

SCOTTISH EXECUTIVE
DEVELOPMENT DEPARTMENT
INQUIRY REPORTERS UNIT

PLANNING APPEALS IN SCOTLAND

Scottish Executive Inquiry Reporters Unit is responsible for processing planning appeals and arranging public local inquiries or site inspections for these and other planning related matters, including local plan inquiries, where the services of a Reporter are required.



SCOTTISH EXECUTIVE

Making it work together

INTRODUCTION

This booklet explains in general terms the procedure for appealing to Scottish Ministers:

- decisions of planning authorities on applications made to them;
- notices served by planning authorities

It has been produced by the Scottish Executive Inquiry Reporters Unit who are responsible for handling such appeals in Scotland. The address of the Reporters Unit is given below. If you have any queries on the submission of an appeal or the procedure that would be followed, the Reporters Unit will do their best to help you.

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1. TYPES OF APPEAL

1.1 There are many different circumstances in which there is a right of appeal to Scottish Ministers. This booklet can give only a broad indication of the procedures to be followed for planning appeals and related matters. More detailed information on procedures will be given when you request appeal forms or lodge an appeal.

1.2 Appeals can be grouped into three broad categories:

- Where an application for consent has been made to the planning authority and has been refused, approved subject to conditions, or the authority has failed to determine the application within the specified period (see section 2).
- Where the planning authority has served a notice requiring action to be taken (see section 3).
- Where an application has been made to the planning authority for a certificate and this has been refused, refused in part or not granted in the terms applied for (section 4).

Please refer to the appropriate section for further guidance. Sections 5 onwards apply generally to all types of appeals.

2. APPEALS FOLLOWING APPLICATIONS FOR CONSENT

2.1 The great majority of applications made to planning authorities are for planning permission to carry out development, including change of use of land or buildings. This can range from alterations to private houses to large scale residential and industrial developments. The following paragraphs deal with appeals following planning authorities' decisions on such applications. Other consents may be required if the building is a listed building or is in a conservation area (see paragraph 2.5) or if an advertisement is involved (see paragraph 2.6)

Whether to Appeal

2.2 Obviously you will feel dissatisfied if the planning authority has refused your application or imposed conditions which you think are unacceptable. Before deciding whether to appeal to Scottish Ministers, read the reasons given by the planning authority for refusing your application or imposing the conditions and try to consider them objectively. In deciding your application the planning authority are required to take into account the provisions of the local and structure plans for the area and any relevant guidance from central government. Any or all of these factors may have had a bearing on the decision reached on your application. Even if you still feel that your proposal should have been approved by the planning authority, appealing to Scottish Ministers is not your only option. It might be worthwhile discussing the matter with the planning authority to see if there is any possibility of your proposal being approved if it were to be revised. You may wish to take professional advice about revising your proposal.

When to Appeal

2.3 You can appeal immediately you have received the planning authority's formal decision on your application. You can also appeal if 2 months has elapsed since your application was formally accepted by the planning authority and you have not received a decision on your application (this is called a deemed refusal). If you have agreed with the planning authority that they can have an extension to the 2 month period, you cannot appeal on the basis of a deemed refusal until the extended period has expired. *Your appeal has to be submitted to*

Scottish Ministers within 6 months of the date of the notice of the planning authority's decision. If you and the planning authority have agreed in writing that a longer period should be allowed for giving a decision, the 6 month period starts from the end of the agreed extension. Scottish Ministers have no discretion to accept an appeal submitted after the end of this 6 month period. It is therefore essential that your appeal is lodged with the Reporters Unit within this period.

How to Appeal

2.4 If you want to appeal you need to complete a form (reference P/PPA) which you can obtain from the Reporters Unit. You will be sent 3 copies of the form - one to return to the Reporters Unit; one to send to the planning authority who dealt with your application; and the third to retain for your own use.

Listed Building and Conservation Area Consent Appeals

2.5 The procedure for appealing against a planning authority's decision (or failure to give a decision) on an application for listed building or conservation area consent is similar to that for applications for planning permission (as set out above). The main difference is that the form to use when submitting the appeal has the reference P/LBA. *An appeal has to be submitted within 6 months of the date of the notice of the planning authority's decision.* If you have submitted applications for both planning permission and listed building/conservation area consent and are dissatisfied with the planning authority's decision on both applications, you will need to submit two separate appeals, even if only one decision letter has been issued.

Advertisement Consent Appeals

2.6 There is no form to use when submitting an advertisement consent appeal. A letter and supporting documents are required. The letter should state the grounds on which the appeal is being made, and the application made to the planning authority (including the relevant plans), the planning authority's decision and any other relevant

correspondence should be enclosed with it. *Appeals must be submitted within 6 months of receipt of the notice of the planning authority's decision.* Scottish Ministers have no discretion to accept appeals submitted after the end of this period.

Hazardous Substances Consent

2.7 The procedure set out in paragraphs 2.1 to 2.3 applies equally to hazardous substances consent appeals except that the form to be used in submitting an appeal has the reference P/HSC. *An appeal has to be submitted within 6 months of the date of the notice of the planning authority's decision.* Scottish Ministers have no discretion to accept appeals submitted after the end of this period.

3. APPEALS AGAINST ENFORCEMENT AND OTHER NOTICES

General

3.1 Planning authorities have powers to serve notices in a variety of circumstances. The most common is a planning enforcement notice where the authority believes that there has been a breach of planning control because they consider that development has been carried out either without the necessary planning permission or without complying with conditions attached to a grant of planning permission. The following paragraphs outline the procedures for appeals against such notices. The same procedures are followed where the enforcement notice relates to a possible breach of listed building or advertisement control except that no fee requires to be paid in connection with such appeals. There are other types of notice which can be served by a planning authority and against which there is a right of appeal to Scottish Ministers. Among these are:-

- a discontinuance notice in relation to advertisements (see paragraph 3.4)
- an amenity notice under section 179 of the 1997 Act where the planning authority considers that the amenity of an area is affected by the condition of any land (see paragraph 3.5).
- a hazardous substances contravention notice (see paragraph 3.6).

How to Appeal

3.2 Appeals against notices are not required to be submitted on an appeal form. The appeal may be made by letter. However, for planning enforcement and listed building enforcement notice appeals, you may find it helpful to submit your appeal on the appeal forms available for this purpose from the planning authority and this Unit. Your appeal must specify one or more of the grounds referred to in the Act. A list of these grounds should have been enclosed with the notice for your information. The appeal must also state facts in support of these grounds i.e. whatever background information, explanation, arguments etc. you wish to put forward to back up the grounds of appeal. In most cases a fee will require to be paid, as an enforcement notice appeal is treated as an application for planning permission for the development to which the

notice relates. If a fee is required, the amount of the fee will be stated in one of the schedules attached to the notice. If the outcome of a planning enforcement notice appeal is that the Reporter finds that there has been no breach of planning control, the fee is refunded. If the fee is not paid, the Reporter will determine the appeal, but cannot grant planning consent for the development.

Time Limits for Submitting an Appeal

3.3 The notice will specify a time limit (before the notice takes effect) within which an appeal can be made to Scottish Ministers. *If you wish to submit an appeal, it is essential that you do so within the time period stated.* If your appeal is received after the end of the period, it cannot be accepted. If, for example, a planning enforcement notice states that it is to come into effect on 12th May, the appeal must be with the Reporters Unit no later than 11th May.

Advertisement Discontinuance Notice Appeal

3.4 The guidance in paragraph 3.3 about the time limit for submitting an appeal applies equally to this type of appeal but the procedures are quite different from the other appeals against notices. Grounds of appeal need to be stated but these are not drawn from a list attached to the notice. An appeal is dealt with as if an application for consent had been made to display the advertisement referred to in the notice. There is no fee payable.

Section 179 Notice Appeal

3.5 The guidance in paragraphs 3.2 and 3.3 applies equally to this type of appeal, except that no fee is payable.

Hazardous Substances Contravention Notice Appeal

3.6 The guidance in paragraphs 3.2 and 3.3 applies equally to this type of appeal. A fee will normally be payable but may be refunded in certain circumstances.

4. APPEALS FOLLOWING APPLICATIONS FOR CERTIFICATES

Certificate of Appropriate Alternative Development

4.1 There is no special form on which an appeal has to be made - a letter and supporting documents are all that is required. *An appeal has to be with Scottish Ministers within 1 month of the date of receipt of the certificate.* Scottish Ministers have no discretion to accept an appeal submitted after the end of the 1 month period. An appeal can also be submitted if no certificate has been issued by the planning authority within 2 months of the date of receipt of the application: in such circumstances, the time limit of 1 month for lodging the appeal still applies. A copy of the application made to the planning authority and of any certificate issued by the planning authority should accompany the appeal. You are also required to send a copy of the appeal to the planning authority and to the other party involved in the land acquisition (the acquiring authority).

4.2 Appeals in connection with these certificates are under the Land Compensation (Scotland) Act 1997 and not the Town and Country Planning (Scotland) Act 1997. As such, some of the guidance given in the remaining sections of the booklet is not applicable to these appeals eg these appeals cannot be delegated to a Reporter for decision.

Certificate of Lawful Use or Development

4.3 If you want to appeal against the council's decision on an application for such a certificate, you need to complete a form (reference P/CLUD) which you can obtain from the Reporter's Unit. You will be sent 3 copies: one to return to the Reporter's Unit; one to send to the planning authority; and the third to retain for your own use.

5. TIME AND COST INVOLVED

5.1 You will have to meet your own expenses in connection with your appeal including the cost of employing any professional advisers or representatives. If the issues are simple there is no reason why you should not deal with the appeal yourself or with the help of relatives or friends. How long it will take to decide your appeal depends on a number of factors. The main one is the method to be adopted to present the information - either written submissions or a public local inquiry - as explained in section 7. Appeals which are decided after holding a public inquiry can take, on average, almost twice as long as appeals dealt with by written submissions. In a small number of cases a Reporter does not issue the decision but is required to submit a report to Scottish Ministers. Such cases take longer to decide. The Reporters Unit's current targets for deciding appeals are shown on the loose leaf page enclosed with this booklet.

6. CONTACT WITH THE REPORTERS UNIT

6.1 When an appeal is received in the Reporters Unit, it will be allocated to a member of the administrative staff (the case officer) who will be responsible for processing the appeal through its various stages. The case officer's name, telephone number, and email address will appear on the correspondence and he or she will be the point of contact for both you and the planning authority in connection with the appeal.

6.2 When the initial stages of the appeal have been completed and it has been established that the appeal has been properly lodged within the appropriate time limit, and whether the appeal is to be decided on the basis of written submissions or after holding a public inquiry, a Reporter will be appointed to the case. Reporters are professional people with experience in town planning either as town planners or associated professions such as architects or lawyers. All Reporters are independent experts who will make an impartial assessment of each case based on the relevant planning considerations and policies.

7. CHOICE OF PROCEDURE TO BE FOLLOWED

7.1 An appeal is normally decided by one of 2 procedures:

- **the written submissions procedure** where you and the planning authority set out your cases in writing
- **the public inquiry procedure** where the Reporter will conduct an inquiry at which you and the planning authority will give evidence.

7.2 The written submissions procedure is the method most frequently used. Over 90% of appeals are decided this way. This is a quicker, simpler and cheaper method of deciding an appeal. The public inquiry method tends to be used where more significant developments are involved or where the issues are more complex. You and the planning authority will be asked which procedure you prefer. Either of you may opt for a public inquiry, and this may also be imposed by Scottish Ministers if the case merits this treatment. These two procedures are explained in more detail in sections 8 and 9 of this booklet.

7.3 In a very small number of cases, a third option might be suggested, that of a hearing. A hearing is likely to be suggested where a written submissions case involves a topic involving particularly complex evidence. Hearings are conducted in a less formal manner and can be useful to clarify matters without the need for a public inquiry. If it is considered that this would be appropriate in your appeal, the Reporters Unit will raise this possibility with you and the planning authority. This procedure would only be followed if both you and the planning authority were agreeable.

8. WRITTEN SUBMISSIONS PROCEDURE

8.1 The basis of this procedure is that both parties (the planning authority and yourself) state their cases in writing, supported by any photographs, plans or other documents. Your grounds of appeal on the appeal form or in your letter will comprise the main part of your written submissions. The planning authority will then submit various documents relevant to your appeal including a copy of responses to any consultations carried out and any representations received from objectors or supporters of the proposal. The planning authority may decide to rest their case on these documents and the officer's committee report, or submit a further statement. Whichever option they choose, you will be given a further opportunity to comment on their submissions. You will also be sent a copy of any further submissions made to Scottish Ministers by objectors.

8.2 Arrangements will be made for a Reporter to inspect the site, and you and the planning authority and any other objectors or supporters will normally be invited to attend. The object of the site inspection is to enable the Reporter to see the site and the surroundings, but not to hear argument or debate about the merits of the appeal. All the relevant arguments and points in connection with your appeal should have been set out in the written submissions themselves. Where there is no difficulty in seeing the site without entering buildings, it may be possible for the Reporter to inspect the site without being accompanied by yourself and the planning authority. This will help to reduce the time taken to give a decision on the appeal.

9. PUBLIC LOCAL INQUIRY PROCEDURE

9.1 Arrangements for an inquiry have to be made some time in advance, and you and the planning authority will be consulted about the date. The inquiry will be conducted by a Reporter and will be held with no greater degree of formality than is necessary for it to be run efficiently. You can conduct your own case at an inquiry and do not have to be represented by a solicitor or other professional person unless that is your preference.

9.2 As it is a public local inquiry, notice of the date, time and place has to be given in a local newspaper. Members of the public and the press can attend to watch the proceedings and third parties, such as objectors, may take part. The Reporter will usually have looked at the site prior to the inquiry. If a further site inspection takes place after the inquiry, you and the planning authority will be invited to accompany the Reporter on the visit.

9.3 Various documents have to be exchanged prior to the inquiry, so that both sides have an adequate chance to consider their arguments. You will be supplied with guidance to explain these procedures.

9.4 At the inquiry, all those giving evidence may be open to questioning, under the supervision of the Reporter.

10. WITHDRAWAL OF THE APPEAL

10.1 You may ask to withdraw your appeal at any time before the decision is issued. It is not possible to reinstate your appeal once it is withdrawn so you should be sure that this is what you want to do. It is helpful if you telephone the Reporters Unit in the first instance especially when an inquiry has been arranged. If you leave the withdrawal too late you may be liable to meet the planning authority's expenses. Your wish to withdraw the appeal must be confirmed in writing.

10.2 If your appeal is against a notice served on you by the planning authority (section 3) the notice will come into effect when this office formally acknowledges withdrawal of your appeal. It will then be necessary to comply with the terms of the notice within the period or periods set out in the notice.

11. AWARD OF EXPENSES

11.1 Scottish Ministers, the person lodging the appeal and the planning authority are normally expected to meet their own costs in processing an appeal. Expenses against another party are only awarded on grounds of unreasonable behaviour. An award of expenses does not necessarily follow the decision on the planning merits of the case. An appellant is not awarded expenses simply because his appeal has succeeded nor is the planning authority awarded expenses simply because the appeal is dismissed.

11.2 If you behave unreasonably in pursuing your appeal, causing unnecessary expense to the planning authority, it is open to the council to ask Scottish Ministers to require you to pay some or all of their expenses. Similarly if the planning authority behaves unreasonably you may claim expenses against them. Any claims for expenses must be made before the appeal procedures are finished. Where the appeal is being dealt with by written submissions, this would normally be at the stage when you submit your final written submissions, and in the case of a public inquiry, before the inquiry is concluded. Further guidance is given in Scottish Executive Development Department Circular 6/1990 which is available on request from the Reporters Unit.

12. DECISION ON THE APPEAL

12.1 In most cases after the written submissions procedure has been completed or after the public local inquiry has been held, the Reporter will prepare and issue a decision letter. This will summarise the arguments put forward by yourself, the planning authority, and any other parties; give the Reporter's conclusions; and either allow or dismiss the appeal. In a small number of cases the Reporter will not issue the decision but will submit a report with a recommendation to Scottish Ministers. In those cases the decision on the appeal will be taken by or on behalf of Scottish Ministers. Once a decision on an appeal has been given, it is final and cannot be changed by the Reporter or Scottish Ministers. The only way in which the decision can be challenged is through the courts, on a point of law or procedure - not on the planning merits of the case. The period for submitting such a challenge to the court will be stated in the decision letter. It is usually 6 weeks from the date of the letter.

13. CITIZENS CHARTER STANDARD STATEMENT

13.1 A companion booklet produced by the Reporters Unit sets out the standards you can expect from the Unit in dealing with your appeal and the procedure for making a complaint if you are dissatisfied with any aspect of the service provided. If you would like a copy of that booklet, it is available on request.

