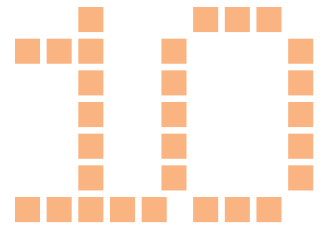


DEVELOPMENT CONTROL

Appeals



This is sheet 10 of The Planning Pack. This pack has been written by Planning Aid, with assistance from Urban Forum. The Planning Pack is endorsed by the Royal Town Planning Institute

Introduction

This information sheet provides a brief introduction to Planning Appeals. It is Sheet 10 of a series of 17 that forms an information pack to help you understand and get involved with the planning system.

Please note that only the applicant can appeal against a local planning authority's decision. Once an appeal has been made the applicant becomes known as the appellants. There is no right for 'third parties' (for example neighbours or community groups) to appeal against a decision on a planning application. However, third parties do have a right to make their views known at appeal. If third parties are not happy with the decision made on a proposal there are other courses of action that can be taken, see Sheet 15 on Redress.

Most forms of development (for example construction of a building or change of use of a building or land) require planning permission. To get planning permission you must submit a planning application to your local planning authority, see Sheet 8 for further details of the planning application process. If your local planning authority decides to refuse your application or you are not happy with the conditions on

the approval, you can appeal to national government against that local decision or particular condition. You (the applicant) can also appeal if a local decision on your proposal is not made within the appropriate time limits – eight weeks for most applications or 13 weeks for major applications, this is called 'non-determination'.

Appeals can also be made against an enforcement notice where the local planning authority alleges a breach of planning control. See Sheet 12 for more information. There are various other forms of special planning appeal – see page 5.

The organisation which deals with appeals at national level is known as the Planning Inspectorate (see Sheet 16 for details). The Planning Inspectorate is part of the Department for Communities and Local Government (DCLG).

Appealing against a planning decision

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

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

If you wish to make an appeal there is a strict timetable that you will need to follow. If you don't keep to the deadlines you may lose the right to make your case. Importantly you only have **six months** from the date shown on the decision notice (the decision date) or the end of decision period, see above, to make an appeal.

An appeal must be made on the appropriate form (there are different forms for planning applications, listed buildings/ conservation area consents and enforcement). Forms are available from the Planning Inspectorate by post or via their website (www.planning-inspectorate.gov.uk). One copy must be returned to the Planning Inspectorate and one copy should be sent to the local planning authority within the time limit. You should also keep a copy for your records. The form asks for details of the appellant (the person who is appealing), the local planning authority's application reference number, the site, a description of the proposal, and details of land ownership. A list of essential supporting documents must be sent with the form (including copies of the original application, ownership certificates, the local planning authority's decision notice and other correspondence, site plan and all drawings and diagrams).

You will need to indicate on the form your preferred procedure for the appeal to be conducted by the Inspector, see appeal procedures section below for more information on the different ways an appeal can be conducted.

You will need to state the reason or reasons why you are appealing on the form these reasons are known as 'grounds of appeal'. The grounds of appeal should explain why you disagree with each of the local planning authority's reasons for

refusal (as written in the refusal notice). It is not sufficient just to say that you disagree, you must provide good planning reasons why permission should be granted. Your reasons should be based on **development plan** policies and/or other considerations relevant to planning known as **material considerations**. These may include site specific considerations or local needs, for more information on material considerations see Sheet 9.

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

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

Appeal Procedures

There are three different ways to carry out an appeal.

- >> written representations; or
- >> informal hearing; or
- >> public inquiry.

The appellant and the local planning authority are asked for their preferred choice of procedure. However the ultimate decision rests with the Planning Inspectorate. Written representations are relatively quick and low cost; the inquiry route can be lengthy and expensive (potentially involving legal representation); the hearing route is intermediate in terms of cost and time. Each method is described in more detail below and in the Planning Inspectorates 'Guide to taking part in planning appeals'. See Sheet 16 for contact details.

Written Representations

As the name suggests, **written representations** are dealt with through written statements from the appellant, the local planning authority and third parties wishing to comment, including the 'statutory' consultees (eg Highways Agency, English Heritage) and neighbours.

Stage 1

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

Stage 2

Within **two weeks** of the start date the local planning

Example of how to order a Written Statement

- >> Site description
- >> Site history – previous and relevant planning applications
- >> Description of the proposal
- >> Reasons for refusal and grounds for appeal
- >> Relevant Development Plan policies
- >> Other material considerations – including national policy, site specific considerations
- >> Main issues, you could look at similar appeal decisions for ideas on what main issues might be
- >> Analysis of main issues – this is the chance to make a case. For example, whether or not the application is consistent with the development plan? Why? How?

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

Stage 3

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

Stage 4

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

Stage 5

When all the written submissions have been received and analysed, the Inspector will visit the site that the appeal relates to. If the site can be viewed from public land and the appellant and local planning authority are agreed, the Inspector can make an 'unaccompanied' visit and talk to no one. With an 'accompanied' visit, the appellant and local planning authority must be present and third parties may also

attend. On site the Inspector will only ask questions to confirm points of the arguments; there will be no general discussion of the merits of the case. It is often useful for third parties to invite the Inspector to view the development site from their own property.

Public Inquiry

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

Stage 1

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

Stage 2

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

Stage 3

Within **six weeks** of the start date the appellant and the local planning authority should send two copies of a written statement. This statement should make clear the case that will be made at the inquiry. Third parties should also send in comments by this date.

Stage 4

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

Stage 5

Four weeks before the inquiry starts the appellant and the local planning authority will need to send two copies of their **proofs of evidence**. This is a written statement that will be read out at the inquiry. If the proof of evidence is over 1500 words long a summary should be provided. It will usually be the summary that is read at the inquiry. The appellant and the local planning authority must also agree a **statement of common ground**, agreeing the relevant factual background. There may be a 'Pre-Inquiry Meeting' at which arrangements and programme can be discussed by participants.

Stage 6

Two weeks before the inquiry the appellant must put up a notice on the site about the inquiry. The local planning authority will place a notice in the local paper about the inquiry and the arrangements.

Stage 7

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

After the appellant and the local planning authority have had their say, the Inspector will call on third parties to make their case. When speaking, be brief, relevant and to the point. The Inspector will treat all information fairly. Third parties do not have to accept cross-examination, but often it is useful to answer the points made; the Inspector should not allow hostile questioning. The Inquiry itself finishes with closing statements from the appellant and the local planning authority.

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

Informal Hearing

An **Informal Hearing** is a less formal than a Public Inquiry and is used for less complex, smaller-scale proposals. The procedure is similar to the Public Inquiry except that the 'Hearing' itself is more of a round-table discussion, with the Inspector acting as 'chair' and starting with a summary of the appellant's and local planning authority's cases. To reduce costs, legal representation is not normally allowed. The Inspector can take part in the discussions to ensure that all points are explored fully. The discussions can continue at the site visit, if all are present and are agreed.

Costs

If the appeal is heard at Public Inquiry or Informal Hearing, the appellants and the local planning authority can ask the Inspector to award costs against the 'other side', if it is felt that the appeal case is unreasonable and has wasted resources.

Decisions

After the Inspector has considered all the evidence, a decision will be made. The appellant, the local planning authority and third party **who has requested a copy of the decision** will be notified in writing by the Inspector. The decision will usually include a brief description of the proposals, identify the main (important) planning issues, and explain how the Inspector has come to their decision. The appeal may be 'upheld' or 'allowed' and planning permission granted, or 'dismissed' and planning permission refused.

If the appeal is allowed (and planning permission is granted), it will include appropriate conditions. If requested the Inspector will also make a decision on whether costs should be awarded. The Inspector's decision is usually final. A further appeal can be made to the High Court (possibly at considerable cost) but only on a 'point of law'. For example, there was a mistake in legal procedures or that some vital information was ignored. If the High Court agrees with the challenge, the case is looked at again by the Planning Inspectorate, but the decision is not necessarily reversed.

Some decisions are made by the Secretary of State (Department for Communities and Local Government). Normally these are cases which raise issues of regional or national importance or raise questions about the interpretation of national policy. Where the decision is to be made by the Secretary of State, the Inspector sends a report which will include conclusions on the main planning issues and a recommendation whether the appeal should be allowed or not. The Secretary of State usually follows the recommendation of the Inspector, but can overrule the recommendation in his final decision.

Other Forms of Planning Appeal/Inquiry

Most planning applications are decided locally by the local planning authority. However the local planning authority may be directed to refer any application to the Secretary of State for decision, under reserved powers. This is known as a 'called in' application. This is rare, only about 150 applications in a year get called in. For most called in applications a public inquiry will be held. For further information on call in procedures and how to get involved contact the Planning Inspectorate, local planning authority, the relevant regional Government Office, or Planning Aid.

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



Commenting on someone else's appeal

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

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

The Inspector, when making a decision on the appeal proposal, will need to consider whether the proposal is in accordance (in line) with the policies within the Development Plan and whether there are any other relevant planning considerations, known as material considerations, why the proposal should be considered acceptable. Examples of material considerations can be found on Sheet 9. Therefore when writing your comments refer to policies within the Development Plan and/or other material considerations to support your comments.

It is a good idea to include a section in your statement on what would make the development more acceptable to you if the Inspector allowed the development. For example, would you be happier with the proposals if frosted glass was used in an overlooking window. This will not undermine a case for refusal, but may be useful in protecting some important aspect should the development be allowed.

When you send in your comments to the Inspector you will need to ask for a copy of the decision letter.

Be Prepared

Before you write your comments:

- >> look at the decision notice: what were the reasons for the decision? What policies are referred to?
- >> look at the Committee Report (if any) what was the recommendation? What policies are considered and what other considerations were highlighted?
- >> look at relevant policies in the Development Plan;
- >> think about other material considerations, including national policy;
- >> talk to the officer responsible for writing the local planning authority's comments on the appeal.