

DPEA Guidance Note 6

Written submission appeals:

- no further procedure
- site inspections

Each case is unique and must be considered on its merits. It is for the person appointed to determine the case to satisfy themselves 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 the Duty Principal Reporter so issues emerging can be considered for future case work.

Guidance note for:	Reporters and parties
Relating to:	<p>This note relates to cases progressed under the The Town and Country Planning (Appeals) (Scotland) Regulations 2013. These are:</p> <p>Planning Permission appeals (PPA) Enforcement Notice appeals (ENA) Certificate of Lawful Use or Development appeals (CLUD) Tree Works Consent appeals (TWCA) Tree Replacement Enforcement Notice appeals (TENA) Amenity Notice appeals (ANA) Planning Obligation Appeals (POA) Good Neighbour Agreement Appeals (GNAA) Listed Building Appeals (LBA) Conservation Area Consent Appeals (CAC) Listed Building Enforcement Appeals (LBE) Advertisement Consent Appeals (ADA) Advertisement Discontinuance Notice Appeals (ADD) Advertisement Enforcement Notice (ADE) Applications for urgent Crown development</p>
Background/ legislative and policy framework:	<p>Circular 4/2013 sets out the objectives of the planning appeals process: to ensure that examination procedures are proportionate and efficient; that the appeal process is transparent and fair; and that decisions are both robust and based upon a review of the proposals that were originally considered by the planning authority.</p>

	<p>Written submission appeals can be determined with no further procedure (Regulation 7) or by site inspection (Regulation 12).</p> <p>Regulation 7 states: “Where the appointed person considers that no further representations are or information is required to enable the appeal to be determined, the appointed person may determine the appeal without further procedure.”</p> <p>Regulation 12 provides that a reporter may choose:</p> <p>(a) whether or not to inspect an appeal site, and (b) whether the inspection will be accompanied or unaccompanied.</p> <p>For site inspections, the Regulations require that:</p> <ul style="list-style-type: none"> • where an inspection is to be unaccompanied the appellant, the planning authority and interested parties will be advised of such intention (no date or time need be given). • where an inspection is to be accompanied the appellant, planning authority and those interested parties who (where applicable) have opted in must be given notice of the date and time. In planning permission, listed building, or advertisement consent appeals, an interested party is any consultee or third party who submitted representations to the planning authority. In appeals relating to enforcement notices, tree replacement enforcement notices, amenity notices, listed building enforcement notices, advertisement enforcement notices, and advertisement discontinuance notices, an interested party is a person to whom the appeal was notified and who has made representations to DPEA. In planning obligation appeals, the interested parties are the owner of the land and any other person against whom the obligation is enforceable. • The reporter is not obliged to defer the site inspection if any of the parties or interested persons are not present or available on the set date.
<p>DPEA practice:</p>	<p>No further procedure appeals:</p> <p>It is for the person appointed to determine what, if any, further procedure is required on a case by case basis. Some examples of appeals where a reporter may consider that no further procedure is necessary are included below. For the avoidance of doubt this note does not suggest that all such cases should proceed with no further procedure.</p> <p>Planning Permission</p> <ul style="list-style-type: none"> • Some appeals in relation to the imposition of planning conditions. For example:

	<ul style="list-style-type: none"> • an appeal in relation to the phasing of a development; • where a condition is not related to the physical aspect of the site; • where the appeal challenges the validity of a condition (although a site inspection might be required if an alternative condition is to be imposed and an inspection of the site was necessary for this purpose); • Where a development would clearly contravene a national planning policy or clear development plan policy and where there is little or no evidence of any material considerations that would outweigh this; • Cases where the planning authority does not defend the appeal, particularly in cases in which the appeal relates to a non-determination and the authority indicates that it would have granted permission; • Where an application for renewal of planning permission has been made and there has been no material change of circumstances since the previous grant of permission; • Some appeals which seek to vary the terms of an earlier consent, but which would not alter the built form or lead to increased traffic etc; • Where there is no dispute about the relevance of a policy, but the key issue relates to whether an exception is justified. For example, where the arguments are around whether an agricultural worker needs to be located on-site; • There may be some cases in which the physical characteristics of the site have no bearing on the issues in the appeal; • Where evidence has been submitted and is not in dispute and is sufficient to enable a decision to be taken without a site inspection. <p>Enforcement Notices</p> <p>A number of Enforcement notice appeals may not require further procedure, for example:</p> <ul style="list-style-type: none"> • ground (b) appeal, where the factual position is clear from the submissions (demonstrating that the alleged activity definitely has, or has not, occurred); • ground (c) appeal, where the submissions clearly show that the alleged activity does, or does not, represent a breach of control; • ground (d) appeal, e.g. where it emerges that the activity is authorised by a previous planning permission; • ground (e) appeal, where it is shown that the notice has not been properly served; • ground (f) and (g) appeals, where the steps required or the time limit are manifestly unreasonable.
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Certificates of Lawful Use or Development

- Appeals in this category do not involve an assessment of the planning merits of the development and, accordingly, a site inspection may not be necessary. However, if there are factual matters in dispute such as whether the site has been abandoned this may be required. In addition, consideration may have to be given to an oral session in order to take evidence on oath or to assess conflicting factual assertions.

Amenity Notices

- A site inspection may not be necessary in cases in which the grounds of appeal are:
 - that the remedial steps specified in the notice are excessive (ground (b) of section 180 of the Act);
 - that the period for compliance falls short of what should reasonably be allowed (ground (c));
 - that the condition of the land is attributable to lawful use or operations (ground (d)); or that
 - the section 179 notice was not served properly (ground (e));

In cases in which the grounds of appeal are that amenity has not been adversely affected (ground (a)), a site inspection may not be necessary if sufficient reliable photographic evidence has been submitted (remembering that a ground (a) appeal relates to the impact on amenity at the date the notice was served.)

Site inspection appeals:

It is for the reporter to determine whether a site inspection is necessary on a case by case basis. The purpose of the site inspection is to obtain further information that is essential for the determination of the appeal.

The appeals process should be proportionate and efficient. Experience during COVID-19 travel restrictions demonstrated that sufficient information could often be obtained by a desk based assessment, through the use of photographs, Streetview extracts, video clips and other means. It is important, having regard to sustainability and proportionality, that these efficiency gains are maintained.

In particular, CLUD and enforcement cases (including those relating to short-term lets) do not require an assessment of the planning merits of the use. In such cases, the submissions will often be sufficient to demonstrate whether or not the use is lawful or whether there has been a breach of control. Site inspections are seldom informative or necessary in these cases.

	<p>If a site inspection is required, the reporter must decide whether this should be accompanied or unaccompanied.</p> <p>In deciding whether a site inspection should be accompanied or unaccompanied, the reporter should consider whether the further information required can be obtained on the basis of an unaccompanied inspection. In many cases an unaccompanied inspection will be all that is required to obtain the necessary information.</p> <p>An inspection should not be carried out on an accompanied basis simply because one or more of the parties has requested this, or because there are a lot of interested parties. The reporter must consider whether there are features of the appeal or the site that would make it appropriate for the inspection to be carried out on an accompanied basis. Situations where it may be preferable for a site visit to be accompanied are:</p> <ul style="list-style-type: none"> • To obtain physical access to the site or premises. If this involves the reporter meeting one party, however briefly, then consideration should be given to an accompanied site inspection in order to avoid any perception of bias; • Where there is a need to view or access the site from private land or property (for example, from an objector’s home) another party may be concerned about the reporter being influenced by that contact; • Where there is any possibility that the reporter’s health and safety may be compromised. This may include visits to remote locations, industrial/operational or vacant premises; and • Where the presence of parties is necessary to identify or explain a particular feature of the site, development or location. <p>The potential for people to approach the reporter during an unaccompanied site inspection is not, generally, a sufficient reason to justify an accompanied inspection. If approached by the parties or others the reporter should explain the purpose of the site inspection and make it clear that they cannot discuss the appeal or hear evidence about the merits of the development.</p>
<p>Process:</p>	<ul style="list-style-type: none"> • On receipt of a case, all appeals will be set at ‘No further procedure’ by the administration team; • The appointed reporter will review the case upon receipt and will, as soon as possible, advise the administration team (by email) of their intended choice of procedure; • If the reporter considers that no further procedure is required they will then issue a decision notice in the normal way;

	<ul style="list-style-type: none"> • If the reporter decides that a site inspection is required, the reporter will advise the case officer whether the site inspection is to be accompanied or unaccompanied; • If unaccompanied, the reporter should advise the case officer of the intended date prior to undertaking the site inspection; • The case officer will then advise the appellant and planning authority that the reporter will be undertaking a site inspection, indicating in the letter whether it is to be an accompanied or unaccompanied site inspection. If accompanied, times and date and an invitation to attend will be given. In the case of accompanied site inspections, the appellant and planning authority must, by return, advise DPEA if they are unable to attend; • If accompanied, the case officer will advise interested parties who (where applicable) have opted in of the date and time of the site inspection, giving a minimum of 7 days' notice.
<p>During an accompanied site inspection</p>	<ul style="list-style-type: none"> • The reporter will introduce the attending parties and explain the purpose of the site inspection; • The merits of the proposal cannot be discussed, and no new evidence can be introduced; • Parties may wish to draw important features of the appeal site and its surroundings to the reporter; • The reporter will bring along any necessary plans for their own reference and a tape measure if required. The reporter may seek the assistance of the parties in measuring and verifying important distances. In high hedge cases, the reporter may request that the planning authority assists by bringing along suitable measuring equipment and undertaking the measurement of the hedge in question; • It is helpful if the appellant and council representatives have knowledge of the site and surroundings and are also able to access relevant plans during the inspection; • The parties, and certainly the representatives of the appellant and the planning authority, should at all times stay close to the reporter. This is so that all parties can hear any questions asked by the reporter together with the responses of the other parties; and • If the reporter requires to visit nearby sites for comparison with the appeal site, this will normally be done unaccompanied.