

Planning and Environmental Appeals Division Stakeholders' Meeting

10.00 a.m. Monday 10 June 2024

DPEA Attendees

- Allison Coard - DPEA
- David Henderson - DPEA
- David Liddell - DPEA
- Scott Ferrie - DPEA
- Sonya Thomas – DPEA

Stakeholders Attendees

1. Adele Shaw - Historic Environment Scotland
2. Aileen Jackson - Scotland Against Spin
3. Bernard Whittle - Heads of Planning
4. Clare Symonds - Planning Democracy
5. David Law – NatureScot
6. David Melhuish - Confederation of St Andrews Residents Association (CSARA)
7. David Middleton - Confederation of St Andrews Residents Association (CSARA)
8. Esmé Clelland - RSPB and Scottish Environment Link
9. Jenny Munro - RTPI Scotland
10. Joe Dagen - Royal Incorporation of Architects in Scotland
11. John Esslemont - Association for the Protection of Rural Scotland (APRS)
12. Maurice O'Carroll – Scottish Planning, Local Government and Environmental Law Bar Group
13. Megan Amundson - Scottish Renewables
14. Michael Greig - Law Society of Scotland
15. Rachel Connor - Scotland Against Spin
16. Richard Lewington – Homes for Scotland
17. Richard Broadley – Planning and Environment Manager

Apologies

Alan Farquhar – SEPA

David Wood – Planning Aid Scotland

Robbie Forbes - Law Society of Scotland

Richard Henderson - Balerno Community Trust and South West Communities Forum

Mags Simpson – CBI

James Sloan – CBI

Euan Pearson – Royal Institute of Chartered Surveyors

Suzanne McIntosh - Sir Frank Mears Associates & Association of Mediators

Donald Campbell – Heads of Planning

Teams Meeting Agenda

1. Introduction and welcome.
2. Previous meeting – matters arising.
3. End of Year Statistics
4. DPEA update – Staffing; budgets; workloads
5. CMS update
6. Planning modernisation: NPF4 and gate check reviews
7. DPEA training
8. Matters raised by stakeholders
 - 8.1 Aileen Jackson - Removal of inquiry recordings from DPEA website
 - 8.2 David Middleton - Update of fees for appeals proposals
 - 8.3 Rachel Connor - What is the standard of acceptable behaviour of participants at inquiries?
 - 8.4 David Middleton – NPF4 Housing Land Requirement
 - 8.5 Kevin Murphy/Richard Lewington - When should the iLHLR and LHLR be set?
 - 8.6 Esmé Clelland/Planning Democracy - Indicative timeframe for Gate Check
 - 8.7 Clare Symonds - Non-determination appeals, the history/any difference in approach and how many appeals are non-determination appeals
 - 8.8 Scott Ferrie – Resourcing Paper
 - 8.9 Rachel Connor – Planning Conditions and Enforcement
9. AOB

Meeting

1. Introduction and welcome.

Scott Ferrie welcomed everyone to the meeting.

Michael Greig confirmed that he is representing the Law Society and has replaced Alastair McKie.

Joe Dagen confirmed that he is attending the meeting on behalf of RIAS/Hugh Crawford.

2. Previous meeting – matters arising.

David Middleton

Recorded in the last note as representing Sustainable Communities Scotland which is incorrect. Now represents Confederation of St Andrews Residents Association (CSARA).

3. End of Year Statistics

David Henderson

The Annual Review is expected to be published in early July.

The number of enforcement cases received has increased. Short term let cases are being received at a steady pace but not yet the numbers which DPEA were expecting. DPEA expect there to be an increased number of short term let cases soon. DPEA performance against targets has been the best performance recorded. 91% of cases within target for no further procedure, 91% within target for site inspection cases, and 83% for further written submission cases.

There had been 19 planning obligation appeals in the last year, an increase of 10 from the previous year. Live appeals were highlighted in Edinburgh with affordable housing modifications sought.

David Middleton

Student accommodation is an issue for St Andrews which has housing pressures and a need for family houses.

David Henderson

Happy to send out the links to the cases DPEA have involving student accommodation.

Bernard Whittle

Falkirk council are using the Mossend Court of Session decision as a guide for how they process their housing applications.

Scott Ferrie

Millar homes has not sought permission to challenge the judgement. The Chief Planner is working on a response letter. Once the letter has gone out the 17 live appeals with DPEA will come out of sist and move towards decisions being issued.

David Law

What are the reasons for Wayleave cases being withdrawn?

David Henderson

80-90% of wayleave cases are withdrawn rather than reported on. Potential reasons for this include discussions may be negotiations starting early enough. The number of wayleave cases being withdrawn is an inefficient use of resource and time for DPEA, significant time and money is being wasted.

4. DPEA update – Staffing; budgets; workloads

Scott Ferrie

In staffing terms DPEA is in a healthy place. Reporter numbers are steady and flexible working arrangements are being used. With the change in SG contracted hours from 37 to 35 hours/week however, DPEA has lost the hourly equivalent of three full time members of staff. There is currently a reporter vacancy being advertised internally. If unsuccessful with an internal applicant DPEA is hopeful that the position can be opened to external applicants.

Budget

The Scottish Government Legal Directorate, where DPEA is based, provide some of the DPEA budget and the amount provided is static, however costs are increasing. Other budget is decreasing and this is the budget which pays for self-employed reporters. Efficiency and savings are being investigated. Wayleaves cases are being looked at; value added vs resources used is being analysed.

Improvements

During the 6-month period when a reduced number appeals were received guidance notes and a broad range of improvement work has been progressed.

Ministerial targets have been updated

For written submissions appeals, which includes cases previously dealt with by no further procedure or a site inspection, determination target is 12 weeks. Hearing targets have been changed to 40 weeks and Inquires to 50 weeks. DPEA believe that this will be challenging but achievable and hope to drive down average processing times.

Guidance notes changes

Delays in Inquiry dates can be as much as six months from the proposed date. Other jurisdictions set dates which can only be changed under exceptional circumstances; DPEA is looking at this. DPEA will ask for stakeholder's comments if the guidance is changed.

David Henderson

The short-term lets workload is not as high as expected so far. Edinburgh is starting to take these short-term let applications forward so DPEA expect the workload to increase. Agents operating in Glasgow anticipate submitting approximately 100 CLUD appeals. Typically, DPEA have 600 appeals a year. Currently there are 220 live and over the year 1200 are expected.

ASTI project – applications aren't in yet. However the Transmission Operators think there will be objections.

5. CMS update

David Henderson

It is expected that DPEA's Case Management System will be moved to the Cloud in next few months. Stakeholders should notice no difference in service, however any issues get in touch.

6. Planning modernisation: NPF4 and gate check reviews

Allison Coard

Local authorities prepare the evidence reports. Full council to approve, then submitted to Scottish Ministers for Gate Check. Reporters are responsible for checking the efficiency of the report. Two Gate Checks received – Fife and Moray.

Glasgow and East Lothian are expected at the end of the month. East Renfrewshire and Falkirk following shortly after. Gate Checks are expected to form a major part of DPEA's workload in the next 18 months.

Clare Symonds

How much analysis do you do?

Allison Coard

Reporters look at the legislation and the development planning guidance and are deciding on the sufficiency of the Evidence Report.

David Law

During the process of looking at the evidence report, do the reporters seek other views?

Allison Coard – This should happen before it comes to DPEA. Whilst DPEA is able to seek comments from other bodies, this should hopefully not be necessary.

Richard Broadley

Falkirk aiming for October for their submission now.

Allison Coard

The decision will either confirm the sufficiency of the evidence report or that it is insufficient. If insufficient it will be re-submitted once further work undertaken by the planning authority.

Clare Symonds

Is there NPF4 guidance for information that needs to be collected by local authority, what guidance does DPEA have?

Megan Amundson

Is maximum social economic benefit considered for NPF4 policy?

Allison Coard

Community wealth building guidance was considered.

7. DPEA training

David Liddell

Training on planning approvals for authorities & appellants.

December training sessions spoke about the appeals process, the training was aimed at planning authorities and agents. Approximately 400 people attended. The session was not interactive due to the numbers and was generally well received. There was feedback that there was not a community perspective. Sector-based sessions and community-based

sessions are planned. The session for community groups and community councils will feature shorter presentations from reporters and questions are being submitted in advance.

Allison Coard ran a session for planning officials for the gate check process.

Aileen Jackson

Where was this advertised? We were unable to advertise this as we were not aware it was taking place.

David Liddell

For data protection reasons, we couldn't contact people whose data we held previously about the new session as we didn't seek their permission to use their data for that purpose. We tweeted the session on X and included the details on the website, Planning and Architecture Division published it, and the improvement service sent it out to their networks and on their website.

Aileen Jackson

The community council for her area is just being set up, they don't have one currently and they didn't know about the session.

Rachel Connor

The community council normally passes this info on, and they haven't heard anything about this meeting.

Clare Symonds

More people would wish to watch the recording - is it possible to record the community session to help prevent people from missing the session entirely.

David Liddell

Will check if they are being recorded but thinks they will be

Scott Ferrie

If people miss the session they can email in any questions that they have

Scott Ferrie

Thanks to Joe Dagen for the RIAS training session for reporters on architecture and design. RSPB and Nature Scot have arranged training where reporters will be out to look at developments on the ground and they will be looking at the Peatland restoration work. Any stakeholder who has anything they feel reporters would benefit from please get in touch.

Rachel Connor

Reporters training on planning conditions (post-meeting note: reporter training on conditions has been undertaken.)

Scott Ferrie

ECU is close to finalising the standard S36 conditions. For S37 the energy consent unit are working with DPEA on this.

Rachel Connor

Major development applications info that should be included, EIA now being conditioned, concerned that inappropriate use of planning conditions are being used.

Scott Ferrie

The planning authority write the first draft.

Rachel Connor

Reporter's responsibility to sign off on conditions, EIA regulations and NPF4 should be part of the conditions training for reporters.

8. Matters raised by stakeholders

8.1 Aileen Jackson - Removal of inquiry recordings from DPEA website

David Henderson

This is being discussed with colleagues currently and a decision may change our policy on these.

Aileen Jackson

We may well get more requests. People didn't know they could download a recording and people didn't know the recordings would be removed from the website. People weren't notified that the privacy policy was changing and couldn't notify members.

David Henderson

Clarified that DPEA would not give permission for anyone to upload and publish recordings.

Aileen Jackson

Would like new people to be able to see a number of different types of recordings.

David Henderson

EIRs will be the most common way to request. If a subject access request was used they would get their data/recordings of themselves only and a different department deal with those requests. The deadline for a response to the current FOI is this week. The recordings are available on the website for 12 weeks after a decision has been made.

Scott Ferrie

The subject will be revisited after the current FOI request has been actioned.

8.2 David Middleton - Update of fees for appeals proposals

28th Feb resourcing the land use planning system. Community view, it could reduce the number of appeals if people appeal must be accessible and affordable.

David Henderson

The consultation period has ended and the results are being analysed. The next steps will be taken by Planning Division colleagues in Autumn.

Scott Ferrie

DPEA operations could be impacted by any change to the 50 megawatts threshold set out in the Electricity Act.

8.3 Rachel Connor - What is the standard of acceptable behaviour of participants at inquiries?

Scott Ferrie

Courtesy and respect, guidance has been updated, and reporter training has been undertaken to ensure reporters watch out for situations that could cause upset.

Rachel Connor

Reported that behaviour on teams can be below expectations and appears to be different to face to face meetings. People appear to forget that they are viewable when on camera. Scott Ferrie offered to meet with Rachel Connor to discuss the issue further.

8.4 David Middleton – NPF4 Housing Land Requirement

Student accommodation is not included in the housing land requirement. Unable to judge the whole issue without looking at the impact a large numbers of students will have on the area, could be looked at as part of the gate check process.

Allison Coard

Scottish Government guidance considers this as part of the evidence that informs the local housing requirement.

8.5 Kevin Murphy/Richard Lewington - When should the iLHLR and LHLR be set?

Allison Coard

DPEA don't have a position as only interpret evidence. When taking account of the LDP guidance SG has published, the expectations of SG is that LHLR would be included in the report. Legislation includes the housing needs of the district.

8.6 Esmé Clelland/Planning Democracy - Indicative timeframe for Gate Check

Esmé Clelland

Found it useful to receive the documents.

8.7 Clare Symonds - Non-determination appeals, the history/any difference in approach and how many appeals are non-determination appeals.

David Liddell

More detail will be shared at the training session on Wednesday night. There are different challenges for these appeals due to lack of evidence. There is a right for any applicant to make an appeal after statutory period for determining an application has passed.

Scott Ferrie

Whilst relatively small in number non-determination appeals present a challenge especially when the planning authority have not validated the appeal.

Rachel Connor

Perception that some local authorities are overwhelmed by some applications such as windfarms. They don't have the resources to deal with them. Community feels unrepresented, non-determination for industrial applications.

8.9 Rachel Connor – Planning Conditions and Enforcement

Major development applications have recently caused a loss of public confidence in planning conditions. Reporters need to be careful about what conditions are being set as there is reduced public confidence in the planning system. There is concern that there are loopholes being used.

9. AOB

None.