

# The Planning Series: 6 - Appeals

October 2019



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# The Planning Series:

## 6 - Appeals

October 2019

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**Paper Overview:**

This briefing provides an overview of the planning appeals process. It describes the grounds on which an appeal can be made, sets out the process for considering appeals and what can be done if an appeal is unsuccessful.



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# 1. On what grounds can a planning appeal be made?

Applicants may appeal on a range of grounds. These include where the Local Planning Authority has:

- Refused planning permission;
- Granted planning permission but imposed conditions;
- Been unable to decide an application within the time allowed; and
- Asked for further information before an outline planning application could be decided.

It is also possible to appeal against an enforcement decision.

There is no right for other interested parties (known as third parties) to appeal against a planning decision.

Any appeals must generally be lodged within six months of the action that is being challenged.

An appeal must be made on valid planning grounds. The extent to which the development proposal fits in with the Local Planning Authority's (LPA's) development plan and any relevant national planning policies will be the most important consideration. The Inspector will judge the appeal on its planning merits. It is unlikely that an applicant's personal circumstances will outweigh any substantial planning considerations.

Costs are normally paid by the appellant and the LPA. However, in some circumstances, either party can ask for their costs to be paid by the opposing party if they can demonstrate that unreasonable behaviour has taken place.

If a LPA's planning committee has rejected an application against officer advice, they must give their reasons. If valid planning reasons for the decision cannot be demonstrated, the decision may be overturned on appeal with costs being awarded against the LPA.

Before making an appeal the applicant should discuss with the LPA whether any changes to their original application would make it more likely to gain planning permission. In some cases a further application may be made free of charge.

## 2. Who is an appeal made to?

Appeals against planning decisions made by Local Planning Authorities are normally handled by the **Planning Inspectorate**, on behalf of the Welsh Ministers. The Inspectorate is a Welsh Government agency whose main work is the processing of planning and enforcement appeals and holding inquiries into Local Development Plans.

The Welsh Government may 'recover' any appeal being dealt with by the Inspectorate and assume the responsibility for making a decision. These powers are usually reserved for appeals dealing with major schemes such as a large retail or housing development.

The Welsh Government can also "call in" a planning application from the LPA before it is decided (see our **separate briefing on call-in of planning applications** for more detail). In such cases an application is considered by the Planning Inspectorate in the same way as a planning appeal, with the final decision being made by the Minister.

There are three statutory procedures under which appeals can be heard; written, a public hearing or a public inquiry.

## 3. What is the written procedure?

This is the quickest method and is used for **more than seventy five percent of appeals**. The Planning Inspectorate appoints an Inspector to hear the appeal and sets a start date. Supporting information is submitted by the LPA, the appellant and any interested parties. The LPA and the appellant may view and comment on each other's information, but there is no opportunity for cross examination. The Inspector then carries out a site visit. A regulatory timetable requires all information to be submitted within nine weeks of the start date.

## 4. What is a public hearing?

If either party does not wish to use the written procedure, there will be a public hearing or a public inquiry. The Planning Inspectorate takes the decision on whether a hearing or an inquiry takes place. A hearing is an open discussion led by the Inspector and tends to be used for appeals that are relatively uncomplicated and uncontroversial. Before the hearing, supporting information is exchanged and commented upon as with the written procedure.

At the hearing, the Inspector will lead an informal discussion on the main issues and a site visit generally takes place. A regulatory timetable requires the hearing to take place within twelve weeks of the start date.

## 5. What is a public inquiry?

If either party does not wish to use the written procedure, and the Planning Inspectorate decides that a public hearing is unsuitable, an Inquiry takes place. Inquiries tend to be used for the most complex and sizable schemes. Before an Inquiry, supporting information is exchanged and commented upon as per the written procedure. The following are also submitted four weeks before the inquiry opens:

- Written statements that are to be read out at the Inquiry. The other party may view these; and
- A statement of common ground outlining any areas of agreement between the parties, such as the size of the site in question.

The location and date of the Inquiry is publicised while the Inspector usually visits the appeal site before the Inquiry. All parties may use a legal representative. The LPA usually presents their case first, before calling witnesses. The Inspector and the appellant can then ask questions. The appellant then presents their case, and calls witnesses, before being questioned by the LPA and the Inspector. Other interested parties usually have a chance to express their opinions. The Inspector may allow these parties to be questioned, and to question the appellant and/or the LPA. Both main parties to the appeal have the right to make a closing statement. A regulatory timetable requires the Inquiry to take place within twenty weeks of the start date for inquiries determined by an Inspector.

## 6. Who makes the final decision?

Regardless of the procedure followed, the Inspector will consider the evidence before deciding whether to 'allow' or 'dismiss' the appeal. The only exceptions to this are appeals for major development schemes where the Welsh Government decides to intervene directly (known as 'recovered' appeals) and which are then decided by the Welsh Ministers. In such cases the Inspector will consider the case and make a recommendation, although the Minister does not have to accept this recommendation.

In an appeal against conditions attached to a planning permission, the Inspector may vary the conditions attached by the LPA or impose new conditions. The Inspector's final decision is set out in a letter. This will explain the reasons for the decision and replaces the original decision made by the LPA. The Inspector's decision is final and can only be challenged in the High Court on a point of law (known as 'judicial review').

## 7. Is there any further right of appeal?

Once decided upon by an Inspector or the Welsh Ministers, an appeal decision may only be challenged in the High Court through **Judicial Review**. Such a challenge must be lodged within six weeks of the decision. This will only succeed if it can be shown that the decision-maker has gone beyond his/her powers, that he/she didn't follow the proper procedures, has acted irrationally, or breached the European Convention on Human Rights.

The Court is only concerned with the process followed, not whether the conclusion is correct, and it will not substitute an alternative decision. Rather if the decision is overturned, then the appeal is returned to the Planning Inspectorate to be reconsidered.



## 8. Key sources

### Welsh Government

The **planning section** of the Welsh Government's website provides information including:

- **Planning Policy Wales (Edition 10, December 2018);**
- **Planning Circular 07/ 2003 Planning (and analogous) appeals and call-in procedures;**
- **Planning appeals guidance;**
- **Planning Inspectorate appeals: how long they take (guidance)**

### Planning Aid Wales

**Planning Aid Wales** is a charitable organisation helping eligible individuals and communities to participate more effectively in the planning system. It provides advisory services, including a helpline.

### Planning Portal

The **Planning Portal** is the UK Government's planning and building regulations resource. It includes information on the planning system in Wales, although some of the content only applies to England.

### Senedd Research

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