



## Planning Guide - Appeals - Introduction

An applicant can appeal against a refusal of planning permission or against conditions imposed. There is also a right of appeal against an enforcement notice (see Planning Quick Guide 50: Enforcement). In the first instance, appeals can be made to the local planning authority (LPA). Depending on the decision, the applicant may also be able to appeal to Welsh Ministers. There is no right of appeal by any other parties affected by the application. This Quick Guide answers frequently asked questions regarding the process. See also Planning Quick Guide 52: Appeals – Further Information.

### When is there a right of appeal against a planning authority's decision?

Section 78 of the *Town and Country Planning Act 1990*<sup>1</sup> (TCPA 1990) confers a right of appeal by the applicant to Welsh Ministers where a LPA in Wales:

- has refused an application for planning permission or granted it subject to conditions;
- has refused to grant a subsequent consent (that an applicant is required to seek from the authority as a consequence of a previously granted planning permission), or has imposed further conditions as part of granting this consent; or
- has refused an application for any approval of that authority required under a development order or a local development order or granted it subject to conditions.

Section 78 of the TCPA 1990 also gives an applicant a right of appeal where a LPA in Wales has done none of the following within 8 weeks of the application being received (or other period as agreed between the applicant and the LPA):

- given notice to the applicant of their decision on the application;
- given notice to the applicant that they have exercised their power (under section 70A) to decline to determine the application;
- given notice that the application has been referred to Welsh Ministers.

Planning appeals made under section 78 must be received by Welsh Ministers generally within 6 months of the date of the notice, and must comply with formalities prescribed by the General Development Orders<sup>2</sup>.

### Who determines planning appeals?

Most planning appeals under section 78 of the TCPA 1990 are determined on behalf of Welsh Ministers by a Planning Inspector (an “appointed person”) employed by the Planning Inspectorate. The Planning Inspectorate is an Executive Agency of the Welsh Assembly Government.

Under the TCPA 1990, Welsh Ministers also have the power to “recover” jurisdiction over appeals which have been transferred to the Planning Inspectorate Wales, and the criteria for such an eventuality are outlined in Planning Policy Wales<sup>3</sup>. See Planning Quick Guide 53: Call in of planning applications for further information.

<sup>1</sup> The *Town and Country Planning Act 1990*,  
<http://www.lexisnexis.com/uk/legal/results/docview>

<sup>2</sup> See: *Town and Country Planning (General Development Procedure) Order 1995* (SI 1995/419):

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

*Town and Country Planning (General Development Procedure) (Welsh Forms) Order 1995* (SI 1995/3336)

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

*Town and Country Planning (General Development Procedure) (Amendment) (Wales) Order 2002* (SI 2002/1877)

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

<sup>3</sup> Welsh Assembly Government, March 2002, *Planning Policy Wales* (section 4.11.2),



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There are three options for the appeal procedure: the written representation, a hearing, or a public inquiry. For more background on these types of appeals, see Planning Quick Guide 52: Appeals – Further information.

### Who is involved in an appeal?

The principal parties to an appeal are the LPA and the appellant (who must be the applicant for planning permission). Other parties may also participate for a number of reasons:

- they may have been consulted in accordance with regulations because the original application for planning permission raised issues affecting their responsibilities, such as highway authorities, the Health and Safety Executive, Environment Agency Wales, and CADW. These 'statutory consultees' may wish to submit evidence to the appeal in support of the views they expressed on the application, or they may have been asked to appear by one of the principal parties to the appeal;
- local residents who object to or support the planning application/appeal;
- individuals and organisations, other than statutory consultees, who may have an interest in the application/appeal and wish to make representations.

Although third parties who have not been asked to provide a statement are not entitled to participate, they may be allowed to speak at the discretion of the inspector (who must not unreasonably withhold permission). The Planning Inspectorate can offer further advice on the rules and procedures.

### What are the cost implications of appealing?

It is a basic principle of land use planning that, irrespective of the outcome of an appeal, the parties to that appeal are expected to bear their own costs and expenses. Awards of costs do not necessarily "follow the event" and neither an appellant nor the LPA is awarded costs simply because the appeal succeeds or fails.

Welsh Ministers have the power to require one or more of the parties to an appeal to pay the appeal costs of one or more of the other parties, but that power is exercised only in exceptional circumstances on grounds of unreasonable behaviour.

Welsh Office Circular 23/93, *Award of Costs Incurred in Planning and Other (Including Compulsory Purchase Order) Proceedings*<sup>4</sup> gives detailed guidance on the award of costs in planning appeal proceedings.

### What evidence would be needed to overturn a planning authority's decision?

There is no clear answer to this question – the evidence needed for a planning appeal to be successful will depend entirely on the grounds of appeal in each case.

The starting point for consideration of all planning applications is section 70(2) of the TCPA 1990, which provides that in dealing with an application for planning permission the LPA shall have regard to the provisions of the development plan, and to any other material considerations. Section 54A of the Act further provides that where regard is to be had to the development plan, the determination shall be made in accordance with the plan unless material considerations indicate otherwise – and those considerations must be genuine land use planning considerations related to regulating the development and use of land in the public interest.

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<http://new.wales.gov.uk/docrepos/40382/4038231121/403821/403821/403828/planningpolicy-e.pdf?lang=en>

<sup>4</sup> The Planning Inspectorate Wales, *Costs – Circular 23/93: Award of Costs Incurred in Planning and Other (Including Compulsory Purchase Order) Proceedings*,

[http://www.planning-inspectorate.gov.uk/cymru/Wal/appeals/costs/circular08\\_19930329\\_e.htm](http://www.planning-inspectorate.gov.uk/cymru/Wal/appeals/costs/circular08_19930329_e.htm)



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Where the LPA refuses to grant the permission or consent sought, or grants it subject to conditions, they will indicate in their decision notice the local and national policies they took into account in reaching the decision.

In deciding whether to appeal the applicant should reassess the perceived planning merits of the development in the light of the relevant planning policies identified in the LPA's decision notice. If the decision is in line with the policies contained in the development plan then it will be necessary to consider what other material considerations there may be which would justify a decision not in accordance with the development plan.

There is no definition as to what constitutes a 'material consideration' but a broad interpretation adopted by the Courts is that "any consideration which relates to the use and development of land is capable of being a planning consideration. Whether a particular consideration falling within that broad class is material in any given case will depend on the circumstances"<sup>5</sup>.

Should the applicant take the view that an appeal should be made because there are material considerations which justify a decision not in accordance with the development plan, the evidence leading to that view should be explained in detail and in writing and, where an inquiry is held into the appeal, the applicant should be prepared for the possibility of that evidence being tested through cross-examination of witnesses.

Similarly, should the applicant take the view that the decision of the LPA is not in accordance with the development plan and that an appeal should be made, a detailed explanation will need to be prepared as to why the decision is considered to be incorrect.

### **Who makes the final decision? Does this person need to be technically qualified?**

Most planning appeals in Wales are determined by Planning Inspectors who will assess all the evidence submitted – whether through written representations, a hearing or a public inquiry – and take a decision in accordance with the development plan, unless material considerations indicate otherwise. The Inspector produces a decision letter in which the reasons for the decision are fully explained.

Planning Inspectors are duty bound to use all their experience and expertise to assess the substance of the evidence before them, including a visit to the appeal site, and come to a reasoned, impartial decision. The Inspectors must be capable of maintaining the principles of openness, fairness, and impartiality. The Inspectorate has published 'core competencies' for inspectors<sup>6</sup> and an *Inspectors' Code of Conduct*<sup>7</sup>.

In the First and Second Assemblies, where the decision was taken by the National Assembly for Wales rather than by an Inspector, this decision was taken by a Planning Decision Committee of the National Assembly for Wales elected for that purpose. In the Third Assembly, as a result of the *Government of Wales Act 2006*, Welsh Ministers have the power to determine the most important or controversial planning applications in Wales. A Planning Inspector will still be appointed to assess the evidence in accordance with the principles outlined above but instead of writing a decision letter, the Inspector will prepare a report, summarising the evidence put forward by the parties and providing conclusions on the merits of the appeal and a recommendation as to whether or not the appeal should be allowed.

The report is submitted to the Planning Division of the Welsh Assembly Government, whose officials will prepare advice for the Minister who will take the final decision.

<sup>5</sup> Stringer vs MHLG, 1971.

<sup>6</sup>The Planning Inspectorate, *Inspector Competencies*,  
[http://www.planning-inspectorate.gov.uk/cymru/wal/recruitment/information/inspector\\_competencies\\_e.htm](http://www.planning-inspectorate.gov.uk/cymru/wal/recruitment/information/inspector_competencies_e.htm)

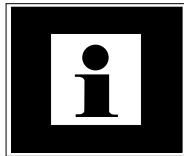
<sup>7</sup>The Planning Inspectorate, *Conduct*,  
[http://www.planning-inspectorate.gov.uk/cymru/wal/inquiries/conduct\\_inspector/conduct\\_inspectors\\_code\\_e.htm](http://www.planning-inspectorate.gov.uk/cymru/wal/inquiries/conduct_inspector/conduct_inspectors_code_e.htm)



## Changing an appeal decision

Section 79(5) of the TCPA 1990 provides that the decision on an appeal shall be final. Therefore, once the decision on an appeal has issued it is not open to the Inspector who took the decision, officials in the Welsh Assembly Government or Ministers, to comment on the merits of the decision or discuss the reasoning behind it. It is not possible for them to reconsider the decision.

However, a planning appeal may be challenged in the High Court in accordance with section 288 of the TCPA 1990, within 6 weeks of the appeal decision. This is only possible in appropriate cases (eg: procedural impropriety, manifest unreasonableness or irrationality in the decision-making process). Anyone considering such a challenge should seek their own legal advice before progressing.



### Further Information:

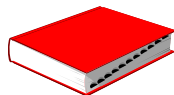
The statutory provisions cited above may be subject to subsequent amendment; the consolidated text of those provisions can be obtained from Butterworths' *LexisNexis* service:

[http://assembly/presidingoffic/mrs/resources/electronic/qlinks\\_lexisnexis.htm](http://assembly/presidingoffic/mrs/resources/electronic/qlinks_lexisnexis.htm)



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