Annex 9: the town and country planning (enforcement) (inquiries procedure) rules

The Town And Country Planning (Enforcement) (Inquiries Procedure) Rules 1992

Scope of the Rules

9.1 The Town and Country Planning (Enforcement) (Inquiries Procedure) Rules 1992 (SI 1992/1903) ("the Enforcement Rules") replaced the Town and Country Planning (Enforcement) (Inquiries Procedure) Rules 1981 (SI 1981/1743). The Enforcement Rules apply, whether the appeal is to be decided by the Secretary of State or by an Inspector appointed by him, to local inquiries held into

(1) enforcement notice appeals under section 174 of the Town and Country Planning Act 1990 ("the 1990 Act");

(2) appeals under section 195 of the 1990 Act against refusal to grant a certificate of lawful use or development, or the deemed refusal of a certificate application made under section 191 or 192 of the 1990 Act (as amended); and

(3) listed building enforcement notice appeals under section 39 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (as amended), including Conservation Area consent enforcement appeals.

Objectives

9.2 The Enforcement Rules are intended to improve the efficiency and effectiveness of the local inquiry process, without reducing participants' ability to make relevant representations in accordance with the requirements of natural justice. As with the Town and Country Planning (Inquiries Procedure) Rules 1992 (SI 1992/2038) ("the Planning Rules"), the aim is to make the best possible use of the period before the inquiry opens, to exchange information so that as much as possible of each party's case can be properly considered by the other participants in advance of the inquiry's opening. This will enable the inquiry Inspector to concentrate on the essential issues, thus minimising the time spent at an inquiry.

Appointment of assessor and pre-inquiry meeting

9.3 The 1992 Rules provide for notifying the appointment of an assessor (rule 10) and for the Inspector to hold a pre-inquiry meeting (rule 6), although these provisions may not often be apt for enforcement appeal inquiries. Rule 7 enables the Inspector (or the Secretary of State in a non-transferred appeal) to serve a statement on the parties to an appeal as to the matters about which he or she particularly wishes to be informed.

Time-limits for the appeal process

9.4 The time-limits imposed by the 1992 Rules generally start to run from the "relevant date" that is, the date when the Secretary of State notifies the appeal parties of his intention to cause an inquiry to be held, as occurs in the Planning Rules. There are some differences in the respective time-tables which reflect the particular circumstances of enforcement and other related appeals. Nevertheless, the intention is to process planning and enforcement appeals together when they relate to the same land. The enforcement appeal will be "in the lead" when it is linked administratively to others.

Statement and proofs of evidence

9.5 The local planning authority are required by rule 8 to produce their statement of case before the appellant (who will have produced a statement of facts with the appeal). Where, under rule 14, evidence is to be given by reading a proof of evidence *which relates to a deemed application* for planning permission under section 177(5) of the 1990 Act, a copy of the proof and a summary (if the proof exceeds 1,500 words) have to be sent to the Inspector 3 weeks before the inquiry timetable arranged under rule 9. The summary should be as concise as possible. Where a proof and summary are required, only the summary may be read at the inquiry, unless the Inspector permits or requires otherwise. But cross-examination would take place on the proof in its entirety.

Inspector's findings of fact

9.6 Because the decision on an appeal against a refusal, or deemed refusal, of a certificate of lawful use or development is based entirely on the application of Planning Law to evidential fact (the planning merits of the use or development being immaterial), rule 17 specifically requires the Inspector to include "findings of fact" in his or her inquiry report. This does not require findings of fact to be stated separately in the report, although they will usually be. If the Secretary of State proposes to disagree with the Inspector's recommendation because he differs from the Inspector on any material fact, or takes account of any new evidence, this rule requires him to give those entitled to appear at the inquiry, and who appeared at it, three weeks to make written representations on those matters, or request the re-opening of the inquiry. Similar arrangements apply, under rule 18, to a transferred appeal.

Provisions for cases "remitted" to the Secretary of State by the Court

9.7 Paragraph 2.48 of Annex 2 to this Circular explains sections 288 and 289 of the 1990 Act. Following a successful appeal to the Court, a case is remitted to the Secretary of State for re-hearing and determination. Rule 21 provides that the Secretary of State shall send to the appeal parties a statement of the matters on which further written representations are invited before the appeal is further considered by him. The period for submitting such representations, or requesting a re-opening of the inquiry, is three weeks. If the Secretary of State considers that the inquiry should be re-opened, paragraphs (3) to (8) of rule 11 will apply.

"Linked" enforcement and planning appeals

9.8 Under rule 22, the Secretary of State may extend the period allowed or required by any other rule. As paragraph 9.4 above explains, in cases where a section 78 and a section 174 appeal relate to the same land, they will be "linked" administratively. In such cases the Enforcement Inquiries Procedure Rules time-limits will apply to the procedure to be followed, by virtue of the Secretary of State's invoking the equivalent provisions of the Planning Rules to rule 22. The other requirements of the Planning Rules (such as the submission of proofs of evidence) will continue to apply to the planning appeal.

Arranging the inquiry

9.9 The arrangements for fixing an inquiry date under these Rules will follow the normal planning appeal arrangements. Each principal party to an appeal will be generally permitted only one refusal of a date offered for the inquiry before the Department will proceed to fix a date, time and place for it. Normally the period allowed for negotiating a date will be one month, starting from when the first offer of an inquiry date is made. If one or both parties refuse the first date offered, and it is clear that they are not prepared to negotiate an acceptable date between them, the Department may proceed to fix the date of the inquiry before the negotiation period has expired. Once a date has been fixed, it will only be changed for exceptional reasons.