

## The video transcript of Dan Jackman's presentation on 30/4/21.

I have been asked to do a presentation on a broad range of matters so inevitably this is a very brisk canter through the planning and appeals system and is very much an overview. The last slide is a series of links that will give you more information.

### The presentation is in two parts.

- Part 1
- Development plan examinations
- Planning (Scotland) Act 2019
- Planning and housing land supply
- Questions
- Part 2
- Planning appeals
- How to present your case
- Questions

### Background

- 1947 Planning Act provided for a right of appeal to Secretary of State for Scotland against refusal of planning permission. Soon afterwards there were mechanism for objecting to Local Plans.
- At first, appeals were administered by different sections of the civil service, there was a panel of Reporters who where consultants with ministers making every decision. The Reporters Unit was set up in 1973 – previously ad hoc. Reporters have always worked from home, with the DPEA admin base being in Falkirk.
- Many changes to appeal procedures over the years the - Constant tensions between efficiency and party rights

### Development Planning

- Basis for making planning decisions by allocating land for different types of development and setting out policies

Currently we have a Two tier system in and around the major conurbations (Glasgow, Edinburgh, Aberdeen, and Dundee, which have overarching 'Strategic Development Plans'). Here, and everywhere else, there are 'Local Development Plans'. The 2019 Act will replace 'Strategic Development Plans' with 'Indicative Regional Spatial Strategies'

- Focused on land use and place but co-ordinated with other policies and strategies
- Current Process of producing the LDP
  1. Evidence base. Lots of information collected
  2. Main Issues Report. Produced and published to engage debate on the general issues
  3. Publication of the Proposed Plan. This is the stage when public and communities can submit their representations
  4. Examination by Reporter.
  5. Delivery & monitoring

### Getting Involved

- Know what it is you want (not just what you don't want) and why
- Engage as early as you can
- Front loading – so prepare your submission to the council carefully (see following slides)
- Unlikely to be any further input
- Be aware of the position of others

### Examination

- While this is in progress, you can monitor what's happening on the DPEA web site.
- Previous system was objection-based and there was a right to be heard, but since 2006 it has been an examination of unresolved representations

- 2006 reforms aimed at increasing coverage and speeding up the process, so that Local Development Plans are up-to-date.
- Council determines the issues (not objections). They produce an important Schedule 4 document, which summarises representations.
- Team of Reporters. Lead Reporter responsible for co-ordination and project management
- Test is “appropriate and sufficient”. (Not ‘as good as it could be’.)
- Council’s get into difficulty if they ignore Scottish Government policy or base decisions on limited evidence
- So far there have been few hearings and no inquiries
- There are very limited circumstances where a council cannot follow the recommendations within the examination report
- Circular 6 2013 provides a lot of detail – some of which will change under the new Act

### Planning (Scotland) Act 2019

- Scottish Government website [www.transformplanning.scot](http://www.transformplanning.scot) explains the implementation of the 2019 Act. You will need to persevere to get to the interesting pages
- Big change is that the National Planning Framework becomes part of the Development Plan. The NPF applies across Scotland, and requires parliamentary scrutiny and approval. The aim is to publish a draft late 2021, with approval by late 2022
- Evidence Report/Gateway Check necessary for Local Development Plans. This replaces the Main Issues Report and provides a check for the planners that they have collected all the evidence they need before setting off on drafting the plan
- Lots of Tweaks eg Masterplan Consent Areas (revamped Simplified Planning Zones) and Local Place Plans. (I’ve read interesting and exciting things about LPPs, but, until guidance is published it’s difficult to know how they will work in practice.)
- Lots and lots and lots of added statutory requirements (for Councils).

### Planning and Housing Land Supply

- This can get very geeky. (DPEA is not involved in forming policy. We just implement it)
- SPP 2014 – Requirement for a 5 year land supply + Presumption in favour of development that contributes to sustainable development. If the council fails in maintaining a 5 year supply, then the ‘presumption in favour of sustainable development’ comes into play. This was not very different from longstanding approaches
- Problems in practice – lots of arguments about what methodology is used to calculate the 5 year land supply and what sustainable development means
- Several Court cases in England and Scotland (There are parallels between the systems.)
- Ministers considered that there were problems in how it was working. So in July 2020 consulted on an amendment to SPP. Responses were very partisan, with house builders on one side, and councils and communities on the other.
- Dec 2020 amended SPP published and this is now Scottish Government policy
- Current Judicial Review of the publication of the revised policy. Court hearing scheduled for mid April.
- Whatever happens in court the new housing policy will be set out in NPF4

## Part 2 Appeals

### Current System

- Before 2006, Reporters dealt with all appeals. now Only have jurisdiction for decisions made by Planning Committee. Local Review Bodies deal with appeals against delegated decisions. This meant a reduction in number of DPEA cases from about 1400 to about 600 (in 2019).
- There is no right to be heard. Reporter decides how an appeal is determined. Front loading of information – no new matters can be raised
- “One shot” grounds of appeal

- Default process is unaccompanied site visit, written grounds of appeal and whatever material had been put before the council (62% of cases in 2019 determined in this way)

### What the Reporter Does

- Cases (80% of appeals are submitted electronically) are collected in batches that are drivable within a day and allocated by the office. Reporter receives an e-mailed batch every 2 weeks
- Reporters don't specialise by types of appeal or by area. Reporters receive a new batch every 2 weeks.
- First thing is to review the material to determine whether default process is appropriate
- If not prepares procedures notice (which we will come to in a minute)
- Arranges site visit
- Prepares for and completes further procedure (if necessary)
- Writes up decision notice

### How does the Reporter Decide the procedure?

- Takes into account views of main parties. (The appellant and the Council)
- Choice of:
  - Further written submissions
  - Hearing session, a structured discussion led by a Reporter.
  - Inquiry session, more formal event – a bit like a court where witnesses can be cross-examined.
  - It can be a mix of procedures for different matters
- Test is what is necessary to make the decision – Can the Reporter understand the positions of the parties? If there is a dispute are the reasons for the differences clear

### Further Procedure

- Further written submissions (128 or 34% of cases in 2019) – specific closed questions Eg new policy or a procedural matter

- Hearing – if dispute is a matter of opinion or judgement which could not be resolved in writing (7 cases in 2019)
- Inquiries – Where cross examination is essential, dispute over facts or technical. Sometimes essential but increasingly rare (3 in 2019)

### How do Reporters write up a decision?

- What is before you? What is the question the Reporter has to answer on behalf of Ministers. Parties can tell you lots of interesting things but not all of them are directly relevant.
- Statutory tests/duties. Every type of appeal will have some kind of statutory test or duty. For planning permission appeals the test is Section 25 – decisions should be made in accordance with the development plan unless material considerations indicate otherwise. A Reporter MUST address the statutory test..
- Rely on the evidence presented. A Reporter can't go looking for their own evidence.
- Must provide 'Adequate reasoning' for your every finding. It must be logical, intelligible and must inform the losing party what they have got wrong.
- Addresses key relevant matters
- Ignore irrelevant matters overtly or not
- Written positively. Don't try and sound balanced eg 'on the one hand the appellant says'
- Do not indicate what would be acceptable. That could prejudice future applications or appeals.
- Accurate and concise
- Only the courts can change a decision once issued by quashing it to be reallocated to another Reporter. This can only be on a matter of law

### How to present your case

- There is no silver bullet. Focus on making your position clear, rather than seeking to persuade. Whether you can persuade

someone of your point of view is not entirely within your control. What is in your control is making sure that your position is clear.

- Answer the question – be aware of the decision-making framework. There's no point in mentioning anything that the Reporter can't take into account
- Give reasons – avoid assertions or exaggerated claims which are easy to counter.
- Have supporting documents, but Cross reference to sources of evidence clearly so that they can be found
- Make it easy to read, and tell the reporter what you want him/her to make of it.
- Use the DPEA case officer and the website. The case officer is a great source of procedural information and deadlines. The website will show you how other parties have dealt with similar situations

### Hearings/Inquiries

- Don't panic – it's not a sudden death play-off.
- Familiarise yourself with the process by viewing webcasts of previous hearings/inquiries
- Reporters understand that it's a once-in-a-lifetime experience for you and that you will be nervous.
- Same advice as above for all written material
- Understand the jargon – if not sure ask
- Combine to pool resources – a sign of strength rather than weakness
- Team of 3 or 4 – clear roles and prepare thoroughly
- Understand the assumptions underpinning your case and the assumptions of those opposite you

### Concluding Remarks

- Current system is designed to be front loaded – don't wait for planning applications. Get involved at NPF and LDP stages
- Current process prioritises efficiency. This has worked in its own terms. Most of Scotland does have up to date LDPs and most appeals are dealt within 12-20 weeks.

- Reporters (and Ministers) have to follow a decision-making framework
- Set out your position clearly
- Not every point of view can prevail but 58% of planning appeals were dismissed in 2019

## References

- Circular 6/2013: Development planning  
<https://www.gov.scot/publications/planning-series-circular-6-2013-development-planning/>
- Circular 4/2013: Planning appeals  
<https://www.gov.scot/publications/planning-series-circular-4-2013-planning-appeals/>
- Planning and Environmental Appeals cases website  
<https://www.dpea.scotland.gov.uk/>
- Planning and Environmental Appeals webcasts  
<https://dpea.public-i.tv/core/portal/home>
- Our policies and guidance notes – see Guidance in taking part in planning appeals and other cases  
<https://gov.scot/policies/planning-environmental-appeals>
- National planning framework and planning reform  
<https://www.transformingplanning.scot>