

**CORONAVIRUS (COVID-19)
DPEA OPERATIONS AND GUIDANCE ON SITE VISITS,
PEM's, HEARINGS AND INQUIRIES DURING PHASE 1 OF THE ROUTE MAP TO
EXIT RESTRICTIONS DESIGNED TO SUPPRESS THE CORONAVIRUS –
UPDATE 28 MAY 2020**

Planning Appeals, Local Development Plan examinations and other DPEA work

This is the fifth DPEA guidance Note setting out how we intend to progress our work during this period. This guidance is based on the guidance contained within [Coronavirus \(COVID-19\): framework for decision making - Scotland's route map](#) and the Chief Planners letter of 29 May which can be found at <https://www.gov.scot/publications/coronavirus-covid-19---planning-procedures---chief-planner-letter-may-2020/>

The vast majority of DPEA work is carried out by or through written representations. During Covid-19 restrictions. DPEA and appointed Reporters as far as possible sought to keep casework and all other DPEA work progressing during this period. In this regard DPEA would like to put on record our thanks to those involved in the cases we handle for showing a degree of flexibility and innovation when it came to devising new ways of working to allow work to progress. Site inspections have been carried out virtually; reporters have used site photographs and google earth to assess the merits of developments; and drone footage has also been used. Oral sessions have been held via audio and video conference. Many of the lessons we have learned during this time have demonstrated positive benefits and it is important that we keep hold of these ideas and weave these into our ways of working going forward.

The Scottish Government guidance covering Phase 1 sets out that remote working will remain the default position for those who can. In practice this means that the majority of DPEA staff will continue to work from home and keep travel to a minimum. Our office in Falkirk will be open with only a skeleton staffing complement in place to accept deliveries and carry out functions that cannot be done at home. Email communication with the Case Support Team remains in place. Please continue to use the usual phone numbers when needing to contact us.

Illness of Reporters

If the appointed Reporter (as a sole appointee) thinks that he or she might have COVID-19 or if he or she has been in close contact with someone with COVID-19 (again subject to self-isolation), a decision may be made to sist those proceedings for a short period.

Where more than one Reporter is appointed in a particular case, a decision on a similar sist will depend on the circumstances, such as the ability of other Reporter(s) to keep the case going procedurally or whether any planned oral procedure is imminent.

Where any party or any key employee of any party (or their agent or representative)

is subject to similar restrictions, we would be grateful if DPEA could be alerted, especially if an impact is anticipated on their ability to participate or pursue their interest in the proceedings effectively.

This is of course subject to, and respectful of, medical confidentiality of any affected person.

DPEA will ensure that medically confidential information divulged for that reason is processed in a way and for these purposes consistent with GDPR.

Site visits

During Phase 1 DPEA will continue to seek parties views on whether a site visit is essential or whether there are alternative ways the reporter can obtain the information that would normally be obtained from a site visit such as photographs, virtual site visits or drone footage etc.

Where a reporter is physically required to visit the site during Phase 1 this will only be done in cases where an unaccompanied site visit is appropriate. Key factors in balancing whether to travel will include the significance of the subject matter of the case as against the nature and distance of travel that would be required (including necessary stops *en route*) and the need to avoid overnight stays.

Site visits – even unaccompanied – will not take place when they will involve or necessitate access to the insides of buildings which are, at the time of the visit, in use as a residence. That remains an activity not permitted under current SG guidance. Visits requiring access to nursing or care homes or other locations likely to involve the presence of elderly persons or persons with underlying health conditions must not in any circumstances be undertaken.

We recognise that this may have the effect of requiring DPEA to continue the need to postpone some site visits during Phase 1.

DPEA will take into account the distance a reporter has to travel to a site when appointing reporters to cases and also whether it would be appropriate to appoint a different or an additional reporter to an existing case where this would allow the site inspection to take place and allow the case to proceed. DPEA will also give consideration to the use of technology that would allow a virtual site inspection to take place when the appointed reporter is unable to visit the site.

Where, prior to this and earlier guidance, an accompanied site visit could have been anticipated the appointed reporter will review what to do, on a clear assumption that it will proceed as unaccompanied.

Parties are reminded that the purpose of a site visit is simply to see the site and representations would not be able to be made, had the reporter been accompanied. That rule will be strictly applied if a party is present at an otherwise unaccompanied site visit in certain of the circumstances below.

The case officer will advise parties of decisions and arrangements in any of these

eventualities.

DPEA reserve the right to arrange for other DPEA staff to accompany the Reporter where deemed necessary for any reason (while respecting Covid-19 precautions as previously advised).

Exceptional circumstances include -

- Where permission and assistance is required to enter onto private land or into buildings (only permissible where not used as a residence – see above). In such a case (such as to hand over keys to land), the only contact to be made will be to arrange or facilitate access. The person doing so should have no role in the matter before the reporter, where that is possible. If no one is available to give access to the reporter, then please advise the case officer as soon as possible. Where such contact is needed, precautions in strict accordance with SG guidance on distancing and hygiene measures to minimise the risk of spread through handling such keys must be respected.
- Where contact is needed because internal access is required to buildings (again only where not used as a residence) and/or in order to ensure the health and safety of the Reporter while on site (for example in an unsafe building). In such cases, arrangements may be possible in discussion with the case officer, subject to SG guidance and to precautions as previously advised being respected for health and safety reasons.
- Where the visit is to a place otherwise in normal business or other day-to-day use other than residential use (and where no party to the subject matter of the case attends). This is permissible, but strictly only where it can be done in compliance with SG guidance and subject to precautions as previously advised being respected along with local restrictions applicable on site. But this should not be done in any circumstances in relation to nursing or care homes or other locations likely to involve the presence of elderly persons or persons with underlying health conditions.
- Where the Reporter requires assistance to understand circumstances on the ground (eg to see certain viewpoints). Where that is necessary, the Reporter will consider ways to allow that understanding, while avoiding or minimising the risk of prejudice or perceived prejudice. Once more, where contact to do that is necessary, precautions as previously advised must be respected. These matters should be intimated to the case officer as soon as they arise and will be dealt with by the Reporter procedurally in the usual way.
- Parties may consider that there are other exceptional circumstances where, on case shown, an unaccompanied site visit should not take place.

Even where such circumstances arise, only one person should normally attend. There is no need for multiple people to be present.

Where an unaccompanied visit is not possible and arrangements cannot be made in a satisfactory and safe way to allow access to the property concerned, the Reporter will consider a visit.

Pre examination meetings and Hearings

During Phase 1 pre examination meetings and Hearings will not take place in an oral form where parties are present. DPEA will however consider, when making arrangements for pre examination meetings or Hearings, the timing of the proposed meeting and anticipated timescales for further easing of restrictions currently in place. In making arrangements for future pre examination meetings or Hearings, DPEA will consider various options and consult with parties to ensure the meeting can go ahead as scheduled. This may take the form of a traditional oral session; one that recognises physical distancing; and/or a virtual meeting.

The precise arrangements applicable to alternatives will be dependent on the subject matter, size and nature of proceedings and our overarching obligation to secure a fair hearing.

During Phase 1 pre examination meetings and Hearings will be organised so as to take place by either written representations or a virtual meeting (or a combination of both).

In doing so, DPEA will put steps in place to provide as much detail in advance in writing as possible. We recognise that this may involve different degrees of detail as between pre examination meetings and Hearings.

In doing this, regard will be had –

- To the capacity of individuals with limited access to, knowledge or of experience in using Skype or conference call facilities.
- To the difficulty of parties with more than one participating officer or employee being involved (and of legal representatives to take instructions), if complying with separation requirements and therefore potentially not being on the same line or in the same location.
- To the feasibility of operating these for large numbers of participants.

Participants are though reminded that, especially for Hearings, even virtual presence is not always essential, where proceedings are webcast, as DPEA will endeavour to do as frequently as possible.

In addition, parties are asked to consider whether your attendance at this is essential or whether your views will be adequately understood by the Reporter based upon previous written communications and whether smaller numbers of attendees (whether third parties with similar interests could work together or whether officials from public or other bodies or parties all need to attend).

If you are an interested person and able to rely on your written representations, then you need take no further action. The Reporter may give you an opportunity to make additional written representations.

Where these potential solutions are inappropriate or unsuitable, the Reporter will

consider a sist.

Public Local Inquiries

During Phase 1 Public Local Inquiries will not take place in an oral form where parties are present.

DPEA case officers will be in touch on individual existing cases as soon as practicable to indicate to parties the Reporters intentions for alternative ways in which these will proceed. DPEA will however consider, when making arrangements for Inquiries, the timing of the proposed meeting and anticipated timescales for further easing of restrictions currently in place. In making arrangements for future Inquiries, DPEA will consider various options and consult with parties to ensure the Inquiry can go ahead as scheduled. This may take the form of a traditional Inquiry; an Inquiry that recognises physical distancing; and/or a virtual Inquiry.

The setting of such procedures, in cases where Public Local Inquiries are intended to be set or are required as a matter of law, in future will be consistent with this Note. The precise arrangements applicable to alternatives will be dependent on the subject matter, size and nature of proceedings and our overarching obligation to secure a fair hearing.

These instead will be organised, where at all possible, so as to take place by either written representations or a virtual meeting comprising the Public Local Inquiry (or a combination of both).

In doing so, DPEA will put steps in place to provide as much detail in advance in writing as possible.

While much of what is said above equally applies, we recognise that there are potentially significantly greater practical and other challenges in so proceeding compared to pre examination meetings and Hearings.

We recognise that conducting any form of examination-in-chief, cross-examination and re-examination remotely is extremely difficult and less satisfactory than it would be in one physical location.

We recognise the importance of local participation which becomes harder in the current exceptional circumstances.

We recognise that a Public Local Inquiry in certain circumstances is a legal entitlement.

We urge parties and their representatives to acknowledge the public interest in finding ways to achieve the outcomes shared by us all in delivering our services in working with us to make Public Local Inquiries (so operated) as fair and transparent as possible, even if progressing these by written representations alone would involve the waiving of an entitlement to a Public Local Inquiry.

On local participation, as above, participants are reminded that even virtual presence

is not always essential, where proceedings are webcast, as DPEA will endeavour to do as frequently as possible.

In addition, parties are asked to consider whether your attendance at a Public Local Inquiry is essential or whether your views will be adequately understood by the Reporter based previous written communications and whether smaller numbers of attendees (whether third parties with similar interests could work together or whether officials from public or other bodies or parties all need to attend).

If you are an interested person and able to rely on your written representations, then you need take no further action. The Reporter may give you an opportunity to make additional written representations.

Where these potential solutions are inappropriate, unsuitable or cannot be agreed by those with key interests, the Reporter will consider a list.

If you are planning to participate in any of these, even remotely:

- Please refer to the latest NHS Scotland guidance <https://www.nhsinform.scot/illnesses-and-conditions/infections-andpoisoning/coronavirus-covid-19> shortly before such participation so that you have the most up to date information on the risks and on how to avoid catching or spreading coronavirus;
- Please check with the local planning authority or with the DPEA case officer that it is going ahead before travelling to any location in order to participate.

Thank you for your continued co-operation and understanding.

28 May 2020