

## *Planning appeals in Scotland*

### **Introduction**

This booklet explains the procedure for appealing to Scottish Ministers about:

- planning authorities' decisions on applications made to them; and
- notices served by planning authorities.

We, the Scottish Executive Inquiry Reporters Unit, have produced it and we are responsible for handling these appeals in Scotland. Our address is below. If you have any questions on sending in an appeal or the procedure to be followed, we will do our best to help you.

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### **1 Types of appeal**

a There are many different circumstances in which there is a right of appeal to Scottish Ministers. This booklet can give only a broad idea of the procedures to be followed for planning appeals and related matters. We will give you more detailed information on procedures when you ask for an appeal form or lodge an appeal.

b We can group appeals into three broad categories.

- Where an application for permission has been made to the planning authority and has been refused, approved (but under certain conditions) or the authority has failed to make a decision on the application within the set period (**see section 2**).
- Where the planning authority has served a notice which is instructing you to take certain action (**see section 3**).
- Where an application has been made to the planning authority for a certificate and this has been refused, partly refused or not granted in the terms applied for (**see section 4**).

Please read the appropriate section for further guidance. Section 5 and onwards apply generally to all types of appeals.

### **2 Appeals following applications for permission**

a Most applications made to planning authorities are for planning permission to carry out a development, including changing the 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 these applications. You may need other permission if:

- the building is a listed building or is in a conservation area (**see paragraph e**);
- an advertisement is involved (**see paragraph f**);
- hazardous substances are involved.

#### **Planning permission**

b You may feel dissatisfied if the planning authority has refused your application or placed conditions on your permission which you think are not acceptable. Before deciding whether to appeal to Scottish Ministers, read the reasons given by the planning authority

for refusing your application or placing conditions on it and try to consider them objectively. In deciding your application, the planning authority must 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 an effect on the decision they have made. 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 you changed it. You may want to take professional advice about revising your proposal.

### **When to appeal**

c You can appeal as soon as you have received the planning authority's formal decision on your application. You can also appeal if two months have passed 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 two-month period, you cannot appeal on the basis of a deemed refusal until the extended period is over. You must send (lodge) your appeal within six 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 six-month period starts from the end of the agreed extension. We cannot accept an appeal lodged after the end of this six-month period. So, you must send your appeal to us within this period.

### **How to appeal**

d If you want to appeal, you need to fill in a form (reference P/PPA) which you can get from us. We will send you three copies of the form:

- one to return to us;
- one to send to the planning authority which dealt with your application; and
- one for you to keep.

### **Listed building and conservation area consent**

e The procedure for appealing against a planning authority's decision or failure to give a decision (deemed refused) 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 you should use to make your appeal has the reference P/LBA. **You must send (lodge) your appeal to us within six months of the date of the notice of the planning authority's decision.** If you have sent in applications for both planning permission and listed building or conservation area consent and are not satisfied with the planning authority's decision on both applications, you will need to send us two separate appeals, even if you have received only one decision letter.

### **Advertisement consent**

f There is no form to use when lodging an appeal against a refusal or deemed refusal of advertisement consent. You must send us a letter and supporting documents. The letter should give your reasons for making the appeal. You should also enclose the application you made to the planning authority (including the relevant plans), the planning authority's decision and any other relevant correspondence. *You must lodge your advertisement appeal within six months of receiving the notice of the planning authority's decision.* We cannot accept appeals lodged after the end of this period.

### **Hazardous substances consent**

g The procedure set out in paragraphs a to c applies equally to appeals about hazardous substances consent decisions except you should use form P/HSC for your appeal. *You must lodge your appeal within six months of the date of the notice of the planning authority's decision.* We cannot accept appeals lodged after the end of this period.

You can get each of these appeal forms from our website '[www.scotland.gov.uk/Topics/Planning/Appeals](http://www.scotland.gov.uk/Topics/Planning/Appeals)', or, we can send you forms by post.

### 3 Appeals against enforcement and other notices

#### General

a Planning authorities have the power to serve notices in a number of circumstances. The most common is a planning enforcement notice. This is where the authority believes that planning control has been broken (breached) because the development has been carried out either without the necessary planning permission or without keeping to conditions attached to the planning permission. The following paragraphs outline the procedures for appeals against these notices. The same procedures are used if the enforcement notice relates to breaking (breaching) listed building or advertisement control except that there is no fee paid in these cases. Other types of notice can be served by a planning authority and against which you have a right of appeal to Scottish Ministers. Among these are:

- 'a discontinuance notice' which relates to advertisements (**see paragraph d**);
- 'an amenity notice' under section 179 of the 1997 Act where the planning authority considers that the amenity (such as attractiveness) of an area is affected by the condition of any land (**see paragraph e**); or
- 'a hazardous substances contravention notice' (**see paragraph f**).

#### How to appeal

b You do not need to send appeals against notices on an appeal form. You can instead appeal by letter. However, for planning enforcement and listed building enforcement notice appeals, you may find it helpful to send your appeal in on the appeal forms available from the planning authority and us. Your appeal must give one or more of the reasons referred to in the Act as grounds. A list of these grounds should have been enclosed with the notice. The appeal must also state facts to support your reasons, in other words, whatever background information, explanation or arguments are needed to back up your appeal. In most cases you will have to pay a fee as we treat an enforcement notice appeal as an application for planning permission for the development the notice relates to. If you have to pay a fee, the amount will be shown in one of the schedules attached to the notice. If the outcome of your appeal is that the reporter finds that you have not broken (breached) planning control, or that the notice should be rejected, we will refund the fee. If you do not pay the fee, the reporter will decide the appeal. However, he or she cannot grant planning permission for the specific development to which the notice relates.

#### Time limits for lodging an appeal

c The notice will give a time limit (before the notice takes effect) within which you can appeal to Scottish Ministers. **If you want to lodge an appeal, you must do so within the time period shown.** If we receive your appeal after the end of the specific period, we cannot accept it. If, for example, a planning enforcement notice states that it is to come into effect on 12 May, your appeal must be with us no later than 11 May.

#### Advertisement discontinuance notice appeal

d The guidance in paragraph c about the time limit for lodging an appeal applies equally to this type of appeal but the procedures are quite different to those for other appeals against notices. You need to give your reasons for the appeal but these are not drawn from a list attached to the notice. We deal with the appeal as if you have applied for consent to display the advertisement referred to in the notice. You do not need to pay a fee.

#### Section 179 notice appeal

e The guidance in paragraphs b and c applies equally to this type of appeal, except that you do not pay a fee.

#### **Hazardous substances contravention notice appeal**

f The guidance in paragraphs b and c applies equally to this type of appeal. You will normally pay a fee but we may refund it in certain circumstances.

### **4 Appeals following applications for certificates**

#### **Certificate of appropriate alternative development**

a There is no special form for you to make an appeal. You just need to send us a letter and supporting documents. **Your appeal has to be lodged within one month of the date of receiving the certificate.** We cannot accept an appeal sent after the end of the one-month period. You can also appeal if no certificate has been issued by the planning authority within two months of the date of receiving your application. In these circumstances, the time limit of one month for lodging the appeal still applies. You should also send a copy of the application made to the planning authority and of any certificate issued by them. You also have to send a copy of the appeal to the planning authority and to the other person involved in buying the land (the acquiring authority).

b Appeals in connection with these certificates are under the Land Compensation (Scotland) Act 1963 and not the Town and Country Planning (Scotland) Act 1997. Because of this, some of the guidance we have given in the rest of this booklet will not apply to these appeals. For example, the decision in these cases is taken by Scottish Ministers and cannot be decided by a reporter.

#### **Certificate of lawful use or development**

c If you want to appeal against the council's decision on an application for this type of certificate, you need to fill in a form (reference P/CLUD) which you can get from us. We will send you three copies:

- one to return to us;
- one to send to the planning authority; and
- one to keep.

### **5 Time and cost involved**

a You will have to pay your own expenses in connection with your appeal. This includes 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 how you will pursue the appeal - either in writing or a public local inquiry - as explained in section 7. Appeals which are decided after holding a public local inquiry take, on average, almost twice as long as appeals dealt with in writing. In a small number of cases we do not issue the decision but have to send a report to Scottish Ministers. These cases take longer to decide. Our current targets for deciding appeals are shown in section 13 of this booklet.

### **6 Contacting us**

a When we receive an appeal, we will pass it to a case officer who will process the appeal through its various stages. The case officer's name, phone number and e-mail address will appear on the letter and he or she will be your point of contact and the point of contact for the planning authority.

b We will appoint someone to the case when:

- the initial stages of the appeal have been completed and we have decided that the appeal has been properly lodged within the appropriate time limit; and

- we know whether the appeal is to be dealt with in writing or after holding a public local inquiry.

c The person appointed (the reporter) will be a professional person with experience in town planning either as a town planner or in associated professions such as architecture or law. All reporters are independent experts who will make an impartial assessment of each case based on the relevant planning considerations and policies.

## 7 Your choice of procedure

a We normally decide an appeal using one of three procedures.

- **In writing** - where you and the planning authority set out your cases in writing. (This is called the written submission procedure.)
- **A public local inquiry** - where you, the planning authority and other parties involved will give evidence.
- **A hearing** - a less formal way of discussing an appeal face to face.

b The written submission procedure is most frequently used as it is a quicker, simpler and cheaper process. Over 90% of appeals are decided this way. A public inquiry tends to be used if more significant developments are involved or if the issues are more complicated. We will ask you and the planning authority which procedure you prefer. Either of you may choose a public inquiry, and this may also be imposed by Scottish Ministers if they believe this is needed. We explain these procedures in more detail in sections 8 and 9 of this booklet.

c Hearings are carried out in a less formal way and can be useful to clear up matters without the need for a public inquiry. We would normally follow this procedure if you and the planning authority both agree.

## 8 Appeals in writing - the written submissions procedure

a The basis of this procedure is that both sides (the planning authority and you) give your cases in writing, supported by any photographs, plans or other documents. Your reasons (grounds) for the appeal on the appeal form or in your letter will make up the main part of your appeal. The planning authority will then send us relevant documents including a copy of responses to any consultations and any representations received from people who objected to, or supported, the proposal. The planning authority may decide to rest their case on these documents and the officer's committee report, or send us a further statement. Whichever option they choose, you will be able to comment on what they have sent. We will also send you a copy of any further submissions made to Scottish Ministers by objectors or supporters.

b We will make arrangements for a reporter to inspect the site, and we will normally invite you and the planning authority and any other objectors or supporters to attend. The aim of the site inspection is to allow the reporter to see the site and the surroundings, but not to hear any arguments or debate about the merits of the appeal. All the relevant arguments and points in connection with your appeal must be set out in the written submissions. If there is no difficulty in seeing the site without entering buildings, it may be possible for the reporter to inspect the site without yourself and the planning authority needing to be there.

## 9 Public local inquiries and hearings

### Public local inquiries

a Arrangements for an inquiry have to be made some time in advance, and we will consult you and the planning authority about the date. The inquiry will be led by a reporter. You can give your own case at an inquiry and do not have to be represented by a solicitor or other professional person unless you prefer to do that.

b As it is a public local inquiry, we have to give notice of the date, time and place in a local newspaper. Members of the public and the press can come and watch the

proceedings and other people, such as objectors or supporters, may take part. The reporter will usually have looked at the site before the inquiry. If a further site inspection takes place after the inquiry, you, the planning authority and others will be able to go with the reporter on the visit.

c Various documents have to be exchanged before the inquiry, so that the sides have the chance to consider each other's arguments. You will receive guidance to explain these procedures.

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

e In the case of larger-scale proposals, or when there is a very high level of public interest, we may hold a meeting before the inquiry to agree dates and procedures to be followed at the actual inquiry. This is known as a pre-inquiry meeting.

### **Hearings**

f The arrangements for a hearing are very similar to those described above. The main difference is that instead of formal evidence and questioning, a discussion takes place. This is led by the reporter who normally sends round an agenda before the hearing.

## **10 Withdrawing the appeal**

a You may ask to withdraw your appeal at any time before the decision is made. It is not possible to reinstate your appeal once you have withdrawn it, so you should be sure that this is what you want to do. It is helpful if you phone us in the first instance especially when an inquiry has been arranged. If you leave the withdrawal too late, you may have to pay the planning authority's expenses. You must write and confirm your wish to withdraw the appeal.

b If your appeal is against a notice served on you by the planning authority (section 3), the notice will come into effect when we formally acknowledge that you have withdrawn your appeal. You will then need to keep to the terms of the notice within the period or periods set out in the notice.

## **11 Awarding expenses**

a Normally everybody taking part in an appeal must pay their own costs. Expenses are only awarded against anybody taking part in an appeal if they have behaved unreasonably. Expenses are not awarded simply because the appeal has been won or lost.

b If you behave unreasonably in pursuing your appeal, causing the planning authority unnecessary expense, you may have to pay some or all of their expenses. Similarly if the planning authority behaves unreasonably, you may claim expenses against them. You must make any claims for expenses before the appeal procedures are finished. If the appeal is being dealt with in writing, this would normally be at the stage when you send your final written submissions. In the case of a public inquiry, this is before the inquiry is concluded. You will find further guidance in Scottish Executive Development Department Circular 6/1990 which you can ask us for.

## **12 Decision on the appeal**

a 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 you, the planning authority, and any other people;
- 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 send 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 lodging this type of challenge with the court will be shown in the decision letter. It is usually six weeks from the date of the letter.

b You can get information about the progress of appeals, as well as copies of decision letters issued from January 2001, from our web pages at [www.scotland.gov.uk/Topics/Planning/Appeals](http://www.scotland.gov.uk/Topics/Planning/Appeals)

### **13 Current targets for deciding appeals**

Our targets are to process appeals within the following periods.

#### **Planning appeals**

- Cases decided using the written submissions procedure - 80% of decisions to be issued within 20 weeks of receiving the appeal.
- Cases decided following a public local inquiry - 80% of decisions to be issued within 38 weeks of receiving the appeal.

#### **Enforcement notice appeals**

- Cases decided by the written submissions procedure - 80% of decisions to be issued within 24 weeks of receiving the appeal.
- Cases decided following a public local inquiry - 80% of decisions to be issued within 38 weeks of receiving the appeal.

#### **Advertisement consent appeals**

- Cases decided by the written submissions procedure - 80% of decisions to be issued within 17 weeks of receiving the appeal.

For other, less common, types of delegated appeal, we would aim to achieve the same targets as those set out above for planning and enforcement notice appeals, according to whether the case involves written submissions or a public local inquiry.

We will regularly renew the target periods for completing cases, with a view to reducing these periods wherever possible.

These targets apply to appeals received from 1 April 2004.

### **14 Our standards**

#### **a An efficient service**

At each stage of the appeal procedure we will provide prompt and careful attention from the relevant case officer.

Our targets are to issue decisions on appeals within the periods set out in section 13.

If it appears that we are unlikely to complete a particular case within the appropriate target, we will write to you and the planning authority. This will take place towards the end of the target period. We will let you know about the situation, give the reasons for the delay, and say, wherever possible, when the case is likely to be completed.

#### **b Fairness**

We will deal with all casework in an open and fair way. Reporters' decisions will be based on the planning merits of the proposed developments, after taking account of the approved development plan, relevant published government guidance, the written evidence or evidence led at a public inquiry.

### **15 Complaints procedure**

If you are not satisfied with any parts of the service we have provided, you should do the following.

First get in touch with the person in the unit dealing with your case to let them know about the problem, and to see what immediate action can be taken.

If you are still not satisfied, or want to lodge a complaint, please write to the Head of Administration at the Scottish Executive Inquiry Reporters Unit. It will help us to investigate your complaint if you set out the facts as fully as possible in writing. We will acknowledge your complaint as soon as we receive it, investigate the matter properly, and will aim to reply within two weeks.

If, after having made a formal complaint and received a final response from the Unit, you are still not satisfied you may wish to consider requesting that the Scottish Public Services Ombudsman undertakes a review. The Ombudsman can be contacted at:

The Scottish Public Services Ombudsman  
4 Melville Street  
Edinburgh  
EH3 7NS  
Telephone: 0870 011 5378  
E-mail: [enquiries@scottishombudsman.org.uk](mailto:enquiries@scottishombudsman.org.uk)  
Website: [www.scottishombudsman.org.uk](http://www.scottishombudsman.org.uk)

On the other hand, if you are satisfied with the service we have provided, want to highlight some exceptional performance, or you have any other suggestion to make about the service, or how it could be improved, we would be happy to hear from you.