

DEVELOPMENT PLANS AND APPEALS PROCESS - Dan Jackman DPEA

Background:

- 1947 Planning Act provided for a right of appeal to Secretary of State for Scotland
- Reporters Unit set up in 1973 – previously ad hoc
- Constant tensions between efficiency and party rights

Development planning is:

- Basis for making planning decisions
- Two tier in conurbations / 2 Tier = Strategic & Local Plans, conurbations – see below
- Focused on land use and place but co-ordinated with other policies and strategies.

Local Development Plan (LDP) is a tool in Councils' tool box, one of the tools but a specialised tool because everything will end up linked to land and property.

Different Councils have different styles for Main Issues Report (MIR) which is the proposed plan and a 'settled will'. If there are comments on MIR there needs to be examination for the plan to be adopted. It is on a 5y cycle which is relaxed to 10 years.

Strategic plan - 'Conurbation' issues for bigger regions such as Glasgow & Clyde, Edinburgh and Lothians, Aberdeenshire etc.

Getting involved:

- Know what it is you want (not just what you don't want) and why
- Engage as early as you can – if not sure of the timelines speak to officials about what stage the plans are at and how to contribute.
- Front loading – so prepare your submission to the council carefully (see below)
- Unlikely to be any further input - If proposed plan is not to your liking, it needs to be considered before, only UNRESOLVED issues go to DPEA.
- Be aware of the position of others, what other people are saying in the area

Examination

- Previous system was objection based and there was a right to be heard – every objection had a right to be considered

- 2006 reforms aimed at increasing coverage and speeding up the process of adopting LDPs. It is a Councils job to group things into issues, usually there's a team looking into LDPs & work gets divvied up.
- Council determines the issues (not objections)
- 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 (Councils sometimes ignore national guidance)
- Few hearings and no inquiries
- Limited circumstances where a council cannot follow the recommendations within the examination report

Current appeal system

Different development hierarchy – if application was decided by officials, the appeal goes to LRB; if passed by elected representatives it goes to DPEA

- Local Review Bodies (LRB) – no right of appeal to us for delegated decisions (previously approx. 1400 cases now approx. 500)
- No right to be heard
- Front loading of information
- "One shot" grounds of appeal
- Default process is unaccompanied site visit, written grounds of appeal and what was before the council (66%)

What the Reporter does:

- Cases are collected in batches and allocated by office, every 2 weeks. Reporter receives a batch by an e-mail (they work from home)
- Reviews material to determine whether default process is appropriate, if the procedures were followed correctly etc.
- If not, prepares procedures notice
- Arranges site visit
- Prepares for and completes further procedure
- Writes up decision notice

How does the Reporter decide what procedure?

- Takes into account views of main parties (they check Councils recommendation)
- Choice of:
 - Further written submissions
 - Hearing session – structured discussion, easier to unpick the arguments
 - Inquiry session - more formal with representations from other parties
- 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 – specific closed questions Eg new policy or a procedural matter, Is dispute over a fact or an opinion?
- Hearing – if dispute is a matter of opinion which could not be resolved in writing
- Inquiries – Where cross examination is essential, dispute over facts or technical. Sometimes essential but rare
- Also considering compulsory purchases, energy applications or transport. (i.e. if by Transport Scotland it could be public inquiry)

How do Reporters write up a decision?

- What is before you – they can only make decisions based on what they see, they can't find information if you have not included it
- Statutory tests/duties – must be followed (S25 – must be made according to plan unless any material considerations)
- Rely on the evidence – they are not allowed to go looking for other evidence themselves
- Adequate reasoning
- Addresses key relevant matters
- Ignore irrelevant matters – any irrelevant issues won't be addressed at all
- Written positively / relating to statutory duty
- Do not indicate what would be acceptable
- Accurate and concise
- Only the courts can change a decision once issued (recommendations can be overturned by ministers)
- Previous decisions are relevant (NOTE - need to double check this!)

How to present your case

- No silver bullet – Focus on making your position clear rather than seeking to persuade
- Answer the question – be aware of the decision making framework
- Give reasons – avoid assertions or exaggerated claim, stick to facts!
- Cross reference to sources of evidence clearly (use subheadings etc.)
- Make it easy to read – if it is all jumbled up, they will still read it but more difficult to make sense
- Don't duplicate evidence
- Use the case officer and the website for procedural points

Hearings / Inquiries

- Don't panic – it's not a sudden death playoff – if you know your case you have nothing to fear! (the hearing is just a tip of the iceberg of all the information gathering – most evidence is written, and documents prepared beforehand)
- Same advice as above for all written material – Look out for KEY ASSUMPTIONS, they are most attacked (works both ways, yours and the opposition)
- Understand the jargon – if not sure ask
- Combine to pool resources (similar positions are combined by Reporters)
- Team of 3 or 4 – clear roles and prepare thoroughly
- Understand the assumptions underpinning your case and the assumptions of those opposite you

Planning Bill

- Currently at third reading – no date set yet
- Lots of amendments at second reading – the Minister is not keen on them
- Greater role for National planning – part of LDP (about style not content – general & loose or very specific)
- Gateway check – for LDP – the timing is crucial; making few modifications won't do if it's a big mess so need Gate Check at the beginning. How – just admin or more thorough?
- Minor changes to appeal system – more cases now go to LRB
- Debate about 3rd party rights or equal rights of appeal – not in the Bill

Concluding remarks

- Front loading requires you to get your retaliation in first – it is crucial to get in EARLY, don't rely on DPEA
- Current process prioritises efficiency – deliberate, 12 weeks for appeals!
- Reporters (and Ministers) have to follow a decision making framework – be aware!
- Set out your position clearly
- Not every point of view can prevail but 55% dismissed last year (about 6 DPEA decided cases a year get overturned in Court)

There is no confidence from communities – still prevailing feeling of 'it's already been decided'.

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 website: <https://www.dpea.scotland.gov.uk/>
- Planning and Environmental Appeals webcasts: <https://dpea.public-i.tv/core/portal/home>