Hedgerows – Retention and Replacement Notices

Guidance on the Appeal Procedures

Introduction

1. This guidance covers the procedures for appeals against Hedgerow Retention Notices and Hedgerow Replacement Notices issued by local authorities (LAs) in England. If you want to appeal against a notice issued in respect of a hedgerow in Wales, please contact: The Planning Inspectorate, Crown Buildings, Cathays Park, Cardiff, CF10 3NQ, or telephone 0303 444 5940.


3. The Regulations apply to most countryside hedgerows. In particular, they affect hedgerows which are 20 metres or more in length; which meet another hedgerow at each end; are on or adjoin land used for: agriculture, forestry, the breeding or keeping of horses, ponies or donkeys, common land, village greens, Sites of Special Scientific Interest (SSSIs) or Local Nature Reserves. Garden hedges are not affected.

4. The purpose of the Act and Regulations is to protect important countryside hedgerows from removal, either in part or whole. Removal not only includes grubbing out, but anything which could result in the destruction of the hedge. If a hedge is removed without consent, in contravention of the Regulations, the local authority may require its replacement.

Appeals

5. Appeals can be made to the Secretary of State for Environment, Food and Rural Affairs (“the Secretary of State”) against Hedgerow Retention Notices and Hedgerow Replacement Notices.

6. The Secretary of State has delegated the power to decide appeals to Inspectors (please see paragraph 10). There are no statutory time limits for dealing with appeals, but the Planning Inspectorate will provide the parties with provisional deadlines for the receipt of representations.

7. Prospective appellants are advised to speak to their LA to try to resolve any difficulties or disagreements before making an appeal. An appeal should only be made as a last resort.
How to appeal

8. Your appeal must be made within 28 days from the date of the Retention or Replacement Notice. A longer period may be allowed in very exceptional circumstances.

9. Your appeal should be made in writing on a form obtained from the Planning Inspectorate.

10. The appeal form may be returned to us electronically by e-mail to: environment.appeals@plannininspectorate.gov.uk, or you can print it out and post it to us. You may also obtain a form by telephoning or writing to us at the address below. When completing the form you will be required to include:

   • your grounds of appeal;
   • a copy of the Retention or Replacement Notice issued by the LA
   • a statement indicating whether you would like the appeal to be dealt with by written representations, a hearing or local inquiry. *(The 3 procedures are described below).*

11. You may also include any other document which you think may help your case.

12. Your appeal form and documents should be sent to:

   Environment Appeals Team
   The Planning Inspectorate
   3A Eagle Wing
   2 The Square
   Temple Quay House
   Bristol
   BS1 6PN

   Tel: 0303 444 5584

13. The Planning Inspectorate is an executive agency of the Ministry for Housing, Communities and Local Government. The Environment Appeals Team is responsible for ensuring that appeals made under section 97 of the Environment Act 1995 are processed in accordance with the Regulations and in a timely manner. In addition to answering general queries on appeal procedures we will also assist with information on the progress of specific cases.

14. At the same time that you send your appeal to the Planning Inspectorate, you must copy the form and accompanying documents to the LA against whose notice you are appealing.

15. When an appeal is made against a Retention Notice, the notice remains in effect until the appeal is decided.

What happens after we receive your appeal

16. We will check your appeal to make sure it is valid and that it has been made within the deadline for its receipt. If you have sent us everything we need to be able to process it, we will send you written confirmation notifying you of the start date for your appeal. All procedural deadlines involved in the processing of your appeal will be timed from this start date and the timetable will be set out in the start letter. On the same day that we write to you we will notify the LA of the start date and will ask for
copies of the following documents, which they should return to us within 2 weeks of the start date:

- a copy of your application to remove the hedge (for Retention Notices);
- a copy of the Retention or Replacement Notice;
- a copy of any comments from the Parish or Community Council;
- a location plan;
- the authority’s evaluation of the hedge. Where the hedgerow is claimed to be important for historic and/or archaeological reasons, this should include copies of source documents/plans. Where species composition is relevant, a survey will be required and this should also include associated features if relied upon;
- confirmation of the LPA’s preferred procedure for determining the appeal, whether they are content to proceed by way of written representations or whether they wish to be heard by the appointed Inspector at a hearing or local inquiry; and
- any other documents they feel are relevant to their case.

17. At the same time that the authority sends us the documents to us i.e. within 2 weeks of the start date, they will copy them to you.

18. Within 6 weeks of the start date both you and the LA should send 2 copies of your written appeal statement to us. The statement should contain all necessary evidence to enable the Inspector to make a decision on the appeal. Any interested parties also have the opportunity to submit comments to us within this period. After the 6 week deadline has elapsed we will cross copy your statements.

19. Within 9 weeks of the start date, you and the LA can comment on each others statements, and any other representations which were received within the six week deadline.

Written Representations

20. Appeals which are dealt with by way of a written exchange followed by a site inspection.

- We will write to you and the LA setting a start date. Six weeks from this date, you and the LA need to send us your statement if you intend to send a one in addition to your grounds of appeal.
- After 6 weeks we will send you and LA a copy of each other’s statement and copies of any third party representations made about the appeal.
- We will then give you and the LA a further 3 weeks to comment on each other’s statement and the third party representations.

21. If you and the LA agree to the written procedure we will contact you as early as possible to make arrangements for the site visit.

22. You and the LA will be given an opportunity to accompany the Inspector during the site visit. It is normal practice for the Inspector to be accompanied by a representative of both parties in order to gain access to the site and for assistance in identifying the hedgerow in question. However, the Inspector will not allow any discussion about the merits of the case and will restrict questions to the physical features of the hedgerow itself. All evidence must be given in the statements of case (see paragraph 15 above) neither you nor the LA will be allowed to submit further representations on the day.
Hearings

23. Although the majority of hedgerow appeals are suitable for the written procedure, you and the LA have a right to be heard by an Inspector appointed by the Secretary of State. Hearings allow the issues to be aired informally through a discussion led by the Inspector. Usually the Inspector will close the hearing before conducting an accompanied site visit but, where appropriate, he/she may decide to adjourn the hearing to the site to allow for the discussion to continue there. The timetable for the submission of written statements is the same as that used for written representations. Arrangements for the site visit will be made at the hearing.

24. We may ask the LA to post notice of hearings locally and on site. Local residents and other interested people are allowed to attend hearings and may speak, at the discretion of the Inspector.

Inquiries

25. In exceptional circumstances a local inquiry may be held. This may be necessary when cross-examination is needed or when there are large numbers of submissions or we are aware of a considerable amount of public interest. Either party may request a local inquiry or the Secretary of State may decide that an inquiry is necessary. The timetable for the submission of statements is the same as that for written representations. You and the LA will be asked to provide a statement of common ground and also proofs of evidence if expert witnesses are to be called.

26. We may ask the LA to post notice of an inquiry in the locality where the hedge is situated and on site. Local residents and other interested people are allowed to attend an inquiry and may speak, at the discretion of the Inspector.

Recovery

27. In very exceptional circumstances (for example, where a significant point of law or Government policy is raised), appeals may be recovered for decision by the Secretary of State.

Decisions on Appeals

28. Following the site visit, hearing or inquiry, the Inspector will consider all the evidence and his/her findings during the site visit before reaching a decision. The decision will contain reasons and will be in writing. The Inspector may allow the appeal and quash the LA’s notice, either in whole or in part, or modify it. Alternatively, the Inspector may dismiss the appeal, or part of it, leaving the Notice to stand either in whole or in part. A copy of the decision will be sent to you, the LA, interested parties and may also be posted on our web site.

29. In cases where the Secretary of State has decided to determine the appeal himself (see Paragraph 26), the Inspector will write a report which will be considered by the Secretary of State, a copy of which will be issued with the Secretary of State’s decision.

Withdrawal of an Appeal

30. An appeal may be withdrawn at any time as long as notification is made to the Planning Inspectorate in writing. You should also copy your letter to the LA, stating you have done so on your letter to us. We will then confirm the withdrawal to the
parties. If the appeal is withdrawn, the Retention Notice/Replacement Notice will still stand.

Costs

31. Costs may be awarded to either party in cases dealt with by way of a hearing or local inquiry. An application for costs should be made to the Inspector at the hearing or inquiry and can be awarded on the grounds that the other party has behaved unreasonably and has caused the party seeking costs to incur unnecessary or wasted expense (DOE Circular 8/93 explains the rules relating to the award of costs in more detail).

32. An application for costs may be submitted to the Inspectorate if the hearing or inquiry is cancelled as a result of a late withdrawal of the appeal. This type of application should be forwarded to the:

Planning Inspectorate
Costs Section, 3A Eagle Wing
Temple Quay House
2 The Square
Temple Quay
Bristol BS1 6PN

Complaints about the Decision

35. If you have any complaints about the decision or the way we have handled your appeal please write to:

The Planning Inspectorate
Customer Quality
3H Hawk Wing
Temple Quay House
2 The Square
Temple Quay
Bristol BS1 6PN

36. The Customer Quality Team will reply to you, or they will ask someone else within the Inspectorate to reply if they have specialist knowledge of the issues raised. They will investigate your complaint and you can expect a full reply within 3 weeks. However, the Inspectorate cannot reconsider your appeal if the decision has already been issued. The only circumstances under which we will be able to reconsider your appeal is if you successfully challenge the decision in the High Court.

Privacy Statement

This privacy notice provides information about our processing of personal information in respect of hedgerows casework in England.

Who are we?

We are the Planning Inspectorate, an agency sponsored by the Ministry of Housing, Communities and Local Government.

We administer and determine hedgerow appeals on behalf of the Secretary of State for Environment, Food and Rural Affairs.
How do we collect information?

The personal information that we use is provided to us by the parties making, or taking part, in that case. As part of that process, the council also send us information from their consideration of the case.

What type of information do we collect?

In processing a hedgerow appeal, we receive information from the appellant, LA and other interested people. The personal information normally includes name and contact details and any other personal information within the representations themselves.

How is that information used?

The information provided to us is used to determine the case. You should be aware that the information provided is copied to other parties and can be made publicly available. We do not normally redact contact information or other information when copying information to other parties - and you should only submit information on that basis.

We do not accept anonymous representations, but you may ask for your name and address to be withheld. If you request this then your name and contact information will be removed, including in the version provided to the Inspector, and your representation may receive less weight as a result.

The appointed Inspector will consider the information provided and reach their decision, providing both the outcome of the case and their reasons for it.

What is the legal basis for our processing of information?

Our processing of personal information is necessary for the effective determination of the case and is therefore necessary for the performance of a task carried out in the public interest. There are also explicit statutory/legal obligations on us in respect of that casework.

Our processing of any special category data (if any is provided) is on a similar basis, being necessary for reasons of the substantial public interest in exercise of our official function of administering and determining cases.

What are the consequences of failing to provide your information?

If you fail to provide us with information required to validate your case then we may not be able to consider it. We will normally let you know if this applies.

There is no statutory obligation on interested parties to participate in a case.
How long do we keep your information?

We normally keep copies of the information provided to us on a case for a period of one year following issue of the decision, and keep the decision itself for 10 years.

Who do we share information with?

As set out above and in our guidance, the information we receive is copied to the case parties. We may use third party service providers to assist us in the provision of our service – for instance through the provision of information technology services). Where we do so, contracts will be put in place to ensure that your personal information is processed only as instructed by us (unless otherwise required by law), and that appropriate measures are in place to ensure the security of information.

Your rights in respect of your personal information

Data protection legislation

Data protection legislation provides you with rights in respect of your personal information. Typically these are:

- the right to be informed;
- the right of access;
- the right to rectification;
- the right to erasure;
- the right to restrict processing;
- the right to data portability
- the right to object;
- rights in relation to automated decision making and profiling.

Given our lawful basis for processing information, your rights to erasure, data portability and to object to the processing of your information may not apply and we do not use automated decision making or profiling.

Your other rights may also not be absolute and, as our legal basis for processing information is not normally dependent on your consent, withdrawal of this is not normally applicable. However, if you have concerns over the use of your personal information, or wish to exercise your rights, then please contact us at the address below.

Complaints about the processing of your personal information

When we process your personal information we will comply with the Data Protection Act.
If you are unhappy with the way the Inspectorate processes your personal information then you should first contact the Inspectorate’s Data Manager: dataprotection@planninginspectorate.gov.uk.
Data Manager
The Planning Inspectorate
3rd Floor Temple Quay House
2 The Square, Temple Quay
Bristol
BS1 6PN

Alternatively, you can contact our respective sponsor’s Data Protection Officer directly (please make clear that your query/complaint relates to the Planning Inspectorate)
MHCLG: dataprotection@communities.gov.uk

If you are still not happy, or for independent advice about data protection, privacy and data sharing, you can contact:

The Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow, Cheshire,
SK9 5AF

Telephone: 0303 123 1113 or 01625 545 745
https://ico.org.uk/