**Planning and Environmental Appeals Division Stakeholders’ meeting**

**10.00 a.m. 02 November 2021**

**Note of meeting - summary**

Scott Ferrie DPEA

Allison Coard DPEA

David Henderson DPEA

Diane Sinclair DPEA

Robbie Calvert RTPI

Mandy Catterall Scottish Property Federation

Katherine Chorley HoPs

Rachel Connor Scotland Against Spin

Joe Dagen Royal Incorporation of Architects in Scotland

John Esslemont The Association for the Protection of Rural Scotland

Alan Farquhar SEPA

Sue Hamilton Planning Democracy

Aileen Jackson Scotland Against Spin

David Law NatureScot

Richard Lewington Homes for Scotland

Ryan McDonagh Graduate planner Falkirk council - observer

Alastair McKie Law Society of Scotland

David Middleton Sustainable Communities Scotland

Alasdair McKenzie Historic Environment Scotland

Charles Nathan RSPB and Scottish Environment Link

Euan Pearson Royal Institute of Chartered Surveyors

Stewart Robson Graduate planner Falkirk Council - observer

Clare Symonds Planning Democracy

Marcus Trinick Scottish Renewables

Morag Watson Scottish Renewables

David Wood Planning Aid Scotland

**Apologies**

Maurice O’Carroll

Clare Mack

Steve Fawcette

Ian Dryden

Suzanne McIntosh

Craig McLaren

Hugh Crawford unable to connect

**1. Introduction and welcome**

Scott Ferrie - Welcomed everyone to the meeting

He confirmed that DPEA was extremely busy and struggling with a shortage of both reporters and admin staff. There was severe staff absence in the admin team with long-term sick leave and several staff moving to new posts. This combination was resulting in slower response times and the group was asked to bear with DPEA while action was taken to remedy the situation. He confirmed that recruitment was underway for admin staff and salaried and self-employed reporters. Sinead Lynch has been appointed as a salaried reporter but with two more retirements coming up these posts would also need filled.

Up until now the budget has remained level but moving into next year DPEA may have to look at efficiency savings. We have had no notice yet of what savings we might be expected to make.

**2. Previous meeting – matters arising**

Minutes of previous meeting approved.

David Middleton - Requested that the provenance of comments made in meetings be recorded in the minutes - agreed.

**3. DPEA update**

Customer survey

David Henderson - DPEA has developed a customer survey for planning appeal decision notices. From this week a link to the survey would be issued to everyone who recently received a decision letter. The survey is intended to be quick and easy to complete. Everything in the survey is optional and will look at the public gov.scot website, the case publication website, clarity of decision notice and will ask for comments on communication and interaction with staff. Some questions will request answers to be rated but there will also be a comments box. Once the responses have been collated and considered DPEA will look at extending to other types of decision notices.

Survey results will be reported back through the DPEA annual review

High number of no remit cases

David Henderson confirmed that DPEA was continuing to receive a high number of no remit cases which should have been sent to the appropriate Local Review Body. DPEA will contact those involved to find out the reason for this. It was felt that a combination of guidance, wording and systems might be contributing to this ongoing problem.

Alastair McKie commented that people can often exercise their right of appeal at the last minute which can result in them losing that right if they do not understand the rules and submit their application incorrectly. There is also an issue with the ePlanning portal. The process is not clear to applicants and does not push them down the correct route. It gives them options which look to the individual as if they can choose the route of appeal when that is not the case.

Rachel Connor agreed the route to appeal is confusing for both appellant and other parties and suggested the guidance should be updated.

David Henderson confirmed that following this exercise DPEA would look at ways of trying to improve this situation and would feedback to the Group.

Publication

David Henderson set out that following an Environmental Information Request DPEA has agreed to review publication timescales and move in line with Energy Consents. Currently documents are published on the DPEA website for 12 weeks then removed, the decision notice is left for 10 years. DPEA is looking to move to a 7 year publication scheme for documents and 30 years for the decision although some information will be removed after 12 weeks. The aim is to implement this quickly, possibly early 2022.

Aileen Jackson asked whether DPEA could speak to planning authorities to ensure they also published documents for the same time span. For data protection reasons they currently only keep them for a short period and charge £50 for retrieving a document.

David Henderson confirmed that DPEA has no authority over the length of time authorities published documents.

Alastair McKie added that authorities should have a publication scheme in place and they have a duty to publish. It may be worthwhile for Aileen to approach them again. They may not even be aware that they have a publication scheme.

David Wood confirmed that there is a clear difference between different authorities and how they publish documents and it is not covered in planning guidance. He felt that there should be a scheme of publication that covers the whole of Scotland.

David Middleton added that he had experienced the same issues. He confirmed that some authorities do not publish documents until the decision has been made. He thought it would be helpful to see docs published as the case progressed.

Aileen Jackson added that there was also inconsistency in some authorities allowing people to speak at meetings whilst some do not allow this. She felt that all authorities should follow the same system – this was agreed by Rachel Connor.

Joe Dagen commented that, in relation to local review body meetings, the system was unfair. The authority can present their case but the appellant is not always allowed the opportunity to speak. He confirmed that Dundee and Angus Councils permit both sides to speak at planning meetings but not at LRB meetings.

David Middleton added that misinformation and misunderstanding could be corrected if the public were allowed to speak. He felt that when a planning report comes out there can be areas in the report where things are not quite right and not everything is covered. Lobbying is the only option to rectify these problems but is considered improper behaviour.

Scott Ferrie commented that these issues could be raised with Heads of Planning. Rachel Chorley attending the meeting on behalf of HoPs would be able to feed them back.

David Law asked whether there had been any progress on the appointment of a new chief reporter.

Scott Ferrie replied that the Scottish Government HR team were currently under huge pressure and recruitment was very slow but they were hoping to fill the post before the turn of the year.

**4. Six month stats**

David Henderson commented on DPEA’s performance over the first six months of the financial year. He confirmed that recruitment difficulties had presented some problems/challenges in some instances in relation to reporters being able to pick up allocated cases as quickly as normal.

There had been some slippage in LDPs arriving with DPEA and this had helped ease the some of the pressures. It was agreed that NPF4 may be impacting on the submission of LDPs.

He confirmed that the number of cases received appeared to be returning to pre-Covid levels. The number of planning appeals remained constant, enforcement notice appeals which had “fallen off a cliff” during Covid were now returning to previous levels. Wayleaves are also increasing while housing developments remained fairly constant.

In relation to performance against targets – those being dealt with by site inspection were hitting the 80% target within 12 weeks but those where further written submission were necessary were missing the 80% target of 20 weeks.

Alastair McKie added that for both planning and enforcement cases DPEA should expect a rise for short term letting numbers. There is a huge issue with short term letting in Edinburgh and it is expanding out of the inner city area. Much of this work could be coming to DPEA.

**5. Feedback on Guidance Note 23**

Allison Coard provided background on GN23 Inquiries and managing an efficient inquiry process. She confirmed that DPEA had carried out some of work looking at inquiry cases. Whilst this mainly dealt with section 36 cases its coverage was wider and included other cases where an inquiry was necessary.

The inquiry process was protracted and the scope of the work was to look at the average time for these cases and to address any snagging points.

The main conclusion was delay was often caused by processing issues, for example the registration of cases given the large amounts of documents received from Energy Consents and fixing dates with parties. Requesting additional environmental information can also cause delay because of the requirement to advertise.

To try and overcome the date setting problem it was decided to produce an early timetable to seek the co-operation of parties early so they know what is expected of them for a more efficient process. PEM by week 12, inquiry by week 30 and setting a 50 week target from registration to submission of the report to produce a more tightly managed process.

She added that it can take some time for reporters to read into cases. The position statement was seen as a way to enable reporters to get up to speed quickly. Whilst this would normally be requested from the appellant it could also be sought from other main parties. There was also scope to narrow main issues and place more emphasis on statement of agreements.

GN23 seeks to address these issues and there are a few cases currently running under the new approach with some elements working well. Document management is better but setting dates is still a huge problem.

Alastair McKie thought GN23 was very good but commented that on pages 6 and 7 where it was stated precognitions were central to the case, closing submissions should also be included. The wording may encourage exclusivity about precognitions with not enough attention being paid to closing submissions.

Marcus Trinick commented that the speed of decision making/reporting was very important but he was not convinced setting dates is such a big point. He is aware of cases where applicants are pushing DPEA to get reporters appointed and this was a source of delay. Parties delay submitting information because they want to have it accurate at the appropriate time. If they submit it too early then there is a possibility it will need updated causing more delay.

He added that the real delay is the reporting times to Ministers which on average is well over 40 weeks from inquiry to report issue. The reason for this is unknown and Ministerial decision time is also very long. He understood there were problems but reporting times and Ministerial decision times must be addressed and improved.

Allison Coard accepted that GN23 will need tweaked and that the wording was perhaps more rigid than it needed to be and a degree of flexibility was necessary. However, the role of precognitions needed to be much fuller and more comprehensive. Equally there was a role for closing submissions. Reporters were open to what works best but it is essential they have a good summary of case.

Scott Ferrie added that reporters face competing demands and have several cases to deal with at one time. DPEA will look at ways to produce the report more quickly. This is a key reason for getting a comprehensive summary, 60 – 70 % of a reporters time is taken up summarising a case. Precognitions are now nothing more than a sign post to lengthy inquiry reports so it is taking reporters time to construct the case and DPEA is optimistic the summary issue would drive down reporting times. Also moving towards an annex to closing submissions. Summaries would always be read with a seasoned eye, they will not be taken as gospel.

Rachel Connor expressed concern about Marcus Trinick’s comments. There are lots of problems with additional information being added after the case is referred by ECU and caused by the applicant not addressing the scoping opinion. Advertising additional information is a requirement but the process is difficult enough for the public without having to wade through additional information. How are they expected to simplify and work out which documents are relevant to the inquiry? It is essential additional information is notified but the reason why it is needed in the first place should be looked at.

Aileen Jackson added that DPEA’s website shows every document in the order it is received and they are difficult to find because the description is not clear. There is also the issue of different versions. Documents should be grouped could DPEA be responsible for this?

Allison Coard confirmed that the DPEA website can be manipulated to group documents and DPEA would be happy to arrange a demo session of how it works in practice. If anyone was interested in this please contact Diane Sinclair diane.sinclair@gov.scot

With regard to document management, DPEA were looking to set up a main list of documents presented in a more accessible way. To an extent this is limited by technology.

David Law added that where NatureScot has been a principal party and the applicants have ordered docs it has proved helpful. He considered GN23 a useful document and useful for staff and should be advertised more. Would it be possible for stakeholders to have copies of guidance notes as they are issued?

Scott Ferrie replied that he thought that guidance notes were issued to the group and they are also posted on the DPEA website and tweeted. The last guidance note was posted on 6 August 2021

**6. Pandemic update**

Scott Ferrie confirmed that site inspection casework was almost back to normal with no restrictions following covid advice. Oral procedure was gradually returning to in-person (if necessary). Others may feel it could happen quicker and it is hoped that will be the case in 2022 but if Covid worsens it will revert back to virtual.

He thought that the real hope is that we will offer a blended approach. It is very apparent that some parties prefer not to be in the room, it can be intimidating. There is also the environmental impact of conducting inquiries and the need to reduce travel. The virtual option affords the benefit of more frequent PEMs, cuts down on email traffic and leads to better management of cases.

**7. Future use of in-person and virtual hearings and inquiries**

David Law agreed there are benefits to virtual PEMs and his staff had mixed views but he felt virtual was useful and would support it going forward. Costs were not a major element.

Marcus Trinick favoured in-person. Inquiry witnesses need to be put under pressure to get to root of their evidence. The flavour of the event and debate is very important. It was also really important for local communities to see justice being done in their community and to attend.

Rachel Connor agreed with Marcus about the importance of the networking side of inquiries but there was an issue of the public feeling intimidated. They are not used to giving evidence or being cross examined and it can render them incoherent. Also internet problems can prevent many of the public from taking part.

Scott Ferrie agreed there were competing interests and DPEA will try to accommodate as much as possible. Reporters will do in-person if necessary.

Alastair McKie agreed opinion on virtual versus in-person was divided and he sees benefits in both. Solicitors like to test the evidence and it is fundamental to inquiries but courts are managing to do this virtually so it is possible. Also reporters manage anxious members of the public very well. Appellants have the right to make a case for in person but it is essential it is the reporter’s decision.

Scott Ferrie confirmed that virtual is not entirely the default position and DPEA is gradually moving back to in-person. There was a need to be very careful running a blended session and not have a situation where one party was with reporter in-person and the other was virtual. That would not give the appearance of impartiality.

He added that numbers attending in-person were very low but many more logon to webcast cases. This had been the case pre-covid as well.

Aileen Jackson felt that attendance was probably dependant on the area. In-person could be busy if the inquiry was local and easy to travel to but in remote areas attending may involve a long journey and greater expense.

**8. Matters raised by stakeholders –**

 a) How does the DPEA ensure that the issue of disaster, identification, mitigation and management, (as specified by Environmental Impact Regulations -EIRs), is competently addressed in planning applications and appeals for new technology?

Rachel Connor considered that comment should be made/sought from the Health and Safety Executive and the fire services. Hydrogen stations have significant safety problems with issues of health and safety not being addressed. These are issues that reporters should look at. Are DPEA looking at this?

Scott Ferrie replied that these elements should be covered in the Environmental report and it is hoped that the Health and Safety Executive would have been consulted. Reporters would be expected to take an inquisitive approach and would seek information but it is helpful if it is brought to their attention by third parties.

Rachel Connor felt that there is a lack of awareness from planning authorities and ECU that such information needs set out at scoping stage. She added that third parties are often ignored with these types of issue not being raised until the inquiry stage.

b) Given the government's programme of legislation for this session of Parliament, is there an expectation that any aspect of this will impact on planning policy, and pending new legislation being enacted, does the current policy requirement that all development must contribute to sustainable development provide opportunities for innovative approaches to protect the environment and limit climate change?

David Middleton to introduce this item at the next meeting.

c) Further information requests in LDP examinations

Alastair McKie raised as a point of fairness a case where an LDP reporter sought further information which became key to the conclusions/recommendations. The land owner was not notified or given the opportunity to comment on it.

He agreed that whilst there may be some benefit in accepting unsolicited information but if that is the case then it should go to all for comment if it is admitted as evidence. He had never had an issue with this and it may have been a one off but wanted to flag it up.

Allison Coard replied that DPEA try to make sure all LDP teams are very conscious of this but there have been a couple of issues caused by the way the legislation is framed. She added that reporters have to be careful and make sure all involved have the opportunity to comment.

Scott Ferrie added that reporters often receive unsolicited information and hoped that this was a one off situation. He will ensure this matter is fed back to LDP lead reporters.

**9. Close**

Scott Ferrie – Thanked everyone for attending and for a very useful discussion.