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### **R.1 Introduction**

R.1.1 This annexe provides guidance and advice about advertisement appeals (which follow either conditional grant of consent or the local planning authority's failure to determine) and appeals against discontinuance notices. The annexe also covers any advertisement consent appeal and discontinuance notice appeals where we determine that a hearing is necessary. This advice should therefore be read alongside that contained in Annexe C, which explains how advertisement appeals against refusal of advertisement consent will be decided under the Part 1 written representations process, as described within Statutory Instrument 2009/452, as amended.

R.1.2 An applicant may appeal against the decision of the local planning authority to:

- refuse consent for the advertisement(s) shown on the application form;
- grant consent for the advertisement(s) subject to conditions to which the applicant objects;
- serve a discontinuance notice.

R.1.3 Also the applicant may appeal if the local planning authority fails to give notice of its decision within the appropriate period of an application for consent. Either:

- within 8 weeks of the date the local planning authority accepted it as valid; or
- if the applicant agreed with the local planning authority, in writing, a period longer than the 8 weeks, but it has failed to decide the application within that period we must receive the appeal within 8 weeks of the end of that extended period.

### **R.2 Legislation, policy and guidance**

R.2.1 Section 220 of the Town and Country Planning Act 1990 sets out the basis for the provision of regulations controlling display of advertisements.

R.2.2 Advertisement appeals in England are regulated through the Town and Country Planning (Control of Advertisements) (England) Regulations 2007 Statutory Instrument 783/2007. Minor amendments were made in Statutory Instrument 1739/2007. The Regulations were further amended in 2011 and 2012 by Statutory Instruments 2057/2011 and 2372/2012, and by The Town and Country Planning (Appeals) (Written Representations Procedure and Advertisement) (England) (Amendment) Regulations 2013, Statutory Instrument 2013/2114.

R.2.3 These Regulations confirm the right of appeal under section 78 of the Town and Country Planning Act 1990, albeit with specific amendment in

its application to advertisement appeals and appeals against discontinuance notices.

### **R.3 Deadline for receipt of advertisement appeal**

R.3.1 The appeal and essential supporting documents **must** be received by us:

- within 8 weeks of the date the applicant received the local planning authority's decision notice; or
- for non-determination ('failure') appeals, within 8 weeks of the date by which the local planning authority should have decided the application.

For information about how to make an appeal please see paragraph 2.3 and the "[How to complete your advertisement/discontinuance notice appeal form](#)".

R.3.2 If the local planning authority has refused listed building consent for the building on which the advertisement will be displayed, or failed to determine it within time, it is helpful to make any listed building consent appeal at the same time as making the advertisement appeal so that they can be considered together.

### **R.4 Advertisement appeals – general**

#### Does the advertisement need express consent?

R.4.1 Part 2 and Schedule 3 of the 2007 Regulations grant deemed consent for certain advertisements, therefore negating the need for specific, 'express', consent.

R.4.2 The Court, in *Thomas v National Assembly for Wales & Neath Port Talbot County Borough Council* [2009] 1734 (Admin), held that if an applicant for express consent specifically requests a ruling on whether deemed consent already exists thereby making an express consent unnecessary the Inspector (or local planning authority at application stage) must consider whether that is the case<sup>26</sup>. There is no requirement for the local planning authority or the Inspector to consider this where a request has not been expressly made.

#### Conditions

R.4.3 There is no need to suggest the standard conditions, which apply to all consents. These can be found at Schedule 2 of the 2007 Regulations.

R.4.4 All consents are automatically granted for 5 years, unless specifically stated (Regulation 14(7)). Therefore a time-limited condition need only be suggested where a period other than 5 years is thought necessary.

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<sup>26</sup> This is a Welsh case and so considered the 1992 Regulations, which still apply in Wales, although as no provision for determining deemed consent was added to the 2007 Regulations it is considered that it also applies in England.

R.4.5 Suggested conditions for a hoarding or general advertisement should seldom, if ever, seek to control content. However, conditions can control size or colour etc in relation to a specific advertisement, if required for the purposes of amenity or public safety. Any suggestions for such conditions should be justified.

R.4.6 When suggesting a condition relating to illumination of advertisements it is useful to refer to 'Technical Report No 5: Brightness of Illuminated Advertisements' by the Institution of Lighting Engineers. The latest version is the 3rd edition dated 2001<sup>27</sup>. Paragraph 11.3 of the Technical Report contains a suggested condition relating to intensity of illumination.

R.4.7 The fact that conditions are suggested does not mean that the appeal will be allowed and consent granted or that, if allowed, conditions will be imposed.

#### Advertisements in special areas

R.4.8 If the appeal site is in an Area of Special Control of Advertisements, conservation area, or Area of Outstanding Natural Beauty local planning authority statements should include maps outlining the boundaries of such areas. In relation to a site in an Area of Special Control of Advertisements the information could be crucial to the handling of the appeal and may affect whether consent can be granted. We do not hold information on Areas of Special Control of Advertisements and we rely on the local planning authority to clearly state where this applies.

R.4.9 The specific duty in section 72 of the Planning (Listed Building and Conservations Areas) Act 1990 applies where a site is in a conservation area. However, that in section 66 regarding listed buildings does not apply, except where enforcement action is involved. Listed building consent as well as advertisement consent is normally required for advertisements attached to listed buildings, because the attachment generally comprises an alteration to the listed building affecting its character as a building of special architectural or historic interest. Where a listed building is involved the listed building description should be included in the local planning authority's statement.

### **R.5 Who decides the procedure for an appeal?**

R.5.1 Under section 319A of the 1990 Planning Act the Secretary of State has the duty to determine the procedure to be used to decide advertisement and discontinuance notice appeals. This duty will be exercised by us, taking account of the criteria for determining the appeal procedure (please see Annexe K).

### **R.6 What are the regulations?**

R.6.1 Where we, determine that an advertisement appeal will proceed by written representations, if it is against the local planning authority's

- refusal of an application for express advertisement consent; or
- refusal of an application to vary a condition.

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<sup>27</sup> As the Report is from 2001 it refers to the 1992 Regulations.

it will follow the shorter procedure detailed in Part 1 of the Town and Country (Appeals) (Written Representations) (England) regulations 2009. Please refer to Annex C for details of this procedure.

- R.6.2 Where the local planning authority has:
- failed to determine an application for express advertisement consent; or
  - granted conditional advertisement consent; or
  - issued a discontinuance notice;

and we determine that the appeal will proceed by written representations, it will follow the 'Part 2' written procedure. This is explained in more detail in paragraphs R.7.1 to R.9.4 below

R.6.3 Where we determine that an advertisement appeal or a discontinuance notice appeal should be the subject of a hearing, the procedure and conduct of the hearing is regulated by the Town and Country Planning (Hearings Procedure)(England) Rules 2000 Statutory Instrument 2000/1626. These are explained in more detail in paragraphs R.10.1 to R.10.4 below. Statutory Instruments 2000/1625 and 2000/1624 have also been amended relating to the conduct of inquiries.

## **R.7 The Part 2 written procedure**

R.7.1 When making an appeal, the appeal form should be accompanied by the appellant's full grounds of appeal, including all relevant documents on which they rely.

### The appeal questionnaire

R.7.2 The local planning authority must send a completed copy of our questionnaire and copies of all of the relevant documents to us and to the appellant within 2 weeks of the start date of the appeal. The local planning authority will indicate on the questionnaire which appeal procedure it considers appropriate, taking account of the criteria (please see Annexe K). If this differs from that determined by us we will review the procedure.

R.7.3 The relevant background documents should be sufficient to present the local planning authority's case. The local planning authority should notify us and the appellant if it decides to treat the questionnaire, and supporting documents, as its full representations on an appeal.

### Local planning authority's representations at the 6 week stage

R.7.4 If the local planning authority decides it needs to make further representations, it should send these to us (2 copies if not sent electronically) within 6 weeks of the start date. These should not normally include new evidence or additional technical data. We will copy these further representations to the appellant.



## The appellant's representations at the 6 week stage

R.7.5 The appellant will normally have no need to add to the grounds of appeal provided when making their appeal. However, they may make further representations at this time. If doing so, they should send these to us (2 copies if not sent electronically) within 6 weeks of the start date. We will copy these further representations to the local planning authority.

## Interested people's representations and the 6 week stage

R.7.6 Any interested people notified of the appeal can rely on the representations they made to the local planning authority at the application stage, as it will forward these to us and the representations will be taken into account by the Inspector.

R.7.7 If having considered the appellant's grounds of appeal an interested person wishes to make representations or further representations they should do so online using the [search facility](#) or send them by email or by post to us (3 copies if possible). They should ensure that we receive them within 6 weeks of the start date. We will copy any representations received to the appellant and the local planning authority. There is normally no further opportunity for interested people to make representations after the 6 week stage.

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

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

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

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

R.9.2 Where the site is sufficiently visible from the road or public viewpoint the visit will be carried out unaccompanied. This is normally the case for advertisement appeals.

R.9.3 If access to the site is required, we will contact the appellant/agent and the local planning authority with a date when the Inspector will carry out the site visit.

R.9.4 The Inspector will not allow any discussion about the case with anyone at the site visit.

## **R.10 Hearing**

R.10.1 The local planning authority must send a completed copy of our questionnaire and copies of all of the relevant documents to us and to the appellant within 2 weeks of the start date of the appeal. The local planning authority will indicate on the questionnaire which appeal procedure it considers appropriate, taking account of the criteria (please see Annexe K). If this differs from that determined by us we will review the procedure.

R.10.2 The relevant background documents should be sufficient to present the local planning authority's case. The local planning authority should notify us and the appellant if it decides to treat the questionnaire, and supporting documents, as its full representations on an appeal.

### The appellant's and the local planning authority's written statements at the 6 week stage

R.10.3 Where we have determined that a hearing is necessary, both the appellant and the local planning authority are required to send us any written statement of the representations they intend to put forward within 6 weeks of the start date. The statement should contain full particulars of the case being put forward and should be accompanied by any documents (including maps and plans) which it is intended to refer to at the hearing.

R.10.4 The conduct of the hearing is at the discretion of the Inspector who may, if the occasion warrants, permit cross-examination.

## **R.11 Discontinuance notice appeals**

R.11.1 A discontinuance notice can be issued only against an advertisement displayed with deemed consent. It is a formal document that, once it takes effect, can result in conviction for non-compliance.

R.11.2 Although there is no requirement that a notice shall contain any statement of the right of appeal against it, local planning authorities are expected, as a matter of good practice, to alert the recipients to their right of appeal – please see paragraph R.2.3.

R.11.3 We **must** receive an appeal against a discontinuance notice **before** the date it will come into effect.

R.11.4 Appeals against a discontinuance notice proceeding by written representations will proceed by the Part 2 procedure outlined in paragraphs R.7.1 to R.9.4 above – although any references to "application" should be ignored.

R.11.5 Appeals against a discontinuance notice proceeding by a hearing will follow the process contained in paragraphs R.10.1 to R.10.4 above.

R.11.6 The local planning authority should state (in their 6 week representations or in their hearing statement as appropriate) whether the discontinuance notice is part of a wider campaign and if not why action has been taken against this particular site/advert; this is particularly useful where

the appellant has referred to other advertisements in the area which, in their view, have a comparable impact to the appeal display/site.

**S            Setting dates for hearings and inquiries**

**S.1          Agreeing and suggesting dates**

S.1.1        Before making an appeal the appellant should consider which procedure is most appropriate according to the criteria at Annexe K. We will seek details of the appellant and local planning authority availability for the hearing/inquiry when sending our appeal start letters which confirm the procedure to be followed. This availability can either be dates agreed by both parties, or dates solely provided by one or other party for which they are available or unavailable.

**S.2          What happens next?**

S.2.1        Where suitable mutually-agreed dates are provided and we can provide an Inspector, we will proceed to send written confirmation of this date.

S.2.2        Where we do not have a suitable Inspector available for mutually-agreed dates, or these dates are considered too early or late, we will offer an alternative date to both parties. Each party will be allowed one refusal of a date.

S.2.3        If dates when a party is available or unavailable are provided, we will take these into account when assigning a date for the hearing or inquiry. We will then offer this date to parties who have provided details of their availability, and may also offer the date to parties who have not provided availability.

S.2.4        However, if a party fails to provide details of availability, we may impose a date upon that party.

## **T Statement of common ground**

### **T.1 Draft statement of common ground**

T.1.1 For an appeal proceeding by a hearing or an inquiry the appellant must provide a draft statement of common ground (as required by the Hearing and the Inquiry Procedure Rules) when making their appeal. A “draft statement of common ground” means a written statement containing factual information about the proposal which is the subject of the appeal that the appellant reasonably considers will not be disputed by the local planning authority<sup>28</sup>.

T.1.2 It would be a good idea for the appellant to discuss the draft statement of common ground with the local planning authority when they contact them, before they make their appeal, to agree hearing or inquiry dates.

### **T.2 Agreed statement of common ground**

T.2.1 Once the appeal is made the appellant and the local planning authority must prepare an agreed statement of common ground together. The local planning authority must ensure that we and any statutory party receive a copy of it within 5 weeks of the start date (or any other date agreed under a bespoke timetable).

T.2.2 A statement of common ground is essential to ensure that the evidence considered at a hearing or an inquiry focuses on the material differences between the appellant and the local planning authority. It will provide a commonly understood basis for the appellant and the local planning authority and provide context to inform the statements of case and, for an inquiry, the subsequent production of proofs of evidence.

T.2.3 Working together in agreeing a statement of common ground will assist the parties in providing relevant evidence and should help to reduce the quantity of material which needs to be presented and considered.

T.2.4 If before the 5 week stage there are any Rule 6 parties they can be involved in producing the statement. For further information please see the [“Guide to Rule 6 for interested parties involved in an inquiry – planning appeals and called-in applications - England”](#).

T.2.5 The statement of common ground should clearly identify matters that are agreed between the appellant and the local planning authority followed by matters that are in dispute. This means that the other documents provided with any full statement of case will allow the hearing or inquiry to focus on the areas still at issue. The statement of common ground should:

- be a single document, compiled and signed by the main parties;

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<sup>28</sup> This definition is in Article 37, paragraph 8 of The Town and Country Planning (Development Management Procedure) (England) Order 2015.

- be concise and not duplicate information already sent – by anyone;
- explain revisions or amendments to the original proposal and confirm if they were agreed at application stage<sup>29</sup>;
- include a list of the agreed plans and drawings on which the Inspector will be asked to base his or her decision and which were considered at application stage;
- include a list of agreed and/or shared core documents, ministerial statements, and policies and references to any relevant passage of the National Planning Policy Framework “the Framework”;
- include relevant statutory and emerging development plan policies, their status and the suggested weight to be attached to them and Supplementary Planning Guidance and Supplementary Planning Documents;
- identify and provide the reference number(s), of any relevant appeal decisions, relating to the site or neighbouring sites;
- identify whether there is/is not agreement over measurements, identify agreed elements of the evidence and any technical studies that have been undertaken;
- include a list of suggested conditions (agreed and not agreed) and include the reasons why the conditions are suggested;
- say if there is a draft planning obligation which would satisfactorily address one or more of the reasons for refusal. For further information please see Annexe O.

T.2.6 There is a [statement of common ground form](#) available online. Appellants and the local planning authority can complete that form, save it to their computer and email to the other party and, when finalised, to us.

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<sup>29</sup> This advice relates only to amendments made before a local planning authority issued a decision. Any “appeal stage” amendments will be at the discretion of the Inspector in light of Wheatcroft considerations (see Annexe N) so any references in a statement of common ground to a jointly agreed amended drawing should be made on that understanding.