

Planning and Environmental Appeals (DPEA)

APPEAL TO SCOTTISH MINISTERS:
NOTES FOR APPELLANTS SUBMITTING A
BUILDING DESIGNATION APPEAL
USING FORM BDA

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Notes for appellant

These notes relate to appeals to the Scottish Ministers under Section 5B of [the Planning \(Listed Buildings and Conservation Areas\) \(Scotland\) Act 1997](#) [the “Listed Buildings Act”] in conjunction with [The Town and Country Planning \(Appeals\) \(Scotland\) Regulations 2013](#) [the “Appeals Regulations”] in respect of decisions made by Historic Environment Scotland (HES) regarding the listing of buildings.

If you want to appeal against HES’s notified decision to either (a) include a building in the List of buildings of special architectural or historic interest or (b) amend an entry in the List, you should use form BDA.

Deadline for making an appeal

The Appeals Regulations state that an appeal must be made within the period of 3 months beginning with the date of on HES’s notification of their decision. This means that your full appeal must be received by the Planning and Environmental Appeals (DPEA) before the end of the third month.

For example:

The date on HES’s notification of their decision is 1 September – your full appeal must be received by DPEA on or before 30 November (note: 1 December would be the start of the fourth month, and so too late).

The Scottish Ministers have no scope to accept and consider an appeal made after the deadline. This includes any incomplete appeal form or documents received before the deadline, but not fully documented by the time it passes. To avoid any risk of your appeal being turned away due to being out of time, we strongly advise that you make your appeal in plenty of time before the end of the 3 month period.

Completing the appeal form

The notes below are intended to help you complete the appeal form. This form is mandatory and should be carefully completed to ensure your appeal is valid.

Page 1 of appeal form

Appellant(s)

This section should be fully completed with the name, address and contact details of the appellant. The Appeals Regulations require that the appellant's name and address must be supplied.

Agent

This section needs to be completed if the appeal is being submitted by an agent acting on behalf of the appellant (e.g. planning consultant, solicitor, architect, friend). The Appeals Regulations require that, where an agent is appointed, the agent's name and address must be supplied.

You must also confirm whether correspondence should be sent to the agent rather than the appellant by using the check box provided.

Do you agree to all correspondence being sent by E-mail

We seek to use electronic communications wherever possible. Please mark the appropriate Yes/No box to confirm whether you are content to receive correspondence by e-mail.

HES's application reference number

The reference number given on the notification of their decision.

Date of HES's Decision

The date on the notification of their decision.

Name and address of building

To help us identify the location of the building, you should provide the postal address and, if applicable, the name of the building.

OS map grid reference or post code

To ensure we have properly identified the location of your proposed works, you should provide either the ordnance survey national grid reference or the site's postcode.

What decision by HES do you wish to appeal against

Select which of the two options you were notified about by HES that you now wish to appeal.

Note that where you have been notified of an amendment to the listing entry, it is only the statutory element of the listing which can be appealed – that is the address given for the building. The category of listing cannot be appealed.

What is your interest in the building?

Please state your interest in the building on this part of the form by marking the appropriate box, and by explaining in the text box provided if necessary.

Note that only owners, occupiers and tenants have a right to appeal designation decisions.

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Statement of appeal

Your statement of appeal should include full particulars of your appeal and the matters you think ought to be taken into account, and all documents, materials and evidence upon which you intend to rely in your appeal must accompany this form. All matters which you intend to raise in the appeal must be set out in your appeal or in the accompanying documents.

Where you do not think the building should be listed you must detail why you consider the building is not of special architectural or historic interest

The Appeal Regulations provide for the raising of additional matters or submission of further documents only in very limited circumstances.

Other interested parties (who had previously expressed a view on the building's designation) will be advised of your appeal to Scottish Ministers. If they provide further comments in respect of your appeal, you will be entitled to respond to those comments before a final decision is made.

Nevertheless, depending on the terms of HES's (and any other party's) response to your appeal and the possible need for any further procedure (see below), the point at which you lodge your appeal might be your only opportunity to state your case, and so you must be content that you have raised all relevant issues.

List of documents/ evidence

As well as providing a full statement of your appeal at the outset, the Appeals Regulations require that all documents, materials and evidence that you intend to rely on in support of your appeal must be provided alongside your appeal form. To ensure we have received all of this information from you, please provide a full list of all supporting documents etc. in this text box.

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Appeal procedure

The appeal process will be managed by the person appointed by Scottish Ministers to consider and decide your appeal. If, having received your appeal, HES's and any other correspondence received from any interested parties, the appointed person has sufficient information to be able to make a decision on the appeal, then that is what will happen.

However, the appointed person may consider it necessary to obtain some further information, perhaps just on a single issue/matter (rather than on the appeal as a whole), before reaching a final decision. There are several methods available to the appointed person to obtain this information:

- Inspection of the Site - The appointed person visits the site to view it and its surroundings. The appointed person will undertake an unaccompanied visit wherever possible. If an accompanied site inspection is necessary, there will be

no scope to discuss the merits of the proposed development with the appointed person.

- Further Written Submissions - Parties will be invited to provide information on a specific issue in writing and each of these parties will then be entitled to respond to the written submissions provided by others.
- Hearing Session - This involves a discussion between the parties. This will be restricted to the specific matters identified for discussion, and will be led by the appointed person. Formal cross examination of hearing participants is not allowed.
- Inquiry Session - Where a more formal inquiry structure is needed, this session can be held to examine the specific matters identified by the appointed person. Cross-examination of witnesses is likely to occur in inquiry sessions.

If the appointed person decides that any further written submissions, a hearing session or an inquiry session is needed to consider a specific matter, both you and HES will always be invited to participate, along with anyone else who the appointed person wishes to receive relevant information from.

While ultimately it is the appointed person's role to decide whether (and, if so, what) further procedure is necessary to inform the decision on your appeal, both you and HES are entitled to express an opinion on which procedure (or combination of procedures) you think are appropriate. This section of the appeal form invites you to do so. It also provides an option (box 1) where you can express if you are content for a decision to be made without any further procedure.

Where there is to be some further procedure, you will always be advised of what is happening and of what might be expected of you.

Site inspection

This section of the form seeks your assistance and opinion in relation to the accessibility of the site of your proposed development, to assist our preparations if the appointed person decides to inspect the site before reaching a decision.

Good bio-security practice helps prevent outbreaks and the spread of animal and plant pests which may affect agriculture, forestry, aquaculture and angling industries. It is helpful for the reporter to know in advance if there are any such issues they need to be

aware of before the carry out a site inspection. If there are, please give details in the comments box on the appeal form or provide on a separate sheet.

Other appeals

If you have any other related appeals currently with the Scottish Ministers concerning the this building, please provide the details on this part of the form.

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Checklist

The appeal form is structured to guide you in making a full and valid appeal which will comply with the terms of both the Listed Buildings Act and the Appeals Regulations.

The checklist allows you to ensure that you have provided us with all the information we need to progress your appeal.

Declaration

To confirm that you are making an appeal to the Scottish Ministers in the manner set out on your form and supporting documents, please sign and date the form before you send it. If you are sending the form electronically, you can simply type your name and date - your e-mail address will act as an electronic signature.

What next?

Once you are happy with the terms of your appeal, you should send the form and all supporting information to Planning and Environmental Appeals (DPEA), either by email, post or fax. The contact details are at the end of the form.

The Appeals Regulations also require that, at the same time as you send the appeal to us, you must send to HES:

- a copy of the notice of appeal (the form);
- a list of all documents and other information relating to your appeal which you intend to rely on in support of your appeal (you will have provided this on page 2 of the form).

The contact details for HES are given on their designation notice, and they are also given at the end of our form.

Further information

For further information about HES's designation decisions please see "Historic Environment Scotland Circular 2019", [Historic Environment Scotland Circular | Historic Environment Scotland](#).

If you wish to discuss any aspect of the appeal form or the process, please contact Planning and Environmental Appeals (DPEA) on 0300 244 6668.

Written queries can be sent to us at either by e-mailing dpea@gov.scot or by post to Planning and Environmental Appeals Division, Hadrian House, Callendar Business Park, Falkirk, FK1 1XR.

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