



Each case is unique and must be considered on its merits. It is for the person appointed to determine the case to satisfy him/herself that the application of the practice contained in this note is appropriate to the circumstances of the case. A reporter who intends to depart from the guidance should advise his/her SGL so issues emerging can be considered for future case work.

Guidance note for:	<b>Reporters and parties</b>
Relating to:	<p>Provision of material evidence and conduct of parties in proceedings before DPEA Reporters.</p> <p>This Guidance Note applies to all proceedings before Reporters, whether planning permission appeals or applications, local development plan examinations, enforcement notice appeals, wind farm applications, high hedge appeals or other such proceedings.</p>
Background:	<p>DPEA have become increasingly concerned about the frequency with which their ability to issue high quality decisions and reports is being inhibited where clearly material information and evidence is not being placed before Reporters by parties or where their attention is not being brought to material changes of circumstances in relation to material evidence.</p> <p>This risks delaying cases being determined and could impact on the integrity of the decision process and the reputation of the planning system.</p>
Legislation	
DPEA practice	<p>All parties engaging with DPEA are expected, whatever their interest, to be complete, open and accurate in putting their cases, focussing on policies, guidance and evidence which are relevant to the matters before reporters.</p> <p>It is understood that parties will want to put their case in as favourable a light as they can in support of their position or their clients position. Reporters respect professional judgement in the interpretation and presentation of evidence.</p> <p>However, high quality decision making relies on parties addressing all relevant matters, even if inconvenient or inconsistent with their case, assisting the reporter to fully understand such matters and how policies, guidance and evidence are to be properly interpreted and applied.</p> <p>It should be clearly understood that Reporters <b>only</b> consider evidence placed before them. They do not actively seek evidence and will normally take evidence before them at face value unless significantly unclear, disputed or clearly factually inaccurate.</p> <p>The same applies to the policy context. They will normally proceed on the basis of policies before them unless unclear, disputed or clearly factually inaccurate. That may lead to issue of FIR's or PN's (see below).</p>

Assumptions should not be made about knowledge of Reporters of local development plan policies, other strategically important policy documents, other appeal cases or, in the case of an LDP examination, the basis, facts and circumstances of the previous examination (even if very familiar to the officers in the promoting authority itself).

For councils this means adequately explaining how policies justify refusal on planning grounds as applied to the facts.

For all participants, this means drawing to DPEA's attention material facts, including where factual or policy/guidance changes occur in the course of reporter consideration, where relevant. This includes the period between further procedure being held and a decision being issued.

In regard to development plan examinations, there is some tension with the provisions of paragraph 113 of Circular 6/2013, but parties should draw material changes to the attention of the reporter, who will then decide whether to accept the new evidence and invite further submissions.

In PPA's, the section 25 test is not applied in a satisfactory way if policies not supportive of a parties' case are ignored rather than assessed in the round.

DPEA regard parties as having a duty to do so in support of high quality decision making, even where not favourable to their case.

This is especially important where there is a clearly material change, whether to the facts or in policy/guidance, in the course of an appeal. Just as DPEA, as a matter of good faith, would expect parties to correct errors in matters put to them as quickly as possible after the error is uncovered, failing to disclose such clearly material changes, where known (thus leaving reporters knowingly labouring under mistaken understandings of the facts or policy position) may be treated as unacceptable conduct.

The Reporter will then consider the weight, impact and materiality of such matters, having given an opportunity to comment to other parties as appropriate.

It should be stressed that this is not an invitation to introduce new evidence regardless of whether trivial or essentially immaterial. It is understood that circumstances change over time, but that does not require disclosure unless there is an obviously material change (when it clearly should be).

Examples of circumstances where material change occurs, whose impact may be relevant, according to the facts and circumstances, are-

- Finalisation of a new Housing Land Audit
- Issue of new statutory Supplementary Guidance or the decision of Ministers to direct not to adopt and issue it
- Court challenges being taken to an LDP.

This of course is not to pre-judge the relevance of such material or

suggest that it will always be relevant or will always be taken into account.

Consistent with that theme of aspiring to the highest quality decision making and conduct of appeal proceedings in the public interest-

1) DPEA would remind parties of the importance of responding to Further Information Requests (FIR) and Procedure Notices (PN), promptly, fully and accurately.

FIR's and PN's are issued for a reason and, unless so obvious as not to be necessary, that reason will be set out in the FIR or PN itself. The DPEA FIR & PN templates are being amended to provide for the setting out of a reason or reasons, to assist clarity on the issue in hand.

An FIR/PN is not an invitation to introduce new arguments or new materials. If doing so is considered essential or it is felt that the Reporter in the FIR/PN has materially misunderstood a key issue or factor, any response should explain why the FIR/PN response contains such new arguments, new materials or explanations.

If not relevant to the FIR/PN or if the relevance of a response is not clear from the terms of the FIR/PN (even where sought to be explained, if the explanation is inadequate), these representations may be given little or no weight. Relevance will be a matter for the Reporter, informed by consideration of the reason for the FIR/PN, the material concerned and the explanation offered.

The most important duty of parties is to answer the points arising. Failure to do so will almost certainly be to the disadvantage of a party not doing so. Providing material not asked for is not a substitute failing to answer the FIR/PN.

2) Parties should recall that DPEA Reporters need more than simply representations made to them on any one issue in an appeal. Findings and conclusions require to be under-pinned by facts and evidence. Parties should recall that, unless a sound evidence base is provided with appeal materials, Reporters may decline to make desired findings or decline to impose preferred conditions (for example justifying developer contributions) where a decision doing so cannot be explained or justified under appropriate reference, set out in the decision or report, to the information or evidence put before or drawn to the attention of the Reporter.

Equally, closing submissions in oral procedure should be based on the evidence brought out in that procedure. New matters should not be introduced at the stage of closing submissions, nor should parties' representatives in effect give their own evidence in such submissions. Such submissions should be based on evidence led or matters put during the oral procedure.