



Guide to taking part in enforcement appeals and lawful development certificate appeals proceeding by an inquiry - England

28 August 2013

Guide to taking part in enforcement appeals and lawful development certificate appeals proceeding by an inquiry – England

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 hearing 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 inquiry is held under:

The Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2002 - Statutory Instrument 2002/2685

and the very few appeals decided by the Secretary of State are held under:

The Town and Country Planning (Enforcement) (Inquiries Procedure) (England) Rules 2002 - Statutory Instrument 2002/2686.

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 The appellant must display details of the inquiry, including the time and place, on the site 2 weeks before the inquiry.

3.3 These are the minimum publicity requirements. Your LPA may give appeals more publicity and will probably put information on its website. It may also publish details of the inquiry in a local newspaper if it thinks it is necessary.

3.4 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 inquiry 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 inquiry 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 representations 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 representations 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 that 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 see:

- 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

in particular Annex H: "Communicating electronically with us" for additional guidance about sending us documents through the Planning Portal or by email.

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 inquiry. You may send a written summary which will be seen by the Inspector, the appellant, the LPA and any Rule 6 (6) party (see paragraph 8.6). Please send (3 copies if possible if not sending electronically) within the 6 week deadline for representations. Also you may ask the Inspector at the inquiry if he or she is willing to accept the audio/video evidence and allow it to be played at the inquiry.

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 inquiry evidence and will be retained by the Inspector. You will need to have additional copies of the audio/video evidence available as if the Inspector allows it to be played these copies will be given to the appellant, the LPA, and any Rule 6 (6)

party. Our Case Officer will be able to tell you how many copies you will need to provide.

8 Before the inquiry

8.1 Local people are encouraged to take part in the inquiry 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 inquiry, 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 statements of case should be available 6 weeks after the appeal start date.

8.3 The appellant and LPA should jointly prepare a statement of common ground. This should list all agreed matters and should include basic facts such as the site description, area, planning history, relevant planning policies, and as many other matters as possible relating to the site. They must send this to us no later than 4 weeks before the inquiry and it should be available to view at the LPA's offices.

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

8.5 Inquiries 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 an inquiry, 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. A group of interested people may appoint one agent, solicitor, or barrister (who would be their "advocate") - to represent them all.

8.6 If you/the group want to take a leading role in the inquiry and call your own witnesses, you should contact us at the earliest possible stage. Under Rule 6(6) (of the (Enforcement) (Inquiries Procedure) Rules) we may require you/the group to provide a statement of your case before the inquiry which should include details of any documents you will produce at the inquiry. If we ask for this information, and you provide it, we will arrange for copies of the appellant's and LPA's statements to be sent to you.

8.7 For further information please see the "Guide to Rule 6 for interested parties involved in an inquiry – England" on the Planning Portal:
http://www.planningportal.gov.uk/uploads/pins/guide_rule_6.pdf

9 Inquiry venue

9.1 We ask the LPA to arrange the inquiry venue. Inquiries are usually held in LPA offices, village halls or community centres. We have set out the facilities that an inquiry 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 inquiries in buildings with proper facilities for people with disabilities. If you, or anyone you know, want to go to the inquiry and you have particular needs, please contact the LPA to confirm that it can make proper arrangements.

11 Openness and transparency

11.1 Inquiries 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 inquiry?

12.1 An inquiry is the most formal of the appeal procedures because it usually involves larger or more complicated appeals. These are often cases where expert evidence is presented, and witnesses are cross-examined (questioned). An inquiry may last for several days, or even weeks. It is not a court of law, but the proceedings will often seem to be quite similar.

12.2 The parties may be formally represented by advocates. As well as the appellant and the LPA, some interested parties (statutory parties and Rule 6(6) parties) are entitled to appear and give evidence.

12.3 The inquiry procedure allows for the presentation of detailed and technical evidence and for the cross examination of expert and other witnesses by the opposing party. The Inspector will take an inquisitorial role to ensure that evidence is thoroughly tested so that she/he can make a properly reasoned decision.

12.4 The starting time for the first day of the inquiry will normally be 10:00, but the notification letter you receive from the LPA and the notice displayed on the site will contain the starting time for the particular inquiry so you should check this. At the start of the inquiry the Inspector will agree the sitting times and starting times. It is often agreed that the inquiry will start at an earlier time on subsequent days. Inquiries usually sit until about 17:00 or 17:30 each day. There will usually be a mid-morning and mid-afternoon break and a 1 hour adjournment for lunch. The Inspector should not be approached during breaks because other participants in the inquiry would not know what was being said.

12.5 If you want to speak at the inquiry, it is important that you are there when it opens, because this is when the Inspector will:

- go through some routine matters;
- tell everyone about the timetable and the order that the proceedings will take; and
- ask if any interested people want to speak at the inquiry and will register their names.

12.6 Interested people may appear and give evidence at the Inspector's discretion. An Inspector would rarely refuse a request to appear at the inquiry.

12.7 At this stage, you should only give your name and address, and say whether you are for or against the appeal (or taking a neutral stance).

12.8 The Inspector will then usually give an outline of what the case is about and what the main issues are that need to be covered/dealt with. At a long inquiry, it is difficult to predict at what stage interested people will be given the chance to speak (normally you will speak after all the evidence of the appellant and the LPA has been heard). If you cannot stay at the inquiry all the time, tell the Inspector at this stage. The Inspector will understand and will try to help by hearing your representations at a different stage of the inquiry, if that is possible. However, if you wish to ask the appellant or the LPA questions, you will need to arrange to be at the inquiry when they are giving their evidence.

12.9 The Inspector has the discretion to decide the order of appearances at the inquiry but normally the appellant will be asked whether they wish to make a brief opening statement, followed by the LPA. Whether the parties make an opening statement or not, the appellant will usually present his/her case first; the witnesses will give their evidence and the opposing side will be allowed to cross-examine (question) them.

12.10 After that the Inspector will normally ask (for each witness) if anyone who registered at the start of the inquiry that they wished to speak, and who opposes the case that has just been put forward, whether they have any questions to put to the witness.

12.11 This is followed by the other side presenting its case with witnesses being cross examined by the opposing side. Similarly, those who registered that they wished to speak and who oppose the case just put forward, will be asked if they have any questions to put to the witnesses.

12.12 You must make sure that your questions are relevant to the evidence the witnesses have given. You should not repeat questions that have already been asked. This is not the time for you to give your views – that will come later.

13 Inspector's questions

13.1 At any stage during proceedings - but normally after cross examination and re-examination of a witness has taken place - the Inspector may also ask questions. Questions may be put to all those who give evidence, including interested people.

14 Re-examination

14.1 After cross-examination, the advocate is allowed to re-examine each witness. If a witness has made a mistake or got in a muddle during their cross-examination, their advocate can try to correct things by discussing the subject again and asking further questions of their witness to ensure that their case is clarified. It is not the function of re-examination to invite the witness to revisit clear answers given in cross-examination. No 'new' evidence can be put forward and leading questions ie a question in which the answer is suggested by the question, are not normally allowed (for example "Would you agree that...").

15 Giving evidence on oath

15.1 Where the inquiry involves a dispute between the appellant and the LPA about the facts it is usual for the evidence to be given under oath (which the Inspector will administer) or after 'affirming'. If your evidence/representations concerns facts you will be required to give your evidence/representations under oath or an affirmation.

16 Taking part in the inquiry

16.1 If you told the Inspector at the start of the inquiry that you wanted to speak, and you decide to ask any of the witnesses a question (or questions) you must make sure that your questions are relevant to the evidence the witness has given. You should not repeat questions that have already been asked.

16.2 When the cases for the main parties have been completed, at the Inspector's discretion, anyone who is interested in the appeal usually has the chance to speak and present their case.

16.3 When you give your views you should not repeat arguments that you have already made in written representations, or which someone has already said, as this 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 inquiry 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.

16.4 The Inspector will usually ask if you are willing to answer questions about your evidence. You do not have to do this, although it is often helpful to do so and it may add weight to your evidence. Do not feel intimidated. The Inspector will not let anyone ask you hostile or unfair questions. If you oppose the appeal the appellant's representative may ask you questions. If you support it, the LPA's representative may ask you questions.

17 Discussion of planning conditions

17.1 If the appellant has pleaded that planning permission should be granted for the alleged development the inquiry 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.

18 Closing statements

18.1 Finally (so far as dealing with evidence about the case is concerned) there are closing statements which are an opportunity for the appellant, the LPA and any Rule 6 (6) parties to sum up their case. They are usually read out from a pre-prepared version which they will give to the Inspector and those other parties who have summed up their case. The appellant will always be allowed to speak last at this point in proceedings.

19 Application for appeal costs

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

19.2 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.

19.3 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.

20 The close of the inquiry

20.1 After hearing any applications for costs the Inspector will formally close the inquiry. This is normally followed by the Inspector visiting the appeal site (in certain circumstances that may have occurred during the inquiry). Because the inquiry has been formally closed there can be no further discussion about the case during that visit.

21 The decision

21.1 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

22 Feedback, complaints and challenges

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

22.2 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>

22.3 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

22.4. 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.**

22.5 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.

22.6 If your challenge is successful, the High 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

22.7 But please note the time limit and the process in relation to enforcement and LDC appeals as given in paragraph 21.4 above, as this is different from the time limit and process for planning appeals which is given in Annexe R.

23 Judicial review

23.1 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.

23.3 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
WC2A 2LL
www.courtservice.gov.uk

24 Contacting us

24.1 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

25 Getting help

25.1 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

26 How we use your personal information

26.1 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.

26.2 We use the information provided to process the appeal, and this includes making your written representations available to the appellant, LPA and any Rule 6 (6) parties. 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

26.3 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 inquiry procedure

Timetable	Interested people	Appellant	LPA
Appeal made.		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
Within 2 weeks from the start date	Receive the LPA's letter telling them that they must send us any 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
Within 6 weeks from the start date (Only exceptionally will we accept late statements or representations)	Send their representations to us	Sends us their statement of case	Sends us its statement of case
Within 9 weeks from the start date. (We will not normally accept late comments)		Sends us their final comments on the LPA's statement and on any representations from 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
We set the inquiry date which will normally be within 20- 22 weeks of the start date			
4 weeks before the inquiry	Receive details from the LPA about the inquiry arrangements	Sends us their proof of evidence and the statement of common ground	Sends us its proof of evidence. It may put a notice in a local paper about the inquiry
At least 2 weeks before the inquiry		Displays a notice on site giving details of the inquiry	