



# The Planning Inspectorate

## Making your enforcement appeal



INVESTOR IN PEOPLE

Revised edition – November 2004

# Planning Inspectorate

## *Quality statement*

We aim to provide the following in the appeal process:

- clear, prompt and polite advice and information;
- quick and efficient handling of your appeal;
- an open exchange of views between the people involved in the appeal;
- fair and unbiased decisions by appropriately qualified people;
- clear, logical decisions and reports;
- a quick and thorough complaints procedure; and
- a service that gives the public confidence in us.

If you need this document in large print, on audio tape, in Braille or in another language please contact our helpline on 0117 372 8075

This document is also available on our website ([www.planning-inspectorate.gsi.gov.uk](http://www.planning-inspectorate.gsi.gov.uk)). The Planning Portal ([www.planningportal.gov.uk](http://www.planningportal.gov.uk)) contains a large amount of information about the planning system in England and Wales, including lists of useful contacts and planning related services. Access to the Planning Portal is free of charge. You can now use the internet to send us documents and check the information and the progress of appeals on the Planning Casework Service (PCS) at [www.planningportal.gov.uk/PCS](http://www.planningportal.gov.uk/PCS).

# About the Planning Inspectorate

We are part of Communities and Local Government (DCLG) and the National Assembly for Wales. We deal with enforcement appeals for England from our Bristol office and enforcement appeals in Wales from our Cardiff office. The Inspectors, who decide most of the appeals, have a variety of backgrounds. These include town planning, surveying, and engineering, architecture and law. We choose Inspectors carefully and train them thoroughly.

When our office staff get your appeal form, they will collect all the information about your case. If you have any questions about it you can contact your case officer. We will give you the case officer's name and phone number. Just before the site visit, hearing or inquiry, the case officer will send your appeal papers to the Inspector, who will study them. In most cases after holding an inquiry or hearing, or visiting the site, the Inspector writes the decision. Your case officer will send the decision to you.

This booklet explains the enforcement appeal procedure for appeals in England. If you want advice about appeals in Wales you should contact our Cardiff office. The information it contains was correct when it was published. But it has no legal status. We will deal with every appeal as efficiently as we can, but to do this we rely on everyone's co-operation. Appeals to do with listed buildings or buildings in a conservation area are similar to normal enforcement appeals. Appendix 4 tells you about some of the main differences.

# Introducing the

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# 1 Enforcement notice appeals

- 1.1 This advice is important to you. If you have already been served with a copy of an enforcement notice, please read this immediately.
- 1.2 This information, prepared by the Planning Inspectorate, is meant to help anyone served with a copy of an enforcement notice to decide whether there are grounds for appeal to the Secretary of State and if so how to appeal. The Secretary of State responsible is the Secretary of State for Communities and Local Government (DCLG).
- 1.3 This advice is not part of the enforcement notice. It is based on the relevant provisions of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 (see Appendix 7). The advice relates to appeals made after 23 December 2002 under the new Rules and Regulations which are listed in Appendix 6 (pages 55-6). More comprehensive information about the policy for enforcing planning control can be found in Planning Policy Guidance Note 18 (PPG 18) issued by the former Department of the Environment and the former Welsh Office in December 1991. Detailed advice on planning enforcement provisions is contained in former DOE Circular 10/97 available from the Stationery Office and through bookshops (see Appendix 6).

## *Whether to appeal*

- 1.4 You must act quickly in deciding whether to appeal. Any appeal must be made before the date on which the notice takes effect (the 'effective date').

- 1.5 Your local planning authority (LPA) will serve an enforcement notice on you when they consider you have broken planning control rules. Normally this will be because they consider what you are doing, or have done, is harmful to your neighbourhood. You should bear this in mind when considering whether to appeal.
- 1.6 Before you decide to appeal, please carefully consider the LPA's reasons for serving the enforcement notice on you.

### *When to appeal*

- 1.7 We must receive your enforcement appeal, or it must be posted in time to be received in the ordinary course of post, **before** the date on which the notice takes effect. This date is shown in your enforcement notice and should be at least 28 days from when a copy of the enforcement notice is served on you. You should not wait until the last few days. If you do and anything goes wrong, it may be too late to put matters right. This will mean that your enforcement appeal is 'out of time' and we will not be able to accept it.
- 1.8 The LPA should have sent you three copies of the appeal form with this booklet and two copies of their enforcement notice. But if you do not have an appeal form and cannot get one quickly, you may appeal by letter.



### *Who can appeal*

- 1.9 Anyone with an interest in the land may appeal, whether or not they have been served with a copy of the enforcement notice. This normally means the owner, tenant or leaseholder. A mortgage company or other lender can also have an interest.
- 1.10 Anyone occupying the land with the owner's permission may also appeal. But trespassers may not, even if they have been served with a copy of the notice.
- 1.11 If you are unclear about anything, you may find it helpful to consult a professional adviser such as a solicitor, town planning consultant, surveyor or valuer. Or you may prefer to talk the matter over with your local Citizens' Advice Bureau first.
- 1.12 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. 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.
- 1.13 All owners of land are strongly advised to consider the consequences for themselves if they do not appeal against an enforcement notice which they support, but which someone else appeals against. In that event, the owner will have the status of an 'interested person', rather than a 'principal party' in the appeal. This does not entitle the owner to receive a copy of all the representations made by the appellant and other interested people (though the owner would be able to see such representations at the LPA's offices).

- 1.14 When an owner of land does not want to appeal against an enforcement notice, but finds the status of an ‘interested person’ unsatisfactory in relation to an enforcement appeal (for example, an appeal made by a tenant), special arrangements can be made to safeguard the owner’s interest in the appeal. This will involve treating the owner as an ‘interested owner’ for the purpose of the appeal.
- 1.15 Someone who is given the administrative status of ‘interested owner’ will be given the same treatment as an appellant. An opportunity will be given to attend any local inquiry, or be present at a site inspection by our Inspector, and to see and comment on any written representations made by the principal parties, and any other interested parties, during the progress of the appeal. If you are an owner of the land and wish to have the status of ‘interested owner’ in somebody else’s appeal against an enforcement notice, you should tell us as soon as you know that an enforcement appeal has been made.

## 2 Breach of condition notices and Stop notices

- 2.1 You cannot appeal to the Secretary of State against these types of notice.
- 2.2 A ‘breach of condition notice’ is another way that a LPA can make you comply with a condition in a planning permission. It can be served in addition to, or instead of, an enforcement notice. Failure to comply with its requirements is a criminal offence. But there is a right of appeal against an enforcement notice saying you have not met a planning condition. The two sorts of notice will be clearly indicated by the LPA.
- 2.3 A ‘stop notice’ is separate from, but directly related to, an enforcement notice that the LPA have issued. If the LPA serve a stop notice on you, it will normally be because they consider that you have seriously broken planning control rules. It can immediately stop an activity on the land. If you don’t do what it says the LPA may prosecute you for that offence immediately, in the Magistrates’ Court or the Crown Court. This could lead to you being fined. If you think the LPA’s decision to serve a stop notice on you is unfair, you should ask to discuss the matter urgently with them.

## 3 How to make your appeal against an enforcement notice

- 3.1 You can complete an appeal over the internet by logging on to [www.planningportal.gov.uk/pcs](http://www.planningportal.gov.uk/pcs) and submitting your completed appeal on line. Or you can use an official form and send your appeal to us by post, by FAX, or deliver it by hand (see address below). If you submit by FAX keep a hard copy of any transmission report, if you deliver your appeal by hand ask for a dated receipt.

Post to:	or	Deliver by hand to:
The Planning Inspectorate PO Box 326 BRISTOL BS99 7XF		The Planning Inspectorate Temple Quay House 2 The Square Temple Quay Bristol BS1 6PN

Fax: 0117 372 8782  
Helpline: 0117 372 8075

- 3.2 If your appeal arrives ‘out of time’, the postmark on the envelope will be examined to see whether, according to the postage paid, it should normally have been received before the date when the enforcement notice took effect. But if the postmark is unclear and you cannot supply proof of posting in time to be received before that date, your appeal will not be accepted.
- 3.3 If you are submitting your appeal by post you should fill in three copies of the appeal form. You may photocopy the form and send a copy to the LPA and keep a copy for yourself, but you must send the **original** to us. You can use appeal forms from our website: [www.planning-inspectorate.gsi.gov.uk](http://www.planning-inspectorate.gsi.gov.uk)

### *Grounds of appeal*

- 3.4 Your enforcement appeal may be made on any one or more of the grounds in section 174 (2) of the Town and Country Planning Act 1990, as amended by the Planning and Compensation Act 1991.

*Grounds for appeals against listed building and conservation area enforcement notices (Section 39(1) of the Planning (Listed Buildings/Conservation Areas) Act 1990) can be found in Appendix 4 (pages 50 - 53).*

- 3.5 If you decide to appeal, you should indicate the grounds of appeal in the appropriate box on the appeal form. Further grounds of appeal may be introduced if we think they are justified. What follows is a summary of the grounds. You will have to consider which of them apply to your appeal. The grounds are:

3.6 ***Ground (a)***

***That planning permission should be granted for what is alleged in the enforcement notice, or that the condition which is alleged not to have been complied with should be discharged.***

You will normally have to pay a fee for the deemed planning application, which is part of every enforcement appeal, for this ground to be considered. This is because the deemed application and ground (a) raise the same issues as a planning application. The notes accompanying the enforcement notice should advise you whether a fee is payable and how much the fee will be. You may then send in the fee with your appeal, if you want the Inspector to consider the planning merits of your case. If you do not send in the fee with your appeal form, we will let you know if a fee is payable, the amount and the date by which it must be received. Any fee would have to be paid to your LPA and to the Department for Communities and Local Government (DCLG).

If you only put this ground forward and then don't

pay the fee, your appeal will lapse. This means that your appeal will end. More information about fees is given on page 21.

- 3.7 In a very few cases an "Environmental Impact Assessment " (EIA) may also be needed before the planning merits of the deemed planning application can be considered.
- 3.8 The LPA will state their reasons for issuing the notice and summarise their planning objections. They will explain the reasons they would have had for refusing planning permission, had an application been made to them. For example, the LPA may consider that the living conditions in the neighbourhood have been damaged, or their policy concerning Green Belt or other specially designated areas is in danger.
- 3.9 In deciding to issue an enforcement notice, the LPA's first consideration will have been their development plan policies. If the plan has something to say about the type of development involved in your case, the authority will have followed the plan, unless the balance of other considerations tells against it. National planning policy is given in Planning Policy Guidance Notes, which are available from the Stationery Office and major bookstores. Alternatively, you can look at these, and the LPA's development plan, at your Council offices, on the DCLG website: [www.communities.gov.uk/corporate](http://www.communities.gov.uk/corporate) or they may be available from your local public library.

**3.10 *Ground (b)***

***That the breach of planning control alleged in the enforcement notice has not occurred as a matter of fact.***

**3.11 *Ground (c)***

***That there has not been a breach of planning control.***

For example because (depending on what the enforcement notice alleges):

- the change made in the use of the land was not a material one: or
- the operations alleged in the notice did not amount to development; or
- the relevant condition imposed on the permission has been complied with because the LPA have misinterpreted the requirements of that condition; or
- what has been done or built was within the terms of an existing planning permission; or
- the change of use of the land, or the erection of buildings on it, was development permitted by the Town and Country Planning (General Permitted Development) Order which was effective when the development took place (or, in the case of operations, when they began); or
- any change made in the use of the land was within the same 'use class' in the Town and Country Planning (Use Classes) Order which was effective at the time the change took place.

(These are examples, not a complete list.)

### 3.12 *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.*

If you can show that the development occurred **more than four or ten years before** the notice was issued, in the circumstances explained below, you should usually be able to appeal on *ground (d)*:

- **Four years: *operational development and use as a single dwellinghouse***
  - if you carried out and mostly completed building, engineering, mining or other operations without planning permission;
  - if you changed the use of any building to use as a dwellinghouse (the change of use may be without planning permission or involve a failure to comply with a condition of a planning permission).
  
- **Ten years: *change of use***
  - if any other breach of planning control is alleged, such as making a change of use of any land;
  - if you have not met any other condition or limitation subject to which planning permission was granted. (The ten-year period runs from the date the condition is broken, not from the date of the permission on which the condition is imposed).

Exceptionally, the authority can issue an enforcement notice outside the four or ten-year periods if they can show that they had taken or thought they had taken enforcement action within four or ten years, as the case may be, of the date when planning control rules were first broken. If so, this ground will not be available.

### 3.13 ***Ground (e)***

***The notice was not properly served on everyone with an interest in the land.***

Even if you succeed in this ground of appeal, you should be aware that the Inspector or the Secretary of State might disregard the matter. It depends whether they think the failure to serve a copy of a notice on a person has caused that person some injustice.



### 3.14 **Ground (f)**

***That steps required to comply with the requirements of the enforcement notice are excessive and lesser steps would overcome the objections.***

Say why you think that what is required in the notice is more than is necessary. You cannot argue that planning permission should be granted under this ground. To grant planning permission, either in whole or in part, you must normally pay a fee. See the advice under ground (a) above. More information about fees is given on page 21.

### 3.15 **Ground (g)**

***The time given to comply with the notice is too short.***

You should say what you consider to be a more reasonable period and why.

#### *Stating the facts*

3.16 Your appeal must state not only the grounds, in section 174(2) of the Act, on which it is made, but also the facts in support of each chosen ground of appeal.

If you do not provide enough facts when your appeal is first made, we will ask for more. We will impose a 14-day time limit for you to produce the facts. We have the power to dismiss your appeal, or not to consider a particular ground of appeal, if you do not provide the further facts or information within the time limit.

- 3.17 You should think carefully about the facts on which you will rely and try to make sure that you do not confuse facts with grounds. If you appeal, you can state your arguments as well as the facts, if you want. But you must at least state the main facts on which your appeal is based, and you should relate them, if you can, to the grounds of your appeal. It is not enough to copy the wording from the grounds of appeal or to put it into different words.
- 3.18 If we consider that any of your representations contain racist or abusive comments, we will send them back to you before our Inspector sees them. If you take out the racist or abusive comments, you can send your comments back to us. **But we must receive them before the time limit ends.**

*Examples of facts*

- 3.19 **In an appeal on ground (a)**  
The matters you think we should take into account may include, for example, any relevant provision of the development plan or of national planning policy that you think supports what you have done. You may wish to draw our attention to the details of the use or of the operations which are the subject of the enforcement notice, the character of the surrounding area, the uses to which adjoining or nearby premises are put, the length of time for which the use has been carried on and whether any neighbours have complained to you about the activity in that time.
- 3.20 If you do not want to appeal on ground (a), you should consider whether or not to pay the fee for the deemed planning application. If you pay the fee you may still like to provide these facts so that they can be taken into account in deciding the deemed application.

### 3.21 **In an appeal on ground (b)**

This ground lets you maintain that the Council's allegation in the notice has not occurred, as a matter of fact. You should therefore state the relevant facts and show how they differ from what is alleged in the notice.

### 3.22 **In an appeal on ground (c)**

Whatever the allegation, you should explain precisely why you consider there has been no breach of planning control. For example, when the allegation in the notice is the making of a material change of use of the property without the grant of planning permission, explain as far as you can what the previous use of the land was, when it began and whether it was authorised by a planning permission which is still valid for what you are doing. If the enforcement notice alleges a breach of condition of a planning permission, state what steps have been taken to comply with the condition. If it relates to operations which you think were development permitted by the Town and Country Planning (General Permitted Development) Order, state why you think the use of the land is lawful for planning purposes and is entitled to the benefits of 'permitted development' rights. If you are in doubt about what is required, state briefly, with relevant dates, what permissions have been granted in respect of the land, the various uses carried on at the property, or the building or other operations carried out.

### 3.23 **In an appeal on ground (d)**

It is not enough to say: 'The breach of planning control occurred more than ten years ago', or 'The building was finished more than four years before the notice was issued' or 'The change to the present use occurred more than ten years ago'. But you could say, for example: 'The present use was started by the late Mr George Smith in the summer of 1990. He continued it until his death in 1997. Then I bought the

premises and have carried on the same use continuously until now’, or ‘The foundations for the building were dug in March 1998. Work proceeded slowly at first because the builder I employed was doing other work, but he started full-time work on the building in the summer of that year, the roof was tiled by the end of September and the building was almost completed and put to use by mid-October 1998.’

**3.24 In an appeal on ground (e)**

State the name and address of the person who you think ought to have been served with a copy of the notice and the nature of his or her interest (for example, joint owner, sub-tenant). Before making an appeal on this ground, you should check carefully that the person concerned has not been served with a copy of the notice. You should also consider whether you or that person has been caused a serious problem by the failure. It is not normally considered necessary to serve a separate copy of a notice on members of the same family living together.

**3.25 In an appeal on ground (f)**

State the circumstances which make you think that any step or steps required by the enforcement notice is more than is necessary. You cannot argue that planning permission should be granted under this ground. To grant planning permission, either in whole or in part, you must normally pay the deemed application fee.

**3.26 In an appeal on ground (g)**

Say why you think that the time allowed for complying with the enforcement notice is too short. You should say what period you consider would be adequate, and why.

*If you want to challenge the validity of the enforcement notice*

- 3.27 If you think the enforcement notice is wrong, because of the way it is written or authorised, you can raise the matter separately from your chosen grounds of appeal against the notice. To challenge the notice you should tell us the reasons why when you submit your appeal, supporting your arguments with relevant facts.
- 3.28 We will ask the LPA for their comments. We might decide that your appeal cannot go ahead. The LPA may later issue a further enforcement notice against you and, if you don't agree with it, you must send another appeal to us. If the position on the validity of the notice is unclear, your appeal will proceed as normal and a decision will be given in the Inspector's or Secretary of State's decision letter.

*Environmental impact assessments*

- 3.30 It will only be necessary in a very few cases, but you may have to provide an environmental statement with your appeal, giving details of the environmental effects of the development shown in your enforcement notice. Usually, the LPA will give you notice (called a regulation 25 notice) that such a statement is required, at the same time as they serve you with a copy of the enforcement notice. If you don't supply an assessment with your appeal, or within the time we ask for it, we won't be able to consider the deemed application for planning permission or ground (a). If you think the LPA were wrong to ask for an environmental impact assessment you can apply to us for a direction on whether one is necessary.

## *The choice of procedure*

### **3.31 Written procedure**

If everyone agrees, and the appeal is suitable, we will decide it on the basis of written exchanges of information from you, the LPA and anyone else who has an opinion on your appeal. The information could include maps, plans and photographs but not oral evidence. It depends on the choice of procedure whether we also accept video or sound tapes (see below). The Inspector will normally visit the site.

3.32 We do not accept tape evidence for appeals under this procedure. This is because we cannot be certain that all parties to the appeal have suitable equipment to play the tape and that identical copies have been sent. You can send a written summary of the tape's content, including photographs.

### **3.33 Hearings and inquiries**

Under these procedures the Inspector will decide whether or not to take into account video or sound tapes. He or she will let you know their decision when the hearing or inquiry opens. You must contact the LPA to find out whether they have suitable equipment to play the tape at the hearing or inquiry, or if they will allow you to use your own.

3.34 If you, the LPA or we do not agree to the written procedure, we will arrange a hearing or local inquiry. You can find more details of the different procedures in sections 6, 7 and 8.

3.35 When you are deciding which procedure to use, you should take into account the following points:

- The result of your appeal will depend on the facts and planning arguments.

- The written procedure is usually quicker and cheaper.
- A hearing is an informal way to give evidence and make oral submissions to the Inspector. Formal cross-examination is not usually allowed.
- You or the LPA can ask for an inquiry, or we can decide that this is the best procedure for your appeal.
- At an inquiry you can make representations to the Inspector personally and challenge any evidence put forward against your appeal.

3.36 To avoid extra costs and to get a decision as quickly as possible, most people only ask for a hearing or inquiry if they think it is necessary. The written procedure is the most common. We may consider an inquiry is essential for taking evidence in person from witnesses or representatives, especially if you have appealed on ground (d).

### *Fees*

3.37 Every enforcement appeal includes an application for planning permission. We call this the ‘deemed planning application’. A fee is normally payable for consideration of this, which is double the amount paid for a normal planning application. Half the fee is payable to the LPA and half to the Department for Communities and Local Government (DCLG). There is no fee for the appeal itself.

3.38 Every enforcement notice served should include advice on the fee payable if you want the planning merits of your appeal to be considered. You should send any fee with your appeal forms. If, for some reason you are not aware of the fee or you cannot forward it with the form do not delay the submission of your appeal. We will advise you of the fee and send invoices giving a set period (usually 2 weeks) in which to pay, when we start your appeal.

- 3.39 There is, however, a link between the deemed planning application and an appeal on ground (a). Unless the fee is received by both the LPA and DCLG by the date we ask for it, the deemed planning application and any appeal on ground (a) cannot be considered. Your appeal would then proceed on any other ground(s) made. If, however, ground (a) is the only ground you have put forward, your appeal will lapse. This means that it will come to an end and the enforcement notice will come into effect.
- 3.40 If you do not appeal on ground (a) and you don't want the planning merits of the deemed planning application considered; for example, because you know you would not succeed in getting planning permission for what you have done or you only want to appeal on other grounds; there is no point in paying the fee.
- 3.41 Where more than one person has appealed against the same enforcement notice, only one need pay the fee for the deemed planning application and any appeal on ground (a) to be considered. If this is the case we will let you know. The fee cannot, however, be transferred to another person if the person paying the fee, or who doesn't have to pay, later withdraws his or her appeal. It is up to you to decide whether or not to pay the fee in case this happens.
- 3.42 If you cannot pay the fee by the date given, we can extend the payment period in exceptional circumstances, but this can only be done **before** the payment period expires. If you feel that there are exceptional circumstances that prevent you from paying the fee by the date given, **let us know straight away**. It is too late to do anything if the payment period has passed. The deemed planning application and your appeal on ground (a) will lapse and cannot be reinstated.



3.43 No fee is payable when:

- Development is carried out at the home of a disabled person to provide access or special facilities needed because s/he is disabled.
- ‘permitted development’ rights have been withdrawn.
- A condition on an earlier permission removes rights under the Use Classes Order.
- Before the notice was issued you applied for planning permission for the same development shown in the notice, you paid the fee to the LPA and your application had not been determined.
- Before the effective date of the notice you had made an appeal to the Secretary of State against the refusal of the LPA to grant planning permission for the same development shown in the notice and your appeal had determined.

3.44 Part of the normal fee is payable when:

- A parish or community council carries out the development.
- A club, society or other non-profit making organisation carries out the development for:
  - changing the use of land to a playing field; or
  - carrying out work related to use of land as a playing field (but not including a building).

3.45 Refunds of the fee are made when:

- Your appeal is withdrawn at least 21 days before the site visit, hearing or local inquiry.
- The LPA withdraw their enforcement notice.
- You win your appeal on legal ground (b), (c), (d) or (e).
- An appeal or enforcement notice is turned away because you or the LPA have failed to meet all the procedures.
- An enforcement notice is not acceptable for legal reasons.

3.46 A part refund will be made in the event of overpayment and if the appeal decision changes the description of the development in the enforcement notice and a lower fee should have been charged. If the appeal relates to siting of a caravan, no refund is due because the Inspector usually considers the planning merits of the caravan. This is because planning permission, or a certificate of lawful use or development, is required to obtain a site licence from the LPA. If your appeal succeeds on ground (c) or (d), our Inspector may grant a certificate of lawful use or development if you have specifically asked him or her to do this and have paid the fee.

#### *Who decides your appeal?*

3.47 You make enforcement appeals to the Secretary of State at the Department for Communities and Local Government. Almost all appeals will be decided by Planning Inspectors. The Secretary of State can decide any enforcement appeal, but does so in less than 2% of cases, usually if there are issues which affect more than just the local area. He won't decide your appeal just because you have asked for this. But if he does, we will tell you why.

#### *Withdrawing your appeal*

3.48 You can withdraw your appeal at any time before it is decided. You may want to do this if, for example, you and the LPA reach agreement and can sort out your differences without an appeal. If you decide you want to withdraw your appeal you should phone your case officer straight away and then write to confirm the withdrawal, giving the appeal reference number. You should also tell the LPA immediately. This is especially important if we have arranged for a site visit, hearing or inquiry to take place. If you unreasonably withdraw your appeal after we have made these arrangements, you may have to pay the costs of the other people involved. Section 9 has more information about costs.

## 4 Is anyone else involved?

- 4.1 Yes. Other people who have an interest in your appeal, for example environmental groups or neighbours, are called ‘interested people’. They have a chance to tell us what they think about your enforcement appeal.

### *How will other parties find out about the appeal?*

- 4.2 We ask the LPA to write to anyone who lives in nearby property and others who they think are affected by your appeal. We ask the LPA to let interested people know the procedures we will use to decide the appeal and the timetable for receiving their comments.
- 4.3 We will send copies of comments we receive from interested people to you and the LPA.
- 4.4 For appeals that we are deciding by inquiry or hearing, the LPA will also tell interested people about the arrangements and invite them to come. They can also inspect, at the Council's offices, the grounds of appeal and the LPA's written evidence supporting their enforcement notice.
- 4.5 If there is going to be an inquiry, you must put a notice that we will send you on the appeal site. The LPA may also have to put up notices in public places and tell the local papers.
- 4.6 Before we take the views of interested people into account, we will give you and the LPA a chance to see the comments they have made and give us your views.

## 5 Timetable for appeals

- 5.1 There are important time limits to keep when you send us comments on your appeal. They apply to the LPA as well. When we have accepted your appeal we will write to you confirming which procedure it will follow. Our letter will also tell you the ‘starting date’. This is an important date because it starts the timetable for us receiving comments from you and the LPA. Our letter tells you the time limits. **If we receive comments after any of the time limits, we will not normally take them into account and we will send them back.**
- 5.2 The following timetable and stages apply to all appeals, whatever procedure is used.
- Within two weeks of the starting date, the LPA will send you and us a questionnaire which they have filled in. They will also tell interested people about the appeal by the same date.
  - Within six weeks of the starting date, you and the LPA should send a statement of your case. We will send you and the LPA a copy of what the other has sent and any comments from interested people (if we have received them in time).
  - Within nine weeks of the starting date, you and the LPA should send us any comments on each other’s statement and comments from interested people.
- 5.3 Some other stages apply if your appeal is being dealt with at a hearing or inquiry. These are explained in sections 7 and 8.

## 6 The written procedure

- 6.1 Appeals which are decided by the written procedure are governed by *The Town and Country Planning (Enforcement) (Written Representations Procedure) (England) Regulations 2002*. The timetable for the written procedure is designed to make the appeal proceed quickly and fairly. The diagram at Appendix 1 shows the timetable. Everyone involved in the appeal should keep to the timetable or their representations may not be taken into account.
- 6.2 The grounds of appeal and supporting facts, set out on the appeal form, make up your case. If you don't give them to us or we think your grounds and facts are inadequate, we will ask you for more details. If we don't receive them in time we won't deal with your appeal on any of the grounds which are not supported by facts.
- 6.3 The regulations say that the LPA must fill in a questionnaire and send it to you and us with documents to support their decision. These documents include the relevant plans or policies on which the decision to issue an enforcement notice was based.
- 6.4 If you or the LPA want to say any more, we must receive two copies within six weeks of the 'starting date'. We will send a copy of your comments to the LPA and send you a copy of anything they send us. We will also send you any comments from interested people. If possible you should follow the guidelines on how to set out your statement in Appendix 5.
- 6.5 Within nine weeks of the starting date, you and the LPA can send us any comments on each other's statement and those made by any interested people. If we receive these outside the time limit, we will not normally consider them.

- 6.6 Don't comment just for the sake of it. Only send us further comments if you have something new to say.

*Using E-mail or post*

- 6.7 If you send us documents by e-mail, you only need to send us one copy of each. However, if you post your documents, please send us **2 copies** of everything and put the full appeal reference number on each copy.

*Late comments*

- 6.8 We expect everyone involved to keep to the timetable. If we receive representations from you, the LPA or interested people after the time limit ends, the Inspector will not normally take them into account when deciding your appeal. If the Inspector asks for more information from you or the LPA, we will send a copy of that information to you or the LPA. We will allow time for comment.

*The site visit*

- 6.9 We will send the appeal papers to the Inspector. He or she will study the enforcement notice, appeal papers and comments, and will normally visit the site.
- 6.10 If you said on your appeal form that the Inspector can view the site from public land, and the LPA agree, we will arrange an unaccompanied site visit where the Inspector will not meet anyone. Anything you want to say about your appeal must be in writing.

## 7 The hearing procedure

- 7.1 If you or the LPA don't agree to the written procedure, there will be a hearing or inquiry instead. Hearings are less formal than inquiries and usually involve an open discussion led by the Inspector. You and the LPA can ask for a hearing, but you don't have the right to one.
- 7.2 The hearing procedure is usually quicker and cheaper than an inquiry. We will agree to a hearing whenever it is appropriate. Hearings aren't suitable for all appeals, especially those which are complicated or controversial, or have caused a lot of local interest or where it is necessary to cross-examine witnesses because facts are at issue.
- 7.3 The rules for dealing with hearings are *The Town and Country Planning (Enforcement) (Hearings Procedure) Rules 2002*. Like other procedures, there are important time-limits for us to receive your comments. The Inspector will not normally consider any comments we receive after the time-limit ends, and we will send them back.
- 7.4 The timetable and stages of the appeal leading up to the hearing are explained in Section 4 and shown at the back of this booklet on the diagram in Appendix 2. If possible you should follow the guidelines on how to set out your statement in Appendix 5.

### *Using E-mail or post*

- 7.5 If you send us documents by e-mail, you only need to send us one copy of each. However, if you post your documents, please send us **2 copies** of everything and put the full appeal reference number on each copy.

### *The hearing*

- 7.6 We will arrange a convenient time and date for the hearing. If you can't accept the first date we offer, we will set another and will expect you to attend. We will give you and the LPA at least four weeks' notice of the hearing date.
- 7.7 We will ask the LPA to advertise the hearing in a local newspaper at least two weeks before the hearing date, and to let interested people know about it.
- 7.8 At the hearing, the Inspector will lead an informal discussion on the main issues. People don't usually have a legal representative with them at hearings, but may if they wish.

### *The hearing site visit*

- 7.9 The Inspector will decide whether to visit the site or continue the discussion at the site. He or she will tell you this at the hearing.
- 7.10 At the site visit you can point out physical features about the site and its surroundings. You can discuss your appeal if the Inspector agrees.

### *People with disabilities*

- 7.11 We want to hold all hearings in buildings that give proper facilities for people with disabilities. The LPA usually choose and provide the place and we have asked them to pay particular attention to the needs of people with disabilities. If you, or anyone you know, want to go to the hearing and you have particular needs, please contact the LPA to confirm they can make proper arrangements.



## 8 The inquiry procedure

8.1 The rules that govern appeals decided by inquiry are called the *The Town and Country Planning (Enforcement) (Inquiries Procedure) (England) Rules 2002*. There are two sets of rules depending on whether the Inspector or the Secretary of State will decide your appeal.

8.2 The early stages of your appeal will be as described in section 5. But there are some more things you and the LPA will have to do. The diagram in Appendix 3 at the back of this booklet explains the inquiry timetable.

8.3 We hold an inquiry if you or the LPA decide that you can't rely on the written procedure and a site visit, and we have decided that a hearing is unsuitable. Sometimes we decide that an inquiry is necessary. If we do we will give you reasons for our decision. We will do the following for all inquiry cases.

- Tell you and the LPA that there will be an inquiry. Our letter will set the 'starting date' and explain what you will have to do.
- Set a date for the inquiry.
- Appoint a suitable Inspector. We might have to transfer the case to another Inspector, sometimes at short notice, but we will keep you up to date about any change.

8.4 We will fix the inquiry date as early as possible. We will contact you and the LPA about the arrangements. You and the LPA can normally only refuse one date before we arrange the inquiry. You are entitled to at least 28 days' notice, in writing, of the inquiry arrangements. But if the appeal is urgent, or if a cancellation releases an early date, we might ask you to accept less notice.

### *Exchanging written statements*

- 8.5 You and the LPA must send us two copies of the case you intend to make at the inquiry, together with any documents and plans. We must receive these within six weeks of the starting date. The LPA statement will include any instructions from the highway authority, and will say whether any government department or local authority has comments on the alleged development. When preparing your statement you should, if possible, follow the guidelines on how to set it out as outlined in Appendix 5.
- 8.6 We will send a copy of the LPA's statement to you and a copy of your statement to them. We will also send you and the LPA a copy of any comments from interested people and anyone else who has a right to comment. You and the LPA can make written comments on these.

### *Proofs of evidence*

- 8.7 If you, or any of your witnesses, have a statement that is going to be read out at the inquiry (a 'proof of evidence'), you must send us two copies at least four weeks before the inquiry. The LPA must do the same. We will send a copy of your proof of evidence to the LPA and a copy of theirs to you. If the statement is more than 1,500 words long there should also be a summary. The summary should not introduce new evidence. Where a summary is provided, usually only that will be read at the inquiry. If you or the LPA don't send your proofs to us in time, the inquiry may be stopped for a while and you or the LPA may have to pay costs.

### *Using E-mail or post*

- 8.8 If you send us documents by e-mail, you only need to send us one copy of each. However, if you post your documents, please send us **2 copies** of everything and put the full appeal reference number on each copy.

### *Statement of common ground*

- 8.9 You must discuss all the points about your appeal that you and the LPA agree, for example, the site, area, plans and so on. At least four weeks before the inquiry date you must send us a written copy of what you have both agreed. This is called a ‘statement of common ground’.

### *Advertising the inquiry*

- 8.10 We will send you a notice that gives the details of the inquiry arrangements. You must put it up on the site before the inquiry takes place. If the land isn’t under your control, we will ask the LPA to put up the notice somewhere people can easily see it near the site. We will also ask the LPA to tell the local papers and anyone else who may be interested or affected by your appeal.

### *At the inquiry*

- 8.11 The Inspector will start by introducing him or herself, announce the subject of the inquiry and ask for the names of all those who wish to speak. The Inspector will then normally explain the procedure.
- 8.12 Everyone who takes part in the inquiry must follow the same rules. This is to make sure that the procedure is fair to everyone. The Inspector will make sure that he or she has all the information needed to decide the appeal.
- 8.13 You will usually present your case first, then call any witnesses. The LPA and the Inspector can ask questions. The LPA will then present their case in the same way, and you and the Inspector can ask them or their witnesses any questions.

- 8.14 After this, other interested people - for example, neighbours or representatives of local amenity societies - will usually have a chance to put their point of view. The Inspector may allow them to be questioned or to question you, and will make sure that you, and the LPA, have seen any letters from interested people or groups who can't be there in person. You, and the LPA, have the right to make a closing statement. You will usually speak last. This allows you to tell the Inspector about the important points that have come up during the questions. But you can't introduce new arguments.
- 8.15 Anyone involved can use a lawyer or other person to put their case. Our Inspector will treat all arguments the same, whoever puts them, and will make sure that the appeal is conducted and reported fairly.

#### *The inquiry site visit*

- 8.16 The Inspector will usually visit the appeal site and surroundings alone, before the inquiry starts. Both you and the LPA can ask the Inspector to visit the site during the inquiry, or after the inquiry has finished, and to be there or represented. During the site visit, the Inspector will ask you and the LPA if there is anything about the appeal site that you want to point out. But you can't say anything else about your appeal.

#### *Late comments*

- 8.17 The Inspector will only consider any evidence we receive after the inquiry has closed in extraordinary circumstances.

#### *People with disabilities*

- 8.18 We want all inquiries to be held in buildings that give proper facilities for people with disabilities. The LPA usually choose and provide the place and we have asked them to pay particular attention to the needs of people with disabilities.

If you, or anyone you know, want to go to the inquiry and you have particular needs, please contact the LPA to confirm they can make proper arrangements.

*Meetings before an inquiry*

- 8.19 Sometimes, if a lot of people want to attend the inquiry or the appeal is complicated, we will arrange a meeting before the inquiry (a pre-inquiry meeting). We will tell you if we decide to do this and will explain what the meeting will cover. We normally arrange this type of meeting if we think the inquiry will last for more than four days.
- 8.20 This type of meeting will only deal with things like defining the main issues, the order that you, the LPA and any other people will present evidence and how long it will take. You cannot discuss your appeal representations at this meeting.

## 9 Appeal Costs Awards

- 9.1 You and the LPA normally have to meet your own appeal expenses, whether we decide it by the written procedure, a hearing or an inquiry.
- 9.2 You can ask the Secretary of State or the Inspector to order the LPA to pay all or some of your costs. The LPA can also ask for you to pay some or all of their costs.
- 9.3 The Secretary of State or the Inspector will only do this if the person applying can show that the other side behaved unreasonably, and put them to unnecessary or wasted expense.
- 9.4 If your appeal is by the written procedure you should say why you think costs should be awarded to you before the Inspector visits the site. If we decide your appeal by a hearing or an inquiry, you should state your case for a costs award before the hearing or inquiry closes.
- 9.5 We will send you our separate guide ‘Costs awards in planning appeals’. It is important that you read this guide because it explains how, when and on what basis you can make an application or have an application made against you. Further information on costs is available from our website.

## 10 The Decision

### *The Inspector's decision*

- 10.1 The Inspector will write to you with his or her decision. It will usually:
- Describe your enforcement appeal.
  - Identify the grounds, facts and important planning arguments.
  - Examine the main arguments and explain why the Inspector has come to the decision.
- 10.2 We will send a copy of the decision to the LPA and anyone else who is entitled to a copy or who asked for one.
- 10.3 The Inspector is not able to investigate maladministration (please see following chapter 11).

### *Decision by the Secretary of State*

- 10.4 The Inspector will send a report to the Secretary of State. The Inspector's report will include conclusions on the issues raised and a recommendation as to whether or not the appeal should be allowed.
- 10.5 The Secretary of State doesn't have to accept the Inspector's recommendation and will consider everything that is relevant. Sometimes the Secretary of State disagrees with the Inspector's recommendation. If this is because he or she takes into account new evidence introduced after the inquiry, or because he or she differs with one of the Inspector's findings, you and the LPA will have a chance to comment before the decision is made. If it is necessary, we may re-open the inquiry. Someone authorised by the Secretary of State will sign the letter telling you the decision.
- 10.6 The Secretary of State will send a copy of the decision letter and the Inspector's report to you, the LPA and anyone else who is entitled to a copy or who asked for one.

# 11 Complaints and Challenges

## *Complaints about The Planning Inspectorate*

- 11.1 The first letter we send you accepting your appeal will give the name of your case officer. He or she should be the first person you contact with any queries or complaints about the way we handle your appeal.
- 11.2 If you have any complaints or questions about the decision, or the way we have handled the appeal, please write to:

The Planning Inspectorate  
Quality Assurance Unit  
4/09 Kite Wing  
Temple Quay House  
2 The Square  
Temple Quay  
Bristol BS1 6PN  
Phone: 0117 372 8252  
Fax: 0117 372 8139  
E-mail: [complaints@planning-inspectorate.gsi.gov.uk](mailto:complaints@planning-inspectorate.gsi.gov.uk)

- 11.3 The Quality Assurance Unit will reply to you, or they will ask a section within the Inspectorate to reply because they have specific specialist knowledge.

## *The High Court*

- 11.4 The only way you can appeal against our Inspector's decision is in the High Court. To be successful, you would have to show that the Inspector made a legal or procedural mistake.



- 11.5 If your challenge is successful we will look at your appeal again. But this doesn't necessarily mean that the original decision will be reversed. An Inspector may come to the same decision again but for different reasons.
- 11.6 If you are going to challenge the decision, you must apply to the High Court within 28 days, or 6 weeks, of the date of the appeal decision, depending on the type of challenge. We will send you a leaflet explaining this right with our Inspector's decision.

*The Parliamentary Commissioner for Administration  
(the Ombudsman)*

- 11.7 If you think that we haven't treated you fairly, you can ask the Ombudsman to investigate. You can't approach the Ombudsman direct - an MP must do it for you. This doesn't have to be your MP but this will usually be the easiest person to ask. Your local library will be able to give you the name and address of your MP. The Ombudsman has no power to question the merits of your appeal or to alter our decision. He or she is only concerned with the way we deal with and administer appeals. The Ombudsman will usually expect you to have made a complaint to us first before he or she investigates your case.

*The Administrative Justice & Tribunals Council*

- 11.8 If you feel that there was something wrong with the basic procedure we used for your appeal, you can complain to the Administrative Justice & Tribunals Council at:

81 Chancery Lane  
London  
WC2A 1BQ

- 11.9 The Council will take up your complaint if they think it concerns them. Like the Ombudsman, they aren't concerned with the merits of your appeal and have no power to alter our decision.

*The Local Government Ombudsman*

- 11.10 If you have a complaint about the way the LPA dealt with you, you can, in some cases, ask the Local Government Ombudsman to investigate. However, the Local Government Ombudsman can't investigate a complaint about a LPA's decision just because you don't agree with it, and the Ombudsman has no power to alter their decision. You can get a booklet explaining how to make a complaint by writing to the appropriate Local Government Ombudsman's office.
- 11.11 There are three Local Government Ombudsmen in England. Each of them deals with complaints from different parts of the country:

For Greater London:  
Local Government Ombudsman  
21 Queen Anne's Gate  
London SW1H 9BU  
Phone: 0207 915 3210  
Fax: 0207 233 0396

For Surrey, Kent, Sussex, East Anglia; the south-west, the west, the south and most of central England:  
Local Government Ombudsman  
The Oaks No 2  
Westwood Way  
Westwood Business Park  
Coventry CV4 8JB  
Phone: 02476 695699  
Fax: 02476 695902

For Birmingham, Staffordshire, Shropshire, Cheshire,  
Derbyshire, Nottinghamshire, Lincolnshire and the  
north of England:

Local Government Ombudsman

Beverley House

17 Shipton Road

York YO30 5FZ

Phone: 01904 663200

Fax: 01904 663269

11.12 We also deal with other types of appeal.

If you are appealing against being refused **planning  
permission**, this is who you should contact.

Planning Appeals

The Planning Inspectorate

Room 3/15 Eagle Wing

Temple Quay House

2 The Square

Temple Quay

Bristol

BS1 6PN

Phone: 0117 372 8927

If you are appealing against being refused **advertisement  
consent**, this is who you should contact.

Advertisement Appeals

The Planning Inspectorate

Room 3/17 Eagle Wing

Temple Quay House

2 The Square

Temple Quay

Bristol

BS1 6PN

Phone: 0117 372 8577

Fax: 0117 372 8181

- **Address, phone and fax numbers for enforcement appeals:**

Send appeals by post to:

The Planning Inspectorate  
PO Box 326  
BRISTOL  
BS99 7XF

Fax number: 0117 372 8782

Deliver appeals by hand to (make sure you get a receipt):

The Planning Inspectorate  
Temple Quay House  
2 The Square  
BRISTOL  
BS1 6PN

Helpline number: 0117 372 8075

Website: [www.planning-inspectorate.gov.uk](http://www.planning-inspectorate.gov.uk)

### *Appeal checklist*

- Act quickly in deciding whether to appeal
- Remember you may have only 28 days to get your appeal to us
- Fill in all parts of the appeal form
- Choose your grounds of appeal
- State the facts in support of your grounds
- Attach a copy of the enforcement notice and plan to your appeal form
- Send a copy of your appeal to your local planning authority (LPA)



# Appendix 1

## The written procedure

Timetable	You
<p style="text-align: center;"><b>Appeal made (before the effective date) We set a starting date</b></p>	<p>You send your appeal form and all supporting documents to us and the LPA. The grounds of appeal and supporting facts should make up your full case.</p>
<p style="text-align: center;"><b>Within 2 weeks from the starting date</b></p>	<p>You receive from the LPA a completed questionnaire and any supporting documents. (One copy if sent by e-mail)</p>
<p style="text-align: center;"><b>Within 6 weeks from the starting date</b>  (Late statements will not normally be accepted but will be sent back)</p>	<p>You send the us 2 copies of any further statement. (One copy if sent by e-mail)</p>
<p style="text-align: center;"><b>Within 9 weeks from the starting date</b>  (Comments sent late will not normally be accepted but will be sent back.)</p>	<p>You send us 2 copies of your final comments on the LPA's statement and on any comments from interested people. (One copy if sent by e-mail) <b>No new evidence is allowed.</b></p>

Note: We send copies of statements and comments to you and the LPA by first-class post or e-mail. We aim to do this within a week of the deadlines.

LPA	Interested People
<p>If the LPA don't want the written procedure (or we decide the appeal needs to be heard before an Inspector), we will tell you and arrange a hearing or inquiry.</p>	
<p>The LPA send you and us a copy of a completed questionnaire and supporting documents. They also write to interested people about the appeal.</p>	<p>Interested people receive the LPA's letter about the appeal.</p>
<p>The LPA send us 2 copies of their statement.</p>	<p>Interested people send us 3 copies of any comments.</p>
<p>The LPA send us 2 copies of their final comments on the appellant's statement and on any comments from interested people. <b>No new evidence is allowed.</b></p>	

**Decision:** After any site visit (or advice that one will not be held) the Inspector/person appointed writes the decision or sends a report to the Secretary of State. **You and the LPA will be sent a copy of the decision notice. Anyone requesting a copy will also be sent one, as will any other person who was served with a copy of the enforcement notice.**

## Appendix 2

### The hearing procedure

Timetable	You
<p style="text-align: center;"><b>Appeal made (before the effective date) We set a starting date</b></p>	<p style="text-align: center;">You send appeal form and all supporting documents to us and the LPA.</p>
<p style="text-align: center;"><b>Within 2 weeks from the starting date</b></p>	<p style="text-align: center;">You receive from the LPA a completed questionnaire and any supporting documents.</p>
<p style="text-align: center;"><b>Within 6 weeks from the starting date</b>  (Late statements will not normally be accepted but will be sent back.)</p>	<p style="text-align: center;">You send the Inspectorate 2 copies of your hearing statement. (One copy if sent by e-mail)</p>
<p style="text-align: center;"><b>Within 9 weeks from the starting date</b>  (Comments sent late will not normally be accepted but will be sent back.)</p>	<p style="text-align: center;">You send us 2 copies of your final comments on the LPA's statement and on any comments from interested people. (One copy if sent by e-mail) <b>No new evidence is allowed.</b></p>

Note: We send copies of statements and comments to you and the LPA by first-class post or e-mail. We aim to do this within a week of the deadlines.



LPA	Interested People
<p>The LPA let us know if they don't think a hearing is suitable.</p>	
<p>The LPA send you and us a copy of a completed questionnaire and supporting documents. They also write to interested people about the appeal.</p>	<p>Interested people receive the LPA's letter about the appeal.</p>
<p>The LPA send us 2 copies of their statement.</p>	<p>Interested people send us 3 copies of any comments.</p>
<p>The LPA send us 2 copies of their final comments on the appellant's statement and on any comments from interested people. <b>No new evidence is allowed.</b></p>	<p>Interested people are told about the hearing by the LPA. They may attend the hearing and, if the Inspector agrees, give their views.</p>

**Decision:** After the hearing the Inspector writes the decision or sends a report to the Secretary of State. **You and the LPA will be sent a copy of the decision notice. Anyone requesting a copy will also be sent one, as will any other person who was served with a copy of the enforcement notice.**

# Appendix 3

## The inquiry procedure

Timetable	You
<p align="center"><b>Appeal made (before the effective date) We set a starting date</b></p>	<p align="center">You send appeal form and all supporting documents to us and the LPA.</p>
<p align="center"><b>Within 2 weeks from the starting date</b></p>	<p align="center">You receive from the LPA a completed questionnaire and any supporting documents.</p>
<p><b>Within 6 weeks from the starting date.</b> (Late statements will not normally be accepted but will be sent back.)</p>	<p align="center">You send us 2 copies of your Inquiry Statement. (One copy if sent by e-mail)</p>
<p><b>Within 9 weeks from the starting date</b> (Comments sent late will not normally be accepted but will be sent back.)</p>	<p align="center">You send us 2 copies of their final comments on the LPA's statement and on any comments from interested people. (One copy if sent by e-mail) <b>No new evidence is allowed.</b></p>
<p align="center"><b>4 weeks before the inquiry</b> (Proofs of evidence sent late will not normally be accepted, but will be sent back.)</p>	<p align="center">You send us 2 copies of their proof of evidence and 1 copy of the statement of common ground.</p>

Note: We send copies of statements and comments to you and the LPA by first-class post or e-mail. We aim to do this within a week of the deadlines.

LPA	Interested People
<p>The LPA receive the appeal documents.</p>	
<p>The LPA send you and us a copy of a completed questionnaire and supporting documents. They also write to interested people about the appeal.</p>	<p>Interested people receive the LPA's letter about the appeal.</p>
<p>The LPA send us 2 copies of their further statement.</p>	<p>Interested people send us 3 copies of any comments.</p>
<p>The LPA send us 2 copies of their final comments on the appellants statement and on any comments from interested people. <b>No new evidence is allowed.</b></p>	
<p>The LPA send us 2 copies of their proof of evidence. The LPA put a notice in a local paper about the inquiry and notify interested people.</p>	<p>Interested people are told about the inquiry by the LPA. They may attend and, at the Inspector's discretion, express their views.</p>

**Decision:** After the inquiry the Inspector writes the decision or sends a report to the Secretary of State. **You and the LPA will be sent a copy of the decision notice. Anyone requesting a copy will also be sent one, as will any other person who was served with a copy of the enforcement notice.**

# Appendix 4

## Listed Buildings and Conservation Area Enforcement Notice Appeals

A listed building enforcement notice is issued by your LPA when:

- Demolition or works for alteration or extension have been carried out to a listed building, without consent, and the works affect its character as a building of special architectural or historic interest.
- There is failure to comply with any condition attached to a listed building consent.

A conservation area enforcement notice is issued by a LPA when they consider an unlisted building in a Conservation Area has been demolished without the grant of Conservation Area Consent.

Appeals against these notices are considered by the same procedures as enforcement appeals. Similar rules and timetables apply, as described in this booklet. There are two main differences. Your appeal can be made on any one or more of 11 grounds lettered (a) to (k), which are explained below and in the appeal form. And, in these sorts of appeals, there is no deemed application fee to pay.

Your LPA should have sent you three copies of the ‘Listed Building/Conservation Area Enforcement Notice Appeal’ forms with their notice. But if you do not have an appeal form and cannot get one quickly, you may appeal by letter. Visit our website or phone our helpline number shown at the back of this booklet if you have any questions.

### *Planning (Listed Buildings/Conservation Areas) Act 1990*

- A **‘listed building’** is defined in section 1 of the Act as a building which is for the time being included in a list compiled or approved by the Secretary of State under that section. For the purpose

of the Act any object or structure fixed to the building, which, since on or before 1 July 1948, has formed part of the land and is comprised within the curtilage of the building is treated as part of the building. 'Building' is defined as including any structure or erection and any part of a building.

- Listed Building Consent is required for the demolition or partial demolition of a listed building, or for its alteration or extension in any manner which would affect its character as a building of special architectural or historic interest. Examples of the types of alteration or extension which would normally require listed building consent are:

- a) an extension to a building whether or not it is within the permitted development limits of the Town and Country Planning General Permitted Development Order 1995;

- b) alteration such as the removal and replacement of doors and windows; and

- c) alterations to the interior fabric of a listed building.

- **Conservation Area Consent.** The provisions of the Act relating to listed buildings are applied, with modifications, to the demolition of unlisted buildings in conservation areas. This requires conservation area consent.

### *Grounds of appeal – Section 39(1)*

**(a) That the building is not of special architectural or historic interest. -**

That is to say that although the building is listed, it is not outstanding and worthy of preservation. This ground, in effect, invites the Secretary of State to remove the building from the statutory list. In the case of a conservation area enforcement notice, ground (a) reads: "that retention of the building is not necessary in the interests of preserving or enhancing the character or appearance of the conservation area in which it is situated." (see SI 1990 No 1519 reg 12 and Schedule 3).

**(b) That the matters alleged to constitute a contravention of section 9(1) or (2) have not occurred.** - That what is alleged in the notice has not taken place as a matter of fact.

**(c) That those matters (if they occurred) do not constitute such a contravention.** – This ground argues that listed building consent is not needed – for example, because the works do not affect the character of the listed building, or because the works concern a building which is not part of a listed building.

**(d) That 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 or repair or works for affording temporary support or shelter, and that the works carried out were limited to the minimum measures immediately necessary.** – All 3 tests must be satisfied here, for example, that the works in question were urgently necessary because parts of the building were unsafe.

**(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.** – This ground covers any arguments on the merits of the case.

**(f) That copies of the notice were not served as required by section 38(4).** – This is the same as ground (e) in a section 174 enforcement appeal – see page 11 of the booklet.

**(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.** – An appeal on this ground will claim that the steps said to be required for restoring the building to its former state are excessive. [If you choose this ground you cannot also choose (i), (j) or (k)]

**(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.** – This refers to the compliance period stated in the notice. If you claim that it is too short, please state what you consider to be a reasonable period for compliance and why.

**(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.** – An appeal on this ground would claim that the steps required by the notice would not restore the character of the building to its former state. This is different from an appeal on ground (g) which would claim that the steps required are excessive. This ground of appeal is not available for appeals against conservation area enforcement notices alleging the demolition of an unlisted building in a conservation area.

**(j) That 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.** – Where restoration of the building to its former state has not been required, the works required go beyond what is necessary to alleviate the effect of the works done. (Section 38(2)(b) enables an authority which considers that restoration of the building to its former state would not be reasonably practicable or would be undesirable, to specify steps “for executing such further works specified in the notice as they consider necessary to alleviate the effect of the works which were carried out without listed building consent”.)

**(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.** As above, but relating to cases involving a breach of condition attached to a grant of listed building consent. (Section 38(2)(c) enables an authority to specify steps “for bringing the building to the state in which it would have been if the terms and conditions of any listed building consent which had been granted for the works had been complied with”.)

# Appendix 5

## **Guidelines for submitting appeal documents, statements and proofs of evidence**

### **Why have we published these guidelines?**

We are publishing these guidelines now to prepare everyone for the time when the Planning Inspectorate's Planning Casework Service, our new online system for making and tracking appeals, will come into operation.

At that time you will be able to submit your appeal documents electronically if you want to. If you decide to submit your appeal documents on paper we will scan them to create an electronic copy on our system.

Whichever method you choose your appeal statements, proofs of evidence and other documents, photographs and plans will appear on the external face of the Planning Casework Service and will be available for anyone to view through the Planning Portal.

### **Viewing handwritten forms and other documents**

It helps readers of these documents if the originals from which they are scanned are as clear and legible as possible. With the reader in mind, we suggest that when completing forms by hand you print lettering in **capitals** and use **black ink**.

### **Viewing typed documents**

Most appeal documents are created using a computer these days and authors have a choice of typeface (font) that they can use.

As many people will read these documents onscreen rather than



download and print them, we suggest that you to use a typeface like **Arial** or **Verdana**.

These are **sans serif** styles, a category of typefaces that do not use **serifs** (small lines at the ends of **characters**). **Serif** fonts include Times New Roman.

Research has shown that documents in a **sans serif** typeface are easier to read onscreen.

Ideally, we would like you to use a font size of **11 point** or larger.

### **Preparing your statement or proof of evidence**

Scanning paper documents presents us with a significant challenge, because of the high volumes of paper documents that we are likely to receive until people become familiar with the electronic service and the benefits that it offers.

It helps our scanning operation if paper documents are of a **standard size** and **loosely bound** rather than of an irregular size and firmly bound.

It would assist us greatly, if you would prepare your appeal documents in the following way:

1. Please use **A4** size paper wherever possible.
2. Please ensure that the pages of documents are **numbered**.
3. Print documents on both sides of a page if you want to, but it helps us if the **quality** of paper is such that something on one side of the page does not show through to the other side.
4. Please ensure **photocopied** documents are clear and legible. The quality of poor photocopies cannot be improved in the scanning process.
5. Please place photographs, maps, plans, etc., in a **separate appendix** and cross-reference them within the main body of the document.
6. Please do not stick **photographs** to sheets of paper. It is much better if you put them in an envelope and write the site address or appeal reference number, if known, on the back.
7. Please **bind** documents in such a way that bindings can be undone quickly without damaging the document. For this reason it is better to avoid using wire or plastic spiral binders.
8. Please avoid using **cover sheets**, **sleeves** or other **bindings** that do not add value or information. They complicate preparation for the scanning operation and, if scanned, will increase the size of the electronic file making it slower to open or download.

9. Please do not send **valuable original documents** unless these are specifically requested.
10. Please do not include **post-it notes** or **small attachments** which might be dislodged easily or lost.

### **What is the Planning Casework Service?**

The Planning Casework Service will be introduced soon. It is an online service that will give people of England and Wales wider and easier access to the planning system.

It will provide the Planning Inspectorate with a new system for our staff to manage casework. In addition, it will provide direct access to our workflows for anyone else to view through the Planning Portal so that people can track the progress of cases.

For more information about the Planning Casework Service visit:  
[www.planningportal.gov.uk/pcs](http://www.planningportal.gov.uk/pcs)

# Appendix 6

## **Some relevant publications**

You can buy copies of all these documents from any Stationary Office or major bookshop, or you may be able to see them at the LPA offices or your local library.

### *Statutory provisions*

#### **The Town and Country Planning Act 1990**

This contains the main rules that govern the planning control system. Part VII – ‘Enforcement’ – is about the power to issue an enforcement notice, your rights of appeal and the Secretary of State’s powers. Relevant extracts from Part VII are set out in Appendix 6 of this booklet. Schedule 6 concerns the appeal decision process where your appeal is decided by an Inspector rather than by the Secretary of State.

#### **The Planning and Compensation Act 1991**

Sections 1 – 11 of this Act changed the enforcement provisions in the 1990 Act.

#### **The Planning (Listed Buildings and Conservation Areas) Act 1990**

This contains the main rules about enforcement notices on listed buildings and in conservation areas. These were also amended by the Planning and Compensation Act 1991.

#### **The Town and Country Planning (General Permitted Development) Order 1995 (SI 1995 No 418)**

This tells you the types of development for which you don’t need to apply for planning permission.

**The Town and Country Planning (General Development Procedure) Order 1995 (SI 1995 No 419)**

This explains in detail the procedures the LPA will follow when they consider your planning application.

**The Town and Country Planning (Determination of Appeals by Appointed Persons) (Prescribed Classes) Regulations 1981 (SI No 804) 1986 (SI No 623) and 1989 (SI No 1087)**

These give Inspectors the power to decide most appeals under the 1990 Act and most appeals relating to listed building consent (LBC) and conservation area consent (CAC). But the Secretary of State still has the power to decide any appeal.

**The Town and Country Planning (Enforcement Notices and Appeals) (England) Regulations 2002 (SI No 2682)**

These contain additional requirements about the content of enforcement notices and what the parties must do if there is an appeal against the notice.

**The Town and Country Planning (Enforcement)(Written Representations Procedure) (England) Regulations 2002 (SI No 2683)**

These explain the procedures and time limits for the various stages of the written appeals procedure.

**The Town and Country Planning (Enforcement) (Hearings Procedure) (England) Rules 2002 (SI No 2684)**

These explain the procedures and time limits for the various stages of enforcement appeals decided by hearings. They explain the rights and responsibilities of everyone involved in an appeal that is dealt with by a hearing.

**The Town and Country Planning (Enforcement)(Inquiries Procedure) (England) Rules 2002 (SI No 2686)**

## **The Town and Country Planning Appeals (Determination by Inspectors)(Enforcement) (Inquiries Procedure) (England) Rules 2002 (SI No 2685)**

These explain the procedures and time limits for the various stages of enforcement appeals decided by an inquiry. They explain the rights and responsibilities of everyone involved in an appeal that is dealt with by an inquiry.

## **The Planning (Listed Buildings and Conservation Areas) Regulations 1990 (SI No 1519)**

These set out special rules for applications and appeals about consent for listed buildings and conservation areas.

### *Circulars*

Here is a brief list of some relevant Circulars. You might be able to get copies from your local library or you can look at them in council offices.

### **2/2002 Enforcement Appeal Procedures**

This sets out best practice in the operation of procedures for deciding enforcement appeals.

### **5/2000 Planning Appeals Procedures**

This sets out best practice in the operation of procedures for deciding planning appeals.

### **2/99 Environmental Impact Assessment**

This gives advice about the circumstances in which we will need to assess the environmental effects of a proposal. It also describes how we will carry out this assessment.

### **9/95 General Development Order Consolidation 1995**

This sets out the procedure for making planning applications and appeals, planning registers and related matters.

### **10/97 Enforcing Planning Control: Legislative Provisions and Procedural Requirements**

This brings together and updates the earlier guidance, in former DOE Circulars 21/91 and 17/92, on how to use the amended planning enforcement provisions in Part VII of the Town and Country Planning Act 1990.

### **14/97 Planning and the Historic Environment**

This sets out Directions by the Secretary of State.

#### **Planning policy guidance notes**

- PPG1 – General Policy and Principles
- PPG2 – Green Belts
- PPG3 – Housing (England)
- PPG4 – Industrial and Commercial Development and Small Firms
- PPG5 – Simplified Planning Zones
- PPG6 – Town Centres and Retail Developments
- PPG7 – The Countryside – Environmental Quality and Economic and Social Development
- PPG8 – Telecommunications
- PPG9 – Nature Conservation
- PPG10 – Strategic Guidance for the West Midlands
- PPG11 – Strategic Guidance for Merseyside
- PPG13 – Transport
- PPG14 – Development on Unstable Land
- PPG15 – Planning and the Historic Environment
- PPG16 – Archaeology and Planning (England)
- PPG17 – Sport and Recreation
- PPG18 – Enforcing Planning Control
- PPG19 – Outdoor Advertisement Control

- PPG20 – Coastal Planning
- PPG21 – Tourism
- PPG22 – Renewable Energy
- PPG23 – Planning and Pollution Control
- PPG24 – Planning and Noise

**Regional planning guidance notes**

- RPG1 – Strategic Guidance for Tyne and Wear
- RPG2 – Strategic Guidance for West Yorkshire
- RPG3 – Strategic Guidance for London
- RPG4 – Strategic Guidance for Greater Manchester
- RPG5 – Strategic Guidance for South Yorkshire
- RPG6 – Regional Planning Guidance for East Anglia
- RPG7 – Regional Planning Guidance for the Northern Region
- RPG8 – Regional Planning Guidance for the East Midlands  
Region
- RPG9 – Regional Planning Guidance for the South East
- RPG10 – Regional Planning Guidance for the South West



# Appendix 7

## **The legislative provisions for enforcement notices and appeals**

The powers of local planning authorities to issue enforcement notices, expressions used in the enforcement of planning control and the right of appeal to the Secretary of State against enforcement notices are in sections 171A, 171B and 172 to 177 of the Town and Country Planning Act 1990, as amended by the Planning and Compensation Act 1991. These provisions are stated in full below, together with the provisions of section 289, which contains the main right of appeal to the High Court against an enforcement appeal decision.

### **Section 171A.**

- (1) For the purposes of this Act -
  - a. carrying out development without the required planning permission; or
  - b. failing to comply with any condition or limitation subject to which planning permission has been granted, constitutes a breach of planning control.
- (2) For the purposes of this Act -
  - a. the issue of an enforcement notice (defined in section 172); or
  - b. the service of a breach of condition notice (defined in section 187A), constitutes taking enforcement action.
- (3) In this Part "planning permission" includes permission under Part III of the 1947 Act, of the 1962 Act or of the 1971 Act.

### **Section 171B. -**

- (1) Where there has been a breach of planning control consisting in the carrying out without planning permission of building, engineering, mining or other operations in, on, over or under land, no enforcement action may be taken after the end of the period of four years beginning with the date on which the operations were substantially completed.
- (2) Where there has been a breach of planning control consisting in the change of use of any building to use as a single dwellinghouse, no

enforcement action may be taken after the end of the period of four years beginning with the date of the breach.

(3) In the case of any other breach of planning control, no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach.

(4) The preceding subsections do not prevent -

- a. the service of a breach of condition notice in respect of any breach of planning control if an enforcement notice in respect of the breach is in effect; or
- b. taking further enforcement action in respect of any breach of planning control if, during the period of four years ending with that action being taken, the local planning authority has taken or purported to take enforcement action in respect of that breach.

## **Section 172.**

(1) The local planning authority may issue a notice (in this Act referred to as an "enforcement notice") where it appears to them -

- a. that there has been a breach of planning control, and
- b. that it is expedient to issue the notice, having regard to the provisions of the development plan to any other materials considerations.

(2) A copy of an enforcement notice shall be served -

- a. on the owner and on the occupier of the land to which it relates: and
- b. on any other person having an interest in the land, being an interest which, in the opinion of the authority, is materially affected by the notice.

(3) The service of the notice shall take place -

- a. not more than twenty-eight days after its date of issue; and
- b. not less than twenty-eight days before the date specified in it as the date on which it is to take effect.

### **Section 173.**

- (1) An enforcement notice shall state -
  - a. the matters which appear to the local planning authority to constitute the breach of planning control; and
  - b. the paragraph of section 171A(1) within which, in the opinion of the authority, the breach falls.
  
- (2) A notice complies with subsection (1)(a) if it enables any person on whom a copy of it is served to know what those matters are.
  
- (3) An enforcement notice shall specify the steps which the authority require to be taken, or the activities which the authority require to cease, in order to achieve, wholly or partly, any of the following purposes.
  
- (4) Those purposes are -
  - a. remedying the breach by making any development comply with the terms (including conditions and limitations) of any planning permission which has been granted in respect of the land, by discontinuing any use of the land or by restoring the land to its conditions before the breach took place; or
  - b. remedying any injury or amenity which has been caused by the breach.
  
- (5) An enforcement notice may, for example, require -
  - a. the alteration or removal of any buildings or works;
  - b. the carrying out of any building or other operations;
  - c. any activity on the land not to be carried on except to the extent specified in the notice: or
  - d. the contour of a deposit of refuse or waste materials on land to be modified by altering the gradient or gradients of its sides.
  
- (6) Where an enforcement notice is issued in respect of a breach of planning control consisting of demolition of a building, the notice may

require the construction of a building (in this section referred to as a "replacement building") which, subject to a subsection (7), is as similar as possible to the demolished building.

(7) A replacement building -

- a. must comply with any requirement imposed by any enactment applicable to the construction of buildings;
- b. may differ from the demolished building in any respect which, if the demolished building had been altered in that respect, would not have constituted a breach of planning control;
- c. must comply with any regulations made for the purposes of this subsection (including regulations modifying paragraphs (1) and (2)).

(8) An enforcement notice shall specify the date on which it is to take effect and, subject to sections 175(4) and 289(4A), shall take effect on that date.

(9) An enforcement notice shall specify the period at the end of which any steps are required to have been taken or any activities are required to have ceased and may specify different periods for different steps or activities; and, where different periods apply to different steps or activities, references in this Part to the period for compliance with an enforcement notice, in relation to any step or activity, are to the period at the end of which the step is required to have been taken or the activity is required to have ceased.

(10) An enforcement notice shall specify such additional matters as may be prescribed, and regulations may require every copy of an enforcement notice served under section 172 to be accompanied by an explanatory note giving prescribed information as to the right of appeal under section 174.

(11) Where -

- a. an enforcement notice in respect of any breach of planning

control could have required any buildings or works to be removed or any activity to cease, but does not do so; and  
b. all the requirements of the notice have been complied with, then, so far as the notice did not so require, planning permission shall be treated as having been granted by virtue of section 73A in respect of development consisting of the construction of the buildings or works or, as the case may be, the carrying out of the activities.

(12) Where -

- a. an enforcement notice requires the construction of a replacement building; and
- b. all the requirements of the notice with respect to that construction have been complied with,

planning permission shall be treated as having been granted by virtue of section 73A in respect of development consisting of that construction.

### **Section 173A.**

(1) The local planning authority may -

- a. withdraw an enforcement notice issued by them; or
- b. waive or relax any requirement of such a notice and, in particular, may extend any period specified in accordance with section 173(9).

(2) The powers conferred by subsection (1) may be exercised whether or not the notice has taken effect.

(3) The local planning authority shall, immediately after exercising the powers conferred by subsection (1), give notice of the exercise to every person who has been served with a copy of the enforcement notice or would, if the notice were re-issued, be served with a copy of it.

(4) The withdrawal of an enforcement notice does not affect the powers of the local planning authority to issue a further enforcement notice.

## **Section 174.**

(1) A person having an interest in the land to which an enforcement notice relates or a relevant occupier may appeal to the Secretary of State against the notice, whether or not a copy of it has been served on him.

(2) An appeal may be brought on any of the following grounds -

- a. that, in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted or, as the case may be, the condition or limitation concerned ought to be discharged;
- b. that those matters have not occurred;
- c. that those matters (if they occurred) do not constitute a breach of planning control;
- d. that, at the date when the notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by those matters;
- e. that copies of the enforcement notice were not served as required by section 172;
- 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;
- g. that any period specified in the notice in accordance with section 173(9) falls short of what should reasonably be allowed.

(3) An appeal under this section shall be made either -

- a. by giving written notice of the appeal to the Secretary of State before the date specified in the enforcement notice as the date on which it is to take effect; or
- b. by sending such notice to him in a properly addressed and pre-paid letter posted to him at such time that, in the

ordinary course of post, it would be delivered to him before that date.

(4) A person who gives notice under subsection (3) shall submit to the Secretary of State, either when giving the notice or within the prescribed time, a statement in writing -

- a. specifying the grounds on which he is appealing against the enforcement notice; and
- b. giving such further information as may be prescribed.

(5) If, where more than one ground is specified in that statement, the appellant does not give information required under subsection (4)(b) in relation to each of those grounds within the prescribed time, the Secretary of State may determine the appeal without considering any ground as to which the appellant has failed to give such information within that time.

(6) In this section "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; and
- b. continues so to occupy the land when the appeal is brought.

### **Section 175.**

(1) The Secretary of State may by regulations prescribe the procedure which is to be followed on appeals under section 174 and, in particular, but without prejudice to the generality of this subsection, may -

- a. require the local planning authority to submit, within such time as may be prescribed, a statement indicating the submissions which they propose to put forward on the appeal;
- b. specify the matters to be included in such a statement;
- c. require the authority or the appellant to give such notice of such an appeal as may be prescribed;
- d. require the authority to send to the Secretary of State, within

such period from the date of the bringing of the appeal as may be prescribed, a copy of the enforcement notice and a list of the persons served with copies of it.

(2) The notice to be prescribed under subsection (1)(c) shall be such notice as in the opinion of the Secretary of State is likely to bring the appeal to the attention of persons in the locality in which the land to which the enforcement notice relates is situated.

(3) Subject to section 176(4), the Secretary of State shall, if either the appellant or the local planning authority so desire, give each of them an opportunity of appearing before and being heard by a person appointed by the Secretary of State for the purpose.

(4) Where an appeal is brought under section 174 the enforcement notice shall subject to any order under section 289(4A) be of no effect pending the final determination or the withdrawal of the appeal.

(5) Where any person has appealed to the Secretary of State against an enforcement notice, no person shall be entitled, in any other proceedings instituted after the making of the appeal, to claim that the notice was not duly served on the person who appealed.

(6) Schedule 6 applies to appeals under section 174, including appeals under that section as applied by regulations under any other provisions of this Act.

(7) Subsection (5) of section 250 of the Local Government Act 1972 (which authorises a Minister holding an inquiry under that section to make orders with respect to the costs of the parties) shall apply in relation to any proceedings before the Secretary of State on an appeal under section 174 as if those proceedings were an inquiry held by the Secretary of State under section 250.

## **Section 176.**

(1) On an appeal under section 174 the Secretary of State may -



a. correct any defect, error or misdescription in the enforcement notice; or  
b. vary the terms of the enforcement notice,  
if he is satisfied that the correction or variation will not cause injustice to the appellant or the local planning authority.

(2) Where the Secretary of State determines to allow the appeal, he may quash the notice.

(2A) The Secretary of State shall give any directions necessary to give effect to his determination on the appeal.

(3) The Secretary of State -

a. may dismiss an appeal if the appellant fails to comply with section 174(4) within the prescribed time; and

b. may allow an appeal and quash the enforcement notice if the local planning authority fail to comply with any requirement of regulations made by virtue of paragraph (a),(b), or (d) of section 175(1) within the prescribed period.

(4) If the Secretary of State proposes to dismiss an appeal under paragraph (a) of subsection (3) or to allow an appeal and quash the enforcement notice under paragraph (b) of that subsection, he need not comply with section 175(3).

(5) Where it would otherwise be a ground for determining an appeal under section 174 in favour of the appellant that a person required to be served with a copy of the enforcement notice was not served, the Secretary of State may disregard that fact if neither the appellant nor that person has been substantially prejudiced by the failure to serve him.

## **Section 177.**

(1) On the determination of an appeal under section 174, the Secretary of State may -

- a. grant planning permission in respect of the matters stated in the enforcement notice as constituting a breach of planning control, whether in relation to the whole or any part of those matters or in relation to the whole or any part of the land to which the notice relates;
- b. discharge any condition or limitation subject to which planning permission was granted;
- c. determine whether, on the date on which the appeal was made, any existing use of the land was lawful, any operations which had been carried out in, on, over or under the land were lawful or any matter constituting a failure to comply with any condition or limitation subject to which planning permission was granted was lawful and, if so, issue a certificate under section 191.

(1A) The provisions of sections 191 to 194 mentioned in subsection (1B) shall apply for the purposes of subsection (1)(c) as they apply for the purposes of section 191, but as if -

- a. any reference to an application for a certificate were a reference to the appeal and any reference to the date of such an application were a reference to the date on which the appeal is made; and
- b. references to the local planning authority were references to the Secretary of State.

(1B) Those provisions are: sections 191(5) to (7), 193(4) (so far as it related to the form of the certificate), (6) and (7) and 194.

(2) In considering whether to grant planning permission under subsection (1), the Secretary of State shall have regard to the provisions of the development plan, so far as material to the subject matter of the enforcement notice, and to any other material considerations.

(3) The planning permission that may be granted under subsection (1) is any planning permission that might be granted on an application under Part III.

(4) Where under subsection (1) the Secretary of State discharges a condition or limitation, he may substitute another condition or limitation for it, whether more or less onerous.

(5) Where an appeal against an enforcement notice is brought under section 174, the appellant shall be deemed to have made an application for planning permission in respect of the matters stated in the enforcement notice as constituting a breach of planning control.

(5A) Where -

- a. the statement under subsection (4) of section 174 specifies the ground mentioned in subsection (2)(a) of that section;
- b. any fee is payable under regulations made by virtue of section 303 in respect of the application deemed to be made by virtue of the appeal; and
- c. the Secretary of State gives notice in writing to the appellant specifying the period within which the fee must be paid, then, if that fee is not paid within that period, the appeal, so far as brought on that ground, and the application shall lapse at the end of that period.

(6) Any planning permission granted under subsection (1) on an appeal shall be treated as granted on the application deemed to have been made by the appellant.

(7) In relation to a grant of planning permission or a determination under subsection (1) the Secretary of State's decision shall be final.

(8) For the purposes of section 69 the Secretary of State's decision shall be treated as having been given by him in dealing with an application for planning permission made to the local planning authority.

## **Section 289.**

(1) Where the Secretary of State gives a decision in proceedings on an appeal under Part VII against an enforcement notice the appellant or the local planning authority or any other person having an interest in the land to which the enforcement notice relates may, according as rules of court may provide, either appeal to the High Court against the decision on a point of law or require the Secretary of State to state and sign a case for the opinion of the High Court.

(2) Where the Secretary of State gives a decision in proceedings on an appeal under Part VIII against a notice under section 207, the appellant or the local planning authority or any person (other than the appellant) on whom the notice was served may, according as rules of court may provide, either appeal to the High Court against the decision on a point of law or require the Secretary of State to state and sign a case for the opinion of the High Court.

(3) At any state of the proceedings on any such appeal as is mentioned in subsection (1), the Secretary of State may state any question of law arising in the course of the proceedings in the form of a special case for the decision of the High Court.

(4) A decision of the High Court on a case stated by virtue of subsection (3) shall be deemed to be a judgment of the court within the meaning of section 16 of the Supreme Court Act 1981 (jurisdiction of the Court Appeal to hear and determine appeals from any judgment of the High Court).

(4A) In proceedings brought by virtue of this section in respect of an enforcement notice, the High Court or, as the case may be, the Court of Appeal may, on such terms if any as the Court thinks fit (which may include terms requiring the local planning authority to give an undertaking as to damages or any other matter), order that the notice shall have effect, or have effect to such extent as may be specified in the order, pending the final determination of those proceedings and any re-hearing and determination by the Secretary of State.

(4B) Where proceedings are brought by virtue of this section in respect of any notice under section 207, the notice shall be of no effect pending the final determination of those proceedings and any re-hearing and determination by the Secretary of State.

(5) In relation to any proceedings in the High Court or the Court of Appeal brought by virtue of this section the power to make rules of court shall include power to make rules -

- a. prescribing the powers of the High Court or the Court of Appeal with respect to the remitting of the matter with the opinion or direction of the court for re-hearing and determination by the Secretary of State; and
- b. providing for the Secretary of State, either generally or in such circumstances as may be prescribed by the rules, to be treated as a party to any such proceedings and to be entitled to appear and to be heard accordingly.

(5A) Rules of court may also provide for the High Court or, as the case may be, the Court of Appeal to give directions as to the exercise, until such proceedings in respect of an enforcement notice are finally concluded and any re-hearing and determination by the Secretary of State has taken place, of any other powers in respect of the matters to which such a notice relates.

(6) No proceedings in the High Court shall be brought by virtue of this section except with the leave of that Court and no appeal to the Court of Appeal shall be so brought except with the leave of the Court of Appeal or of the High Court.

(7) In this section "decision" includes a direction or order, and references to the giving of a decision shall be construed accordingly.

# Appendix 8

## **Inspector's Code of Conduct – the principles by which Inspectors\* work**

*\*Although these principles are primarily directed to Planning Inspectors they apply with equal force to all decision-makers in the Planning Inspectorate.*

1. Inspectors make their decisions and recommendations in the public interest.
2. Inspectors do not pre-judge a case.
3. Inspectors are not involved in cases where they have a pecuniary interest or a personal interest that may give rise to a reasonable perception of bias.
4. Inspectors are not influenced by irrelevant considerations or outside influences when making their decisions and recommendations.
5. Inspectors refuse all gifts, hospitality and other benefits offered by parties having an interest in a case, other than those of minimal value.
6. Inspectors conduct cases as expeditiously as possible.
7. Inspectors treat each person who appears before them with dignity and respect.
8. Inspectors do not discriminate on the grounds of race, sex, sexual orientation, marital status, religion, disability, and age, or otherwise.
9. Inspectors avoid unnecessary delay in reaching their decisions and recommendations.
10. Inspectors give reasons for their decisions and recommendations.
11. Inspectors keep their professional knowledge and skills up to date.
12. Inspectors are accountable for their decisions and recommendations and submit themselves to whatever scrutiny is appropriate.

# Appendix 9

## Data Protection and Privacy in the Planning Inspectorate

### *Introduction*

Under the Data Protection Act 1998 we have a legal duty to inform you about and protect any information we collect from you.

When considering an appeal, the Inspector (or Secretary of State) receives a variety of personal information. This information comes from a number of sources including:

- the original application, together with any documents of support or objection;
- the appeal form together with any further documentation of support or objection.

In accordance with current statutory obligations most of the documentation received will be made accessible to the public. Nevertheless, The Planning Inspectorate, as part of the Department for Communities and Local Government (DCLG), recognises the importance of the privacy of individuals. These notes set out what information we collect and how it will be used.

### *Data Protection*

The Planning Inspectorate has put in place procedures to ensure that it complies with the Data Protection Act 1998 when handling your personal information.

In particular we will:

- only use your personal information for the purposes of dealing with and considering the relevant planning appeal;
- only hold your personal information for as long as is reasonably necessary. For completed appeals this is usually 12 months. It may be that personal information could form part of the Inspector's decision letter, which may be available from various sources for longer.

### *Who has access to your personal information?*

The appeal papers will be open for inspection at the council's offices and anyone can view them.

A challenge to an appeal decision must be made within four or six weeks of the date of the decision (depending on type of challenge made). Any person entitled to be notified of the decision in an inquiry case has a legal right to apply to inspect the listed documents, photographs and plans. Other requests to see appeal documents will not normally be refused.

In addition, when the electronic Planning Portal is available, the majority of personal information received will be placed on the Casework web site [[www.planningportal.gov.uk](http://www.planningportal.gov.uk)] and will be accessible worldwide by any third party, including individuals or organisations who have no direct interest in the particular appeal.

### *What information do we collect?*

When dealing with an appeal we could receive personal information about you from a number of parties, including:

- local planning authorities;
- yourself;
- other parties interested in the appeal.

The information we receive is varied but often includes:

- details of your name, address and occupation;
- information as to your health;
- information relating to your opinions or intentions in respect of a planning application/appeal.

What steps should you take?

- Only provide personal information if you are happy for it to be placed in the public domain.



- Do not include personal information about another third party (including family members) unless you have told the individual concerned and they are happy for you to send it.
- Tell us as soon as possible if any of the personal information you have provided should change.

### *The Data Controller*

The data controller (the organisation responsible for dealing with personal information) is the Secretary of State at the Department for Communities and Local Governmen.

### *Your Rights to Access Personal Data*

We have to provide you with a readable copy of the personal data that we keep about you within 40 days. There is a statutory charge of £10. Evidence of proof of your identity will be required. It is both in our interest and yours to hold accurate data. If the data we hold is inaccurate in any way, then without charge and where appropriate, you may have the data:

- erased,
- rectified or amended,
- completed.

For any enquiry or concern about our privacy policy, or to request access to your personal data contact our Data Manager:

Alastair Grant  
Data Manager  
The Planning Inspectorate  
Room 3/16 Eagle Wing  
Temple Quay House  
2, The Square,  
Temple Quay  
Bristol BS1 6PN

Telephone: 0117 372 8922

Email: [alastair.grant@planning-inspectorate.gsi.gov.uk](mailto:alastair.grant@planning-inspectorate.gsi.gov.uk)

Related information about our Privacy policy is available on our web site at <http://www.planning-inspectorate.gov.uk> at the section marked “Privacy Statement”.

### *Dispute*

We aim to ensure that we have resolved any matters satisfactorily, however, if you are not satisfied with our response you may contact:

The Information Commissioner  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF

Switchboard: 01625 545 700

Fax: 01625 524 510

DX: 20819 Wilmslow

Website: <http://www.dataprotection.gov.uk/>

E-mail: [mail@dataprotection.gov.uk](mailto:mail@dataprotection.gov.uk)



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