gov.scot/publications/challenging-planning-decisions-guidance/>

26. How will my personal data be processed?

DPEA will process personal data in accordance with the GDPR. To find out more about what information is collected, how the information is used and managed please read the DPEA's privacy notice - <https://www.gov.scot/publications/planning-and-environmental-appeals-division-privacy-notice/>

27. Can we help?

If you feel that anything is unclear in the information we have given you, please get in touch with us. We are committed to providing a high quality service. One of the ways we can improve is by listening and responding to you. We welcome your comments on this guidance, or indeed any aspect of our service.

28. How do I contact the DPEA?

DPEA inbox – DPEA@gov.scot

Twitter: [@DPEAScotland](https://twitter.com/DPEAScotland)

DPEA general enquiries line – 0300 244 6668

Postal Address

Planning and Environmental Appeals Division

Ground Floor

Hadrian House

Callendar Business Park

Callendar Road

Falkirk

FK1 1XR

29. Where can I find out more?

Scottish Government Websites:

[Planning and Environmental Appeals Division](#)

[Energy Consents Unit](#)

[Planning and Architecture Division](#)

[Online Planning Case Files](#)

[Planning Information and Publications](#)

[A Guide to the Planning System in Scotland](#)

[Planning Advice Note 3/2010 - Community Engagement](#)

[ePlanning - For Online Submission of Appeals](#)

[Submitting Documents Electronically](#)



Your Planning authority:

Your planning authority should be the starting point for general planning enquiries. It can:

- Tell you whether you need planning permission and how to apply
- Answer questions about how it deals with individual planning applications
- Give you advice about enforcement and local review procedures; and
- Give you information about the contents of local development plans, strategic development plans and supplementary guidance

Contact your local planning authority for more details.

PAS (Planning Aid for Scotland)

An independent charity which helps people engage in the planning system. It provides free, impartial advice on planning for individuals and community groups.

Telephone: 0300 323 7602

E-mail: office@pas.org.uk Web: <https://www.pas.org.uk/>

Royal Town Planning Institute

The professional body for planners in Scotland.

RTPI Scotland

18 Atholl Crescent

Edinburgh

EH3 8HQ

Telephone: 0370 774 9494

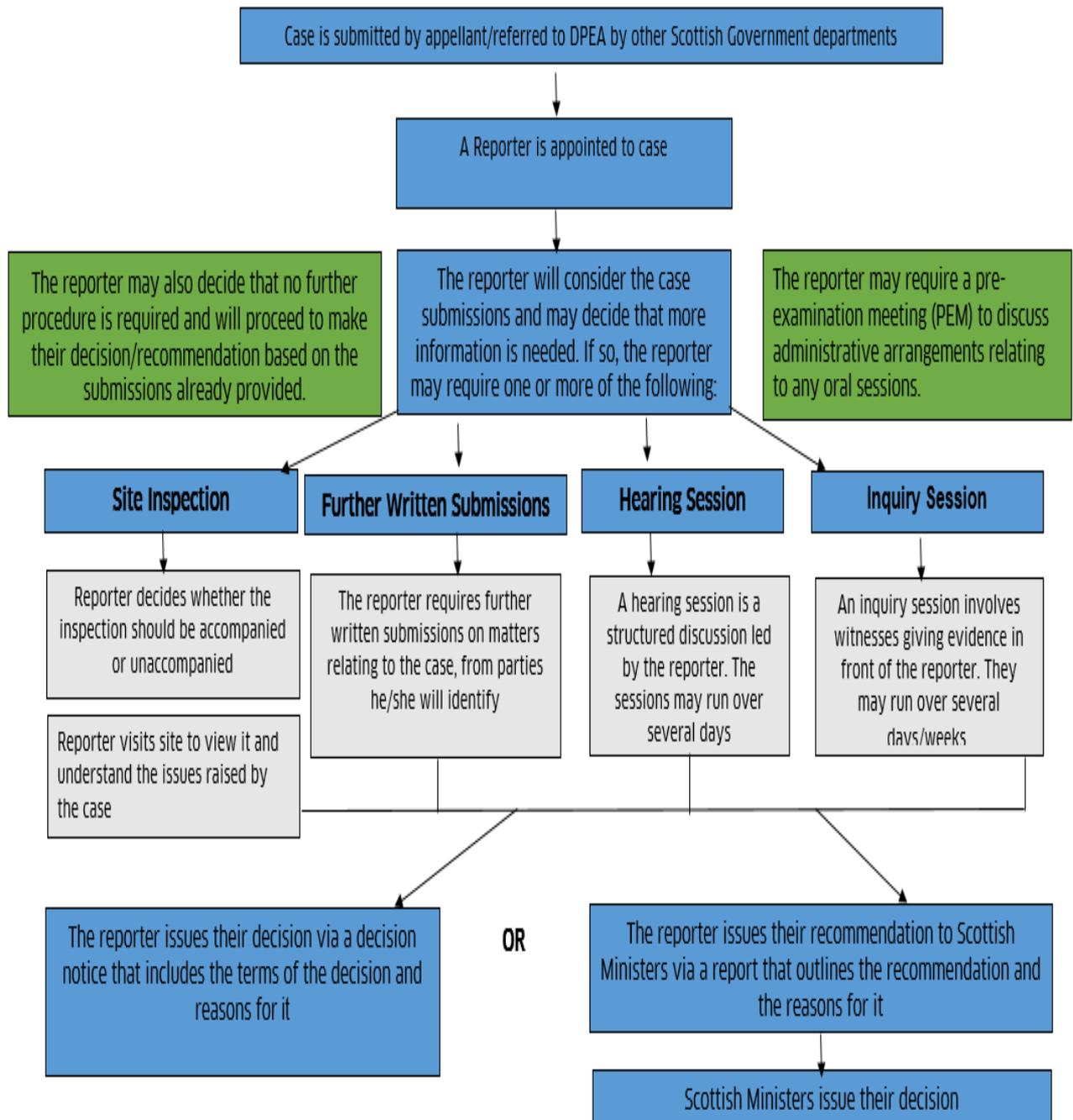
E-mail: scotland@rtpi.org.uk

Web: <https://www.rtpi.org.uk/scotland>



Annex 1 - Flowchart

DPEA Case Process Chart



Annex 2 - Frequently Asked Questions

Q. Why does the right to appeal exist?

A. The requirement for planning permission means that people can be prevented from carrying out works to land which would otherwise be legitimate, because the wider public interest would be affected by the impacts on amenity or the environment. It is considered appropriate that such intervention in the rights of individuals or other organisations should have a right to challenge, on planning grounds, the initial decision on planning permission. In recent years, the right of appeal to Scottish Ministers for applications for local development delegated to planning officers for decision has been replaced by a right to review of the decision by a local review body.

Q. Can I submit an appeal as an interested party against a decision by a planning authority?

A. The Town and Country Planning (Scotland) Act 1997 sets out the legal basis for the right of appeal, which rests only with the person or organisation who either: made the application to the planning authority, seeking a consent OR are covered by that notice. There is no right of appeal for anyone else to challenge a planning authority's decision or action. There are, however, opportunities for anyone to get involved and make their views known at the various stages of the process, prior to a decision. The reporter will consider all the evidence submitted by all parties before reaching a decision.

Q. Why has the appeal I am interested in not been recalled by Scottish Ministers?

A. Scottish Ministers can intervene at any point before a final decision is issued on a planning appeal. This is done by directing that the appeal, which would otherwise fall to be determined by an appointed person (the reporter), should instead be determined by Ministers. The issue of a recall direction is, therefore, a matter for Ministers' discretion, the power used sparingly and normally only in circumstances where a proposal raises issues of genuine national interest.

Q. I wrote to the Planning Minister about this appeal, but received a response from DPEA. How can I contact the Planning Minister directly?

Ministers receive a voluminous amount of correspondence on a daily basis, it is impossible for them to respond to all correspondence personally, therefore a system is in place whereby officials from the appropriate division respond on their behalf. Generally speaking, Ministers will respond directly to correspondence received from their own constituents, from MPs and from MSPs.

Q. Can I make a complaint about the planning authority's conduct to DPEA?

A. Reporters are appointed to consider the planning merits of the appeal only, not the conduct of the planning authority. Local authorities are independent corporate bodies, whose powers and duties are set out in statute. They are free to exercise discretion within the law so far as carrying out

their planning functions are concerned. The powers of the Scottish Ministers to investigate their actions or to intervene in their day-to-day activities are similarly expressed in, and limited, by statute. The Scottish Government puts in place the relevant planning legislation and policies and publishes guidance and advice to local authorities but it does not oversee an authority's processing of applications or undertake a policing role and has no power to investigate an authority's handling of an application or to question or influence the decisions it takes in relation to that application.

It is open to anyone to make an approach to the Planning Authority's Chief Executive and raise his or her concerns about the actions or decisions of planning authority officers. Additionally if an individual feels that he or she has personally suffered an injustice as a result of maladministration, and if no other remedy is available, a complaint can be made to the Scottish Public Services Ombudsman. The Ombudsman cannot consider complaints about discretionary decisions, but can look into the administrative processes involved in reaching that decision. Responsibility for deciding whether or not to investigate a complaint rests wholly with the Ombudsman who is entirely independent from the Scottish Government. Before taking on a case the Ombudsman would expect the local authority's complaints process to have been exhausted.

Q. How can I lodge a complaint about DPEA's handling of a case?

A. Details on how to lodge a complaint about DPEA can be found [here](#).

Q. On what basis does a reporter make a decision on a planning appeal?

A. The reporter is required to make his/her decision in accordance with the development plan unless material considerations indicate otherwise. Further information on what constitutes material considerations can be found [here](#)

Q. Can the decision on a planning appeal be reviewed if a mistake has happened?

A. We cannot reconsider a reporter's decision or his/her reasoning in reaching the decision. The decision can only be changed following a successful Court of Session challenge. Any party aggrieved by the reporter's decision can appeal to the Court of Session. This appeal can only be made on a point of law and you may wish to seek professional advice before taking any action in this regard.

Q. How can an appeal succeed if local residents are all against it?

A. Local views are important but reporters have to determine an appeal on the basis of all the evidence submitted and on the planning merits of the case.

A common misconception about representations is that the volume of these impacts on the decision made by the reporter – this is not necessarily the case. The submitted representations ought to raise material planning considerations that can be taken into account by the reporter in balancing their decision – matters such as strength of public feeling or loss of a view from existing properties are not material planning considerations.

Q. How can a reporter know about local feeling or issues if they do not live in the area?

A. Appointing reporters who do not live locally ensures that they have no personal involvement in any local issues or any ties with the planning authority or its policies. However reporters will be aware of local views from the representations people have made on the case and will, in the vast majority of cases, have carried out an inspection of the appeal site.

Q. Can I speak directly to the reporter?

A. All correspondence and submissions relating to an appeal/application must be directed to the case officer for that case, who will then pass these to the reporter for their consideration. The case officer's name and contact information will be available to view on the DPEA website page for the relevant case and will also be found on correspondence issued by DPEA relating to the case. This procedure ensures that all parties can be confident that other parties cannot submit evidence direct to the reporter and that all evidence is shared in a fair and transparent manner.

Q. When will the reporter's decision be issued/report submitted to Scottish Ministers?

A. Timescales for issue of the reporter's decision/submission of report to Scottish Ministers vary depending on the complexity of the case and the method of determination selected by the reporter. See the relevant section above for more information on these timescales. The reporter will endeavour to meet these timescales although other factors, such as the complexity of the case, may impact the reporter's ability to do so.

Q. I submitted representations on this case, why did the reporter not mention this in his decision notice/report to Scottish Ministers?

A. Reporters must give reasons for their decision and take into account all views submitted but it is not practicable or necessary to list every bit of evidence.

Q. Who is responsible for ensuring compliance with conditions attached to an award of planning permission by a reporter?

A. Once a reporter has issued a decision he/she has no further jurisdiction in the case. Responsibility for ensuring compliance with any conditions rests with the local planning authority.

Q. What is the difference between a hearing and an inquiry?

A. A hearing takes the form of a round-table discussion that is chaired by the reporter. No formal cross-examination is permitted but questions can be asked of other parties through the reporter. An inquiry is a more formal event, where witnesses give their evidence in front of the reporter and can be cross-examined by other parties, similar to what you might see in the law courts.

Q. I want to participate at a hearing session, do I need a professional representative or consultant or may I represent myself?

A. You can represent yourself at the hearing session or you can have a representative to help you. The procedure is fairly informal and the reporter will ensure that you know what is happening. There is no requirement for you to be professionally represented at a hearing session. If you do decide to enlist the help of a representative you should provide advance notice of the person you wish to speak on your behalf.

Q. I want to participate at an inquiry session, do I need a professional representative or consultant or may I represent myself?

You can represent yourself at the inquiry session or you can have a representative to help you. An inquiry is a more formal event than a hearing session, where witnesses give their evidence in front of the reporter and can be cross-examined by other parties, similar to what you might see in the law courts. There is no requirement for you to be professionally represented at an inquiry session. The reporter will ensure any unrepresented party is not unfairly disadvantaged. If you do decide to enlist the help of a representative you should provide advance notice of the person you wish to speak on your behalf.

Q. How are the discussions at hearings and inquiries recorded?

A. No minutes of the sessions are taken, however, the reporter will make his or her informal notes. The sessions may be webcast and made available to view live or at a later date on our website. Webcasting is used as a means of enhancing openness and transparency of proceedings.

Annex 3 - Glossary of Terms

Agent – A person or business appointed to lodge an appeal or make a representation on behalf of another person or organisation

Appellant – The person or organisation making an appeal to the Scottish Ministers.

Applicant – The person or organisation making an application that is subject to examination by Scottish Ministers

Call-In – where Scottish Ministers direct that an application being considered by the planning authority should be referred to them for determination.

Case Officer - named official at DPEA who will be the first point of contact on the case and carry out all administration.

Circular – A government publication setting out procedural matters and guidance.

Closing Submissions – A summary of a party’s case which may be requested by the reporter when all procedures in a case are concluded. The submissions should address all the topics upon which a party wishes to make representations including any submissions on the evidence heard at any hearing or inquiry sessions.

Delegated – A power conferred to reporters by Scottish Ministers, so that the reporter may take decisions on specified matters, or undertake an examination of a development plan on their behalf.

Documents – Documents which are submitted as evidence in relation to an oral session (hearing or inquiry), shared with all parties and published on DPEA website.

Hearing - A round-table discussion led by the reporter and undertaken in a structured way, but without the formality of an inquiry

Interested party – This is the term given to parties who made representation (either in support or objection) to the authority at the time the application was before them for consideration, which were not subsequently withdrawn by that party. The party can be an individual, a community body, residents association, or a petition organiser.

Inquiry – A more formal event than a hearing, involving the cross-examination of witnesses. Inquiries are presided over by a reporter, and may be held to discuss particularly complex planning matters

Local Development Plan (LDP) – A document which sets out the local authority’s policies and proposals for the development and use of land in their area. It identifies where

development should and shouldn't happen. Local development plans allocates sites, either for new development, such as housing or sites to be protected.

Strategic Development plans deal with region wide issues that cross boundaries of planning authority areas such as scale of housing and transport and water and connections needed.

Local Review Body – The local review body (LRB) is made up of a group of three or more elected members of the planning authority. Requests for a review should be made to the LRB, rather than to Scottish Ministers, in cases where an application for a 'local development' (as specified by a planning authority's 'scheme of delegation') has been decided by a planning authority official. The decision notice for all planning applications should specify whether the right of appeal lies with the LRB or with Scottish Ministers.

Objection - a term sometimes used to describe a comment against a particular policy or proposal. 'Representation' is a more correct term.

Planning Authority – The public authority (generally the planning authority or national park authority) whose duty it is to carry out specific planning functions for a particular area including preparing local plans, determining planning applications and carrying out enforcement against unauthorised development.

Planning Authority Appeal Response Form (PARF) – A form to be completed by the planning authority when responding to an appeal, containing information relevant to the reporter's determination of the appeal.

Planning and Environmental Appeals Division (DPEA) – Part of the Scottish Government which deals with a wide range of appeals from decisions of planning or local authorities on behalf of Scottish Ministers.

Planning policies – contained in development plans or in supplementary planning guidance, these set out criteria against which planning applications are determined.

Precognition – A written statement of evidence to be read out by a witness to an inquiry.

Recall - where Scottish Ministers direct that an appeal being considered by DPEA should be referred to them for determination.

Report - A report issued by a reporter regarding the planning issues debated at the examination of a case. The recommendations contained in reports are considered by the Scottish Ministers in making their decision.

Reporter – The person appointed by Scottish Ministers to consider and in most cases, decide the appeal.

Representee – a person who has made a representation to a case.

Representation – a formal statement/letter or proforma which communicates an opinion or registers an objection or note of support regarding a case.

Scheme of Delegation – details the circumstances under which decisions on planning applications are made by planning authorities, by listing whether a decision is the responsibility of a planning officer or of a committee comprising of elected councillors. Schemes of delegations differ from planning authority to planning authority and can usually be found on planning authority websites.

Section 75 Agreement – this is a legally binding obligation, usually agreed between the applicant/appellant and the planning authority, but can also be a unilateral obligation by the applicant/appellant, under Section 75 of The Town and Country Planning (Scotland) Act 1997. The obligation covers on-site provision of certain items and financial contributions that the applicant/appellant must pay to the planning authority. These can be for a wide range of things, including, but not limited to, education provision, cemetery provision, public art provision, open spaces and play areas. The agreement must be registered with the Land Register of Scotland. Where necessary, the reporter may issue a Notice of Intention, requesting that an obligation is agreed and registered before they will issue permission or consent for a development.

Site inspection - A visit to an area or areas of land by a reporter considering a case. Such visits may be accompanied or unaccompanied.

Statement – A statement which may be lodged by every party who intends to participate in an oral session. It should provide full particulars of the case which that party intends to put forward, set out a list of documents which are to be referred to, and list the witnesses who will give evidence at any inquiry sessions.

Statutory - Required by law (statute), usually through an Act of Parliament.

Supplementary guidance – Part of the development plan prepared and adopted by the planning authority to provide further information or detail on the policies or proposals that are in the local or strategic development plan, for example a master-plan for a site. Supplementary Guidance may cover a range of Issues, both thematic and site specific. Supplementary guidance is not subject to examination by a reporter.