



Planning Guide - Appeals (further information)

Introductory information about appeals is given in Planning Quick Guide 51: Appeals. This Quick Guide provides more details about the procedures for planning appeals and public inquiries.

What is the procedure for dealing with appeals?

Planning appeals are conducted according to one of three statutory procedures: written, public hearing, or local public inquiry. As regards the appropriate procedure, *Circular 07/03*¹ states:

"For any appeal under section 78 of the *Town and Country Planning Act 1990* [...] the appellant/applicant and the local planning authority have a statutory right to appear before and be heard by a person appointed by the National Assembly². If neither party wishes to be heard, and the National Assembly² does not consider it necessary to hold a hearing or an inquiry, the appeal is determined by means of the written representations procedure. Where either of the principal parties exercises their right to be heard, they will be asked to state which procedure they would prefer and give their reasons. The Planning Inspectorate, acting on behalf of the National Assembly², will decide whether a hearing or inquiry is to be held taking into account the circumstances of each appeal, including any preferences already expressed by the principal parties. Before choosing their preferred procedure, it is important that the parties carefully consider the nature of the appeal and the time and resource implications of each procedural method".

As a result of the *Government of Wales Act 2006*³, the statutory right of appeal is now to appear before a person appointed by Welsh Ministers.

The written representations procedure

Generally, an appellant under section 78 of the *Town and Country Planning Act 1990* (TCPA 1990)⁴ may choose, or the parties may agree to use, the written representations procedure, which entails paper-based submissions and a site visit by a planning inspector. The procedure is subject to a regimented nine-week timetable designed to make the appeal proceed quickly and fairly. The appellant's case is presented in the form of grounds of appeal set out in an appeal form. The local planning authority is required to complete a questionnaire and provide documents to support its decision. Any additional comments from the parties must be sent to the Planning Inspectorate Wales (PINS) within six weeks of the starting date. The parties submit comments on case statements and representations made by interested persons within nine weeks of the starting date. Thereafter, PINS will send the appeal papers to the inspector allocated to the case; the inspector reviews the proposals, plans and comments and visits the site to judge the likely effect of the proposal on its surroundings and, thereafter, determines the appeal.

Appeals dealt with by the written representations procedure are governed by *The Town and Country Planning (Referrals and Appeals) (Written Representations Procedure) (Wales) Regulations 2003*⁵. If the parties do not agree to use the written representations procedure, the appeal will be determined either by a public hearing or inquiry.

¹ Welsh Assembly Government, February 2003, *Circular 7/2003: Planning (and Analogous) Appeals and Call-in Procedure*.

² Welsh Assembly Government since May 2007

³ The *Government of Wales Act 2006*,
<http://www.lexisnexis.com/uk/legal/search>

⁴ The *Town and Country Planning Act 1990*,
<http://www.lexisnexis.com/uk/legal/results/docview>

⁵ The *Town and Country Planning (Referrals and Appeals) (Written Representations Procedure) (Wales) Regulations 2003*, SI 2003/390 (W.52).

<http://www.lexisnexis.com/uk/legal/results/docview>



The public hearing procedure

Appeals determined by a public hearing are governed by *The Town and Country Planning (Hearings Procedure) (Wales) Rules 2003*⁶. Hearings are less formal than inquiries and take the form of an open discussion led by the planning inspector. The hearing procedure is quicker and cheaper than an inquiry; however, hearings are not considered suitable for all appeals (particularly those involving complex or controversial issues, those attracting considerable local interest or those necessitating the cross-examination of witnesses). The date for an appeal hearing is normally scheduled for within 12 weeks of the starting date. At hearings, planning inspectors lead an informal discussion on the principal issues (without legal representatives). Inspectors will normally visit the site and will determine whether the discussion should continue at the site. Thereafter, the inspector either determines the appeal personally or submits a report to Welsh Ministers – this differs to cases in which the Assembly Government “calls-in” an application, where the Minister alone makes the final decision (see Planning Quick Guide 13: Call-in of planning applications).

The local public inquiry procedure

A local public inquiry is conducted when the parties do not agree to use the written representations procedure and PINS considers an informal hearing to be unsuitable. PINS will make the administrative arrangements for the inquiry (informing the parties, setting dates etc) and appoint an inspector.

The principal points in relation to local public inquiries are:

- For appeals decided by planning inspectors, the date of the inquiry should not be more than 20 weeks after the start of the appeal; for appeals decided by Welsh Ministers, the period is 22 weeks. PINS has the discretion to extend these periods.
- The parties are required to exchange written statements of case and supporting documents intended for use at the inquiry within six weeks of the starting date. Statements of case, accompanying documents, and plans are to be made available for public inspection. Any party intending to read out a written statement of evidence at the inquiry (or intending for a witness to do so) must submit two copies of the statement at least four weeks before the inquiry.
- The principal parties to the appeal are required to prepare a ‘statement of common ground’, which sets out those points about the appeal which are agreed (eg site, area, plans), and submit this document at least four weeks before the inquiry date.
- The statutory rules also require publicity of the inquiry: a notice must be displayed on the site before the inquiry takes place or, if the appellant does not own the land, a prominent position nearby; also, the planning authority should inform local papers and other parties that may have an interest in, or be affected by, the proposals.
- The statutory rules confer broad discretionary power on the inspector to control the form of proceedings, including, for example, the procedure to be followed, evidence that may be submitted, and witnesses that may be called.
- Generally, the authority presents its case first and calls its evidence and witnesses. After this, other interested persons (eg: neighbours or representatives of local interest groups) are usually given the opportunity to put their point of view. The appellant and the planning authority have the right to make closing statements.
- All parties involved in an inquiry may instruct a legal representative or other person to put their case. The inspector has a duty to treat all arguments the same, whoever makes them, and will ensure that the appeal is conducted and reported fairly.
- The Inspector will usually visit the appeal site and surroundings alone, before the inquiry starts.

⁶ *The Town and Country Planning (Enforcement) (Hearings Procedure) (Wales) Rules 2003*, <http://www.lexisnexis.com/uk/legal/results/docview>



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Those appeals determined by a local public inquiry are governed by the *Town and Country Planning (Inquiries Procedure) (Wales) Rules 2003*⁷ and the *Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (Wales) Rules 2003*⁸.

In the case of a planning appeal where the decision has been transferred to an inspector, the planning appeal inquiry is subject to the *Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (Wales) Rules 2003*.

Planning appeals “recovered” for determination by Welsh Ministers, are subject to the *Town and Country Planning (Inquiries Procedure) (Wales) Rules 2003*. In the First and Second Assemblies such appeals were determined by a Planning Decision Committee of the National Assembly for Wales.

Who can participate in an inquiry?

Under Rule 11 of the *Inquiries Procedure Rules 2003*, the following parties have a right to participate in an inquiry:

- the applicant for planning permission;
- the local planning authority;
- the community council for the administrative area in which the proposal site is located (if it made representations when the application was made);
- a county or county borough council, National Park Authority or joint or special planning board (if the application site falls within its area and that body is not the local planning authority);
- CADW (if the organisation has had to be notified about a related application for listed building consent);
- any ‘statutory party’ (ie: any owner or occupier of the land to which the application relates, with the exception of the applicant);
- any other person who has provided a statement of case or outline statement (eg an association or group which has special knowledge or a particular viewpoint which might not otherwise be adequately examined at the inquiry).

There is no formal role for Assembly Members in the planning appeals system.

Rules 4 and 5 of the *Inquiries Procedure Rules 2003* provide that ‘interested parties’ (ie those who made representations to the LPA in respect of the original planning application) are entitled to receive notification that an appeal has been lodged. The *Rules* also allow third parties to notify Welsh Ministers in writing of an intention or wish to attend and/or take part in the inquiry. Welsh Ministers have discretion as to whether it should ask a third party to take part in the inquiry. Rule 6(6) outlines the obligation on a third party to disclose a statement of case (two weeks after the inquiry timetable begins).


Paragraph 16 of Annex 3 to *Circular 07/2003* states:

Under Rule 6(6) the National Assembly has a discretionary power to require other parties who have notified it that they wish to appear at the inquiry, to provide them with 3 copies of their statement of case within 4 weeks, and one copy to any statutory party. Third parties who provide a statement (where required) are entitled to appear at the inquiry under Rule 11(1)(g).

As a result of the *Government of Wales Act 2006*, the discretionary power outlined above transferred to Welsh Ministers from May 2007.

⁷ The *Town and Country Planning (Enforcement) (Inquiries Procedure) (Wales) Rules 2003*, SI 2003/1266, <http://www.lexisnexis.com/uk/legal/results/docview>

⁸ The *Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (Wales) Rules 2003*, SI 2003/1267, <http://www.lexisnexis.com/uk/legal/results/pubTreeViewDoc.do?nodeId=TAAFABRAAL&pubTreeWidth=870>



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Accordingly, unless a party is either a statutory party or a third party asked by Welsh Ministers to provide a statement of case (ie: give evidence), that party will not have a right to participate in the inquiry. However, under Rule 11, the inspector holding the inquiry has discretion, which must not be withheld unreasonably, to allow a third party to speak at the inquiry. Paragraphs 30 and 31 of *Circular 07/2003* address the exercise of the discretionary power under Rule 11:

30. Rule 11(2) makes clear that the Inspector will not unreasonably withhold permission for any other person to appear at the inquiry (i.e. beyond those entitled to appear under Rule 11(1)). In practice, anyone who wishes to appear at an inquiry will usually be allowed to do so, provided they have something relevant to say which has not already been said.

31. It is good practice for individuals with a similar interest to get together to agree upon a spokesperson (or spokespersons) and it is not considered that this needs to be subject to the Inspector's approval.

Rule 15 outlines the procedure usually adopted at the inquiry hearing, however, the inspector is given broad control over the form and content of the hearing.

- Generally, any party entitled to participate under Rule 11 may call evidence, however, only the applicant, local planning authority and any statutory party may cross-examine witnesses. Third parties do not have the right to cross-examine witnesses for the principal parties.
- Under Rule 15, the inspector may control the introduction of evidence, cross-examination of witnesses or presentation of 'any other matter' where it is considered to be irrelevant or repetitious. Where the inspector prevents a party from bringing forward oral evidence, the Rules state that evidence may be submitted to the inspector in writing before the end of the inquiry.

The inspector also has discretion to give consideration to any representation, evidence or other document received from any person prior to the opening of (or during, provided it is disclosed) the inquiry.



Further Information:

The statutory provisions cited above may be subject to subsequent amendment; the consolidated text of those provisions can be obtained from Butterworths' *LexisNexis* service:

http://assembly/presidingoffic/mrs/resources/electronic/qlinks_lexisnexis.htm

National Assembly for Wales Circular 07/2003 contains comprehensive guidance on the appeals procedures:

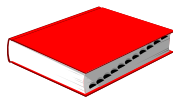
http://www.planning-inspectorate.gov.uk/cymru/wal/appeals/documents/NAFWC07-03-e_000.pdf

In addition, PINS has published various guides to its work and the appeals and appeals procedures: <http://www.planning-inspectorate.gov.uk/>



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