



Each case is unique and must be considered on its merits. It is for the person appointed to determine the case to satisfy him/herself that the application of the practice contained in this note is appropriate to the circumstances of the case. A reporter who intends to depart from the guidance should advise his/her SGL so issues emerging can be considered for future case work.

Guidance note:	<b>Applying timescales for appeal submissions</b>
Relating to:	<p>This note relates to cases progressed under the Town and Country Planning (Appeals) (Scotland) Regulations 2013. These are:</p> <ul style="list-style-type: none"> <li><b>Planning Permission appeals (PPA)</b></li> <li><b>Enforcement Notice appeals (ENA)</b></li> <li><b>Certificate of Lawful Use or Development appeals (CLUD)</b></li> <li><b>Tree Works Consent Appeals (TWCA)</b></li> <li><b>Tree Replacement Enforcement Notice appeals (TENA)</b></li> <li><b>Amenity Notice appeals (ANA)</b></li> <li><b>Planning Obligation appeals (POA)</b></li> <li><b>Good Neighbour Agreement appeals (GNAA)</b></li> <li><b>Listed Building appeals (LBA)</b></li> <li><b>Conservation Area Consent appeals (CAC)</b></li> <li><b>Listed Building Enforcement appeals (LBE)</b></li> <li><b>Advertisement Consent appeals (ADA)</b></li> <li><b>Advertisement Discontinuance Notice appeals (ADD)</b></li> <li><b>Advertisement Enforcement Notice appeals (ADE)</b></li> </ul>
Background/ legislative and policy framework:	<p>Circular 4/2013: Planning Appeals underlines the Government's determination to remove unnecessary planning delays and speed up decisions on planning applications and appeals. Provision in this regard is made in the Town and Country Planning (Appeals) (Scotland) Regulations 2013, which set out the framework and timescales that now apply. Reporters are expected to determine appeal cases as soon as practicable after the statutory exchanges have been completed.</p> <p>These Appeals Regulations are designed to encourage front loading of the appeal system. They do this by requiring the appellant and the planning authority to give full details of their case and supporting documents at an early stage of proceedings and by giving those persons defined as interested parties an opportunity to comment on the appeal. Thereafter, it is for the appointed person to decide what further information (if any) is necessary to determine the appeal and by what procedure that information should be obtained. The time limits for submitting representations and documents are clearly set out in the Appeals Regulations and in the Hearing and Inquiry Session Rules. Our objective is to comply with those Regulations and Rules. As a general principle, late or unsolicited information or documentation</p>

	<p>should only be accepted where there is a good reason for it not having been submitted at the appropriate time and where the information or documentation would be material to the decision.</p>
<p>DPEA practice and process:</p>	<p>This Guidance Note sets out our practice in dealing with cases in which the appellant, the planning authority, or interested parties fail to comply with the regulations or rules by submitting documents late or by seeking to make further representations other than as provided for. It also deals with cases in which third parties, other than those defined as interested parties, seek to make representations or to submit documents. As always, this is general guidance and each case must be looked at on its own merits.</p> <p>Reporters should bear in mind section 47A(1) of the Town and Country Planning (Scotland) Act 1997. This provides that, in appeals under section 47(1), a party to proceedings is not to raise any matter that was not before the planning authority at the time the decision appealed against was made unless the party can demonstrate that the matter could not have been raised before that time, or that the fact that it was not raised before that time was a consequence of exceptional circumstances.</p> <p>Parties seeking to raise new matters should be asked to explain why it had not been possible to raise the matter earlier, when the planning authority was dealing with the planning application. The reporter should then consider whether the requirements of section 47A(1) are met and whether, having regard to section 47A(2), the new matter is of such a nature and weight that it should be permitted to be considered in the appeal.</p> <p><b>Submissions by interested parties and other third parties</b>  “Interested party” is defined in regulation 2 of the 2013 Appeals Regulations and express provision is made in the regulations for an interested party to comment on the appeal. Third parties who do not fall within this category might seek to submit representations on the appeal. On receiving a representation from a third party, DPEA may not be aware of whether the person is an interested party or not as this information is contained in the PARF which may not have been submitted when the representation is received. For this reason, representations made by all third parties will be accepted, whether or not they are defined as interested parties, provided these are received within 28 days of the appeal being lodged. The 28 day period is based on the requirement for planning authorities to notify interested parties of the appeal within 14 days following notification of the appeal (Regulation 5(1)) and the period of 14 days which interested parties are given to comment on the appeal (Regulation 5(5)). In cases where there has been a delay by the planning authority in notifying interested parties of the appeal, DPEA will accept submissions from interested parties</p>

and third parties up to 14 days following notification of the appeal.

If a representation is received from an interested party or another third party after that date it will be returned to the sender. The party will be advised that it is out of time and that it will not be admitted unless the sender can provide a satisfactory explanation within 7 days as to why it was not submitted in accordance with the regulations and why, exceptionally, it should now be taken into account. The reporter will be informed that a late representation has been received and of the deadline for resubmission. If the representation is resubmitted with an explanation for the delay, these documents will be referred to the reporter who will decide whether the representation should be accepted. As a general rule a late submission will only be accepted if: (1) there is a satisfactory explanation why it was not lodged timeously and; (2) the representation would be material to the decision and; (3) the reporter has not already drafted their decision on the matter; and (4) the acceptance of the late representation would not prejudice other parties or cause undue delay in determining the appeal.

#### **Late submission of the PARF**

Regulation 4(2) provides that the planning authority must respond to the appeal not later than 21 days after receiving notification of the appeal. Nevertheless, PARFs are from time to time submitted more than 21 days after notification of the appeal, or they are submitted, but without all the supporting documentation specified in the regulations. DPEA caseworkers issue reminders when the PARF or supporting documents are late and press for early submission of any missing documents. It will rarely be possible to determine the appeal without the planning authority's response, as this contains basic information about the case which the reporter requires in order to determine the appeal, including the responses from statutory consultees and representations made by interested parties. However, this should be considered on a case by case basis. Planning authorities may need to be reminded that failing to comply with appeal timescales can be a ground for a claim for expenses (Circular 6/1990).

#### **Appellant's comments on the PARF**

Regulation 4(3) provides the appellant with the opportunity to comment on the planning authority's response on any matters not raised in the decision notice. Such comments are to be made within 14 days of receipt of the planning authority's response. If comments are received from an appellant after that date they will be returned. The appellant will be advised that they are out of time and that they will not be admitted unless the sender can provide a satisfactory explanation within 7 days as to why they were not submitted in accordance with the regulations and why, exceptionally, they should now be taken into account. The reporter will be informed that late comments have been

received and of the deadline for resubmission. If the comments are resubmitted with an explanation for the delay, these documents will be referred to the reporter who will decide whether the comments should be accepted. As a general rule the reporter will only accept the late submission if: (1) there is a satisfactory explanation why it was not lodged timeously and; (2) the comments would be material to the decision and; (3) the reporter has not already drafted his decision on the matter; and (4) the acceptance of the late comments would not prejudice other parties or cause undue delay in determining the appeal.

**Comments by the appellant and the planning authority on representations made by interested parties or third parties**

Regulation 5(5) requires Scottish Ministers to send copies of any representations made by an interested party to the appellant and to the planning authority and to give them not less than 14 days to make comments. If those comments are not received within the period specified for reply, they will be returned to the appellant or the planning authority who will be advised that they are out of time and that they will not be admitted unless the sender can provide a satisfactory explanation within 7 days as to why they were not submitted in accordance with the regulations and why, exceptionally, they should now be taken into account. The reporter will be informed that late comments have been received and of the deadline for resubmission. If the comments are resubmitted with an explanation for the delay, these documents will be referred to the reporter who will decide whether the comments should be accepted. As a general rule the reporter will only accept the late submission if: (1) there is a satisfactory explanation why it was not lodged timeously and; (2) the comments would be material to the decision and; (3) the reporter has not already drafted their decision on the matter and; (4) the acceptance of the late comments would not prejudice other parties or cause undue delay in determining the appeal. In cases where the PARF is submitted late, an appellant may ask for an extension of time in which to comment on representations made by interested parties or third parties so that a single response can be given to the issues raised in the PARF and in those representations. Such a request should generally be granted.

**Further representations or documentation**

After the initial exchange of representations and documentation provided for in the regulations the appellant, planning authority, interested parties or other third parties may seek to submit further information. Regulation 3(5) provides that an appellant may raise matters and submit further documents, materials and evidence only in accordance with and to the extent permitted by regulations 4, 5 and 11 the Hearing Session Rules and the Inquiry Session Rules.

	<p>Where additional representations or documentation are submitted after the exchange provided for in the Regulations they will be returned to the sender who will be advised that they are out of time and that they will not be admitted unless the sender can provide a satisfactory explanation within 7 days as to why they were not submitted in accordance with the regulations and why, exceptionally, they should now be taken into account. The reporter will be informed that late representations or documentation have been received and of the deadline for resubmission. If the representations or documentation are resubmitted with an explanation for the delay, they will be referred to the reporter who will decide whether they should be accepted. As a general rule the reporter will only accept the late submission if: (1) there is a satisfactory explanation why it was not lodged timeously and; (2) the representations or documentation would be material to the decision and; (3) the reporter has not already drafted their decision on the matter and; (4) the acceptance of the late representations or documentation would not prejudice other parties or cause undue delay in determining the appeal.</p>
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