



A Guide to Challenging Decisions made by DPEA



IMPORTANT NOTE

The content of this document is guidance only with no statutory status. This guidance is not definitive because Court of Session challenges can involve complicated legal issues. If you are considering making a challenge you may wish to take legal advice from a qualified person, such as a solicitor or advocate. Further information about the Court of Session and court procedures is available from the Scottish Courts and Tribunals service:

www.scotcourts.gov.uk

Can I challenge a decision made by a reporter?

A decision cannot be challenged because you disagree with the reporter's decision. For a challenge to be successful you would have to satisfy the court that the reporter made an error in law, e.g. misinterpreting/misapplying a policy or failing to take account of an important consideration. If the court agrees there has been an error in law which affected the outcome of the appeal, it will return the appeal to the DPEA for it to be decided again.

Is there a time limit for challenging a decision in the Court of Session ?

If you challenge a decision on a planning appeal it must be made to the Court of Session within 42 days (6 weeks) of the date of the decision – this period cannot be extended. Chapter 41 of the Court of Session Rules applies to these appeals:

<https://www.scotcourts.gov.uk/docs/default-source/rules-and-practice/rules-of-court/court-of-session/chap41.pdf?sfvrsn=16>

Who can make a challenge?

In planning cases, a person aggrieved by the decision may do so if they have sufficient interest in it. This could include interested parties as defined in the Town and Country Planning (Appeals)(Scotland) Regulations 2013 as well as appellants, and planning authorities.

Are there any costs involved?

An administrative charge is made by the Court of Session for processing a challenge. Information about court fees can be obtained from the Scottish Courts and Tribunals service.

<https://www.scotcourts.gov.uk/rules-and-practice/fees>

The legal expenses (i.e. the fees payable to solicitors and advocates) involved in preparing and presenting a case in court can be considerable, and if your challenge fails you would usually have to pay DPEA's expenses as well as your own. However, if your challenge is successful DPEA would normally be required to meet your reasonable legal expenses.

Sometimes a request can be made to the Court for an order (a protective expenses order) which excludes or limits liability for the other side's expenses up to a certain amount. You should seek advice about whether this applies in your case.

What is the timescale for a challenge?

This can vary considerably but may take a year or more.

Do I need to get legal advice?

You do not have to be legally represented in Court but it is advisable to do so, as you may have to explain to the court why you think an error of law has been made.

Can the DPEA provide me with advice about making a challenge?

The DPEA cannot advise you on a challenge or on becoming a formal party, you should seek advice from your own legal adviser.

If my challenge is successful will the decision be reversed?

Not necessarily. If your challenge is successful the Court of Session will return the case to DPEA for it to be decided again. This does not

necessarily mean that the original decision will be changed or reversed. The reporter who hears the appeal again may come to the same decision but for different or expanded reasons.

What happens if my challenge is successful?

If your challenge is successful the appeal will be returned to the DPEA for us to re-determine (decide again). All Court of Session re-determination cases will be dealt with in line with DPEA appeal procedures. We will appoint a different reporter where appropriate.

The reporter appointed to re-determine the appeal will usually ask the appellant and the planning authority for their views on the method(s) by which the appeal should be re-determined. The reporter will take into account their views, the reasons for the Court's decision, and any changes in circumstances that have taken place since the original appeal decision. The reporter will then decide whether further written submissions are required and whether any hearing or inquiry sessions should be held.

What happens if my challenge fails ?

Although it may be possible for you to submit a further appeal to the UK Supreme Court this can only be done if your case raises a point of law of public importance.

What about decisions in other types of appeal?

If the decision you want to challenge is not a planning decision, for example, a decision in an environmental appeal or a high hedge appeal, you may be able to apply to the Court of Session for a judicial review of the reporter's decision. The reporter's decision can only be challenged on a point of law and you might want to take legal advice before considering this option.

Is there help available?

If you would like advice on how to find a solicitor contact:

The Law Society of Scotland: <http://www.lawscot.org.uk/for-the-public/>

The Faculty of Advocates has a Free Legal Services Unit that may be able to help: http://www.advocates.org.uk/FLSUwebsite/index_flsu.html

If you need advice about making an appeal to the Court of Session you could contact

PAS (Planning Aid for Scotland)

An independent charity which helps people engage in the planning system. It provides free, impartial advice on planning for individuals and community groups.

3rd Floor
125 Princes Street
Edinburgh
EH2 4AD

Telephone: 0845 603 7602

E-mail: office@pas.org.uk

Web: www.pas.org.uk

Can I make a complaint to DPEA?

Yes you can. The DPEA takes all complaints very seriously. We try hard to ensure that everyone involved in the appeals system (or other cases that we deal with) is satisfied with the service they receive from us. A complaint can arise at any stage in the proceedings and you should raise any issues when they occur, rather than waiting for the final decision to be issued. DPEA cannot however:

- Change the reporter's decision
- Re-open the appeal once the decision has been issued
- Resolve any issues you may have with the planning authority about the planning system or the implementation of a planning permission

Further information on lodging a complaint is detailed in our [complaints guidance](#).

Planning and Environmental Appeals Division

4 The Courtyard
Callendar Business Park
Falkirk
FK1 1XR

Telephone: 01324 696400

Fax: 01324 696444

E-mail: DPEA@gov.scot

Web: www.scotland.gov.uk/topics/planning/appeals

Useful Contact Information

Scottish Courts and Tribunals

For further information on about making a Court of Session challenge.

Scottish Courts and Tribunals Service
Saughton House
Broomhouse Drive
Edinburgh
EH11 3XD

Telephone: 0131 444 3300

Fax: 0131 443 2610

E-mail: enquiries@scotcourts.gov.uk

Web: <https://www.scotcourts.gov.uk/about-the-scottish-court-service/contact-us>