

Planning and Environmental Appeals (DPEA)

APPEAL TO SCOTTISH MINISTERS:

NOTES FOR APPELLANTS SUBMITTING A CERTIFICATE OF LAWFUL USE OR
DEVELOPMENT APPEAL

(FORM CLUD)



Scottish Government
Riaghaltas na h-Alba
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Notes for appellant

These notes relate to appeals to the Scottish Ministers under Section 154 of [the Town and Country Planning \(Scotland\) Act 1997](#) [the “Planning Act”]; in conjunction with [The Town and Country Planning \(Appeals\) \(Scotland\) Regulations 2013](#) [the “Appeals Regulations”] in respect of decisions made by planning authorities on applications for certificate of lawful use or development, or in respect of the non-determination of such applications.

If you want to appeal against (a) a refusal of an application for a certificate of lawful use or development, or (b) the planning authority’s failure to give a decision on your application, you should use form CLUD.

Deadline for making an appeal

The Appeals Regulations state that an appeal must be made within the period of 3 months beginning with the date of the planning authority’s decision notice on the application. This means that your full appeal must be received by Planning and Environmental Appeals (DPEA) before the end of the third month. If the planning authority has not made a decision on your application and the date by which it should have done so has passed, you can make an appeal against non-determination of your application; in which case the 3-month period starts from the date by which the authority should have made its decision. Check with your planning authority if you are unsure of this date.

For example:

- (1) The date of planning authority’s decision notice is 1 September – your full appeal must be received by DPEA on or before 30 November (note: 1 December would be the start of the fourth month, and so too late).
- (2) The planning authority has not made a decision on your application, and it should have done so by 15 March. You can make an appeal against non-determination, but the last day by which you can do so is 14 June. However, if you do not make an appeal against non-determination and wait for the planning authority’s decision on your application, and you subsequently want to make an appeal

against that decision, the 3-month clock will start again from the date of the decision notice.

The Scottish Ministers have no scope to accept and consider an appeal made after the deadline. This includes any incomplete appeal form or documents received before the deadline, but not fully documented by the time it passes. To avoid any risk of your appeal being turned away due to being out of time, we strongly advise that you make your appeal in plenty of time before the end of the 3 month period.

Completing the appeal form

The notes below are intended to help you complete the appeal form. This form is mandatory and should be carefully completed to ensure your appeal is valid.

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Appellant(s)

This section should be fully completed with the name, address and contact details of the appellant. The Appeals Regulations require that the appellant's name and address must be supplied

Agent

This section needs to be completed if the appeal is being submitted by an agent acting on behalf of the appellant (e.g. planning consultant, solicitor, architect, friend). The Appeals Regulations require that, where an agent is appointed, the agent's name and address must be supplied.

You must also confirm whether correspondence should be sent to the agent rather than the appellant by using the check box provided.

E-mail communications

We seek to use electronic communications wherever possible. Please mark the appropriate Yes/No box to confirm whether you are content to receive correspondence by e-mail.

Planning authority

This will be the name of the council (or national park authority) who considered your application.

Application reference number

Each application for a certificate of lawful use or development is given a unique reference number by the planning authority. This will feature on correspondence from the authority and on the decision notice. The Appeals Regulations require that the reference number must be supplied with your appeal.

Site address

To help us identify the location of the land which is subject of your appeal, you should provide the postal address or site name.

Description of use or development

This should describe the existing or proposed use/development for which you applied to the planning authority for a certificate.

Date of application

This is the date on which the planning authority received your application (or any outstanding information) and so validated your application. The planning authority will have confirmed this date to you when acknowledging receipt of your application.

Date of authority's decision

Where the planning authority has made a decision on your application, you should provide the date stated on the decision notice.

OS map grid reference or post code

To ensure we have properly identified the location of your proposed development, you should provide either the ordnance survey national grid reference or the site's post code.

Area of appeal site

Please provide a note of the area of the site, either in square metres or in hectares Page 2 of appeal form.

Section 150 or 151 appeal?

There are 2 options in this section and you should select one of them, to demonstrate whether you are seeking a certificate relating to an 'existing' or a 'proposed' use/development.

Appeal against

There are 2 options in this section and you should select one of them, to demonstrate what decision or action of the planning authority you now wish to appeal against.

- If you have received a notice from the planning authority stating that it has refused your application, and you want to challenge that decision, you should mark the first box.
- If you have not received a decision on your application within the timescale you were advised previously by the planning authority, and you wish to exercise your right of appeal rather than wait for the authority to make its decision, you should mark the second box.

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Statement of appeal

Your statement of appeal should include full particulars of your appeal and the matters you think ought to be taken into account, and all documents, materials and evidence upon which you intend to rely in your appeal must accompany this form. All matters which you intend to raise in the appeal must be set out in your appeal or in the accompanying documents.

The Appeal Regulations provide for the raising of additional matters or submission of further documents only in very limited circumstances.

For example, if, in its response to your appeal, the planning authority raises matters which had not previously featured in its decision on your application, you would have

the opportunity to comment and submit additional documents on those matters. And if you are making an appeal against the non-determination of your application by the planning authority, at that stage you will have an opportunity to respond to the planning authority's view (which would be unknown to you at the time you first make your appeal).

Nevertheless, depending on the terms of the planning authority's response to your appeal and the possible need for any further procedure (see below), the point at which you lodge your appeal might be your only opportunity to state your case, and so you must be content that you have raised all relevant issues.

List of documents/evidence

As well as providing a full statement of your appeal at the outset, the Appeals Regulations require that all documents, materials and evidence that you intend to rely on in support of your appeal must be provided alongside your appeal form. To ensure we have received all of this information from you, please provide a full list of all supporting documents etc. in this text box. When listing plans and drawings please quote the reference the planning authority gave them.

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Appeal procedure

The appeal process will be managed by the person appointed by the Scottish Ministers to consider and decide your appeal. If, having received your appeal and the planning authority's response, the appointed person has sufficient information to be able to make a decision on the appeal, then that is what will happen.

However, the appointed person may consider it necessary to obtain some further information, perhaps just on a single issue/matter (rather than on the appeal as a whole), before reaching a final decision. There are several methods available to the appointed person to obtain this information:

- Inspection of the site - The appointed person visits the site to view it and its surroundings. The appointed person will undertake an unaccompanied visit

wherever possible. If an accompanied site inspection is necessary, there will be no scope to discuss the merits of the appeal with the appointed person.

- Further written submissions - Parties will be invited to provide information on a specific issue in writing – and each of these parties will then be entitled to respond to the written submissions provided by others.
- Hearing session - This involves a discussion between the parties. This will be restricted to the specific matters identified for discussion, and will be led by the appointed person. Formal cross-examination of hearing participants is not allowed.
- Inquiry session - Where a more formal inquiry structure is needed, this session can be held to examine the specific matters identified by the appointed person. Cross-examination of witnesses is likely to occur in inquiry sessions.

If the appointed person decides that any further written submissions, a hearing session or an inquiry session is needed to consider a specific matter, both you and the planning authority will always be invited to participate, along with anyone else who the appointed person wishes to receive relevant information from.

While ultimately it is the appointed person's role to decide whether (and, if so, what) further procedure is necessary to inform the decision on your appeal, both you and the planning authority are entitled to express an opinion on which procedure (or combination of procedures) you think are appropriate. This section of the appeal form invites you to do so. It also provides an option (box 1) where you can express if you are content for a decision to be made without any further procedure.

Where there is to be some further procedure, you will always be advised of what is happening and of what might be expected of you.

Site inspection

This section of the form seeks your assistance and opinion in relation to the accessibility of the site of your proposed development, to assist our preparations if the appointed person decides to inspect the site before reaching a decision.

Bio-security

Good bio-security practice helps prevent outbreaks and the spread of animal and plant pests which may affect agriculture, forestry, aquaculture and angling industries. It is helpful for the reporter to know in advance if there are any such issues they need to be aware of before they carry out a site inspection. If there are, please give details in the comments box on the appeal form or provide on a separate sheet.

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Other appeals

If you have any other planning (or related) appeals currently with the Scottish Ministers concerning the same or neighbouring land, please provide the details on this part of the form.

Checklist

The appeal form is structured to guide you in making a full and valid appeal which will comply with the terms of the Planning Act and the Appeals Regulations.

The checklist allows you to ensure that you have provided us with all the information we need to progress your appeal.

Declaration

To confirm that you are making an appeal to the Scottish Ministers in the manner set out on your form and supporting documents, please sign and date the form before you send it. If you are sending the form electronically, you can simply type your name and date - your e-mail address will act as an electronic signature.

What next?

Once you are happy with the terms of your appeal, you should send the form and all supporting information to Planning and Environmental Appeals (DPEA), either by e-mail or post. The contact details are at the end of the form.

The Appeals Regulations also require that, at the same time as you send the appeal to us, you must send to the planning authority:

- a copy of the notice of appeal (the form);
- a list of all documents and other information relating to your appeal which you intend to rely on in support of your appeal (you will have provided this on page 2 of the form); and
- a copy of any documents or other information from that list which you have not already provided to the planning authority when it was handling your planning application.

Further information

For further information about the planning appeals process, please see the [Scottish Government's Planning Circular 4/2013: Planning Appeals](#). This is available on the Government's website or can be obtained in hard copy by contacting the Scottish Government's Central Enquiry Unit on 0300 244 4000.

If you wish to discuss any aspect of the appeal form or the process, please contact Planning and Environmental Appeals (DPEA) on 0300 244 6668.

Written queries can be sent to us at either by e-mailing dpea@gov.scot or by post to Planning and Environmental Appeals Division, Hadrian House, Callendar Business Park, Falkirk, FK1 1XR.

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