



The Planning Inspectorate

Guide to taking part in enforcement appeals and lawful development certificate appeals proceeding by a hearing - England

28 August 2013

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1 Introduction

1.1 This guide explains how, if you are interested in the outcome of an appeal, you can make your views known.

1.2 Please note – there are separate guides for enforcement appeals that are proceeding by the written representations or inquiry process. You can access all our guides through the Planning Portal:
<http://www.planningportal.gov.uk/planning/appeals/guidance/guidanceontheappealprocess>

1.3 **If you need this guidance in large print, in audio format or in Braille, please contact our helpline on 0303 444 5000.**

2 Who decides an appeal and what are the rules?

2.1. Nearly all appeals are decided by our Inspectors, a very small percentage are decided by the Secretary of State - these tend to be the very large or contentious breaches of planning control.

2.2 For:

- (a) an appeal against an enforcement notice (section 174 of the Town and Country Planning Act 1990);
- (b) an appeal against the refusal or non-determination of an application for a certificate of lawful use or development (section 195 of the Town and Country Planning Act 1990);
- (c) an appeal against a listed building enforcement notice (section 39 of the Planning (Listed Buildings and Conservation Areas) Act 1990 or an appeal against a conservation area enforcement notice (under that section as applied by section 74(3) of that Act);

the hearing is held under:

The Town and Country Planning (Enforcement) (Hearings Procedure) (England) Rules 2002 – Statutory Instrument 2002/2684.

3 How you find out about the appeal

3.1 If there is an appeal the local planning authority (LPA), usually your local council or National Park Authority, should write to everyone who it thinks is affected, to tell them about the appeal.

3.2 This is the minimum publicity requirement. Your LPA may give appeals more publicity and will probably put information on its website. It may also publish details of the hearing in a local newspaper if it thinks it is necessary.

3.3 If you have already written to the LPA about the site or building:-

- it will normally write to tell you about the appeal within 2 weeks of us accepting it; and
- when the arrangements have been made for the hearing it will normally let you know when and where it will take place.

4 What you can do

4.1 If you have already contacted the LPA about the site or building it may send us your representations. But it does not have to do this. If you want the Inspector to take your views into account you should send us your representations about the appeal.

4.2 You **must** make sure that we receive your representations within 6 weeks of the starting date for the appeal. The LPA should have told you the deadline. There is a timetable for the hearing procedure in the annexe to this guide.

4.3 The time limits for sending representations to us are important, and everyone taking part in an appeal must follow them. **If you send us representations after the end of the time limits, we will not normally accept them. Instead we will return them to you. This means that the Inspector will not see them and so will not be able to take them into account.**

4.4 When you send us your representations you should include:

- your name and address;
- the Planning Inspectorate appeal reference number (this will start APP/...);
- the address of the appeal site;

and, for an appeal against an enforcement notice, say either:

- 'I support the LPA in issuing the enforcement notice' and explain whether it is for the same reasons as given by the LPA or, if not, explain your own reasons; or
- 'I support the appellant in appealing against the enforcement notice' and explain why;

and, for an appeal about an application for a lawful development certificate, say either:

- 'I support the LPA in refusing the application and explain whether it is for the same reasons as given by the LPA or, if not, explain your own reasons; or
- 'I support the appellant in appealing against the LPA's refusal and explain why.

4.5 You can make your comments online through the Planning Portal using the search facility:

www.planningportal.gov.uk/planning/appeals/online/search

or you can write to or email us. The LPA should have told you our Case Officer's contact details. Our Case Officer is responsible for the administration of the appeal.

4.6 If you send us your representations in a letter, unless your handwriting is very clear it would help if you are able to have your comments typed. Please use **black** ink. If possible, please send us 3 copies and note that we do not acknowledge receipt.

4.7 We will copy your representations to the appellant and to the LPA where they will be available for anyone to see them.

4.8 However if we consider your representations contain libellous, racist or abusive comments, we will send them back to you before the Inspector or anyone else sees them. If you take out the libellous, racist or abusive comments, you can send your representations back to us; **but** you must send them back before the time limit ends.

4.9 We do not accept anonymous representations, but you may ask for your name and address to be withheld. If you ask us to do this you should make sure that your representations do not include any other information which may identify you. We will copy your representations, with your name and address removed, to the parties, and they will be seen by the Inspector who may give them less weight as a result.

4.10 If you indicate that you do not want us to copy your representations to the appellant and the LPA, we will return them. They will not be seen by the Inspector and, therefore, will not be taken into account. This is because the Inspector can only take into account representations which have been copied to the appellant and the LPA and are available to be seen.

5 What is considered?

5.1 The Inspector can only take into account information and evidence that is relevant to the appeal. This could cover a wide range of issues, but those that apply are usually set out in the LPA's reasons for issuing the enforcement notice or in the decision notice in the case of a lawful development certificate appeal.

6 If you decide to send documents to support your representations

6.1 Please note that we are unable to return any documents or photographs.

6.2 Please

- use a font such as Arial or Verdana in a size of 11 point or larger;
- use **A4** paper wherever possible;
- number the pages of the documents;
- make sure photocopied and scanned documents are clear and legible;
- use black and white for documents unless colour is essential;
- put any photographs (both originals and photocopies should be in colour), maps, plans, etc, in a **separate appendix** and cross-reference them within the main body of the document;
- print documents on both sides of a page. You should use paper of good enough quality that something printed on one side of the page does not show through to the other side;

- ensure that the scale and orientation of any maps and plans are shown clearly. If you are sending maps or plans by email or through the Planning Portal you **MUST** tell us the paper size;
- do not send original documents unless we specifically ask for them.

6.3 For further information please see our “Procedural Guide: Planning appeals and called-in planning applications – England”:
http://www.planningportal.gov.uk/uploads/pins/procedural_guide_planning_appeals_and_call_ins.pdf

6.4 Although this document does not apply to enforcement or lawful development certificate appeals the information in some of its annexes does apply. Annex H “Communicating electronically with us” does apply and it contains additional guidance about sending documents through the Planning Portal or by email.

7 Audio/video evidence

7.1 We will return any audio/video evidence sent to us in advance of the hearing. You may send a written summary which will be seen by the Inspector, the appellant, and the LPA. Please send (3 copies if possible if not sending electronically) within the 6 week deadline for comments. Also you may ask the Inspector at the hearing if he or she is willing to accept the audio/video evidence and allow it to be played at the hearing.

7.2 It is your responsibility to contact the LPA to find out whether it has suitable equipment at the venue to access the evidence, or if it will allow you to use your own. The equipment must be suitable to play the evidence so that everyone can see/hear it.

7.3 If the evidence is accepted by the Inspector it will become part of the hearing evidence and will be retained by the Inspector. You will need to have 2 additional copies of the audio/video evidence available as if the Inspector allows it to be played these copies will be given to the LPA and the appellant.

8 Before the hearing

8.1 Local people are encouraged to take part in the hearing process. Local knowledge and opinion can often be a valuable addition to the evidence given by the appellant and the LPA.

8.2 Before going to the hearing, if you want to see what the appellant and the LPA have written, you should be able to see copies of the appeal documents at the LPA’s offices. The LPA’s and the appellant’s hearing statement should be available 6 weeks after the appeal start date.

8.3 Depending on whether you oppose or support the appeal you may wish to consult the LPA or the appellant to find out what their position will be at the hearing to help you decide whether your position can be satisfactorily represented by them.

8.4 Hearings are open to members of the public, and although you do not have a legal right to speak, the Inspector will normally allow you to do so. If you want to speak at a hearing, you need to think about what you want to say and how you want to say it. Some people prefer to make, or read out, a brief statement giving their views. If there are several people with the same views, it is a good idea for one person to speak on behalf of the others.

9 Hearing venue

9.1 We ask the LPA to arrange the hearing venue. Hearings are usually held in LPA offices, village halls or community centres. We have set out the facilities that a hearing venue should include. You can access our document "The venue and facilities for public inquiries and hearings" on the Planning Portal:
http://www.planningportal.gov.uk/uploads/pins/venue_and_facilities_for_public_inquiries_and_hearings.pdf

10 People with disabilities

10.1 We want to hold all hearings in buildings with proper facilities for people with disabilities. If you, or anyone you know, want to go to the hearing and you have particular needs, please contact the LPA to confirm that it can make proper arrangements.

11 Openness and transparency

11.1 Hearings are open to journalists and the wider public, as well as interested people. Provided that it does not disrupt proceedings, anyone will be allowed to report, record and film proceedings including the use of digital and social media. Inspectors will advise people present at the start of the event that the proceedings may be recorded and/or filmed, and that anyone using social media during or after the end of the proceedings should do so responsibly.

11.2 If you want to record or film the event on equipment larger than a smart phone, tablet, compact camera, or similar, especially if that is likely to involve moving around the venue to record or film from different angles, you should contact us and the LPA in advance to discuss arrangements.

12 What happens at the hearing?

12.1 The hearing is an inquisitorial process led by the Inspector who identifies the issues for discussion based on the evidence received and any representations made.

12.2 The Inspector will open the hearing by explaining what the appeal is about. He or she will then go through some routine points, and explain how he or she intends to proceed and will ask who wants to speak.

12.3 The order in which people speak at a hearing on any topic that needs to be discussed will be tailored to the individual appeal and who is at the hearing. The Inspector will usually outline the main issues and any other matters to be discussed at the hearing. It will always take the form of a structured discussion led by the Inspector. The Inspector will ensure that the hearing is orderly so everyone involved can have a fair hearing.

12.4 Repeating arguments at the hearing that you have already made in written comments or which someone has already said does not help the Inspector, or make the point more relevant. However, there should be no 'surprises' and 'new' evidence should not be presented at this time as it could result in the Inspector having to adjourn the hearing so that such evidence can be properly considered and answered. You should have set out your main concerns in your representation sent at the 6 week stage.

12.5 If you make comments, or have any questions, you must put them through the Inspector.

13 Inspector's questions

13.1 At any stage during proceedings the Inspector may ask questions. Questions may be put to all those who give evidence, including interested people.

14 Discussion of planning conditions

14.1 If the appellant has pleaded that planning permission should be granted for the alleged development the hearing will usually include a discussion about the conditions which may be imposed if the alleged development is granted planning permission. The fact that conditions are discussed does not mean that the appeal will be allowed and planning permission granted or that, if allowed, conditions will be imposed.

15 Closing statements

15.1 Finally (so far as dealing with evidence about the case is concerned) there are usually closing statements which are an opportunity for the appellant and the LPA to sum up their case. The appellant will always be allowed to speak last at this point in proceedings.

16 Application for appeal costs

16.1 The Inspector will then hear any applications for costs. All parties to an appeal are normally expected to meet their own expenses.

16.2 There is a Department for Communities and Local Government Circular 03/09 "Costs awards in appeals and other planning proceedings" and a booklet "Costs awards in planning appeals (England)". You can access these at <http://www.planningportal.gov.uk/planning/appeals/guidance/costs> It is important that you read these because they explain how, when and on what basis you can make an application or have an application made against you.

16.3 You should also be aware that for appeals received on or after 1 October 2013 costs may be awarded at the initiative of the Inspector.

17 Site visit

17.1 Once any claim for costs has been heard the Inspector will make arrangements for the site visit. The Inspector will make it clear if:-

- it would be helpful to carry on the discussion on the site and so will not close the hearing until after the site visit; or
- it appears that all discussion has been completed and the hearing will be closed before going to the site. In this circumstance there will be no further discussion of the merits of the appeal at the site.

18 The decision

18.1 When made, the decision will be published on the Planning Portal and can be viewed using the search facility:
www.planningportal.gov.uk/planning/appeals/online/search

19 Feedback, complaints and challenges

19.1 We are always looking for ways to improve our performance and at some inquiries participants may be asked to complete a feedback form.

19.2 If you wish to make any comments (whether praise or a complaint) or have questions about the decision, or the way we have handled the appeal, you can contact our Quality Assurance Unit.

The Planning Inspectorate
Quality Assurance Unit
1/23 Hawk Wing
Temple Quay House
2 The Square
Bristol
BS1 6PN

Phone: 0303 444 5000

Fax: 0117 372 8139

Email: web.complaints@pins.gsi.gov.uk

<http://www.planningportal.gov.uk/planninginspectoratefeedback>

19.3 We will investigate a complaint and you can normally expect a full reply within 20 working days. In some cases where the issues raised are complex, a more detailed investigation will be needed, and we will often have to get the views of those involved with the appeal. This may mean that we cannot reply to you as quickly as we would like. For further information please see our Procedural Guide, Annexe Q "Feedback and complaints":

http://www.planningportal.gov.uk/uploads/pins/procedural_guide_planning_appeals_and_call_ins.pdf

19.4 However, we cannot change an appeal decision. This can only happen if the decision is successfully challenged on legal grounds in the Courts. A challenge can only be made by the appellant, the LPA or other people with a legal interest in the land. If you have a legal interest in the land, to challenge an enforcement decision you must first get the permission of the Court. However, if the Court does not consider that there is an arguable case, it can refuse permission. **Applications for permission to make a challenge must be received by the Administrative Court within 28 days of the date of the decision, unless the Court extends this period.**

19.5 To be successful, you would have to show that:

- an error had been made in law; or
- we did not follow the proper procedures and that your interests may have been harmed.

19.6 If your challenge is successful, the Court will return the appeal to us for it to be decided again. This does not necessarily mean that the original decision will be changed or reversed. For further information please see our Procedural Guide, Annexe R "How can a decision be challenged?":

http://www.planningportal.gov.uk/uploads/pins/procedural_guide_planning_appeals_and_call_ins.pdf

19.7 But please note the time limit and the process in relation to enforcement and LDC appeals as given in paragraph 19.4 above, as this is different from the time limit and process for planning appeals which is given in Annexe R.

20 Judicial review

20.1 If you do not have a legal interest in the land and wish to complain about a decision made by administrative staff during the processing of an appeal or the appeal decision you must apply to the Court for permission for a judicial review .

The application must be made

- if the decision was made before 1 July 2013, promptly and in any event not later than 3 months after the grounds to make the claim first arose; or
- if the decision was made on or after 1 July 2013, not later than 6 weeks after the grounds to make the claim first arose.

20.2 For information about how to do this you should contact the Administrative Court at the Royal Courts of Justice, Queen's Bench Division, Strand, London WC2 2LL.

www.courtservice.gov.uk

21 Contacting us

21.1 To contact us about a particular appeal you should contact our Case Officer – the LPA should have given you their details. For general enquiries our contact details are:

The Planning Inspectorate
Temple Quay House
2 The Square
Bristol
BS1 6PN

Helpline: 0303 444 5000

E-mail: enquiries@planning-inspectorate.gsi.gov.uk

22 Getting help

22.1 If you would like help in taking part in an appeal against an enforcement notice, you can contact Planning Aid. Planning Aid provides free and independent professional advice on town and country planning issues to people and groups (who cannot afford consultancy fees).

Planning Aid England
41-42 Botolph Lane
London
EC3R 8DL

Advice Line: 0330 123 9244

Switchboard: 020 7929 9494

Fax: 020 7929 9490

Email: info@planningaid.rtpi.org.uk

Website: www.rtpi.org.uk/planningaid

23 How we use your personal information

23.1 If you participate in an enforcement appeal or a lawful development certificate appeal, then the type of personal information contained in your representations will normally include your name, contact details and any other personal information you choose to provide.

23.2 We use the information provided to process the appeal, and this includes making your written representations available to the appellant and the LPA. The guidance in this booklet explains the appeal process in more detail and you are advised to read this guidance before providing any representations. For further details please see our privacy statement:
www.planningportal.gov.uk/planning/appeals/online/about/privacystatement

23.3 If you have any queries about our use of your personal information please contact our Data Manager at the address set out above in the paragraph called "Contacting us".

Timetable for the hearing procedure

Timetable Interested people	people	Appellant LPA	
<p>Appeal made.</p> <p>We set the start date and the timetable</p>		Sends the appeal form to us and the LPA. The grounds of appeal and supporting facts should make up the full case	Receives the appeal documents
<p>Within 2 weeks from the start date</p>	Receive the LPA's letter telling them that they must send us their representations within 6 weeks of the start date	Receives a completed questionnaire and any supporting documents from the LPA	Sends the appellant and us a questionnaire and supporting documents. It writes to interested people about the appeal
<p>Within 6 weeks from the start date (Only exceptionally will we accept late statements or comments)</p>	Send their representations to us	Sends us their hearing statement	Sends us its hearing statement
<p>Within 9 weeks from the start date.</p> <p>(We will not normally accept late statements or representations)</p>		Sends us their final comments on the LPA's statement and on any representations from interested people. No new evidence is allowed	Sends us its final comments on the appellant's statement and on any representations from interested people. No new evidence is allowed
<p>We set the hearing date which will be not later than 12 weeks after the start date or the earliest date after that which is practicable</p>			
<p>2 weeks before the hearing</p>	Receive details from the LPA about the hearing arrangements		Tells interested people about the hearing arrangements and may put a notice in the local paper about the hearing