

Planning and Environmental Appeals Division stakeholders' meeting 31 May 2017

Paul Cackette	Chief Reporter
Scott Ferrie	Assistant chief reporter
David Henderson	Head of Performance and Administration
Karen Cowie	Scanning manager
Mandy Catterall	Scottish Property Federation
Rachel Conner	Scotland Against Spin
Alan Farquhar	Scottish Environment Protection Agency
Darren Hemsley	Scottish Natural Heritage
Richard Henderson	South West Edinburgh Communities Forum
Kate Houghton	Royal Town Planning Institute Scotland
Graham Lang	Scotland Against Spin
Neil Martin	Homes for Scotland
Alastair McKie	The Law Society of Scotland
Suzanne McIntosh	Royal Incorporation of Architects in Scotland
David Middleton	Sustainable Communities Scotland
Penny Uprichard	The Royal Burgh of St Andrew's Community Council

Apologies

Aedan Smith	RSPB and Scottish Environment Link
Stephanie Clark	Scottish Renewables
Euan Pearson	Royal Institution of Chartered Surveyors
Alasdair Sutherland	Environmental Law and Bar Group
Ian Dryden	Heads of Planning Scotland

1. Welcome and introductions

Paul welcomed everyone to the meeting and intimated apologies as above.

2. Matters arising from the last meeting

Paul confirmed that the mediation conference, chaired by Sarah Boyack, had taken place. The general consensus arising was that it would be difficult for reporters to be adjudicators and mediators. There is an issue in respect of confidentiality of discussions given the expectation of a fair, open transparent planning process. There was a broad conclusion at a wider level for greater discussion with community groups, especially if there is a move to 10 year LDP cycle.

3. DPEA update

1. Paul confirmed that DPEA's performance against targets in 2016 had seen a dip for various reasons. This was one of the first and most important areas he had to deal with in taking up post. He confirmed the appointment of 9 new self-employed reporters (6 starting last year) and 3 new salaried reporters (Nick Smith, Elspeth Cook and Keith Bray) who would be joining over the next couple of months. Induction has already taken place. However, he added that these appointments,

whilst welcome, would not provide a short term solution to performance but he felt it allowed DPEA to look to the future with more confidence.

2. Paul confirmed that the lease expires on our current premises in Falkirk at the end of 2018 and that we are in the process of looking at options. The impact of the final decision and the uncertainty at this time falls mainly on the admin team as reporters are home based. He stressed that we are keen to maintain a Falkirk location given the where our admin team live but also to ensure the independence of our decision making. It was not, in his view, appropriate for us to be located in Victoria Quay or Atlantic Quay given Planning and Architecture Division and Energy Consents Unit are based in these buildings.

3. Paul confirmed DPEA had no current cases in the Court of Session. A challenge has been made to the Aberdeen LDP; and in respect of two decisions made by Scottish Ministers, 1 has been lost and 1 conceded.

Graham Lang asked what DPEA's policy was with regard to the appointment of reporters to areas where they have previously worked

Scott Ferrie replied confirming that there was a minimum quarantine period of 5 years. He confirmed that DPEA followed a similar process in cases where the conflict of interest was real or perceived.

Paul added that a reporter would volunteer any conflict of interest when they were appointed or at any stage in the handling of a case.

Rachel Conner asked how does DPEA measure quality of decision making and whether there was an audit of decision making.

Paul Cackette replied confirming that, while far from the only nor the best measure, the ultimate measurement is the important one of in how many decisions are overturned by the Court of Session. He added that there is a balance to strike as reporters are independent decision makers – decisions are not by committee.

However to support reporters there are a number of arrangements in place. This includes mentoring, line and performance management, specialist advisers on specific areas of work, ensuring support is always available and encouraging discussion on issues arising.

Suzanne McIntosh asked whether reporters visited sites after development has been completed.

Scott confirmed that this tends to be done individually by reporters.

Paul confirmed that offers have been made to elected members and officials regarding the role of DPEA and to allow DPEA a better understanding of the local issues. He thought that councils were more likely take up this offer following local elections. He confirmed that he had met with both Angus Council and the CNPA in this regard.

Suzanne commented that some sort of link in going back to look at decisions would add value

Penny Uprichard commented that one measure of success might be whether consented development has actually gone ahead, say looking at 5 years after decision issued.

David Middleton added the large number of further information requests in certain LDP examinations suggests planning authorities are “passing the buck” on to DPEA with a knock on impact on resources and workload at DPEA.

Rachel felt that using if the Court of Session is being used as an audit you also need to look at why cases are not being challenged, is cost likely to be the main barrier. She thought that it was Important to look at the success of decisions/developments.

Kate Houghton stated that the planning review did raise issue of quality of decision making and that it would be of benefit if this could be followed through.

Richard Henderson asked whether as DPEA is part of the Scottish Government. are DPEA satisfied there is sufficient insulation from the SG.

Paul replied confirming in his view that there was sufficient insulation confirming that in delegated decisions there was no pressure from Scottish Ministers to change any decisions. If decisions were to be made by 1st teir tribunals There would be an issue which would need to be reconciled in how Scottish Ministers could recall cases and work.

Richard commented that he felt a lack of independence may raise problems in years to come.

Alan Farquhar added that in relation to LDP issues, these could be better resolved prior to examination. He added that SEPA would be delighted to speak to new reporters re issues such as flood risk.

Paul replied confirming that DPEA was looking at developing specialisms within the reporter cohort.

Alan replied confirming that he was happy to look at whether SEPA can better present relevant information for DPEA reporters – such as 6 monthly updates.

Alastair McKie felt that nervousness in local authority’s regarding delivery of affordable housing. He asked how comfortable are DPEA in using conditions to ensure affordable housing, a practice which is quite widespread in England.

Scott replied confirming that Ministerial policy was to favour conditions over obligations.

Graham asked whether DPEA have any role in ensuring that conditions are complied with.

Paul Cackette confirmed that DPEA have no involvement in this, unless a subsequent enforcement notice appeal is lodged with Scottish Ministers.

Penny Uprichard commented that it was quite common for decisions to be made with up to 35/40 conditions. She had hoped they would be tightly maintained – but in her experience this was not the case. She added that the amount of decisions made by officers was too high and not democratic.

4. Planning review - Planning White Paper

Paul confirmed that 450 responses to the White Paper are currently being analysed with an aim to introduce a bill in 2017/18. One of the aims of the white paper is to direct more cases to the local review bodies on matters that are considered to be genuinely local.

Penny commented that in Fife, holding the local review body in Glenrothes is not particularly handy or easily accessible. She thought that local review bodies should allow local councillors to consider developments in their own area.

Richard added that there was scope for differential practice amongst local review bodies which reduces the overall confidence in the system.

David Middleton felt that better practice would be to have review to planning the planning committee rather than the local review body.

Penny felt that there should be a facility to rescind planning decisions and not have to challenge legality which puts the burden on communities.

Rachel added that the review body has to be seen as a completely independent appeal body.

Suzanne confirmed acceptance, despite long standing views, that local review bodies are here to stay. However, she added that the process has to be consistent and fair. She asked whether there should be consideration of the equivalent of the small claims court for planning decisions.

Alastair agreed with much of what had been said. He would rather moving enforcement to local review body than expanding the planning remit of local review body.

David Middleton stated that the local review body process was against the spirit of natural justice, to extend the local review body is simply to extend the injustice.

Penny commented that the elephant in the room is the third party right of appeal which has been ruled out by the review body and Scottish Ministers.

Mandy Catterall felt that any third party right of appeal would be subject to misuse and run counter intuitively to front loading the system.

There was a wide and varied discussion on pre-application discussion; community engagement; varied approach from communities; varied approach by developers. Some members expressed the view that the front loaded approach does not work. Others felt that the limits on community councils restricts involvement and that DPEA could do more to help communities engage through the process.

5. Role of Reporters on building design

David Middleton commented that there was general agreement that decisions are a matter of individual judgement. He asked whether a reporter should be able to overturn decision on design grounds given subjectivity of this judgement.

Suzanne confirmed that guidance is and should be followed.

Alastair confirmed that the bar is set very high in some authorities with regard to the highest quality of design

6. Applying time limits for appeal submissions

Penny confirmed that she was somewhat re-assured by previous commitment to 28 day period for representations to be made from the date of receipt of an appeal.

7. Improving community engagement

The group felt that this had been covered in earlier discussions.

8. Misdirected appeals

David Middleton noted the high number of appeals that are rejected as no remit to consider by DPEA. He wondered whether the e-planning portal might be causing some confusion for appellants. David Henderson agreed to look into this matter further.

9. AOB

Paul confirmed in response to issues raised by Aedan Smith regarding the possibility of reporters being involved earlier stages of the development plan process that this was one of the expectations proposed by the Gateway Review which forms a part of the new planning bill. .

Penny asked for confirmation of what role "precedent" should play in decision making.

Scott confirmed that whilst it is considered each proposal has to be considered in its own merits.