



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.

Guidance note: 16	<b>New matters and the submission of documents, materials or evidence</b>
Relating to:	This note relates to planning appeals submitted under section 47(1) of the Town and Country Planning (Scotland) Act 1997
Background/ legislative and policy framework:	<p><u>What is a new matter?</u></p> <p>1. As paragraph 22 of Circular 4/2013 explains, section 47A of the 1997 Act restricts the circumstances in which a party to an appeal to Scottish Ministers may raise a matter that was not before the planning authority at the time the decision was made. The restrictions do not apply where the new matter is raised pursuant to a requirement or an entitlement to have regard to the development plan or any other material consideration. In addition, there is no restriction against a matter being raised on appeal where it was not possible to raise it before the planning authority or it was not raised before the planning authority due to exceptional circumstances. Section 47A does not apply to appeals against non-determination of an application made by virtue of section 47(2).</p> <p>2. 'Matter' is not defined in the Act. It is, however, a term used throughout the Act in various contexts. It is a term which denotes an issue or a topic rather than any particular item of evidence or any document<sup>1</sup>. In particular, section 267(1B)(b) and (c) draw a clear distinction in the context of appeals between matters which may be raised in the course of an appeal and the documents which may be lodged in support of submissions.</p> <p>3. So far as the 2013 Appeals Regulations are concerned, these provide that all <i>matters</i> which the appellant intends to raise in the appeal must be set out in the notice of appeal<sup>2</sup> and that all documents, materials and evidence upon which the appellant relies must accompany the notice.<sup>3</sup> In addition to the matters set out in the appeal and supporting documents the appellant may raise <i>matters</i> and submit further documents, materials or evidence only in accordance with the rules relating to the rights of other parties to respond to the appeal, the reporter's ability to ask for further information and the hearing and inquiry session rules.<sup>4</sup> The</p>

<sup>1</sup> It is used for example in this way in section 265(3) in relation to inquiries. Section 15(5) sets out a list of 'matters'. Other examples include sections 31A(7), 59(1) and 128(1).

<sup>2</sup> Regulation 3(5)(a)

<sup>3</sup> Regulation 3(5)(b)

<sup>4</sup> Regulation 3(6)

	<p>planning authority is to send a note of those <i>matters</i> it considers require to be taken into account in determining the appeal<sup>5</sup>; and a copy of the documents which were before the planning authority and which were taken into account in reaching their decision.<sup>6</sup> The appellant has a right to comment on any <i>matters</i> raised in the planning authority's response which had not been raised in the decision notice<sup>7</sup> and to send any documents, materials or evidence on which it relies in support of those comments.<sup>8</sup></p> <p>4. Under regulation 11 the reporter may call for further written submissions by way of a procedure notice which sets out the <i>matters</i> upon which further representations or information is requested.</p> <p>5 The hearing and inquiry session rules provide that only specified <i>matters</i> are to be considered at that session; notice of a hearing or inquiry session is to be given to an interested party which made representations in relation to the specified <i>matters</i>; and the reporter may seek further information or representations from any body or person on the specified <i>matters</i>.<sup>9</sup></p> <p>6. It appears, therefore, from the drafting of both the Act and the Appeals Regulations that 'matter' is being used in the sense of 'issue' or 'topic'. Reporters should interpret 'new matter' as a new issue or topic that was not before the planning authority</p>
DPEA practice:	<p><u>What happens if a new matter is raised ?</u></p> <p>7. Although there are some restrictions on an appellant's ability to introduce new matters in an appeal, neither section 47A nor the Appeals Regulations prevents the appellant from submitting updated or additional evidence on any matters which may be raised in the appeal, provided that all the documentation is lodged in accordance with the Appeals Regulations. This might, however, amount to unreasonable behaviour for the purpose of a claim for an award of expenses unless there are good reasons for the evidence not having been submitted to the planning authority at the appropriate time.</p> <p>8. If an appellant raises a new matter (i.e. topic or issue) that was not before the planning authority at the time of their decision, the reporter must decide whether the appellant is entitled raise the matter or if the reporter is required to consider it.</p> <p>9. If, in its response to the appeal a planning authority raises a matter which was not dealt with in the decision notice then regulation 4(3) applies and the appellant would have the opportunity to</p>

<sup>5</sup> Regulation 4(2)(a)

<sup>6</sup> Regulation 4(2)(b)

<sup>7</sup> Regulation 4(3)(a)

<sup>8</sup> Regulation 4(3)(b)

<sup>9</sup> Rule 1 of both the hearing session and inquiry session rules

comment on this. If the matter raised by the planning authority was one which had not been before the authority at the time of the decision, section 47A would apply.

10. If, in the course of an appeal, an appellant, planning authority or other party to the appeal seeks to raise a new matter, the reporter would have to consider whether this was prohibited by section 47A and, if not, the reporter would also have to consider, applying the usual rules of natural justice, whether it was fair to other parties to allow the matter to be raised at that stage of the appeal.

Submission of further documents, materials or evidence in the course of an appeal on matters that were before the planning authority

11. The Appeals Regulations set out strict time limits for the submission of documents, materials or evidence in support of an appeal, the planning authority's response to an appeal or representations made by interested parties. If, in the course of an appeal, an appellant, planning authority or any other party to the appeal seeks to submit further documents, materials or evidence (other than in response to a procedure notice) DPEA practice is to return the document, drawing attention to the time limits for submission of documents set out in the rules, and ask for an explanation of why the document was not submitted at the appropriate time.

12. For the reasons given above, if the representations or documents are about issues that were considered by the planning authority, DPEA does not regard these as raising 'new matters' within the meaning of section 47A, even though the representation or document was not before the planning authority at the time of its decision.

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