



Each case is unique and must be considered on its merits. It is for the person appointed to determine the case to satisfy him/herself that the application of the practice contained in this note is appropriate to the circumstances of the case. A reporter who intends to depart from the guidance should advise a Principal or Assistant Chief Reporter so issues emerging can be considered for future case work.

<p>Guidance note:</p>	<p><b>No further procedure</b></p>
<p>Relating to:</p>	<p>This note relates to cases progressed under the Town and Country Planning (Appeals) (Scotland) Regulations 2013. These are:</p> <ul style="list-style-type: none"> <li><b>Planning Permission appeals (PPA)</b></li> <li><b>Enforcement Notice appeals (ENA)</b></li> <li><b>Certificate of Lawful Use or Development appeals (CLUD)</b></li> <li><b>Tree Works Consent appeals (TWCA)</b></li> <li><b>Tree Replacement Enforcement Notice appeals (TENA)</b></li> <li><b>Amenity Notice appeals (ANA)</b></li> <li><b>Planning Obligation Appeals (POA)</b></li> <li><b>Good Neighbour Agreement Appeals (GNAA)</b></li> <li><b>Listed Building Appeals (LBA)(from 1 December 2011)</b></li> <li><b>Conservation Area Consent Appeals (CAC) (from 1 December 2011)</b></li> <li><b>Listed Building Enforcement Appeals (LBE) (from 1 December 2011)</b></li> <li><b>Advertisement Consent Appeals (ADA) (from 30 June 2013)</b></li> <li><b>Advertisement Discontinuance Notice Appeals (ADD) (from 30 June 2013)</b></li> <li><b>Advertisement Enforcement Notice (ADE) (from 30 June 2013)</b></li> <li><b>Applications for urgent Crown development (from 30 June 2013)</b></li> </ul>
<p>Background/ legislative and policy framework:</p>	<p>Circular 4/2013 sets out the objectives of the reformed planning appeals process: to ensure that examination procedures are proportionate and efficient; that the appeal process is transparent and fair; and that decisions are both robust and based upon a review of the proposals that were originally considered by the planning authority.</p> <p>Regulation 7 of <a href="#">The Town and Country Planning (Appeals) (Scotland) Regulations 2013</a> states: <i>“Where the appointed person considers that no further representations are or information is required to enable the appeal to be determined, the appointed person may determine the appeal without further procedure.”</i></p> <p>In the context of the regulations, holding a site inspection constitutes ‘further procedure’. Regulation 7 applies where the reporter considers that there is sufficient information to determine the appeal without a site inspection.</p>

DPEA practice:	<p>It is for the person appointed to determine what, if any, further procedure is required on a case by case basis. Some examples of appeals where a reporter <i>may</i> consider that no further procedure is necessary are included below. <b>For the avoidance of doubt this note does not suggest that all such cases should proceed with no further procedure.</b></p> <p><b>Planning Permission</b></p> <ul style="list-style-type: none"> <li>• Some appeals in relation to the imposition of planning conditions. For example: <ul style="list-style-type: none"> <li>○ an appeal in relation to the phasing of a development;</li> <li>○ where a condition is not related to the physical aspect of the site;</li> <li>○ where the appeal challenges the validity of a condition (although a site inspection might be required if an alternative condition is to be imposed and an inspection of the site was necessary for this purpose);</li> </ul> </li> <li>• Where a development would clearly contravene a national planning policy or clear development plan policy and where there is little or no evidence of any material considerations that would outweigh this;</li> <li>• Cases where the planning authority does not defend the appeal, particularly in cases in which the appeal relates to a non determination and the authority indicates that it would have granted permission;</li> <li>• Where an application for renewal of planning permission has been made and there has been no material change of circumstances since the previous grant of permission;</li> <li>• Some appeals which seek to vary the terms of an earlier consent, but which would not alter the built form or lead to increased traffic etc;</li> <li>• Where there is no dispute about the relevance of a policy, but the key issue relates to whether an exception is justified. For example, where the arguments are around whether an agricultural worker needs to be located on-site;</li> <li>• There may be some cases in which the physical characteristics of the site have no bearing on the issues in the appeal;</li> <li>• Where evidence has been submitted and is not in dispute and is sufficient to enable a decision to be taken without a site inspection.</li> </ul> <p><b>Enforcement Notices</b></p> <p>A number of Enforcement notice appeals may not require further procedure, for example:</p> <ul style="list-style-type: none"> <li>• ground (b) appeal, where the factual position is clear from the submissions (demonstrating that the alleged activity definitely has, or has not, occurred);</li> <li>• ground (c) appeal, where the submissions clearly show that</li> </ul>
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	<p>the alleged activity does, or does not, represent a breach of control;</p> <ul style="list-style-type: none"> <li>• ground (d) appeal, e.g. where it emerges that the activity is authorised by a previous planning permission;</li> <li>• ground (e) appeal, where it is shown that the notice has not been properly served;</li> <li>• ground (f) and (g) appeals, where the steps required or the time limit are manifestly unreasonable.</li> </ul> <p><b>Certificates of Lawful Use or Development</b></p> <ul style="list-style-type: none"> <li>• Appeals in this category do not involve an assessment of the planning merits of the development and, accordingly, a site inspection may not be necessary. However, if there are factual matters in dispute such as whether the site has been abandoned this may be required. In addition, consideration may have to be given to an oral session in order to take evidence on oath or to assess conflicting factual assertions.</li> </ul> <p><b>Amenity Notices</b></p> <ul style="list-style-type: none"> <li>• A site inspection may not be necessary in cases in which the grounds of appeal are: <ul style="list-style-type: none"> <li>○ that the remedial steps specified in the notice are excessive (ground (b) of section 180 of the Act);</li> <li>○ that the period for compliance falls short of what should reasonably be allowed (ground (c));</li> <li>○ that the condition of the land is attributable to lawful use or operations (ground (d)); or that</li> <li>○ the section 179 notice was not served properly (ground (e));</li> <li>○ In cases in which the grounds of appeal are that amenity has not been adversely affected (ground (a)), a site inspection may not be necessary if sufficient reliable photographic evidence has been submitted (remembering that a ground (a) appeal relates to the impact on amenity at the date the notice was served.)</li> </ul> </li> </ul>
Process:	<ul style="list-style-type: none"> <li>• On receipt of a case, an initial assessment of the procedure by which it is likely to progress will be made by the administration team.</li> <li>• A potential NFP case will be allocated to a reporter.</li> <li>• The reporter will review the case upon receipt of the PARF, any representations made by interested parties, and any comments made by the appellant and the planning authority on those representations and decide the appropriate procedure for determination.</li> <li>• If the reporter considers that no further procedure is required s/he will issue a decision notice in the normal way. Our target is to issue these decisions within 8 weeks of receipt.</li> </ul>

	<ul style="list-style-type: none"><li>• If the reporter considers further procedure is required s/he will complete the form APP/PROC/2 (see Guidance Note 3).</li><li>• This guidance is equally relevant where a case is allocated to a reporter with an expectation that there will be some further procedure, but where the reporter considers that to be unnecessary. Again, form APP/PROC/2 should be completed.</li></ul>
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