The Planning Inspectorate

Procedural Guide

Planning appeals - England

This Guide applies to

- planning appeals;
- householder development appeals;
- minor commercial appeals;
- listed building appeals;
- advertisement appeals;
- discontinuance notice appeals.

July 2020

2.3.5 Wherever possible the appellant should make their appeal(s) online through the Appeals Casework Portal.

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

2.3.7 If a potential appellant does not have access to the internet they should contact us and we will send them the relevant appeal form(s).

2.3.8 Appellants must send complete appeals and supporting documents to us so that we receive them within the time limit. At the same time they must send a copy to the local planning authority.

2.4 What are the time limits to make an appeal?

2.4.1 There are different time limits to make an appeal depending on the type of appeal and the circumstances.

2.4.2 For an appeal in relation to:

refusal of a householder planning application

We must receive it within **12 weeks** from the date on the decision notice but if the local planning authority has taken enforcement action - note the important information in paragraph 2.4.3.

Note – If the local planning authority has failed to determine a householder planning application or an appeal is being made against the grant of permission subject to conditions to which the applicant objects, the time limits under "other types of planning applications" below apply.

advertisement consent

application

We must receive it:

- ☐ within **8 weeks** of the date of receipt of the decision; or
- ☐ within **8 weeks** of the expiry of the period which the local planning authority had to determine the application.

Note – The local planning authority determination period is usually 8 weeks. If the applicant has agreed a longer period with the local planning authority, the time limit runs from the end of that period.

Note – If the local planning authority has failed to determine an application for express consent to display an advertisement or an appeal is being made against the grant of consent subject to conditions to which the applicant objects, the time limits under "other types of planning applications" below apply.

discontinuance notice appeals

An appeal against a discontinuance notice **must** be received by us **before** the effective date of the notice. The effective date will be on the notice.

refusal of a planning application for 'minor commercial'

development

We must receive it:

- ☐ within **12 weeks from** the date on the decision notice.

But if the local planning authority has taken enforcement action - note the important information in paragraph 2.4.3.

Note – If the local planning authority has failed to determine a planning application for minor commercial development or an appeal is being made against the grant of permission subject to conditions to which the applicant objects, the time limits under "Other types of planning applications" below apply.

other types of planning

applications We must receive it:

- ☐ within **6 months** from the date on the decision notice, or
- ☐ within **6 months** from the expiry of the period which the local planning authority had to determine the application.

But if the local planning authority has taken enforcement action - note the important information in paragraph 2.4.3.

Note – The local planning authority determination period for planning applications is usually 8 weeks (usually 13 weeks for major developments). However, if the local planning authority has also to determine an environmental impact assessment application the determination period is 16 weeks. For technical details consent applications the determination period is usually 5 weeks (usually 10 weeks for major development). If the applicant has agreed a longer period with the local planning authority, the time limit runs from the end of that period.

2.4.3 However, if an enforcement notice has been served for the same or very similar development for the above appeals the time limit is:

- ☐ within **28 days** from the date of the local planning authority's decision notice or of the date by which the local planning authority should have decided the application if the enforcement notice was served before the decision was made yet not longer than 2 years before the application was made.
- ☐ within **28 days** from the date the enforcement notice was served if served on or after the end of the period the local planning authority had to determine the application(unless this extends the normal appeal period).

2.4.4 For an appeal in relation to:

listed building consent application

We must receive it:

- ☐ within **6 months** from the date on the notice of the decision, or
- ☐ within **6 months** of the expiry of the period which the local planning authority had to determine the application.

Note – The local planning authority determination period is usually 8 weeks. If the applicant has agreed a longer period with the local planning authority the time limit runs from the end of that period.

2.5 Full statement of case

2.5.1 Appellants must set out their full statement of case when making the appeal. For further information about the full statement of case please see Annexe J.

2.6 Planning conditions

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

2.6.2 The appellant when making their appeal and the local planning authority when sending us its completed copy of our questionnaire, or as a separate document when sending its full statement of case should indicate if they wish to accept or can suggest a planning condition(s) that they think would mitigate the impact of the proposal.

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

2.7 Who determines the appeal procedure?

2.7.1 Section 319A of the Town and Country Planning Act 1990 gives the Secretary of State the duty to determine the procedure for dealing with various appeals. This duty, which has been commenced in relation to planning, advertisement and enforcement appeals, will be exercised by us, taking account of the criteria for determining the appeal procedure (please see Annexe K). The duty to determine the procedure does not yet apply to listed building appeals.

2.7.2 When making their appeal, the appellant must identify which procedure they consider to be the most appropriate and give reasons to support this.

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

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

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

2.7.6 Although the criteria in Annexe K do not directly apply to listed building appeals they are a useful indication which procedure would be appropriate for these appeals. The appellant and the local planning authority should consider Annexe K when indicating which procedure they want.

2.8 What is the process for challenging a decision made during the processing of an appeal?

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

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

2.9 What is the role of interested people?

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

2.9.2 "Guide to taking part in" documents explain how interested people can get involved in the appeal process. They are available for the following appeal procedures:

Written representations – England
Hearing – England
Inquiry - England

3 OTHER IMPORTANT INFORMATION

3.1 Can a proposed scheme be amended?

3.1.1 If, exceptionally, the appellant wishes to amend a scheme at the appeal stage, we will consider each request on its own merits. For further information please see Annexe M.

3.2 Can there be new material during an appeal?

3.2.1 There will be rare occasions when new matters will arise during an appeal which ought to be considered by the Inspector. For further information please see Annexe B.

3.3 Planning obligations

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

3.4 What is "Expert evidence"?

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

3.5 Openness and transparency

3.5.1 Hearings and inquiries are open to journalists and the wider public, as well as interested people. Provided that it does not disrupt proceedings, anyone will be allowed to report, record and film proceedings including the use of digital and social media. Inspectors will advise people present at the start of the event that the proceedings may be recorded and/or filmed, and that anyone using social media during or after the end of the proceedings should do so responsibly.

3.5.2 If anyone wants to record or film the event on equipment larger than a smart phone, tablet, compact camera, or similar, especially if that is likely to involve moving around the venue to record or film from different angles, they should contact us and the local planning authority in advance to discuss arrangements.

3.5.3 In exceptional circumstances, where there are factors which outweigh the public interest in allowing hearings and inquiries to be filmed or recorded, it may be necessary for the Inspector to prevent or restrict such

filming or recording. This would include situations where there is a danger to the safety of the individual.

3.5.4 If the venue has restrictions on filming in place, then confirmation will be needed before the hearing that those restrictions can be lifted.

4 THE DECISION

4.1 Where will the decision be published?

4.1.1 When made, the decision will be published online and can be viewed using the search facility.

5 AFTER THE DECISION

5.1 What happens if an error has been made?

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

5.2 How can someone give feedback?

5.2.1 We welcome feedback about people's experience of dealing with us. This can be provided to us at any time. Further information is available here.

5.3 How are complaints dealt with?

5.3.1 If after the decision on an appeal has been published, we receive a complaint against an Inspector's decision or the Inspector or the way we administered a case it is dealt with by the Customer Quality Team who are independent of the teams who process cases. All complaints are investigated thoroughly and impartially. Further information is available here.

5.4 How can a decision be challenged?

5.4.1 The High Court is the only authority that can formally identify a legal error in an Inspector's or Secretary of State's decision and require that decision to be re-determined. Applications to challenge planning appeal and related costs decisions must be received by the Administrative Court within 42 days (6 weeks) from the date of the decision. For further information please see Annexe L.

5.5 Who makes sure that development is in accordance with planning permission?

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

5.5.2 If the local planning authority considers that the development does not comply with the permission it has the power to take enforcement action.

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

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

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

6 CONTACTING US

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

For general enquiries our contact details are:

The Planning Inspectorate
Customer Support Team
Temple Quay House
2 The Square
Bristol
BS1 6PN

Helpline: 0303 444 5000
Email: enquiries@planninginspectorate.gov.uk

Or for queries about problems with working electronically:

Email: pcs@planninginspectorate.gov.uk

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

Annexe A

A Who decides an appeal?

A.1 Legislation

A.1.1 Under section 78 of the Town and Country Planning Act 1990 there is a right for the original applicant to make an appeal to the Secretary of State. Through legislation, for the vast majority of appeals, the authority to decide an appeal ("the jurisdiction") has been transferred to an Inspector.

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

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

A.2 If an appeal is recovered what happens?

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

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

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

A.2.4 If the appeal is proceeding by an inquiry it will follow the legislation and procedure as described in Annexe G.A.2.5 If a party has a statutory right to appear at the inquiry, they will be asked to provide a full written statement of case before the inquiry under the Rules.

A.2.6 We will:

- ☐ require the local planning authority to publicise the inquiry arrangements in the local press;
- ☐ require the local planning authority to inform owners and occupiers of properties near the appeal site, those who made representations to the local planning authority at application stage and anyone else it thinks may be affected by the development of the inquiry arrangements;
- ☐ require the appellant, if he or she controls the site, to post a notice on the site - in a place where it can be seen by the public - giving details of the inquiry arrangements.

A.2.7 If an interested party is not going to attend the inquiry but want their views to be known they must send their representations to our Case Officer within 6 weeks of the start date.

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

A.3.1 If an appeal has been recovered, the Inspector will write a report which will contain his or her conclusions and make a recommendation on whether the appeal should be allowed and planning permission be granted (with or without conditions) or dismissed.

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

A.3.3 Under the statutory timetabling provisions set down by the Act[3] the parties involved in the appeal will be advised of the expected date of the Secretary of State's decision when the Inspector's report is submitted to the Secretary of State.

A.3.4 Recovered appeal decision letters are available on the Ministry of Housing, Communities and Local Government area of the GOV.UK website and online using the search facility.

[3] Section 55 and Schedule 2 of the Planning and Compulsory Purchase Act 2004.

B Can there be new material during an appeal?

B.1 The importance of ongoing discussion

B.1.1 Ongoing discussion between the applicant and the local planning authority should ensure that the applicant has the opportunity to respond to any issues/concerns before the local planning authority's decision is made. This will mean that there should be no unexpected issues raised by that decision.

B.2 Changed circumstances

B.2.1 If:

- a decision has been made, or enforcement action taken, on a local similar development since the appealed application was decided, (either by the local planning authority or on appeal);
- ☐ there has been a change in circumstances (eg new or emerging legislation or Government policy or guidance or local policy) since the local planning authority's decision (see paragraphs 1.9 and 1.10);

the local planning authority must alert us in writing, as soon as possible (copying their correspondence to the appellant), to the decision or the change in circumstances. The appellant may also do this. See paragraphs 1.7 to 1.10.

B.2.2 New evidence will only be exceptionally accepted where it is clear that it would not have been possible for the party to have provided the evidence when they sent us their full statement of case.

B.2.3 If, exceptionally, any party provides new evidence at appeal stage this may lead to:

- ☐ delay – so that we can give the other party or interested people the opportunity to comment; and/or
- ☐ additional expense by another party who may make an application for costs; or
- ☐ the Inspector initiating an award of costs.

C Householder, advertisement and minor commercial appeals

Part 1 of The Town and Country Planning (Appeals) (Written Representations Procedure) (England) Regulations 2009 (Statutory Instrument 2009/452) as amended by The Town and Country planning (Appeals) (Written Representations Procedure and Advertisements) (England) (Amendment) Regulations 2013 Statutory Instrument 2013/2114

C.1 Householder appeals

C.1.1 An appeal in connection with **refusal** of a householder application ("a householder appeal") will normally proceed by the Part 1 written representations procedure.

C.1.2 "Householder application"[4] means:

> "(a) an application for planning permission for development for an existing dwellinghouse, or development within the curtilage of such a dwellinghouse for any purpose incidental to the enjoyment of the dwellinghouse; or
> (b) an application for any consent, agreement or approval required by or under a planning permission, development order or local development order in relation to such development,
>
> but does not include an application for change of use or an application to change the number of dwellings in a building."

C.1.3 "Householder application" also includes an application for prior approval of a larger single-storey rear extension.

C.2 Advertisement or minor commercial appeals

C.2.1 An appeal against the **refusal** of an application for express consent to display an advertisement or **against** the refusal of an application for minor commercial development (shop front development) will normally proceed by the Part 1written representations procedure.

C.2.2 "Minor commercial application"[5] means:

> "(a) an application for planning permission for development of an existing building or part of a building currently in use for any of the purposes falling within Part A of the Schedule to the Town and Country Planning (Use Classes) Order 1987, or

[4] This is defined in Article 2 - Interpretation - of the Town and Country Planning (Development Management Procedure) (England) Order 2015 Statutory Instrument 2015/595.
[5] This also is defined in Article 2 of the 2015 Order referred to in the above footnote.

(b) an application for any consent, agreement or approval required by or under a planning permission, development order or local development order in relation to such development,

where such an application does not include a change of use, a change to the number of units in a building, or development that is not wholly at ground floor level or that would increase the gross internal area of a building."

C.2.3 Please see Appendix C.1 which contains Schedule 1A.

C.3 Process and scope

C.3.1 For appeals proceeding by written representations, under Part 1 of the Regulations, relevant documentation can usually be seen online and can be viewed using the search facility.

C.3.2 The following appeals are within the scope of the Part 1 process:

- ☐ appeals against the refusal of householder applications for planning permission for development such as dwellinghouse extensions, alterations, garages, swimming pools, walls, fences, vehicular access, porches and satellite dishes (this list is not exhaustive);
- ☐ appeals against refusal of express consent to display an advertisement;
- ☐ appeals against refusal of a minor commercial (shop front) development (eg ground floor security shutters or any other ground floor level external alterations)
- ☐ appeals against the refusal of any consent, agreement, or approval required by or under a planning permission, development order or local development order in relation to such development. This includes appeals against the refusal of an application for prior approval of a larger single-storey rear extension; and
- ☐ appeals against a local planning authority's decision to refuse to remove or vary a condition or conditions attached to a previous planning permission for householder or minor commercial (shop front) development or advertisement consent.

A timetable for these appeals is in Appendix C.2 to this annexe.

C.3.3 The following are not within the scope of the Part 1 process described in this annexe:

- ☐ appeals in relation to proposals for additional dwellings, replacement dwellings and any change of use;
- ☐ appeals in relation to proposals for any development to a flat;
- ☐ appeals against the decision of the local planning authority to impose a condition or conditions on a planning permission;
- ☐ appeals where the local planning authority has failed to make a decision (non-determination or "failure" appeals);
- ☐ appeals following service of a discontinuance notice.

As these are not "householder" or "minor commercial" appeals they will proceed by the process explained in Annexe D of this Guide. For information about the process for appeals against a condition on an advertisement consent, advertisement appeals where the local planning authority has failed to make a decision and appeals against a discontinuance notice please see Annexe Q.

C.3.4 Minor commercial (shop front) appeals made under the reduced timetable because enforcement action has been taken by the local planning authority (please see paragraph 2.4 3) are also not within the scope of the Part 1 process as described in this annexe. The appeal will follow a Part 2 process which is different from the Part 2 process described in Annexe D of this Guide. A timetable for this different process is illustrated in Appendix D.2 to Annexe D.

C.3.5 There may be circumstances where an appeal is not suitable to proceed by the Part 1 process. This may be evident at the beginning, or come to light during the processing of an appeal. In such instances we may determine that the appeal should proceed under Part 2 of the Regulations as a written representations appeal or we may determine that a hearing or inquiry should be held.

C.3.6 However if we determine that an appeal, which would normally be under the Part 1 process, is unsuitable for that process but is suitable for the Part 2 written representations process the appeal will normally follow a Part 2 process which is different from the Part 2 process described in Annexe D of this Guide. A timetable for this different process is illustrated in Appendix D.2 to Annexe D.

C.3.7 We may agree special arrangements for an appeal that would normally proceed under the Part 1 process where it would be sensible for it to be considered simultaneously with a related appeal (such as one relating to listed building consent) by the same appellant.

C.4 The appellant

C.4.1 The appellant must ensure that we receive their:

<u>householder planning appeal</u>

- ☐ within 12 weeks (not 3 months) from the date on the notice of the local planning authority's decision.

However if the local planning authority has taken enforcement action the time limit is **shorter** than given here. For important information please see paragraph 2.4 3.

<u>advertisement appeal</u>

- ☐ within **8 weeks** of the date of receipt of the local planning authority's decision.

minor commercial appeal

- ☐ within **12 weeks** of the date of the local planning authority's decision.

However if the local planning authority has taken enforcement action the time limit is **shorter** than given here. For important information please see paragraph 2.4 3.

C.5 Grounds of appeal

C.5.1 The appellant's grounds of appeal should fully disclose their case through full representations and any supporting evidence. The grounds of appeal must be concise, clear and comprehensive. The appellant should respond to the reasons for refusal set out in the local planning authority's decision notice, any issues raised in the planning officer's report and/or the Committee minutes, and should explain the basis on which they consider planning permission should be granted. If the appellant intends to submit a planning obligation or unilateral undertaking then this must be received within the time limit for the submission of a householder planning appeal (see N.1)

C.5.2 The appellant may also wish to respond to any representations the local planning authority received from interested people during the application stage.

C.5.3 Some local planning authorities publish the planning officer's report, Committee minutes, representations received from interested people and other documents relating to the application on their websites, but not all. As part of considering the merit of making an appeal the onus is on the appellant to make the necessary arrangements to view these documents.

C.5.4 Having made their appeal, the appellant will not normally be able to send any further material unless further information or response is required and requested by the Inspector.

C.6 What happens when we receive an appeal?

C.6.1 Within 7 days of receiving a valid appeal we will determine whether the appeal is suitable for the Part 1 process, and, if so, will confirm to the appellant and the local planning authority:

- ☐ the reference number allocated to the appeal;
- ☐ that the appeal will proceed by way of the Part 1 process.

C.6.2 The date of this notification letter will be the start date for the appeal.

C.6 3 If we determine, at this stage or later, that the appeal is not suitable for the Part 1 procedure we will notify the appellant and the local planning authority and explain what procedure the appeal will follow.

C.7 What does the local planning authority have to do?

C.7.1 When notified by us that an appeal is to proceed by the "Part 1" procedure, the local planning authority must send copies of all of the relevant documents to us and to the appellant within 5 working days of the start date along with a completed copy of the appropriate appeals questionnaire. The local planning authority must indicate on the questionnaire what appeal procedure it considers appropriate, taking account of the criteria (see Annexe K). If this differs from that determined by us we will review the procedure.

C.7.2 The local planning authority's case will be its reasons for refusal and the documentation supplied with the questionnaire. The local planning authority's reasons for refusal should be clear and, where the Committee's decision goes against the planning officer's recommendation, it is good practice for the reasons for this to be stated clearly in the Committee minutes. In turn this will mean that if an appeal is made the local authority's documentation will contain all of its reasons and if the appellant arranges to view the documentation before they make their appeal, they will be aware of the full background to the refusal. With its documentation the local planning authority should identify any factual error in the appellant's grounds of appeal and any new material or changes made which were not before it at the time it made its decision.

C.7.3 The local planning authority will not normally be able to send any further material after the questionnaire stage unless further information or response is required and requested by the Inspector.

C.8 Who tells interested people about the appeal?

C.8.1 Within 5 working days of the start date the local planning authority must notify interested people:

- that an appeal has been made;
- that any representations made to the local planning authority in relation to the application, will be sent to the Planning Inspectorate and the appellant, and will be considered by the Inspector when deciding the appeal;
- how they can withdraw their representations if they wish to do so; and
- that the decision will be published online.

C.8.2 The local planning authority will already have informed interested people at the application stage that, in the event of an appeal, there normally will be no further opportunity to make representations at appeal stage.

C.8.3 We encourage local planning authorities to use the online model notification letter.

C.9 Is the appeal site visited?

C.9.1 Visits to the appeal site and any relevant neighbouring land or properties are normally carried out where it is necessary to assess the impact

of a development on its surroundings. The purpose of the visit is solely to enable the site and its surroundings to be viewed.

C.9.2 Where the site is sufficiently visible from the road or public viewpoint the visit will be carried out unaccompanied. This is likely to be the case for the majority of advertisement consent appeals and minor commercial appeals.

C.9.3 If access to the site is clearly required, we will contact the appellant/agent with a date and usually a morning or afternoon time slot when the Inspector or his/her representative will carry out the site visit. Similar arrangements will be made with individual neighbours where it is considered to be necessary to view the site from their property.

C.9.4 The local planning authority should advise us (when completing the questionnaire) and the neighbour concerned if it is certain of such a need, and provide us with the neighbour's contact details.

C.9.5 If the appellant's or agent's presence is required at the appeal site it will be required solely to provide access to the site. The local planning authority will not attend the site visit.

C.9.6 Where, during an unaccompanied site visit, the Inspector or his/her representative decides that he or she needs to access the site, he or she may approach the occupants to gain permission/access.

C.9.7 A site visit is not an opportunity for anyone present to discuss the merits of the appeal or the written evidence they may have previously provided. The Inspector or his/her representative will therefore not allow any discussion about the case with anyone at a site visit.

Appendix C.1

Definition of minor commercial development

As explained in Article 2 - Interpretation - of the Town and Country Planning (Development Management Procedure) (England) Order 2015 Statutory Instrument 2015/595, "minor commercial development" is defined as:

> "(a) an application for planning permission for development of an existing building or part of a building currently in use for any of the purposes falling within Part A of the Schedule to the Town and Country Planning (Use Classes) Order 1987, or
> (b) an application for any consent, agreement or approval required by or under a planning permission, development order or local development order in relation to such development,
>
> where such an application does not include a change of use, a change to the number of units in a building, or development that is not wholly at ground floor level or that would increase the gross internal area of a building."

SCHEDULE

PART A

Class A1. Shops
Use for all or any of the following purposes —

(a) for the retail sale of goods other than hot food,
(b) as a post office,
(c) for the sale of tickets or as a travel agency,
(d) for the sale of sandwiches or other cold food for consumption off the premises,
(e) for hairdressing,
(f) for the direction of funerals,
(g) for the display of goods for sale,
(h) for the hiring out of domestic or personal goods or articles,
(i) for the washing or cleaning of clothes or fabrics on the premises,
(j) for the reception of goods to be washed, cleaned or repaired,
(k) as an internet café, where the primary purpose of the premises is to provide facilities for enabling members of the public to access the internet;

where the sale, display or service is to visiting members of the public.

Class A2. Financial and professional services
Use for the provision of —

(a) financial services, or
(b) professional services (other than health or medical services), or
(c) any other services (including use as a betting office) which it is appropriate to provide in a shopping area,

where the services are provided principally to visiting members of the public.

Class A3. Restaurants and cafes
Use for the sale of food and drink for consumption on the premises.

Class A4. Drinking establishments
Use as a public house, wine-bar or other drinking establishment.

Class A5. Hot food takeaways
Use for the sale of hot food for consumption off the premises.

L.13 What will the timetable be for the hearing or inquiry?

L.13.1 We would normally try to agree dates for a hearing or an inquiry in accordance with our standard practice, please see Annexe E and Annexe F. Where the re-determined case is proceeding by written representations we would normally contact the parties to make arrangements for a further visit, unless it has been agreed that a further visit is unnecessary. Cases to be re-determined by the Secretary of State will be determined in accordance with the timetable published by the Secretary of State.

L.14 Contacting the Ombudsman

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

Helpline: 0845 0154033
Website: www.ombudsman.org.uk
Email: phso.enquiries@ombudsman.org.uk

M Can a proposed scheme be amended?

M.1 Making a new application

M.1.1 If an applicant thinks that amending their application proposals will overcome the local planning authority's reasons for refusal they should normally make a fresh planning application. The local planning authority should be open to discussions on whether it is likely to view an amended scheme favourably.

M.2 If an appeal is made

M.2.1 If an appeal is made the appeal process should not be used to evolve a scheme and it is important that what is considered by the Inspector is essentially what was considered by the local planning authority, and on which interested people's views were sought.

M.2.2 Where, exceptionally, amendments are proposed during the appeals process the Inspector will take account of the Wheatcroft Principles when deciding if the proposals can be formally amended. In the 'Wheatcroft' judgment[21] the High Court considered the issue of amendments in the context of conditions and established that "the main, but not the only, criterion on which… judgment should be exercised is whether the development is so changed that to grant it would be to deprive those who should have been consulted on the changed development of the opportunity of such consultation". It has subsequently been established that the power to consider amendments is not limited to cases where the effect of a proposed amendment would be to reduce the development[22].

M.2.3 Whilst amendments to a scheme might be thought to be of little significance, in some cases even minor changes can materially alter the nature of an application and lead to possible prejudice to other interested people.

M.2.4 The Inspector has to consider if the suggested amendment(s) might prejudice anyone involved in the appeal. He or she may reach the conclusion that the proposed amendment(s) should not be considered and that the appeal has to be decided on the basis of the proposal as set out in the application.

[21] *Bernard Wheatcroft Ltd v SSE* [JPL, 1982, P37]. This decision has since been confirmed in *Wessex Regional Health Authority v SSE* [1984] and *Wadehurst Properties v SSE & Wychavon DC* [1990] and *Breckland DC v SSE and T. Hill* [1992].
[22] See *Breckland DC* v. Secretary of State for the Environment (1992) 65 P&CR.34.

N Planning obligations

N.1 Introduction

N.1.1 Planning obligations in connection with planning appeals comprise both agreements and unilateral undertakings (section 106 of the Town and Country Planning Act 1990 "the Act" as amended). In this annexe where it refers to the Inspector, it should be taken to mean the Secretary of State for recovered appeals (please see Annexe A).

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

N.1.3 It is the responsibility of the appellant, at the outset of the process, to establish what are the relevant legal interests in the land, and who holds those legal interests. There is also a duty on the Council to check the information provided to them, in order to advise the Inspector whether the ownership position is agreed.

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

N.2 Deadline for receipt of planning obligations

Written representations cases

N.2.1 Part 1 written representations process: If the appellant intends to submit a planning obligation and wants to be certain that it will be taken into account by the Inspector they must provide an executed and certified copy at the time of making their appeal(s). Part 2 written representations process: If the appellant intends to send a planning obligation and wants to be certain that it will be taken into account by the Inspector they must make sure that it is executed and a certified copy is received by us no later than 7 weeks from the start date.

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

Hearing and inquiry cases

N.2.3 There should be a continuous dialogue between the parties in the run up to the hearing or inquiry about the state of the draft section 106 to ensure that the final draft is as good as it can be.

N.2.4 If the appellant intends to send a planning obligation they should make sure that a final draft, agreed by all parties to it, is received by us no later than 10 working days before the hearing or inquiry opens. The Inspector's and other parties' ability to prepare for the hearing or inquiry is likely to be significantly hampered if this deadline is not met.

N.2.5 We ask for a final draft, rather than an executed planning obligation, to allow for the possibility that the wording may need to be changed as a result of discussion and examination during the hearing or inquiry. Nonetheless the planning obligation should normally be executed before the hearing or inquiry closes, without the need for an adjournment. However if that is not practicable the Inspector will agree the details for the receipt of the executed planning obligation with the appellant/applicant and the local planning authority at the hearing or inquiry.

N.3 Justifying the need for the planning obligation

N.3.1 Regulation 122 of the Community Infrastructure Levy Regulations 2010 Statutory Instrument 2010/948 makes it unlawful for any planning obligation to be taken into account as a reason to grant a planning permission if it does not meet the 3 tests set out in the Regulation. It is:

- necessary to make the development acceptable in planning terms;
- directly related to the development; and
- fairly and reasonably related in scale and kind to the development?

N.3.2 The Framework sets out at paragraph 56, 3 policy tests which mirror the tests in the Regulations.

N.3.3 The following evidence is likely to be needed to enable the Inspector to assess whether any financial contribution provided through a planning obligation (or the local planning authority's requirement for one) meets the tests:

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

N.4 Format of the planning obligation

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

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

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

N.5 Parties to the planning obligation

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

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

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

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

N.5.5 There may be exceptional circumstances where it is agreed in advance by the parties that counterparts are the only practical option. In

these cases, both the Inspector and the local planning authority should be satisfied that certified copies of all the individually signed documents have been provided (by a solicitor or other suitably legally qualified person). It is preferable in such circumstances that each counterpart document includes a clause confirming that while the deed may be executed in counterparts, or in any number of counterparts, each of these shall be deemed to be an original (or a duplicate original), but all of them, taken together, shall constitute one and the same agreement. While such a clause is recommended in order to improve clarity, its absence will not make the counterparts invalid.

N.6 Content of the planning obligation

General points

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

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

N.6.3 The planning obligation must identify:

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

N.6.4 It must state:

- that it is a planning obligation made under the terms of Section 106 of the Act (or if not, it must state under which other legislation it is made) and name the planning authority by which it is enforceable;
- which part or parts come into effect upon the grant of planning permission – even if the actions required by the obligation are triggered by subsequent events, such as commencement of the development;
- precisely the requirements which it imposes on the party or parties giving the covenant(s) in sufficient detail (including the parts of the land to which they are to apply, where relevant) to make them enforceable; and
- that any financial contributions are to be paid to the local planning authority or (by a suitably worded provision in the deed) any other relevant body responsible for the provision of the particular public services to which the contributions apply.

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

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

N.6.7 Care should be taken to ensure that the obligations fall within the terms of section106 of the Act as set out below:

a) restricting the development or use of the land in a specified way;
b) requiring specified operations or activities to be carried out in, on, under or over the land;
c) requiring the land to be used in a specified way; or
d) requiring a sum or sums to be paid to the local planning authority.

See for example Westminster City Council v. Secretary of State for Communities and Local Government[2013] EWHC 690 (Admin).

Requirements imposed by unilateral undertakings

N.6.8 If using the unilateral undertaking form of obligation, it is acceptable for it to set out the conditions under which any financial contribution may be made – such as the purpose for which it may be used and the timing or phasing of the payments.

N.6.9 However, a unilateral undertaking should not try to impose requirements or obligations on any person other than the signing party eg it would not be acceptable to try to require a Registered Provider to exchange contracts within a set period.

N.7 Modifying or discharging planning obligations

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

N.7.2 Planning obligations, whether section 106 agreements or unilateral undertakings, can usually only be modified or discharged under section 106A of the Act.

Section 106A enables modification or discharge to be achieved either by an agreement with the local planning authority (which must be executed as a deed), or by an application to the local planning authority.

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

- for obligations entered into on or before 6 April 2010 – an application can be made at any time;

- for obligations entered into after 6 April 2010 – an application can be made after 5 years beginning with the date the obligation has been entered into to.

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

N.7.5 Great care should be taken in preparation, before executing a unilateral undertaking, so as to avoid any need to modify it subsequently. Where an obligation has been entered into, and executed, it will not usually be possible for the obligation to be subsequently withdrawn or modified unilaterally.

N.8 Planning obligations and the provision of affordable housing

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

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

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

- if the affordable housing is to be provided off-site, or a financial contribution made in lieu of provision, there is robust justification for this, and what is on offer is of broadly equivalent value (see paragraph 50 of the Framework);
- the planning obligation contains adequate controls to ensure that any affordable housing is retained as affordable for an unlimited duration;
- the arrangements for allocating the affordable housing (eg nomination rights involving use of the local authority's housing waiting list or allocations to qualifying persons by a Registered Provider) are satisfactory;
- if the planning obligation includes a cascade arrangement, there are adequate time-periods at each stage, especially before triggering any "fall-back" clause which would enable the affordable housing to revert to the developer for sale on the open market; and
- the proposed arrangements for managing the affordable housing are adequate.

N.9 Planning obligations for pooled contributions/tariffs

N.9.1 Formerly Regulation 123 of the CIL Regulations restricted the use of planning obligations in two ways:

a) It prevented the use of a planning obligation for the provision or funding of infrastructure, which was to be funded, wholly or partly, by CIL, to ensure that a developer did not pay twice for the same infrastructure in connection with a particular development; and

b) No more than 5 planning obligations could be pooled towards the funding of a single piece of infrastructure.

N.9.2 However, Regulation 123 was removed by the 2019 CIL Amendment Regulations on 1 September 2019. It is no longer unlawful, when considering the grant of planning permission at appeal, to take account of mitigation in the form of funding for an infrastructure project, which is also included in an authority's infrastructure list to be funded by CIL, or is being funded from pooled contributions from more than 5 other S106 obligations. However, obligations will still need to be assessed to check if they meet all three statutory tests as set out in Regulation 122. Relevant guidance on this can be found in the Planning Obligations and CIL chapters of the PPG at the following paragraphs: Reference ID: 23b-003-20190901, 23b-004-20190901 and 23b-006- 20190901 and Reference ID: 25-166-20190901 to 25-170-20190901.

Appendix N.1

Glossary

Affordable housing
See National Planning Policy Framework [DCLG, March 2012].

Agreement **A legal document executed and delivered by all the parties named. Must be between 2 or more parties.**

Attorney **A person appointed by another to act in the latter's place.**

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

[Legal] interest in land	An interest in land includes freehold ownership, leasehold interest, interest as a mortgagee, etc. Under section 106 it is a pre-requisite to entering into a planning obligation.
Landowner	Person holding a legal estate in land, eg a freeholder or leaseholder.
Liability	A duty or obligation enforceable by law.
Mortgagee	A person with security against a property usually by

	way of a loan.
Obligation / Planning obligation	An obligation in the strict sense is something which a party is legally bound to do (eg they may be bound by a section 106 agreement or unilateral undertaking to make a financial contribution towards educational facilities, lay out an access road, and so on). A planning obligation is an obligation to do any of the things listed in section 106(1) of the Town and Country Planning Act 1990, and is contained in an instrument executed as a deed – see section106(9). However the term "obligation" is also sometimes used as shorthand for "planning obligation", which in this generic sense refers to both section 106 agreements and unilateral undertakings.
Option to purchase	A right (made by agreement) to buy or not, within a certain time.
Power of Attorney	Legal document authorising a named person to sign documents on another's behalf in specified circumstances.
Registered Provider	An organisation which is registered with the Homes and Communities Agency as a provider of social housing. This can include Housing Associations, Local Authorities and private companies.
Section 106 agreement	An agreement made under section 106 of the Town and Country Planning Act 1990, containing covenants from one or more parties (who must have a legal interest in the land) to another party (usually the local planning authority).
Sealing (of a legal document)	Method of signing a document by means of a corporate or common seal. See Appendix N.2.
Successor(s) in title	Persons who are entitled to succeed the current holder(s) of a title to a property.
Title	A right to ownership of land or property.
Title Deed	A legal document which provides evidence of title to the land or property.
Unilateral undertaking	A planning obligation executed solely by the party or party giving the covenants and not by the party (usually the local planning authority) having the benefits of those covenants. In this way it differs from a section 106 agreement which is executed by all the parties including the local planning authority.
Witness / witnessing	A document is witnessed if it is signed in the presence of one or more other persons – the witness(es) – who then also sign to indicate that they have witnessed the signature.

Appendix N.2

Execution as a deed

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

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

1. Execution by an individual

Section 1(3) of the Law of Property (Miscellaneous Provisions) Act 89 provides that an instrument is validly executed as a deed by an individual if:

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

and

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

Example

The above requirements are satisfied if:

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

and

The document is signed in the following manner:

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

……
(*Signature of witness*)
……
(*Name of witness in print*)
……
……
……
(*Address of witness*)

2. Execution by a company

Section 44 of the Companies Act 2006 provides that a document is executed as follows:

(i) By the affixing of its Common Seal,

OR

(ii) By signature in accordance with section 44(2) that is, by any 2 authorised signatories.

Authorised signatories are defined as:

- every Director of the Company and
- the Secretary (or any joint secretary) of the Company

OR

(iii) By a Director of the Company in the presence of a witness who attests the signature

Examples

The above requirements are satisfied in the examples below:

(i) By Sealing

The following words appear in the document: *In Witness to the above the Company has affixed its Common Seal the day and year first above written*.

and

The Common Seal of)
J R Ltd was affixed) *(Seal of JR Limited here)*
in the presence of)

……
(*Director)*

.....
(Director/Secretary)

[Usually a Director signs according to the rules of the Company.]

(ii) By signature

The following words appear in the document: *In Witness to the above the Company has executed and delivered this document as a Deed the day and year first above written*.
and
The document is signed in the following manner:

Executed as a Deed by)
J R Ltd) *[signatures of authorised signatories[23] here]*
Acting by)

……	……
(*Signature*)	(*Signature*)
……	……
(Name and position in print)	*(Name and position in print)*

(iii) By signature by a director in the presence of a witness

The document should be signed in the following manner:

Signed as a Deed by)
JR Limited) *[signature of Director here]*
Acting by)

……	…….
(Signature)	*(Signature of witness)*
……	…….
(Name and position in print)	*(Name of witness)*

3. Other scenarios

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

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

[23] See above for definition of "authorised signatories".

4. General note

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

O What is "Expert evidence"?

O.1 Who provides expert evidence?

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

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

O.2 Endorsement

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

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

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

P What happens if an error has been made?

P.1 Background

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

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

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

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

P.1.4 The Act requires any person who wants us to correct a decision to request this in writing and within the relevant High Court challenge period. This is within 6 weeks from the date of the decision notice for planning appeals.

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

Contacting us

Customer Quality Team
The Planning Inspectorate
Temple Quay House
2 The Square
Bristol
BS1 6PN

Phone: 0303 444 5000
Email: feedback@planninginspectorate.gov.uk
Website: feedback

Q What is the procedure for advertisement and discontinuance notice appeals?

Q.1 Introduction

Q.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.

Q1.2 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.

Q.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.

Q.2 Legislation, policy and guidance

Q.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.

Q.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.

Q.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.

Q.3 Deadline for receipt of advertisement appeal

Q.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".

Q.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.

Q.4 Advertisement appeals – general

Does the advertisement need express consent?

Q.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.

Q.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[24]. There is no requirement for the local planning authority or the Inspector to consider this where a request has not been expressly made.

Conditions

Q.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.

Q.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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[24] 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.

Q.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.

Q.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[25]. Paragraph 11.3 of the Technical Report contains a suggested condition relating to intensity of illumination.

Q.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

Q.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.

Q.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.

Q.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).

Q.6 What are the regulations?

Q.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

[25] As the Report is from 2001 it refers to the 1992 Regulations.

- refusal of an application to vary a condition.

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.

Q.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

Q.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.

Q.7 The Part 2 written procedure

Q.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

Q.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.

Q.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

Q.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

Q.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

Q.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.

Q.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**.**

Q.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.

Q.9 Is the appeal site visited?

Q.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.

Q.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.

Q.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.

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

Q.10 Hearing

Q.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 J). If this differs from that determined by us we will review the procedure.

Q.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

Q.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.

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

Q.11 Discontinuance notice appeals

Q.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.

Q.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.

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

Q.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.

Q.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.

Annexe R

R Statement of common ground

R.1 Draft statement of common ground

R.1.1 For an appeal where the appellant wishes to proceed 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.

R.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. S.2 Agreed statement of common ground

R.1.3 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. S.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.

R.1.4 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 and help inform the early engagement process.

R.1.5 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".

R.1.6 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 (uncommon ground). 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;
- 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;
- 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.

R.1.7 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.