

## Guidance notes for Appeals against refusals and other decisions form

Relevant legislation:

- Section 47 of The Town And Country Planning (Scotland) Act 1997 in respect of Planning Permission
- Section 18 of The Planning (Listed Buildings And Conservation Areas) (Scotland) Act 1997 In Respect Of Listed Building And Conservation Area Consents
- The Town and Country Planning (Control of Advertisements) (Scotland) Regulations 1984 in respect of Advertisement Consent Appeals
- Section 154 of The Town And Country Planning (Scotland) Act 1997 in respect of an application for a Certificate Of Lawful Use Or Development
- Article 23 of The Town And Country Planning (General Development Procedure) (Scotland) Order in respect of Prior Approvals
- Section 26 of The Land Compensation (Scotland) Act 1963 in respect of a Certificate Of Appropriate Alternative Development
- Section 160 (together with the provisions of Sections 47 and 48 ) of The Town And Country Planning (Scotland) Act 1997 in respect of decisions on Tree Works
- The Town and Country Planning (Appeals) (Scotland) Regulations 2013

## Introduction

The appeals against refusals and other decisions form allows you to appeal to Scottish Ministers against a decision made by a planning authority i.e. a council or national park authority, on a planning application made by you, or a failure by them to make a decision on such an application.

These guidance notes provide clarification and further information to help you fill in each section of the form and they apply only to the types of appeals, listed below, which can be submitted via the ePlanning portal.

## Types of appeals that can be made using this form, and their deadlines

- planning permission appeals
- listed building consent appeals
- conservation area consent appeals
- advertisement consent appeals

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- certificate of lawful use or development appeals
- tree works consent appeals
- prior approval consent appeals
- review of old mineral permissions appeals
- certificate of appropriate alternative development appeals

All of the above appeal types have a three month deadline for submission, except for certificate of appropriate alternative development appeals which have a one month deadline.

If the type of appeal you wish to make is not listed above, the relevant form can be found at <https://beta.gov.scot/publications/appeals-list/>

### Making an appeal

The Scottish Government's Planning and Environmental Appeals Division (DPEA) deals with the administration of all planning related appeals for Scottish Ministers.

#### (1) Making an appeal if you have not received a decision on your application

If you have not received a decision from the authority, and you have not agreed to an extension on your application, you can submit an appeal to DPEA if:-

- 2 months have passed since submission of the application to the authority and your application fell into the category of local developments.

**Or**

- 4 months have passed since submission of the application to the authority and your application fell into the category of major or national developments

You may need to clarify the category of the development with the authority.

Such failures to give a decision are referred to as deemed refusals. If you have agreed with the planning authority to extend the two or four-month period, you will not be allowed to appeal against a deemed refusal until the extended period has ended.

The deadline for making deemed refusal appeals is 3 months from the date by which the authority should have made their decision, except for certificate of appropriate alternative development appeals where the deadline is one month from then.

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### (2) Making an appeal if your application has been refused, or granted with conditions you think unreasonable

The deadline for making your appeal should be shown in the decision notice or letter you have received from the authority. The date given should be in line with the deadlines appropriate to appeal type given above, but If you want to make an appeal and are unsure of the deadline you should check with the authority.

**Before making such an appeal, you should also make sure that you understand why the planning authority refused your application or, if you are appealing against conditions imposed on a consent they have given, why they set those conditions.**

### Planning permission only – appeal or local review

If you wish to appeal a decision or failure to give a decision for a local development your appeal must be submitted to the local review body. For major or national developments, appeals are submitted to DPEA. The decision notice or application validation letter you received from the planning authority should confirm who the appeal should be submitted to.

### Appeal procedures

For all the appeals types listed other than certificate of appropriate alternative development appeals (see later), the procedures to be followed are dictated by The Town and Country Planning (Appeals) (Scotland) Regulations 2013.

Under those regulations:

- the Scottish Government reporter appointed to consider your appeal will manage the whole process and will consider what action is needed to gather enough information to make a decision. Both you and the planning authority state your full cases at the outset.
- when you make your appeal you must also send a copy of the notice of appeal to the planning authority, together with a list of all documents, material and evidence the appeal relates to and which you intend to rely on. Within 21 days of receiving this notice, the planning authority must send you and the Scottish Ministers a note ('the planning authority's response') of what matters they want to be taken into account when deciding the appeal and the procedure (or combination of procedures) they want to be used, together with any conditions they feel should be set if the Scottish Ministers or the appointed person decide that permission should be granted. You then have 14 days from the date you receive the planning authority's response to comment on any matters raised by the planning authority which were not raised in the decision notice or on any document, material or evidence the planning authority have provided.

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- in very limited circumstances only you may be allowed to raise extra matters or provide further documents at a later date in the appeal process . It is important that you check you have raised all relevant issues when you make your appeal.
- the reporter appointed to consider your appeal will make a decision as soon as practically possible. However, they may sometimes need some more information on a particular matter. If so, they may choose to carry out one or more of these further procedures:
  - an inspection of the site;
  - ask for further written details;
  - a hearing session; or
  - an inquiry session.

Although it is the appointed person's role to decide whether (and, if so, what) further procedure is necessary to help them reach the decision on your appeal, both you and the planning authority can state at the outset which procedure (or combination of procedures) you/they think would be the most appropriate.

### Procedures for certificate of appropriate alternative development appeals

There are three way these appeals can be processed:

- by written submissions;
- by the holding of a hearing; or
- by the holding of a public local inquiry.

In most instances the provision of written submissions will be sufficient for the merits of the appeal to be considered by the Scottish Government reporter appointed to the appeal. However for this type of appeal you and the authority have a right to appear before and be heard by the reporter. Therefore you should consider the information below on what each of these above procedure entails before making your choice.

- The written submissions procedure is used in most of these cases and is a quick, simple and cheap method of deciding an appeal. Under this procedure, both you and the authority state your cases in writing. The grounds and facts to support your appeal will form the main part of your written submissions. The reporter will inspect the site and you and the authority will have the opportunity to attend the site inspection. You can point out any features of the site to the reporter during the site inspection, but neither you nor the authority can discuss the case, as any relevant matters should be stated in the written submissions.

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- If your development is more significant or the issues are more complicated, you or the planning authority can ask for a public local inquiry to be held. If either you or the authority ask for an inquiry, Scottish Ministers must hold one. Arrangements for an inquiry have to be made some time in advance and the Ministers will consult you and the authority about the date. A reporter will hold the inquiry and it will not be more formal than it needs to be in order to be efficient. You can make your own case at the inquiry and do not need to be professionally represented. As it is a **public** local inquiry, notice of the date, time and place has to be given in the local press. Members of the public can attend the inquiry to watch the proceedings and other people, such as objectors, can take part. The reporter will usually have looked at the site before the inquiry. If there is another site inspection after the inquiry, you and the authority will be entitled to attend.
- A hearing is less formal than a public inquiry. Again, this will be carried out by a reporter who will ask you and the questions to establish the facts. Members of the public may attend and take part but the details of the hearing will not normally be advertised in the press. Please note that hearings may not be appropriate depending on the matters to be examined.

### Withdrawing your appeal

You may ask to withdraw your appeal at any time before the decision is issued. It is unlikely that you would be allowed to reinstate your appeal once you have withdrawn it, so you should be sure that this is what you want to do. It is helpful if you phone the DPEA before withdrawing your appeal because, if the inquiry has to go ahead, you may have to pay the authority's expenses. You should confirm, in writing, that you want to withdraw the appeal. In theory, the Scottish Ministers may refuse to allow you to withdraw the appeal but this is unlikely, particularly in the early stages.

### Decision on the appeal

- In most cases, after the appeal processes are complete, the reporter will prepare and issue a decision letter. This will summarise the arguments you and the authority have put forward, give the reporter's conclusions and either agree or dismiss the appeal. In a small number of cases which are of particular significance (because of the importance of the building or the nature of the proposal), the Scottish Ministers may decide that they should decide the appeal instead of the reporter. In those cases, the reporter will prepare a report for the Scottish Ministers.
- You should note that with certificate of appropriate alternative development appeals the reporter cannot make the decision. The reporter will instead prepare a report for the Scottish Ministers, who will then issue the decision.

Once a reporter or the Scottish Ministers have made a decision on your appeal, that decision is final and you can only challenge it to the Court of Session on a point of law.

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### Electronic submission of appeals

Under The Town and Country Planning (Electronic Communications) (Scotland) Order 2004, please note that by sending in your appeal electronically, you are agreeing that:

- all communication relating to the appeal will be made electronically; and
- the email address you have used is the one which will be included in the appeal.

If you want to withdraw your agreement to using electronic communication, you should tell the planning authority in writing, giving at least seven days' notice.

### Contacting DPEA

Email DPEA at [DPEA@gov.scot](mailto:DPEA@gov.scot) or write to them at:

DPEA  
Ground Floor  
Hadrian House  
Callendar Business Park  
Falkirk  
FK1 1XR

Contact by phone: 0300 244 6668