Planning and Environmental appeals Division stakeholders’ meeting 8 June 2016

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| Lindsey Nicoll | Chief reporter |
| Karen Heywood | Assistant chief reporter |
| Scott Ferrie | Assistant chief reporter |
| David Henderson | Head of performance and administration |
| Mandy McComiskie | Section manager |
| Liz Kerr | Specialised caseworker |
| Morag Smith | Specialised caseworker development plans |
| Tammy Adams | Homes for Scotland |
| Hugh Crawford | Royal Incorporation of Architects in Scotland |
| Stephanie Clark | Scottish Renewables |
| Ian Dryden | Heads of Planning Scotland |
| Richard Henderson | Edinburgh South West Communities Forum |
| Graham Lang | Scotland Against Spin |
| Alastair McKie | The Law Society for Scotland |
| David Middleton | Sustainable Communities (Scotland) |
| Maurice O'Carroll | Scottish Planning, Local Government and Environmental Law Bar Group |
| Euan Pearson | Royal Institution of Chartered Surveyors  |
| Aedan Smith | RSPB and Scottish Environment Link |
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**Welcome and introductions**

Lindsey welcomed everyone to the 12th meeting of the DPEA stakeholder Group.

Apologies had been received form from Alan Farquhar, Penny Uprichard and David Wood.

Lindsey Nicoll welcomed everyone to the meeting and introduced Mandy McComiskie, Liz Kerr and Morag Smith who work in the DPEA Admin Team.

**Matters arising from the last meeting**

No matters were raised.

**DPEA Update**

Lindsey Nicoll provided an update on performance and cases received by DPEA over the course of the last year. She noted that whilst there had been a slight increase in cases over the course of the year, this did not paint the full picture as the type of appeal received was more likely to be high profile or controversial.

Lindsey stated that housing proposals accounted for 36% of planning appeals received. She confirmed that housing statistics are now on DPEA’s web site detailing cases in progress and decisions made. A further 26 % of planning appeals involve onshore wind energy cases. The last year has also seen an increase in appeals involving building alterations/car parks/demolition/hotels and visitor accommodation.

In the course of the year Scottish Ministers have decided to recall housing cases involving 100 or more units; energy from waste appeals and also other high profile planning proposals.

There are currently 13 Section 36 cases with DPEA, 4 reports had been submitted. Two development plan examinations have been completed in the year and 9 are currently underway, including Edinburgh, Glasgow, Fife, Aberdeen and Aberdeenshire.

In respect of housing cases decided by a reporter Lindsey confirmed that 16 had been allowed, 6 were the subject of a notice of intention and 16 had been dismissed.

With regard to recalled appeals 5 reports had been submitted with a recommendation to grant consent, 4 were granted consent; recommendation to refuse in 3, 3 were refused; and 23 appeals were on-going, 8 of which remained unallocated to a reporter.

29 multiple turbine appeals had been decided of which 13 (45%) had been allowed. 32 single turbine appeals had been decided of which 21 (66%) had been allowed.

Other high profile cases with DPEA include the St James CPO; Park of Kier; Glasgow Queen Street TAWS Order; Royal High School; the Pentland Film Studio; Loudon Castle; Bangour Village Hospital; and North Kelvin Meadow

Lindsey went on to confirm the position with regard to LDPs/SDPs on the go at the moment and also confirmed what plans were anticipated to be submitted by the end of financial year.

Resources

Lindsey confirmed that DPEA continued to have problems allocating larger scale cases to reporters. She set out that salaried reporters currently carry out approximately 50% of DPEA’s work, the rest being picked up by the panel of self-employed reporters.

Lindsey confirmed that DPEA’s indicative DRC budget had been reduced by over 15% in the current year. This has resulted in DPEA having to pay all self-employed reporter costs from our programme budget which has left no ability to invest in IT or other improvements to our service. Even given this transfer of costs, DPEA is likely to overspend on salaries unless we carry vacancies. We would wish to recruit self-employed reporters to the panel but lack of detailed confirmation on budgets has delayed this process.

Impact

Lindsey confirmed that performance against targets was down this year, that there is a backlog of cases emerging and that current resources do not match work that is already in and anticipated.

As a result of this DPEA may need to seek Ministers agreement to extend targets and also get a steer from Ministers on what work should be prioritised.

Independently of the review Scottish Ministers may want us to explore options for charging fees for appeals and other casework on a full or partial cost recovery basis.

Richard Henderson asked whether reductions to the DPEA budget were across the board in the Scottish Government. Lindsey replied that she was not aware of the across the board figures.

Richard Henderson asked what was the ratio of LDP examinations to other work. Lindsey replied that it was approximately 50/50.

Graham Lang asked for confirmation of who Minister is. Lindsey replied confirming that Kevin Stewart is Minister for Housing and Local Government.

Richard Henderson said that in his view budgetary constraints are a restriction on sustainable development/economic growth. Alastair McKie confirmed in his view that this would be the view of the stakeholder group.

David Middleton asked whether extending target dates simply defers problems. Lindsey agreed more resource still required.

Richard Henderson expressed the view that the DPEA budget should be dealt with similarly to other access to justice regimes.

David Middleton stated that in his view it was not necessarily a bad thing to charge for appeals.

Lindsey Nicoll replied saying that discussion on fees for appeals had only just started and whilst it made some sense to scale fees depending on the size of the development DPEA still get a number of smaller scale appeals

Initiatives

DPEA is continuing to develop the case management system; web pages are to be re-designed; shorter form reports with hyperlinks to key documents are now being prepared for Ministers; the core docs library to be extended; and a pilot involving web-casting of hearings and inquiries has commenced

Graham Lang asked why can DPEA not record hearing/inquiry sessions, Karen Heywood responded saying resources not always available. Lindsey Nicoll set out that we will webcast wherever possible. The process does allow further assistance on showing documents on webcast that are being referred to at hearings and inquiries which should make the proceedings easier to follow. She confirmed that that concerns that the process might be disruptive had not materialised.

Aedan Smith confirmed support for this initiative

Alastair McKie asked whether we will now allow the media to film hearing or inquiry proceedings. Karen Heywood replied saying that we would continue to allow them to film before proceedings start but not beyond.

Lindsey Nicoll concluded that whilst we are running the pilot for a year when we will make a decision on whether to continue or not, the benefits are already being seen.

4. Independent Review of Planning.

Lindsey Nicoll set out background to the review. She confirmed that the Scottish Government is still to decide how and what to proceed with. It may be the case that they decide to take further evidence.

Iain Dryden confirmed that HoPS will be looking at the review over the next couple of days. He anticipated looking at the LDP recommendations and others and potentially submitting comments on this.

Tammy Adams said that one of the points raised in written evidence was that there should be early discussions on issues including housing numbers.

Hugh Crawford said that there was still concern about time taken to deal with planning applications. He hoped that the review will also allow better resourcing of planning departments.

He confirmed that concerns remain with LRBs – he felt that those making decisions in some authorities were not competent to deal with these matters. He highlighted inconsistency in the approach of LRB’s across Scotland. He hoped that an alternative to this would be brought forward. He felt that there was a place for mediation at an early stage and would support this principle but asked the question, who would pay for this. Hugh went on to add that in his view it was not a root and branch review that was required but rather polishing of the existing system. He also felt that the report did not take into account all the evidence submitted.

Lindsey Nicoll confirmed that there were no recommendations to restrict the role of the LRB in the review.

Alastair confirmed his interest in hearing reporters views on the LDP process as set out in the review. Lindsey replied saying that the current system does not work terribly well and mentioned housing land supply as an example.

Tammy Adams felt that there was a pressing need for certainty over housing numbers at an early stage. She also thought it important to be thinking about transitional arrangements.

Lindsey set out that other main area for DPEA is contained within para 6:19 read with recommendation 35.

Alastair confirmed that there were big issues in granting planning permission in principle through the LDP process

Graham felt that whilst it was good to have aims, they need to be resourced properly.

David Middleton suggested that the structure of planning reports was not working as they were not always including concerns raised by letters of representation. In Fife steps have been taken to address this issue.

He also noted that a third party right of appeal had been kicked into touch. He highlighted the Madras school development as an example of a planning process that it is not an even process.

He also felt that up front proposals in the review were very similar to aspirations of most recent changes to planning through the last reform which are in his view widely not working.

Lindsey confirmed that in the report the pre-application consultation process as existing is not working.

David put forward that the quality of decision making might improve if there was a third party right of appeal – decision makers would know their decision might be the subject of further scrutiny.

Hugh asked what is the process following the review. Lindsey confirmed that colleagues in PAD have set up teams to look at different topics. They may wish to discuss further with stakeholders. She confirmed that Scottish Ministers would be issuing a response to the review. She also confirmed that it was her understanding that there was a slot in the programme for a planning bill in 2017, although it would likely be 2018 before any changes were implemented form this.

Alasdair McKie was of the view that, if taking all on board, this would mean substantial change and much greater than the 2006 reforms.

Richard Henderson felt that there was a great pressure to deliver something that will protect the position and maintain public confidence in the planning system.

Tammy Adams said that there was scope for community plans to be similar to neighbourhood plans but this would have a possible impact on DPEA resources.

David Middleton asked how do you prevent localism becoming “nimbyism”.

Euan Pearson confirmed that neighbourhood plans have to be in conformity with the development flow. Tammy Adams felt that there was more risk to this if the development plan not up to date.

Alastair confirmed that down south they are looking to move back to Section 75 agreements rather than community levy funds.

Lindsey replied that two cases DPEA is currently handling where a 2nd notice of intention has been issued where parties cannot agree the terms of a section 75 agreement and now reporters are now proceeding by way of a unilateral obligation.

Tammy Adams stated that in her view Section 75 agreements remain an issue throughout Scotland.

**Late representations**

The Group discussed handling of late letters of representation. Lindsey confirmed that issues do arise, specifically with regard to cases where the appeals is against the non-determination where interested parties would want to see the council’s response before making further representations or to make comments on emerging issues.

Alistair felt that if representations contained material considerations then these should be considered by the reporter.

Ian Dryden asked if it would be helpful to publish council PARF response rates.

**Any other business**

In response to a question from Tammy, it was confirmed that information concerning claims for expenses was published in the Annual Review.

Tammy also asked if Scottish Ministers are still going to be recalling 100 housing unit or more housing appeals.

Lindsey confirmed that no decision made yet but new Minister may review.

Scott Ferrie asked if house builders are keen to see continuation of recall.

Tammy confirmed that probably not given the only impact seems to be a delay in decision.

Ian Dryden will pass on information to Lindsey re section 42 cases in East Ayrshire.

Scott confirmed that reporters should be referencing drawing numbers in decision notices when permission is being granted.

It was agreed to roll issues raised by Penny Uprichard on to the next meeting.

Lindsey announced this was her last meeting before her retirement in August.

Alastair noted this and confirmed his and others thanks to Lindsey.

Lindsey confirmed that her successor was not known yet.

Lindsey thanked everyone for their participation.