

QUESTION AND ANSWERS ON LOCAL DEVELOPMENT PLANS AND APPEALS

We held an online [event](#) in April 2021 with Dan Jackman the Scottish Government Reporter from the DPEA. He kindly agreed to answer everyone's questions in writing. This was an enormous task and we would like to thank him for his efforts.

Planning Democracy have added our own responses to some of the questions in red.

1. General

1.1 Question - Over the past several years planning applications in the Newton Mearns area for large scale housing developments have included designs for drainage of sewer and run-off water via a drain network only to the limit of each site boundary. We have a sewer flooding problem in Newton Mearns due to poor drainage system designs over the last four or five decades. Can future planning regulations insist that for future planning applications, sewer and off-flow drainage be detailed to the appropriate mains sewer or SuDs?

Answer – The detailed design of a sewer system is not mainly controlled through the planning system. Scottish Water and SEPA would normally be consulted on a planning application that potentially impacted on a sewer system and no doubt any comments received would be taken into account. Sewers are usually adopted by Scottish Water and they have their own legislation and guidance as to what design they will or will not adopt.

1.2 Question – Why is there no third party right of appeal in Scotland?

Answer – Since the 1947 Planning Act the right of appeal rests with the applicant if planning permission is refused or the council fails to determine the application within the relevant period. Whether the current law should be changed has been considered by the Scottish Parliament but it has always decided not to.

Planning Democracy say- The lack of a right of appeal for communities is a travesty of natural justice. As many of you know we worked very very hard to get a right of appeal for communities during the planning reforms that led to the 2019 Planning Act. We were ultimately unsuccessful, the SNP and Conservatives voted against our amendments, put forward by the Greens and Labour, which would have given communities a right of appeal and limited developer appeals. In a recent hustings Ben McPherson SNP candidate for Edinburgh stated that the reason the SNP did not support rights of appeal for communities was because the development lobby were so resistant. It is crucial we reduce the power of the development lobby particularly the volume house builders. See our next event with Bob Colenutt author of *The Property Lobby: The hidden reality behind the housing crisis*.

1.3 Question- DPEA is neglecting communities and is inaccessible to communities. DPEA community liaison roles should be created to support urgently.



Answer – DPEA’s role is to determine the appeals that are submitted. In doing so it must follow the rules and guidance issued by the Scottish Government and the planning policies adopted by councils. Obviously an effective appeals service has to be impartial and independent – we could not be seen to take sides. Within these constraints I would be interested in any suggestions that the questioner had as to how DPEA could operate differently.

Planning Democracy say- This is a great idea and we are happy to assist in taking it forward.

1.4 Question - Our group have tried to secure a meeting with Scottish Government about planning legislation but refused. We have found legislation and planning processes advantage developers to the detriment of the community. Hopefully the recent PAC survey will address some of the issues.

Answer – Formal meetings with Scottish Government officials are not the only way to make your points to Government about legislation and policy. When the Scottish Government decides to change legislation or policy it would normally carry out a consultation. You could register with the Planning and Building newsletter which will alert you to new consultations - see [The Scottish Government - gov.scot \(www.gov.scot\)](http://www.gov.scot) and click on the subscribe button.

Planning Democracy say- we understand how hard it is to get your voice heard, we had to use a variety of advocacy tactics during the planning bill, including getting an open letter published in the press signed by over 100 groups and community councils which finally secured us a meeting with the Minister. By working together and having so many of our supporters augmenting our voice, we did manage to get community rights onto the agenda. You only need to read the reports of the committees and the final debate in Parliament, where we were quoted on numerous occasions to see our impact. Unfortunately, very little of this translated into meaningful changes to the legislation, the voices of the developers were too powerful. See our [blog](#) to see what we **did** achieve through the planning bill. It is crucial that we all work together, if we are to achieve success in the future.

Future Planning Democracy events can include advocacy and campaign training if people wish.

1.5 Question - If a Local Authority fails to notify the Scottish Government reporter regards a consented application which is contrary to national policy, the development plan or a significant development requiring notification...what can be done to hold the Council to account?

Answer – I do not understand the detailed circumstances set out in the question. In general terms, the council as planning authority has a duty to follow the obligations placed upon it by legislation. If it fails to do that properly it may leave itself vulnerable to legal challenge, invalid permissions or claims of maladministration. When a case is the subject of a planning appeal, the Reporter can only consider the evidence provided by the parties. If one side considers that there are inaccuracies in another parties evidence they may challenge that evidence.

2. Process



www.planningdemocracy.org.uk info@planningdemocracy.org.uk @plandemoc

2.1 Question - What to do about developers submitting late information

Answer – We encourage all parties to adhere to agreed timescales as this makes the appeal process more efficient. Normally our timetables are respected. However, there are occasions when there are good reasons for late information – and this is not restricted just to appellants. The Courts have held that relevant information does not become irrelevant because of a failure to adhere to administrative timetables.

2.2 Question - How to access old appeal information (I note that there is info on removal of appeal info after 12 weeks on your website, but my question is how do people access documents relating to a previous appeal on a similar / relevant application)

Answer – The information is not destroyed but is stored in a separate place for IT reasons. Contact the general DPEA inbox and the IT Team will see what they can do. If an appeal is older than 10 years basic information is given to the National Archive.

Planning Democracy say- you can write to the [DPEA](#) at (David Henderson the Head of Performance and Administration is very helpful if you get no joy from other officials). Here is



a screenshot of the relevant page on accessing information.

Planning Appeals On-line

DPEA are pleased to announce that they have now integrated their case management system with Planning and Architecture Division (PAD). The DPEA Division of the Scottish Government plays an important role in the Planning Appeals system in Scotland. The DPEA is responsible for the administration of over 20 different types of casework. PAD Decisions Branch processes a wide range of statutory planning and historic environment casework that Scottish Ministers have an interest in. The range of case types includes: notified applications, compulsory purchase orders and EIA screening directions.

There may be reasons why particular documents are not available on-line. If you require copies of documents that are not on-line, please call DPEA 0300 244 6668 or e-mail dpea@gov.scot and PAD 0131 244 7073 or email planning.decisions@gov.scot we will try to make them available to you.

Once a decision is made, documentation will remain on the website for 12 weeks, after which only the originating documents and decision notice will remain on the website. We then remove all case documentation after 10 years from the date of the decision, in compliance with the Scottish Government's archiving and retention policy. Copies of archived decision notices can be sought by consulting with the [National Library of Scotland](#).

The Scottish Government will [process your personal data in accordance with the GDPR](#) . We will only use the information for the purposes of dealing with and considering the appeal, application or other casework and only publish the information for as long as reasonably necessary. For completed appeals, applications and other casework this is usually for a period of 12 weeks after the date of the final decision.

[Guidance on using this website and the case portal is available on the Scottish Government website](#)

Live and archived DPEA webcasts are available to view [on the webcasting site](#).

2.3 Question - Whether people who have not responded to an application can take part in an appeal

Answer – The only people who have a right to participate are the appellant, the council and anyone or organisation who commented on the planning application. Any other participant would be at the discretion of the Reporter.

2.4 Question - Under what circumstances can the applicant seek a review of the (rejection) decision through the Local Review Body rather than go to appeal to the Scottish ministers (and so Reporter)?

Answer – Whether the appeal is determined by the Local Review Body or a DPEA Reporter is set out in legislation. There is no choice. DPEA only has jurisdiction if the decision is made by the planning committee.



Planning Democracy say- whether or not an application is determined by the LRB (made up of local councillors) or the Reporter depends on whether the application has been determined by a planning officer or councillors at committee.

Every planning authority (your local council) has to have a Scheme of Delegation which sets out who makes the decision about different applications, whether it be a planning officer (aka an appointed officer) or elected councillors. For more information about schemes of delegation see page 21 of our responding to an application [guide](#).

Section 4.2 of Circular 3/2013 on development management explains *“Where a decision has been taken by an appointed officer under a section 43A scheme of delegation, or in cases where the applicant wishes to challenge the appointed officer’s failure to determine an application so delegated, the route to challenge is a review by the **local review body** rather than an appeal to Scottish Ministers”*.

2.5 Question - Should “minded to grant” decisions be notified to Scottish Ministers if HES raised issues and set out mitigating actions or ONLY where HES objected?

Answer – There are some types of planning applications or some circumstances where a council must notify Scottish Ministers if they are minded to grant planning permission. This is to allow the Minister to decide whether the application should be called in to be determined by Scottish Ministers. The requirements are set out in circular 3/2009 but do change from time to time.

2.6 Question - Why should developers with their array of legal advisers be allowed to go on applying and appealing until they get what they want? The local community near me has made it abundantly clear to a developer for 14 years that they aren’t wanted, the Council has refused 2 applications and the Reporter has refused one appeal. A further appeal has now been upheld so a green light has been given to these developers. This will be hugely destructive to the environment for 20 years. In the era of climate emergency, should Reporters not be taking the moral high ground and just saying NO?!

Answer – Reporters make their decisions in the name of Scottish Ministers and are expected to implement the legislation and policies currently in place. A Reporter would get into trouble trying to apply any moral judgement. There are restrictions on applying for similar developments if they have been refused but this is a matter for councils to rule upon.

Planning Democracy say- You are right to be angry about the imbalance of power, the system is vastly pro development (94.7% of applications are in fact approved). To change this you need to lobby your MSPs to make the planning system less about delivering economic growth and more about ensuring development in the public interest. We are bringing out a briefing for new MSPs which you can take to your newly elected politician after the election to ask them to bring about change. You can also lobby your MSP to make sure the new National Planning Framework 4 has strong policies that ensure that we restrict development to what our planetary boundaries can cope with.



2.7 Question - Once a planning application is give consent by a Local Authority, what constitutes progress regards keeping an application live? Are applications 'live' thence forth for evermore however small the progress is with an application?

Answer – Case law has determined that a legal start has to be made. A legal start is considered to be that some form of construction has taken place and any pre-start conditions have been complied with. Once legally started there is no time limit, although councils have powers to issue a completion notice.

2.8 Question - How will the public be aware an appeal has been lodged. For example, an application the community has been involve in and has been refused by the Council - how will the community know the developer has lodged the appeal with the Reporter?

Answer – The council is required to inform everyone who commented on the initial application that an appeal has been made

2.9 Question - Does a Reporter meet developers at any time not including a hearing or enquiry and if so are such meetings minuted

Answer – No. A Reporter does not meet any party. All contact goes through the case officer.

2.10 Question - Are there significant differences in an S36 local public inquiry?

Answer – The links I gave in my final slide relates to planning permission appeals. The DPEA deals with 30 other types of appeal and each different type of appeal will normally have their own rules or guidance. S36 refers to Section 36 of the 1989 Electricity Act and applies to electricity generating stations over 50 MW – typically large wind farms. The Act has little to say about appeal procedures and the DPEA applies a code of practice, which is closely based on planning permission appeal rules.

2.11 Question - When an appeal is dismissed with good reason, why can developers re-apply again for planning permission and have it granted without the Council referring it back to the Reporter?

Answer – It is a matter for the council to determine whether a re-submitted application is similar to one previously refused and therefore whether they can consider it again. Once an appeal decision has been made the Reporter has no further involvement. For any subsequent appeal a different Reporter would be appointed.

2.12 Question - What if the community reps can't attend a hearing on a particular day? The developer has a choice of staff/consultants and will always be able to find someone to represent them. Community members have to juggle commitments!

Answer - If a reporter was arranging a hearing then the dates and times are agreed with parties. This can sometimes be difficult. Sometimes hearings take place in the evening or weekends to accommodate folk.

3. LDP's

3.1 Question - Description of a schedule 4 and what it is



Answer – Schedule 4 is planning jargon for the “form” set out in Schedule 4 of the Development Plan Regulations. This “form” is completed by the council and in very simple terms sets out a summary of the representations grouped in that issue, what changes the representations are seeking and the council’s response. There is space at the end of the “form” for the Reporter to address the respective points. The examination report is effectively the collection of Schedule 4 “forms” for every issue.

3.2 Question - Can you let us know in what circumstances a council can ignore the reporters' advice after an examination of their LDP?

Answer - The circumstances are set out in the Town and Country Planning (Grounds for Declining to Follow Recommendations) (Scotland) Regulations 2009. They are:

1. the modification would mean that the plan would not be consistent with either the NPF or SDP
2. the modification would not be compatible with the habitats regulations
3. the modification is based on conclusions which the Reporter could not reasonably have reached on the evidence considered during the examination.

3.3 Question - How much background detail do Reporters go into when they look at housing need figures and how is that reflected in the Housing Supply Target?

Answer – For a LDP examination, it depends on the unresolved representations that are before the Reporter. In the first instance it is for the council and those making representations to set out fully their grounds and the information they are relying upon. The Reporter can request further information or hold a hearing if they need more in order to address the representations made.

Planning Democracy say- if you want to be sure that the Reporter understands the housing figures correctly it is best to check and try to understand the figures yourselves. You can be proactive in sending in relevant information if it has been missed out (even if you have not been asked to) and pointing out any changes or mistakes. We urge you to be diplomatic and also as clear as you can be with this information, this will improve your chances of getting it considered. Our new guide, (to be out shortly), will explain how to understand these figures yourselves. It is certainly not for the faint hearted, but until we get a better system, you have to rely on your own skills. There is nothing to stop you contacting a Reporter with further information if you think there is a mistake. We know of one case where a community council pointed out that the Housing Land Audit figures being sent in by the local authority were outdated. The Reporter accepted this and apparently it made a big difference and possibly the appeal was won as a result. Be determined. Be proactive is our advice.

3.4 Question - Developers (Barratt and Gladman) are appealing our local LDP. A reporter has been appointed to investigate. What do we do? Do we contact the Reporter directly, add or send our objections



Answer – I assume from the question that what is meant is that there is a current LDP examination ongoing and that one of the issues relates to a housing site. If a Reporter has been appointed, they will already have a copy of the representations, the schedule 4 form and whatever material the council has submitted to “defend” the proposed plan. The LDP examination process doesn’t provide for another party to object to other representations.

3.5 Question - Is there a hierarchy of plans? In Glasgow which is the plan which supersedes all the others and which the others have to agree with?

Answer – This will change in the future, but at the moment the Glasgow and Clyde Valley SDP covers the whole conurbation and provides the strategic framework within which the LDP for each council (such as Glasgow City Council) has to comply

3.6 Question - communities do not have resources to investigate/examine

Answer – The council has the duty to prepare the LDP and involve communities. It can be a challenge and so it’s worthwhile speaking to the council to see what help may be available and what issues a community group wants to be involved in. Sometimes combining with other groups can pool resources.

3.7 Question - The current Aberdeen LDP review has been through the formal consultation period and is going to examination. If errors or misinformation are discovered within a developers bid after the consultation, how can that be addressed?

Answer – The council have the responsibility to submit the schedule 4, the original submissions and any background information. In the first instance it would be for the council to comment on any submissions from developers. If the examination has not yet started speak to the council. If the LDP has already been submitted to the DPEA for examination, contact the case officer.

3.8 Question - A question about housing land supply. Often the argument seems to be between the council and Homes for Scotland, the housebuilders' body. Why is there so much confusion about the evidence for adequate supply when builders fail to use the land available?

Answer – Arguments over housing land supply within the planning system are nothing new. Housebuilders and council will inevitably have different perspectives on the planning system.

Planning Democracy say- our shortly to be published Community guide to housing land supply, will hopefully help you to understand these issues. One thing we have noticed whilst writing the guide is just how much lobbying power the volume house builders have and how they gradually increase the housing land supply figures. We will shortly be holding another online seminar on the Developer Lobby with Bob Colenutt, an academic who has studied the power of the development lobby. Sign up to our [newsletters](#) to hear more.

3.9 Question - What can be done when a council wants a LDP but roads infrastructure doesn't support it?



Answer – I assume the question refers to roads infrastructure in the general sense. A council has a duty to prepare a LDP. One of the purposes of the planning system is to try and balance the need for development against the infrastructure necessary to support it.

3.10 Question - If the council failed to provide the Reporter with relevant information which led to the Reporter approving the LDP, what steps can be taken to challenge the Reporter's report to ensure that all pertinent and important information and evidence is considered ?

Answer – In an LDP examination, it is the unresolved representations that are being examined and the council is “defending” its proposed plan. It is a matter for the council to put their case as they see fit. Once the examination report has been published the council must consider that report. Once the LDP has been adopted there is a 6 week period when the plan can be challenged in the courts – but only on a point of law.

3.11 Question - Can a Council change its LDP without carrying out further consultation

Answer – After the proposed plan has been agreed and the report received a council can only make non-material alterations.

3.12 Question - In seven years' experience, there has not been allowed a single presentation by groups questioning development plans. Is our council obliged to allow public consultation?

Answer – There are obligations placed on councils to ensure consultation during the preparation of an LDP. Many councils use lots of different methods. There is no prescribed form – it is a matter for each council to decide.

3.13 Question - If proposed development sites in a LDP were also included in previous LDPs but were excluded by Reporters when they examined by them do reporters check and take notice of the comments by previous Reporters

Answer: If those are brought to their attention when they are next examining the plan. Quite often when there are disputes over sites to be included/allocated in a plan, the planning history of those sites would be raised. In those circumstances the Reporter would have regard to whatever is put forward to them. Reporters don't go searching for information. It would be up to the parties to raise the issue.

3.14 Question - What's the next stage, Renfrew Council voted to reject reporters analysis of LDP. What follows on from that. It was a small site on HLS, so 9 planning board voted to reject the whole plan as not allowed to change.

Answer: I cannot comment on specific cases but in general terms the council has to consider the report and decide how to respond. However, there are limited circumstances that a council can use to set aside an examination report recommendation. It would be open to the council to abandon the LDP and start again.

4. 2019 Act

4.1 Question - Local Place Plans and how Reporters will consider them



Answer – it is difficult to know until regulations and guidance are available. I do not expect DPEA will have a role in the preparation of Local Place Plans. For planning appeals, you would expect that the policies in a Local Place Plan would have to be taken into account.

Planning Democracy Say- we are highly sceptical that LPPs will become a significant material consideration. Currently there is a consultation on Local Place Plans (deadline 25th June). PD have decided against taking part in the consultation, because we feel the fundamentals are not in place to truly enable communities to realise their plans. We were highly engaged in the drawing up of the planning legislation during which we realised that LPPs were being put forward as another means of drawing attention away from the real problems that communities face at the 'business end of planning', ie the development management or planning application stage, where there is a real imbalance of power and opportunity. They refused to give us a community right of appeal, so LPPs were put forward as a sop.

PD's Position On LPPs

We believe that LPPs have the potential to be very powerful and can help change Scotland and its places for the better, but only if communities have greater control over them. They need to be written by communities for communities, in ways most appropriate to that community. Different areas and communities will want to draw up their LPPs in different ways and this is important for the community to feel the plans are theirs. If a community has ownership of their own plan, they are more likely to make what is in them happen and that could be key to changing our communities for the better. However, the concern is that LPPs will be controlled by Scottish Government, because they have to comply with existing national and local authority plans and timescales. This leaves very little room for a community's own plan and ideas to have any influence and they are unlikely to be adopted, so the process of drawing up an LPP becomes meaningless. We have put forward ten conditions we think should be adopted by the Government to make LPPs acceptable and meaningful for communities.

To ensure LPPs fulfil their purpose and potential, we propose **10 essential conditions must be met:**

1. **LPPs must carry weight.** Towards fulfilling the National Outcomes and addressing Climate Change, should a conflict exist between local authority and LPP interpretations of National Planning Framework 4 (NPF4) and Local Development Plans (LDPs), then the agreed community position must be granted due priority and weight as a material consideration and basis for deliberation.
2. **Existing LPPs** or the equivalent must be integral to the development of new LDPs, providing a starting point for negotiations between communities, authorities, landowners and other stakeholders with an interest in the Place.
3. **New LPPs** need mechanisms to enable them to interface with adopted LDPs and national policy, and have a meaningful influence on decision-making. Mechanisms we have seen with this potential include story maps and formal guidance (e.g. such as Land Use or Development Frameworks), which could sit between LPPs and LDPs and 'bridge the gap'.
4. **Defending LPPs.** Credible legal routes for communities to question planning decisions that conflict strongly with LPPs, for example, a right-to-appeal or a court independent of the Scottish Government to decide appeals.



5. **Deliberative processes.** Duties which require authorities to engage in conversation with communities around their LPPs in planning processes and to allow reasonable time for community deliberation within their schedules.
6. **Representativeness.** Guidance which can ensure LPPs are resident-led and reflect the requisite diversity of perspectives and experiences which make up a Place, including children and young people, and are not used to further the interests of specific groups or landowners.
7. **Flexibility.** The approach taken to develop LPPs, as well as their form, content, or language should not be constrained or stifled by authorities with predetermined approaches, rules and priorities. This would allow for the freedom of expression of communities and their values and include the scope to define community boundaries which work best for residents.
8. **Non-Political Affiliation.** LPPs should be entirely non-party-political and non-sectarian. There can be no requirement for Community Councils or residents preparing LPPs to take into account the views of the area of councillors or politicians, unless they are participating purely in their capacity as local residents.
9. **Unambiguous Guidance on these Criteria.** Planning Advice Notes or other guidance issued for Local Authorities by the Scottish Government should set clear requirements on the implementation of all of these essential criteria, and leave no room for alternative interpretations.
10. **Funding** must be responsibly delegated towards building capacity at a local level and leveraging community expertise. This is best allocated through community anchor organisations or community empowerment teams based in local authorities with knowledge of the local area and needs, rather than through a centralised Scottish Government fund. Communities receiving funding should be incentivised to work together on their LPPs to promote a joined-up approach to land use and development.

Unless these criteria are met, LPPs can have no substantive place or effect within the planning system, and therefore, communities will not invest time and effort developing them.

4.2 Question - If there is a change of government at next election will anything in progress with NPF4 change?

Answer- Producing NPF4 is now a statutory requirement for the Scottish Government. It is perfectly possible that a different administration or a particular political composition of the Scottish Parliament would change the actual policies approved.

Planning Democracy say-the NPF4 is a much more powerful document than it was before the Planning Act 2019, because it is combined with the Scottish Planning Policies and has become a significant material consideration. It is therefore deffo worth trying to influence it. A draft will be consulted on in the autumn, and there will be a simultaneous parliamentary scrutiny process of the document. It also now needs to be signed off by Parliament, so it is important to lobby MSPs on making it a strong document. Although there is much rhetoric about 20 minute neighbourhoods and net zero carbon emissions, the plan and SPPs are really not very different to previous iterations. As long as the emphasis is on economic growth any other social or environmental factors will have reduced weight in planning



decisions. We need to campaign for this to change. Some people are campaigning for a presumption against development unless it fulfills climate and biodiversity criteria. You can read our response to the Government's position statement on NPF4 [here](#).

4.3 Questions - Can you say more about the Masterplan consent areas

Answer – My understanding is that they will be similar to what was previously called Simplified Planning Zones. A scheme will be prepared and provided development takes place in accordance with the scheme – planning permission is not needed. It would be a bit like granting planning permission in advance.

Question - Do you envisage that the 2019 Act will bring about fundamental changes to LDPs or will it produce more subtle/incremental changes?

Answer: A bit of both. Certain elements will be really different like the NPF4 which will have national policies. LPPs have the potential to make fundamental change. On the other hand a lot has been kept and will probably be fairly familiar.

5. Consultation

5.1 Question - Are fixed planning application consultation periods for the public appropriate, fair and part of a coherent process when it is possible to view draft and un-versioned documents within planning submissions, as well as seeing updates or completely new document uploads at any point right up until the consultation window end?

Answer – Times quoted in regulations are the minimum required. Extensions can be granted at the discretion of whoever is running the consultation. If deadlines given are unrealistic it may be worth speaking to the promoter and seeing whether a deadline extension can be negotiated or guidance given as to what areas a group should prioritise.

5.2 Question - Since 2006 the voice of communities has been stymied in terms of applications and appeals. It appears that local authorities can make up the rules so in one local authority outside Edinburgh comments are not published online so objectors cannot find out if others have made similar comments. In another local authority outside Edinburgh all Councillors are on the Planning Committee and that committee does not allow any presentations. It seems to me that Local Authorities can restrict the voice and then even if an appeal is lodged, the Reporter chooses a written representations process is selected most of the time. This means that opportunities for community engagement can be few and it is no wonder that communities start to feel that they are not engaged. Is it time for change to have better engagement and public participation- nothing much has been achieved in the last 50 years post Skeffington.

Answer – Practice does vary across Scotland. However, there are many examples of engagement that were never envisaged or widely used 50 years ago. For example pre application consultations, e-planning, committee hearings and the creation of organisations like Planning Democracy and Planning Aid for Scotland.



Planning Democracy say- it is probably more the context and culture that planners work within that determines how consultation is done. Also with years of austerity planning departments are very under resourced. Our neoliberal world that relies heavily on the private sector to deliver public good, that seeks to de regulate and that believes in the power of the markets rather than people often means that even the most willing local authority find it hard to resist development because it delivers growth. Planning in Scotland is expected to deliver the Government's economic policy rather than sustainable development. Until we change the context it is unlikely that things will change. Read our [blog post](#) here for more on this.

On another note we really don't want to have to exist! Planning Democracy is a grassroots organisation that campaigns largely on a voluntary basis on behalf of communities. Unlike Planning Aid Scotland we receive no Government funding and therefore can maintain our independence and ability to advocate on your behalf. We rely heavily on your donations. Please consider setting up a regular [donation](#) to help keep us going.

5.3 Question - Scotland Against Spin, through the DPEA Stakeholders' Forum, requested a handbook explaining the appeals process and this was published last month. Has it been sent out to all local authorities, community councils and other local community groups? Why has it not been more widely advertised on the DPEA website for example?

Answer: We attach a link to this document in all our initial letters to parties involved in cases covered by this guidance to ensure that everyone has access to this information at the start of an appeal. We have also placed prominent links to these documents on our web pages. We have to follow Scottish Government rules on our web layout which is not always helpful for operational departments and we are working with IT colleagues to see if we can improve the layout and design. In addition, we sent a link to each member of the Stakeholder Group (including Scotland Against Spin and Planning Democracy) to allow them to disseminate to the bodies they represent.

Planning Democracy says- here is a copy of the DPEA [guide](#) and well done to Scotland Against Spin for their efforts to get it written (NB PD also asked for the guide to be written). We will send you a copy of our own community guide as soon as it is published.

6. Planning Appeals

6.1 Question - In percentage terms, how far above an allocated number of units for a housing development site in a Local Development Plan would a planning application have to be for a Reporter to regard it as contrary to the LDP?

Answer – There can be no fixed percentage. It would depend on the circumstances of each case. For example, some LDPs say such numbers are indicative, others are more specific. The numbers of units on a site can vary enormously depending on the type of unit, design and layout chosen. The real issue is the planning consequences of the increase in the number of units rather than the change in number per se.

6.2 Question - What defines sustainable development?



Answer – The current Scottish Planning Policy contains a definition in the glossary and paragraph 29 sets out a number of principles to be taken into account.

Planning Democracy say- the current Scottish Planning Policy makes it clear that economic growth is the priority, despite purporting to support sustainable development. The Scottish Planning Policy is currently being changed as part of the National Planning Framework 4 (NPF4) preparation. It is CRUCIAL that you lobby to get a very strong National Planning Framework. The consultation will be done in the autumn and includes parliamentary scrutiny and sign off so lobby your new MSPs on this as soon as they are elected!

One success that Planning Democracy had during the planning bill was to get a purpose for planning incorporated into the Planning Act 2019. This puts greater emphasis on sustainable development and the National Outcomes, which technically could improve things. However, one constraint is that the purpose is only relevant to the Development Planning part of the act, not the Development Management part which deals with planning applications. This is due to the Government being scared of court challenges if developments are not considered sustainable.

6.3 Question - What planning merits does the reporter take into account. Is it mainly planning policy or other govt. policies

Answer – For a planning appeal the Reporter must make the decision in accordance with the provisions of the development plan unless material considerations indicate otherwise. The Reporter must first consider the relevant policies in the development plan (either the LDP or in the conurbations the SDP/LDP) and decide whether overall the proposal complies or not. The Reporter must then decide whether any material considerations suggests a different approach. What is or is not a material consideration depends on the circumstances but almost always would include Scottish Government policy.

6.4 Question - Why is there no mechanism to have a planning application modified rather than refused completely?

Answer – It is open to councils to consider amendments to a planning application. Once a case is at appeal, the Reporter can only consider the scheme that was determined by the council. There was a change in 2006 to prevent developers using the appeal system as a negotiating tool.

6.5 Question - Do you believe it is beneficial for individuals and local communities to have an advocate to steer them through the appeal process and represent them in an inquiry.

Answer – I am sure that any help is useful. However, it is not essential to have professional representation. It is not the case that only parties that a professionally represented prevail at planning appeals.

6.6 Question - Can a Council change conditions imposed by the Reporter?

Answer – No. The applicant could apply to the council to amend the conditions. In addition, only the council has responsibility to enforce planning conditions.



6.7 Question - Now that the 5 year HLS calculation has been adopted can it be disputed by developers?

Answer – Scottish Government planning policy is as published. The fact that the Government has a policy does not necessary mean that there are no arguments. I cannot recall a time in my 32 year planning career when housing land has not been argued about

Planning Democracy say- Currently McTaggart and Mickel with Grahams 'Family' Dairies and Elan Properties are challenging the new interim housing policy in court generally on the grounds that the changes to SPP were presented by SG as being technical in nature whereas they contained fundamental policy changes, The case was heard on 14/15th April and we await the result. If the Government win we are not sure what whether they will have to retract the new guidelines.

6.8 Question - What proportion of appeals are withdrawn before determination?

Answer – 27 planning or planning related appeals were withdrawn in 2019. Withdrawal rates are higher with other non-planning types of appeals

6.9 Question - We have lots of student residential developments in our area (Gorgie-Dalry) and the Council refuse plans based on local objections but the DPEA allow the plans at appeal. How can we as a Community Council know about these appeals before they are decided, in order to make our representations?

Answer – Ask the council to notify you of such planning applications. If you comment on a planning application to the council you have to be notified of the appeal.

6.10 Question - How can a reporter make an informed decision on a PPIP application with little to no detail?

Answer – The purpose of planning permission in principle is to consider the principle of the development and leave matters of detail to a second application. The Reporter has to determine the appeal on the basis of the proposal and information that was before the council. The lack of sufficient information to determine the acceptability of a scheme could potentially be a reason for dismissing an appeal.

6.11 Question - Does the Scottish Government have to accept the Reporter's decision?

Answer – Most planning appeals are delegated to the Reporter to determine. In such circumstances the decision of the Reporter is final. The Minister gets a list of appeals received and can “recall” any appeal for the Minister to determine. In those circumstances a Reporter will write a report for Ministers with a recommendation but the final decision would be the Ministers.

6.12 Question - Within a LDP, there are conflicting policies eg (economic) development (sustainable, how defined?) versus environment and biodiversity. How does the Reporter weigh these up in an appeal? Also how does the Reporter take into account Scot Gov policy?



Answer: The Reporter has to decide whether the proposal complies with the relevant policies of the LDP overall, taking into account the objectives, written policies and explanatory text. The Reporter then has to decide whether there are any material considerations that indicate a different decision. Scottish Government policy is usually a material consideration.

6.13 Question - I'm perplexed by the answer to the weighting questions as there are no weightings shown in (Edinburgh) development plan and as far as I can see the tensions in e.g. Economic vs Environment were not addressed at all in preparing it.

Answer – The phrase “weighting” is used to describe either a council, Reporter or Minister explaining how they reached a decision. More “weight” would be attached to some things than others. I am sure Edinburgh City Council would argue that in preparing their LDP that they tried to reach a balance between the need for development against the protection of the environment.

6.14 Question - What data do the Reporters feel is most appropriate to have regarding up to date housing requirements:

Answer - As reporters we don't have a view. We would have regard to whatever is set out in policy or guidance. We would consider whatever data is taken by a party to appeal. We try and get parties to agree data. If data is not comparable, a Reporter may have to hold a hearing or inquiry to understand the differences between the parties.

Planning Democracy says- see our answers to questions 3.3

6.15 Question - If a hearing has been held at the planning stage by council and the development has been sent to the reporter will the reporter watch the hearing?

Answer: Probably not. If that is a planning appeal the issue is whether planning permission should be granted or not. How the council actually reaches a decision is not of direct relevance. Once a council makes a decision it is expected to defend it. It is the Council decision not what the officer has recommended that the Reporter has to consider.

6.16 Question - I had a case where the Council's Planning Committee unanimously refused a developer's application in support of the community's objections. (The developer was taking a parcel of land beyond the land designated for development.) At appeal the Reporter upheld the reasons for refusal but, nevertheless, upheld the developer's appeal. How is that justifiable?

Answer: The number of objections is not of itself relevant. A planning decision must be made in accordance with the provisions of the development plan unless material considerations indicate otherwise. The Reporter must consider all the arguments put forward by the parties to an appeal and ultimately exercise their professional judgement. I accept that in any decision not everyone will necessarily agree with the outcome.

6.17 Question - Does 58% rejected appeals include speculative applications.

Answer: I don't know. Our data just records the outcome. It would be difficult to precisely define what was a speculative application.



Planning Democracy says- First of all the high rate of successful developer appeals demonstrates that the policies are not strong enough and are too easy to challenge. We would expect a much lower rate of successful appeals if a policy is working properly.

Secondly the fact that no-one records whether applications are contrary to the development plan demonstrates how little value is placed on having a plan led planning system in Scotland.

We have been asking for planning departments to record whether or not applications are contrary to the development plan or not in their performance management indicators.

Thankfully one of our amendments to the planning bill did introduce a requirement for planning authorities to include, in their decision statements, whether they consider the application is in accordance with the development plan together with an explanation of why they have reached that view.

6.18 Question - Does the Reporters' decision making framework include anything about how far away from a development plan an application has to be before it is "not in accordance"? Perhaps the basic question here is what does "in accordance mean"?

Answer: Ultimately it is a matter of planning judgement. The Courts have given guidance that you have to look at the objectives of the policies and detailed wording of the policies that are relevant to the proposal and decide overall whether it complies or not.

6.19 Question - What weight is given if any to an emerging LDP that is contested?

Answer – In a planning appeal the Reporter has to make a decision in accordance with the provisions of the development plan unless material considerations indicate otherwise. An emerging LDP can only be a material consideration. The fact that it is contested and therefore may change would be an important factor to take into account.

Questions answered by Planning Democracy

Is there a forum whereby people with similar issues can get in touch with each other?

Yes if you want to join our Slack discussion forum please contact us at info@planningdemocracy.org.uk and we will send you an invitation to join and a guide on how to use Slack.

Our issue is not that a planning application was refused, it's that it was granted. Our LA both applied for the planning application (a new road) and granted it & our understanding is only that LA can appeal. Groups & individuals who objected feel consultations were tickbox exercises. Community concerns about public goods (like recreational enjoyment of the countryside or clean air) were effectively ignored. A sustainable travel solution was not investigated. The focus was purely on housing and economic development. So we feel stymied every which way. I would like to hear from anyone in a similar situation.



Please join our slack forum and use it to discuss issues. Discussion forums only work if you use them! The aim is to put people in touch with each other so you feel less isolated. You can share information about how to engage in the planning system, tactics you have used and so on. You can ask questions there too.

