

## Procedural Guide

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# Enforcement notice appeals - England

23 March 2016



# PROCEDURAL GUIDE

## ENFORCEMENT NOTICE APPEALS - ENGLAND

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## **IMPORTANT CHANGES**

This document contains revised guidance on:

- the process for challenging a costs decision following changes that came into force under Schedule 16 of the Criminal Justice and Courts Act 2015 – Procedure for Certain Planning Challenges;
- the risk in implementing a planning permission / commencing development before the High Court challenge time limit has expired;
- planning obligations and counterpart documents.

# **1 INTRODUCTION**

## **1.1 Background**

1.1.1 The content of this document is guidance only with no statutory status. However, all parties should follow the general principles, as will Inspectors who may adapt them as necessary for an individual appeal whilst ensuring that no party is prejudiced. It should be read alongside the [planning practice guidance](#) published by the Department for Communities and Local Government.

## **1.2 Listed building enforcement notice appeals**

1.2.1 This guide also applies to enforcement notice appeals in respect of listed buildings. For further information please see the [planning practice guidance](#).

## **1.3 Who makes sure that development is in accordance with planning permission?**

1.3.1 If planning permission is granted, by the local planning authority at application stage, by the Inspector on appeal or the Secretary of State on an application that has been called-in the local planning authority has the sole responsibility for monitoring the implementation of the permission and ensuring that it is in accordance with the plans and any conditions.

1.3.2 If the local planning authority considers that development does not comply with the permission it has the power to take enforcement action. The planning practice guidance includes guidance on the [range of enforcement options](#) available to local planning authorities.

## **1.4 Why has the local planning authority issued an enforcement notice?**

1.4.1 A local planning authority has discretion on whether to issue an enforcement notice. A local planning authority will issue an enforcement notice because it considers that what is being done or has been done is a breach of planning control because it is development that is not authorised by a planning permission or is a breach of condition(s) attached to a planning permission.

1.4.2 Further guidance on the circumstances in which a local planning authority may consider issuing an [enforcement notice](#) is in the planning practice guidance.

## **1.5 Responsibilities of the appellant, the local planning authority and other parties**

1.5.1 When issuing an enforcement notice the local planning authority should consider carefully whether it has a sufficiently strong case, on the basis of the available evidence. The reasons for issuing an enforcement notice should be clear and comprehensive and if the elected members' decision on whether to issue an enforcement notice differs from that

recommended by its officers it is essential that its reasons for doing so are similarly clear and comprehensive.

1.5.2 The local planning authority's reasons for issuing the enforcement notice have to be included on that notice. Potential appellants should consider these carefully when deciding whether to make an appeal. Appellants should be confident at the time they make their appeal that they have a clear case.

1.5.3 The Secretary of State's ability to deliver timely and high-quality decisions on enforcement appeals relies on all parties following good practice and behaving reasonably. The parties must meet the statutory timetables to ensure that no-one is disadvantaged and the appeal can be processed efficiently.

1.5.4 If a party does not behave reasonably they leave themselves open to costs being awarded against them. This would be on the basis that the behaviour had directly caused another party to incur expenses that would not otherwise have been necessary.

1.5.5 Costs may be awarded in response to an application for costs by one of the parties. Also costs may be awarded at the initiative of the Inspector.

1.5.6 There is guidance about [costs awards](#) in the planning practice guidance.

1.5.7 The appellant should read the guidance about making an application for costs before they make their appeal.

## **1.6 The importance of continued discussion about an alleged breach of planning control**

1.6.1 The local planning authority should have constructive discussions with people whom it considers to have breached planning control.

1.6.2 The reasons for issuing an enforcement notice should be clear and comprehensive. Clear reasons for issuing the enforcement notice will help continued discussions and may mean that agreement can be reached and the enforcement notice withdrawn.

## **1.7 Who decides an appeal?**

1.7.1 Nearly all appeals are decided by our Inspectors or by appointed persons; in each case they are solely responsible for their decision<sup>1</sup>. A very small percentage are decided by the Secretary of State - these tend to be the very large or contentious alleged breaches of planning control. For further information please see Annexe A. Also, guidance on the Secretary of State's

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<sup>1</sup> The judgment in *Billy Smith v SSCLG and South Bucks DC* [2014] EWCH 935 (Admin) confirmed that it is legitimate for an Inspector's decision to be read for quality assurance purposes. The key to this is in ensuring that the Inspector takes the decision and the reader (or mentor as referred to by the Judge) does not interfere in his or her judgment.

decision making functions is available in [Guidance on Planning Propriety Issues](#).

## **1.8 What is the time limit for making an appeal?**

1.8.1 An appeal against an enforcement notice **must** be received by us **before** the effective date of the notice. The effective date will be on the notice.

## **1.9 What is the timetable for an appeal and what are the rules?**

1.9.1 Once we have received an appeal and ensured that it is valid we will confirm the procedure and notify the appellant and the local planning authority of the appeal start date, reference number, the timetable for the appeal and the specific address (room number and email address) to which any correspondence should be sent.

1.9.2 For an appeal proceeding by written representations, within 2 weeks of the start date the local planning authority sends us its questionnaire and supporting documents. Within 6 weeks interested people may send us their representations and the appellant and the local planning authority may send us further representations. Within 9 weeks the appellant and the local planning authority only may comment on representations received. An Inspector will normally visit the site. For the legislation and further information please see Annexe B.

1.9.3 For an appeal proceeding by a hearing, within 2 weeks of the start date the local planning authority sends us its questionnaire and supporting documents. Within 6 weeks interested people may send us their representations and the appellant and the local planning authority send us their hearing statement. Within 9 weeks the appellant and the local planning authority only may comment on representations received. We will try to hold the hearing within 12 weeks of the start date, unless that is impracticable. For the legislation and further information please see Annexe C.

1.9.4 For an appeal proceeding by an inquiry, within 2 weeks of the start date the local planning authority sends us its questionnaire and supporting documents. Within 6 weeks interested people may send us their representations and the appellant and the local planning authority send us their statement of case. Within 9 weeks the appellant and the local planning authority only may comment on representations received. No later than 4 weeks before the date of the inquiry they send us their proofs of evidence and their agreed statement of common ground. We will try to hold the inquiry with 20 weeks of the start date, unless that is impracticable. For the legislation and further information please see Annexe D.

1.9.5 Keeping to the timetables is fundamental to an efficient and fair appeals service and we expect everyone to comply with them.

## **1.10 What happens if we receive documents after the deadline?**

1.10.1 If we receive documents after the deadline normally we will return them and they will not be seen by the Inspector. The Inspector will not accept any documents at the site visit.

1.10.2 There are some exceptions where we might use our discretion to accept late documents and these are set out below in paragraphs 1.11 to

1.10.3 Where the change in circumstances is likely to affect the outcome of the appeal we will ensure that all parties have an appropriate opportunity to comment on the new material.

## **1.11 What happens if there are new or emerging policies?**

1.11.1 The local planning authority must alert us in writing, as soon as possible, if it becomes aware at any stage before the appeal decision is issued of any material change in circumstances which have occurred since it issued the enforcement notice (eg a newly adopted or emerging policy) that is directly relevant to the appeal. It should indicate the anticipated date of adoption of any emerging policy. The appellant may also do this in writing, as soon as possible, and ask for our agreement to their sending in further representations, necessary as a result of the change(s), and agree a date for the receipt of representations.

## **1.12 What happens if a relevant decision is made on another case?**

1.12.1 The local planning authority must alert us in writing, as soon as possible, if it makes a decision (either to grant or refuse planning permission or to issue an enforcement notice) on a similar development. Also it should alert us if it is aware of a decision on an appeal that is relevant. The appellant may also do this in writing, as soon as possible, and ask for our agreement to their sending in further representations, necessary as a result of the change(s), and agree a date for the receipt of representations.

## **1.13 What happens if there is new legislation or national policy or guidance**

1.13.1 If a party to an appeal considers that changes to legislation or Government policy or guidance are a material consideration, they should inform us, in writing, as soon as possible and ask for our agreement to their sending in further representations, necessary as a result of the change(s), and agree a date for the receipt of representations.

## **1.14 What will the Inspector take into account?**

1.14.1 The Inspector has to make the decision (or the report and recommendation to the Secretary of State for a recovered appeal) under the circumstances existing:

- at the time he or she makes it when considering appeals on grounds (a), (f) and (g);

- on the date that the enforcement notice was issued when considering appeals on grounds (b), (c), (d) and (e). These grounds are often referred to as “the legal grounds of appeal”.

1.14.2 Exceptionally, when considering ground (c) by the time of the appeal decision there may no longer be a breach of planning control, due to a change in the legislation, and this will be taken into account, as there would be no planning control purpose to be served by the enforcement notice. For information about the grounds of appeal please see Annexe E.

## **2 GENERAL MATTERS**

### **2.1 What are the procedures?**

2.1.1 This guide explains the main aspects of the 3 procedures:

- Annexe B contains the procedure for written representations;
- Annexe C contains the procedure for hearings;
- Annexe D contains the procedure for inquiries.

2.1.2 This guide also applies to enforcement appeals in respect of listed buildings and conservation areas. However, the power to determine the procedure (please see paragraph 2.7.1) does not apply to these types of appeals.

2.1.3 For enforcement appeals that are recovered for the decision to be made by the Secretary of State the Inspector reports with recommendations to the Secretary of State (see Annexe A). Most of these cases will proceed by an inquiry.

### **2.2 Postponements, adjournments, abeyance, and linked cases**

2.2.1 Our usual practice is to resist postponements and adjournments in view of the delay and disruption this causes. We will not put cases into abeyance unless there are exceptional reasons.

2.2.2 We may decide to link appeals that relate to the same site in order to minimise the use of resources for all parties. We will make decisions to link on a case by case basis.

### **2.3 Who can make an appeal against an enforcement notice?**

2.3.1 Any person having an interest in the land, or who is a relevant occupier of the land, to which an enforcement notice relates may appeal to the Secretary of State against the notice. They can do this even if a copy of the enforcement notice was not served on them.

2.3.2 The terms “a person” and “a relevant occupier” includes a limited company or unincorporated body. If this is the case the appeal must be made in the name of the company. A director or shareholder, or in the case of an unincorporated body their authorised representative, does not have the right of appeal on the company’s behalf, although they can act as agent to the appellant company.

2.3.3 “Interest in the land” in this context has a special significance. It means either a legal or equitable interest in the land. It includes owners, lessees, some tenants and Official Receivers. Mortgagees or other lenders also have an interest in the land (as security for the loan they have advanced to the borrower).

2.3.4 A person who has an interest in the land may appeal against an enforcement notice (irrespective of his/her standing when the notice was served).

2.3.5 A “relevant occupier” means a person who:  
(a) on the date on which the enforcement notice is issued occupies the land to which the notice relates by virtue of a licence (the consent of the owner whether oral, written or implied); and  
(b) continues so to occupy the land when the appeal is brought.

2.3.6 A person who does not have an interest in the land or is not a relevant occupier does not have a right of appeal – even if the local planning authority serves a copy of the enforcement notice on them.

2.3.7 Sometimes, more than one person may have a legal interest in the land to which an enforcement notice relates and their different interests may conflict with each other. For example, the owner of the land may wish the enforcement notice to be upheld, while the occupier of the land may wish to continue with the present use and/or retain the works. In these circumstances, it is up to each person with a legal interest to decide how his or her interests will best be served once an enforcement notice has been issued.

2.3.8 If the owner of the land does not appeal against an enforcement notice but someone else does, in law they will have the status of an ‘interested person’. This does not entitle them to receive a copy of all the representations made by the appellant and other interested people (though they would be able to see such representations at the LPA’s offices).

2.3.9 However, in those circumstances, the owner may wish to request to be considered as an ‘interested owner’. This status is given at our discretion. It means that we will give them similar treatment to an appellant. The owner will be able to attend any hearing or local inquiry, or be present when the Inspector visits the site. They will also be able to see and comment on any written representations made by the appellant, the LPA, and any other interested people, during the progress of the appeal. It is important that the owner requests the status of “interested owner” at the earliest opportunity.

## 2.4 Making an appeal

2.4.1 Appeals against an enforcement notice must be received by us **before** the effective date on the notice. The Secretary of State has no discretion to accept late appeals once the notice has come into effect.

2.4.2 The following “Making your appeal: How to complete your appeal form” documents are available online:

- [How to complete your enforcement notice appeal form - England](#)
- [How to complete your listed building enforcement notice appeal form - England](#)

2.4.3 Potential appellants should read the relevant “How to...” before they make their appeal as they contain important advice about the information they may wish to provide on the appeal form.

2.4.4 If an appellant wants to make an appeal in relation to more than one enforcement notice or in relation to eg an application for planning permission, they must make a separate appeal for each.

2.4.5 Wherever possible the appellant should make their appeal(s) online through the [Appeals Casework Portal](#).

2.4.6 We encourage and support appellants, local planning authorities and interested people to work electronically with us both online and by email. For further information about system availability, system requirements and our guidelines for submitting documents to us electronically please see Annexe F.

2.4.7 If a potential appellant does not have access to the internet they should contact us (please see “Contacting us” below) and we will send them the relevant appeal form(s).

2.4.8 Appellants must send complete enforcement appeals and supporting documents to us so that we receive them **before** the effective date on the enforcement notice. At the same time they must send a copy to the local planning authority.

2.4.9 Exceptionally, if the appellant cannot appeal online and does not have an appeal form and cannot get one to reach us **before** the effective date, they may make an appeal by sending us a letter, an email or a fax (0117 372 8782) saying that they are appealing against the enforcement notice(s). The appellant must make it clear that the letter, email or fax is a notification of appeal and include:

- the appellant’s name and address;
- the name of the local planning authority;
- the address of the site/building; and
- the effective date of the enforcement notice.

We must receive this **before** the effective date on the enforcement notice. This should **immediately** be followed by the completed appeal forms.

## **2.5 Statement of Appeal/Grounds of appeal**

2.5.1 Appellants should set out on which grounds they are making their appeal and provide supporting facts for each ground. If the appellant wants the planning merits of the development to be considered – known as the “deemed planning application (DPA)” - they **must** plead ground (a) **and** pay the fee for that application to the local planning authority either when making

their appeal or **within the time limit** we set. If either of these is not done by the deadline then the ground (a) appeal, and therefore the DPA, will lapse and cannot be resurrected later.

- 2.5.2 However, if the enforcement notice was issued at a time:
- after the making of a related application for planning permission; but
  - before the end of the period for the local planning authority to determine that application;
- it is not possible to make an appeal on ground (a).

2.5.3 For further information please see Annexe E and the "[How to complete your enforcement notice appeal form - England](#)".

## **2.6 Planning conditions**

- 2.6.1 If the appellant is appealing on ground (a) they should indicate:
- when making the appeal;
  - or as a separate document with their 6 week statement;
- whether they wish to accept or can suggest a planning condition(s) that they think would mitigate the impact of the alleged development if the enforcement appeal is successful on ground (a) and planning permission is granted. The local planning authority should do this:
- with its questionnaire; or
  - as a separate document when sending its statement of case.

2.6.2 The appellant and local planning authority should look at the planning practice guidance on the [use of planning conditions](#); and Appendix A – "Suggested Models of Acceptable Conditions for Use in Appropriate Circumstances" (which is still in existence) to Circular 11/95: Use of conditions in planning permission (which has been cancelled).

2.6.3 The fact that conditions are suggested does not mean that the appeal will be allowed and planning permission granted or that, if allowed, conditions will be put on the permission. A hearing or inquiry will usually include a discussion about the conditions which may be imposed if the enforcement appeal is successful on ground (a) and planning permission is granted.

## **2.7 Who determines the appeal procedure?**

2.7.1 Section 319A of the Town and Country Planning Act 1990 gives the Secretary of State the duty to determine the procedure for dealing with various appeals and applications. This duty, which has been commenced in relation to planning and enforcement appeals, will be exercised by us, taking account of the criteria for determining the appeal procedure (please see Annexe G).

2.7.2 When making an appeal, appellants must identify, taking account of the criteria, which appeal procedure they consider to be the most appropriate and give reasons to support this.

2.7.3 We will ensure that the most appropriate appeal procedure is selected, taking account of the criteria, the views of the appellant and the local planning authority and any appropriate expert involvement.

2.7.4 We will give reasons for the determination where this differs from the procedure identified by the appellant or the local planning authority. If circumstances change we will review the procedure and if necessary we will change it at any point before a decision on the appeal is made. The Inspector also may decide that the procedure needs to be changed.

2.7.5 The appellant or the local planning authority may ask for the determination to be reviewed by a senior officer.

2.7.6 Although the Secretary of State does not currently have the power to determine the appeal procedure for listed building enforcement appeals the criteria in Annexe G are a useful indication of which procedure would be appropriate for these appeals. The appellant and the local planning authority should consider Annexe G when indicating which procedure they want.

## **2.8 What is the process for challenging a decision made during the processing of a case?**

2.8.1 If the appellant, the local planning authority or an interested person thinks that we have made a decision during the processing of an appeal that is wrong, they should write to our Case Officer giving clear reasons why they think we should review our decision.

2.8.2 For decisions made by administrative staff during the processing of an appeal there is no statutory right to challenge that decision in the High Court. However it is possible to make an application for judicial review of such a decision. For further information please see Annexe H.

## **2.9 What happens when we receive an appeal?**

2.9.1 Once we have received an appeal and ensured that it is valid we will confirm the procedure and notify the appellant and the local planning authority of the appeal start date, reference number, the timetable for the appeal and the specific address (room number and email address) to which any correspondence should be sent to us.

## **2.10 What is the role of interested people?**

2.10.1 People who are interested in the outcome of an appeal "interested people" (often also called "third parties", "interested parties" or "interested persons") have an important role to play in the planning process. Their representations indicating support for, or opposition to, alleged development are taken into account along with other material considerations.

2.10.2 "Guide to taking part in enforcement appeals and lawful development certificate appeals" documents explain how interested people can get involved in the appeal process. They are available for the following appeal procedures:

[Written representations – England](#)  
[Hearing – England](#)  
[Inquiry - England](#)

### **3 OTHER IMPORTANT INFORMATION**

#### **3.1 What happens if someone discloses evidence late?**

3.1.1 If an appellant introduces late evidence during the appeals process which was not included within the facts and grounds or in the appeal statement (provided by the appellant when making the appeal and at the 6 week stage) we will usually return it and it will not be taken into account. Similarly if the local planning authority introduces late evidence which was not included with their appeal statement at the 6 week stage we will return it.

#### **3.2 Can new material be introduced during the appeal process?**

3.2.1 There will be rare occasions where a party to the appeal considers that newly available material evidence ought to be considered by the Inspector. Evidence provided outside of the published appeals timetable will normally only be exceptionally accepted by the Inspector where it is considered relevant to consideration of the appeal and it is clear that it would not have been possible for the party to have provided the evidence with earlier documents provided on time. Examples of new material evidence are given in paragraphs 1.11 to 1.13.

3.2.2 If such evidence is accepted this can lead to the need to change the procedure or to adjourn hearings or inquiries. For appeals following the written representations procedure this may require an extension to the standard timetable to allow all parties to be made aware of, and be given the opportunity to comment upon, the new evidence.

#### **3.3 Planning obligations**

3.3.1 If the appellant has pleaded ground (a) and paid the fee, the appellant and the local planning authority should include with their appeal documentation any section 106 planning obligation which they wish the Inspector to consider. Where the planning obligation provides for a pooled contribution towards items that may be funded by the Community Infrastructure Levy, the local planning authority should also clarify the number of planning obligations which have been entered into on or after 6 April 2010 which provide for the funding or provision of a project, or provide for the funding or provision of that type of infrastructure for which it is seeking an obligation in relation to the appeal proposal. This information is required for each obligation sought by the local planning authority. The local planning authority (and the appellant) should inform us as a matter of urgency of any further changes in circumstances on this matter as the appeal progresses. For information please see Annexe I and [planning practice guidance paragraphs 99-104](#).

### **3.4 What is “Expert evidence”?**

3.4.1 Expert evidence is evidence that is given by a person who is qualified, by training and experience in a particular subject or subjects, to express an opinion. For further information see Annexe J.

### **3.5 Openness and transparency**

3.5.1 Hearings and 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.

3.5.2 If anyone wants 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, they should contact us and the local planning authority in advance to discuss arrangements.

## **4 THE DECISION**

### **4.1 Where will the decision be published?**

4.1.1 When made, the decision will be published online and can be viewed using the [search facility](#).

## **5 AFTER THE DECISION**

### **5.1 What happens if an error has been made?**

5.1.1 We cannot change the decision however we have the power, in limited circumstances, to correct certain types of errors in decisions. For further information see Annexe K.

### **5.2 How can someone give feedback?**

5.2.1 We welcome feedback about people’s experience of dealing with us. This can be provided to us at any time. Further information is available [here](#).

### **5.3 How are complaints dealt with?**

5.3.1 If after the decision on an appeal has been published, we receive a complaint against an Inspector’s decision or the Inspector or the way we administered a case it is dealt with by the Customer Quality. All complaints are investigated thoroughly and impartially. For further information please see Annexe L.

## **5.4 How can a decision be challenged?**

5.4.1 The High Court is the only authority that can formally identify a legal error in an Inspector's or Secretary of State's decision and require that decision to be re-determined. Applications to challenge enforcement decisions must be received by the Administrative Court within 28 days from the date of the decision. Any challenge to a related costs decision must be made within 42 days from the date of the decision.

5.4.2 For further information please see Annexe H.

## **5.5 Should I wait until the time limit for making a challenge in the High Court has passed, before implementing the planning permission?**

5.5.1 You should be aware that there is a risk in implementing a planning permission / commencing development before the High Court challenge time limit has expired. This is because if the planning permission is quashed by the Court, development will become unlawful. In some circumstances, the local planning authority may consider taking enforcement action against development that exists without a valid planning permission.

5.5.2 If the time limit for making a challenge in the High Court has passed without a challenge being made, you may implement a planning permission / commence development without risk of the planning permission being quashed by a Court.

## **6 CONTACTING US**

6.1 To discuss a particular appeal please contact our Case Officer – the local planning authority can provide their details or they can be found online using the [search facility](#).

For general enquiries our contact details are:

The Planning Inspectorate  
Customer Support Team  
Room 3/13  
Temple Quay House  
2 The Square  
Bristol  
BS1 6PN

Helpline: 0303 444 5000

E-mail: [enquiries@planning-inspectorate.gsi.gov.uk](mailto:enquiries@planning-inspectorate.gsi.gov.uk)

Or for queries about problems with working electronically:

Email: [pcs@pins.gsi.gov.uk](mailto:pcs@pins.gsi.gov.uk)

Further information on the Planning Inspectorate is available at:  
<https://www.gov.uk/government/organisations/planning-inspectorate>

## **A Who decides an appeal?**

### **A.1 Legislation**

A.1.1 Under section 174 of the Town and Country Planning Act 1990 there is a right for a person who has an interest in the land to which the enforcement notice relates or is a relevant occupier (please see paragraph 2.3.4) to make an appeal to the Secretary of State. Through legislation, for the vast majority of appeals, the authority – “the jurisdiction”- to decide an appeal has been transferred to an Inspector.

A.1.2 However, jurisdiction may be recovered for the Secretary of State to make the decision. These are referred to as “recovered appeals”. For the criteria used to decide if an appeal should be recovered please see the national planning practice guidance on [appeals](#).

A.1.3 Recovery of jurisdiction can occur at any stage before the decision is issued, even after the site visit, a hearing or an inquiry has taken place.

### **A.2 If an appeal is recovered what happens?**

A.2.1 If an appeal is recovered we will write to tell the appellant and the local planning authority setting out the reasons for this.

A.2.2 A recovered appeal can proceed by written representations, a hearing or an inquiry, and will follow the appropriate rules for each procedure. We will determine which procedure is most appropriate for the appeal, following the criteria (please see Annexe G) and will tell the appellant and the local planning authority in writing which procedure the appeal will follow.

A.2.3 If the appeal is proceeding by written representations or by a hearing it will continue to follow the procedures in Annexe B and Annexe C respectively.

A.2.4 If the appeal is proceeding by an inquiry it will follow The Town and Country Planning (Enforcement) (Inquiries Procedure) (England) Rules 2002 (Statutory Instrument 2002/2686) as described in Annexe D.

A.2.5 If a party has a statutory right to appear at the inquiry, they will be asked to provide a full written statement of case before the inquiry under the Rules.

### **A.3 Report to the Secretary of State and the decision**

A.3.1 If an appeal is recovered the Inspector will write a report which will contain his or her conclusions and make a recommendation on whether:

- the enforcement notice should be quashed; (and if the appeal appears to succeed on ground (a), planning permission be granted - with or without conditions); or
- the enforcement notice should be upheld and the appeal dismissed.

A.3.2 The report will be sent to the Secretary of State to make the decision taking into account the Inspector's recommendation. When the Secretary of State has reached a decision, this will be explained in the decision letter. This letter will normally be sent by Planning Casework which is part of the Department for Communities and Local Government, based in London.

A.3.3 Recovered appeal decision letters are available on the Department for Communities and Local Government area of the [GOV.UK website](#) and online using the [search facility](#).

## **B Written representations procedure**

### **Town and Country Planning (Enforcement) (Written Representations Procedure) (England) Regulations 2002 (Statutory Instrument 2002/2683)**

#### **B.1 What is the process?**

B.1.1 Under the written representations procedure, the Inspector will decide the appeal on the basis of the written material provided by all parties and, generally, following a visit to the appeal site – but please see paragraph B.9.5.

#### **B.2 The appellant**

B.2.1 The appellant must ensure that we receive their appeal against an enforcement notice **before** the effective date of the notice. This date will be on the enforcement notice.

B.2.2 The appellant must send a copy of the enforcement notice with the appeal along with the other essential supporting documents detailed on the on-line and paper appeal forms. At the same time they must copy the appeal to the local planning authority.

B.2.3 The appellant's representations should disclose their case through all of the grounds they are appealing on and supporting facts and any available supporting evidence. For further information about grounds of appeal please see Annexe E.

#### **B.3 Who tells interested people about the appeal?**

B.3.1 Within 2 weeks of the start date the local planning authority must notify any:

- a) person on whom a copy of the enforcement notice has been served;
- b) occupier of property in the locality in which the land to which the enforcement notice relates is situated; and
- c) other person who in the opinion of the local planning authority is affected by the breach of planning control or contravention of listed building or conservation area control which is alleged in the enforcement notice;

that an appeal has been made.

The notification must include

- a) a description of the alleged breach of planning control;
- b) a statement of its reasons for issuing the notice(s);
- c) the steps required to be taken by the enforcement notice;
- d) the appellant's grounds of appeal against the notice(s);
- e) the appeal procedure;

- f) an invitation to interested persons<sup>2</sup>: to make their views known by writing to the case officer (and include their address), quoting our reference number. That their representations must be sent within 6 weeks of the starting date and that they may be made online or by sending 3 copies to our case officer.
- g) that their views will be disclosed to the parties to the appeal unless the representations are withdrawn before the 6 weeks deadline;
- h) that the Planning Inspectorate will not acknowledge representations;
- i) they can get a copy of our booklet 'Guide to taking part in enforcement appeals and lawful development certificate appeals proceeding by written representations - England' free of charge from the local planning authority, or on its website, or online [here](#);
- j) when and where the appeal documents will be available for inspection; and
- k) that the decision will be published online.

B.3.2 We encourage local planning authorities to use the online [model notification letter](#).

#### **B.4 The appeal questionnaire**

B.4.1 The local planning authority must send a completed copy of our questionnaire and copies of all of the relevant documents to us and to the appellant within 2 weeks of the start date of the appeal. The local planning authority must indicate on its questionnaire which appeal procedure it considers appropriate, taking account of the criteria (please see Annexe G).

B.4.2 If this differs from that determined by us we will review the procedure.

B.4.3 The relevant background documents should be sufficient to present the local planning authority's case. The local planning authority should notify us and the appellant if it decides to treat the questionnaire, and supporting documents, as its full representations on an appeal.

#### **B.5 Local planning authority's representations at the 6 week stage**

B.5.1 If the local planning authority decides it needs to make further representations, it should send these to us (2 copies if not sent electronically) within 6 weeks of the start date. We will copy these further representations to the appellant.

#### **B.6 The appellant's representations at the 6 week stage**

B.6.1 The appellant may decide to rely on their grounds of appeal and the documents accompanying it as their representations on their appeal.

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<sup>2</sup> The definition of "Interested parties " (referred to as interested people in this Guide) whom the local planning authority has to notify of an appeal is contained in Regulation 5 of the Statutory Instrument referred to at the top of this Annexe.

B.6.2 If the appellant decides to make any further representations, these should be sent to us (2 copies if not sent electronically) within 6 weeks of the start date. We will copy these further representations to the local planning authority.

## **B.7 Interested people's representations at the 6 week stage**

B.7.1 If the local planning authority has received representations about the site or building it may send those to us but it does not have to do this. Therefore if any interested person wants the Inspector to take their views into account they should send us representations.

B.7.2 If having considered the appellant's grounds and facts an interested person wishes to make representations they should do so online using the [search facility](#) or send them by email or by post to us (3 copies if possible). They should ensure that we receive them within 6 weeks of the start date. We will copy any representations received to the appellant and the local planning authority. There is normally no further opportunity for interested people to make representations after the 6 week stage.

## **B.8 Comments at the 9 week stage**

B.8.1 If either the appellant or the local planning authority wishes to comment on the other's appeal statement or on any representations made at the 6 week stage, they must send their comments to us (2 copies if not sent electronically) within 9 weeks of the start date. These comments should not introduce new material. We will copy the comments to the other appeal party.

## **B.9 Is the appeal site visited?**

B.9.1 Visits to the appeal site and any relevant neighbouring land or properties are normally carried out where it is necessary to assess the impact of a development on its surroundings or measurements need to be taken. The purpose of the visit is solely for the site and its surroundings to be viewed.

B.9.2 Where the site is sufficiently visible from the road or public viewpoint the visit will be carried out unaccompanied.

B.9.3 Where access is required, it may be necessary for a representative of the appellant and the local planning authority to attend the site visit. Arrangements will be made with neighbours where it is necessary to inspect the site from their property.

B.9.4 An accompanied site visit is not an opportunity for those present to discuss the merits of the appeal or the written evidence they have provided. The Inspector will therefore not allow discussion about the appeal with anyone at the site visit but parties may point out physical features that they have referred to in their written evidence.

B.9.5 Where the appeal concerns a case which will be decided purely on the basis of technical and/or legal interpretation of the facts, the Inspector may decide the appeal without a site visit.

**Timetable for the written procedure**

<b>Timetable</b>	<b>Interested people</b>	<b>Appellant</b>	<b>Local planning authority</b>
<b>Appeal received We set the start date and the timetable</b>		Sends the appeal form and all supporting documents to us and the local planning authority.	Receives the appeal documents
<b>Within 2 weeks from the start date</b>	Receive the LPA's letter about the appeal, telling them that they must send us any representations within 6 weeks from the start date	Receives a completed questionnaire and any supporting documents from the local planning authority	Sends the appellant and us a completed questionnaire and supporting documents. It writes to interested people about the appeal
<b>Within 6 weeks from the start date</b> (Only exceptionally will we accept representations)	Send their representations to us	Sends us any further representations.	If the local planning authority decides not to treat the questionnaire and supporting documents as its representations it sends us its further representations
<b>Within 9 weeks from the start date</b>		Sends us their final comments on the local planning authority's 'week 6' representations and on any comments from interested people <b>No new evidence is allowed</b>	Sends us its final comments on the appellant's 'week 6' representations and on any comments from interested people <b>No new evidence is allowed</b>
<b>The Inspector visits the site and the decision is issued later</b>			

## C Hearing procedure

### The Town and Country Planning (Enforcement) (Hearings Procedure) (England) Rules 2002 (Statutory Instrument No 2002/2684)

#### C.1 What is the process?

C.1.1 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.

C.1.2 Interested people can attend and may participate in the discussion at the discretion of the Inspector. They may be represented by an “advocate” but this is not essential. Any advocate may be legally qualified but this also is not essential.

C.1.3 The Inspector may

- adjourn the hearing to the site, if discussion on site would more satisfactorily resolve matters; or
- visit the site during the hearing or after closing the hearing, accompanied by the appellant and the local planning authority if they wish to attend. As the hearing has not been adjourned to the site the Inspector will not allow any discussion at the site.

C.1.4 The timetable for the hearing procedure is designed to enable the appeal to proceed quickly and fairly.

#### C.2 The appellant

C.2.1 Where, taking account of the criteria set out in Annexe G, the appellant considers a hearing to be the most appropriate procedure, they should indicate this when making their appeal and give reasons to support their choice of procedure.

C.2.2 The appellant must ensure that we receive their appeal against an enforcement notice **before** the effective date of the notice.

C.2.3 The appellant must send a copy of the enforcement notice with the appeal along with the other essential supporting documents detailed on the on-line and paper appeal forms. At the same time the appellant must copy the appeal to the local planning authority.

C.2.3 The appellant’s representations should disclose their case through grounds and facts. For further information about grounds of appeal please see Annexe E.

#### C.3 Who tells interested people about the appeal?

C.3.1 Within 2 weeks of the start date the local planning authority must notify any:

- a) person on whom a copy of the enforcement notice has been served;
- c) occupier of property in the locality in which the land to which the enforcement notice relates is situated; and
- d) other person who in the opinion of the local planning authority is affected by the breach of planning control or contravention of listed building or conservation area control which is alleged in the enforcement notice;

that an appeal has been made.

The notification must include:

- a) a description of the alleged breach of planning control;
- b) a statement of its reasons for issuing the notice(s);
- c) the steps required to be taken by the enforcement notice;
- d) the appellant's grounds of appeal against the notice(s);
- e) the appeal procedure;
- f) an invitation to interested persons to make their views known by writing to the case officer (and include their address), quoting our reference number. That their representations must be sent within 6 weeks of the starting date and that they may be made online or by sending 3 copies to our case officer.
- g) that their views will be disclosed to the parties to the appeal unless the representations are withdrawn before the 6 weeks deadline;
- h) that the Planning Inspectorate will not acknowledge representations;
- i) they can get a copy of our booklet 'Guide to taking part in enforcement appeals and lawful development certificate appeals proceeding by a hearing - England' free of charge from the local planning authority, or on its website, or online [here](#);
- j) when and where the appeal documents will be available for inspection; and
- k) that the decision will be published online.

C.3.2 We encourage local planning authorities to use the online [model notification letter](#).

#### **C.4 The appeal questionnaire and supporting documents**

C.4.1 The local planning authority must send a completed appeal questionnaire and copies of all of the documents referred to in it and any other relevant documents to support its decision to issue an enforcement notice, to us and to the appellant within 2 weeks of the start date of the appeal. The local planning authority must indicate on its questionnaire which appeal procedure it considers appropriate, taking account of the criteria (please see Annexe G).

C.4.2 If this differs from that determined by us, we will review the procedure.

## **C.5 Interested people's representations at the 6 week stage**

C.5.1 If the local planning authority has received representations about the site or building it may send those to us but it does not have to do this. Therefore if any interested person wants the Inspector to take their views into account they should send us representations.

C.5.2 If, having considered the appellant's grounds of appeal, an interested person wishes to make representations they should do so online using the [search facility](#) or send them by email or by post to us (3 copies if possible). They should ensure that they are received with 6 weeks of the starting date. We will copy any representations received to the appellant and the local planning authority.

## **C.6 Who tells people about the hearing?**

C.6.1 We will notify the appellant and the local planning authority of the date, time and place of the hearing and the name of the Inspector who will conduct it. We will ask the local planning authority to notify those with an interest in the land, owners/occupiers of property near the site, those who made representations on the appeal, those entitled to appear at the hearing and anyone else it considers to be affected by or interested in the alleged breach of planning control.

## **C.7 Hearing statement at 6 weeks**

C.7.1 The appellant and the local planning authority must send their hearing statement to us (2 copies if not sent electronically) ensuring we receive it within 6 weeks of the start date. We will copy documents to the other appeal party.

C.7.2 Hearing statements should:

- be a succinct statement of the reasons for proposing or opposing the development;
- contain full particulars of the case which the appellant or local planning authority proposes to put forward at the hearing and copies of any documents which that person intends to refer to or put in evidence;
- should be concise and highlight where there are differences between the material supplied by the appellant in the grounds of appeal and the local planning authority in the material it supplied with the questionnaire;
- include the full report reference of any case law cited;
- outline the basis upon which any agreement that certain reasons for issuing the enforcement notice have been resolved.

C.7.3 The hearing statement conclusions should be briefly summarised at the end with appropriate references. The aim should be for the statement not to exceed 3,000 words.

C.7.4 If we receive the hearing statement after the deadline we will return it and it will not be seen by the Inspector. Appellants, local planning

authorities and interested people should not try to “get around” the rules by taking late evidence to the hearing.

## **C.8 Comments at the 9 week stage**

C.8.1 If either the appellant or the local planning authority wishes to comment on the other’s hearing statement or on any representations made at the 6 week stage by interested people, they must send their comments to us (2 copies if not sent electronically) within 9 weeks of the start date. These comments should not introduce new material. We will copy the comments to the other appeal party.

## **C.9 Acceptance of late hearing statement in exceptional circumstances**

C.9.1 If we have returned a late hearing statement, if, exceptionally, a party feels that their hearing statement should be taken to the hearing and be taken into account, Inspectors do have discretion whether to accept late evidence.

C.9.2 Before deciding whether, exceptionally, to accept it, the Inspector will require:

- an explanation as to why it was not received by us accordance with the rules; and
- an explanation of how and why the material is relevant; and
- the opposing parties’ views on whether it should be accepted.

C.9.3 The Inspector will refuse to accept late evidence unless fully satisfied that:

- it is not covered in the evidence already received; and
- that it is directly relevant and necessary for his/her decision; and
- that it would be procedurally fair to all parties (including interested people) if the late evidence were taken into account.

C.9.4 If the Inspector accepts late evidence this may result in the need for an adjournment. The other party may make an application for costs or the Inspector may initiate an award of costs. This would be on the basis that the necessary adjournment had directly caused another party to incur expenses that would not otherwise have been necessary.

**Timetable for the hearing procedure**

<b>Timetable</b>	<b>Interested people</b>	<b>Appellant</b>	<b>Local planning authority</b>
<p><b>Appeal received</b></p> <p>We set the start date and the timetable</p>		Sends the appeal form and all supporting documents to us and the local planning authority.	Receives the appeal documents
<p><b>Within 2 weeks from the start date</b></p>	Receive the local planning authority's letter about the appeal, telling them that they must send us any comments within 6 weeks of the start date	Receives a completed questionnaire and any supporting documents from the local planning authority	Sends the appellant and us a completed questionnaire and supporting documents. It writes to interested people about the appeal
<p><b>Within 6 weeks from the starting date</b></p> <p>Only exceptionally will we accept late statements or comments</p>	Send their comments to us.	Sends us their hearing statement	Sends us its hearing statement
<p><b>We set the hearing date</b> which will normally be within 12 weeks of the start date – or the earliest date after that period which is practicable</p>			
<p><b>Within 9 weeks from the starting date</b></p>		Sends us their final comments on the local planning authority's statement and on any comments from interested people <b>No new evidence is allowed</b>	Sends us its final comments on the appellant's statement and on any comments from interested people <b>No new evidence is allowed</b>
<p><b>At least 2 weeks before the date of the hearing</b></p>	Receive details from the local planning authority about the hearing arrangements		Tells interested people about the hearing arrangements and may put a notice in a local paper about the hearing
<p><b>No later than 10 days before the hearing</b></p>		If there is one, sends us the draft planning obligation	

## D Inquiries procedure

### The Town and Country Planning (Enforcement) (Inquiries Procedure) (England) Rules 2002 (Statutory Instrument 2002/2686) <sup>3</sup>

### The Town and Country Planning (Enforcement)(Determination by Inspectors) (Inquiries Procedure) (England) Rules 2002 (Statutory Instrument 2002/2685)<sup>4</sup>

#### D.1 What is the process?

D.1.1 An inquiry provides for the investigation into, and formal testing of, complex and/or technical evidence, usually through expert witnesses, including by the use of giving evidence on oath and cross-examination. Parties may be formally represented by advocates. The site may be visited before, during or after the inquiry.

D.1.2 Interested people can attend and may participate in an inquiry at the discretion of the Inspector.

D.1.3 The timetable for the inquiry procedure is designed to enable the appeal to proceed quickly and fairly.

#### D.2 The appellant

D.2.1 Where, taking account of the criteria set out in Annexe G the appellant considers an inquiry to be the most appropriate procedure they should indicate this when making the appeal and give reasons to support their choice of procedure.

D.2.2 The appellant should include also the expected number of witnesses, topics to be addressed by witnesses, whether there will be legal representation and an estimate for the overall inquiry length.

D.2.3 The appellant should be realistic, the estimate should include time for opening and closing statements, any sessions on conditions and any section 106 obligation and the time they consider may be necessary for questions to be put to both their and the local planning authority's witnesses and to interested people. If the appellant has instructed an advocate they should get their views on the likely length of the inquiry.

D.2.4 The appellant must ensure that we receive their appeal against an enforcement notice **before** the effective date of the notice.

D.2.5 The appellant must send a copy of the enforcement notice with the appeal along with the other essential supporting documents detailed on the

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<sup>3</sup> The Inquiries Procedures Rules set out in Statutory Instrument 2002/2686 are used where the jurisdiction to decide the appeal has been recovered for the Secretary of State to make the decision.

<sup>4</sup> The Inquiries Procedure Rules set out in Statutory Instrument 2002/2685 are used for appeals transferred to be decided by an Inspector on behalf of the Secretary of State.

on-line and paper appeal forms. At the same time the appellant must copy the appeal to the local planning authority.

D.2.6 The appellant's representations should disclose their case through grounds and facts and any available evidence.

D.2.7 For further information about grounds of appeal see Annexe E.

### **D.3 The appeal questionnaire and supporting documents**

D.3.1 The local planning authority must send a completed appeal questionnaire and copies of all of the documents referred to in it and any other relevant documents to support its decision to issue an enforcement notice, to us and to the appellant within 2 weeks of the start date of the appeal. The local planning authority must indicate on its questionnaire which appeal procedure it considers appropriate, taking account of the criteria (please see Annexe G). If this differs from that determined by us, we will review the procedure.

D.3.2 If, the local planning authority agrees with the appellant and/or it considers that the case ought to be dealt with by inquiry, the expected number of witnesses, topics to be addressed by witnesses, time estimates for the overall inquiry length and the presentation of the local planning authority's case and whether there will be legal representation should be included with the questionnaire.

### **D.4 Setting the length of the inquiry**

D.4.1 We will take account of the initial estimates we receive from the appellant and the local planning authority and our own experience when we set the likely length of the inquiry. Once set we will expect the length of the inquiry to stay within the agreed timetable. A form will be sent later in the process asking for more detailed information on the duration of the inquiry, including detailed information about witnesses and evidence and the duration of the inquiry.

### **D.5 Who tells interested people about the appeal?**

D.5.1 Within 2 weeks of the start date the local planning authority must notify any:

- a) person on whom a copy of the enforcement notice has been served;
- b) occupier of property in the locality in which the land to which the enforcement notice relates is situated; and
- c) other person who in the opinion of the local planning authority is affected by the breach of planning control or contravention of listed building or conservation area control which is alleged in the enforcement notice;

that an appeal has been made.

The notification must include:

- a) a description of the alleged breach of planning control;
- b) a statement of its reasons for issuing the notice(s);
- c) the steps required to be taken by the enforcement notice;
- d) the appellant's grounds of appeal against the notice(s);
- e) the appeal procedure;
- f) an invitation to interested persons to make their views known by writing to the case officer (and include their address), quoting our reference number. That their representations must be sent within 6 weeks of the starting date and that they may be made online or by sending 3 copies to our case officer.
- g) that their views will be disclosed to the parties to the appeal unless the representations are withdrawn before the 6 weeks deadline;
- h) that the Planning Inspectorate will not acknowledge representations;
- i) they can get a copy of our booklet 'Guide to taking part in enforcement appeals and lawful development certificate appeals proceeding by an inquiry - England' free of charge from the local planning authority, or on its website, or online [here](#);
- j) when and where the appeal documents will be available for inspection; and
- k) that the decision will be published online.

D.5.2 We encourage local planning authorities to use the online [model notification letter](#).

## **D.6 Interested people's representations at the 6 week stage**

D.6.1 If the local planning authority has received representations about the site or building it may send those to us but it does not have to do this. Therefore if any interested person wants the Inspector to take their views into account they should send us representations.

D.6.2 If, having considered the appellant's ground of appeal, an interested person wishes to make representations they should do so online using the [search facility](#) or send them by email or by post to us (3 copies if possible). They should ensure that they are received with 6 weeks of the starting date. We will copy any representations received to the appellant and the local planning authority.

D.6.3 If any person notifies us of an intention to appear and give evidence at an inquiry we may require them (under Rule 6 (6) of the Enforcement Inquiry Procedure Rules<sup>5</sup>) to provide a statement of case. They should send their statement of case to us (3 copies if not sent electronically). We will copy the statements of case to the local planning authority and the appellant.

D.6.4 For further information please see "[Guide to Rule 6 for interested parties involved in an inquiry - enforcement appeals and certificate of lawful use or development appeals - England](#)" and paragraph D.10 which contains information about the statement of case.

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<sup>5</sup> Rule 8 for appeals determined by the Secretary of State

## **D.7 Who tells people about the inquiry?**

D.7.1 We will notify the appellant and the local planning authority of the date, place, time and length of the inquiry and the name of the Inspector who will conduct it. We will ask the local planning authority to notify, no later than 2 weeks before the opening of the inquiry, those with an interest in the land, owners/occupiers of property near the site, those who made representations on the appeal, those entitled to appear at the inquiry and anyone else it considers to be affected by or interested in the alleged breach of control.

## **D.8 Pre-inquiry meeting or pre-inquiry note**

D.8.1 A pre-inquiry meeting may be held to discuss the programming of the inquiry and other matters. We will give not less than 2 weeks written notice of a pre-inquiry meeting to:

- the appellant;
- the local planning authority;
- any other person known to be entitled to appear at the inquiry; and
- any other person whose presence at the meeting appears to the Inspector to be desirable.

D.8.2 Or the Inspector may issue pre-inquiry notes to these parties, in which a timetable for the inquiry may be set to which the parties will be expected to keep, and set out other matters.

## **D.9 Statement of common ground**

D.9.1 As required by the inquiry procedure rules, the appellant and the local planning authority must prepare the statement of common ground together, and ensure that we receive a copy of it not less than 4 weeks before the inquiry. The appellant is expected to send it to us.

D.9.2 A statement of common ground is essential to ensure that the evidence at an inquiry focuses on the material differences between the appellant and the local planning authority. It will provide a commonly understood basis for the appellant and the local planning authority to inform the statements of case and the subsequent production of proofs of evidence. This should lead to an improvement in the quality of the evidence and a reduction in the quantity of material which needs to be considered.

D.9.3 The statement of common ground should identify where the appellant and the local planning authority agree and where they differ. This means that the other documents and the inquiry can focus on the areas still at issue.

D.9.4 If there are any Rule 6 parties they can be involved in producing the statement. For further information please see the "[Guide to Rule 6 for interested parties involved in an inquiry - enforcement appeals and certificate of lawful use or development appeals - England](#)".

D.9.5 The statement should:

- be a single document, compiled and signed by the main parties;
- be concise and not duplicate information already sent – by anyone;
- describe the site, the surrounding area and important features, and the planning history,
- include a list of agreed and/or shared core documents, ministerial statements, and policies and references to any relevant passage of the National Planning Policy Framework;
- include relevant statutory and emerging development plan policies, their status and the suggested weight to be attached to them;
- identify and provide the reference number(s), of any relevant appeal decisions, relating to the site or neighbouring sites;
- identify whether there is/is not agreement over measurements, identify agreed elements of the evidence and any technical studies that have been undertaken;
- if there is a ground (a) appeal and, therefore, a deemed application for planning permission, say if the main parties agree that a reason for issuing the notice can be resolved by conditions and if so, include a list of suggested conditions (agreed and not agreed) which should meet the tests in [paragraph 206 of the National Planning Policy Framework](#);
- where case law is cited, include the full Court report/transcript;
- identify whether there are planning obligations which would satisfactorily address one or more of the reasons for issuing the notice. For further information please see Annexe I.

D.9.6 There is a [statement of common ground form](#) available online. Appellants and local planning authorities can complete that form, save it to their computer and email to the other party and, when finalised, to us.

**D.10 Statement of case**

D.10.1 A statement of case:

- must include a list of documents, maps and plans the appellant intends to rely on;
- should describe, but not contain, the evidence;
- should refer to any policies or other documents not referred to by the local planning authority but considered to support an appellant's case;
- should not, normally, in the local planning authority's statement introduce additional policies, except where the local policies have changed since the notice was issued;
- should set out both the planning and legal arguments which a party intends to put forward at the inquiry;

- should cite any statutory provisions and case law they intend to use in support of their arguments;
- should briefly describe any suggested mitigating factors;
- should focus on the areas of differences - as the areas of agreement will be in the statement of common ground.

## **D.11 Comments at the 9 week stage**

D.11.1 If either the appellant or the local planning authority wishes to comment on the other parties' appeal statements or on any representations made by interested people at the 6 week stage, they must send their comments to us (2 copies if not sent electronically) within 9 weeks of the start date. These comments should not introduce new material. We will copy the comments to the other appeal party.

## **D.12 What are "proofs of evidence"?**

D.12.1 The term "proofs of evidence" is used in the Enforcement Inquiries Procedure Rules and refers to the document containing the written evidence about which a person appearing at a public inquiry will speak. It must be received by us no later than 4 weeks before the inquiry.

D.12.2 It should:

- include the information that witnesses representing the appellant, or the local planning authority wish the Inspector to take into account;
- revisit the suggested conditions set out in the statement of common ground;
- cover only areas which remain at issue and should not include new areas of evidence or arguments;
- contain concisely expressed argument and evidence supported by technical appendices;
- where case law is cited include the full Court report/transcript reference and cross refer to a copy of the report/transcript;
- include any data referred to, and outline any assessment methodology and the assumptions used to support the arguments;
- not repeat or quote national or local policy, but should provide policy and paragraph numbers;
- not include long irrelevant biographical detail of the witness.

D.11.3 Witnesses and their advocates should limit the length of proofs. If the proof exceeds 1,500 words it should be accompanied by a summary. It is normally only the summaries that will be read out at the inquiry.

D.11.4 Before the inquiry Inspectors may direct the manner in which they wish to receive evidence which may include giving further advice about the length of proofs.

D.11.5 If the proof of evidence includes evidence given by an expert witness please see Annexe J.

## **D.12 Acceptance of late documents in exceptional circumstances**

D.12.1 If we receive a document after the deadline we will return it and it will not be seen by the Inspector. Appellants, local planning authorities and interested people should not try to “get around” the rules by taking late evidence to the inquiry.

D.12.2 However if, exceptionally, a party feels that an inquiry document we returned, because it was received after the deadline, should be taken to the inquiry and be taken into account, Inspectors do have discretion whether to accept late evidence.

D.12.3 Before deciding whether, exceptionally, to accept it, the Inspector will require:

- an explanation as to why it was not received by us accordance with the rules; and
- an explanation of how and why the material is relevant; and
- the opposing parties’ views on whether it should be accepted.

D.12.4 The Inspector will refuse to accept late evidence unless fully satisfied that:

- it is not covered in the evidence already received; and
- that it is directly relevant and necessary for his/her decision; and
- that it would be procedurally fair to all parties (including interested people) if the late evidence were taken into account.

D.12.5 If the Inspector accepts late evidence this may result in the need for an adjournment. Another party may make an application for costs or the Inspector may initiate an award of costs. This would be on the basis that the necessary adjournment had directly caused another party to incur expenses that would not otherwise have been necessary.

**Timetable for the inquiry procedure**

<b>Timetable</b>	<b>Interested people</b>	<b>Appellant</b>	<b>Local planning authority</b>
<b>Appeal received</b> <b>We set the start date and the timetable</b>		Sends the appeal form and all supporting documents to us and the local planning authority	Receives the appeal documents
<b>Within 2 weeks from the start date</b>	Receive the local planning authority's letter about the appeal, telling them that they must send us any comments within 6 weeks of the start date	Receives a completed questionnaire and any supporting documents from the local planning authority	Sends the appellant and us a completed questionnaire and supporting documents. It writes to interested people about the appeal
<b>Within 6 weeks from the starting date</b> Only exceptionally will we accept late statements or comments	Send their comments to us	Sends us their inquiry statement	Sends us its inquiry statement
<b>We set the inquiry date which will normally be within 20 – 22 weeks of the start date</b>			
<b>Within 9 weeks from the starting date</b>		Sends us their final comments on the local planning authority's statement and on any comments from interested people <b>No new evidence is allowed</b>	Sends us its final comments on the appellant's statement and on any comments from interested people <b>No new evidence is allowed</b>
<b>4 weeks before the inquiry</b>		Sends us their proof of evidence and the agreed statement of common ground.	Send us its proof of evidence. It may put a notice in a local paper about the inquiry
<b>At least 2 weeks before the inquiry</b>	Receive details from the local planning authority about the inquiry arrangements	Displays a notice on site giving details of the inquiry	Notifies interested people about the inquiry arrangements
<b>No later than 10 working days before the inquiry</b>		If there is one, sends us the draft planning obligation	

## **E Grounds of appeal**

### **E.1 General advice**

E.1.1 Appellants should ensure that, at the time they make their appeal, they make clear what grounds they are pleading and provide facts to support each of these. If information on a ground is not supplied then it is possible that ground may not be considered by the Inspector.

E.1.2 The facts should be clear, precise and provide disclosure of their case and the arguments being put forward. This will ensure:

- that we will be able to make an informed decision on the appeal procedure; and
- all other participants (including interested people) viewing the appeal documents will be aware of the arguments and issues from the start and will be able to make informed comment by the 6 week deadline.

E.1.3 Grounds of appeal should:

- if ground (a) has been pleaded **and** the fee paid within the deadline;
  - cover the planning merits of the case;
  - include reference to any planning obligation under section 106 of the Town and Country Planning Act 1990;
- explain clearly why the appellant disagrees with each of the reasons for issuing the enforcement notice;
- explain why the alleged development would either satisfy the local and or national planning policy or why they are not relevant;
- include the full report reference if any case law is cited.

### **E.2 Grounds of appeal**

E.2.1 There are 7 different grounds, in section 174(2) of the Town and Country Planning Act, on which an appellant can make an appeal against an enforcement notice. For information on how to address each ground when making an appeal please see our "[How to complete your enforcement notice appeal form – England](#)".

E.2.2 The grounds are:

**Ground (a)** - that planning permission should be granted for what is alleged in the notice (or that the condition or limitation referred to in the enforcement notice should be removed);

**Ground (b)** - that the breach of control alleged in the enforcement notice has not occurred as a matter of fact;

**Ground (c)** - that there has not been a breach of planning control;

In their appeal statement the appellant may wish to put forward the case that the development that has taken place or the development that they propose:

- does not amount to development, under section 55 of the Act, or that the change of use is not a material one (ie it is not subject to the requirements of planning control);
- is permitted by the Town and Country Planning (General Permitted Development) (England) Order 2015, or that the change of use is permitted by the Town and Country Planning (Use Classes) Order 1987 (as amended);
- has been done or carried out in accordance with a planning permission.

**Ground (d)** – that at the time the enforcement notice was issued it was too late to take enforcement action against the matters stated in the notice; has become lawful as it is too late for the local planning authority to take enforcement action. The time limits are as follows:

- section 171B(1) of the Act gives a 4 year time limit from the date of the breach of planning control involving development for operational development such as building, mining or engineering works;
- section 171B(2) gives a 4 year time limit from the date of the breach of planning control for change of use from a building/part of a building to a single dwellinghouse. This time limit applies either where the change of use to a single dwellinghouse involves development without planning permission, or where it involves a failure to comply with a condition or limitation subject to which planning permission has been granted;
- section 171B(3) gives a 10 year time limit for any other change from the date of the breach. This applies to changes of use and to breaches of any conditions attached to previous planning permissions.

Any evidence supporting a claim for use has to show a continuous period of use for the relevant 4 or 10 year period. In some cases it may not be possible to rely on the fact that development has taken place continuously for

the relevant 4 or 10 year periods, where acts of deliberate concealment have successfully prevented discovery of the breach of planning control.<sup>6</sup>

The onus of proof is on an appellant. The test to be achieved is 'on the balance of probability' (a lesser requirement than 'beyond a reasonable doubt').

**Ground (e)** – that the notice was not properly served on everyone with an interest in the land;

**Ground (f)** - that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach”;

**Ground (g)** – that the time given to comply with the notice is too short.

E.2.3 For further important information about these different grounds of appeal please see the [“How to complete your enforcement notice appeal form - England”](#).

### **E.3 Grounds of appeal for a listed building enforcement notice**

E.3.1 There are 11 different grounds of appeal set out in section 39(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 on which an appellant can make an appeal against a listed building enforcement notice. For information about how to address each ground please see our [“How to complete your listed building enforcement notice appeal form – England”](#).

E.3.2 The grounds are:

**Ground (a)** - that the building is not of special architectural or historic interest;

**Ground (b)** – that the matters alleged to constitute a contravention of section 9(1) or (2) have not occurred;

**Ground (c)** – that those matters (if they occurred) do not constitute such a contravention;

**Ground (d)** - that the works to the building were urgently necessary in the interests of safety or health or for the preservation of the building, that it was not practicable to secure safety or health or, as the case may be, the preservation of the building by works of repair or works for affording temporary support or shelter, and that the works carried out were limited to the minimum measures immediately necessary;

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<sup>6</sup> :Welwyn Hatfield Council v Secretary of State for Communities and Local Government [2011] UKSC 15

**Ground (e)** – that listed building consent ought to be granted for the works, or that any relevant condition of such consent which has been granted ought to be discharged, or different conditions substituted;

**Ground (f)** – that copies of the notice were not served as required by section 38(4);

**Ground (g)** – except in relation to such a requirement as is mentioned in section 38(2) (b) or (c), that the requirements of the notice exceed what is necessary for restoring the building to its condition before the works were carried out;

**Ground (h)** – that the period specified in the notice as the period within which any step required by the notice is to be taken falls short of what should reasonably be allowed;

**Ground (i)** – that the steps required by the notice for the purpose of restoring the character of the building to its former state would not serve that purpose;

**Ground (j)** - that the steps required to be taken by virtue of section 38(2)(b) exceed what is necessary to alleviate the effect of the works executed to the building;

**Ground (k)** – that steps required to be taken by virtue of section 38(2)(c) exceed what is necessary to bring the building to the state in which it would have been if the terms and conditions of the listed building consent had been complied with.

## **F Communicating electronically with us**

### **F.1 System availability**

FI.1.1 Our online facilities will usually be available 24 hours a day. We will sometimes need to take the system out of service for a while to implement upgrades. Wherever possible, we will do this outside of usual office hours.

### **F.2 System requirements**

F.2.1 Before you start, you should ensure that you have the following system requirements:

- Adobe Acrobat (Version 9 or higher recommended);
- an internet browser (Internet Explorer/Chrome/Firefox recommended);
- an email account;
- ensure that your internet browser has JavaScript enabled, which is usually the default setting.;
- ensure that cookies are allowed;
- ensure that the web address <http://www.planningportal.gov.uk/> for the Planning Portal is NOT added to the IE proxy server exceptions. **Note** – This is normally only applicable to corporate networks.

### **F.3 Guidelines for submitting documents**

F.3.1 Please see Appendix F.1 for our detailed advice.

**Guidelines for submitting documents**

<p><b>Acceptable file formats</b></p>	<table border="1"> <tr> <td>PDF</td> <td>.pdf</td> </tr> <tr> <td>Microsoft Word</td> <td>.doc or .docx</td> </tr> <tr> <td>TIF</td> <td>.tif or .tiff</td> </tr> <tr> <td>JPEG</td> <td>.jpg or .jpeg</td> </tr> <tr> <td>PNG</td> <td>.png</td> </tr> <tr> <td>ZIP</td> <td>.zip</td> </tr> </table>	PDF	.pdf	Microsoft Word	.doc or .docx	TIF	.tif or .tiff	JPEG	.jpg or .jpeg	PNG	.png	ZIP	.zip
PDF	.pdf												
Microsoft Word	.doc or .docx												
TIF	.tif or .tiff												
JPEG	.jpg or .jpeg												
PNG	.png												
ZIP	.zip												
<p><b>File sizes</b></p>	<p>Documents submitted may be no bigger than 15mb each. It is your responsibility to keep your documents to a manageable size.</p> <p>If you have documents that are larger than this you can try the following;</p> <ul style="list-style-type: none"> <li>• Break long documents into several files, but note the document naming conventions below.</li> <li>• Try and use black and white wherever possible (unless submitting photographs).</li> <li>• If submitting images, your software may have file/image compression facilities to make them smaller.</li> <li>• Note scanned documents are usually bigger than non-scanned versions.</li> <li>• Provided you are using the acceptable file types above, you can use ZIP files to compress documents.</li> <li>• If you have a large file and you are unable to use the options listed, you can email anything up to 10mb to <a href="mailto:appeals@pins.gsi.gov.uk">appeals@pins.gsi.gov.uk</a></li> </ul>												
<p><b>Security</b></p>	<p>Remove any document security and enable macros if necessary. Documents should not be password protected, they should not be formatted as 'read only' and printing should be enabled.</p>												
<p><b>Copyright</b></p>	<p>Ensure you have the owner's permission and have paid any copyright licence fee before sending in documents.</p>												
<p><b>File names</b></p>	<ul style="list-style-type: none"> <li>• Ensure all documents have descriptive names, including the type of document you are sending, eg '<i>Proposed plan 1 March 2014</i>'.</li> <li>• Number appendices and submit them as separate documents. Ensure the first page includes the appendix number. Name them to indicate what they form part of, and their sequence eg '<i>Appeal statement Appendix 2 Traffic census</i>'.</li> <li>• Use '<i>Part 1</i>', '<i>Part 2</i>' etc in the file name if you have split up a large document eg '<i>Appeal statement in Appendix 1 Environmental Assessment Part 1 of 3</i>'.</li> <li>• Include the required paper size in the document name for plans and drawings eg '<i>Proposed plan A3 size 1 March 2014</i>'.</li> <li>• Include scale bar(s) on all plans and drawings.</li> <li>• Do not use a colon ':' in any file names.</li> </ul>												

<b>Scanning</b>	Ensure documents are complete and legible and avoid scanning more than one document into a single file. Use black and white unless colour is essential.
<b>Ordnance Survey</b>	<p>People may only scan an Ordnance Survey map if they;</p> <ul style="list-style-type: none"> <li>• Have an annual licence to make copies; or</li> <li>• Have purchased a bulk copy arrangement; or</li> <li>• Are using a local planning authority supplied map under the 'map return scheme' (for which a fee is normally payable at the local planning authority's discretion), or</li> <li>• Have purchased the site-specific map from the Planning Portal for the purposes of attaching to a planning application, appeal or representation.</li> </ul> <p>More information on map licensing is available on the Ordnance Survey website:  <a href="http://www.ordnancesurvey.co.uk/support/licensing.html">http://www.ordnancesurvey.co.uk/support/licensing.html</a></p>
<b>Images</b>	Send pictures, photographs, plans, maps or drawings as individual files. Avoid the use of bitmap images as they are very large.
<b>Hyperlinks</b>	<ul style="list-style-type: none"> <li>• You should not use hyperlinks within documents you send to us. Instead, you should download such documents yourself and attach them separately.</li> <li>• You should not use hyperlinks to a website page containing multiple documents or links.</li> </ul>
<b>Formatting</b>	You should ensure that you number all pages accordingly.
<b>Sending emails</b>	<p>If you send anything by email you should get an automatic acknowledgement, provided it is sent to <a href="mailto:appeals@pins.gsi.gov.uk">appeals@pins.gsi.gov.uk</a> or to a team email address (which can be found at the top of letters from us about the appeal). If you do not get an automatic acknowledgement, then you should contact us.</p> <p>For any correspondence which you send to us via email, you should;</p> <ul style="list-style-type: none"> <li>• Quote the appeal reference and/or appellant's name, site address and local planning authority name in the subject line or in the body of your email.</li> <li>• If you are attaching more than one document, please list them in the covering email.</li> <li>• If you are sending a series of emails, include '1 of 5', '2 of 5' etc in the subject line of the email, so we know how many to expect and can check with you if any appear to be missing.</li> </ul>

**G Criteria for determining the procedure for planning, enforcement, advertisement and discontinuance notice appeals**

**The criteria for each procedure cannot be fully prescriptive or entirely determinative: they require judgement to be applied using common sense. More than one criterion may apply.**

**Written representations** - written representations would be appropriate if:

- the planning issues raised or, in an enforcement appeal, the grounds of appeal, can be clearly understood from the appeal documents and a site inspection (if required<sup>7</sup>); or
- the issues are not complex and the Inspector is not likely to need to test the evidence by questioning or to clarify any other matters; or
- in an enforcement appeal the alleged breach, and the requirements of the notice, are clear.

**Hearing** - a hearing would be appropriate if:

- the Inspector is likely to need to test the evidence by questioning or to clarify matters<sup>8</sup>; or
- the status or personal circumstances of the appellant are at issue<sup>9</sup>; or
- there is no need for evidence to be tested through formal questioning by an advocate or given on oath; or
- the case has generated a level of local interest such as to warrant a hearing<sup>10</sup>; or
- it can reasonably be expected that the parties will be able to present their own cases (supported by professional witnesses if required) without the need for an advocate to represent them; or
- in an enforcement appeal, the grounds of appeal, the alleged breach, and the requirements of the notice, are relatively straightforward.

**Inquiry** - an inquiry would be appropriate if:

- there is a clearly explained need for the evidence to be tested through formal questioning by an advocate<sup>11</sup>; or

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<sup>7</sup> A small number of appeals do not require a site visit and can be dealt with on the basis of the appeal documents.

<sup>8</sup> For example where detailed evidence on housing land supply needs to be tested by questioning.

<sup>9</sup> For example whether in traveller appeals the definition in Annex 1 of DCLG's planning policy for traveller sites is met, or in agricultural dwelling appeals.

<sup>10</sup> Where the proposal has generated significant local interest a hearing or inquiry may need to be considered. In such circumstances the local planning authority should indicate which procedure it considers would be most appropriate taking account of the number of people likely to attend and participate at the event. We will take that advice into account in reaching the decision as to the appropriate procedure.

<sup>11</sup> This does not preclude an appellant representing themselves as an advocate.

- the issues are complex<sup>12</sup>; or
- the appeal has generated substantial local interest to warrant an inquiry as opposed to dealing with the case by a hearing<sup>13</sup>; or
- in an enforcement appeal, evidence needs to be given on oath<sup>14</sup>; or
- in an enforcement appeal, the alleged breach, or the requirements of the notice, are unusual and particularly contentious.

**Note** - It is considered that the prospect of legal submissions being made is not, on its own, a reason why a case would need to be conducted by inquiry. Where a party considers that legal submissions will be required (and are considered to be complex such as to warrant being made orally), the Inspectorate requires that the matters on which submissions will be made are fully explained – including why they may require an inquiry - at the outset of the appeal or otherwise at the earliest opportunity.

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<sup>12</sup> For example where large amounts of highly technical data are likely to be provided in evidence.

<sup>13</sup> . Where the proposal has generated significant local interest a hearing or inquiry may need to be considered. In such circumstances the local planning authority should indicate which procedure it considers would be most appropriate taking account of the number of people likely to attend and participate at the event. We will take that advice into account in reaching the decision as to the appropriate procedure.

<sup>14</sup> For example where witnesses are giving factual evidence about how long the alleged unauthorised use has been taking place.

## H How can a decision be challenged?

**Important Note** - The content of this document is guidance only with no statutory status. This guidance is not definitive. Because High Court challenges can involve complicated legal issues, if someone is considering making a challenge they may wish to take legal advice from a qualified person, such as a solicitor. Further information is available from the Administrative Court (see below).

### H.1 What is the process for challenging a decision made during the processing of a case?

H.1.1 For decisions made by administrative staff during the processing of an appeal (other than those relating to an award of costs where the substantive appeal granted planning permission or permitted variation/discharge of a planning condition) there is no statutory right to challenge that decision in the High Court (please see the information about High Court challenges below). However it is possible to make an application for judicial review of such a decision. Rule 54.5(5) of the Civil Procedure Rules 1998 (as amended) requires that an application for judicial review relating to a decision of the Secretary of State<sup>15</sup> under the planning acts, must be made not later than 6 weeks after the grounds to make the claim first arose.

H.1.2 However, if the appeal is decided before the end of this time limit then the only way to challenge decisions by administrative staff would be as part of the challenge to the appeal decision itself through the High Court (see paragraph H.2).

### H.2 What is the time limit for making a challenge in the High Court?

H.2.1 If making a challenge to an enforcement appeal decision in the High Court the challenge must be made within 28 days of the date of the decision, although the Court can extend this period if it considers there is good reason to do so. Where a challenge is made to a related costs decision the challenge must be made within 42 days (6 weeks) of the date of that costs decision – this period cannot be extended.

### H.3 On what grounds can a decision be challenged?

H.3.1 A decision cannot be challenged merely because someone disagrees with the Inspector's decision. For a challenge to be successful the challenger would have to satisfy the High Court that the Inspector made an error in law, eg misinterpreting or misapplying a policy or failing to take account of an important consideration. If a mistake has been made and the High Court considers it might have affected the outcome, the appeal or costs decision will be returned to the Planning Inspectorate for it to be decided again.

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<sup>15</sup> Our administrative staff make decisions about the processing of an appeal on behalf of the Secretary of State.

## **H.4 Under what legislation can an enforcement appeal decision or a costs decision be challenged?**

H.4.1 Enforcement appeal decisions under all grounds can be challenged under section 289 of the Town & Country Planning Act 1990. Challenges against related costs decisions, where planning permission has been granted or a condition varied / discharged, can be challenged under the provisions of section 288. All other related costs decisions can be challenged by Judicial Review.

For listed building enforcement appeal decisions challenges are made under section 65 of the Planning (Listed Buildings and Conservation Areas) Act 1990. Challenges against related costs decisions, where listed building consent has been granted or a condition varied / discharged, can be challenged under the provisions of section 63. All other related costs decisions can be challenged by Judicial Review.

To challenge an enforcement decision under section 289 or section 65 or a related costs decision you must first get the permission of the Court. If the Court does not consider that there is an arguable case, it can refuse permission. **Applications for permission to make a challenge to the enforcement appeal decision must be received by the Administrative Court within 28 days of the date of the decision, unless the Court extends this period.** Challenges to related costs decisions must be made within 42 days (6 weeks) of the date of the decision – this period cannot be extended.

## **H.5 Who can make a challenge to an enforcement decision?**

H.5.1 In enforcement cases, a challenge can only be made by the appellant, the local planning authority or any other person with a legal interest in the land. Other aggrieved people may apply for judicial review by the Courts. The claim form must be filed with the Administrative Court not later than 6 weeks after the grounds to make the claim first arose. The Administrative Court can tell you more about how to do this – see 'Further information' below.

## **H.6 How much is it likely to cost?**

H.6.1 An administrative charge is made by the Court for processing a challenge (the Administrative Court should be able to give you advice on current fees – see Further information below). The legal costs involved in preparing and presenting a case in Court can be considerable, and if the challenge fails the challenger will usually have to pay our costs as well as their own. However, if the challenge is successful we will normally be required to meet their reasonable legal costs.

H.6.2 Sometimes a request can be made to the Court for an order (a Protective Costs Order) which excludes liability or limits liability for the other side's costs up to a certain amount including costs of the decision maker and any interested people. The Administrative Court or a legal adviser will be able to advise if this is possible.

## **H.7 How long will it take?**

H.7.1 This can vary considerably. Many challenges are decided within 6 months, some can take longer.

## **H.8 Does a challenger need to get legal advice?**

H.8.1 A challenger does not have to be legally represented in Court but it is normal to do so, as they may have to deal with complex points of law made by the our legal representative.

## **H.9 Will a successful challenge reverse the decision?**

H.9.1 Not necessarily. The Court can only require the Planning Inspectorate to reconsider the case and an Inspector may come to the same decision but for different or expanded reasons.

## **H.10 What happens if a challenge fails?**

H.10.1 Although it may be possible to take the case to the Court of Appeal, a compelling argument would have to be put to the Court for the judge to grant permission to do this.

## **H.11 Further information**

H.11.1 Further advice about making a High Court challenge can be obtained from:

Administrative Court at the Royal Courts of Justice  
Queen's Bench Division  
Strand  
London  
WC2A 2LL

Phone: 020 7947 6655

Website: <http://www.justice.gov.uk/about/hmcts/>

## **H.12 What happens if a challenge is successful?**

H.12.1 If a challenge is successful, the appeal or costs decision will be returned to the Planning Inspectorate for re-determination. We will give all High Court re-determination cases priority status, and they will normally be dealt with quickly, though without prejudicing any party. We will usually appoint a different Inspector to re-determine the appeal. Arrangements for redetermination of costs decisions may differ, particularly where the related enforcement appeal decision has been upheld.

H.12.2 The appeal will usually be decided by either further written representations or an inquiry. We will rarely arrange a hearing even if the original appeal was dealt with this way. We consider that a hearing decision that has been examined in the formal setting of the High Court would normally need to be re-determined under the formal inquiry procedure, in order to allow a full examination of the legal issues raised. However, where

all parties agree that a hearing would be appropriate we will take this into account when determining the procedure for the re-determined appeal.

H.12.3 Where the appeal was originally dealt with by written representations, we would normally re-determine it by means of further written representations. However, where there has been a material change in circumstances, we may consider this is no longer the most appropriate procedure, having regard to the criteria (please see Annexe G).

H.12.4 Where the appeal was originally dealt with by an inquiry it will probably be re-opened. Where there have been significant changes in circumstances (eg new legislation or local or national policies) since the original inquiry or hearing the Inspector would normally allow further evidence to address these.

### **H.13 What will the timetable be for the hearing or inquiry?**

H.13.1 Unless there is a specific need, the redetermination will not follow the usual timetable. We will write to the main parties, and interested parties if appropriate, to let them know what will happen. All original appeal documentation will be seen by the appointed Inspector.

H.13.2 We would normally try to agree dates for a hearing or an inquiry in accordance with our standard practice, please see Annexe C and Annexe D. Where the re-determined case is proceeding by written representations we would normally contact the parties to make arrangements for a further visit, unless it has been agreed that a further visit is unnecessary.

### **H.14 Contacting us**

High Court Team  
The Planning Inspectorate  
4/06 Kite Wing  
Temple Quay House  
2 The Square,  
Bristol  
BS1 6PN

Phone: 0303 444 5000  
E-mail: [feedback@pins.gsi.gov.uk](mailto:feedback@pins.gsi.gov.uk)

Website: [feedback](#)

### **H.15 Contacting the Ombudsman**

The Parliamentary & Health Service Ombudsman  
Millbank Tower  
Millbank  
London  
SW1P 4QP

Helpline: 0845 0154033  
Website: [www.ombudsman.org.uk](http://www.ombudsman.org.uk)

E-mail: [phso.enquiries@ombudsman.org.uk](mailto:phso.enquiries@ombudsman.org.uk)

## I Planning obligations

### I.1 Introduction

I.1.1 Planning obligations in connection with planning appeals, called in planning applications and enforcement appeals comprise both agreements and unilateral undertakings (section 106 of the Town and Country Planning Act 1990 “the Act” as amended). In this annexe where it refers to the Inspector, it should be taken to mean the Secretary of State for recovered appeals.

I.1.2 This annexe provides good practice advice to guide appellants in preparing planning obligations. It should be read alongside Government policy on the use of [planning obligations](#) in the National Planning Policy Framework and the planning practice guidance. Also the Law Society has published a second edition of its model section 106 agreement (June 2010).

I.1.3 It is the responsibility of the appellant to clarify at an early stage the details of those with an interest in the land and therefore the numbers of parties and the logistics of completing the deed.

I.1.4 A glossary of legal and technical terms is at Appendix I.1. Guidance on Execution of a Deed is at Appendix I.2.

### I.2 Deadline for receipt of planning obligations

#### Written representations cases

I.2.1 If the appellant intends to send a planning obligation and wants to be certain that it will be taken into account by the Inspector they must make sure that it is executed and a certified copy is received by us no later than 9 weeks from the start date.

I.2.2 Planning obligations received after this date will be taken into account only at the Inspector’s discretion as she/he will not delay the issue of a decision to wait for an obligation to be executed, unless there are very exceptional circumstances.

#### Hearing and inquiry cases

I.2.3 If the appellant intends to send a planning obligation they should make sure that a final draft, agreed by all parties to it, is received by us **no later than 10 days before the hearing or inquiry opens**. The Inspector’s and other parties’ ability to prepare for the hearing or inquiry is likely to be significantly hampered if this deadline is not met.

I.2.4 We ask for a final draft, rather than an executed planning obligation, to allow for the possibility that the wording may need to be changed as a result of discussion and examination during the hearing or inquiry. Nonetheless the planning obligation should normally be executed before the hearing or inquiry closes, without the need for an adjournment. However if that is not practicable the Inspector will agree the details for the

receipt of the planning obligation with the appellant and the local planning authority at the hearing or inquiry.

### **I.3 Justifying the need for the planning obligation**

I.3.1 Regulation 122 of the Community Infrastructure Levy Regulations 2010 Statutory Instrument 2010/948, makes it unlawful for any planning obligation to be taken into account in determining a planning application if it does not meet the 3 tests set out in the Regulation. The Inspector will need to assess whether these tests are met by a planning obligation, even where the parties are satisfied with it. The parties should ensure that they provide the necessary evidence to enable this assessment to be made. Inspectors will not take into account any obligations, including standard charges or formulae, which do not meet 1 or more of the statutory tests.

I.3.2 The Framework sets out, at paragraph 204, 3 policy tests which mirror the tests in the Regulations.

I.3.3 The statutory tests in Regulation 122 of the Community Infrastructure Regulations 2010 do not apply to obligations in an enforcement appeal. An Inspector considering an offered planning obligation in connection with an enforcement appeal on ground (a) would however take similar considerations into account in accordance with the policy tests in the Framework.

I.3.4 The following evidence is likely to be needed to enable the Inspector to assess whether any financial contribution provided through a planning obligation (or the local planning authority's requirement for one) meets the tests:

- the relevant development plan policy or policies, and the relevant sections of any supplementary planning document or supplementary planning guidance;
- quantified evidence of the additional demands on facilities or infrastructure which are likely to arise from the proposed development;
- details of existing facilities or infrastructure, and up-to-date, quantified evidence of the extent to which they are able or unable to meet those additional demands;
- the methodology for calculating any financial contribution necessary to improve existing facilities or infrastructure, or provide new facilities or infrastructure, to meet the additional demands;

details of the facilities or infrastructure on which any financial contribution will be spent.

### **I.4 Format of the planning obligation**

I.4.1 All parts of the planning obligation, including the signatures, should follow in sequence without gaps. The signatures should preferably not start on a new page. The planning obligation should be securely bound and its pages should be numbered.

I.4.2 Any manuscript alterations to the text must be initialled by all the parties. Any documents or plans which are annexed to the planning obligation must be clearly identified in the text (by document title and date or drawing number) and any plans which are identified must be attached. Any plans must be signed by all the parties and any colouring of plans must match the description given in the text. If any plan is found to be inaccurate or missing, the planning obligation will need to be re-executed with the correct plan(s) attached.

I.4.3 The original planning obligation should be held by an officer (a solicitor) of the enforcing planning authority – it should not be sent to us as we destroy hard copy case files after 1 year. A copy should be sent to us with a signed statement by that officer certifying that it is a true copy of the original.

## **I.5 Parties to the planning obligation**

I.5.1 Under section 106(1) of the Act, any person interested in the land may enter into a planning obligation. Persons can only bind their own interest and any successors in title to that interest. Normally, therefore, all persons with an interest in land affected by a planning obligation – including freeholder(s), leaseholder(s), holders of any estate contract(s) and any mortgagees – must sign the obligation. Where there are different ownerships it may be necessary to define them by reference to a plan.

I.5.2 The planning obligation must give details of each person's title to the land. This should be checked by the local planning authority, and in hearing and inquiry cases the Inspector will ask for its assurance. In written representations cases, and in cases where the local planning authority is unable to give an assurance, the applicant or appellant will need to provide evidence of title to the Inspector. Normally this is in the form of an up to date copy entry or entries from the Land Registry.

I.5.3 Where a developer has only an option to purchase the land, the current landowner(s) will need to be party to any obligation binding the land.

I.5.4. Counterpart documents are legal documents identical in all respects except that each is signed by a different party or parties. This is not appropriate to planning obligations, since these are public law documents which are entered on the planning register and the local land charges register and are often copied to residents and other interested people. The planning obligation should be one single document executed by all the relevant parties.

I.5.5 There may be exceptional circumstances where it is agreed in advance by the parties that counterparts are the only practical option. In these cases, both the Inspector and the local planning authority should be satisfied that certified copies of all of the individually signed documents have been provided (by a solicitor or other suitably legally qualified person). It is preferable in such circumstances that each counterpart document includes a clause confirming that while the deed may be executed in counterparts, or in any number of counterparts, each of these shall be deemed to be an original (or a duplicate original), but all of them, taken together, shall constitute one

and the same agreement. While such a clause is recommended in order to improve clarity, its absence will not make the counterparts invalid.

## **I.6 Content of the planning obligation**

### General points

I.6.1 It should provide clear and concise definitions for frequently-used terms, and use consistent terminology throughout.

I.6.2 The planning obligation must be dated, signed by all the parties to it, and executed as a deed. For details of how to achieve execution as a deed, see Appendix I.2.

I.6.3 The planning obligation must identify:

- the land to which it relates (by a plan if necessary); and
- the parties to the obligation, by names and addresses, and their relevant interest in the land. If a party is an offshore company it must give an address for service of documents in the UK.

I.6.4 It must state:

- that it is a planning obligation and name the planning authority by which it is enforceable;
- that it comes into effect upon the grant of planning permission – even if the actions required by the obligation are triggered by subsequent events, such as commencement of the development;
- precisely the requirements which it imposes on the party or parties giving the covenant(s) in sufficient detail (including the parts of the land to which they are to apply, where relevant) to make them enforceable; and
- that any financial contributions are to be paid to the local planning authority or (by a suitably worded provision in the deed) any other relevant authority responsible for the provision of the particular public services to which the contributions apply.

I.6.5 It might be necessary to define by reference to a plan the proposed site(s) of particular facilities (eg open space) to be provided, or the detailed specification of the purposes to which particular financial contributions are to be put (including any time limits, quality checks, etc. which are to be applied).

I.6.6 It must make it clear when each of its requirements is triggered and whether there are any conditions affecting the performance of that requirement. For example, it should make it clear whether some other event needs to occur, or formal notice needs to be given, before a financial contribution becomes payable; or whether the terms of a transfer of land need to be agreed before affordable housing or some other community benefit is delivered.

I.6.7 Care should be taken to ensure that the obligations fall within the terms of section 106. See for example *Westminster City Council v. Secretary of State* [2013] EWHC 690 (Admin.).

## Requirements imposed by unilateral undertakings

I.6.7 If using the unilateral undertaking form of obligation, it is acceptable for it to set out the conditions under which any financial contribution may be made – such as the purpose for which it may be used and the timing or phasing of the payments.

I.6.8 However, a unilateral undertaking should not try to impose requirements or obligations on any person other than the signing party eg it would not be acceptable to try to require a Registered Provider to exchange contracts within a set period.

### **I.7 Modifying or discharging planning obligations**

I.7.1 A deed executed under section 106 cannot provide for its own modification or discharge after a given period or in given circumstances.

I.7.2 Planning obligations, whether section 106 agreements or unilateral undertakings, can usually only be modified or discharged under section 106A of the Act<sup>16</sup>. Section 106A enables modification or discharge to be achieved either by an agreement with the local planning authority (which must be executed as a deed), or by an application to the local planning authority.

I.7.3 Periods within which applications to modify or discharge an obligation can be made, are as follows:

- for obligations entered into on or before 6 April 2010 – an application can be made at any time;
- for obligations entered into after 6 April 2010 – an application can be made after 5 years beginning with the date the obligation has been entered into to.

I.7.4 There is a right of appeal under section 106B if any application is refused.

I.7.5 Great care should be taken in preparation, before executing a unilateral undertaking, so as to avoid any need to modify it subsequently. However, sometimes during the course of an appeal it becomes clear that changes are required to an executed unilateral undertaking to ensure that it will deliver what is intended. The strong preference is for this to be done by an agreement with the local planning authority as that can provide for the original unilateral undertaking to be superseded. If an application is made the original unilateral undertaking will remain in force (as it cannot be “withdrawn” or “superseded” other than by agreement with the local planning

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<sup>16</sup> The Growth and Infrastructure Act 2013 inserted new sections 106BA, BB and BC into the Town and Country Planning Act 1990. This introduced a new application and appeal procedure to review affordable housing obligations on the grounds of viability. Information for applicants and local planning authorities on this measure and the procedures is in the Department for Communities and Local Government guidance - Section 106 affordable housing requirements: Review and appeal (April 2013).

authority), but it will be for the local planning authority to secure enforcement of the preferred version.

## **I.8 Planning obligations and the provision of affordable housing**

I.8.1 This section should be read alongside the relevant sections of the Law Society's model section 106 agreement (second edition - June 2010).

I.8.2 If a planning obligation provides for affordable housing as part of the proposed development, the Inspector will need to be satisfied that:

- the type(s) of affordable housing which it is proposed to provide are satisfactorily defined;
- where there is a split between the different types of affordable housing it is justified and that there are arrangements to secure it;
- there are clear and specific provisions dealing with the distribution of the affordable housing;
- the covenants are drafted in a way which will ensure delivery of the proposed housing. The planning obligation should state who is to be responsible for the construction of the affordable housing;
- if the land to be used for affordable housing is to be transferred (eg to a Registered Provider), the relevant land is clearly identified on a plan, and there is a restriction on development until arrangements for the transfer are made as set out in the planning obligation or in a document annexed to it;
- if the Registered Provider is a party to the planning obligation, it includes positive covenants to ensure that the affordable housing will be constructed and (by a suitably worded provision) transferred to the Registered Provider (possibly with a cascading mechanism in case of default by the preferred Registered Provider);
- if none of the parties to the planning obligation is a Registered Provider (and assuming the applicant itself is not going to build the affordable housing), there are adequate and reasonable arrangements for securing a Registered Provider;
- the phasing arrangements for delivery of the affordable housing are satisfactory. The planning obligation should not allow most of the market housing to be sold before the affordable units are available for occupation. The provision/occupation of both types of housing should be appropriately synchronised;
- if the affordable housing is to be provided off-site, or a financial contribution made in lieu of provision, there is robust

justification for this, and what is on offer is of broadly equivalent value (see paragraph 50 of the Framework);

- the planning obligation contains adequate controls to ensure that any affordable housing is retained as affordable for an unlimited duration;
- the arrangements for allocating the affordable housing (eg nomination rights involving use of the local authority's housing waiting list or allocations to qualifying persons by a Registered Provider) are satisfactory;
- if the planning obligation includes a cascade arrangement, there are adequate time-periods at each stage, especially before triggering any "fall-back" clause which would enable the affordable housing to revert to the developer for sale on the open market; and
- the proposed arrangements for managing the affordable housing are adequate.

## **I.9 Planning obligations for pooled contributions/tariffs**

I.9.1 The Community Infrastructure Levy Regulations 2010, Regulation 123(3) as amended concerns limitations on the use of planning obligations in the determination of planning applications and appeals. Following the end of the transitional period on 6 April 2015, the requirements of the Regulation came into effect. The Regulations are available [online](#). For further information please see planning practice guidance [paragraphs 99-104](#).

I.9.2 Broadly, following the end of the transitional period, a planning obligation may not constitute a reason for granting planning permission where it provides for the funding or provision of an infrastructure project or type of infrastructure, and five or more separate planning obligations have previously been entered into on or after 6 April 2010 that already provide for the funding or provision of that project or type of infrastructure. Obligations requiring a highway agreement to be entered into are not limited in this way.

I.9.3 Planning practice guidance [paragraph 24](#) outlines that local planning authorities are required to keep a copy of any planning obligation, together with details of any modification or discharge of the planning obligation, and make these publically available on their planning register.

I.9.4 Where the local planning authority considers that a contribution/contributions secured by a planning obligation or obligations would be required to make the appeal proposal acceptable in planning terms, we ask that it should also clarify the number of planning obligations which have been entered into on or after 6 April 2010 which provide for the funding or provision of a project, or provide for the funding or provision of that type of infrastructure for which it is seeking an obligation in relation to the appeal proposal. This information is required for each obligation sought by the local planning authority.

I.9.5 The local planning authority (and the appellant) should inform us as a matter of urgency of any further changes in circumstances on this matter as the appeal progresses, i.e. if any further relevant obligations have been entered into as a result of the local planning authority granting permission and/or appeals being allowed. It is in the interest of both the local planning authority and the appellant to do so, as any failure to keep us informed could result in delays in the processing of the appeal and/or, at worst, unlawful appeal decisions being made.

Glossary

<b>Affordable housing</b>	See National Planning Policy Framework [DCLG, March 2012]
<b>Agreement</b>	A legal document executed and delivered by all the parties named. Must be between 2 or more parties.
<b>Attorney</b>	A person appointed by another to act in the latter's place.
<b>Benefit</b>	Something, for example an area of open space, a community facility, an item of infrastructure, or a financial contribution, which is provided by means of a planning obligation.
<b>Certified copy</b>	A copy of a legal document which has been signed and certified as a true copy by the person to whose custody the original is entrusted.
<b>Common seal</b>	See Sealing below.
<b>Completed</b>	A legal document that has been executed and delivered to the other party or parties unconditionally.
<b>Completion</b>	The act of completing a legal document.
<b>Condition precedent</b>	A provision which delays the right or requirement to do something until another action or event has occurred.
<b>Covenant</b>	A binding promise given by one party to another to observe or perform an obligation.
<b>Deed</b>	A legal document that is executed as a deed.
<b>Delivered</b>	A deed is delivered at the point at which it takes effect, that is to say when it has been both executed <b>and</b> dated.
<b>Discharge</b>	Release from a planning obligation.
<b>Enforceable / Legally enforceable</b>	Binding in a legal sense and capable of being enforced if not complied with.
<b>Estate contract</b>	A contract by an owner of land to convey the land to another.
<b>Evidence of title / Details of title</b>	Documents which evidence ownership of property. (Also sometimes referred to as Title Deeds – see below.)
<b>Executed</b>	See Appendix I.2.
<b>Instrument / Legal instrument</b>	A formal legal document.
<b>[Legal] interest in land</b>	An interest in land includes freehold ownership, leasehold interest, interest as a mortgagee, etc. Under section 106 it is a pre-requisite to entering into a planning obligation.
<b>Landowner</b>	Person holding a legal estate in land, eg a freeholder or leaseholder.
<b>Liability</b>	A duty or obligation enforceable by law.
<b>Mortgagee</b>	A person with security against a property usually by

	way of a loan.
<b>Obligation / Planning obligation</b>	<p>An obligation in the strict sense is something which a party is legally bound to do (eg they may be bound by a section 106 agreement or unilateral undertaking to make a financial contribution towards educational facilities, lay out an access road, and so on).</p> <p>However the term "obligation" is also sometimes used as shorthand for "planning obligation", which in this generic sense refers to both section 106 agreements and unilateral undertakings.</p>
<b>Option to purchase</b>	A right (made by agreement) to buy or not, within a certain time.
<b>Power of Attorney</b>	Legal document authorising a named person to sign documents on another's behalf in specified circumstances.
<b>Registered Provider</b>	An organisation which is registered with the Homes and Communities Agency as a provider of social housing. This can include Housing Associations, Local Authorities and private companies.
<b>Section 106 agreement</b>	An agreement made under section 106 of the Town and Country Planning Act 1990, containing covenants from one or more parties (who must have a legal interest in the land) to another party (usually the local planning authority).
<b>Sealing (of a legal document)</b>	Method of signing a document by means of a corporate or common seal. See Appendix I.2.
<b>Successor(s) in title</b>	Persons who are entitled to succeed the current holder(s) of a title to a property.
<b>Title</b>	A right to ownership of land or property.
<b>Title Deed</b>	A legal document which provides evidence of title to the land or property.
<b>Unilateral undertaking</b>	A planning obligation executed solely by the party or party giving the covenants and not by the party (usually the local planning authority) having the benefits of those covenants. In this way it differs from a section 106 agreement which is executed by all the parties including the local planning authority.
<b>Witness / witnessing</b>	A document is witnessed if it is signed in the presence of one or more other persons – the witness(es) – who then also sign to indicate that they have witnessed the signature.

**Execution as a deed**

Section 106(9) of the Town and Country Planning Act 1990 (as substituted by section 12 of the Planning and Compensation Act 1991) states that a planning obligation may not be entered into except by an instrument [that is to say, a formal legal document] executed as a deed.

Execution of a deed can be fulfilled in the following ways:

**1. Execution by an individual**

Section 1(3) of the Law of Property (Miscellaneous Provisions) Act 1989 provides that an instrument is validly executed as a deed by an individual if:

- (i) it is signed by him in the presence of a witness who attests the signature; (or, at his direction and in his presence and the presence of two witnesses who each attest the signature)

and

- (ii) it is delivered as a deed by him or a person authorised to do so on his behalf.

**Example**

The above requirements are satisfied if:

The following words appear in the document: *In Witness to the above the Owner has executed and delivered this Deed the day and year first above written.*

and

The document is signed in the following manner:

*Signed as a Deed by:            )*  
*A N Other                        )*                    *(A N O signs here)*  
*In the presence of            )*

.....  
*(Signature of witness)*

.....  
*(Name of witness in print)*

.....  
.....  
.....  
*(Address of witness)*



The document should be signed in the following manner:

Signed as a Deed by)

J R Ltd ) [signatures of authorised signatories<sup>17</sup> here]  
Acting by )

.....  
(Signature) (Signature)

.....  
(Name and position (Name and position  
in print) in print)

(iii) By signature in the presence of a witness

The document should be signed in the following manner:

Signed as a Deed by)

JR Limited ) [signature of Director here]  
Acting by )

.....  
(Signature) (Signature of witness)

.....  
(Name and position ( Name of witness  
in print)

### 3. Other scenarios

If it is proposed to execute a document in any other way, documentary evidence that the signatories are authorised to sign should be provided. For example:

- If a Company signs on behalf of an individual or another Company - section 44(8) of the Companies Act 2006 applies.
- If the office of Director or Secretary of a Company is held by an individual of a Firm (e.g. a firm of accountants or solicitors) - section 44(7) of the Companies Act 2006 applies.
- If a Building Society or Bank refers to "authorised signatories" who are not Directors or the Company Secretary.
- If a document is signed on behalf of a Trust by named Trustees.
- There are special provisions for execution under a power of attorney.
- In the case of foreign corporations, it is usually necessary to obtain opinion letters from suitable foreign lawyers to confirm due execution.

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<sup>17</sup> See above for definition of "authorised signatories".

#### **4. General note**

If parties are legally represented we would expect their lawyers to inform the Inspector as to whether or not they are satisfied with the execution of the obligation.

**J What is “Expert evidence”?**

**J.1 Who provides expert evidence?**

J.1.1 Expert evidence is evidence that is given by a person who is qualified, by training and experience in a particular subject or subjects, to express an opinion. It is the duty of an expert to help an Inspector on matters within his or her expertise. This duty overrides any obligation to the person from whom the expert has received instructions or by whom he or she is paid.

J.1.2 The evidence should be accurate, concise and complete as to relevant fact(s) within the expert’s knowledge and should represent his or her honest and objective opinion. If a professional body has adopted a code of practice on professional conduct dealing with the giving of evidence, then a member of that body will be expected to comply with the provisions of the code in the preparation and presentation (written or in person) of the expert evidence.

**J.2 Endorsement**

J.2.1 Expert evidence should include an endorsement such as that set out below or similar (such as that required by a particular professional body). This will enable the Inspector and others involved in an appeal to know that the material in a proof of evidence, written statement or report is provided as ‘expert evidence’. An appropriate form of endorsement is:

*“The evidence which I have prepared and provide for this appeal reference APP/xxx (in this proof of evidence, written statement or report) is true [and has been prepared and is given in accordance with the guidance of my professional institution] and I confirm that the opinions expressed are my true and professional opinions.”*

J.2.2 Giving expert evidence does not prevent an expert from acting as an advocate so long as it is made clear through the endorsement or otherwise what is given as expert evidence and what is not.

**K What happens if an error has been made?**

**K.1 Background**

K.1.1 Under section 56 of the Planning and Compulsory Purchase Act 2004, we may correct certain types of errors within our decision notices (sometimes referred to as the "Slip Rule") if we consider it to be in the public interest to do so. This allows us to issue a correction notice only to correct errors which are not material and which would not have the effect of altering or varying the decision. On receipt of a request, we will decide whether a correction should be made.

K.1.2 A correction notice may be issued in relation to the following decision types:

- Planning
- Enforcement
- LDC
- Listed Building (including Listed Building Enforcement)
- Costs
- Advertisement

K.1.3 A correction notice will be accompanied by an amended decision (superseding the original decision) which has full legal status. That decision will carry a fresh date and will replace (and be subject to the same provisions as) the original in all respects.

K.1.4 The Act requires any person who wants us to correct a decision to request this in writing and within the relevant High Court challenge periods. This is within 28 days for enforcement decisions.

K.1.5 If any person wants us to consider correcting a decision they should explain clearly what error they think has been made.

**Contacting us**

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Website: [feedback](#)

## **L Feedback and complaints**

### **L.1 How do we handle feedback?**

L.1.1 We try hard to ensure that everyone who uses the appeal system is satisfied with the service they receive from us. We welcome feedback and like to hear that we have provided a good service. However although we aim to give the best service possible, there will unfortunately be times when things go wrong and we fail to achieve the high standards we set ourselves.

L.1.2 We appreciate that many of our customers will not be experts on the planning system and for some it will be their one and only experience of it. We consider that people's opinions are important and realize that they may be strongly-held.

L.1.3 All correspondence we receive after the appeal decision is issued is handled by the Customer Quality Team which works independently of all of our casework and Inspector teams. We will reply as soon as possible in clear, straightforward language, avoiding jargon and complicated legal terms.

L.1.4 People can contact us by email, write to us, or phone us (see 'Contacting us' below). Whilst we are happy to talk to people on the phone, where there are a number of issues to relay it may be easier to put these in writing setting out the points clearly. We will acknowledge all correspondence, advise who is dealing with it and provide a timescale for replying. We aim to reply to 80% of all correspondence within 20 working days.

### **L.2 Looking at appeal documents**

L.2.1 Before making a complaint it would usually be a good idea to look at the appeal documents. We normally keep appeal files for one year after the decision is issued, after which they are destroyed. People can look at appeal documents at our office in Bristol, by contacting us to make an appointment (see 'Contacting us' below). We will obtain the file from our storage facility ready for it to be viewed at the appointment.

L.2.2 Alternatively, if visiting Bristol would involve a long or difficult journey it may be more convenient to arrange to view the local planning authority's copy of the file, which should be similar to ours.

### **L.3 How we investigate complaints**

L.3.1 There is no time limit in which complaints must be made, but we would normally expect them to be made promptly once the reason for the complaint becomes apparent. As explained in paragraph L.2.1 above, we normally only keep appeal files for one year after the decision is issued, after which they are destroyed. Whilst we are able to deal with complaints that are older than that, our ability to do so thoroughly may be restricted if the file has been destroyed, and the recollections of the people concerned will

naturally fade over time. In such circumstances, complainants will probably need to send us documents to support their complaint.

L.3.2 It is the job of the Customer Quality Team to investigate complaints about procedure, decisions or an Inspector's conduct. All complaints are investigated impartially and as thoroughly as possible.

L.3.3 However, to help us gain as full a picture as possible, we may need to ask the Inspector or other staff for comments. This helps us to decide whether an error has been made. If this is likely to delay our full reply we will let the complainant know.

L.3.4 Sometimes complaints arise due to misunderstandings about how the appeal system works. When this happens we will try to explain things as clearly as possible. Sometimes there is confusion about what the appeal decision means. In enforcement appeals, 'upheld' means that the Inspector has rejected the grounds of appeal and the enforcement notice must be complied with, 'quashed' means that the Inspector has agreed with the grounds of appeal and cancelled the enforcement notice.

L.3.5 Enforcement appeals often raise strong feelings and it is inevitable that there will be at least one party who will be disappointed with the outcome of an appeal. This often leads to a complaint, either about the decision or the way the appeal was handled.

L.3.6 Sometimes the appellant, the local planning authority or a local resident may have difficulty accepting a decision simply because they disagree with it.

L.3.7 We appreciate that the party, especially an appellant, that 'loses' an appeal will be disappointed but it is very important to understand that we cannot re-open an appeal to re-consider its merits, add to what the Inspector has said or change the decision. We will however do our best to clarify things, if it is necessary and possible.

L.3.8 Sometimes a complaint is not one we can deal with (for example, complaints about how the local planning authority dealt with another similar breach of planning control), in which case we will explain this and suggest who may be able to deal with the complaint instead.

L.3.9 Similarly we cannot resolve any issues someone may have with the local planning authority about the planning system or the implementation of a planning permission.

L.3.10 If the complainant considers that our reply has not adequately responded to their concerns, our policy is that a senior manager will review their complaint and send a final reply.

#### **L.4 Who is responsible for monitoring a development?**

L.4.1 If planning permission is granted, either by the local planning authority at application stage or by the Inspector or the Secretary of State on appeal, **the local planning authority has the sole responsibility for**

**monitoring the implementation of the permission and ensuring that it is in accordance with the plans and any conditions. The Planning Inspectorate does not have this role.**

L.4.2 If the local planning authority considers that the development does not comply with the permission they have the power to take enforcement action.

**L.5 What we cannot change**

L.5.1 As we have already stated above, we **cannot change the Inspector's decision**, or re-open the appeal once the decision has been issued.

L.5.2 Although we can rectify certain minor errors (please see Annexe K), we cannot reconsider the evidence the Inspector took into account or the reasoning in the decision or change the decision reached even if we acknowledge that an error has occurred. This can only be done following a successful High Court challenge resulting in the appeal being returned to us to decide it again, please see Annexe H.

**L.6 What we will do if we have made a mistake**

L.6.1 We are keen to learn from our mistakes and try to make sure they do not happen again. Complaints and our responses to them are therefore one way of helping us improve the appeals system.

L.6.2 If a mistake has been made we will write explaining what has happened and we will apologize. The Inspector, or the administrative member of staff, and their line manager will be told that the complaint has been upheld and we will look to see if lessons can be learned from the mistake, such as whether our procedures can be improved or training given, so that similar errors can be avoided in future.

L.6.3 Remedies which we may offer include:

- an apology, explanation, and acknowledgement of responsibility;
- remedial action which may include:
  - reviewing service standards;
  - revising published material;
  - revising procedures to prevent the same thing happening again;
  - training or supervising staff;

or any combination of these.

L.6.4 Where maladministration or an error by us has led to injustice or hardship, we will try to offer a remedy that returns the complainant to the position they would have been in otherwise. If that is not possible, we will provide compensation for additional expenses incurred as a direct result of an acknowledged error by us, where there are compelling reasons to do so. However, certain circumstances will be beyond our control, and where this is the case we will not meet a claim for financial compensation unless there are very exceptional circumstances.

L.6.5 We will consider carefully requests for financial compensation and would expect these normally to be received within 6 months of the date of the error or of any subsequent appeal decision by us related to that error (eg a decision on an appeal that we have had to re-determine). However in exceptional circumstances (which should be explained) we will consider requests outside of this time limit.

## **L.7 Role of the Ombudsman**

L.7.1 The Parliamentary and Health Service Ombudsman can investigate complaints of maladministration against Government Departments or their Executive Agencies. Normally the Ombudsman will not investigate a complaint:

- unless the complainant has followed our complaints process completely and is still not satisfied with our replies; or
- if there is a legal route that can be followed to challenge a decision.

L.7.2 For appeals there **is** a legal route, for further information please see Annexe H.

L.7.3 Complaints to the Ombudsman must be made through a Member of Parliament. We would normally expect such a complaint to be made within 6 months of the date of our final reply to the original complaint, but it is for the Ombudsman's office to determine whether they will accept a case.

L.7.4 Even if the Ombudsman does decide to investigate a complaint the Ombudsman **cannot change the Inspector's decision.**

## **L.8 Frequently asked questions**

*"Why did an appeal succeed when local people were all against it?"* – The representations of local people are important but they are likely to be more persuasive if based on planning reasons, rather than a basic like or dislike of the proposal. Inspectors have to make up their own minds based on all of the evidence, including the representations, whether the appeal should be allowed or dismissed.

*"How can Inspectors know about local feeling or issues if they don't live in the area?"* – Using Inspectors who do not live locally ensures that they have no personal interest in any local issues or any ties with the appellant or their agent, the local planning authority or its policies. However, Inspectors will be aware of policies and local opinion from the information provided by the appellant and the local planning authority and the representations people have made on the appeal.

*"I wrote to you giving my opinion, why didn't the Inspector mention this?"* – Inspectors must give reasons for their decision and take into account all representations received but it is not necessary to list every piece of evidence.

*"Why did my appeal fail when similar appeals nearby succeeded?"* – Although two cases may be similar, there will nearly always be some aspect of a

development which is unique. Each case must be decided on its own particular merits taking into account the evidence provided by the parties on that case (which is likely to differ from case to case).

### **Contacting us**

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