Circular 02/02 (ODPM): Enforcement appeals procedures

On 5th May 2006 the responsibilities of the Office of the Deputy Prime Minister (ODPM) transferred to the Department for Communities and Local Government.

Department for Communities and Local Government
Eland House
Bressenden Place
London SW1E 5DU
Telephone: 020 7944 4400
Website: www.communities.gov.uk

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Summary

This Circular explains the new procedures for handling enforcement appeals in England, which are being introduced with effect from 23 December 2002. These procedures apply to enforcement appeals received on or after that date.

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Note: The above publication was issued by our former department, the Office of the Deputy Prime Minister (ODPM). ODPM became Communities and Local Government **on 5 May 2006** - all references in the text to ODPM now refer to Communities and Local Government.

Contents

Go to table of contents

Published 1 November 2002.

Introduction

The main body of the Circular follows with 4 Annexes.

1. This Circular explains the new procedures for handling enforcement appeals in England, which are being introduced with effect from 23 December 2002. These procedures apply to enforcement appeals received on or after that date. Appeals received before that date will continue to be processed through to a conclusion on the basis of the previous procedures and guidance (see paragraph 37 [transitional arrangements] of the main body of the Circular).

2. The new procedures implement the Government's commitment to improve the Planning Inspectorate's service to its customers and to increase the efficiency of the enforcement appeals process by reducing both the cost and time taken. In introducing these changes, the Government recognises that it is vital to maintain a system which ensures that there is fair and open decision-making and that all parties have the opportunity to put their case, resulting in decisions that are legally sound and of the highest possible quality.

3. The new procedures follow closely the procedures for planning appeals which came into force on 1 August 2000.

4. In addition to streamlining the procedures themselves, the Planning Inspectorate has been set tough new targets to deliver improvements in the speed with which planning enforcement appeals are handled. It is clear, however, that improving service to the benefit of all concerned is not just the responsibility of the the Planning Inspectorate. All parties to the appeals process have a responsibility to meet deadlines set and cooperate with the Inspectorate in agreeing dates offered for hearings and inquiries.

Comments or representations received after the due dates will normally be disregarded.

The Enforcement Appeal Process

5. It is essential that as well as reading those Annexes explaining the procedural rules applicable in individual enforcement appeal cases all the parties read the main body of this Circular. The following advice is intended to be a guide, and it is not definitive. An authoritative statement of the law can only be made by the Courts.

6. This Circular highlights the main ways in which all three procedures - written representations, hearings, and inquiries - are operated under the procedural rules for determining enforcement notice appeals under section 174 of the Town and Country Planning Act 1990. In addition, these procedures also apply to appeals against listed building and conservation area enforcement notices, and to lawful development certificate appeals.

7. The procedures for appealing against enforcement notices have been amended. The revisions ensure that all the elements of fair, open, and impartial decision-making are retained, and the role of public participation is safeguarded. At the same time, the procedures have been clarified to make them more user-friendly, and strengthened, so ensuring that all parties co-operate fully in complying with the rules. The hearings and written representations procedures now have a statutory basis in common with the procedure for enquiries. The new statutory procedure is different in many ways from that previously set out in the "Notes for Guidance and Code of Practice - Informal Hearing (Appeals against Enforcement Notice and Listed Building Enforcement Notices)".

8. Annex 1 of this Circular provides guidance on the latest procedural regulations for enforcement notices and enforcement appeals. Annexes 2 to 4 of this Circular provide guidance on the procedural rules and regulations governing the three procedures for handling enforcement appeals and the hearing and inquiry procedures for lawful development certificate appeals. Where the Circular and Annexes refer to appellants, Inspectors or assessors as "he", this also means "she".

Key Points

9. For all appeals, co-operation by all parties will help progress a case; minimising paperwork at all stages will also assist. Clearly all the relevant issues should be dealt with fully. Nevertheless, written representations should be as brief and succinct as possible, and avoid duplication of arguments or supporting information. All parties to the appeals process have a responsibility to adhere to deadlines. Failure to comply with the deadlines set will, except in extraordinary circumstances, also result in a party's representations (which may be a statement of case or proofs of evidence) not being taken into account (see paragraph 14 of the main body of the Circular).

10. Hearings will be used rather than inquiries in all suitable cases. The choice of the hearings procedure will be determined by the Secretary of State following consultation with the principal parties.

11. To ensure that **inquiries** last no longer than necessary, it is essential for the parties to prepare effectively early on and focus on the critical issues in advance. Irrelevant or inessential detail or repetition should be excluded from parties' evidence. The main parties should also

engage in pre-inquiry discussions for the purpose of reaching agreement on relevant facts in the form of a statement of common ground (see Annex 4(ii)). Such discussions will identify areas of agreement on which evidence need not be submitted and those issues which remain in dispute. The more widespread use of pre-inquiry meetings, whether between the parties or, in appropriate cases, chaired by an Inspector, will assist this process.

12. Under the procedural rules Inspectors have discretion in conducting inquiries. Whilst observing the rules of natural justice at all times, they will, in the interests of all the parties, exercise tight control over advocacy and cross-examination. In particular, Inspectors will exclude repetitious or irrelevant evidence, ensure that opening statements are succinct and do not delay presentation and examination of the main evidence, and curtail excessive or aggressive cross-examination. Inspectors will use their powers to establish a timetable for inquiry proceedings that should be adhered to by all the parties.

13. The introduction of the new procedures will put in place a regime of discipline for all the parties involved in the enforcement and lawful development certificate appeal process. Under the previous arrangements, there had been a tendency for a "cross examination by post" to take place with parties trying to get the last word. This was unfair to those who followed the Rules and supplied their representations within the set times. To achieve greater fairness and to seek to prevent the parties from gaining advantage over one another, the new procedures will require simultaneous submission of evidence and strict adherence to timescales. The time limits placed on the various stages of the appeal processes are designed to allow sufficient time for parties to prepare their cases.

14. Representations received after the due dates will normally be disregarded. It is the parties' responsibility to ensure that representations are sent to the Secretary of State within the deadlines. Although each case will be considered on its particular facts, late representations will only be considered in extraordinary circumstances. Examples of extraordinary circumstances include where representations are delayed because of a postal strike, or by the ill-health of an appellant, or to give a third party more time where the local planning authority is late in notifying them of the appeal, or where there has been a last minute change in circumstances which the Inspector ought to know about.

Annexes

15. The list of Annexes is as follows:

Annex 1: Enforcement Notices and Appeals: The Town and Country Planning (Enforcement Notices and Appeals) (England) Regulations 2002 (SI 2002 No 2682).

Annex 2 Written Representations: The Town and Country Planning (Enforcement) (Written Representations Procedure) (England) Regulations 2002 (SI 2002 No 2683).
(i) Format of written statement.

Annex 3 Hearings: The Town and Country Planning (Enforcement) (Hearings Procedure) (England) Rules 2002 (SI 2002 No 2684).
(i) Hearings procedure: guidance derived from the former Code of Practice for hearings.
(ii) Format of hearing statement.

Annex 4 Inquiries: The Town and Country Planning (Enforcement) (Inquiries Procedure) (England) Rules 2002 (SI 2002 No 2686) and The Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2002 (SI 2002 No 2685).
(i) Written evidence at public inquiries
(ii) Statements of common ground.

Pre-Appeal Considerations

16. Discussions between the persons facing enforcement action and the local planning authority can be particularly beneficial in resolving differences before any enforcement action is taken.

17. Before a person faced with enforcement action lodges an appeal, there will be a limited opportunity for discussion with the local planning authority. This might enable that person to comply with an enforcement notice rather than making an appeal. In this way difficulties can be more effectively, quickly and cheaply resolved.

Reasons for Taking Enforcement Action

18. Local planning authorities, when taking enforcement action, should specify all policies and proposals in the development plan which are relevant to the decision to issue the notice. More precise reasons for taking enforcement action linked to development plan policies will help appellants to focus their submissions on the planning merits of the appeal more specifically. **The aim should be to explain to the appellant the reasons why the enforcement notice has been served and to amplify the local planning authority's objections to the development as fully as possible.**

Submitting an Enforcement Appeal

19. Appeals **must** be sent to the Planning Inspectorate acting on behalf of the Secretary of State within the strict time limit specified in the notice. **The appeal must be delivered, or posted in time to be received in the ordinary course of post, by the Secretary of State before the date specified for the enforcement notice to take effect. It is important that the enforcement appeal form is completed accurately, including the full grounds of appeal, or that this information is included in a letter, and is accompanied by all the relevant documents. Late appeals cannot be accepted.**

20. An appeal against an enforcement notice may be made on any one or more of the grounds in section 174 (2) of the Town and Planning Act 1990 as amended by the Planning and Compensation Act 1991. Similarly appeals against Listed Building and Conservation Area enforcement notices may be made on any one or more of the grounds in section 39 (1) of the Planning (Listed Buildings and Conservation Areas) Act 1990. All the grounds of appeal should be given together with the facts in support of each ground pleaded and a clear explanation of why the appellant disagrees with each of the local planning authority's reasons for taking enforcement action. It is insufficient merely to state that the reasons are not accepted. General guidance on appeals is provided in the Planning Inspectorate's booklet "Making Your Enforcement Appeal". Enforcement appeal forms will be sent with the enforcement notice but are also obtainable from the Planning Inspectorate or may be obtained from the Planning

Portal (www.planningportal.gov.uk). Completed forms may be returned by post or applicants may give notice of their appeal by letter. Electronic submission of appeals via the Planning Portal will be possible once the necessary enabling legislation is in force and the necessary arrangements in place.

21. Appellants should send a copy of the enforcement appeal form and relevant documents direct to the local planning authority. Any local planning authority in doubt about the validity of an appeal should immediately contact the appropriate case officer in the Planning Inspectorate in Bristol.

London Borough Councils

22. Under the provisions of the Town and Country Planning (Mayor of London) Order 2000, certain planning applications are required to be referred to the Mayor. Where an enforcement appeal includes a ground that planning permission should be granted for the unauthorised activity or development, and where that activity or development is one which would have been referred to the Mayor had a planning applications been made, the local planning authority should similarly notify the Mayor of London.

Choice of Procedure

23. For any enforcement appeal under section 174 of the Town and Country Planning Act 1990, or section 39 of the Planning (Listed Buildings and Conservation Areas) Act 1990 and for lawful development certificate appeals under section 195 of the Town and Country Planning Act 1990, the appellant and the local planning authority have a statutory right to appear before and be heard by a person appointed by the Secretary of State. If neither party wishes to be heard, and the Secretary of State does not consider it necessary to hold a hearing or an inquiry, the appeal is determined by means of the **written representations** procedure. Where either of the principal parties exercises their right to be heard, they will be asked to state which procedure they would regard as suitable. The Planning Inspectorate, acting on behalf of the Secretary of State, will decide whether a hearing or inquiry is to be held taking into account the circumstances of each appeal, including any preferences already expressed by the principal parties. **Before choosing their preferred procedure, it is important that the parties carefully consider the nature of the appeal and the time and resource implications of each procedural method.**

24. All appeals under section 174 and 195 of the Town and Country Planning Act 1990 (except appeals by *statutory undertakers* involving their *operational land*) are prescribed by Regulations (see endnote 1) for decision by an Inspector, as are most listed building and conservation area enforcement appeals under section 39 of the Planning (Listed Buildings and Conservation Areas) Act 1990. However, the Secretary of State can recover jurisdiction on an appeal at any stage and decide the appeal himself. An Inspector can also ask him to do this.

Written Representations

25. This is by far the most common procedure and normally offers the quickest, simplest and cheapest way of deciding appeals. The Secretary of State will continue to encourage the use of the written method wherever appropriate. If an appeal proceeds on this

basis, it will normally be necessary for a Planning Inspector to inspect the site. Where this requires entry to the land, arrangements will usually be made for the Inspector to be accompanied by a representative of the appellant and the local planning authority.

26. The procedures for enforcement appeals determined by the written method are prescribed by The Town and Country Planning (Enforcement) (Written Representations Procedure) (England) Regulations 2002 (SI 2002 No 2683). Advice on the contents of the Regulations, including the statutory time limits for action calculated from the starting date, is contained in Annex 2 to this Circular. Annex 2 also contains a diagram of the appeal stages and time limits and a model format for theparties' written statements, where appropriate.

Hearings

27 The hearings procedure is simpler and quicker than the inquiries procedure. A hearing enables the parties to present their case fully and fairly in a more relaxed and less formal atmosphere than at an inquiry. It usually takes the form of a round-the-table discussion led by the Inspector. Without formal cross-examination or advocacy, hearings can be much less daunting for unrepresented parties. Where the dispute is solely about the planning merits of the development, or the requirements of the notice or the period for compliance, or the interpretation of agreed points, and one of the parties has exercised their right to be heard, the Department's policy is to promote the use of hearings in preference to inquiries for appropriate cases. However, hearings are not suitable for all enforcement or lawful development certificate appeals, eg where there is a dispute on evidential facts, or on most of the 'legal' grounds in section 174(2) i.e. grounds (b), (c), (d) and (e), or where a substantial number of third parties wish to speak, or where complex policy or technical issues are likely to be raised (see also paragraph 10 of Annex 3).

28. Hearings are conducted in accordance with the Town and Country Planning (Enforcement) (Hearings Procedure)(England) Rules 2002 (SI 2002 No 2684), as explained in **Annex 3** which also contains a diagram of the appeal stages and the time limits and guidance on the parties' hearing statements and the procedure at the hearing.

Inquiries

29. Where either the appellant or the local planning authority have exercised their right to be heard, an inquiry will be held if the case is not considered suitable for the hearings procedure. Where the grounds of appeal suggest a dispute about the relevant facts, between the local planning authority and the appellant, e.g. under grounds (c) or (d) of section 174(2), and in lawful development certificate and listed building and conservation area enforcement notice appeals raising similar issues, an inquiry is generally essential.

30. In the case of an appeal to which these procedures apply and which the Secretary of State has recovered for his own decision, the appeal inquiry is subject to the Town and Country Planning (Enforcement) (Inquiries Procedure) (England) Rules 2002 (SI 2002 No 2686) (informally referred to as "the Secretary of State's Rules"). In the case of an appeal where the decision has been transferred to an Inspector, the appeal inquiry is subject to the Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (England)

Rules 2002 (SI 2002 No 2685) (informally referred to as "the Inspectors' Rules").

31. The Rules are designed to make the inquiry process as efficient and expeditious as possible. The Rules give Inspectors wide powers in the conduct of proceedings, without impairing the fairness of the proceedings or the ability of the parties to express their views. It is essential that all the deadlines provided for in the Rules are observed by the parties in the interests of fairness for all parties. Failure to do so could expose the party responsible to a claim for costs. Under Rule 19(2) of the Inspectors Rules and Rule 19(4) of the Secretary of State's Rules Inspectors may disregard evidence if it is submitted after an inquiry has closed. When closing an inquiry Inspectors will give an estimate of when they expect to submit their decision or report.

32. Advice on the contents of the Rules is contained in Annex 4 to this Circular, which also includes a diagram of the appeal stages and time limits.

Costs

33. Both principal parties (the appellant and the local planning authority) risk an award against them of the other party's costs if it is shown, on specific application, that they behaved unreasonably in the proceedings, so that the other party incurred unnecessary expense. **In enforcement and lawful development certificate appeal cases this risk arises irrespective of the procedure for determining the appeal - whether by a hearing, an inquiry or written representations.**

34. In the case of a hearing or inquiry, causing the appeal process to be delayed unnecessarily - for example, as a result of an adjournment to hear late evidence - is likely to amount to unreasonable behaviour, leading to unnecessary additional expense. In the case of third parties, awards of costs, either in their favour or against them, are only made in exceptional circumstances. Causing an unnecessary adjournment would be an example of exceptional circumstances.

35. Costs can be awarded on procedural grounds where "unreasonable" conduct in withdrawing an appeal, or one or more grounds of an appeal, or an enforcement notice, brings the process to an end and causes the other party to incur wasted or unnecessary expense. **This risk can arise whenever, or at whatever stage in the process, a withdrawal occurs.**

36 DOE Circular 8/93 "Award of Costs Incurred in Planning and Other (Including Compulsory Purchase Order) Proceedings" gives detailed guidance on the award of costs in planning related cases including the appeals to which this Circular applies.

Transitional Arrangements

37. Appeals received before **23 December 2002** will be processed through to a conclusion on the basis of the previous procedures and guidance set out in DOE Circular 10/97 in relation to such appeals. Appeals that have been heard under the 1992 Rules but which are then remitted for rehearing and determination following an appeal to the High Court will be redetermined under the new Rules.

Financial and Manpower Implications

38. The purpose of this Circular is to update existing guidance in the light of new Rules revising existing procedures. This should not have an adverse effect on local government manpower or expenditure. Neither should it create a burden for business, developers and the private sector generally. Rather the improvements in procedures, and gains in time taken to handle appeals, which the new Rules are designed to bring about, should lead to positive benefits.

John Stambollouian
Assistant Secretary

The Chief Executive:
County Councils in England
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Unitary Authorities in England
London Borough Councils
Council of the Isles of Scilly

The Town Clerk, City of London

The National Park Officer, National Park Authorities in England

The Chief Planning Officer, The Broads Authority

Endnote

1 The Town and Country Planning (Determination of Appeals by Appointed Persons) (Prescribed Classes) Regulations 1997 (SI 1997 No 420)

Go to table of contents

Annex 1: Enforcement Notices and Appeals

The Town and Country Planning (Enforcement Notices and Appeals) (England) Regulations 2002.

Scope of the Regulations

1. The Regulations contain provisions on:

i. the contents of enforcement notices issued under section 172 of the Town and Country Planning Act 1990 and the information to be provided by planning authorities when serving copies of such notices (Part 2);
ii. the procedures to be followed for appeals against such notices and against listed building and conservation area enforcement notices issued under section 38(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (Part 3); and
iii. the application of the Regulations to such notices issued by the Secretary of State (Part 4).

Regulation 4 - Additional Matters to be Specified in Enforcement Notice

2. It is vital that anyone served with a copy of an enforcement notice should understand, from the outset, the reasons why the local planning authority issued the notice. Consequently, Regulation 4 requires every enforcement notice to specify why the local planning authority consider it "expedient" to issue the notice. The statement of reasons should therefore be included in the text of the enforcement notice. There is a new requirement that the statement of reasons should cite the relevant development plan policies. It should also make clear whether or not those reasons are only for the purpose of remedying an injury to amenity.

3. Regulation 4 also requires that the enforcement notice shall specify the precise boundaries of the land to which it relates. This is always best done by means of a plan (preferably on an Ordnance Survey base with a scale of not less than 1/2500) attached to the enforcement notice, on which the exact boundary of the land is clearly indicated by a suitably coloured outline. If this is insufficient to identify the boundary exactly, a brief written description, or an accurately surveyed drawing to a larger scale should supplement the plan.

Regulation 5 - Explanatory Note to Accompany Copy of Enforcement Notices

4. Regulation 5 requires every copy of an enforcement notice served by a local planning authority, under section 172, to be accompanied by an explanatory note which includes a copy of, or a summary of, sections 171A, 171B and 172 to 177 of the 1990 Act explaining -

1. that there is a right of appeal to the Secretary of State against the notice;
2. that any appeal must be made in writing before the date specified in the notice as the date on which it takes effect;
3. the grounds on which an appeal may be made; and
4. the fee payable for the deemed application for planning permission.

5. Where a fee is payable, the amount will be double that payable for a normal planning application. The local planning authority should ensure that the note which accompanies the enforcement notice clearly specifies the total amount of the fee which would be payable, and to whom the fee should be paid ie half to the local planning authority and half to the Planning Inspectorate (made payable to the Office of the Deputy Prime Minister).

6. Regulation 5 also requires the local planning authority to explain that an appeal must be supported simultaneously (or within the time-limit of fourteen days which can be imposed by the Secretary of State, under this regulation) by a statement of the grounds of appeal and facts on which it is based. Local planning authorities should decide how to fulfil the requirement of this regulation, but it can be done simply by enclosing a copy of the Planning Inspectorate's booklet entitled 'Making Your Enforcement Appeal', as this contains all the necessary information. Regulation 5 contains two new requirements. First, that the explanatory note should inform the recipient who else has been served with a copy of the enforcement notice. Second, it requires the local planning authority to calculate the appropriate fee for the deemed planning application that arises if the recipient appeals and wishes ground (a) or the deemed planning application to be considered. Regulation 13 of the Town and Country Planning General Regulations 1992 (SI 1992/1492) requires that notices and envelopes be marked with the words: "Important-This Communication affects your Property".

Regulation 6 - Statement by Appelant

7. Regulation 6 requires that any person who gives notice to the Secretary of State appealing against an enforcement notice, listed building enforcement notice or conservation area enforcement notice, and who does not send with it a statement in writing specifying the grounds on which he or she is appealing, and stating briefly the facts in support of each of those grounds, should do so within 14 days of the Secretary of State giving him or her notice to that effect. Section 174(5) of the Town and Country Planning Act 1990 and section 39(5) of the Planning (Listed Buildings and Conservation Areas) Act 1990 enables the Secretary of State to determine the appeal where more than one ground is specified without considering any ground of appeal for which the appellant fails to provide the required information within the specified time.

8. If the appellant fails to provide the information, the Secretary of State may proceed to dismiss the appeal (or determine it only on those grounds of appeal for which he has sufficient information) unless the appellant can show genuine extenuating circumstances preventing him or her from providing the required information. When an appeal is dismissed under section 176(3) of the 1990 Act, the deemed planning application will not have been considered and any fee already paid by the appellant will be refunded by the Department and the local planning authority.

Regulation 8 - Local Planning Authority to Send a Copy of Notice to Secretary of State

9. Local planning authorities are asked to send two copies of every enforcement notice they issue, so that an intending appellant can submit one with any appeal to the Secretary of State. If this procedure does not work satisfactorily, the Department must be able to obtain a copy of

the notice quickly. Regulation 8 of the Regulations requires the local planning authority to send the Secretary of State a certified copy of the notice, not later than 14 days from the date on which he notifies them that an appeal has been made, together with a list of the names and addresses of the people served with a copy of it. If the local planning authority fails to observe this requirement, the Secretary of State has power to quash the notice, by virtue of section 176(3) of the 1990 Act. It should be most exceptional to quash a notice in these circumstances. If quashing does seem appropriate, the Secretary of State will give the local planning authority seven days final notice of his intention to quash. Any representations from the local planning authority, during that period, claiming there are extenuating circumstances that make it inappropriate to quash the notice will be considered by the Secretary of State. Any decision to quash a notice is open to challenge in the High Court, and does not prevent the local planning authority from issuing another notice, within any relevant time limit.

Regualtion 9 - Statement by Local Planning Authority

10. Regulation 9 requires local planning authorities to submit to the Secretary of State and any person who has been served with a copy of the enforcement notice, a statement indicating the submissions which they propose to put forward on the appeal.

11. The local planning authority cannot rely on the questionnaire only as its statement of case. If the local planning authority fails to comply with the requirements of Regulation 9 the Secretary of State may, under section 176(3) of the 1990 Act, allow an appeal and quash the enforcement notice.

Regualtion 11 - Application of Regulations

12. Regulation 11 applies these Regulations, with exceptions, to enforcement notices issued by the Secretary of State under section 182 of the 1990 Act, to appeals made to the Secretary of State against such notices and to appeals against notices issued by him under section 46 of the Listed Buildings Act.

Annex 2: Written Representations

The Town and Country Planning (Enforcement) (Written Representations Procedure) (England) Regulations 2002

1. This Annex is referred to in paragraphs 25 and 26 of the main body of the Circular. The main body of the Circular should be read in conjunction with this Annex.

Scope of the Regulations

2. The Regulations apply to all appeals under section 174 of the Town and Country Planning Act 1990, or section 39 of the Planning (Listed Buildings and Conservation Areas) Act 1990 which are to be determined by the written representations procedure. The Regulations will also apply to enforcement appeals which have been successfully challenged and returned to the Secretary of State for redetermination. The Regulations cease to apply when the Secretary of State informs the local planning authority and the appellant that the appeal is to be determined by an inquiry or hearing. The Regulations do not apply to enforcement appeals which have been commenced before these came into effect but not yet determined. These continue to be dealt with under the old Regulations. The Regulations do not apply to lawful development certificate appeals, but it is expected that the parties to those appeals which are proceeding by written representations will abide by the spirit of these Regulations and adhere to the relevant time-limits outlined below.

Notification of the Starting Date

3. The "starting date" means the date of the Secretary of State's written notice to the appellant and local planning authority under Regulation 4. It is the point from which all other procedural steps in the Regulations are calculated.

4. The written notice will also notify the appellant and the local planning authority of the starting date, the appeal reference number, and the address for communications to the Secretary of State and the grounds on which the appeal has been brought. In addition, he will also inform the local planning authority of the name of the appellant and the address of the appeal site.

Regulations 5, 6 and 7 - the Local Planning Authority

5. Under the Regulations the local planning authority is required:

> *i. within 2 weeks of the starting date of the appeal*, to give written notice that an appeal has been made to any person on whom the enforcement notice has been served, occupiers of properties in the locality of the site to which the enforcement notice relates and to any other person who in the opinion of the local planning authority is affected by the breach of planning control or contravention of listed building or conservation area control which is alleged in the enforcement notice. (As a matter of good practice, anyone

who made representations to the local planning authority about the alleged breach or contravention should be notified). The notice must give the appeal reference, the address for communications to the Secretary of State, the name of the appellant, a description of the alleged breach or contravention, the address of the appeal site, the starting date and in the case of an appeal against a planning enforcement notice a statement setting out the additional matters specified in Regulation 4 of the Enforcement Notices and Appeals Regulations 2002, including a statement of reasons specified in the notice as to why the local planning authority considered it expedient to issue the notice. The notice must also include the grounds on which the appeal has been made. A notice to interested persons should state that any representations will be forwarded to the appellant and the local planning authority and taken into account unless they are subsequently withdrawn. The notice should also state that any written representations must be submitted to the Secretary of State not later than 6 weeks after the starting date;

ii. to send the completed questionnaire to the Secretary of State and the appellant together with copies of any papers referred to in the questionnaire. These should include: copies of correspondence about any previous planning applications and their outcome; any correspondence about the matters referred to in the enforcement notice; copies of relevant representations from other interested persons; the planning officer's report to committee (if any); any relevant committee minutes; and extracts from the relevant plans or policies. The blank questionnaire is obtainable from the Planning Inspectorate and may be accessed via the Planning Portal (see paragraph 20 of the main body of the Circular);

iii. within 6 weeks of the starting date of the appeal, to send to the Secretary of State its main statement indicating the submissions which it proposes to put forward on the appeal, including a summary of its response to each ground of appeal and if the deemed application falls to be considered, a statement according to Regulation 9(1)(b) of the Enforcement Notice and Appeals Regulations 2002. The local planning authority may instead elect to adopt the questionnaire, documents and Regulation 9 statement as its written representations. The Secretary of State will send a copy of those representations received within the deadline to the appellant;

iv. within 9 weeks of the starting date, to submit 2 copies of any comments it has on the appellant's representations. The Secretary of State will send a copy of those comments received within the deadline to the appellant;

v. to comment on third party representations within a specified period of not less than 2 weeks.

Regulation 7 - the Appelant

6. In the case of grounds (b), (c), (d) and (e) for appeals under section 174 of the Town and Country Planning Act 1990 and grounds (b), (c), (d) and (f) in appeals under section 39 of the Planning (Listed Buildings and Conservation Areas) Act 1990, High Court rulings confirm that the onus of proof in appeals against enforcement notices rests on the person appealing. This means that it is not for the local planning authority to prove its case, but for the appellant to establish the facts on which they rely.

7. An appellant who appeals under section 174 of the Town and Country Planning Act 1990, is deemed to have made a planning application for the alleged development (or for the change of use of land, or the carrying out of operations without complying with the condition to which the notice refers), whether or not they have appealed on ground (a). If a deemed planning application fee is due for this and the correct fee is sent to the Secretary of State (at the

Planning Inspectorate) and to the local planning authority in time and the deemed application falls to be considered, the Inspector or Secretary of State will consider it (and ground (a) if pleaded). In this case, the appellant should include in his representations any points that he wants the Inspector or Secretary of State to take into account when he considers the merits of the deemed planning application. Details of any previous planning applications (and their outcome) relating to the site, and copies of any correspondence about the matters referred to in the notice should be provided.

8. An appellant who appeals under section 39 of the Planning (Listed Buildings and Conservation Areas) Act 1990 has no deemed application for planning permission but the Inspector or Secretary of State may consider whether to grant listed building consent if ground (e) is pleaded. If the work carried out on a building needs planning permission as well as listed building consent, the appellant should make a separate application to the local planning authority for planning permission.

9. The Regulations require the appellant:

i. within 6 weeks of the starting date, further to the notice of appeal which should contain the full grounds of appeal together with supporting facts and relevant documents, to submit 2 copies of any further representations he wishes to make to the Secretary of State. The Secretary of State shall send a copy of those representations provided they are submitted within the deadline to the local planning authority as soon as practicable after receipt.
ii. within 9 weeks of the starting date, to submit 2 copies of any comments he has on the local planning authority's representations to the Secretary of State, who will then send a copy of these comments received within the deadline to the other party.
iii. to comment on third party representations within a specified period of not less than 2 weeks.

Regulation 8 - Third Parties

10. Within 2 weeks of the starting date, the local planning authority should, under Regulation 5, have informed local residents, and any other persons who in its opinion are affected by the alleged breach or contravention, about the appeal. The local planning authority should write to them to tell them about the enforcement notice, the reason why the local planning authority considered it expedient to issue the notice and the grounds of appeal.

11. Any interested party, notified of the appeal under Regulation 5(1), may submit 14 15 representations about the appeal to the Secretary of State within 6 weeks of the starting date. The Secretary of State shall send a copy of those representations received within the time limit to the appellant and the local planning authority as soon as practicable after receipt for comment within a specified period of not less than 2 weeks.

12. The Secretary of State may disregard comments made by the local planning authority on a third party's representations if it has failed to notify that person in accordance with Regulation 5.

Site Visits

13. Although there is no statutory provision for it in written representations cases, the Inspector dealing with the case will normally carry out a site visit. No discussion of the merits of an appeal or arguments from any of the parties is allowed at a site visit. It is not necessary for the Inspector to be accompanied by either party if the site can be seen satisfactorily from a public highway (or other publicly accessible land). If the Inspector does wish to enter the site, the Planning Inspectorate will advise the appellant of the date and time of the inspection and ask the appellant to make arrangements for him to gain access to the land and any buildings referred to in the enforcement notice. The Planning Inspectorate will also invite the local planning authority to send a representative and to tell anybody else who enquires about the date and time. The Inspector should not be accompanied at any stage by the representative of only one of the main parties. Unaccompanied site visits do not require formal arrangements to be made with the parties. Accompanied site visits will not normally be delayed because the local planning authority's case officer would be unavailable on the date suggested. The local planning authority will be asked to provide another representative sufficiently familiar with the case to be able to point out important site features and, if necessary, be able to verify the plans. Both these tasks are standard parts of an accompanied visit. The Inspector may not take into account any representations received after the site visit has taken place.

General

14. A diagram of the several stages of, and time limits for, appeals to be determined by the written representations procedure is at the end of this Annex.

The written procedure

Timetable	Appellant	LPA	Interested parties
Appeal made **The Planning Inspectorate sets a start date**	The appellant sends appeal form and all supporting documents to the Inspectorate. The grounds of appeal and supporting facts should make up the full case.	If the LPA does not want the written procedure (or the Inspectorate decides the appeal needs to be heard before an Inspector), the Inspectorate will tell the appellant and the LPA and arrange a hearing or inquiry.	
Within 2 weeks from the start date	The appellant receives from the LPA a completed questionnaire and any supporting documents.	The LPA sends the appellant and the Inspectorate a copy of a completed questionnaire and supporting documents. It also writes to interested people	Interested people receive the LPA's letter about the appeal.

		about the appeal.	
Within 6 weeks from the starting date (Late statements will not normally be accepted)	The appellant sends the Inspectorate 2 copies of any further representations.	The LPA sends the Inspectorate 2 copies of its statement (unless it elects to adopt previously submitted documents as its representations).	Interested people send the Inspectorate 3 copies of any comments.
Within 9 weeks from the starting date (Comments sent late will not normally be accepted)	The appellant sends the Inspectorate 2 copies of their final comments on the LPA's statement and on any comments from interested people. **Any evidence received after the 9 week point may be disregarded.**	The LPA sends the Inspectorate 2 copies of its final comments on the appellant's statement and on any comments from interested people. **Any evidence received after the 9 week point may be disregarded.**	

Note: The Planning Inspectorate send copies of statements and comments to the appellant and the LPA by first-class post. The Inspectorate aims to do this within a week of the deadlines.

Decision: After any site visit (or advice that one will not be held) the Inspector/person appointed writes the decision or sends a report to the Secretary of State. **The appellant and the LPA will be sent a copy of the decision notice. Anyone requesting a copy will also be sent one, as will any other person who, in an enforcement appeal case, was served with a copy of the enforcement notice.**

Annex 2 (i): Format of a Statement in Written Representations Cases

1. This Annex is referred to in paragraph 26 of the main body of the Circular. Local planning authorities and appellants may find it helpful to use the template obtainable from the Planning Inspectorate and accessed via the Planning Portal.

2. In some cases, the appellant's grounds of appeal and supporting statement will already have given a sufficient opportunity for his case to have been made. Where it is necessary to submit a more detailed statement, both the appellant and the local planning authority should adopt the following format.

3. The statement should include the Planning Inspectorate reference number for the enforcement appeal, and the local authority reference number for the enforcement notice. It should also include the description of the site and location of the alleged breach or contravention and in the case of the local planning authority's statement, reasons why the enforcement notice was issued.

4. The statement should also include a schedule of any development plan policies which are thought to be material to the appeal. The status of all plans referred to should be given: a copy

of the title page of the subject document should normally be sufficient. Extracts from, or copies of, both the text of and written justification for all policies to which reference is made should be set out in an appendix. Relevant parts of Government Planning Policy Guidance Notes and Circulars should be referred to by the paragraph number of the document concerned. Their text need not be quoted or copied unless essential.

5. Explanatory comments may also be included to clarify or augment the reasons already given in the grounds of appeal for appealing against the enforcement notice or in the local planning authority's questionnaire.

6. Where conflict with policy is given as a reason for issuing the enforcement notice, the local planning authority's statement should make clear in what ways the policy's objective would be materially harmed or put at risk by the proposed development. In every case the comments should explain how allowing the appeal would or would not cause material harm to interests of acknowledged importance.

7. A detailed history of the appeal site should be avoided where this is not relevant to the appeal. The comments of persons (other than the appellant and the local planning authority) in support of either main party's case, and references to relevant planning decisions, should be set out in an appendix.

8. In larger or more complex written representations cases, the statement format recommended for use in hearings cases (see Annex 3(i) to this Circular) may be more appropriate.

Go to table of contents

Annex 3: Hearings

The Town and Country Planning (Enforcement) (Hearings Procedure) (England) Rules 2002

1. This Annex is referred to in paragraph 28 of the Circular. The main body of the Circular should be read in conjunction with this Annex.

Scope of the Rules

2. The procedure for Hearings was formerly set out in an informal Code of Practice which has now been revised and given statutory force, in SI 2002 No 2684. The Rules apply to all appeals under sections 174 and 195 of the Town and Country Planning Act 1990 and to listed building and conservation area enforcement notice appeals under section 39 of the Planning (Listed Buildings and Conservation Areas) Act 1990, where the appeal is to be determined by the hearings procedure. All the parties involved in hearings are required to comply with the Rules; keeping to the timescales is important and in the interests of all the parties, and ensures that a decision is reached as quickly as possible. The Rules cease to apply when the Secretary of State informs the local planning authority and the appellant that the appeal is to be determined by inquiry.

3. Under the hearings procedure, the Inspector leads a discussion about the issues. Everyone, including interested third parties, should be given a fair hearing. The Inspector obtains all the information necessary for his decision, but in a more relaxed and less formal atmosphere than at a local inquiry. A hearing is suitable where the development is small-scale; there is little or no third party interest; complex legal, technical or policy issues are unlikely to arise; and there is no likelihood that formal cross-examination will be needed to test the opposing cases. There is no right to crossexamine witnesses at a hearing. An important element of the hearings procedure is that the Inspector must be fully appraised of the relevant issues and arguments before the hearing opens so that he can properly lead the discussion.

4. The Secretary of State will decide whether a hearing is the most suitable procedure for considering an appeal. Where either the appellant or the local planning authority wishes to exercise their right to be heard, the Secretary of State will consider whether the case is suitable for a hearing, taking into account the circumstances of the appeal and the views of the principal parties.

Notification of the Starting Date

5. "Starting date" means the date of (a) the Secretary of State's written notice to the appellant and the local planning authority that he has received all the documents required to enable him to entertain the appeal1; or (b) the relevant notice2, whichever is the later. It is the point from which all other steps in the Rules are calculated.

6. The Secretary of State will, as soon as practicable after he receives all the information necessary to enable him to entertain the appeal, notify the appellant and the local planning authority of the starting date, the appeal reference number, and the address for communications to the Secretary of State. In practice, these details will be provided when

giving notice under Rule 4 or Regulation 10 of the Enforcement Notices and Appeals Regulations, whichever is later. In addition he will also inform the local planning authority of the name of the appellant and the address of the appeal site.

Rule 4 - The Local Planning Authority and Notification of Interested Parties

7. Under the Rules, the local planning authority is required:

i. within 2 weeks of the starting date, to send the completed questionnaire to the Secretary of State and the appellant together with copies of any papers referred to in the questionnaire; and
ii. w*ithin 2 weeks of the starting date*, in the case of an enforcement appeal, to notify any person who was served with a copy of the enforcement notice, the occupier of property in the locality, and any persons who in the opinion of the local planning authority are affected by the breach of planning control (or contravention of listed building or conservation area control) which is alleged in the enforcement notice, that an appeal has been made and provide details of the address and timescale in which representations to the Secretary of State may be made. As a matter of good practice, local authorities are encouraged to notify any person who, prior to the issue of the enforcement notice, made representations to the local planning authority about the alleged breach of planning control.

Rule 5 - Hearing Sttements and Other Comments

8. Under Rule 5:

i. within 6 weeks of the starting date, the appellant and the local planning authority shall send two copies of their written hearing statement to the Secretary of State. The hearing statement differs from the statement of case for inquiries in that it contains full particulars of the case the appellant and the local planning authority wish to make at the hearing, including copies of any documents to which they wish to refer;
ii. within such period as the Secretary of State may reasonably require, the appellant and the local planning authority must send two copies of any further information about the matters contained in their hearing statement as the Secretary of State may specify;
iii. within 6 weeks of the starting date, any person who was notified about the appeal (see paragraph 7 (ii) above) shall send three copies of any comments they wish to make to the Secretary of State;
iv. within 9 weeks of the starting date, the appellant and the local planning authority must send to the Secretary of State two copies of any comments either party wishes to make on the other's hearing statement or comments made by any other party. The Secretary of State shall send a copy of the hearing statement and further information received from the appellant or the local planning authority to the other of those two parties, and shall send written comments made by third parties to the local planning authority and the appellant. The local planning authority shall make available for inspection copies of the pre-hearing statements and other associated documents on request and shall specify in their hearing statement where and when the documents may be inspected; and
v. after receipt of the 6 weeks statement and the 9 weeks comments, the Secretary of

State will forward them to the Inspector as soon as practicable. Late statements and comments will normally be disregarded.

Rule 6 - Date and Notification of Hearing

9. The Secretary of State will fix the hearing date for not later than 12 weeks after the starting date or the earliest practicable date thereafter. He may vary the date, time and place for the holding of a hearing, and will give reasonable notice of any such changes. The Secretary of State shall give not less than 4 weeks written notice of the date, time and place fixed by him for holding the hearing, unless a lesser period is agreed with the appellant and the local planning authority. The local planning authority and the appellant will be permitted one refusal of a date before the date, time and place of the hearing are fixed. The Secretary of State may also require the local planning authority to:

i. not less than 2 weeks before the date of the hearing, publish a notice of the hearing in one or more local newspapers; and/or

ii. send a notice of the hearing to such persons as he may specify. This would normally include all those, other than the appellant, with an interest in the land, and all who made representations i.e. including any interested third parties, and anyone else specified by the Secretary of State within a prescribed time. (Such parties might also be advised that they may, at the discretion of the Inspector, participate in the discussion at the hearing). The notice of hearing must include details of where and when the hearing will take place, the location of the land in question, the subject matter of the appeal, and where and when copies of the hearing statements and any other associated documents sent by and copied to the local planning authority may be inspected.

Rule 8 - Method of Procedure

10. If at any time before or during the hearing the appellant or the local planning authority forms the view that the hearing procedure is inappropriate and that they no longer wish to proceed in this way, they should explain their reasons to the Secretary of State or, during the hearing, the Inspector, who will, after seeking the views of the other party, decide whether an inquiry should be held instead. If it becomes apparent to the Inspector during the hearing that the procedure is inappropriate, the Inspector may, after consulting the appellant and the local planning authority, close the proceedings and an inquiry will be arranged.

11. If after a previous notification that an inquiry will be held it is decided to hold a hearing instead, any step taken under the Inquiries Rules which could have been taken under any corresponding provision shall have effect as if taken under the relevant provision of the Hearings Rules.

The Accomadation Arrangements for the Hearing

12. The arrangements for a hearing and the conduct of it are designed to create the right atmosphere for discussion and to eliminate or reduce the formalities of the traditional local

inquiry. Generally, the accommodation provided for the hearing will be less formal than for an inquiry. The Inspector and the parties should wherever practicable sit round a table; a small, local authority committee room is usually satisfactory, but the more formal atmosphere of a Council chamber should be avoided. The venue for the hearing should afford adequate facilities for those with special needs.

Rule 11 - Procedure at Hearing

13. Details of the procedure at a hearing are set out in Annex 3(ii).

Rule 12 - Site Inspections

14. It may appear to the Inspector that certain matters could be more satisfactorily resolved if the hearing were to be adjourned to the site, and concluded there. The Inspector will only do this, having had regard to all the circumstances, when he is also satisfied about a number of other matters. These are that:

i. the hearing would proceed satisfactorily and no party would be placed at a disadvantage;
ii. all parties present at the hearing would have the opportunity to attend; and
iii. the local planning authority and the appellant have not made reasonable objections to the discussion continuing on the site.

15. When a hearing is not adjourned to the site, the Inspector may inspect the site during the hearing, or after it has closed, and will do so if he has previously been requested to do so by the appellant or local planning authority before or during the hearing. The Inspector will ask the appellant or the local planning authority if they wish to be present. If an accompanied site visit is requested, the date and time of the visit will be announced at the hearing. The appellant, landowner and representative of the local planning authority may attend the visit, as may any other person entitled or permitted to appear at the hearing, at the discretion of the Inspector and with the consent of the landowner. The Inspector should not be accompanied at any stage by the representative of one of the principal parties without the representative of the other also being present. The Inspector may carry out an unaccompanied site visit if the local planning authority and appellant are not there at the time arranged.

Award of Costs

See also paragraphs 33 to 36 of the main body of the Circular.

16. The Inspector will normally ask for applications for awards of costs (if any) to be made at the end of the proceedings in the hearing room and before adjournment to the site. A party may become liable for costs if another party is put to unnecessary expense eg through the late submission of statements. Other circumstances in which costs may be awarded for a hearing are set out in DOE Circular 8/93.

General

17. A diagram of the appeal stages and time limits for hearings cases is at the end of this Annex.

The hearing procedure

Timetable	Appellant	LPA	Interested parties
Appeal made **The Planning Inspectorate sets a start date**	The appellant sends appeal form and all supporting documents to the Inspectorate and the LPA. The grounds of appeal and supporting facts should make up the full case.	The LPA lets the Inspectorate know if it does not think a hearing is suitable.	
Within 2 weeks from the start date	The appellant receives from the LPA a completed questionnaire and any supporting documents.	The LPA sends the appellant and the Inspectorate a copy of a completed questionnaire and supporting documents. It also writes to interested people about the appeal.	Interested people receive the LPA's letter about the appeal.
Within 6 weeks from the starting date (Late statements will not normally be accepted)	The appellant sends the Inspectorate 2 copies of any further statements.	The LPA sends the Inspectorate 2 copies of its statement.	Interested people send the Inspectorate 3 copies of any comments.
Within 9 weeks from the starting date (Comments sent late will not normally be accepted)	The LPA sends the Inspectorate 2 copies of its final comments on the appellant's statement and on any comments from interested people. **Any evidence received after this point may be taken into account at the Inspector's discretion.**	The appellant sends the Inspectorate 2 copies of their final comments on the LPA's statement and on any comments from interested people. **Any evidence received after this point may be taken into account at the Inspector's discretion.**	

Note: The Planning Inspectorate send copies of statements and comments to the appellant and the LPA by first-class post. The Inspectorate aims to do this within a week of the deadlines.

Decision: After the hearing the Inspector writes the decision or sends a report to the Secretary of State. **The appellant and the LPA will be sent a copy of the decision notice. Anyone requesting a copy willalso be sent one, as will any other person who, in an enforcement appeal case, was served with a copy of the enforcement notice.**

Annex 3(i): Format of a Statement Inhearings Cases

1. This Annex, which is referred to in paragraph 28 of the Circular, gives guidance on the form and content of hearings statements as referred to in Rule 5 of the Hearings Procedure Rules. Local planning authorities and appellants may find it helpful to use the template obtainable from the Planning Inspectorate and accessed via the Planning Portal (www.planningportal.gov.uk).

2. As well as producing their own individual statements, it would be helpful if appellants and local planning authorities co-operate to produce and submit a short summary setting out the evidence upon which they can agree. This can be annexed to the main statement. Such a summary will not only avoid unnecessary repetition (see paragraphs below), but will also remove the possibility of small but potentially confusing differences of emphasis on undisputed matters.

3. The main purpose of a hearing statement is to provide a succinct statement of the submitting party's reasons for proposing or opposing the proposed, existing or alleged development, activity or works which are the subject of the enforcement notice or application for a lawful development certificate, to inform the other parties and persons participating or interested in the appeal. It must state not only the grounds in section 174(2) of the Town and Country Planning Act 1990, or section 39(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 on which the appeal is made, but also the facts in support of each chosen ground of appeal. The statement may be used, in whole or in part, for reference at the hearing by the Inspector in writing his decision or report; and, in recovered appeals, as an annex to the Inspector's report.

4. Statements should concentrate on the main issues and include the Planning Inspectorate reference number for the appeal, and the local authority reference number for the enforcement notice or lawful development certificate application. The statement should also include a description of the site as it was before the start of any alleged development, activity or works that are the subject of the enforcement action and in the case of lawful development certificate appeals any proposed, existing or alleged development. Statements should also include a description of the site and location and, where relevant, a concise statement of the policies in approved, adopted or emerging development plans which will be relevant to the outcome of the appeal. The status of all plans referred to should be given: a copy of the title page of the subject document should normally suffice for this purpose. Extracts from, or copies of, both the text of and the written justification for all policies to which reference is made should be set out in an appendix. References to relevant parts of Government Planning Policy Guidance Notes and Circulars should be given by means of their document and paragraph numbers. Their text need not be quoted or copied.

5. If included in an agreed summary, the information referred to in paragraph 4 above need not be repeated in the hearing statement.

6. The main body of the statement should set out the key facts, reasoning and conclusions necessary to make the case in a logical form. If appropriate, expert opinions should also be stated and substantiated. Opinions on matters involving subjective judgements (such as the visual impact of the proposal) should be kept brief; but should be adequately explained. In those enforcement appeals where the merits of the matter will fall to be considered (see paragraph 8(b) and (c) below, for other specific requirements for local planning authorities in such cases), it would be helpful if both principal parties consider conditions in their hearing statements.

7. Where detailed calculation and/or analysis is necessary, the relevant background material should be set out if it can be agreed before the hearing, in an appendix to the agreed summary or, if not, in an appendix to the hearing statement. If case law is cited, it would be helpful if the full report reference is given, and a copy of the case report included as an appendix. If two or more people covering different fields of expertise are to speak in support of the appellant at the hearing, the main hearing statement need only note this fact. The hearing statement conclusions should be briefly summarised at the end with references to paragraph numbers.

8. The local planning authority's statement should:

a. include a summary of the local planning authority's response to each ground of appeal pleaded by the appellant(s);
b. for appeals under section 174, if ground (a) and the deemed application for planning permission are under consideration, say whether the local planning authority would be prepared to grant planning permission for the alleged breach of planning control set out in the notice(s). It should also give any conditions the local planning authority would wish to impose; or
c. for listed building /conservation area enforcement appeals, if ground (e) is pleaded, say whether the local planning authority would be prepared to grant listed building/conservation area consent for the alleged contravention set out in the notice(s). It should also give any conditions the local planning authority would wish to impose.

If the local planning authority wishes to rely on its reasons for issuing the notice in response to any particular ground of appeal, it should say so in its statement.

9. Under section 177(5) of the Town and Country Planning Act 1990, each section 174 enforcement appeal gives rise to a deemed application for planning permission, whether or not an appellant appeals on ground (a). The deemed application will only be considered if the correct fee was received in time. If the deemed planning application is under consideration, the local planning authority's statement should include any points about the planning merits of the alleged breach that it wishes the Inspector to take into account.

10. It should be remembered that unchallenged evidence will not necessarily be accepted merely because of the absence of a challenge to it. The Secretary of State and his Inspectors should bring their experience, knowledge and judgement to bear on all evidence presented to them.

11. Appendices should be bound separately. For each volume, a title page should be provided. If more than one document is included an index should be provided and each page of the volume should be numbered. Photographs should be mounted on A4 card, and should be

prefaced by a plan showing the viewpoints from which they were taken. Other relevant details, such as their time and date, and the focal length of the lens used should also be given.

Annex 3(ii):Procedure at the Hearing

1. Rule 11(1) of the Hearings Procedure Rules provides that the procedure to be adopted at hearings shall, unless otherwise stated, be determined by the Inspector. Most hearings will be conducted along the following lines.

2. The Inspector will open the hearing at the appointed time, even if one or more of the parties is not by then present. He will start by introducing himself and describing the nature of the subject appeal. After resolving any residual doubts about the application or plans, the Inspector conducting the hearing will explain that it will take the form of a discussion which he will lead.

3. The Inspector will summarise his understanding of the case from reading the papers and any pre-hearing site visit. At that stage, the Inspector will outline what he considers to be the main issues and indicate those matters for which further explanation or clarification is required. This will not preclude the parties from referring to other aspects which they consider to be relevant.

4. Anyone may present their case through an agent or adviser but such representation is not essential. Legal representation should not normally be necessary. The appellant will usually be asked to start the discussion. In some cases it may be appropriate for the local planning authority to start if, for example, it is necessary to clarify development plan policy matters in order to guide the debate. Written material should have been circulated and exchanged well beforehand and should not need to be read out at the hearing.

5. Those at the hearing will be given the opportunity to participate. Any questions must be relevant and discussion should proceed in an orderly manner. The appellant will be allowed to make any final comments before the discussion is closed.

6. Parties should not normally introduce at the hearing material or documents which are new, ie they have not previously been referred to, as this may necessitate adjournment of the hearing to a later date to give the other parties adequate time to consider this new material. Anyone behaving in a disruptive manner may be asked to leave. Repetitious debate may be ruled out, but the appellant may be allowed to make any final comments in writing before the hearing is closed. Cross-examination will not be permitted but the Inspector has a duty to be inquisitorial and the parties may ask each other questions through the Inspector.

7. If at any time before or during the hearing the appellant or the local planning authority comes to the view that the informal procedure is inappropriate and that they no longer wish to proceed this way, they should explain their reasons to the Secretary of State or, during the hearing, the Inspector, who will, after seeking the views of the other party, decide whether an inquiry should be held instead. If it becomes apparent to the Inspector during the hearing that the procedure is inappropriate, because, for example, cross-examination is required, the Inspector will close the proceedings and a local inquiry will be arranged.

8. It may appear to the Inspector during the hearing that certain matters could be more

satisfactorily resolved if the hearing was to be adjourned to the site, and concluded there.

9. Applications for costs, if any, should be made at the hearing venue, before adjournment to the site.

Endnotes

[1] This notice is given under Regulation 10 The Town and Country Planning (Enforcement Notices and Appeals)(England) Regulations 2000

[2] "The relevant notice" means the Secretary of State's written notice informing the appellant and the local planning authority that a hearing is to be held (see Rule 2).

Go to table of contents

Annex 4: Inquiries

The Town and Country Planning (Enforcement) (Inquiries Procedure) (England) Rules 2002 (SI 2002 No 2686)

The Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2002
(SI 2002 No 2685)

1. This Annex is referred to in paragraph 32 of the Circular. The main body of the Circular should be read in conjunction with this Annex.

Scope of the Rules

2. SI 2002 No 2686 (the "Secretary of State Rules") applies to local inquiries held into:

i. appeals against enforcement notices under section 174 of the Town and Country Planning Act 1990 which are decided by the Secretary of State rather than by an Inspector appointed by him;
ii. appeals against refusal or non-determination of an application for a lawful development certificate under section 195 of that Act decided by the Secretary of State; and
iii. appeals against listed building enforcement notices, under section 39 of the Planning (Listed Buildings and Conservation Areas) Act 1990, or appeals against conservation area enforcement notices under section 39 of that Act, as applied by section 74(3), decided by the Secretary of State.

3. SI 2002 No 2685 (the "Inspectors' Rules") applies to local inquiries held into section 174 and section 195 appeals and into appeals against listed building or conservation area enforcement notices which are decided by Inspectors appointed by the Secretary of State.

Background to the Rules

4. The principle objective of these Rules is to improve the handling of inquiries. The changes to the Rules are designed to retain the existing high standards of fairness and impartiality while improving performance ie in meeting the deadlines set in the Rules. This should ensure that all stages are carried out as efficiently and effectively as possible, and that everyone is acting constructively.

5. The revisions are further intended to ensure that the procedure is as clear and user-friendly and remains as fair as possible, for all the parties, including third parties. The rules on pre-inquiry meetings set the procedure which will be applied both to inquiries which are expected to last for 4 days or more (where a pre-inquiry meeting will usually be held) and to inquiries which it is estimated will last less than 4 days (where such a meeting will be held if it appears necessary). It should also be noted that where under the Rules, the Inspector arranges a timetable, he has discretion to act flexibly and vary it, particularly on the matters to be discussed, at any time as necessary. The Rules contain a change in the procedure about the

role of the Secretary of State; under the Rules parties are now required to send statements of case etc to the Secretary of State who will be responsible for forwarding documents to the parties at the appropriate time.

6. Failure by a party to comply with the Rules could, if it led to another party incurring unnecessary expenditure due to unreasonable behaviour, result in an award of costs.

7. The following paragraphs explain the 2002 Rules in more detail. For ease of presentation, and to avoid unnecessary repetition, both sets of Rules are referred to at the same time. Where the corresponding Rule in the Inspectors' Rules has a different number, or there is no corresponding Rule, this is mentioned in brackets after the Secretary of State Rule number. Sub-paragraph numbering is the same for Inspectors' and Secretary of State's Rules unless otherwise indicated.

Notification of Starting Date

8. "Starting date" means the date of the

a. Secretary of State's written notice to the appellant and the local planning authority that he has received all the documents required to enable him to entertain the appeal (see endnote 1); or
b. relevant notice (see endnote 2), whichever is the later.

It is the point from which all other steps in the Rules are calculated.

Rule 5 - Notification of Name of Inspector

9. Rule 5(1) requires the Secretary of State to notify the Inspector's name to every person entitled to appear at the inquiry, except where there is insufficient time to give notification of a replacement Inspector before the inquiry opens. In those circumstances the Inspector will identify himself at the start of the inquiry.

Rule 6 - Procedure Where Secretary of State Causes Preinquiry Meeting to be Held (Nn Equivlent Inspectors' Rule)

10. The significance of the Secretary of State causing a pre-inquiry meeting to be held under Rule 6(1) is that it triggers the special procedures in the remainder of the Rule (see paragraphs 11 to 13 below). Pre-inquiry meetings will be held when the Secretary of State expects an inquiry to last for 4 days or more, unless it is considered unnecessary. Pre-inquiry meetings may be held for any inquiry to which these Rules apply. Inspectors have the power under Rule 9(1) to hold a pre-inquiry meeting where no meeting is held under Rule 6.

11. Rule 6(2)(a)(ii) requires the Secretary of State to provide a statement of "the matters about which he particularly wishes to be informed for the purposes of his consideration of the appeal in question". Its purpose is to provide a clear statement of what, on the information before him, he considers to be the key issues. This statement is intended to assist the parties and Inspector in preparing for the inquiry. It is not intended to be a definitive statement since

Inspectors must be free to hear all evidence that they believe is relevant to their consideration of the case.

12. Rule 6(2)(b) requires the local planning authority to give notice of the Secretary of State's intention to hold a pre-inquiry meeting and of the statement under Rule 6(2)(a)(ii). In practice, the Department will provide a suggested form of notice for local authorities to use.

13. Under Rule 6 the appellant and the local planning authority must ensure that *within 8 weeks of the starting date*, 2 copies of their outline statements have been sent to the Secretary of State. Other parties may be required by the Secretary of State to provide an outline statement, *within 4 weeks of being required to do so*. The (first) pre-inquiry meeting is to be held *within 16 weeks of the starting date*, and the Inspector may, under Rule 6(10), call further pre-inquiry meetings where he considers it necessary. These meetings provide an important opportunity for the Inspector to identify clearly the main issues with which the inquiry is likely to be concerned and any need for additional information. This makes it easier to arrange a programme for the inquiry and to make the necessary procedural arrangements to ensure that the inquiry will run smoothly, speedily and efficiently.

Rule 8 (Rule 6) - Service of Statements of Case etc

14. Both the local planning authority, and the appellant must ensure that 2 copies of their statements of case are sent to the Secretary of State either *within 4 weeks of its conclusion* where a pre-inquiry meeting is held under Rule 6, or *within 6 weeks of the starting date* where no pre-inquiry meeting is held under Rule 6.

15. Rule 8(5) enables the applicant and the local planning authority to require from each other copies of any documents (or relevant extracts) which the other intends to refer to or put in evidence at the inquiry. Furthermore, to avoid unnecessary copying of documents, the assumption is that the parties will only require those documents (or relevant extracts) which they do not already have.

16. Under Rule 8(6) the Secretary of State has a discretionary power to require other parties who have notified him that they wish to appear at the inquiry, to provide 3 copies of their statement of case to him *within 4 weeks* of being so required, and one copy to any person on whom a copy of the enforcement notice has been served. Third parties who provide a statement (where required) are entitled to appear at the inquiry under Rule 13(1)(h).

17. The statement of case should contain the *full* particulars of the case which a party proposes to put forward at the inquiry; ie it should set out the arguments (planning and legal) that a party intends to put forward at the inquiry and describe, but not contain, the evidence, and cite the statutory provisions and case law, that a party intends to call in support of its arguments. It should also include a list of all the documents that a party will rely on when presenting their case at the inquiry and refer to in their proofs of evidence. This enables the parties to know as much as possible about each other's case at an early stage and will help the parties to focus on the matters which are in dispute. It can also help the parties assess whether there is scope for negotiation while there is still time for this to lead to a satisfactory outcome. Starting negotiations early can help avoid late cancellations of inquiries or requests for postponement.

18. To assist in ensuring that adequate information is supplied in advance of the inquiry, Rule 8(8) enables the Secretary of State or the Inspector to require the provision of such further information as may be specified. If any party considers a statement of case produced by another party to be inadequate or incomplete, this should be drawn to the Inspector's attention at the earliest opportunity.

19. Third parties are entitled under Rule 8(7) to receive from the Secretary of State a copy of the principal parties' statements of case where they themselves have been required to serve a statement. Rule 8(13) ensures that copies of statements and relevant supporting documents are available for public inspection. Late statements and supporting documents will only be accepted under extraordinary circumstances (see paragraphs 13 and 14 of the main body of the Circular).

20. Under Rule 8(12) (which cross-refers to Rule 6(2)(a)(ii) of the Secretary of State Rules) the Secretary of State may provide a pre-inquiry statement of matters (see paragraph 11 above). Rule 7(1) of the Inspectors' Rules is the equivalent provision in those Rules.

Rule 9 - Further Power of Inspector to Hold Pre-Inquiry Meetings

21. Rule 9 of the Secretary of State Rules enables an Inspector to hold a pre-inquiry meeting where he considers it desirable, other than in cases where one is held according to Rule 6; and the Inspector is similarly given the power in Rule 7(2) of the Inspectors' Rules to hold a pre-inquiry meeting for any appeal to which those Rules apply.

Rule 10 (Rule 8) - Inquiry Timetable

22. Rule 10 enables the Inspector to arrange a timetable where he considers that this would be helpful. For the Secretary of State Rule 6 cases and for other inquiries expected to last for at least 4 days, he is required to do so.

23. Rule 10(4) enables the Inspector to arrange and specify, in any timetable arranged under this Rule, a date for sending any proof of evidence and summary required by Rule 16. This links in with the provision in Rule 16(3) requiring a proof and summary to be sent to the Inspector either 4 weeks before the date fixed for the inquiry, or by any other date specified in a timetable arranged under Rule 10. The related Rule 10(4) and Rule 16(3) provisions, taken together, will give the Inspector the discretion to vary the time limit for proofs and summaries to suit the particular circumstances of a case.

Rule 11 (Rule 9) - Date and Notification of Inquiry

24. For Secretary of State-decided cases where a pre-inquiry meeting is held under Rule 6, Rule 11 specifies that the date for the inquiry must be no later than 8 weeks from the conclusion of the (last) pre-inquiry meeting. For other cases, the relevant period is not later than 22 weeks after the "starting date" in Secretary of State-decided cases and not later than 20 weeks in Inspector-decided cases. It will often be possible and desirable for the inquiry to start well before the specified time. Where the Secretary of State considers that it is impracticable to start the inquiry within the period specified in the Rule, it gives him power to

extend the date by which the inquiry must open to the earliest practicable date thereafter.

25. The Department's aim, in every case, is to fix as early an inquiry date as possible. To this end, each principal party to an appeal will only be permitted one refusal of a date offered for the inquiry before the Secretary of State will proceed to fix a date, time and place for the inquiry. The period allowed for negotiation of inquiry dates will, in normal circumstances, be limited to one month. This negotiation period will be deemed to have started 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 alternative date acceptable to the Secretary of State, the Secretary of State may proceed to fix the date of the inquiry before the negotiation period has expired. Once a date has been fixed, it will be changed only for exceptional reasons. Ultimately the decision rests with the Secretary of State. The venue for the inquiry should provide adequate facilities for those with special needs.

26. The Secretary of State must normally give the parties at least 4 weeks' notice of the inquiry under Rule 11. In practice, it will often be possible to give much more notice.

27. The extent of publicity for an inquiry is, in practice, generally left to the discretion of the local planning authority, although the Secretary of State may stipulate requirements in a particular case under Rule 11(6) of the Secretary of State Rules (Rule 9(5)). Local planning authorities will usually be in the best position, from their local knowledge, to decide upon the appropriate extent of press publicity or individual notification. It is important that persons or bodies known to have an interest in an appeal are informed in good time of the inquiry details. Where a local planning authority is required to publish notice of an inquiry in a newspaper, it is a requirement that this should be done not later than 2 weeks before the inquiry.

28. Where the land is under the control of the appellant, he is obliged under Rule 11(7) (Rule 9(6)) to display the site notice provided by the Secretary of State. The content of the notice is prescribed in Rule 11(8) (Rule 9(7)).

Rule 12 (Rule 10) - Notification of Appointment of Assessor

29. Where a suitably qualified assessor has been appointed, Rule 12 requires the Secretary of State to notify persons entitled to appear at the inquiry of the assessor's name and the matters on which he is to advise. Rule 20 refers to reports by assessors (see paragraph 49 of this Annex). Assessors are important in assisting the progress of inquiries towards a quicker understanding of more specialised issues.

Rule 13 (Rule 11) - Appearances at Inquiry

30. Rule 13(1) lists the bodies entitled to appear at an inquiry, including certain public authorities. A number of these bodies exercise local planning authority functions, although they may not necessarily be the local planning authority in the particular case.

31. Rule 13(2) makes clear that the Inspector will not unreasonably withhold permission for any other person to appear at an inquiry (ie beyond those entitled to appear under Rule 13(1)). In practice, anyone who wishes to appear at an inquiry will usually be allowed to do so, provided

they have something relevant to say which has not already been said.

32. It is good practice for individuals with a similar interest to get together to agree upon a spokesperson (or spokespersons) and it is not considered that this needs to be subject to the Inspector's approval.

Rule 15 (Rule 13) - Representatives of Government Departments and Other Authorities at Inquiry

33. Under this Rule a representative of a Government Department is not required to answer any question directed to the merits of Government policy.

Rule 16 (Rule 15) - Proofs of Evidence

34. This rule contains a number of provisions that are designed to assist improved public participation in the inquiry process and to help achieve savings in inquiry time, without detracting from the fairness of the proceedings or the ability of participants to make their views known.

35. Any person entitled to appear at an inquiry who intends to read, or call another person to read, from a proof of evidence is required to send a specified number of copies to the Secretary of State within the time periods laid down in the Rules. A guide to presenting written evidence at public inquiries is at Annex 4(i).

36. Proofs of evidence (together with a summary where the proof contains more than 1500 words) should be sent to the Secretary of State no later than 4 weeks before the inquiry, unless a timetable has been prepared specifying a date for sending proofs of evidence. Late proofs of evidence will not normally be accepted.

37. Rule 16(7) requires the local planning authority to give any person a reasonable opportunity to inspect and, where practicable, take copies of any document sent to or by them, under this Rule. These provisions enable all interested parties to familiarise themselves with proofs of evidence before an inquiry opens.

38. Where a summary is provided, in accordance with the Rules, only that summary, as opposed to the full proof, shall be read out at the inquiry unless the Inspector permits or requires otherwise. This provision, and the discretion it affords to the Inspector, remains a crucial element of the Rules. However, the full proof will be treated as tendered in evidence under Rule 18(7) and cross-examination can take place on it.

39. It is recognised that a certain amount of flexibility, and sensible use of discretion by the Inspector, is important in using these provisions effectively to shorten inquiries while ensuring that they remain as thorough as possible, and without making them more difficult to follow. Thus, there is no statutory limit on the length of summaries. Attention is drawn, however, to the advice on the length of summaries given in Annex 4 (i), paragraph 11. It is appreciated that it may sometimes be difficult to summarise complex technical evidence effectively, and it is not intended to prevent witnesses properly explaining their evidence. Situations may also arise where the Inspector considers it necessary or very important that more than the summary

should be read out, e.g. in order to make the proceedings more intelligible for third parties or to ensure that relevant points are adequately explained. In such exceptional situations, Inspectors will use their own discretion to enable or require more than the summary to be read out.

40. However, summaries of complex evidence can help to make the salient points clearer to the interested parties, as well as saving time, which is in the interest of all participants.

41. Under the Rules all the parties are required to facilitate the exchange of relevant information in good time before an inquiry opens, so that everyone has adequate time to prepare properly. Parties should normally provide with their proofs of evidence the data, methodology and assumptions used to support their submissions unless this material has been agreed and is included as part of the statement of common ground. This is particularly important for major inquiries. If extensive tables, graphs, diagrams, maps etc are not produced until after the inquiry has opened, this can cause unnecessary delay, and the other parties might well need time, by means of an adjournment, to study these. If new material evidence is raised at a very late stage which another party has not had adequate time to consider, an adjournment may result and, unless there is good reason for the late submission, an award of costs could arise.

Rule 17 (Rule 16) - Statement of Common Ground

42. The local planning authority and the appellant will ensure that the Secretary of State has received an agreed statement of common ground, 4 weeks before the date fixed for the inquiry. The appellant will be responsible for sending a copy of the agreed statement to the Secretary of State. A guide to the statement of common ground is at Annex 4(ii).

Rule 18 (Rule 17) - Procedure at Inquiry

43. The appellant will normally give evidence first, unless the Inspector in a particular case decides otherwise, and the appellant shall have the right of final reply. Other parties entitled or permitted to appear shall be heard in the order determined by the Inspector.

44. All persons entitled to appear at an inquiry are entitled to call evidence. Only the appellant, the local planning authority and, in an enforcement case, any person on whom a copy of the enforcement notice has been served, have an entitlement to crossexamine, although the Inspector may permit other persons to do so.

45. Under Rule 18(6) the Inspector may refuse to hear evidence or to permit crossexamination which is irrelevant or repetitious, and under Rule 18(9) he may require any person behaving in a disruptive manner to leave the inquiry.

46. Rule 18(7) makes clear that, despite the requirements about the provision and reading of summaries of proofs of evidence, the full proof will still be treated as tendered in evidence and open to cross-examination (unless the person required to provide the summary notifies the Inspector that he wishes to rely on the summary only).

47. Rule 18(12) enables the Inspector to take into account written representations, evidence or other documents received during the inquiry, as well as before it opens, provided that they are

disclosed at the inquiry. The Inspector or the Secretary of State will normally disregard late representations unless there are extraordinary circumstances (see paragraph 14 of the main body of the Circular).

Rule 19 (Rule 18) - Site Inspections

48. This Rule allows the Inspector to make accompanied site visits during the inquiry and after its close, as well as unaccompanied visits before or during the inquiry. The Inspector will refuse to hear evidence or other submissions during any accompanied visit. It is legitimate, however, for people to draw his attention to particular features of the site and its surroundings.

Rule 20 (Rule 19) - Procedure After Inquiry

49. Where an assessor has been appointed to sit with an Inspector at an inquiry to advise on specialist matters, he may subsequently provide the Inspector with a written report on those matters. The Inspector is, however entirely responsible for the writing of his report to the Secretary of State and for the recommendation made (or in Inspectordecided appeals, for reaching a decision). In Rule 20(3) of the Secretary of State Rules, there is a requirement for any written report made by an assessor to be appended to the Inspector's own report, and for the Inspector to state how far he agrees or disagrees with the assessor. This does not apply to the Inspectors' Rules, since the Inspector does not provide a report to the Secretary of State where he is determining an appeal himself; but the existence of an assessor's report will be made known under Rule 19(1) of those Rules, to enable inspection to take place under Rule 20(2).

50. Regarding the treatment of evidence received after the inquiry, Rule 20(5) of the Secretary of State Rules requires reference back to the parties where the Secretary of State is disposed to disagree with the Inspector's recommendation. Such disagreement might be because he differs from the Inspector on any matter of fact mentioned in, or appearing to him to be material to, a conclusion reached by the Inspector, or he proposes to take into consideration any new evidence or any new matter of fact (not being a matter of Government policy). For appeals to be decided by an Inspector, Inspectors are required under Rule 19(3) of the Inspectors' Rules to refer back to the parties where they propose to take into account any new evidence or any new matter of fact (not being a matter of Government policy) which was not raised at the inquiry and which they consider to be material to their decision. It is accepted that there may be circumstances other than those set out in these Rules where the Secretary of State, or the Inspector in the case of a transferred appeal, may consider that reference back should take place in the interests of natural justice. These will continue to be identified on a case-by-case basis.

51. Where reference back takes place under Rule 20(5) of the Secretary of State Rules or Rule 19(3) of the Inspectors' Rules for transferred appeals - all persons entitled to appear at the inquiry who appeared at it will be afforded the opportunity of submitting written representations within 3 weeks. Where reference back is required because it is proposed to take account of some new evidence or new matter of fact, the parties may, alternatively, ask for the inquiry to be re-opened; and if such a request is made by the appellant or the local planning authority, the inquiry will have to be re-opened. In other circumstances, the Secretary of State (or the

Inspector for a transferred appeal) may, at his discretion, cause the inquiry to be re-opened.

52. When making his decision or recommendation the Inspector may disregard any written representations or evidence or other document received after the close of the inquiry.

Rule 21 (Rule 20) - Notification of Decision

53. Any persons entitled to appear at the inquiry who did appear are entitled to be notified of the decision in writing, whether or not they have asked to be notified, and any other person, who appeared at the inquiry and asked to be notified will also be notified. Where an assessor provides a written report, this will, in cases to be decided by the Secretary of State, be distributed with the Inspector's report as an appendix. The right to apply to the Secretary of State to inspect documents extends to 6 weeks from the date of decision to tie in with the maximum statutory High Court challenge period (though most High Court challenges to decisions on enforcement appeals are subject to a 28 days time limit).

Rule 22 (Rule 21) - Procedure Following Remitting of Appeal

54. This Rule relates to the procedure to be followed where the original decision has been remitted for redetermination by a Court. It ensures that those who were entitled to appear at the inquiry and who did so are given the opportunity to make further comments on the case, following the Court's decision. The Secretary of State will send to those parties a written statement of the matters on which further representations are invited within a 3 week period, for the purposes of his further consideration of the appeal, and will afford them the opportunity of asking for the inquiry to be re-opened. The Secretary of State may, at his discretion cause the inquiry to be re-opened, whether by the same or a different inspector.

Rule 23 (Rule 22) - Allowing Further Time

55. There may, exceptionally, be circumstances where it would be reasonable to allow further time for the taking of any step for which the Rules specify a time limit, and this Rule therefore enables the Secretary of State at any time, in a particular case to do so. The Secretary of State will be sparing in the use of this power.

Rule 24 (Rule 23) - Additional Copies

56. At any time before the close of an inquiry, the Secretary of State can request additional copies of a statement of case, a proof of evidence or any other document or information sent to him before or during an inquiry. The Secretary of State will specify the time within which the copies should be sent to him.

General

57. A diagram of the appeal stages and time limits in inquiry cases is at the end of this Annex.

The inquiry procedure

Timetable	Appellant	LPA	Interested parties
Appeal made **The Planning Inspectorate sets a start date**	The appellant sends appeal form and all supporting documents to the Inspectorate. The grounds of appeal and supporting facts should make up the full case.		
Within 2 weeks from the start date	The appellant receives from the LPA a completed questionnaire and any supporting documents.	The LPA sends the appellant and the Inspectorate a copy of a completed questionnaire and supporting documents. It also writes to interested people about the appeal.	Interested people receive the LPA's letter about the appeal.
Within 6 weeks from the starting date (Late statements will not normally be accepted)	The appellant sends the Inspectorate 2 copies of any further statement. This should relate only to issues raised by the questionnaire and any supporting documents.	The LPA sends the Inspectorate 2 copies of its statement.	Interested people send the Inspectorate 2 copies of any comments.
Within 9 weeks from the starting date (Comments sent late will not normally be accepted)	The appellant sends the Inspectorate 2 copies of their final comments on the LPA's statement and on any comments from interested people. **New evidence may only be taken on board at the discretion of the Inspector.**	The LPA sends the Inspectorate 2 copies of its final comments on the appellant's statement and on any comments from interested people.	
4 weeks before the inquiry (Proofs of evidence sent late will not normally be accepted.)	The appellant sends the Inspectorate 2 copies of their proof of evidence and 1 copy of the statement of common ground.	The LPA sends the Inspectorate 2 copies of its proof of evidence. The LPA puts a notice in a local paper about the inquiry and notifies	Interested people are told about the inquiry by the LPA. They may attend and, at the Inspector's discretion, express their views.

		interested people.	

Note: The Planning Inspectorate send copies of statements and comments to the appellant and the LPA by first-class post. The Inspectorate aims to do this within a week of the deadlines.

Decision: After the inquiry the Inspector writes the decision or sends a report to the Secretary of State. **The appellant and the LPA will be sent a copy of the decision notice. Anyone requesting a copy will also be sent one, as will any other person who, in an enforcement appeal case, was served with a copy of the enforcement notice.**

Annex 4(i) A Guide to Presenting Written Evidence at Public Inquiries

1. This guide is referred to in paragraph 35 of Annex 4. Local planning authorities and appellants may find it helpful to use the template obtainable from the Planning Inspectorate and accessed via the Planning Portal.

Proofs of Evidence and Summaries

2. The term "proof of evidence" is used in the Inquiry Procedure Rules. It refers to the document containing the written evidence and submissions which a person appearing at a public inquiry will read from and speak about and upon which, if necessary, they will be questioned.

3. Proofs should be concise and ideally contain facts and expert opinions deriving from witnesses' own professional or local knowledge as applied to individual cases.

4. Proofs should not include matters which are not in dispute. The statement of common ground prepared jointly by the appellant and the local planning authority should contain basic matters such as site description, planning history including any conditions which may have been imposed and the relevant planning policy. In addition, in enforcement notice appeals, the statement of common ground should include the results of any pre-inquiry agreement the main parties have reached.

5. Appellants must give all the grounds of appeal and the facts in support of each chosen ground of appeal.

6. Where it is important to set out facts in detail, the proof should focus on what is really necessary to make the case and avoid including unnecessary material. Where the proof makes a point which relies on a document, the page and paragraph number in that document should always be identified and cross-referenced.

7. Reasons for serving the enforcement notice must specify all relevant development plan policies. These policies should therefore be quoted in the local planning authority's proof only to the extent needed to understand the argument being put forward. Only those that are fundamental to an appraisal of the appeal's merits should be included.

8. If case law is to be cited in the proof, it would be helpful if the full law report reference is

included together with a copy of the report as a document and cross-referenced.

9. Where a party calls more than one witness, the evidence of each should address distinct topics. It is important that witnesses do not overlap in their evidence. Even fairly small differences in emphasis can confuse the case being presented.

10. Proofs should have their pages and paragraphs numbered. Sufficient copies should be prepared for all the main participating parties and exchanged in accordance with the Rules. Proofs may be sent electronically where this is appropriate. Additional copies should be made available for inspection at the local planning authority's offices prior to the inquiry and for inspection and circulation at the inquiry. The number required will depend on the likely level of public interest.

11. Summaries should be provided when a proof exceeds 1,500 words. As a guide, summaries should not exceed 10% of the length of the proof. It is normally only the summaries that are read out at the inquiry. These should accurately condense the gist of the proof, concentrating on the case in relation to the main points at issue. The content of the summary should not go beyond the scope of the text it purports to summarise, otherwise unproductive disputes could arise.

Documents

12. All documents accompanying proofs of evidence should be carefully prepared, presented and, where appropriate, edited so as to exclude irrelevant matter. Their purpose is to set out in an ordered and readily identifiable form the factual material and technical data upon which the evidence is based. They should be separate from the proofs of evidence and have identifiable reference numbers prefixed by letters denoting the name of the party producing them. The relevance of all documents submitted should be explained in evidence or submissions.

13. Lists of core documents, such as policy statements and development plan extracts, should be compiled and indexed by local planning authorities and submitted as statements of case. Co-operation between parties should ensure that as far as possible a list of core documents is agreed and that extracts contain all material to be referred to. All main parties should start to number their own documents before the inquiry, and keep an up-to-date list to be completed and submitted before the close of the inquiry.

14. As far as possible documents should be of A4 size. Extracts from published material must indicate the precise context with full titles, chapter headings and dates. A photocopy of the document's title page is sufficient to indicate its origin and publication date.

15. Plans, maps and diagrams should be similarly identified. Photographs should be mounted on a series of A4 cards. Each photographic view should be individually numbered and the viewpoints from which they were taken shown on a separate Ordnance Survey extract. The time and date at which a photograph was taken should be given. It is also helpful to give the focal length of the lens used. Models displayed at inquiries should be photographed, preferably in colour, and copy prints submitted as documents.

16. In preparing for longer inquiries local planning authorities should compile lists of core documents and submit them with statements of case. These documents will include policy

statements and development plan extracts, and other key policy documents and background material. The test for including a document is whether it is probable it will need to be referred to before the inquiry closes. As the pre-inquiry process continues the parties should consult to agree on any additions to the core document list prior to the submission of these documents to the Secretary of State. If a document is a core document there is no need to produce separate extracts to accompany individual proofs. The proof only needs to refer to it by its core document reference number.

17. Plans, photographs and diagrams should be listed as documents. All should display the already notified Planning Inspectorate reference number as well as the document number. Local planning authorities should include as documents both a copy of the Inquiry Notice and of the letter of notification of the inquiry. They should also specifically identify the appeal site plan and any associated drawings. Bundles of correspondence can be submitted as single documents provided that each letter is separately numbered.

18. Proofs of evidence are not normally inquiry documents and should not be listed in the document list. Where there are many of them, they should however be separately numbered and indexed.

The Importance of Timeliness

19. It is essential that proofs, summaries, statements of common ground and documents are submitted in time to be received 4 weeks before the inquiry opens. It is vital for the efficient functioning of the inquiry process that all parties have adequate time to prepare for the inquiry in the light of the case being promoted by the opposing side. 42

Annex 4(ii): A Guide to the Statement of Common Ground

1. This guide is referred to in paragraph 42 of Annex 4.

2. The statement of common ground is a written statement prepared jointly by the local planning authority and the appellant. The purpose of the statement of common ground is to set out the agreed factual information about the appeal. The inclusion of agreed material in the statement of common ground should result in shorter proofs of evidence and shorter inquiries.

3. The statement of common ground should complement the proofs of evidence and both should be sent to the Secretary of State no later than 4 weeks before the inquiry. The main parties will therefore need to meet before that date to try to narrow the areas of dispute and agree on what should go in the statement. It is the responsibility of the appellant to send the statement to the Secretary of State.

4. The Statement of Common Ground should be kept factual and should not include opinion and comment.

5. In all cases agreement can be reached on some matters: the precise nature of the proposal before the inquiry, the description of the site, its planning history and the relevant policies can all be agreed.

6. Evidence on technical matters and topics that rely on basic statistical data can often be fruitful areas for pre-inquiry agreement. Traffic evidence, for example, can be simplified and the issues refined, by pre-inquiry agreement on matters such as traffic flows, design standards, and the basis for forecasting the level of traffic any proposed or existing development would or does generate as the case may be. Other examples of topics where a degree of factual agreement might be possible are the pattern and frequency of public transport routes, applicable air quality standards, acceptable noise impact thresholds, nature conservation survey data, and housing land availability. What might be agreed in any particular appeal will depend on the matters at issue and will be unique to that case.

7. The statement of common ground, by clearly identifying the matters which are not in real dispute, may save time and cost at the inquiry. It may also be useful for the statement to identify areas where agreement is not possible.

8. Time can also be saved at the inquiry by seeking to agree beforehand any conditions, and planning obligations which affect the appeal. The Rules reinforce the established presumption against taking into account material submitted after the inquiry is closed. It is therefore sensible to reach agreement on any necessary section 106 planning obligations before the inquiry. be made.

9. Failure to reach agreement on the statement of common ground could, if resulting from a non-co-operative attitude rather than a genuine disagreement on the facts, lead to an application for costs. If it can be shown that a lack of co-operation has extended the inquiry, for example, and caused additional expense, an award of costs could

10. A template for the statement of common ground may be obtained from the Planning Portal.

11. The Rules require the local planning authority to allow anyone who requests it an opportunity to inspect the statement of common ground.

Endnotes

[1] This notice is given under Regulation 10 The Town and Country Planning (Enforcement Notices and Appeals)(England) Regulations 2000

[2] "The relevant notice" means the Secretary of State's written notice informing the appellant and the local planning authority that an inquiry is to be held (see Rule 2).