

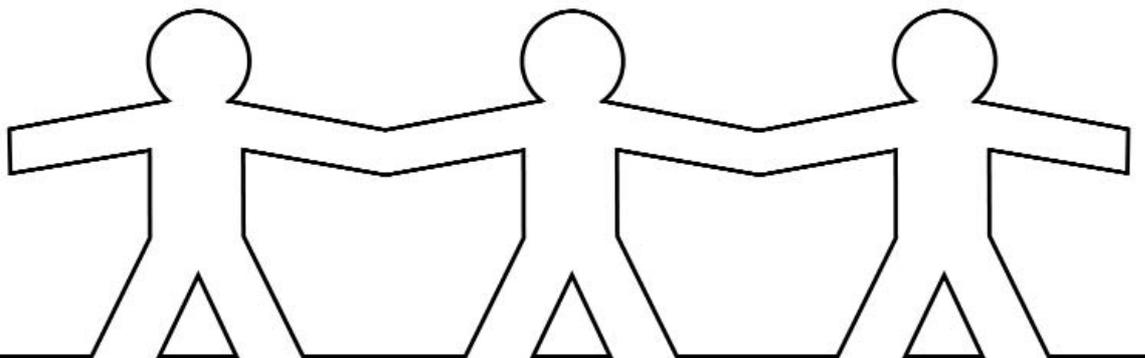


Campaign to Protect
Rural England

A CPRE Planning Help Campaigners' Guide

The Facts About Planning Appeals

What happens when an applicant appeals against the decision made on a planning application – and how you can continue to campaign at the appeals stage



This guide is a paper version of an online guide found on CPRE's Planning Help website, a website that gives you the knowledge to influence change and shape the decisions that affect your environment. The site is regularly updated and we encourage you to visit it (www.cpre.org.uk/planninghelp).

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The Appeals Process

If a planning application is refused permission, or conditions are attached to the permission that restrict the development in some way, the applicant may decide to appeal. Only the individual or company who submitted the planning application has the right to launch an appeal against a planning decision. But you can still take an active part in the appeals process. In doing so, you can help prevent bad development and boost the prospects of good development.

A local authority usually has eight weeks in which to come to a decision about a planning application, during which time it is expected to consider any comments or objections from the public. If you have concerns about a proposed development in your area – perhaps because you feel it would compromise a beautiful local landscape or open the way for harmful development in the future – you should make your views known during the formal consultation period. If you don't, and the application is approved, you will have few opportunities to object.

If sufficient public concern is demonstrated, the local authority may take the decision to refuse planning permission or else attach conditions to its approval – such as not allowing the applicant to begin until certain infrastructure is in place, insisting that certain materials need to be used on a building or limiting the hours of operation of a business. In such cases, the developer may appeal.

If the developer does not accept the decision taken by the local authority, or if the authority fails to take a decision within the allotted time (usually eight weeks), the developer has the option to lodge an

appeal. The developer has three months in which to do this.

Please note that appeals against planning decisions are not allowed when:

- > permission has been granted to an application goes against the policies outlined in the development plan; or
- > the local authority has given itself planning permission, for one of its own projects.

CPRE believes that local people should be allowed to lodge an appeal in these circumstances, and we campaign for this.

The appeals process in brief

- > The local authority takes a decision on a planning application that the developer finds unacceptable
- > The developer appeals to the Secretary of State
- > The Secretary of State decides a method of appeal
- > All interested parties organise their evidence
- > If the case is significant enough, a public inquiry takes place
- > The inspector makes a formal site visit
- > A decision is made on the appeal
- > The planning appeal process

Three Ways in Which Appeals May be Decided

The Planning Inspectorate can deal with an appeal in one of three ways: through written representations, with an informal hearing or by ordering a public inquiry.

The function of an appeal is to examine the local authority's decision on the planning application. In each case, an inspector is appointed to preside over the appeal and take the final decision. Evidence is gathered and sometimes an official visit is made to the site of the proposed development. In exceptional circumstances, the decision is referred to the Secretary of State.

Written representations

This is the most common appeals method. In this type of appeal, the inspector reaches a decision based on written submissions from the planning applicant, the local authority and any objectors.

Informal hearings

If an informal hearing is called, evidence for and against the development is given orally, but in a less formal setting than at a public inquiry.

Public inquiries

If a planning application is controversial, it may be dealt with at a public inquiry. This is the most formal and adversarial of the three options. Over the course of the inquiry, the appeals inspector takes oral evidence from anyone with a vested interest in the development, or who wants to express a view. The inspector also takes written submissions into account when making the final decision.

Procedure for Written Representations

In cases where neither the applicant nor the planning authority requests 'the right to be heard', that is, the right to present their evidence orally, the appeal is handled through written representations.

The 'start date' of the appeal is the date that the Secretary of State receives the request to appeal from the applicant. Within five days, the local authority must notify everyone who submitted representations on the original planning application.

Appeals questionnaire

The local authority is required to complete a standard questionnaire about the case, and return it to the Planning Inspectorate and the appellant within 14 days of the start date. The completed questionnaire should contain information on how the local authority has publicised the case and on what ground it is opposing the appeal.

If the local authority fails to make its case in the questionnaire it must send a 'statement of case' to the Secretary of State's office within 28 days of the starting date.

The appellant who is making the appeal has 17 days to respond to the questionnaire. The local authority and the Planning Inspectorate have seven days after that to respond.

What you can do

As a member of the public, you have a right to make a written representation of your case for the inspector's consideration. Organise your evidence carefully, and send your representation to the Planning Inspectorate.

You should also attend the inspector's site visit if there is one. Both the applicant and the local authority will be represented, and objectors are invited to attend.

Procedures for Informal Hearings

If the decision is made to conduct the appeal through an informal hearing, the local authority will notify all parties with an interest in the application. The authority will also supply everyone with a copy of the rules and procedures of an informal hearing, as devised by the Planning Inspectorate.

The hearing should take place within 12 weeks of the appeal request. As an interested party, you will be given at least 28 days' notice of it taking place.

The applicant and the local authority must provide a statement of their case to the inspector and all principal parties at least three weeks before the hearing. As a third party, you also have the right to provide a written statement. Ask to receive copies of all other parties' documents.

Your written statement should contain the same information that would be included in a proof of evidence for a public inquiry. Organise your evidence carefully in advance. You will not be expected to raise any issues at the hearing other than the ones detailed in your statement.

Informal hearings are usually run as a discussion led by the inspector, in which members of the public can ask questions and put forward their points of view. Lawyers are rarely present.

A hearing often involves an inspector's site visit. When this happens, you have a good opportunity to expand on your case and to demonstrate the depth of local feeling.

Procedures for Public Inquiries

The move to take an appeal to a public inquiry is a highly significant one, and is not a decision that will have been taken lightly by the Secretary of State. It usually means the planning application is controversial in some way or else indicates considerable local opposition.

If a public inquiry is called for a planning application that concerns you, you have a good opportunity to present your case on behalf of your community. However, your involvement in the appeals process will demand considerable commitment from you and your supporters. Organising your evidence and preparing your case involves large amounts of time, effort, resources and, very likely, teamwork.

If you are successful, the hard work will have all been worth it. Your reward will be the immense satisfaction of knowing you have safeguarded your local environment for all, now and in the future.

Public inquiries: your opportunity

In significant cases, where there is substantial public feeling, a public inquiry is the best chance you have to get your case across. If you are contesting a planning application of this nature, securing a public inquiry should be your key goal. Although inquiries can be stressful, time-consuming and in some cases expensive, the inspector will be left in no doubt about the strength of local feeling.

You cannot demand that an inquiry be held, but a significant volume of substantial objections makes this much more likely. You and your supporters need to write to the Planning Inspectorate at the Office of the Deputy Prime Minister and the Government office for the region, copying your letter to your local authority. Emphasise the extent of local feeling, stressing that it can only be properly expressed at a public inquiry.

The pros and cons of a public inquiry

Pros:

- > an inquiry is the most thorough way available to deal with issues of complexity;
- > strength of public feeling is better communicated at a public inquiry; and
- > the formality of an inquiry ensures that you will have access to the evidence from all parties concerned further in advance, which gives you a chance to prepare a strong case.

Cons:

- > a public inquiry is the most expensive of the appeals processes for all concerned;
- > there will be more delay before a decision is made; and
- > the formality of the proceedings, and the likely involvement of lawyers, can make it an intimidating process.

But don't go overboard. If your case does not have substantial local support, or you don't expect to have the time and resources to present it properly, an inquiry may do more harm than good. You may simply force the developers to put together a more robust case themselves, and at the same time demonstrate to the inspector that there is limited local opposition to the development. In such a case, an informal hearing would be more appropriate.

Pre-inquiry procedure

Whenever an inquiry is called, the local authority has to draw up a timetable of proceedings and distribute copies to all interested parties. If you have not been involved prior to this stage, contact your local planning department for the timetable.

The authority is also required to publicise the inquiry by placing advertisements in the local press and putting up a notice at the site of the proposed development

'Statement of case'

In the run up to the inquiry, the planning applicant and other parties appearing at the inquiry are required to serve a 'statement of case', which summarises their position. You will be able to obtain copies of these statements from the local authority.

Pre-inquiry meeting

A pre-inquiry meeting is sometimes held to work out arrangements for the inquiry itself. As a member of the public, you are entitled to attend this meeting and to comment on the proposals.

'Proof of evidence'

Anyone, or any group, who wants their opinion to be taken into account by the inspector has the right to present their case at the inquiry. You can appear as a witness even if you didn't respond to the original planning application.

As a witness, you must provide a document known as a 'proof of evidence', which will be sent to all other parties three weeks before the inquiry. Your proof of evidence is a written account of the case you want to put before the inspector at the inquiry.

Procedure at the inquiry

A public inquiry may take from days to months, depending on how many witnesses present evidence and how significant the proposed development is. It usually takes the following form:

- > the inspector opens the inquiry by describing the appeal. He or she will note which members of the public wish to speak;
- > the appellant's (planning applicant's) lawyer will open his or her client's case;
- > the appellant's first witness will be called, usually to read the summary proof of evidence. Additional points may be raised from other witnesses' proofs of evidence. This process is called 'examination in chief';
- > other principal parties can then cross-examine the witness;
- > the inspector may then ask questions;

Model proof of evidence

Evidence for Bourne District CPRE on the proposal to erect five houses on land adjacent to Manor Farm, Back Lanes, Small Bere by Mr E. Preneur

Introduction

My name is Ivor Worry. My family and I have lived in Small Bere for the last 17 years and I have served on the Parish Council for the last five years. I have been a member of CPRE for the last seven years. I work as a teacher at Biggerton Primary School.

The site

Small Bere is a dispersed settlement in the Chase Hills, eight miles north of Biggerton. Manor Farm lies on the western edge of the village, on rising ground. The appeal site covers approximately 0.9 hectares. Until two months ago, it was made up of two small grass fields, separated by a mature hedge, with open farmland beyond and the scattered houses of the village to the south and east. The hedge has now been removed and the land left idle, although several loads of builders waste appear to have been dumped there within the last month. The site is clearly visible from the hills to the west and north and from many points within the village, most notably the village green. The access to the site is via Back Lane, a single track road with no passing places.

The proposal

This is for five detached houses of a chalet design, spaced evenly across the site. Access would be taken onto Back Lane through the existing hedge line, with approximately 75 metres of this hedge removed in order to provide the necessary sight-lines. A scheme of landscaping including a substantial screen hedge around the majority of the site is offered.

The planning policy context

The development plan for the area is made up of both the Barset Structure and Bourne Local Plans. The Barset Structure Plan aims to concentrate new housing development in the main towns of the county. Policy RS4 allows only very limited development in rural settlements, and then only subject to strict criteria. Policies RA3, H1, C6 and TR1 of the Bourne District Local Plan expand these points. They require that housing developments should be necessary to meet local needs, in keeping with the character of the area and located in villages which are well-placed within the existing transport network in order to avoid disproportionate increases in private car movements.

History

The site has a history of planning applications for various types of development. In 1982 an outline application was submitted for 30 houses on a larger site, which included the appeal site. It was refused. In 1986 a proposal of reduced scale (17 houses) was submitted, refused and dismissed at appeal. Last year an application for an equestrian centre was made but was subsequently withdrawn following an unfavourable committee report.

Main planning considerations

The policies of the development plan clearly seek to protect village like Small Bere from inappropriate housing development. In this case, the proposal would introduce a scale and style of development on the edge of the village at odds with the character and pattern of existing development. In addition, the proposed design of the

five houses would be strongly out of keeping with the historic character of the village, which is typified by the cottages found around the village green.

The appeal site is clearly visible from many points in the surrounding countryside and within the village. At present the village nestles unobtrusively in this rural setting. Development on the site would destroy this relationship, extending the built area of the village intrusively into the surrounding hills, and spoil the perception of enclosure by the surrounding countryside from within the village. No landscape proposal of a scale sufficient to mask the proposal could hope to overcome these problems since it would be a discordant feature in its own right.

Back Lane, like many of the roads in the village, was not designed for modern traffic. The introduction of additional vehicles would highlight the inadequacy of these lanes to accommodate more traffic. In order to provide a satisfactory access to the site it would be necessary to remove 75 metre of its mature frontage hedge and to widen the road in several places, destroying the pattern of ancient field boundaries and further highlighting the intrusive character of the proposal.

There is no need for housing development of this type in the village. The district has an existing supply of housing land of over seven years. The recent Housing Department Need Survey identified a requirement for up to five affordable homes in the village and a potential site has been identified on Main Street by the bus stop. No comparison can legitimately be drawn between this project and the appeal proposal.

Pressure for development in Small Bere is considerable. In the last five years, four similar schemes have been resisted elsewhere in the village (two at appeal). In addition, the planning history of the site itself demonstrates the fundamental unacceptability of development such as the appeal proposal. Were the appeal allowed, an extremely dangerous precedent would be set, not just for Small Bere, but for the numerous similar villages scattered across the Basset countryside which would be left vulnerable to high levels of intrusive housing development at a time when the Basset Structure Plan is rightly seeking a more sustainable pattern of development, focused on the towns such as Biggerton.

The recent deterioration of the condition of the site is concerning. It has now been removed from agricultural use and degraded by the grubbing-out of mature hedges and tipping. It could be suggested that to allow the proposal would provide a sure way of getting rid of this eyesore. To do this, however, would be to reward a negligent landowner with a planning permission where one should not otherwise be granted, and by default, to penalise all those who continue to keep their land in good heart. This would not be fair and the current state of the appeal site is therefore wholly immaterial.

Conclusion

In conclusion, the proposal is clearly unacceptable in terms of the policies of the development plan. This fundamental conflict could not be resolved by the imposition of any conditions and therefore, in the absence of any other factors which might lend support to the proposal, it should be rejected. If, however, the Inspector is minded to grant the appeal without prejudice to my objection in principle, conditions to cover the following should be applied: minerals, landscaping, highway works, hard surfacing, removal of permitted development rights and external lighting. It would also be necessary to seek a planning obligation to ensure that no further development would take place at Manor Farm so that the proposal would not establish a damaging precedent.

- > the appellant's lawyer can re-examine the witness on matters raised in the cross examination;
- > this procedure is followed for each of the appellant's witnesses;
- > the local authority then presents its evidence; and
- > all other interested parties are invited to put forward their cases. This may take the form of a short statement by an individual member of the public, or be a full case presented by a lawyer.

The order in which everyone makes his or her case is flexible. You can, for example, request to speak before or after the local authority depending on whether you think it will help or hinder your arguments.

Your role at the inquiry

While you may feel intimidated at the prospect of appearing at an inquiry, especially if you've never done so before, don't let this be a hindrance. Dozens of CPRE volunteers have successfully appeared at inquiries, and you can too. The best thing you can do, if you want your case to succeed, is to be as well prepared as possible. Remember that it is your right to speak out and that the inquiry is designed to help you do this.

Points to remember:

- > if you represent a body of local opinion, choose the person who is most familiar with the case to present it;
- > always remember that the inspector, as the person who makes the final decision, is the most important person

at an inquiry. Be sensitive to his or her reaction to the proceedings and focus on persuading him or her;

- > etiquette is important at public inquiries, but don't let rules and procedures inhibit you when you present your case;
- > be prepared to suggest alternative uses for the site. This is a common question; and
- > do not save points for cross-examination as you may not get a chance to use them.

Dealing with lawyers

- > do not be intimidated if a lawyer representing another party is aggressive. Stay calm and polite. If you are having trouble explaining your case, ask the inspector for assistance;
- > if a lawyer confuses you, refer him or her to your answers in your proof of evidence. All your arguments should be summarised there; and
- > generally speaking, the tougher the cross-examination you are facing, the more seriously you are being taken, so keep your nerve.

Lay advocates

If you are using a 'lay' advocate, or non-professional, to present your case, make sure he or she:

- > is familiar with the material. It sounds obvious, but it will be too late on the day if there's a problem;
- > calls witnesses in an order that helps to

- make sense of your arguments;
- > plans any supplementary questions, and deals with additional points that witnesses may want to add;
- > waits until the inspector has finished before asking another question;
- > prepares cross-examinations from other parties' proofs of evidence;
- > doesn't ask questions that have already been asked; and
- > attends as much of the inquiry as possible.

List of conditions

At some point during the proceedings, the inspector will ask all parties involved for a list of conditions that they would want imposed on the planning application, if permission were granted. This does not necessarily mean permission will be granted. Have ready a clear, precise list of conditions you would like to see imposed.

Closing statement

All parties are given an opportunity to make a closing statement at the end of the inquiry. Use the following tips to make as strong a case to the inspector as possible:

- > make a note of the points you may want to make as the inquiry progresses;
- > if necessary, ask for a 10-15 minute adjournment to prepare your speech;
- > do not simply repeat everything you said in your evidence;

- > deal with new points that have emerged in the course of the appeal;
- > highlight key points and add any supplementary points that have emerged from other submissions; and
- > summarise your case concisely, in your own words.

Preparing your case

If you want your comments to be taken into account at the inquiry, you will need to have ready your 'proof of evidence' for distribution to all interested parties three weeks before the inquiry itself. Prepare this carefully, and you will be well equipped to make your case orally on the day. You may prefer someone else to present on your behalf.

In the three weeks before the inquiry, you will also have an opportunity to examine the 'statements of case' and proofs of evidence prepared by all the other inquiry participants. You can draw on this evidence to strengthen your own case and to prepare yourself to tackle opposing arguments.

If for some reason you cannot appear at the inquiry, and no one else can appear for you, you may choose to submit written evidence only.

Writing your proof of evidence

Your proof of evidence is a written account of the argument you want to present at the inquiry. Set aside as much time as possible to prepare it. Make sure that your points are easy to follow, as you will need to take the inspector through the arguments.

Your evidence should be:

- > clearly set out; this will help you to understand your case and help the inspector to understand it;
- > clearly written; use plain English;
- > supported by appropriate evidence;
- > comprehensive, but succinct. Don't leave things out just because you are reluctant to deal with them. If you introduce difficult issues at this stage, it will give you time to think about how best to present them at an appeal;
- > truthful. If you are found to be dishonest, it will devalue your evidence; and
- > accurate. If you exaggerate your case, it will weaken it.

It may help to structure your evidence as follows.

- 1 Establish your qualifications for giving evidence. Describe your involvement in local organisations and give details of any organisation that you are representing.
- 2 Describe the site and surrounding area. Although others may do this, it is important to put your case in context, in your own way. Highlight what makes the proposed development unacceptable.
- 3 Describe the proposed development. Point out elements of particular concern.
- 4 Draw attention to the elements of the development plan, national planning guidance and other official documents that strengthen your case. Only quote

from them sparingly, but explain their relevance to the appeal.

- 5 Use any information about the history of the site that illustrates why the development would be inappropriate.
- 6 Outline why you want the inspector to turn down the appeal. You need to show the harm the proposal would cause. Use graphs, diagrams and statistics to simplify your case.
- 7 Summarise your case.
- 8 Supply any documents you have referred to in your evidence.

What else you can do:

- > contact the people most directly affected by the proposed development. They can give important evidence to an inquiry;
- > co-ordinate your approach with other groups that share your position. Ensure that you are supporting, and not duplicating, each other's arguments;
- > look for weak points in the evidence supplied by other parties. Use this to decide which points to challenge;
- > pick issues to raise at the inquiry on which you are well prepared. They may be points that you already raised when the planning application was lodged with the local authority. Decide whether this is sufficient/or you need to gather further evidence;
- > pinpoint the issues central to the appellant's case and look for weaknesses in their arguments;

- > check with your local authority whether any expert witnesses are going to be called, and whether they are likely to support or oppose your arguments;
- > get feedback from others who are interested in the appeal. Make sure that you are not duplicating each other's work. You may be able to get support for your case from other groups who are opposing the development. This will strengthen your argument;
- > prioritise issues where you or your group can make a particular contribution, and make sure that your information is accurate; and
- > if you do not have much experience of appeals, or if you have few resources, make sure that you limit the areas that you cover. You do not want to run the risk of cross-examination on issues you are not completely familiar with. If your reasoning is shown to be flawed in one area, your case as a whole will lose credibility.

Legal costs

In planning appeals, each party pays for the cost of preparing and presenting its own case. Legal costs can only be awarded to or against third parties in exceptional circumstances. So while costs may be awarded against you if you behave intentionally badly, they cannot be awarded if, for example, your proof of evidence arrives a little late.

If you feel intimidated at any point in the proceedings by threats of costs being brought against you, bring this to the attention of the inspector.

Cross-examination

The object of cross-examination is two-fold:

- > to challenge evidence put forward by a witness to reduce its weight in the eyes of the inspector; and
- > to bring out helpful evidence from the witness for your own case.

If you are being cross-examined

Do not make the mistake of saving up good points to be introduced during cross-examination, as the opportunity may not happen. Many lawyers at public inquiries are reluctant to cross-examine third parties.

If you are being cross-examined by an aggressive lawyer, stay calm and polite. Your evidence is there in writing in your proof of evidence, so refer the lawyer to the answer it if it is in the proof.

If, having been cross-examined, you feel there was something in the cross-examination you did not make clear, ask the inspector for an opportunity to do so.

If you are cross-examining others

Questions can be asked that arise out of the witness's whole proof of evidence, not just the summary.

Leadings questions – which indicate the answer you want – play an important part in cross-examination.

Do not try to cross-examine another party's witness without preparing first. Make sure that you prepare the questions you wish to ask based on their proofs of evidence and

sort out the order in which you propose to ask them. It helps to ensure that your questions are well tied down to answers which the witness has already given or to statements in the proof of evidence. Make sure that you do not ask the same questions which have already been asked.

Listen carefully to the cross-examination which has already taken place and make notes of important answers. It may give you further materials for your cross-examination.

Cross-examination can be difficult when a witness stonewalls all your questions. Explain that the question has not been answered and try again. Perhaps try putting it a different way. Be polite but firm. If you are having no success, ask the inspector for help. You cannot always get the answer you want, but you should get an answer. Pay attention to the questions asked by the inspector of all witness. This is one of the few pointers you will get about the issues on which the inspector is focusing.

Involving a lawyer

While lawyers may be helpful, they are not critical. Many CPRE volunteers have appeared at appeals without lawyers.

If your local authority is not presenting the same legal or technical case that you support, you may want to seek advice from a planning lawyer or another expert when you are preparing your case. Contact the local authority lawyer first to assess their approach.

Establish from the outset how much it will cost to get legal experts involved. If it is beyond your budget, and there is no hope

of raising the money within the community, you may be able to take advantage of schemes that provide low cost legal and planning advice. You may also choose to nominate one of your own group to act as a lay advocate.

Tips for Involvement with the Appeals Process

A developer who is refused planning permission, or who finds the conditions attached to the permission unacceptable, has the right to appeal to the Secretary of State for planning (the Deputy Prime Minister). Appeals are heard by independent inspectors from the Planning Inspectorate, an agency of the Office of the Deputy Prime Minister. Inspectors are appointed by the Secretary of State.

When this happens, the local authority is always informed. If you have been involved at the application stage, the authority will notify you, too. If you haven't been involved up to this point, you can ask your council's chief planning officer to let you know if a planning decision that concerns you is being appealed against.

Organising your evidence

In order to prepare an effective case – no matter what appeals process is chosen – you need to understand the way the inspector will approach the evidence presented. He or she will view the case in terms of long-established planning policies, at both local and national level. The more familiar you are with these guidelines, the better able you will be to put forward a persuasive argument.

The development plan

The local authority's development plan, which outlines planning policy in the area and may in practice comprise a number of documents, is crucial. Any appeal must be decided in accordance with the development plan unless other factors indicate otherwise. Your priority is to study the plan and establish how it can be used to help your case. Contact your local authority for a copy or look on its website or ask your local library.

How to use the development plan

Start by identifying those policies in the development plan that are relevant to the appeal, and then establish whether they support or undermine your case.

If the policies help your case, you will need to prepare evidence to show how important and appropriate they are. If they detract from your case, you will need to show that they do not directly apply to the appeal, are out of date or should not be applied because of some other overriding consideration.

Others can help

If you have an interest in the outcome of an appeal, contact any groups who may be sympathetic to your point of view, such as local CPRE groups, the parish council, amenity societies, wildlife trusts, influential individuals and councillors. Let them know about the decision to appeal, and gather as much new information as you can. Spread the word further by contacting your MP, the media and neighbouring local authorities. The more people you get to support your view, the better.

The site file

Another useful source of information is the local authority's planning file for the site under consideration. This 'site file' contains background information and the planning application. It will also contain the minutes of the planning committee meetings held to consider the application, the appeal letter and the views of objectors.

Other sources of information:

- > *Public Access to Planning Documents*, published by the National Planning Forum, encourages local authorities to make information available to the public;
- > *Environmental Facts: a guide to using public registers*, published by the Office of the Deputy Prime Minister;
- > local authority planning registers contain copies of all planning applications and decisions;
- > pollution control authorities also hold registers that are available to the public; and
- > larger libraries, as well as local authority offices, should hold local development plans, copies of legislation and government policy.

To help put the issues in context, contact the planning officer at your local authority for an informal chat. Your local councillors can also be helpful contacts.

And don't allow yourself to be lost in technical jargon. If there is anything you do not understand, contact the local authority and ask for straightforward answers to your questions. Do not be

ashamed to admit that you do not know the answer and if you do not get a satisfactory answer, try again.

Material considerations

The issues that an inspector will take into account are known as 'material considerations'. The following are always considered material:

- > relevant development plan policies, such as the Regional Spatial Strategy;
- > Government policies – national and Regional Planning Guidance, at the minerals, waste;
- > representations made by statutory consultees and others in response to consultation at application or appeal stage;
- > the designated status of a site or its surroundings (such as Area of Outstanding Natural Beauty);
- > the planning history of the site; and
- > the effect on a conservation area or listed building.

How to frame your evidence

Government guidance states that decisions on development must have regard to the development plan unless material considerations apply.

It's a good idea to focus on one or two major issues where you can make a distinctive contribution. Play to your strengths. Deal with the areas that you know best or where you can add a new dimension to an issue. And, if you are part

of a group, relate your concerns to your group's core purposes.

Do not be afraid to put forward arguments which are harder to quantify than more technical matters. Just because the destruction of a locally important environment or the character of the area cannot easily be measured does not mean that it is not important.

If you are inexperienced or have few resources, limit the aspects of the case you cover. By doing this, if there is a public inquiry, you also leave yourself less exposed to cross-examination on areas you are not able to properly address.

The inspector's site visit

In any appeals process, including an appeal conducted through written representations, the inspector may make an official, accompanied visit to the site of the proposed development. Although no new evidence can be presented at this stage, the visit can be an excellent opportunity to impress upon the inspector the points you made in your evidence.

Prepare!

To make the most of the site visit, decide in advance what you want the inspector to see and make any necessary arrangements for this. You may want the inspector to talk to some local people if, for example, the proposed development would have an impact on their home. In which case, you should get their agreement beforehand. The visit can constitute an important part of your case, and is a chance for the inspector to experience the depth of feeling at grassroots level, so prepare for it carefully.

New information

If you come across important new evidence after the appeal is over but before the decision has been announced, send it to the Planning Inspectorate. This information will be circulated to all parties involved in order to give them a chance to respond.

If the new information is highly significant, the inspector may re-open the appeal process. In this event, the inspector will make it clear what new issues are going to be addressed.

The inspector's letter

When the inspector has made his or her decision, a letter is sent to the planning applicant, indicating whether their appeal has been allowed (the development can go ahead) or dismissed (planning permission is denied). Copies of this letter are sent to the local authority and all interested parties.

The inspector's letter usually includes findings in all the areas he considered important. It is written in such a way as to try to avoid legal challenges (which means it may not read like plain English!)

What the decision means

In many cases, the result of appeal is not absolutely conclusive. For example:

- > a development may be approved subject to conditions, which the developer does not accept; or
- > even if an appeal is officially dismissed, the local authority and developer may decide to negotiate a compromise that is acceptable to both parties.

So when you learn of the inspector's decision, contact your local authority to find out its response to the inspector's decision and to see if anything has happened concerning the development proposed and the site since the appeal.

Challenging an appeal decision

Anyone who presented evidence during an appeal can challenge the eventual decision, but cannot simply object on the grounds that the inspector should have reached a different conclusion. If you are considering objecting, you should discuss the case with a specialist planning lawyer.

There are two routes to challenging an appeal decision:

- > **application to the High Court on a point of law.** This application must be made within six weeks of the date of the decision letter. It is a highly technical proceeding and can result in significant legal costs, although these will be recovered if you win. If you lose, you usually have to pay the other parties' costs as well as your own. Legal aid is available for cases like this;
- > **Judicial review.** An application of this kind must be lodged within three months. In this case, you must be able to show that the local authority made an irrational decision or that there was some procedural irregularity. You will need lawyers, but legal aid is available.

A decision could be quashed if:

- > the action taken is not within the powers of the planning acts; or
- > any of the relevant requirements on law

have not been complied with, for example if notification didn't happen

If you are unable to challenge

If you cannot find grounds for a challenge, don't give up. The development will not necessarily go ahead, even with planning permission. There may well have been changes in circumstances since the application was first submitted. The developers may have decided to pursue interests elsewhere, or the development as first proposed may no longer make commercial sense. The very fact there has been a strong, well-argued campaign against it may persuade the developer to think again.

Making a complaint

If you are unhappy with any aspect of how an appeals case has been handled, it is your right to lodge a complaint. If your complaint:

- > relates to the local authority, contact the Local Government Ombudsman. The Ombudsman may uphold a complaint, but a recommendation is not binding on local authorities and planning permission will not be withdrawn;
- > is about procedure at an inquiry, contact the Council on Tribunals;
- > is about an inspector, contact the chief executive at the Planning Inspectorate; or
- > is about a Government department, contact your Member of Parliament to approach the Parliamentary Ombudsman.

Glossary

Inspector

Someone employed by the Planning Inspectorate, an independent agency of Government appointed by the Secretary of State to preside over inquiries into development plans and rule on planning appeals.

Local authority

The administrative body that governs local services such as education, housing and social services. An umbrella term that could refer to any unitary authority or county, metropolitan or district council.

Secretary of State

The Secretary of State is the most senior Government minister responsible for the work of his or her department. The Government department responsible for planning is the Office of the Deputy Prime Minister. As a reflection of the political seniority of the Deputy Prime Minister in the present Government, planning decisions made by the Government are described as being in the name of the First Secretary of State for the Office of the Deputy Prime Minister.

Public inquiry

A general term, sometimes loosely used to mean any hearing on a planning appeal or Local Plan, but also more specifically to refer to an inquiry on a major development proposal, such as a new port, which has been called in by the Secretary of State for his own decision. See also local inquiry, Local Plan inquiry and public local inquiry

Development plan

The approved or adopted statutory land use and spatial plans for an area. The development plan sets a local planning authority's policies and proposals for the development, conservation and use of

land and buildings in the authority's area. Under the present planning system, the development plan will generally include the Structure Plan prepared by the county council, the Local Plan prepared by the district council and the Minerals and Waste Local Plans – or the single unitary development plan prepared by unitary councils. *The Planning and Compulsory Purchase Act 2004* replaces this system with a Regional Spatial Strategy prepared by the Regional Assembly and a Local Development Framework prepared by district or unitary councils. The development plan – with its policies and proposals – is the most important consideration for local planning authorities when they make a decision on a planning application.

Further Reading

Responding to Planning Applications.

Available for free from CPRE Publications.

Call 0800 163680 Monday to Friday

9.30am-5.30pm, free of charge, and ask for the publications department (or, if you're in London, dial 020 7981 2856).



Campaign to Protect
Rural England

Campaign to Protect Rural England

The Campaign to Protect Rural England (CPRE) exists to promote the beauty, tranquillity and diversity of rural England by encouraging the sustainable use of land and other natural resources in town and country. We promote positive solutions for the long-term future of the countryside to ensure change values its natural and built environment. Our Patron is Her Majesty The Queen. We have 59,000 supporters, a branch in every county, nine regional groups, over 200 local groups and a national office in central London. Membership is open to all. Formed in 1926, CPRE is a powerful combination of effective local action and strong national campaigning. Our President is Sir Max Hastings.

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