



## DPEA Guidance note 28

### Reporters’ jurisdiction at appeal to determine the validity of a planning application

Guidance note for:	Reporters and parties
Relating to:	The jurisdiction of reporters to determine whether a planning appeal, or the application that it is based upon, is valid
Legal framework:	<ul style="list-style-type: none"> <li>• Town and Country Planning (Scotland) Act sections 39 and 47 to 48</li> <li>• Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013</li> <li>• <i>R v Secretary of State for the Environment, Transport and the Regions ex parte Bath and North-East Somerset District Council</i> [1999] 1 WLR 1759</li> </ul>
The issue:	<p>In some planning appeals, the question of validity of a planning application is raised by the planning authority. The usual circumstances are that</p> <ul style="list-style-type: none"> <li>• the planning authority has not validated the application;</li> <li>• the applicant has not accepted that the application is not valid; and</li> <li>• the applicant has subsequently appealed in respect of the planning authority’s failure to give a substantive determination of the application<sup>1</sup>.</li> </ul>
Guidance:	<p>The Scottish Ministers (and reporters, by delegation) have jurisdiction in an appeal in respect of deemed refusal of an application to determine the validity of the application (or an appeal), where that is questioned.</p> <p>This was the finding of the court in <i>R v Secretary of State for the Environment, Transport and the Regions ex parte Bath and North-East Somerset District Council</i> [1999] 1 WLR 1759 in respect of the equivalent English law. The legal issues involved do not differ in Scotland from the position in <i>Bath and North-East Somerset</i>. The law on determination of validity of an application in England has since changed (because there has been change to relevant parts of the English statute law), but in Scotland the</p>

<sup>1</sup> A “deemed-refusal appeal” under section 47(2) of the Town and Country Planning (Scotland) Act 1997 (the 1997 Act)

statute law remains similar to English law at the time of the *Bath and North-East Somerset* judgment.

The requirements of a valid application are set out in the Town and Country Planning (Development Management) (Scotland) Regulations 2013 regulations 9 to 12. Regulation 14 provides that the validation date of an application is the date on which the last of the items or information required to be contained in or to accompany the application is received by the planning authority. The period for determination of the application (two months or four months) is calculated from the date of its validity, and then the three-month period for an appeal under section 47(2) following from that.

Usually in such cases, the reporter will determine the issue of validity first, then – if the application and consequently the appeal is found to be valid – invite parties to make their submissions on the substance of the case.

Failure in some formal elements of application procedure may not be fatal to the application's or the appeal's validity if no party has been substantially prejudiced by such a failure. Generally speaking, a person who complains that they were not given due notice of an application will not have been substantially prejudiced if they have had sufficient time to make full representations to the reporter.

It should be noted though that Scottish Ministers (and reporters) do not have power at appeal to review a planning authority's decision to decline to determine an application under section 39(1) of the Town and Country Planning (Scotland) Act 1997 (which relates to repeated applications for a similar development after refusal of previous applications or appeals). They also do not have power to consider an appeal in respect of major or national development if pre-application consultation requirements have not been complied with<sup>2</sup>.

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<sup>2</sup> See section 39(1A) of the 1997 Act