

SHEET 8

Development Management: Appeals

Making and Commenting on them

DISCLAIMER: Produced by Planning Aid England - Published by the Royal Town Planning Institute (RTPI) (c) 2012. All rights reserved.

Planning Aid is part of the Royal Town Planning Institute, Registered Charity in England and Wales Number 262865. Head Office: Royal Town Planning Institute, 41 Botolph Lane, London, EC3R 8DL.

The Planning Pack is not a statement of the law.

The Institute and Planning Aid England permits persons using this Planning Pack for the furtherance of effective public participation in the town and country planning system to make copies of the Planning Pack Sheets included, as long as they in no way commercially or financially benefit from making such copies. With this exception no part of this publication may be reproduced or transmitted in any form or by any means, electronic or mechanical without prior permission in writing from the publisher. While every effort has been taken to check the accuracy of the information in this Planning Pack, the RTPI or Planning Aid England cannot be held liable for any financial loss resulting from the professional advice contained herein. Readers are advised to seek advice from their local planning authority and/or a professional planning consultant, or specialist planning lawyer before proceeding on any matter.

This is **Sheet 8** of The Planning Pack. This pack has been written by Planning Aid England, and is endorsed by the Royal Town Planning Institute. This information sheet provides a brief introduction to Planning Appeals.

If your local planning authority decides to refuse your planning application or you are not happy with the conditions on the approval, you can appeal to national government against that local decision or particular condition. You (the applicant) can also appeal if a local decision on your proposal is not made within the appropriate time limits – eight weeks for minor applications, 13 weeks for major applications or 16 weeks in the case of applications requiring environmental assessment. This circumstance is called ‘non-determination’.

Appeals can also be made against an enforcement notice where the local planning authority alleges a breach of planning control (see **Sheet 10**).

The organisation which deals with appeals at national level is known as the Planning Inspectorate. The Planning Inspectorate is an Agency of the Department for Communities and Local Government (DCLG).

Only the applicant can appeal against a local planning authority’s decision. Once an appeal has been made the applicant becomes known as the appellant. There is no right for ‘third parties’ (for example neighbours or community groups) to appeal against a decision on a planning application. However, third parties do have a right to make their views known at appeal. If third parties are not happy with the decision made on a proposal there are other courses of action that can be taken. See **Sheet 13** on Redress.



Appealing Against a Planning Decision

If you have submitted a planning application to your local planning authority you can appeal to the Planning Inspectorate in the following circumstances:

- ◆ where the application has been **refused**; or
- ◆ where the application is granted but is **subject to conditions** which the applicant believes are inappropriate; or
- ◆ where the application is **not decided within the time allowed** – 8 weeks from receipt of the application (minor applications), 13 weeks for major applications, or 16 weeks in the case of applications requiring environmental assessments,
- ◆ where the local planning authority **rejects details of a proposal**, following grant of outline permission or as a requirement of a condition; or
- ◆ where you believe that the local planning authority **inappropriately demands more information** relating to an outline application.

An exception to this rule applies to **appeals against conditions** attached to a planning permission which is more than 6 months old, when an appeal can be made at any time during the life of the permission (known as section 73 appeals).

There is a strict timetable that you will need to follow. If you don't keep to the deadlines you may lose the right to make your case. Importantly, you only have **12 weeks** for householder applications and have **6 months** for all other applications from the date shown on the decision notice (the decision date) or the end of decision period, see above, to make an appeal.

An appeal must be made on the appropriate form (there are different forms for householder applications, planning applications, listed building/ conservation area consent applications and enforcement notices). Most appeals can be submitted electronically via the Planning Portal website however, paper forms are available from the Planning Inspectorate by post.

One copy of the appeal application must be **returned to the Planning Inspectorate** and one copy should be **sent to the local planning authority** within the time limit. You should also keep a copy for your records. The form asks for details of the appellant (the person who is appealing), the local planning authority's application reference number, the site, a description of the proposal, and details of land ownership.

A list of **essential supporting documents** must be sent with the form (including copies of the original application, ownership certificates, the local planning authority's decision notice and other correspondence, site plan and all drawings and diagrams). You will need to indicate on the form your **preferred procedure** for the appeal to be conducted by the Inspector, (see Appeal Procedures section below for more information on the different ways an appeal can be conducted).

You will need to state the reason or reasons why you are appealing on the form; these reasons are known as '**grounds of appeal**'. The grounds of appeal should explain why you disagree with each of the local planning authority's reasons for refusal (as written in the refusal notice). It is not sufficient just to say that you disagree; you must provide good planning reasons why permission should be granted. Your reasons should be based on Local Plan policies and/or other considerations relevant to planning, known as material considerations. These may include site specific considerations or local needs. For more information on material considerations see **Sheet 7**.

Whatever your case, make sure that you express it **clearly, succinctly and logically**. It may be helpful to include any further illustrative material, such as plans and photographs.

All your comments must be '**relevant**' to planning. You should be aware that all comments are publicly available.

Appeal procedures

There are three different ways to carry out an appeal.

- ◆ written representations (including a fast-track option called a 'householder appeal' for less complex cases); or
- ◆ hearing; or
- ◆ public inquiry

The appellant and the local planning authority are asked for their preferred choice of procedure. However the ultimate decision rests with the Planning Inspector. Each method is described in more detail in the Planning Inspectorate's Procedural Guidance: Planning Appeals and Called in planning Applications (PINS01/2009) and 'Guide to taking part in planning appeals'. See **Sheet 16** for the links. Below is a summary of this process:

Written Representations

As the name suggests, written representations are dealt with through **written statements** from the appellant, the local planning authority and third parties wishing to comment, including the 'statutory' consultees (e.g. Highways Agency, English Heritage) and neighbours. Householder appeals have slightly different rules about consultation, the submission of evidence and how site visits are conducted. These differences are all designed to speed up the process.

The appellant completes an appeal form, including grounds of appeal. The grounds are very important as they are the only opportunity to fully establish the case in the written representation procedure. Any supporting documents must be sent to the Planning Inspectorate and local planning authority (remember the twelve week or six month time limit). Once the Planning Inspectorate has received the form and supporting information they will set a '**start date**'. This date is important, as all of the deadlines will relate to the start date.

EXAMPLE OF HOW TO ORDER A WRITTEN STATEMENT

- ◆ Site description
- ◆ Site history – previous and relevant planning applications
- ◆ Description of the proposal
- ◆ Reasons for refusal and grounds of appeal
- ◆ Relevant Local Plan policies
- ◆ Other material considerations – including national policy, site specific considerations
- ◆ Main issues – you could look at similar appeal decisions for ideas on what main issues might be (common main issues are the effect of the proposal upon the character and appearance of the area, and/or the living conditions of people)
- ◆ Analysis of main issues – this is the chance to make a case. For example, whether or not the application is consistent with the Local Plan. Why? How?

Within **two weeks** of the start date, the local planning authority responds to the appeal by filling in a questionnaire and attaching relevant documents – such as the planning officer's report, relevant policies, committee minutes and written submissions from other parties. This information will be sent to the appellant and the Inspector. The local planning authority will also inform third parties who commented on the original planning application about the appeal, giving them the opportunity to comment.

Within **six weeks** of the start date, the appellant should send two copies of a further written statement if they elect to make any further representations. This is an opportunity to respond to issues raised in the local planning authority questionnaire and supporting information. Third parties will also need to send their comments to the Inspector by this date.

Within **nine weeks** of the start date, the appellant and the local planning authority may send an additional written statement. This gives the opportunity to respond to any previous statement made by the local planning authority and to comments made by third parties. No new information or evidence can be included at this point.

Shortly after all of the written submissions have been received the file is passed to an Inspector, who will visit the site that the appeal relates to. If the site can be viewed from public land and the appellant and local planning authority are agreed, the Inspector can make an 'unaccompanied' visit. Depending on the nature of the case and the site, the inspector may seek an 'accompanied' visit, where the appellant and local planning authority are present and third parties may also attend. There will be no discussion in relation to the case with any party. It is often useful for third parties to invite the Inspector to view the development site from their own property, but this would be at the Inspector's discretion.

Householder Appeals

As noted above, the **householder appeals service is a faster procedure** for householder appeals which have slightly different rules about consultation, the submission of evidence and how site visits are conducted. A brief overview of this procedure is outlined below:

The appellant submits a copy of the planning application form and the local planning authority's decision notice with the householder planning appeal form, including grounds for appeal. The grounds are very important as they are the only opportunity to fully establish the case in the written representation procedure. The **grounds must be concise, clear and comprehensive**. They should respond forensically to the reasons for refusal set out in the local planning authority's decision notice and should be clear as to why planning permission should be granted. There will be no need to submit copies of plans or any other material submitted with the planning application, as this will be supplied by the local planning authority.

Within 5 working days of the start date of the appeal, the local planning authority's case will need to be submitted. The documentation submitted will include all of the material contained on the case file when the planning application was determined. In addition, it must include copies of all policies quoted in the reasons for refusal, all representations made during the consideration of the application and any conditions the local planning authority would like considered. The Local planning authority will not be able to submit any further information after the questionnaire stage.

Regarding interested persons: the local planning authority must within 5 working days of the start date notify interested persons that any representations made to the local planning authority in relation to the application before it was determined will be sent to the Inspector and considered by them. There is no further opportunity for an interested person to comment at appeal stage, but they will have an opportunity to withdraw earlier comments if they wish to do so.

The Inspector will visit the site that the appeal relates to. If the site can be viewed from public land the Inspector will make an 'unaccompanied' visit and talk to no one. Where access is required, arrangements will be made to allow the site to be inspected. In such circumstances there will be no discussion permitted on the case with any party on site.

Hearing

A **hearing** is less formal than a Public Inquiry and is used for less complex, smaller-scale proposals.

An appeal form is completed by the appellant and sent with supporting documents to the Planning Inspectorate and the local planning authority. On determining that a hearing is the best approach, the Planning Inspectorate will then set a '**start date**'.

Within **two weeks** of the start date, the local planning authority responds to the appeal by filling in a questionnaire, attaching relevant documents – such as the planning officer's report, relevant policies, committee minutes and providing written submissions from other parties. The local planning authority will also inform third parties who commented on the original planning application about the appeal, giving them the opportunity to comment further.

Within **six weeks** of the start date, the appellant and the local planning authority must submit two copies of their hearing statement. This statement should summarise the material already supplied by the appellant (in grounds of appeal) and the local planning authority (with questionnaire), highlighting where there are differences between the parties. Third parties should also send in comments by this date.

The '**hearing**' itself is more of a discussion, with the Inspector acting as 'chair'. The Inspector identifies the issues for discussion based on the appellant's and local planning authority's cases. To reduce costs, legal representation is not normally allowed. The Inspector can take part in the discussions to ensure that all points are explored fully. The hearing may include a discussion at the site or the site may be inspected, without discussion, on an accompanied or unaccompanied basis.

Public Inquiry

Public inquiries are usually for larger or more complex appeals. This method often involves the appellant and the local planning authority employing legal representation or experts to help present their case. This usually increases costs substantially.

In some larger public inquiries where the inquiry is expected to last 8 days or more, the Planning Inspectorate may agree a bespoke timetable. However, in most cases, the following timetable would generally apply:

An appeal form is completed by the appellant and sent with supporting documents to the Planning Inspectorate and the local planning authority. The Planning Inspectorate will then set a '**start date**'.

Within **two weeks** of the start date, the local planning authority responds to the appeal by filling in a questionnaire, attaching relevant documents. This information will be sent to the appellant and the Inspector. The local planning authority will also inform third parties who commented on the original planning application about the appeal, giving them and any statutory consultee the opportunity to comment further.

Within **six weeks** of the start date, the appellant and the local planning authority must agree on a statement of common ground, which is prepared jointly by both parties and focuses on the material differences between the main parties case. Each party will also submit a statement of case. This statement should make clear the case that will be made at the inquiry. Third parties should also send in comments by this date.

Four weeks before the inquiry starts, the appellant and the local planning authority (including Rule 6 parties) will need to send copies of their proofs of evidence. This is a written statement that will be read out at the inquiry. If the proof of evidence is over 1500 words long, a summary should be provided. It will usually be the summary that is read at the inquiry. There may be a 'Pre-Inquiry Meeting' at which arrangements and programme can be discussed by participants.

At the **Inquiry**, the Inspector will start the proceedings, by asking for the names of all those intending to speak. The Inspector will then explain the inquiry procedure. The Inspector's objective is to make sure that they have all the information needed to make a decision and to make sure that all participants are treated fairly. If a third party wishes to speak, they should tell the Inspector, who will inform them of the approximate timing for their statement. People who have not written in beforehand can only appear at the discretion of the Inspector. Proceedings normally take the form of a brief opening statement by the appellant, followed by the local planning authority's case and statements from supporting expert witnesses. These witnesses can then be cross-examined (questioned) by the appellants' side and any third party.

Questions must be relevant to the point under discussion. The appellant will then make a full statement and may use expert witnesses. The appellant's case will then be subject to similar cross-examination. After the appellant and the local planning authority have had their say, the Inspector will call on third parties to make their case. When speaking, be brief, relevant and to the point. The Inspector will treat all information fairly. Third parties do not have to accept cross-examination, but often it is useful to answer the points made; the Inspector should not allow hostile questioning. The Inquiry itself finishes with closing statements from the appellant and the local planning authority.

The Inspector will usually visit the site before the inquiry starts. The appellant and the local planning authority can ask the Inspector to visit the site during or after the inquiry and can request to be present. However neither will be allowed to say anything about the proposal.

Costs

Regardless of the procedure under which an appeal is determined, **either of the principal parties (i.e. the appellant(s) and the local planning authority) can make an application for costs to be awarded against the 'other principal party' in the appeal or, exceptionally, against a third party**, if it is felt that there has been unreasonable behaviour, leading to unnecessary or wasted costs being incurred. Normally, the same Inspector who determines the appeal will also decide any costs application(s), using Circular 03/2009 Costs Awards in Appeals and Other Planning Proceedings as a guide to what constitutes unreasonable behaviour **Sheet 16** for the link.

Decisions

After the Inspector has considered all the evidence, **a decision will be made**. The appellant, the local planning authority and third party who has requested a copy of the decision will be notified in writing by the Inspector. The decision will identify the main (important) planning issues, and give reasons explaining the Inspector's decision. The appeal may be '**allowed**' and planning permission granted, or '**dismissed**' and planning permission refused. Sometimes a split decision is issued, allowing one part of a proposal, but dismissing another.

If the appeal is allowed (and planning permission is granted), it will include any **necessary conditions**, which would normally have been discussed at the hearing or inquiry. The Inspector's decision is usually final. An Inspector's decision may be challenged in the High Court (possibly at considerable cost and would need to be within 6 weeks of the Inspector's decision), but only if the Inspector has erred in fact or law. For example, there was a mistake in legal procedures or some vital information was ignored. If the High Court upholds the challenge, the case is looked at again by the Planning Inspectorate, but the decision is not necessarily reversed.

Other forms of planning appeal/inquiry

Most planning applications are decided locally by the local planning authority. However the local planning authority may be directed to refer any application to the Secretary of State for decision, under reserved powers. This is known as a '**called in**' application. Normally, these are cases which raise issues of regional or national importance or raise questions about the interpretation of national policy. Examples of these are:

- ◆ development that may conflict with national policies on important matters;
- ◆ development that could have significant effects beyond its immediate locality;
- ◆ development that raises significant architectural and urban design issues;
- ◆ development where the interests of national security are involved, or the interest of foreign Governments;
- ◆ development where there is substantial regional or national controversy.

Where the decision is to be made by the Secretary of State, the Inspector sends a report which will include conclusions on the main planning issues and a recommendation whether the proposal should be allowed or not.

The Secretary of State usually follows the recommendation of the Inspector, but can overrule the recommendation in their final decision.

It is possible to appeal to Government (DCLG) against other decisions made by the local planning authority. These include appeals related to advertisement control, listed building control, caravan sites, public rights of way (footpaths), telecommunications masts, hazardous substances consents, hedgerow control, protected trees, certificates of lawfulness, and environmental impact assessments. Such appeals are dealt with in largely the same way as appeals against a planning refusal, as described above, although with some changes to suit the topic concern.

Further guidance on the matter can be found in the Planning Inspector's Guidance Note 03: Called in Planning Applications See **Sheet 16** for the link.

Making Comments

If you commented on an initial planning application, you will be notified automatically of any appeal and your original comments on the planning application will be sent to the Planning Inspectorate by your local planning authority.

If you have not previously commented, there is no legal reason for you to be notified and it is your responsibility to find out if an appeal has been lodged; usually larger-scale proposals will be accompanied by more extensive publicity, but this is at the discretion of the local planning authority.

Anyone can make comments on an appeal. All comments must be sent in writing to the Planning Inspectorate within six weeks of the date on which the appeal has been accepted, known as the start date. Make sure you include the appeal reference number to which your comments relate on your letter or written statement. You can repeat the original comments you made, if any, on the initial application; however, it is a good idea to provide additional information and comment. Your comments should be written clearly and logically. If the appeal is made by written representations, this will be your only opportunity to comment.

The Inspector, when making a decision on the appeal proposal, will need to consider whether the proposal is in accordance (in line) with National Policy – i.e. the NPPF and the policies within the Local Plan – and whether there are any other relevant planning considerations, known as material considerations. Examples of material considerations can be found on **Sheet 7**. Therefore when writing your comments refer to policies within the Local Plan and/or other material considerations to support your comments. It is a good idea to include a section in your statement on what would make the development more acceptable to you if the Inspector allowed the development. For example, would you be happier with the proposals if frosted glass was used in an overlooking window. This will not undermine a case for refusal, but may be useful in protecting some important aspect should the development be allowed. When you send in your comments to the Inspector you will need to ask for a copy of the decision letter.

BEFORE YOU WRITE YOUR COMMENTS:

- ◆ Look at the decision notice: what were the reasons for the decision? What policies (i.e. national/local) are referred to?
- ◆ Look at the Committee Report (if any). What was the officer's recommendation? What policies are considered and what other considerations were highlighted?
- ◆ Look at relevant policies in the Local Plan;
- ◆ Think about other material considerations, including national policy;
- ◆ Talk to the officer responsible for writing the local planning authority's comments on the appeal.

More detail about how you can take part in planning appeals can be found in the Planning Inspectorate's Procedural Guidance: Guide to taking part in planning appeals – written, hearing and inquiry. See **Sheet 16** for the links.