



The Planning
Inspectorate

Procedural Guidance

Enforcement appeals and determination of appeal procedure



INVESTOR IN PEOPLE

PINS 02/2009
April 2010



CONTENTS

1. INTRODUCTION
2. DETERMINING THE APPEAL PROCEDURE
3. APPLICATION OF GUIDANCE

ANNEXES

- Annexe A Criteria for determining the procedure for enforcement appeals

PROCEDURAL GUIDANCE

ENFORCEMENT APPEALS AND DETERMINATION OF APPEAL PROCEDURE

1. INTRODUCTION

1.1 This guidance explains the new process in England for determining the procedure by which enforcement appeals¹ are dealt with.

1.2 The legislation enabling this process comes into force on 6 April 2009. This guidance will take effect from that date. Both the legislative power and this guidance will apply to enforcement appeals made on or after that date.

1.3 ODPM Circular 02/02: Enforcement Appeals Procedures will remain in force. However, in relation to the determination of the appeal procedure, this guidance supersedes any references in ODPM Circular 02/02 to that process.

2. DETERMINING THE APPEAL PROCEDURE

2.1 There are three procedures by which an enforcement appeal can proceed:

- on the basis of written representations;
- by hearing;
- by local inquiry.

2.2 Section 319A of the Town and Country Planning Act 1990 (inserted by section 196 of the Planning Act 2008) has been partially commenced and gives the Secretary of State the power to determine the procedure for dealing with enforcement appeals. This power will be exercised by the Planning Inspectorate on behalf of the Secretary of State in accordance with the published criteria that are to be applied in making determination (see **Annex A**).

2.3 Appellants and local planning authorities will be invited to identify which appeal procedure they consider to be the most appropriate for each appeal, by reference to the published criteria. The appellant will do this on the appeal form and the local planning authority will do so on their enforcement questionnaire.

2.4 In cases which are controversial and have raised significant local interest, local planning authorities will be expected to contact the Planning Inspectorate as soon as practicable after receiving notice of an appeal from the appellant, to indicate whether they believe

¹ Enforcement appeals are made under s174 of the Town and Country Planning Act 1990.

a hearing or inquiry is required. In cases such as these the written representations procedure may not be suitable.

- 2.5 The Planning Inspectorate will ensure that the most appropriate and proportionate appeal procedure is selected through the application of the criteria, careful consideration of any representations and appropriate expert involvement.
 - 2.6 The Planning Inspectorate will determine which procedure will be used within 7 working days of the receipt of a valid appeal.² In relation to enforcement appeals, receipt of a valid appeal means receipt by the Secretary of State of a notice of appeal under section 174(3) together with the statement of appeal submitted in accordance with regulation 6 of the Town and Country Planning (Enforcement Notices and Appeals) (England) Regulations 2002. The determination will be reviewed on receipt of the local planning authority's questionnaire if the local planning authority has an alternative preferred procedure.
 - 2.7 The Planning Inspectorate will give reasons for its choice where it disagrees with the procedure identified by either of the main parties. The determination under section 319A can be varied at any point before a decision on the appeal is made. This power may need to be exercised where, for example, there is a change in circumstances or policy.
 - 2.8 The exercise of the power to determine the appeal procedure and the application of the Ministerial criteria will be monitored by the Advisory Panel on Standards for the Planning Inspectorate (APOS), who report directly and independently to the Secretary of State on the maintenance and enhancement of professional standards within the Planning Inspectorate.
- 3. APPLICATION OF GUIDANCE (PINS 01/2009)**
- 3.1 Other changes to the statutory framework have yet to be implemented for enforcement appeals. However, the guidance document Procedural Guidance: planning appeals and called-in planning applications (PINS 01/2009) is considered good practice for enforcement as well as planning appeals.

² Refer to the Town and Country Planning (Determination of Appeal Procedure) (Prescribed Period) (England) Regulations 2009 (SI 2009/454)

Criteria for Determining the Procedure for Enforcement Appeals

Written representations

If your appeal meets the following criteria, the most appropriate procedure would be written representations: -

1. the grounds of appeal and issues raised can be clearly understood from the appeal documents plus a site inspection and do not include a ground (d) appeal; and/or
2. the Inspector should not need to test the evidence by questioning or to clarify any other matters; and/or
3. an environmental impact assessment (EIA) is either not required or the EIA is not in dispute; and/or
4. the alleged breach and the requirements of the notice are clear and there are no complex legal issues.

Hearing

If the criteria for written representations are not met because questions need to be asked, for example where any of the following apply: -

- the status of the appellant is at issue, eg Gypsy/Traveller;
- the need for the proposal is at issue eg agricultural worker's dwelling; Gypsy/Traveller site
- the personal circumstances of the appellant are at issue, eg; people with disabilities or other special needs;

the most appropriate procedure would be a hearing if: -

1. there is no need for evidence to be tested by formal cross-examination; and
2. the grounds of appeal, the allegation and the requirement of the notice are straightforward (and do not require legal or other submissions to be made) and you should be able to present your own case (although you can choose to be represented if you wish); and
3. your case and that of the LPA and interested persons is unlikely to take more than one day to be heard.

Inquiry

If the criteria for written representations and hearings are not met because the evidence needs to be tested and/or questions need to be asked, as above, the most appropriate procedure would be a local inquiry if: -

1. the issues are complex and likely to need evidence to be given by expert witnesses; and/or

2. you are likely to need to be represented by an advocate, such as a lawyer or other professional expert because material facts and/or matters of expert opinion are in dispute and formal cross-examination of witnesses is required; and/or
3. legal submissions may need to be made or evidence needs to be heard under oath (e.g. where a witness is giving factual evidence about how long the alleged unauthorised use has been taking place); and/or
4. the alleged breach or the requirements of the notice are unusual and particularly contentious.

NOTE: Where proposals are controversial and have generated significant local interest they may not be suitable for the written representation procedure. We consider that the LPA is in the best position to indicate that a hearing or inquiry may be required in such circumstances.