

Handling Appeals in England

RTPI Planning Practice Standard

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Introduction

- It is essential that the planning appeal system operates efficiently, effectively and fairly. First, so that acceptable development is allowed to proceed. Second, because it is the one time when most people come into direct contact with the town planning system and town planners as a profession. Members involved in planning appeals must therefore act in the highest professional manner if the public is to have confidence in the profession and the Institute.
- In August 2000 the Government introduced new procedures (the 2000 Procedures) for all appeals under Section 78 of the Town and Country Planning Act 1990, for called in planning applications and for appeals in respect of applications for listed building and conservation area consent.
- This Planning Practice Standard (PPS) advises on the operation of the 2000 Procedures. It has been prepared by the Institute with the active involvement of the Planning Inspectorate.
- The PPS describes the respective roles of the Chartered Town Planner in the local planning authority, acting for appellants or advising third parties involved in planning appeals. The aim is to set out high standards of professional conduct for members involved in the development control and appeal system.

Summary

It is good practice that:

Local Planning Authority planners should:

- Not delay decisions unnecessarily.
- Quote only relevant policies on the decision notice.
- Complete the questionnaire properly and on time. Include copies of extracts from the development plan and other policies.

- Prepare a thorough committee report (or similar for delegated decisions). Use this report whenever possible to avoid the need for a separate written statement.
- Notify people about the appeal within 2 weeks of the start date, to avoid subsequent delays.
- Suggest conditions in all types of appeals.

Private sector planners should:

- Advise their clients to appeal only when all else has failed.
- Prepare thoroughly before submitting the appeal. Remember that 6 months is allowed from the date of the decision or when one should have been made.
- Not submit incomplete appeals – they will be returned by the Inspectorate and cannot be accepted unless all the necessary documents are submitted within the 6 month deadline.
- Avoid repeating initial grounds of appeal in later submissions; at the 6-week stage, comment only on new points raised in the questionnaire.

All members should:

- Be prepared to talk and listen. Consider all options and explore all avenues to seek a compromise.
- Be responsible – for your part in the appeal system. Follow the letter and spirit of the 2000 Appeal Procedures.
- Be timely – meet the timetable set out in the 2000 Appeal Procedures.
- Be open - do not keep information back. Appeals are not the time for surprises. Submit all relevant information at the earliest opportunity.
- Be brief – do not submit unnecessary written material. Do not quote unnecessarily from published documents. Focus on the main issues. Follow the advice in the annexes to Circular 5/2000 on the format of written submissions.
- Be prepared for an early site visit, hearing or inquiry date.
- Co-operate in the production of the statement of common ground using the template provided by the Inspectorate.

The 2000 appeal procedures

Introduction

1. The 2000 Procedures were introduced to bring greater fairness and to improve the speed and efficiency of the appeals system. They cover all appeals under Section 78 of the Town and County Planning Act 1990, called in planning applications and appeals in respect of applications for listed building and conservation area consent. But the principles they embody, of co-operation, discipline and fairness, apply equally to all appeals.

2. Appeals dealt with by all 3 methods – written representations, public inquiries and for the first time hearings - are covered by the 2000 Procedures. Comprehensive guidance is contained in Circular 5/2000. It deals in detail with the 3 different methods, giving advice on each procedure and best practice for the preparation of statements and proofs of evidence. The aim of this Planning Practice Standard is to focus on the role of the Town Planner, particularly good practice and what constitutes an acceptable standard of professional conduct. It deals first with general principles, then looks more closely at the timetable in the 2000 Procedures and good practice for members. It ends by examining the role of the member working in the private and public sectors.

Timeliness

3. The 2000 Procedures will only achieve their aim of increasing fairness, speed and efficiency in the appeals system if everyone accepts their share of responsibility and gets their appeal submissions to the Inspectorate on time.

4. **Members have a particular responsibility to act in accordance with the letter and spirit of the 2000 Procedures, making every effort to adhere to the appeal timetable. Statements, proofs of evidence and other documents that are late without good reason will only be accepted in extraordinary circumstances. The Inspectorate will normally return them. Failure to adhere to the timetable in the 2000 Procedures without good reason is, in the Institute's view, bad practice falling short of the high standard expected of members.**

Late submissions

5. If it proves impossible to meet the appeal timetable and a statement is returned, there is no recourse where the appeal is proceeding by written representations. Where a hearing or inquiry is held, members may seek to offer the document to the Inspector during the opening. The decision to accept or reject it will be made by the Inspector, following the principles of fairness and natural justice. The 2000 Procedures are not intended to prevent anyone putting the best possible case forward to support their arguments in an appeal, but to ensure that they do so in accordance with a timetable that provides fairness to all. **It is consequently bad practice to offer late documents at hearings or inquiries and should only be done in extraordinary consequences.**

6. If the Inspector accepts late statements or proofs, it will be necessary for the hearing or inquiry to be adjourned so that these can be read. Late documents that have been returned should never be sent to others involved in the appeal as this deprives the Inspector and those who might be affected of that information until the last minute. Nothing is gained by such action, which is bad practice to be avoided. An appointment will still be necessary for it to be read by the Inspector and others involved.

Costs

7. Where a hearing or inquiry is adjourned to read late submissions, the proceedings may take longer than they would have if the documents had been on time. This may lead to one side incurring additional cost.
8. Circular 8/93 gives detailed guidance on costs. The basic criteria for an award have not been changed under the 2000 Procedures. An award will only be made where an application has been made and one side has behaved unreasonably, causing the other side or possibly a third party to waste expense unnecessarily.
9. Submitting a late document previously returned by the Inspectorate at the hearing or inquiry will not automatically lead to an award of costs. The Inspector's decision on any costs application will depend on the circumstances and reasons why the document was not submitted on time. But a hearing or inquiry may take longer if it has to be adjourned for late submissions to be read. The side responsible for the delay are likely to be found to have behaved unreasonably unless they can show good reason for failing to submit on time. An award of costs is likely to follow for unnecessary additional expense due to the extended hearing or inquiry. The Inspector will not be concerned with the amount, only whether dealing with the late material at the inquiry or hearing rather than at the proper time caused the party making the application to incur or waste some expenditure unnecessarily.

The appeal timetable

Starting date

10. All 3 appeal procedures lay down a timetable for the submission of documents. The diagram over the page shows the timetable. This begins to run from the **starting date**, the date on which the Planning Inspectorate or the Secretary of State notifies the appellant (the applicant on a date called-in application) and the local planning authority that it has received all the information necessary to begin processing the appeal. Whatever procedure is chosen, the Inspectorate will not allow the appeal to proceed if insufficient detail is provided or if essential documents such as copies of the original application, forms, certificates and refusal notice (unless the appeal is against a failure to issue a decision) are missing. Should the procedure change, for example from written to hearing, the timetable begins again. Advice on the preparation of the grounds of appeal for private sector members is given below.

The 2-week deadline: questionnaire and notification

11. By 2 weeks after the starting date the local planning authority must send a completed **Questionnaire** to both the appellant and the Inspectorate. The Questionnaire is a crucial document in all appeals, whichever of the 3 procedures is used. It provides essential information for the Inspector. Failure to send the

questionnaire by the 2-week deadline will unacceptably delay the whole of the appeal.

12. The questionnaire allows the local planning authority to choose, in appeals conducted by written representations, whether to submit a separate appeal statement. (Advice on best practice for the submission of appeal statements is given later.) But for all types of appeals, whether a separate statement of the authority's case is to be submitted or not, it remains essential that the questionnaire is correctly and fully completed. Supporting documentation including a copy of the relevant development plan policies and other relevant policies must accompany the questionnaire and not be sent later. Advice on the completion of the questionnaire is given below.

13. Also by the 2-week deadline, the local planning authority must notify people that the appeal has been made. Everyone consulted on the original application and anyone else who made representations at application stage should be included. It is vital that, by the 2-week deadline the local planning authority notifies people that the appeal has been made. If they are notified late, the Inspectorate will have to allow them more time to make comments, leading to unacceptable and unnecessary delay.

The 6-week deadline: statements and representations

14. Whatever the procedure (written, hearing or inquiry), all statements are to be submitted to the Inspectorate within 6 weeks of the starting date. This includes statements of case where an inquiry is to be held but there are no pre-inquiry meeting. The only exception is where the case is to be determined by the Secretary of State and a pre-inquiry meeting is held. In such cases the statement of case must be sent to the Inspectorate within 4 weeks of the end of that meeting. Two copies of any statement are required, irrespective of the procedure. This is so that one copy can be sent to the Inspector and one to the other side.

15. The intention of these procedures is to prevent one side from getting an unfair advantage by having the other side's statement before submitting its own. The Inspectorate therefore keeps the statements until the 6-week deadline has passed or until both statements have been received if this is earlier. Both statements are then sent out together.

16. Also by the 6-week deadline, people who have been notified of the appeal must send their comments to the Inspectorate. All representations will be copied to the appellant and local planning authority once the 6-week deadline has passed. Late representations will normally be returned unless there are exceptional circumstances such as the local planning authority notifying people late.

The 9-week deadline: comments

17. Under the 2000 Procedures, **one opportunity only is given for comments**. These must be submitted, both on the 6-week statements and on any other representations, within 9 weeks of the starting date. Where an inquiry is to be held, any comments on the statements of case must be submitted by the same deadline.

18. **The opportunity for comment must not be used as a means of introducing new material or to put forward the arguments that should have been included in the 6-week statements. The Institute considers that such conduct by any member is unprofessional and contrary to the spirit of the 2000 Procedures.** To do so leaves the other side and those who might be affected without the opportunity to comment as any further representations will be out of time and returned. The Inspectorate will therefore reject and return 'comments' received at the 9-week stage which raise new issues or are evidently a substitute for a late 6-week statement, previously returned.

19. The timetable above is identical for all appeal procedures but where an inquiry is held there are additional steps and deadlines. **Proofs of evidence** must normally be received not less than **4 weeks** before the start of the inquiry. The Inspector has the option to vary this date where a pre-inquiry meeting is held, although 4 weeks prior to opening will still be the preferred option. Summaries are required for all proofs and be sent to the Inspectorate at the same time, not provided later. And they must be just that, not used to introduce new matters not found in the proof. Proofs and summaries submitted late without good reason will be returned by the Inspectorate, like all other late material. The Institute expects its members to act in accordance with the letter and spirit of the 2000 Procedures, submitting all inquiry documents on time.

20. **Statements of Common Ground** were introduced for the first time by the 2000 Inquiry Rules. A Statement sets out the agreed factual information about the proposal, identifying both areas of agreement and, if appropriate, areas of disagreement, enabling the subsequent inquiry to focus on the matters in dispute. The Statement is prepared jointly by the appellant and local planning authority, but there is nothing to prevent them from involving other parties in the preparation of the Statement if they feel this to be appropriate. Well prepared statements can save significant inquiry time.

21. It is the responsibility of the appellant to send the Statement of Common Ground to the Inspectorate, again not less than **4 weeks** before the date when the inquiry opens. A template setting out the recommended format for the Statement is available from the Inspectorate and can be downloaded from their web site (see below).

22. Although there is no equivalent provision for hearings, it is good practice for the appellant and local planning authority to produce together a short

statement of agreed points before a hearing. This can be annexed to the hearing statement sent to the Inspectorate by the 6-week deadline.

Appeal procedures: good practice

Written submissions and proofs of evidence

23. All written appeal submissions should be brief. There are a number of ways of doing this. Never include lengthy extracts from published Government guidance such as circulars, statutory instruments and Planning Policy Guidance Notes. Inspectors have copies and they are available in the local planning authority's offices and from PINS and DTLR's website to anyone who has been consulted. Nor is there a need to quote policies verbatim in the submissions. Place the relevant part of the policy document in an appendix and include the supporting text, which is just as important as the actual policy. Treat documents not widely available similarly.

24. Focus on the major points of disagreement. Inspectors write decisions by first defining the main issues on which the decision hinges and then dealing with each in turn. This approach is commended as it focuses attention and helps in putting forward a logically structured case. It is not necessary to follow the format of the Inspector's decision, but it is good practice to deal with all the arguments relevant to each main point of contention before moving to the next.

25. As the development plan is the starting point, the submissions should set out how the subject of the appeal stands in relation to each relevant development plan policy. All other relevant policy documents should be dealt with similarly, but after the development plan. When giving views on policies, explain impact on national/development plan policies. This is usually best done by relating the effect of the development to the objectives of the relevant policies.

26. **The annexes to Circular 5/000 contain detailed recommendations on the format of written submissions for all 3 types of appeal procedures and these should be studied and followed by all members.**

Openness and fairness

27. Appeals are not the time for surprises. The Institute expects all members to act in accordance with the letter and spirit of the 2000 Procedures, ensuring that all the necessary information is placed before the Inspector in good time. Only in this way will they be acting in the best interests of their client or employer. Appeals are not won by holding information back in the mistaken belief that this will gain an advantage. This merely causes delay, which can have cost implications. To withhold information is unfair, particularly to those who may be affected and might wish to comment. And it is contrary to the spirit of openness in which appeals are to be conducted. Members should therefore ensure that they include all relevant information in their written submissions at the earliest opportunity.

28. Those written submissions must be on time. The Inspectorate will return statements, proofs of evidence and any documents submitted late without good reason. This deprives the Inspector and those who may wish to comment of that information, which helps no one.

29. Nor does it help to send late hearing statements or proofs of evidence that have been returned directly to the other parties involved in the appeal. **It is bad practice and contrary to the spirit of the 2000 Procedures.** It is unfair to those who might be affected as it prevents them from seeing the information until a late stage. And it hampers the Inspector's ability to prepare properly. If the late submission is presented to the Inspector at the hearing or inquiry, time will be wasted, since the Inspector will have to adjourn to read it. **The Institute considers that any member who takes such a step is acting in a manner contrary to the spirit of the 2000 Appeal Procedures.**

The town planner's role

30. Each party involved in a planning appeal must accept responsibility for their part in making the system work. It will only work fairly and properly if all involved make every effort to abide by the timetables set out in the 2000 Procedures. Failure to do so may result in unnecessary delays and possible frustration and unfairness for those who adhere to these timetables. The professional town planner's role in appeals is crucial, not just to provide the required information on time but to convey to their employer, client, colleagues from other professions and all others involved the importance of abiding by the appeal procedures.

Members acting for appellants and third parties

Early discussions

31. It is in no one's interests that an appeal is made. All too often meaningful discussions during the initial stages of a project and a willingness to make reasonable compromises would avoid the delay and expense an appeal entails. It is therefore vital that members in the private sector discuss schemes with their public sector colleagues and those who might be affected at the earliest opportunity, before details have been finalised and the application submitted. The Institute looks to private sector members to take the lead in discussing development proposals and never refuse an opportunity or invitation to maintain a dialogue. **Private sector members should explore all avenues in seeking an acceptable solution, ensuring clients understand the importance of discussion and dialogue.**

The decision to appeal

32. When the proposal has been refused, the first reaction should not be to appeal, but to reflect upon the refusal with a view to seeking an acceptable compromise. It is the responsibility of the Institute's members to advise their

clients accordingly. Even under the timetables in the 2000 Procedures and with the Inspectorate's tight targets for issuing decisions, it is likely to be quicker to submit a revised proposal acceptable to both the client and the local planning authority. **The decision to submit an appeal should not therefore be taken lightly and should only be when all else has failed.** Appeals should not be made to pressurise the local planning authority to approve a subsequent revised application. Submitting an appeal with this intention will usually have the opposite effect.

Submission of the appeal

33. If it is decided that the only way forward is to submit an appeal, remember that 6 months is allowed from the date of the local planning authority's decision, or the date by which it should have made a decision. This allows plenty of time for preparation. **It is therefore bad practice to submit an incomplete appeal, which does not include the necessary documents and proper supporting grounds.**

34. The provision of adequate grounds to support the appeal is crucial. If the written representations method is chosen, the Inspectorate will not accept the appeal as valid unless it sets out the full grounds in support of the appellant's case. Whichever procedure is chosen, **the Inspectorate will not allow the appeal to proceed if insufficient detail is provided or if essential documents such as copies of the original applications, drawings/plans, forms, certificates and refusal notice (unless the appeal is against a failure to issue a decision)** are missing. If all the information necessary is not received by the Inspectorate within the 6 months allowed for the submission of an appeal, it will be out of time and cannot be accepted. Members must therefore respond promptly to any request by the Inspectorate for missing information.

Comments at the 6-week deadline

35. At the 6-week deadline, where the appeal is proceeding by the **written representation** method and the initial grounds of appeal are adequate, members should confine themselves to commenting on new matters raised by the questionnaire. There is no obligation to submit a further statement at 6 weeks. Repeating matters set out in the grounds of appeal serves no useful purpose.

36. If a **hearing** is to be held, members can choose to rely on their initial grounds of appeal, but this should be confirmed in writing with the Inspectorate. If a hearing statement is prepared, the matters stated in the initial grounds of appeal need not be repeated.

Giving advice to third parties

37. There will be occasions when consultant planners and those in Planning Aid are asked to advise people affected by development proposals, sometimes to

represent them at hearings or inquiries. The key deadline in such cases is 6 weeks after the starting date, by when comments must be sent to the Inspectorate. Three copies of comments must be sent for distribution to the Inspector, appellant and local planning authority. As with all late representations, anything received after the deadline will be returned unless there are extraordinary circumstances.

38. Where a member is asked to represent someone at a hearing or inquiry, he or she should adhere to the same deadlines as the appellant and local planning authority. **Hearing statements** should be submitted within 6 weeks of the starting date. **Proofs of evidence** should be submitted 4 weeks before the inquiry opens.

Members in local planning authorities

Dialogue and discussion

39. **The need for dialogue and discussion applies equally to members in the public sector.** It means being prepared to discuss and advise on schemes both before applications are submitted and during the application process. Appeals have resource implications. Local planning authorities therefore need to balance the pressure to deal with applications quickly against the saving to avoid an appeal by sensible dialogue at an earlier stage.

Making the decision

40. But the point will come when a compromise solution cannot be found and a decision has to be made by the local planning authority. Not all decisions can be made within the statutory 8-week period, but none should be delayed without good reason. The Institute expects members to make every effort to ensure that a decision is made as quickly as possible. It should never be delayed for spurious reasons such as to wait for details that could be covered by conditions, such as landscaping, materials or parking.

Reasons for refusal

41. The reasons given by the local planning authority for refusing an application or imposing conditions are crucial. In any subsequent appeal, those will normally form the basis for the main arguments put forward. Members should therefore ensure that reasons given for refusing applications are clear, precise and specific and identify the grounds on which the application is unacceptable. Where permission is granted, conditions should only be imposed that are necessary with clear and precise reasons for their imposition. Discussing the form of a condition before it is imposed will often avoid a subsequent needless appeal.

42. The 2000 Procedures require that the reasons for refusing applications and for imposing conditions state the **relevant** development plan policies. Those

having little direct relevance to their decision should not be included merely to bolster a local planning authority's case. This will lead to time being wasted in any subsequent appeal. Remember that, even though development plan policies are the starting point, it is not sufficient for reasons of refusal merely to state that an application does not comply with policy. Reasons must identify how the development would cause harm, perhaps by stating how the scheme would conflict with the objective of a policy. Each decision to refuse an application, or to approve one subject to conditions, might be the starting point for an appeal. Decisions and recommendations should be considered carefully and justified in properly reasoned report by reference to the relevant development plan and other policies. Time spent in preparing such a report will never be wasted, as it can be used as the authority's statement in the event that an appeal is submitted.

The appeal questionnaire

43. The **Questionnaire** is a crucial document. It provides essential information for the Inspector. **Local authority members should not regard its completion simply as an administrative task.**

44. In the majority of written representation appeals the following will be sufficient for the Inspector to determine the appeal following a site visit:

- A correctly completed questionnaire
- a copy of the original committee report
- relevant extracts from the development plan and other policy documents
- a list of conditions.

For many other appeals a short statement of 1-2 pages to supplement the questionnaire will suffice. **The Institute recommends this as best practice, which should be adopted by all local authority members.**

45. Where the appeal is to be dealt with by way of a hearing or public inquiry, or by the written method but the local planning authority still consider that a separate statement is necessary, it remains essential that the questionnaire is correctly completed and the required information supplied with it. There is no good reason for members to omit copies of extracts from the relevant development plan and other policies. It is unacceptable and bad practice to indicate that these will be submitted with a later statement. **If the initial decision was properly thought through the relevant development plan policies will already be identified on the refusal notice.**

The local planning authority's conditions

46. In a written representation appeal where the authority does not intend to submit a separate statement, a list of **conditions** should accompany the questionnaire. In all appeals the local planning authority should set out the conditions it would wish the Inspector to attach if the appeal is allowed. Submission of conditions by the local planning authority does not indicate to the Inspector to cast about for conditions. If the authority fails to put forward

conditions a permission could be granted without restrictions, particularly in written appeals. **The Institute regards the provision of suggested condition (or a statement that no conditions, other than a standard commencement date condition as appropriate, are necessary) in all appeals as good practice to be followed by members.**

Notifying people

47. **Prompt notification is vital.** People have 6 weeks from the starting date to send their comments on the appeal to the Inspectorate. Late representations will be returned unless the authority was late in notifying them, in which case the Inspectorate will have to give them more time.

48. **The initial 2 weeks is therefore a critical time in the appeal process.** It is vital that the questionnaire is completed correctly and returned with the required documents and that notification is carried out by the 2-week deadline. Failure to do so will unacceptably delay the whole of the appeal. **The Institute therefore expects public sector members to ensure that procedures are in place to enable their authority to act promptly and efficiently at this stage.** By so doing, later delay will be prevented and the need for a further statement by the authority can often be avoided, thus saving time and effort.

Further sources of information

49. Members can obtain advice, appeal forms, a copy of Circular 5/2000 – essential reading for all members – further information on the Planning Inspectorate’s web site www.planning-inspectorate.gov.uk

50. Forms can be downloaded but presently cannot be submitted electronically. This will change when the Planning Portal is implemented. Information on this project is posted regularly on the Inspectorate’s web.

This guidance is written for chartered town planners working with the English system, but much of the advice is relevant to all parts of the UK.

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