

**Planning and Environmental Appeals Division Stakeholder meeting  
09 November 2023**

**Note of meeting.**

Scott Ferrie	DPEA
David Henderson	DPEA
Karen Heywood	DPEA
David Liddell	DPEA
Allison Coard	DPEA
Esme Clelland	RSPB & Scottish Environment Link
Rachel Connor	Scotland Against Spin
Joe Dagen	Royal Incorporation of Architects in Scotland (RIAS)
John Esslemont	Association for the Protection of Rural Scotland
Alan Farquhar	SEPA
Aileen Jackson	Scotland Against Spin
David Law	NatureScot
Richard Lewington	Homes for Scotland
Alasdair McKenzie	Historic Environment Scotland
Alastair Mckie	Law Society of Scotland
David Melhuish	Scottish Property Federation
David Middleton	Sustainable Communities Scotland
Marcus Trinick	Scottish Renewables
Morag Watson	Scottish Renewables
Bruce Walker	Homes for Scotland

**Apologies**

Donald Campbell	HoPS
Hugh Crawford	Royal Incorporation of Architects in Scotland
Steve Fawcett	Homes for Scotland
Robbie Forbes	Law Society of Scotland
Mary Macleod	HES
Suzanne McIntosh	Sir Frank Mears Associates & Association of Mediators
Jenny Munro	RTPI
Maurice O'Carroll	SPGELBG
Mags Simpson	CBI
Clare Symonds	Planning Democracy (travelling but might be able to listen in

**1. Introduction and welcome**

Scott Ferrie welcomed everyone to the meeting.

**2. Previous meeting – matters arising.**

Scott Ferrie  
RIAS are working to provide design training for reporters early 2024.

### **3. Mid-year stats**

David Henderson

DPEA performance against target in the first half of 2023 was good, with significant improvement in section 36 cases. While there had been an increase in the number of cases received across the board, wind farm, wayleave, and housing case numbers were down.

Marcus Trinick

ECU is currently very understaffed and slow to process cases. There are a lot of projects waiting to come through.

David Middleton

Has there been any further progress in reducing the number of planning appeals incorrectly submitted to DPEA, instead of the local review body?

David Henderson

DPEA has improved guidance to combat this, but the real problem appears to lie with the ePlanning portal, which fails to provide clear guidance on who an appeal should be submitted to. DPEA aims to respond to these no remit cases as quickly as possible, to prevent the applicant losing their right of appeal.

Joe Dagen

There is a general lack of confidence in local review bodies. Appellants are not given the opportunity to speak or comment. When a case is decided by a reporter, the decision is considered balanced, and fair.

### **4. DPEA Update – staffing, budgets, workload**

#### **Staffing**

Salaried reporter numbers remain stable. Karen Heywood has made substantial progress, providing training for less experienced reporters on S36 inquiries. The number and time commitment of self-employed reporters has reduced, and recruitment is currently ongoing.

Admin team numbers remain stable, and recent recruits have become more experienced. The IT team has lost two members of staff, through promotion to other Scottish Government departments, impacting the DPEA ability to webcast. One post has been filled, with the replacement due to start in a few weeks.

#### **Budgets**

Scottish Government budgets are tight, and expected to reduce further. While we have been able to recruit, this may not continue in the future.

#### **Workloads**

Workloads are stable. We are nearing completion of old style LDPs, and sixteen housing cases are currently awaiting the outcome of the Mossend court case. The Inner House hearing is set for 24<sup>th</sup> of January 2024. A quick judgement is expected, and will hopefully allow the processing of the sisted cases early 2024.

Wayleave numbers are expected to increase substantially in tandem with transmission line upgrades of which four or five on the scale of Beauldy Denny are expected. A substantial increase in short term let appeals are also expected. These are mostly in tourist areas, with Edinburgh currently dealing with approx. 1200.

Karen Heywood

DPEA is looking at options for dealing with the expected increase in short-term lets, and have held initial discussions with Edinburgh Council and Heads of Planning. Large numbers are expected to hit DPEA from March, and a more streamlined process is necessary for processing them. The possibility of a small team of reporters for purely short-term lets, has been considered.

### **CMS Update**

David Henderson

The Scottish Government initially informed DPEA that systems would move to the cloud in December, but it now looks to be happening in the early part of 2024.

DPEA are also considering the development of a new case management system, in the next two to three years. Hopefully, this would interface with PARD systems and a new national planning system.

## **6. Planning modernisation**

Allison Coard

NPF4 is now part of the development plan. Reporters are considering interpretation and consistency, and are conscious of issues around this.

Planning authorities are now required to produce Evidence Reports prior to starting work on new LDPs. Guidance on how to produce these reports is available on the DPEA website. Discussions with local authorities are ongoing, to prepare our systems for their arrival. It is essential we receive an accurate note of report arrival dates, with the first expected in Spring 2024. We are also looking at document management, and how documents can be transferred seamlessly, between planning authorities and DPEA.

David Law

How does the NPF4 overview process work, regarding consistency and interpretation?

Scott Ferrie

As would be expected, there are differences of view in how the new policies ought to be interpreted. Care is being taken to ensure consistency, and DPEA are maintaining a management overview.

Bruce Walker

In the old system, the reporter's involvement was the examination. With the new system, they must deal with both a gate check, and an examination. Does this mean a doubling of the workload?

Allison Coard

The gate check process is staggered. Guidance states the process should be proportionate, and if everything is in place, as it should be, the process should be efficient. The whole point of the gate check process, is to remove problems before the LDP examination stage.

Bruce Walker

With two large workstreams, transmission lines and short-term lets, has DPEA considered the person responsible for gate checking, not being a reporter?

Allison Coard

No this has not been considered.

Scott Ferrie

With the plan making cycle being altered from 5 to 10 years, there is a risk that time between the gate check and inquiry, could become too great.

## **7. DPEA training**

David Liddell

Prior to the pandemic, DPEA and the Improvement Service, had delivered training to local authorities. The intention is to re-introduce this, and widen it to include others involved in the planning process. Invitations for an initial session in early December will be distributed in the next few days. This session will provide an overview of the appeal process, and speakers will include reporters, representatives from Heads of Planning and Brodies. As well as providing training, the aim is to assess which topics people would like included in future training events, and how they would like the training delivered. DPEA have provided a list of training themes as a starting point.

Morag Watson

Requested the training be recorded, to allow it to be used as a tool for training new starts in local authorities, and other stakeholder groups.

Alastair McKenzie

Historic Scotland were also discussing providing training for local authorities to increase awareness.

David Middleton

Asked if the issue of a reporter, not always being equipped to make a decision on a conservation area or listed building case, had been addressed?

Scott Ferrie

Salaried and self-employed reporters receive the same training. RIAS is scheduled to provide design training at the end of January, and the December seminar will cover world heritage sites in Edinburgh.

He suggested David Middleton write to him if there were specific cases he wished to highlight.

## **8. Matters arising**

## Conditions – Rachel Connor

Planning conditions do not encourage confidence in the public. Wording is often not precise enough, and can be ambiguous. They can come with caveats that allow developers to do as they please, and there are cases where the submitting of a document becomes the condition, not the content. Many conditions affect the public directly, and there is an expectation they will be put in place to protect such interests.

There is a need for improvement in the way they are written, to ensure they can be enforced. In 2015 ECU produced very rigorous guidance for writing conditions. Is there a reason they are not used, and can DPEA gate check conditions?

Marcus Trinick

The current system works very well, and DPEA conditions are generally very good. A very vigorous method is in place to ensure conditions are rigorous.

Rachel Connor

Agreed there was discussion at hearings and inquiries, and the appellant and local authority will hammer out conditions. But the wording when they are written up creates problems when it fails to be precise and unambiguous.

Esme Clelland

Sympathy with Rachel Connors comments. There are variations in conditions, they should be case specific, wording is less than perfect, some allow information to be submitted post-consent. This can be lost to the public, creating issues with public trust. There is concern over biodiversity conditions, and a lot of confusion between compensation and enhancement.

Alastair Mckie

We need to look at where the conditions are coming from. ECU, Reporter, or local authorities. There is a case for updating the 1998 circular, dealing with conditions, and a central bank of conditions would be helpful.

Scott Ferrie

Agreed the circular would benefit from updating. Reporters do not have a set of standard conditions, and are reliant on the conditions provided by parties in each case.

David Liddell

DPEA recently held a reporter training session covering conditions, led by Robert Seaton. Rachel's themes came up at the event, and future training events will cover conditions.

Esme Clelland

It would be good to include third parties in the training. There is also an issue of enforceability of conditions, especially those that require people, not involved in the application, to implement them, for example other landowners.

Rachel Connor

ECU model conditions are worth looking at. Almost all pre-conditions are suspensive, but should be done before a development begins.

Karen Heywood

Reporters are aware of, and do see a lot of poor conditions. Although they are dependent on parties providing the conditions, they do not always accept what they say, and they do put them through the test in the circular. Happy to look at examples.

We are aware ECU want to update their conditions, but currently have no capacity to do so. More staff have been recruited, and consultants engaged. Looking at conditions will be part of their remit.

Marcus Trinick

Conditions are often written by people not at the coal face, but academically. Would be in favour of standard conditions, written by those that know and have experience of the work. Biodiversity should be informed by experience.

### **Cost of inquiries – Esme Clelland**

Question of how much an inquiry cost was raised by the Scottish Environment Link Group. Question was also raised in parliament on section 36 inquiries.

David Henderson

Parties meet their own cost and DPEA do not hold the information. We have records for venue hire and adverts, but staff costs are difficult to quantify. Case officers and salaried reporters work on several cases at the same time, making the time spent, and cost, difficult to separate into individual cases. Self-employed reporters invoice for their time, so it is easier to gather the information on their costs, but they do not tend to carry out inquiries.

### **Unreasonable behaviour – Aileen Jackson**

Unreasonable and abusive behaviour is continuing at inquiries. The circular should be updated to control this. The SAS petition of November 2022, asked for an independent advocate, but this is still under consideration. Reporters now ask people to be considerate and kind at the beginning of inquiries, but behaviour has got worse, and even abusive in closing submissions. Does DPEA have any plans to punish bad behaviour? It was noted that a particularly abusive comment in a closing submission was not published on the DPEA website.

Scott Ferrie

There is updated guidance for reporters on handling behaviour at inquiries. They are aware of the bounds of reasonable behaviour. DPEA is looking at standard wording, for announcement at the beginning of inquiries. Agree the circular needs updating.

DPEA are not responsible for closing submissions, and abusive comments are never helpful to the reporter. It is standard practice not to publish any comments that may cause offence on the DPEA website.

Joe Dagen

A lot of behaviour at inquiries is petty, and diverts attention from important issues. It needs to be nipped in the bud; can it be Included in training?

Scott Ferrie

Yes, this issue can be covered in training.

### **Tracking LDP progress – Esme Clelland**

Clare Symonds asked if DPEA would regularly publish the LDP progress tracking spreadsheet, provided prior to the meeting.

Scott Ferrie

The spreadsheet was a work planning tool for DPEA only, and there were no plans to publish on the DPEA website, but happy to share with the stakeholder group.

### **AOB**

Alastair McKenzie

Provided links to publications from HES and their role in planning for information.

Lintel – Newsletter subscription from HES’s Heritage Directorate which includes items on architecture and planning etc: [www.historicenvironment.scot/about-us/the-lintel](http://www.historicenvironment.scot/about-us/the-lintel)

Our Regulatory framework – recently published and describes HES’s regulatory and advisory roles and general approach to this work, including relationship with appeals: [www.historicenvironment.scot/regulatory-framework](http://www.historicenvironment.scot/regulatory-framework)

pointing the way to the future – new HES position statement on how we undertake these regulatory functions in a way that responds to our wider environmental responsibilities: [www.historicenvironment.scot/advice-and-support/planning-and-guidance/our-work-and-the-climate-and-nature-crises](http://www.historicenvironment.scot/advice-and-support/planning-and-guidance/our-work-and-the-climate-and-nature-crises)

[The Lintel | Historic Environment Scotland | HES](#)