

Procedural Guide

Certificate of lawful use or development appeals - England

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PROCEDURAL GUIDE

CERTIFICATE OF LAWFUL USE OR DEVELOPMENT APPEALS - ENGLAND

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IMPORTANT CHANGES

This document contains revised guidance on:

- the process for challenging a costs decision following changes that came into force under Schedule 16 of the Criminal Justice and Courts Act 2015 – Procedure for Certain Planning Challenges;
- the risk in implementing a planning permission / commencing development before the High Court challenge time limit has expired.

1 INTRODUCTION

1.1 Background

1.1.1 The content of this document is guidance only with no statutory status. However, all parties should follow the general principles, as will Inspectors who may adapt them as necessary for an individual appeal whilst ensuring that no party is prejudiced. It should be read alongside the [planning practice guidance](#) published by the Department for Communities and Local Government.

1.1.2 There are 3 types of lawful development certificate that may be applied for under section 191 and section 192 of the Town and Country Planning Act 1990 and section 26H of the Planning (Listed Building and Conservation Areas) Act 1990:

- section 191 – whether an **existing** use of buildings, land, operational development or activity in breach of a planning condition is lawful; and
- section 192 – whether a **proposed** use of buildings, land or operations intended to be carried out would be lawful.
- section 26H – whether **proposed** works for the alteration or extension of a listed building would be lawful.

1.1.3 A certificate of lawful use or development under sections 191 and 192 is sometimes referred to as a “certificate of lawfulness of existing use or development” (CLEUD) or “certificate of lawfulness of proposed use or development” (CLOPUD). In practice both forms are commonly referred to as a “lawful development certificate” (LDC). This Guide therefore uses the phrases “LDC application” and “LDC appeal”. Appeals against such applications are made under section 195 of the Town and Country Planning Act 1990 (as amended).

1.1.4 We anticipate that a listed building certificate of lawfulness of proposed works will be commonly referred to as a “listed building lawful development certificate (LB LDC). This Guide therefore uses the phrases “LB LDC application” and “LB LDC appeal”. LB LDC appeals are made under section 26K of the Planning (Listed Building and Conservation Areas) Act 1990 (as amended).

1.1.5 The procedure for listed building certificate of lawfulness is contained in The Planning (Listed Buildings) (Certificates of Lawfulness of Proposed Works) Regulations 2014 Statutory Instrument 2014 No 2014/552 which came into force on 6 April 2014.

1.1.6 The grant of a certificate following appeal under section 195 applies only to the lawfulness of development in accordance with planning legislation. It does not remove the need to comply with any other legal requirements such as [The Building Regulations 2010](#), or the [Planning \(Listed Buildings and Conservation Areas\) Act 1990 \(as amended\)](#) or other licensing or permitting schemes. Likewise, a certificate granted following an appeal under section 26K only certifies that listed building consent is not required and does not

remove the need to comply with planning or building regulation requirements.

1.2 What is the purpose of an LDC/LB LDC?

1.2.1 LDCs are applied for to establish:

- that an existing use or development has become 'lawful' through the passage of time (see E.1.5 for timescales); or
- that an existing or proposed use or development is lawful because it did/does not require planning permission; or
- that an existing or proposed use or development benefits from a general planning permission for the use or development granted by the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO) (or any previous version of the GPDO in the case of section 191 applications); or
- that an existing or proposed use or development complies with a current planning permission.

1.2.2 LB LDCs are applied for to establish:

- that proposed work is lawful because it does not require listed building consent before it can be undertaken.

1.2.3 The onus of proof is on an appellant for appeals where the ground that an existing use or development has become 'lawful' through the passage of time is pleaded (not relevant in LB LDC appeals). The test to be achieved is 'on the balance of probability' (a lesser requirement than 'beyond a reasonable doubt').

1.2.4 Once a certificate is granted the lawfulness of that use or operation is conclusively presumed, provided, in the case of a proposed development, that nothing material has changed that could affect lawfulness prior to development beginning. A certificate could not however be granted that contravenes the requirements of an enforcement notice or a breach of condition notice¹ then in force.

1.2.5 There is no provision under section 195 for the planning merits of what has been applied for to be considered on appeal in relation to applications under sections 191 and 192. As there is no power to grant planning permission it follows that the planning merits of the development are not relevant in deciding an LDC application or appeal; it rests entirely on the facts involved in each case. It is open to applicants to apply to the LPA for planning permission in the normal way, without prejudice to their application or appeal for an LDC.

1.2.6 Similarly there is no provision under section 26K to grant listed building consent on an appeal in relation to an application under section 26H. It is open to applicants to apply to the LPA for consent, without prejudice to their application or appeal for an LB LDC. However decisions as to whether

¹ See DCLG's guidance about breach of conditions notices in the national planning practice guidance at: <http://planningguidance.planningportal.gov.uk/blog/guidance/ensuring-effective-enforcement/>

proposals affect the special architectural/historic character of a building in a particular way can involve a planning judgement rather than just fact.

1.3 Responsibilities of the appellant, the local planning authority and other parties

1.3.1 When refusing an application for an LDC², the local planning authority should consider carefully whether it has a sufficiently strong case for doing so, on the basis of the material before it. The reasons for refusal of an LDC should be clear and comprehensive and if the elected members' decision differs from that recommended by its officers it is essential that its reasons for doing so are similarly clear and comprehensive.

1.3.2 Potential appellants should consider the reasons for refusal carefully when deciding whether to make an appeal. Appellants should be confident at the time they make their appeal that they have a clear case and do not need to rely on evidence that was not available to the local planning authority when it made its decision.

1.3.3 The Secretary of State's ability to deliver timely and high-quality decisions on LDC appeals relies on all parties following good practice and behaving reasonably. The parties must meet the statutory timetables to ensure that no-one is disadvantaged and the appeal can be processed efficiently.

1.3.4 If a party does not behave reasonably they leave themselves open to costs being awarded against them. This would be on the basis that the behaviour had directly caused another party to incur expenses that would not otherwise have been necessary.

1.3.5 Costs may be awarded in response to an application for costs by one of the parties. In addition, costs may be awarded at the initiative of the Inspector.

1.3.6 There is guidance about [costs awards](#) under "appeals" in the planning practice guidance.

1.3.7 The appellant should read the guidance about making an application for costs before they make their appeal.

1.3.8 Uses and operations cannot be considered lawful where they are in contravention of any of the requirements of an enforcement notice, in relation to the same development, which is in force³. If we consider that an enforcement notice is in force which will prevent the grant of an LDC⁴ so that the appeal will be dismissed we will write to the appellant and explain this. If despite this the appellant proceeds with an appeal they may leave themselves open to an award of costs against them- as pursuing an appeal in

² From here on in this document, where it refers to an LDC that includes an LB LDC unless the wording indicates differently.

³ Section 191(2)(b) of the Town and Country Planning Act 1990 ("the Act") (as amended). This does not apply to LB LDCs.

⁴ This only applies to section 191 appeals as for those appeals the development has already taken place.

circumstances where an LDC cannot be granted could be seen as being unreasonable behaviour.

1.4 The importance of continued discussion about an LDC application

1.4.1 While the LPA should always co-operate with an LDC applicant asking for information about the planning status of the land by making records readily available they need not go to great lengths to show that the subject of the application is or is not lawful. Having said that, it is however best practice for the local planning authority to have constructive discussions with applicants for an LDC and, if it has any concerns, give the applicant the opportunity to amend the application before it is decided. This should help to avoid the need to appeal, especially appeals where the local planning authority has failed to make a decision.

1.4.2 Clear reasons for refusal of the LDC application will help continued discussions and may mean that a new application with an amended proposal or with additional evidence would be the best way forward.

1.5 Who decides an appeal?

1.5.1 Nearly all appeals are decided by our Inspectors or by appointed persons; in each case they are solely responsible for their decision⁵. A very small percentage are decided by the Secretary of State - these tend to be the very large or contentious LDC applications. If an appeal is going to be decided by the Secretary of State we will write to the appellant and the local planning authority explaining this. Guidance on the Secretary of State's decision making functions is available in [Guidance on Planning Propriety Issues](#).

1.6 What is the time limit for making an appeal?

1.6.1 There is currently no time limit within which an appeal against the local planning authority's refusal of (or its failure to decide) an **LDC** application has to be received. However we would expect that normally an appeal would be received within 6 months.

1.6.2 An appeal against the local planning authority's refusal of (or its failure to decide) an **LB LDC application** must be received by us **within 6 months** of the date of the local planning authority's decision notice or the date by which the local planning authority should have decided the application.

1.7 What happens when we receive an appeal?

1.7.1 Once we have received an appeal and ensured that it is valid we will confirm the procedure and notify the appellant and the local planning authority of the appeal start date, reference number, the timetable for the

⁵ The judgment in Billy Smith v SSCLG and South Bucks DC [2014] EWCH 935 (Admin) confirmed that it is legitimate for an Inspector's decision to be read for quality assurance purposes. The key to this is in ensuring that the Inspector takes the decision and the reader (or mentor as referred to by the Judge) does not interfere in his or her judgment.

appeal and the specific address (room number and email address) to which any correspondence should be sent.

1.7.2 Keeping to the timetables is fundamental to an efficient and fair appeals service and we expect everyone to comply with them.

1.8 What happens if there is new legislation or new or emerging policies?

1.8.1 In accordance with sections 191 to 195 of the Town and Country Planning Act 1990 and 26H of the Planning (Listed Building and Conservation Areas) Act 1990, the Inspector will consider the lawfulness of the use or development on the date that the application was made to the local planning authority – under the legislation that was current on that date. National and local policies have no bearing on whether a development is lawful.

1.8.2 Where a change in circumstances is likely to affect the outcome of the appeal we will ensure that all parties have an appropriate opportunity to comment on the new material.

1.9 What will the Inspector take into account?

1.9.1 The Inspector will consider whether, on the facts of the case and relevant planning law, the existing or proposed development is or would be lawful and will decide the case on the best facts available⁶.

1.9.2 The Inspector will not consider the planning merits of any proposed or existing use or operational development for LDC appeals. However for proposed LB LDC works decisions as to whether proposals affect the special architectural/historic character of a building in a particular way can involve a planning judgement.

1.9.3 The Court has held that the appellant's own evidence does not need to be corroborated by "independent" evidence, particularly if it is unchallenged, in order to be accepted⁷. The onus of proof however is firmly on the appellant to provide evidence which is sufficiently precise and unambiguous to justify the grant of a certificate.

1.9.4 The Inspector may find that part of what is described in the application is lawful and may issue an LDC for that part of the application only.

2 GENERAL MATTERS

2.1 What are the procedures?

2.1.1 This guide explains the main aspects of the 3 procedures:

- Annexe A contains the procedure for written representations;
- Annexe B contains the procedure for hearings;

⁶ Cottrell v SSE and Tonbridge and Malling BC [1982] Journal of Planning Law 443

⁷ F W Gabbittas v SSE and Newham LBC [1985] Journal of Planning Law 630

- Annexe C contains the procedure for inquiries.

2.2 Postponements, adjournments, abeyance, and linked cases

2.2.1 Our usual practice is to resist postponements and adjournments in view of the delay and disruption this causes. Appellants should therefore not make their appeal until they are ready to proceed to the decision. We will not put cases into abeyance unless there are exceptional reasons.

2.2.3 We may decide to link appeals that relate to the same site in order to minimise the use of resources for all parties. We will make decisions to link on a case by case basis.

2.3 Who can make an appeal against the refusal of an LDC application?

2.3.1 Only the person who made the application for an LDC can make an appeal.

2.4 Making an appeal

2.4.1 Potential appellants should read the "[Making your appeal: How to complete your lawful development certificate appeal form – England](#)" document before they make their appeal as they contain important advice about the information they may wish to provide on the appeal form.

2.4.2 If an appellant wants to make an appeal in relation to more than one application, they must make a separate appeal for each.

2.4.3 Wherever possible the appellant should make their appeal(s) on-line through the [Appeals Casework Portal](#).

2.4.4 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 D.

2.4.5 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).

2.4.6 Appellants must send a copy of the appeal and supporting documents to us. At the same time they must send a copy to the local planning authority.

2.5 Appeal statement

2.5.1 Appellants should set out a clear and concise statement of their case and the reasons why they consider the subject of the application to be lawful when making the appeal. For further information please see "[How to complete your lawful development certificate appeal form - England](#)".

2.5.2 For further information about the appeal statement please see Annexe E.

2.6 What procedure will the appeal follow?

2.6.1 When making an appeal, appellants should identify which appeal procedure they consider to be the most appropriate and give reasons to support this. The criteria in Annexe F do not directly apply to LDC appeals. However, they do provide a useful indication of which procedure would be most appropriate so we ask that the appellant and the local planning authority consider the criteria when indicating their choice of procedure. They should note that if evidence will need to be taken under oath this is not possible at a hearing, so an inquiry would be necessary.

2.6.2 Sometimes during the processing of an LDC appeal it will become apparent that an inquiry will be necessary. In these circumstances we will write to the appellant and the local planning authority giving dates for the receipt of representations. Also, the Inspector may change the procedure.

2.7 What is the process for challenging a decision made during the processing of a case?

2.7.1 If the appellant, the local planning authority or an interested person thinks that we have made a procedural 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.

2.7.2 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 G.

2.8 What is the role of interested people?

2.8.1 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 appeal process. Their representations about facts are taken into account along with other material considerations. LDC appeals are concerned only with the lawfulness of the use or development. Interested people's views on the planning merits are not relevant and cannot be considered.

2.8.2 "Guide to taking part in enforcement appeals and lawful development certificate appeals" 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 the development the subject of the appeal be amended?

3.1.1 If an applicant thinks that amending their LDC application will overcome the local planning authority's reason(s) for refusal they should make a fresh LDC application. Local planning authorities should be open to discussions on whether it is likely to view what is described in an amended application as lawful and not, therefore, requiring planning permission/listed building consent.

3.2 What happens if someone discloses evidence late?

3.2.1 If an appellant introduces late evidence during the appeals process which was not included with the appeal statements (provided by the appellant when making the appeal and at the 6 week stage) we will usually return it and it will not be taken into account. Similarly if the local planning authority introduces late evidence which was not included with their appeal statement at the 6 week stage we will return it.

3.3 Can there be new material during an appeal?

3.3.1 There will be rare occasions where a party to the appeal considers that newly available material evidence ought to be considered by the Inspector. Evidence provided outside of the published appeals timetable will normally only be exceptionally accepted by the Inspector where it is considered relevant to consideration of the appeal and it is clear that it would not have been possible for the party to have provided the evidence with earlier documents provided on time.

3.3.2 If such evidence is accepted this can lead to the need to change the procedure or to adjourn hearings or inquiries. For appeals following the written representations procedure this may require an extension to the standard timetable to allow all parties to be made aware of, and be given the opportunity to comment upon, the new evidence.

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 see Annexe H.

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.

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 see Annexe I.

5.2 How can someone give feedback?

5.2.1 We welcome feedback about your 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. For further information please see Annexe J.

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 an LDC decision 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 G.

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

5.5.1 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.

5.5.2 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
Room 3/13
Temple Quay House
2 The Square
Bristol
BS1 6PN

Helpline: 0303 444 5000

E-mail: enquiries@planning-inspectorate.gsi.gov.uk

Or for queries about problems with working electronically

Email: pcs@pins.gsi.gov.uk

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

A Written representations procedure

Town and Country Planning (Enforcement) (Written Representations Procedure) (England) Regulations 2002 (Statutory Instrument 2002/2683)

A.1 What is the process?

A.1.1 Although the written representations Regulations do not formally apply to LDC appeals, where these appeals proceed by written representations they will be conducted within the spirit of those Regulations.

A.1.2 Under the written representations procedure, the Inspector will decide the appeal on the basis of the written material provided by all parties and, generally, following a visit to the appeal site – but please see paragraph A.9.4.

A.2 The appellant

A.2.1 Although the criteria set out in Annexe F do not directly apply to LDC appeals they are a useful indication of what would be the most appropriate procedure for an LDC appeal. We ask that the appellant takes account of the criteria when they indicate, when making their appeal, their choice of procedure.

A.2.2 The appellant must send a copy of the application for an LDC and the local planning authority's decision with the appeal along with the other supporting documents detailed in the on-line and paper appeals forms.

A.2.3 The appellant must copy the appeal and the supporting documents to the local planning authority.

A.2.4 The appellant's representations should disclose their case through an appeal statement and any supporting evidence. For further information about the appeal statement please see Annexe E.

A.3 Notice to interested people

A.3.1 It is best practice that within 2 weeks of the start date the local planning authority notifies occupiers of properties near the appeal site and any other person, who, in its opinion, are affected by the appeal. Also, if the local planning authority canvassed anyone at application stage for evidence about the site or invited comments from anyone it should, out of courtesy, notify them of the appeal.

A.3.2 The notification should include

- a. a description of the development concerned;
- b. an invitation to interested persons that they may make their views known by writing to the case officer (and include their address), quoting our reference number. Their representations

must be sent within 6 weeks of the starting date. Any representations received after the deadline will not usually be considered and will be returned. Wherever possible they must send 3 copies of their letter and it should give warning that their views (including those sent at application stage) will be disclosed to the parties to the appeal unless the representations are withdrawn before the 6 weeks deadline;

- c. that the Planning Inspectorate will not acknowledge representations. We will, however, ensure that letters received by the deadline are passed on to the Inspector dealing with the appeal;
- d. when and where the appeal documents will be available for inspection; and
- e. that the decision will be published online.

A.3.3 We encourage local planning authorities to use the online [model notification letter](#).

A.4 The appeal questionnaire

A.4.1 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. Although the criteria in Annexe F do not directly apply to LDC appeals they provide an indication of which procedure would be appropriate. The local planning authority must indicate on its questionnaire which appeal procedure it considers appropriate, taking account of the criteria.

A.4.2 The relevant documents considered during the application process 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.

A.5 Local planning authority's representations at the 6 week stage

A.5.1 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. We will copy these further representations to the appellant.

A.6 The appellant's representations at the 6 week stage

A.6.1 The appellant may decide to rely on their initial appeal statement and the documents accompanying it as their representations on their appeal.

A.6.2 If the appellant decides to make any further representations, these should be sent 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.

A.7 Interested people's representations at the 6 week stage

A.7.1 If the local planning authority has received representations about the site or building it is best practice that it sends those to us but it does not have to do this. Therefore if any interested person who has sent representations to the local planning authority wants to be sure that the Inspector takes their representations into account they should send them to us.

A.7.2 An interested person who wishes to make 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.

A.8 Comments at the 9 week stage

A.8.1 If either the appellant or the local planning authority wishes to comment on the other's appeal statement or 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. We will copy the comments to the other appeal party.

A.9 Is the appeal site visited?

A.9.1 Where the site is sufficiently visible from the road or public viewpoint the visit may be carried out unaccompanied.

A.9.2 Where access is required, it may be necessary for a representative of the appellant and the local planning authority to attend the site visit. Arrangements will be made with neighbours where it is necessary to view the site from their property.

A.9.3 An accompanied site visit is not an opportunity for those present to discuss the written evidence they have provided. The Inspector will therefore not allow discussion about the appeal with anyone at the site visit but parties may point out any factual features that they have referred to in their written evidence. Sometimes measurements may need to be taken by the Inspector.

A.9.4 Where the appeal concerns a case which will be decided purely on the basis of technical and/or legal interpretation of the facts, the Inspector may decide the case without a site visit.

Timetable for the written procedure

Timetable	Interested people	Appellant	Local planning authority
Appeal received We set the start date and the timetable		Sends the appeal form and all supporting documents to us and the local planning authority.	Receives the appeal documents
Within 2 weeks from the start date	Receive the LPA's letter about the appeal, telling them that they must send us any representations within 6 weeks from the start date	Receives a completed questionnaire and any supporting documents from the local planning authority	Sends the appellant and us a completed questionnaire and supporting documents. It writes to interested people about the appeal
Within 6 weeks from the start date (Only exceptionally will we accept late statements or comments)	Send their representations to us	Sends us any further representations	If the local planning authority decides not to treat the questionnaire and supporting documents as its representations it sends us its further representations
Within 9 weeks from the start date		Sends us their final comments on the local planning authority's 'week 6' representations and on any representations from interested people No new evidence is allowed	Sends us its final comments on the appellant's 'week 6' representations and on any representations from interested people No new evidence is allowed
The Inspector visits the site and the decision is issued later			

B Hearing procedure

The Town and Country Planning (Enforcement) (Hearings Procedure) (England) Rules 2002 (Statutory Instrument No 2002/2684)

B.1 What is the process?

B.1.1 The hearing is an inquisitorial process led by the Inspector who identifies the issues for discussion based on the evidence received and any representations made.

B.1.2 Interested people can attend and may participate in the discussion at the discretion of the Inspector. They may be represented by an "advocate" but this is not essential. Any advocate may be legally qualified but this also is not essential.

B.1.3 The Inspector may

- adjourn the hearing to the site, if discussion on site would more satisfactorily resolve matters; or
- visit the site during the hearing or after closing the hearing, accompanied by the appellant and the local planning authority if they wish to attend. As the hearing has not been adjourned to the site the Inspector will not allow any discussion at the site.

B.1.4 The timetable for the hearing procedure is designed to enable the appeal to proceed quickly and fairly.

B.2 The appellant

B.2.1 Although the criteria set out in Annexe F do not directly apply to LDC appeals they are a useful indication of what would be the most appropriate procedure for an LDC/LB LDC appeal. We ask that the appellant takes account of the criteria when they indicate, when making their appeal, their choice of procedure.

B.2.2 The appellant must send a copy of the application for a certificate of lawful use or development and the local planning authority's decision with the appeal along with the other supporting documents detailed on the on-line and paper appeals forms.

B.2.3 The appellant must copy the appeal and the supporting documents to the local planning authority.

B.2.4 The appellant's representations should disclose their case through an appeal statement, and any supporting evidence. For further information about the appeal statement please see Annexe E.

B.3 Who tells interested people about the appeal?

B.3.1 As any person who has an interest in the land is entitled to appear at the hearing the local planning should notify them of the appeal. If the local planning authority canvassed anyone at application stage for evidence about the site or invited comments from anyone, it should, out of courtesy, notify them of the appeal. Also it is best practice that within 2 weeks of the start date the local planning authority notifies occupiers of properties near the appeal site and any other person, who, in its opinion, are affected by the appeal.

B.3.2 The notification should include:

- a. a description of the development concerned;
- b. an invitation to interested persons that they may make their views known by writing to the case officer (and include their address), quoting our reference number. Their representations must be sent within 6 weeks of the starting date. Any representations received after the deadline will not usually be considered and will be returned. Wherever possible they must send 3 copies of their letter and you should give warning that their views will be disclosed to the parties to the appeal unless the representations are withdrawn before the 6 weeks deadline;
- c. that the Planning Inspectorate will not acknowledge representations. We will, however, ensure that letters received by the deadline are passed on to the Inspector dealing with the appeal;
- d. when and where the appeal documents will be available for inspection; and
- e. that the decision will be published online.

B.3.3 We encourage local planning authorities to use the online [model notification letter](#).

B.4 The appeal questionnaire and supporting documents

B.4.1 The local planning authority must send a completed copy of our questionnaire and copies of all of the documents referred to in it and any other relevant documents to support its decision, to us and to the appellant within 2 weeks of the start date of the appeal. Although the criteria in Annexe F do not directly apply to LDC/LB LDC appeals, they are a useful indication of which procedure would be the most appropriate. The local planning authority must indicate on its questionnaire which appeal procedure it considers appropriate, taking account of the criteria.

B.5 Interested people's representations at the 6 week stage

B.5.1 If the local planning authority has received representations about the site or building it may send those to us but it does not have to do this. Therefore if any interested person wants the Inspector to take their views into account they should send us representations.

B.5.2 An interested person who wishes to make representations 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 starting date. We will copy any representations received to the appellant and the local planning authority.

B.6 Who tells people about the hearing?

B.6.1 We will notify the appellant and the local planning authority of the date, time and place of the hearing and the name of the Inspector who will conduct it. We will ask the local planning authority to notify those with an interest in the land, owners/occupiers of property near the site, those who made representations at the application and/or appeal stages, those entitled to appear at the inquiry and anyone else it considers to be affected by or interested in the development.

B.7 Hearing statement at 6 weeks

B.7.1 The appellant and the local planning authority must send their hearing statement to us (2 copies if not sent electronically) ensuring we receive it within 6 weeks of the start date. We will copy documents to the other appeal party.

B.7.2 The term "hearing statement" means, and consists of, a written statement which contains full particulars of the case which a person proposes to put forward at a hearing and copies of any documents which that person intends to refer to or put in evidence at the hearing.

B.7.3 Hearing statements should be a succinct statement of the reasons for proposing or opposing the appeal and for explaining why it is, or is not lawful use or development. They should be concise and highlight where there are differences between the material supplied by the appellant in the appeal statement and the local planning authority in the material it supplied with the questionnaire. Any case law cited should include the full report reference. It should also state the basis of any agreement that certain reasons for refusal have been resolved.

B.7.4 The hearing statement conclusions should be briefly summarised at the end with appropriate references. The aim should be for the statement not to exceed 3,000 words.

B.7.5 If we receive the hearing statement after the deadline we will return it and it will not be seen by the Inspector. Appellants, local planning authorities and interested people should not try to "get around" the rules by taking late evidence to the hearing.

B.8 Comments at the 9 week stage

B.8.1 If either the appellant or the local planning authority wishes to comment on the other's hearing statement or on any representations made at the 6 week stage by interested people, 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. We will copy the comments to the other appeal party.

B.9 Acceptance of late hearing statement in exceptional circumstances

B.9.1 If we have returned a late hearing statement, and, exceptionally, a party feels that their hearing statement should be taken to the hearing and be taken into account, Inspectors do have discretion whether to accept late evidence.

B.9.2 Before deciding whether, exceptionally, to accept it, the Inspector will require:

- an explanation as to why it was not received by us accordance with the rules; and
- an explanation of how and why the material is relevant; and
- the opposing parties' views on whether it should be accepted.

B.9.3 The Inspector will refuse to accept late evidence unless fully satisfied that:

- it is not covered in the evidence already received; and
- that it is directly relevant and necessary for his/her decision; and
- that it would be procedurally fair to all parties (including interested people) if the late evidence were taken into account.

B.9.4 If the Inspector accepts late evidence this may result in the need for an adjournment. The other party may make an application for costs or the Inspector may initiate an award of costs. This would be on the basis that the necessary adjournment had directly caused another party to incur expenses that would not otherwise have been necessary.

Timetable for the hearing procedure

Timetable	Interested people	Appellant	Local planning authority
<p>Appeal received</p> <p>We set the start date and the timetable</p>		Sends the appeal form and all supporting documents to us and the local planning authority.	Receives the appeal documents
<p>Within 2 weeks from the start date</p>	Receive the local planning authority's letter about the appeal, telling them that they must send us any comments within 6 weeks of the start date	Receives a completed questionnaire and any supporting documents from the local planning authority	Sends the appellant and us a completed questionnaire and supporting documents. It writes to interested people about the appeal
<p>Within 6 weeks from the starting date</p> <p>Only exceptionally will we accept late statements or comments</p>	Send their comments to us.	Sends us their hearing statement	Sends us its hearing statement
<p>We set the hearing date which will normally be within 12 weeks of the start date – or the earliest date after that period which is practicable</p>			
<p>Within 9 weeks from the starting date</p>		Sends us their final comments on the local planning authority's hearing statement and on any representations from interested people No new evidence is allowed	Sends us its final comments on the appellant's hearing statement and on any representations from interested people No new evidence is allowed
<p>At least 2 weeks before the date of the hearing</p>	Receive details from the local planning authority about the hearing arrangements		Tells interested people about the hearing arrangements and may put a notice in a local paper about the hearing

C Inquiries procedure

The Town and Country Planning (Enforcement) (Inquiries Procedure) (England) Rules 2002 (Statutory Instrument 2002/2686)⁸ and The Town and Country Planning (Enforcement)(Determination by Inspectors) (Inquiries Procedure) (England) Rules 2002 (Statutory Instrument 2002/2685)⁹

C.1 What is the process?

C.1.1 An inquiry provides for the investigation into, and formal testing of, complex and/or technical evidence, usually through expert witnesses, including by the use of giving evidence on oath and cross-examination. Parties may be formally represented by advocates. The site may be visited before, during or after the inquiry.

C.1.2 Interested people can attend and may participate in an inquiry at the discretion of the Inspector.

C.1.3 The timetable for the inquiry procedure is designed to enable the appeal to proceed quickly and fairly.

C.2 The appellant

C.2.1 Although the criteria set out in Annexe F do not directly apply to LDC appeals they are a useful indication of what would be the most appropriate procedure for an LDC appeal. We ask that the appellant takes account of the criteria when they indicate, when making their appeal, their choice of procedure.

C.2.2 The appellant should also indicate, when making the appeal, the expected number of witnesses, topics to be addressed by witnesses, whether there will be legal representation and an estimate for the overall inquiry length.

C.2.3 The appellant should be realistic, the estimate should include time for opening and closing the inquiry, and the time they consider may be necessary for questions to be put to both their and the local planning authority's witnesses. If the appellant has instructed an advocate it may be useful to get their views on the likely length of the inquiry.

C.2.4 The appellant's representations should disclose their case through an appeal statement, and any supporting evidence. For further information about the appeal statement please see Annexe E.

⁸ The Inquiries Procedure Rules set out in Statutory Instrument 2002/2686 (as amended) are used for LDC appeals which are recovered for determination by the Secretary of State (recovered appeals). In these cases the Inspector reports with recommendations to the Secretary of State.

⁹ The Inquiries Procedure Rules set out in Statutory Instrument 2002/2685 (as amended) are used for LDC appeals transferred to be decided by an Inspector on behalf of the Secretary of State.

C.2.5 The appellant must send a copy of the application for a certificate of lawful use or development and the local planning authority's decision with the appeal along with the other supporting documents detailed on the online and paper appeal forms.

C.2.6 The appellant must copy the appeal and the supporting documents to the local planning authority.

C.3 The appeal questionnaire and supporting documents

C.3.1 The local planning authority must send a completed appeal questionnaire and copies of all of the documents referred to in it and any other relevant documents to support its decision, to us and to the appellant within 2 weeks of the start date of the appeal. The local planning authority must indicate on its questionnaire which appeal procedure it considers appropriate, taking account of the criteria (please see Annexe F). Although the criteria in Annexe F do not directly apply to LDC appeals, they are a useful indication of which procedure would be the most appropriate.

C.3.2 If, the local planning authority agrees with the appellant and/or it considers that the case ought to be dealt with by inquiry, the expected number of witnesses, topics to be addressed by witnesses, time estimates for the overall inquiry length and the presentation of the local planning authority's case and whether there will be legal representation should be included with the questionnaire.

C.4 Setting the length of the inquiry

C.4.1 We will take account of the initial estimates we receive from the appellant and the local planning authority and our own experience when we set the likely length of the inquiry. Once set we will expect the length of the inquiry to stay within the agreed timetable. A form may be sent later in the process asking for more detailed information on the duration of the inquiry, including detailed information about witnesses and evidence and the duration of the inquiry.

C.5 Who tells interested people about the appeal?

C.5.1 As any person who has an interest in the land is entitled to appear at the inquiry the local planning authority should notify them of the appeal. If the local planning authority canvassed anyone at application stage for evidence about the site or invited anyone to comment it should, out of courtesy, notify them of the appeal. Also it is best practice that within 2 weeks of the start date the local planning authority notifies occupiers of properties near the appeal site and any other person, who, in its opinion, are affected by the appeal.

C.5.2 The notification should include

- a. a description of the development concerned;
- b. an invitation to interested persons that they may make their views known by writing to the case officer (and include their

address), quoting our reference number. Their representations must be sent within 6 weeks of the starting date. Any representations received after the deadline will not usually be considered and will be returned. Wherever possible they must send 3 copies of their letter and you should give warning that their views will be disclosed to the parties to the appeal unless the representations are withdrawn before the 6 weeks deadline;

- c. that the Planning Inspectorate will not acknowledge representations. We will, however, ensure that letters received by the deadline are passed on to the Inspector dealing with the appeal;
- d. when and where the appeal documents will be available for inspection; and
- e. that the decision will be published online.

C.5.3 We encourage local planning authorities to use the online [model notification letter](#).

C.6 Statement of case

C.6.1 The appellant and the local planning authority must send their statement of case (2 copies if not sent electronically) to us ensuring it is received within 6 weeks of the start date.

C.6.2 A statement of case:

- must include a list of documents, maps and plans the appellant intends to rely on. Though the requirement at this stage is just to list the documents it would be helpful if they were supplied at this stage;
- should describe, but not contain, the evidence;
- should set out both the planning and legal arguments which a party intends to put forward at the inquiry;
- should cite any statutory provisions and case law they intend to use in support of their arguments;
- should focus on the areas of differences - as the areas of agreement will be in the statement of common ground.

C.7 Interested people's representations at the 6 week stage

C.7.1 If the local planning authority has received representations about the site or building it may send those to us but it does not have to do this. Therefore if any interested person wants the Inspector to take their views into account they should send us representations.

C.7.2 An interested person who wishes to make representations 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 they are received with 6 weeks of the starting date. We will copy any representations received to the appellant and the local planning authority.

C.7.3 If any person notifies us of an intention to appear and give evidence at an inquiry we may require them (under Rule 6 (6) of the

Enforcement Inquiry Procedure Rules¹⁰) to provide a statement of case. They should send their statement of case to us (3 copies if not sent electronically). We will copy the statements of case to the local planning authority and the appellant.

C.7.4 For further information please see "[Guide to Rule 6 for interested parties involved in an inquiry - enforcement appeals and certificate of lawful use or development appeals - England](#)" and Annexe E which contains information about the appeal statement.

C.8 Comments at the 9 week stage

C.8.1 If either the appellant or the local planning authority wishes to comment on the other's statement of case and any representations made at the 6 week stage by interested people, 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. We will copy the comments to the other appeal party.

C.9 Who tells people about the inquiry?

C.9.1 We will notify the appellant and the local planning authority of the date, place, time and length of the inquiry and the name of the Inspector who will conduct it. We will ask the local planning authority to notify, no later than 2 weeks before the opening of the inquiry, those other than the appellant with an interest in the land, owners/occupiers of property near the site, those who made representations at the application and/or appeal stages, those entitled to appear at the inquiry and anyone else it considers to be affected by or interested in the development.

C.10 Pre-inquiry meeting or pre-inquiry note

C.10.1 A pre-inquiry meeting may be held to discuss the programming of the inquiry and other matters. We will give not less than 2 weeks written notice of a pre-inquiry meeting to:

- the appellant;
- the local planning authority;
- any other person known to be entitled to appear at the inquiry; and
- any other person whose presence at the meeting appears to the Inspector to be desirable.

C.10.2 Or the Inspector may issue pre-inquiry notes to these parties, in which a timetable for the inquiry may be set to which the parties will be expected to keep, and set out other matters.

C.11 Statement of common ground

C.11.1 As required by the inquiry procedure rules, the appellant and the local planning authority must prepare the statement of common ground

¹⁰ Rule 8 of the Inquiry Procedure Rules for cases where the jurisdiction has been recovered so that the decision on the appeal will be made by the Secretary of State

together, and ensure that we receive a copy of it not less than 4 weeks before the inquiry. The appellant is expected to send it to us.

C.11.2 A statement of common ground is essential to ensure that the evidence at 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 to inform the statements of case and the subsequent production of proofs of evidence.

C.11.3 The statement of common ground should contain agreed factual information about the development, or works. This means that the other documents and the inquiry can focus on the matters still at issue.

C.11.4 If 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 - enforcement appeals and certificate of lawful use or development appeals - England](#)".

C.11.5 The statement should:

- be a single document, compiled and signed by the main parties;
- be concise and not duplicate information already sent – by anyone;
- describe the site, and the planning history,
- explain revisions or amendments to the original proposal and confirm they were agreed at application stage¹¹;
- 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;
- where case law is cited, include the full Court report/transcript.

C.11.6 There is a [statement of common ground form](#) available online. Appellants and local planning authorities can complete that form, save it to their computer and email to the other party and, when finalised, to us.

C.12 What are "proofs of evidence"?

C.12.1 The term "proofs of evidence" is used in the Enforcement Inquiries Procedure Rules and refers to the document containing the written evidence about which a person appearing at a public inquiry will speak. Proofs of evidence must be received by us no later than 4 weeks before the inquiry.

C.12.2 It should:

¹¹ This advice relates only to amendments made before a local planning authority issued a decision.

- include the information that witnesses representing the appellant or the local planning authority wish the Inspector to take into account;
- cover only areas which remain at issue and should not include new areas of evidence or arguments;
- contain concisely expressed argument and evidence supported by technical appendices;
- where case law is cited include the full Court report/transcript reference and cross refer to a copy of the report/transcript;
- include any data referred to, and outline any assessment methodology and the assumptions used to support the arguments;
- not include long irrelevant biographical detail of the witness;
- not omit necessary detail.

C.12.3 Witnesses and their advocates should limit the length of proofs. If the proof exceeds 1,500 words it should be accompanied by a summary. It is normally only the summaries that will be read out at the inquiry.

C.12.4 Before the inquiry Inspectors may direct the manner in which they wish to receive evidence which may include giving further advice about the length of proofs.

C.12.5 If the proof of evidence includes evidence given by an expert witness please see Annexe H.

C.13 Acceptance of late documents in exceptional circumstances

C.13.1 If we receive a document after the deadline we will return it and it will not be seen by the Inspector. Appellants, local planning authorities and interested people should not try to “get around” the rules by taking late evidence to the inquiry.

C.13.2 However if, exceptionally, a party feels that an inquiry document we returned, because it was received after the deadline, should be taken to the inquiry and be taken into account, Inspectors do have discretion whether to accept late evidence.

C.13.3 Before deciding whether, exceptionally, to accept it, the Inspector will require:

- an explanation as to why it was not received by us accordance with the rules; and
- an explanation of how and why the material is relevant; and
- the opposing parties’ views on whether it should be accepted.

C.13.4 The Inspector will refuse to accept late evidence unless fully satisfied that:

- it is not covered in the evidence already received; and
- that it is directly relevant and necessary for his/her decision; and
- that it would be procedurally fair to all parties (including interested people) if the late evidence were taken into account.

C.13.5 If the Inspector accepts late evidence this may result in the need for an adjournment. Another party may make an application for costs or the Inspector may initiate an award of costs. This would be on the basis that the necessary adjournment had directly caused another party to incur expenses that would not otherwise have been necessary.

Timetable for the inquiry procedure

Timetable	Interested people	Appellant	Local planning authority
Appeal received We set the start date and the timetable		Sends the appeal form and all supporting documents to us and the local planning authority.	Receives the appeal documents
Within 2 weeks from the start date	Receive the local planning authority's letter about the appeal, telling them that they must send us any comments within 6 weeks of the start date	Receives a completed questionnaire and any supporting documents from the local planning authority	Sends the appellant and us a completed questionnaire and supporting documents. It writes to interested people about the appeal
Within 6 weeks from the starting date Only exceptionally will we accept late statements or comments	Send their comments to us	Sends us their inquiry statement	Sends us its inquiry statement
Within 9 weeks from the starting date		Sends us their final comments on the local planning authority's statement of case and on any representations from interested people No new evidence is allowed	Sends us its final comments on the appellant's statement of case and on any representations from interested people No new evidence is allowed
We set the inquiry date which will normally be within 20 – 22 weeks of the start date			
4 weeks before the inquiry		Sends us their proof of evidence and the statement of common ground that they have agreed with the local planning authority.	Send us its proof of evidence. It may put a notice in a local paper about the inquiry
At least 2 weeks before the inquiry	Receive details from the local planning authority about the inquiry arrangements	Displays a notice on site giving details of the inquiry	Notifies interested people about the inquiry arrangements

D Communicating electronically with us

D.1 System availability

D.1.1 Our online facilities will usually be available 24 hours a day. We will sometimes need to take the system out of service for a while to implement upgrades. Wherever possible, we will do this outside of usual office hours.

D.2 System requirements

D.2.1 Before you start, you should ensure that you have the following system requirements:

- Adobe Acrobat (Version 9 or higher recommended);
- an internet browser (Internet Explorer/Chrome/Firefox recommended);
- an email account;
- ensure that your internet browser has JavaScript enabled, which is usually the default setting.;
- ensure that cookies are allowed;
- ensure that the web address <http://www.planningportal.gov.uk/> for the Planning Portal is NOT added to the IE proxy server exceptions. **Note** – This is normally only applicable to corporate networks.

D.3 Guidelines for submitting documents

D.3.1 Please see Appendix D.1 for our detailed advice.

Guidelines for submitting documents

<p>Acceptable file formats</p>	<table border="1"> <tr> <td>PDF</td> <td>.pdf</td> </tr> <tr> <td>Microsoft Word</td> <td>.doc or .docx</td> </tr> <tr> <td>TIF</td> <td>.tif or .tiff</td> </tr> <tr> <td>JPEG</td> <td>.jpg or .jpeg</td> </tr> <tr> <td>PNG</td> <td>.png</td> </tr> <tr> <td>ZIP</td> <td>.zip</td> </tr> </table>	PDF	.pdf	Microsoft Word	.doc or .docx	TIF	.tif or .tiff	JPEG	.jpg or .jpeg	PNG	.png	ZIP	.zip
PDF	.pdf												
Microsoft Word	.doc or .docx												
TIF	.tif or .tiff												
JPEG	.jpg or .jpeg												
PNG	.png												
ZIP	.zip												
<p>File sizes</p>	<p>Documents submitted may be no bigger than 15mb each. It is your responsibility to keep your documents to a manageable size.</p> <p>If you have documents that are larger than this you can try the following;</p> <ul style="list-style-type: none"> • Break long documents into several files, but note the document naming conventions below. • Try and use black and white wherever possible (unless submitting photographs). • If submitting images, your software may have file/image compression facilities to make them smaller. • Note scanned documents are usually bigger than non-scanned versions. • Provided you are using the acceptable file types above, you can use ZIP files to compress documents. • If you have a large file and you are unable to use the options listed, you can email anything up to 10mb to appeals@pins.gsi.gov.uk 												
<p>Security</p>	<p>Remove any document security and enable macros if necessary. Documents should not be password protected, they should not be formatted as 'read only' and printing should be enabled.</p>												
<p>Copyright</p>	<p>Ensure you have the owner's permission and have paid any copyright licence fee before sending in documents.</p>												
<p>File names</p>	<ul style="list-style-type: none"> • Ensure all documents have descriptive names, including the type of document you are sending, eg '<i>Proposed plan 1 March 2014</i>'. • Number appendices and submit them as separate documents. Ensure the first page includes the appendix number. Name them to indicate what they form part of, and their sequence eg '<i>Appeal statement Appendix 2 Traffic census</i>'. • Use '<i>Part 1</i>', '<i>Part 2</i>' etc in the file name if you have split up a large document eg '<i>Appeal statement in Appendix 1 Environmental Assessment Part 1 of 3</i>'. • Include the required paper size in the document name for plans and drawings eg '<i>Proposed plan A3 size 1 March 2014</i>'. • Include scale bar(s) on all plans and drawings. • Do not use a colon ':' in any file names. 												

Scanning	Ensure documents are complete and legible and avoid scanning more than one document into a single file. Use black and white unless colour is essential.
Ordnance Survey	<p>People may only scan an Ordnance Survey map if they;</p> <ul style="list-style-type: none"> • Have an annual licence to make copies; or • Have purchased a bulk copy arrangement; or • Are using a local planning authority supplied map under the 'map return scheme' (for which a fee is normally payable at the local planning authority's discretion), or • Have purchased the site-specific map from the Planning Portal for the purposes of attaching to a planning application, appeal or representation. <p>More information on map licensing is available on the Ordnance Survey website: http://www.ordnancesurvey.co.uk/support/licensing.html</p>
Images	Send pictures, photographs, plans, maps or drawings as individual files. Avoid the use of bitmap images as they are very large.
Hyperlinks	<ul style="list-style-type: none"> • You should not use hyperlinks within documents you send to us. Instead, you should download such documents yourself and attach them separately. • You should not use hyperlinks to a website page containing multiple documents or links.
Formatting	You should ensure that you number all pages accordingly.
Sending emails	<p>If you send anything by email you should get an automatic acknowledgement, provided it is sent to appeals@pins.gsi.gov.uk or to a team email address (which can be found at the top of letters from us about the appeal). If you do not get an automatic acknowledgement, then you should contact us.</p> <p>For any correspondence which you send to us via email, you should;</p> <ul style="list-style-type: none"> • Quote the appeal reference and/or appellant's name, site address and local planning authority name in the subject line or in the body of your email. • If you are attaching more than one document, please list them in the covering email. • If you are sending a series of emails, include '1 of 5', '2 of 5' etc in the subject line of the email, so we know how many to expect and can check with you if any appear to be missing.

E Appeal statement

E.1 General advice

E.1.1 Appellants should ensure that their appeal statement is a clear and concise statement of their case and the reasons why they consider the development the subject of the application to be lawful. It should provide disclosure of their case and the evidence being put forward.

E.1.2 The appellant should not withhold information at an early stage, so as to attempt to introduce additional evidence at a later stage.

E.1.3 The appeal statement should:

- explain clearly why the appellant disagrees with each of the reasons for refusal and respond to any counter evidence put forward by others;
- include the full report reference if any case law is cited;
- not contain excessive detail of the site. The Inspector will observe details at the site visit;
- include a history of the site including any relevant applications.

E.1.4 If the local planning authority has failed to make a decision it is helpful if the appellant sets out in detail why a certificate should be granted.

E.1.5 In their appeal statement the appellant may wish to put forward the case that the development that has taken place or the development that they propose:

- does not amount to development, under section 55 of the Town and Country Planning Act 1990, or that the change of use is not a material one (ie it is not subject to the requirements of planning control) or does not amount to works under section 7 of the Planning (Listed Buildings and Conservation Areas) Act 1990;
- is permitted by the Town and Country Planning (General Permitted Development) (England) Order 2015, or that the change of use is permitted by the Town and Country Planning (Use Classes) Order 1987 (as amended);
- has been done or carried out in accordance with a planning permission;
- has become lawful as it is too late for the local planning authority to take enforcement action. The time limits are as follows:

- section 171B(1) of the Act gives a 4 year time limit from the date of the substantial completion of the development for operational development such as building, mining or engineering works;
- section 171B(2) gives a 4 year time limit from the date of the breach of planning control for change of use from a building/part of a building to a single dwellinghouse. This time limit applies either where the change of use to a single dwellinghouse involves development without planning permission, or where it involves a failure to comply with a condition or limitation subject to which planning permission has been granted;
- section 171B(3) gives a 10 year time limit for any other change from the date of the breach. This applies to changes of use and to breaches of any conditions attached to previous planning permissions.

E.1.6 Any evidence supporting a claim for use has to show a continuous period of use for the relevant 4 or 10 year period. In some cases it may not be possible to rely on the fact that development has taken place continuously for the relevant 4 or 10year periods, where acts of deliberate concealment have successfully prevented discovery of the breach of planning control.¹²

E.1.7 For further information please see our "[How to complete your lawful development certificate appeal form – England](#)".

¹² :Welwyn Hatfield Council v Secretary of State for Communities and Local Government [2011] UKSC 15

F Criteria for determining the procedure for planning, enforcement, advertisement and discontinuance notice appeals

Note – these criteria do not directly apply to LDC appeals however they are a useful indication of what would be the most appropriate procedure for an LDC appeal.

The criteria for each procedure cannot be fully prescriptive or entirely determinative: they require judgement to be applied using common sense. More than one criterion may apply.

Written representations - written representations would be appropriate if:

- the planning issues raised or, in an enforcement appeal, the grounds of appeal, can be clearly understood from the appeal documents and a site inspection (if required¹³); or
- the issues are not complex and the Inspector is not likely to need to test the evidence by questioning or to clarify any other matters; or
- in an enforcement appeal the alleged breach, and the requirements of the notice, are clear.

Hearing - a hearing would be appropriate if:

- the Inspector is likely to need to test the evidence by questioning or to clarify matters¹⁴; or
- the status or personal circumstances of the appellant are at issue¹⁵; or
- there is no need for evidence to be tested through formal questioning by an advocate or given on oath; or
- the case has generated a level of local interest such as to warrant a hearing¹⁶; or
- it can reasonably be expected that the parties will be able to present their own cases (supported by professional witnesses if required) without the need for an advocate to represent them; or
- in an enforcement appeal, the grounds of appeal, the alleged breach, and the requirements of the notice, are relatively straightforward.

¹³ A small number of appeals do not require a site visit and can be dealt with on the basis of the appeal documents.

¹⁴ For example where detailed evidence on housing land supply needs to be tested by questioning.

¹⁵ For example whether in traveller appeals the definition in Annex 1 of DCLG's planning policy for traveller sites is met, or in agricultural dwelling appeals.

¹⁶ Where the proposal has generated significant local interest a hearing or inquiry may need to be considered. In such circumstances the local planning authority should indicate which procedure it considers would be most appropriate taking account of the number of people likely to attend and participate at the event. We will take that advice into account in reaching the decision as to the appropriate procedure.

Inquiry - an inquiry would be appropriate if:

- there is a clearly explained need for the evidence to be tested through formal questioning by an advocate¹⁷; or
- the issues are complex¹⁸; or
- the appeal has generated substantial local interest to warrant an inquiry as opposed to dealing with the case by a hearing¹⁹; or
- in an enforcement appeal, evidence needs to be given on oath²⁰; or
- in an enforcement appeal, the alleged breach, or the requirements of the notice, are unusual and particularly contentious.

Note - It is considered that the prospect of legal submissions being made is not, on its own, a reason why a case would need to be conducted by inquiry. Where a party considers that legal submissions will be required (and are considered to be complex such as to warrant being made orally), the Inspectorate requires that the matters on which submissions will be made are fully explained – including why they may require an inquiry - at the outset of the appeal or otherwise at the earliest opportunity.

¹⁷ This does not preclude an appellant representing themselves as an advocate.

¹⁸ For example where large amounts of highly technical data are likely to be provided in evidence.

¹⁹ . Where the proposal has generated significant local interest a hearing or inquiry may need to be considered. In such circumstances the local planning authority should indicate which procedure it considers would be most appropriate taking account of the number of people likely to attend and participate at the event. We will take that advice into account in reaching the decision as to the appropriate procedure.

²⁰ For example where witnesses are giving factual evidence about how long the alleged unauthorised use has been taking place.

G How can a decision be challenged?

Important Note - The content of this document is guidance only with no statutory status. This guidance is not definitive. Because High Court challenges can involve complicated legal issues, if someone is considering making a challenge they may wish to take legal advice from a qualified person, such as a solicitor. Further information is available from the Administrative Court (see below).

G.1 What is the process for challenging a decision made during the processing of a case?

G.1.1 For decisions made by administrative staff during the processing of an appeal (other than those relating to an award of costs) there is no statutory right to challenge that decision in the High Court (please see the information about High Court challenges below). However it is possible to make an application for judicial review of such a decision. Rule 54.5(5) of the Civil Procedure Rules 1998 (as amended) requires that an application for judicial review relating to a decision of the Secretary of State²¹ under the planning acts, must be made not later than 6 weeks after the grounds to make the claim first arose.

G.1.2 However, if the appeal is decided before the end of this time limit then the only way to challenge decisions by administrative staff would be as part of the challenge to the appeal decision itself through the High Court (see paragraph G.2).

G.2 What is the time limit for making a challenge in the High Court?

G.2.1 A challenge to a decision on a planning appeal or related costs decision in the High Court must be made within 42 days (6 weeks) of the date of the decision – this period cannot be extended.

G.3 On what grounds can a decision be challenged?

G.3.1 A decision cannot be challenged merely because someone disagrees with the Inspector's decision. For a challenge to be successful the challenger would have to satisfy the High Court that the Inspector made an error in law, eg misinterpreting or misapplying a policy or failing to take account of an important consideration. If a mistake has been made and the High Court considers it might have affected the outcome, the appeal or costs decision will be returned to the Planning Inspectorate to be decided again.

G.4 Under what legislation can an LDC/LB LDC appeal decision or a costs decision be challenged?

²¹ Our administrative staff make decisions about the processing of an appeal on behalf of the Secretary of State.

G.4.1 A decision on an LDC appeal can be challenged under section 288 of the Town and Country Planning Act 1990 and for an LB LDC under section 63 of the Planning (Listed Buildings and Conservation Areas) Act 1990. For LB LDC consent appeal decisions and related costs decisions challenges are made under section 63 of the Planning (Listed Buildings and Conservation Areas) Act 1990. Challenges must be received by the Administrative Court within 42 days (6 weeks) of the date of the decision - this period cannot be extended. To challenge a decision under section 288 or section 63 you must first get the permission of the Court. If the Court does not consider that there is an arguable case, it can refuse permission.

G.5 Who can make a challenge to an LDC decision?

G.5.1 A person aggrieved by the decision may do so if they have sufficient interest in it. This could include interested people as well as appellants, local planning authorities and landowners.

G.6 How much is it likely to cost?

G.6.1 An administrative charge is made by the Court for processing a challenge (the Administrative Court should be able to give you advice on current fees – see Further information below). The legal costs involved in preparing and presenting a case in Court can be considerable, and if the challenge fails the challenger will usually have to pay our costs as well as their own. However, if the challenge is successful we will normally be required to meet their reasonable legal costs.

G.6.2 Sometimes a request can be made to the Court for an order (a Protective Costs Order) which excludes liability or limits liability for the other side's costs up to a certain amount including costs of the decision maker and any interested people. The Administrative Court or a legal adviser will be able to advise if this is possible.

G.7 How long will it take?

G.7.1 This can vary considerably. Many challenges are decided within 6 months, some can take longer.

G.8 Does a challenger need to get legal advice?

G.8.1 A challenger does not have to be legally represented in Court but it is normal to do so, as they may have to deal with complex points of law made by our legal representative.

G.9 Will a successful challenge reverse the decision?

G.9.1 Not necessarily. The Court can only require the Planning Inspectorate to reconsider the case and an Inspector may come to the same decision but for different or expanded reasons.

G.10 What happens if a challenge fails?

G.10.1 Although it may be possible to take the case to the Court of Appeal, a compelling argument would have to be put to the Court for the judge to grant permission to do this.

G.11 Further information

G.11.1 Further advice about making a High Court challenge can be obtained from:

Administrative Court at the Royal Courts of Justice
Queen's Bench Division
Strand
London
WC2A 2LL

Phone: 020 7947 6655

Website: <http://www.justice.gov.uk/about/hmcts/>

G.12 What happens if a challenge is successful?

G.12.1 If a challenge is successful the appeal or costs decision will be returned to the Planning Inspectorate for re-determination. We will give all High Court re-determination cases priority status, and they will normally be dealt with quickly, though without prejudicing any party. We will usually appoint a different Inspector to re-determine the appeal. Arrangements for redetermination of costs decisions may differ, particularly where the related appeal decision has been upheld.

G.12.2 The appeal will usually be decided by either further written representations or an inquiry. We will rarely arrange a hearing even if the original appeal was dealt with this way. We consider that a hearing decision that has been examined in the formal setting of the High Court would normally need to be re-determined under the formal inquiry procedure, in order to allow a full examination of the legal issues raised. However, where all parties agree that a hearing would be appropriate we will take this into account when determining the procedure for the re-determined appeal.

G.12.3 Where the appeal was originally dealt with by written representations, we would normally re-determine it by means of further written representations. However, where there has been a material change in circumstances, we may consider this is no longer the most appropriate procedure, having regard to the criteria (please see Annexe F).

G.12.4 Where the appeal was originally dealt with by an inquiry, a new one may be held.

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

G.13.1 Unless there is a specific need, the redetermination will not follow the usual timetable. We will write to the main parties, and interested parties if appropriate, to let them know what will happen. All original appeal documentation will be seen by the appointed Inspector.

G.13.2 We would normally try to agree dates for a hearing or an inquiry in accordance with our standard practice, please see Annexe B and Annexe C. 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.

G.14 Contacting us

High Court Team
The Planning Inspectorate
4/06 Kite Wing
Temple Quay House
2 The Square,
Bristol
BS1 6PN

Phone: 0303 444 5000
E-mail: feedback@pins.gsi.gov.uk

Website: [feedback](#)

G.15 Contacting the Ombudsman

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

Helpline: 0845 0154033
Website: www.ombudsman.org.uk
E-mail: phso.enquiries@ombudsman.org.uk

H What is “Expert evidence”?

H.1 Who provides expert evidence?

H.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.

H.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.

H.2 Endorsement

H.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.”

H.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.

I What happens if an error has been made?

I.1 Background

I.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.

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

- Planning
- Enforcement
- LDC
- Listed Building (including Listed Building Enforcement)
- Conservation Area Consent
- Costs
- Advertisement

I.1.2 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.

I.1.3 The Act requires any person who wants us to correct a decision to request this in writing and within the relevant High Court challenge periods. For an LDC decision this is within 6 weeks of the date of the decision.

I.1.4 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
4D Hawk Wing
Temple Quay House
2 The Square
Bristol
BS1 6PN

Phone: 0303 444 5000
Email: feedback@pins.gsi.gov.uk
Website: [feedback](#)

J Feedback and complaints

J.1 How do we handle feedback?

J.1.1 We try hard to ensure that everyone who uses the appeal system is satisfied with the service they receive from us. We welcome feedback and like to hear that we have provided a good service. However although we aim to give the best service possible, there will unfortunately be times when things go wrong and we fail to achieve the high standards we set ourselves.

J.1.2 We appreciate that many of our customers will not be experts on the planning system and for some it will be their one and only experience of it. We consider that people's opinions are important and realize that they may be strongly-held.

J.1.3 All correspondence we receive after the appeal decision is issued is handled by the Customer Quality Team which works independently of all of our casework and Inspector teams. We will reply as soon as possible in clear, straightforward language, avoiding jargon and complicated legal terms.

J.1.4 People can contact us by email, write to us, or phone us (see 'Contacting us' below). Whilst we are happy to talk to people on the phone, where there are a number of issues to relay it may be easier to put these in writing setting out the points clearly. We will acknowledge all correspondence, advise who is dealing with it and provide a timescale for replying. We aim to reply to 80% of all correspondence within 20 working days.

J.2 Looking at appeal documents

J.2.1 Before making a complaint it would usually be a good idea to look at the appeal documents. We normally keep appeal files for one year after the decision is issued, after which they are destroyed. People can look at appeal documents at our office in Bristol, by contacting us to make an appointment (see 'Contacting us' below). We will obtain the file from our storage facility ready for it to be viewed at the appointment.

J.2.2 Alternatively, if visiting Bristol would involve a long or difficult journey it may be more convenient to arrange to view the local planning authority's copy of the file, which should be similar to ours.

J.3 How we investigate complaints

J.3.1 There is no time limit in which complaints must be made, but we would normally expect them to be made promptly once the reason for the complaint becomes apparent. As explained in paragraph J.2.1 above, we normally only keep appeal files for one year after the decision is issued, after which they are destroyed. Whilst we are able to deal with complaints that are older than that, our ability to do so thoroughly may be restricted if the file has been destroyed, and the recollections of the people concerned will

naturally fade over time. In such circumstances, complainants will probably need to send us documents to support their complaint.

J.3.2 It is the job of the Customer Quality Team to investigate complaints about procedure, decisions or an Inspector's conduct. All complaints are investigated impartially and as thoroughly as possible.

J.3.3 However, to help us gain as full a picture as possible, we may need to ask the Inspector or other staff for comments. This helps us to decide whether an error has been made. If this is likely to delay our full reply we will let the complainant know.

J.3.4 Sometimes complaints arise due to misunderstandings about how the appeal system works. When this happens we will try to explain things as clearly as possible. Sometimes there is confusion about what the appeal decision means. In LDC appeals "allowed" means that the certificate is granted, "dismissed" means that it is not granted.

J.3.5 LDC appeals often raise strong feelings and it is inevitable that there will be at least one party who will be disappointed with the outcome of an appeal. This often leads to a complaint, either about the decision or the way the appeal was handled.

J.3.6 Sometimes the appellant, the local planning authority or a local resident may have difficulty accepting a decision simply because they disagree with it.

J.3.7 We appreciate that the party, especially an appellant, that 'loses' an appeal will be disappointed but it is very important to understand that we cannot re-open an appeal to re-consider its merits, add to what the Inspector has said or change the decision. We will however do our best to clarify things, if it is necessary and possible.

J.3.8 Sometimes a complaint is not one we can deal with (for example, complaints about how the local planning authority dealt with another similar application), in which case we will explain this and suggest who may be able to deal with the complaint instead.

J.3.9 Similarly we cannot resolve any issues someone may have with the local planning authority about the planning system or the implementation of a planning permission.

J.3.10 If the complainant considers that our reply has not adequately responded to their concerns, our policy is that a senior manager will review their complaint and send a final reply.

J.4 Who is responsible for monitoring a development?

J.4.1 If planning permission is granted, either 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. The Planning Inspectorate does not have this role.

J.4.2 If the local planning authority considers that the development does not comply with the permission they have the power to take enforcement action.

J.5 What we cannot change

J.5.1 As we have already stated above, we **cannot change the Inspector's decision**, or re-open the appeal once the decision has been issued.

J.5.2 Although we can rectify certain minor errors (please see Annexe I), we cannot reconsider the evidence the Inspector took into account or the reasoning in the decision or change the decision reached even if we acknowledge that an error has occurred. This can only be done following a successful High Court challenge resulting in the appeal being returned to us to decide it again, please see Annexe G.

J.6 What we will do if we have made a mistake

J.6.1 We are keen to learn from our mistakes and try to make sure they do not happen again. Complaints and our responses to them are therefore one way of helping us improve the appeals system.

J.6.2 If a mistake has been made we will write explaining what has happened and we will apologize. The Inspector, or the administrative member of staff, and their line manager will be told that the complaint has been upheld and we will look to see if lessons can be learned from the mistake, such as whether our procedures can be improved or training given, so that similar errors can be avoided in future.

J.6.3 Remedies which we may offer include:

- an apology, explanation, and acknowledgement of responsibility;
- remedial action which may include:
 - reviewing service standards;
 - revising published material;
 - revising procedures to prevent the same thing happening again;
 - training or supervising staff;

or any combination of these.

J.6.4 Where maladministration or an error by us has led to injustice or hardship, we will try to offer a remedy that returns the complainant to the position they would have been in otherwise. If that is not possible, we will provide compensation for additional expenses incurred as a direct result of an acknowledged error by us, where there are compelling reasons to do so. However, certain circumstances will be beyond our control, and where this is the case we will not meet a claim for financial compensation unless there are very exceptional circumstances.

J.6.5 We will consider carefully requests for financial compensation and would expect these normally to be received within 6 months of the date of the error or of any subsequent appeal decision by us related to that error (eg a decision on an appeal that we have had to re-determine). However in exceptional circumstances (which should be explained) we will consider requests outside of this time limit.

J.7 Role of the Ombudsman

J.7.1 The Parliamentary and Health Service Ombudsman can investigate complaints of maladministration against Government Departments or their Executive Agencies. Normally the Ombudsman will not investigate a complaint:

- unless the complainant has followed our complaints process completely and is still not satisfied with our replies; or
- if there is a legal route that can be followed to challenge a decision.

J.7.2 For appeals there **is** a legal route, for further information please see Annexe G.

J.7.3 Complaints to the Ombudsman must be made through a Member of Parliament. We would normally expect such a complaint to be made within 6 months of the date of our final reply to the original complaint, but it is for the Ombudsman's office to determine whether they will accept a case.

J.7.4 Even if the Ombudsman does decide to investigate a complaint the Ombudsman **cannot change the Inspector's decision.**

J.8 Frequently asked questions

"Why did an appeal succeed when local people were all against it?" – The representations of local people are important but they are likely to be more persuasive if based on evidence or planning legislation, rather than a basic like or dislike of the proposal/development. Inspectors have to make up their own minds based on all of the evidence, including the representations, whether the appeal should be allowed or dismissed.

"How can Inspectors know about local feeling or issues if they don't live in the area?" – Using Inspectors who do not live locally ensures that they have no personal interest in any local issues or any ties with the appellant or their agent, the local planning authority. However, Inspectors will be aware of relevant local information from the documents provided by the appellant and the local planning authority and the representations people have made on the appeal.

"I wrote to you giving my opinion, why didn't the Inspector mention this?" – Inspectors must give reasons for their decision and take into account all representations received but it is not necessary to list every piece of evidence. And in an LDC appeal it is only evidence that is considered, not planning merits or opinions.

"Why did my appeal fail when similar appeals nearby succeeded?" – Although two cases may be similar, there will always be some aspect of an LDC/LB LDC application which is unique. Each case must be decided on its own particular facts taking into account the evidence provided by the parties on that case (which is likely to differ from case to case).

"I've just lost my appeal, is there anything else I can do to get my LDC/LB LDC?" – Depending on the reasons why the Inspector refused to issue an LDC perhaps you could change some aspect of your proposal to make it lawful or for an existing development you could provide more evidence. If so, you can make a revised application to the local planning authority. Talking to a planning officer about this might help you explore your options.

Contacting us

Customer Quality Team
The Planning Inspectorate
4D Hawk Wing
Temple Quay House
2 The Square
Bristol
BS1 6PN

Phone: 0303 444 5000
Email: feedback@pins.gsi.gov.uk
Website: [feedback](#)