

DPEA Guidance Note 8

Further procedure

Each case is unique and must be considered on its merits. It is for the person appointed to determine the case to satisfy themselves 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 the Duty Principal Reporter so issues emerging can be considered for future case work.

Guidance for:	Reporters
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"> Planning Permission appeals (PPA) Enforcement Notice appeals (ENA) Certificate of Lawful Use or Development appeals (CLUD) Tree Works Consent appeals (TWCA) Tree Replacement Enforcement Notice appeals (TENA) Amenity Notice appeals (ANA) Planning Obligation Appeals (POA) Good Neighbour Agreement Appeals (GNAA) Listed Building Appeals (LBA) Conservation Area Consent Appeals (CAC) Listed Building Enforcement Appeals (LBE) Advertisement Consent Appeals (ADA) Advertisement Discontinuance Notice Appeals (ADD) Advertisement Enforcement Notice (ADE) Applications for urgent Crown development
Background/ legislative and policy framework:	<p>Circular 4/2013 sets out the objectives of the reformed planning appeals process: to ensure that examination procedures are proportionate and efficient; that the appeal process is transparent and fair; and that decisions are both robust and based upon a review of the proposals that were originally before the planning authority.</p> <p>Part 3 of The Town and Country Planning (Appeals) (Scotland) Regulations 2013 deals with the procedures for determining an appeal. These allow a reporter to determine a case with no further procedure (Regulation 7, see Guidance Note 7), or by one or a combination of the following additional procedures:</p> <ul style="list-style-type: none"> (a) by means of written submissions; (b) by the holding of one or more hearing sessions; (c) by the holding of one or more inquiry sessions; (d) by means of an inspection of the land to which the appeal

	<p>relates.</p> <p>The appellant and the planning authority both have the opportunity to make representations about the procedure to be adopted and the reporter will give careful consideration to these. However, the principle underlying the regulations is that additional procedures are driven by the need for the reporter to obtain further information in order to determine the appeal.</p> <p>If the reporter decides that further procedure, other than a site inspection, is necessary, he/she must issue a procedure notice specifying the matters on which he/she is seeking further information or representations. The notice is to confirm the method by which that information is to be obtained. Any subsequent submission lodged, or any oral examination conducted, is to be limited to the specified matters only.</p> <p>To ensure that any further procedure is limited to the specified matters, care must be taken in drafting the procedure notice to ensure that it is clear and precise. It must spell out the specified matters, who is to be involved, and what the procedure will be.</p>
<p>DPEA practice:</p>	<p>In the interests of efficiency, a decision should be made on an appeal as soon as the reporter has sufficient information to do so (after the statutory round of submissions set by regulations 3-5).</p> <p><u><i>Further written submissions</i></u></p> <p>Further written submissions will not routinely be invited as the statement of appeal and the planning authority's response, together with any representations made by interested parties, should set out their cases in detail. Additional written representations or information might be needed where:</p> <ul style="list-style-type: none"> • a relevant issue has been only partially or incompletely addressed and clarification is required; • particular arguments/reasons for refusal have not been sufficiently well expressed, and so a clearer explanation is needed to aid the reporter's understanding; • improved visual information (e.g. photomontages) is needed to assist in the conduct of a site inspection; • a key agency has not submitted a response and the reporter considers this necessary; • it should be noted that a document referred to, but not provided, should be requested by simple email (not a procedure notice) should the reporter wish to have that before them. <p>A notice requesting further written representations or information should be sent to both the appellant and the planning authority. The reporter can also request further written information from any other body or person. The notice must set out the matters on which information is sought, the date by which they should be submitted and also advise which other parties have been asked to provide information. All parties sent a procedure notice will be asked to copy responses to each other at the point they send a response to</p>

the DPEA.

The period for submission of information can vary but only in exceptional circumstances should it be less than 14 days from the date of the request. Following receipt of information requested in a procedure notice, the other invited parties have 14 days to submit comments to the reporter.

The reporter should carefully consider whether an exchange of further written submissions or a short, focussed and virtual hearing session is likely to be most appropriate and efficient.

Hearing sessions

One or more hearing sessions may be required where:

- the reporter needs to enhance his/her 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;
- 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 /him/her to reach his/her own opinion.

Inquiry sessions

One or more inquiry sessions might be appropriate 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;
- 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.

The choice between a hearing or inquiry session should be based on the best/most efficient method of obtaining the evidence and information required. There is no maximum limit on how many parties can be involved in a hearing, or how long the procedure can last, but clearly any hearing must be manageable. As with inquiries more than one reporter can be appointed to conduct a hearing, or a reporter can be supported at an oral process by an administrator. The reporter might also wish to consider whether it would be useful to fix a number of separate topic based hearing/inquiry sessions to enable the examination to take place in a more structured fashion.

Specified matters

The specified matters that the reporter seeks further information on must be clearly set out in the procedure notice. The notice relating

	<p>to a hearing or inquiry session must be sent to the appellant, the planning authority, any interested party who made representations on the specified matter(s) and who has opted into further procedure, and any body or person who the reporter wishes to hear from. The reporter is responsible for identifying the interested parties who made representations on the specified matters although, where there are a large number of parties, the administration team may be able to offer assistance with this task.</p> <p>An interested party who receives a procedure notice must advise the reporter of their intention to attend the hearing/ inquiry session within 14 days of the date of the notice.</p> <p><u>Statements</u> The regulations allow the reporter to require parties to submit a hearing/inquiry statement in advance of an oral process, and precognitions for an inquiry session. Hearing and inquiry statements should give full particulars of the case relating to the specified matters, a list of documents on which the party will rely, and a list of people who will speak at the hearing session or witnesses who will give evidence at an inquiry session.</p> <p><u>Pre-examination meetings</u> A pre-examination meeting (PEM) may be held to consider the manner by which the appeal, or any stage of it, is to be conducted efficiently and expeditiously. The reporter should indicate in advance of the meeting the nature of the specified matters in respect of which, in his or her opinion, further procedure should take place.</p> <p>The note of the PEM should list the specified matters, procedures by which they are to be examined, and the timetable for the appeal, so that parties and members of the public can see clearly how the appeal is to be handled.</p>
<p>Process:</p>	<ul style="list-style-type: none"> • Reporter reviews the papers submitted with the appeal and Planning Authority Response Form and identifies any matters where he/she requires further information. • The reporter decides on the most appropriate procedure to gather the necessary information for each specified matter. • The reporter decides which parties are to be invited to submit further evidence (see “specified matters” above). • Reporter completes form APP/PROC/2 and submits this through the Case management System, CMS. • Procedure notices are drafted by reporter (templates available) and finalised/issued to parties by the case officer. • Where necessary, notice of inquiry session published in local newspaper by case officer (this is not always needed).

Timescales

It is for the reporter to determine the appropriate timescale for response to procedure notices and this will depend on the issues requiring submission of further evidence and the details of the case. The following table provides guidance on the normal **minimum** periods from issuing of notice.

Procedure	Normal minimum time period for submission
Further written information	14 days
Response to further written information	14 days (cannot be reduced; set by regulation 11)
Notice of participation in oral process	14 days (cannot be reduced; set by rule 1 of Hearing/Inquiry Session Rules)
A hearing statement	14 days
An inquiry statement	14 days
A hearing session	28 days
An inquiry session	28 days
A precognition	2 weeks before the inquiry session