



The Planning
Inspectorate

Making your appeal

How to complete your lawful development certificate appeal form



INVESTOR IN PEOPLE

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Note: this guidance replaces the Making your Lawful Development Certificate Appeal booklet.

If you need this guidance in large print, in audio format or in Braille, please contact our helpline on 0117 372 6372.

This advice is important to you. Please read it immediately.

Introduction

If an application for a lawful development certificate (LDC) is wholly or partly refused, or is granted in a different form from the application, or is deemed to have been refused (because the local planning authority (LPA) has not determined the application within the time-limit of eight weeks of receiving the completed application), you can appeal.

You should note that we will turn away an LDC appeal if an effective Enforcement Notice is in force. This is because if such a notice is in force, the legislation does not allow a lawful development certificate to be granted.

Your appeal should be made only when all else has failed. You should have had discussions with the LPA during the course of your application. If you think that making changes to your application could resolve the LPA's reasons for refusal, you should discuss these with the LPA before appealing to us. A further application to the LPA may be your best route.

You can submit your appeal on-line through the Planning Portal using the Planning Casework Service. This is an on-line service that gives people in England and Wales wider and easier access to the planning system. It allows you to track the progress of your case.

For more information about the Planning Casework Service, visit www.planningportal.gov.uk/pcs.

You can fax your appeal form to us. You can also deliver your appeal form by hand. You should ask us for a receipt if you do so. Our fax number and address details are given in Section K of the appeal form.

Handwritten appeal forms and other documents

Please complete the appeal form in **CAPITAL LETTERS** using **black ink**.

Typed documents

Documents in a sans serif font are easier to read. Please use a font such as Arial or Verdana in a size of 11 point or larger.

Please

- use **A4** paper wherever possible;
- number the pages of the documents;
- make sure **photocopied** documents are clear and legible;
- put photographs (colour if possible), maps, plans, etc, in a **separate appendix** and cross-reference them within the main body of the document;
- bind documents so that they can be undone quickly without damaging the document. Do not use wire or plastic spiral binders;
- Do not use cover sheets, sleeves or other bindings that do not add value or information;
- do not send original documents unless we specifically ask for them;

- do not include self adhesive notes or small attachments which might be dislodged easily or lost;
- print documents on both sides of a page. You should use paper of good enough quality that something printed on one side of the page does not show through to the other side;
- ensure that the scale, orientation and paper size of any maps and plans are shown clearly. This is especially important if you submit your appeal electronically through the Planning Casework Service.

Appeal costs awards

You and the LPA normally have to meet your own appeal expenses, whether we decide it by the written procedure, a hearing or an inquiry.

If you have good reason you can ask the Secretary of State or the Inspector to order the LPA to pay all or some of your costs. The LPA can also ask for you to pay some or all of their costs if they have good reason. The Secretary of State or the Inspector will only do this if the person applying can show that the other side behaved unreasonably, and put them to unnecessary or wasted expense.

We will send you our separate guide 'Costs awards in planning appeals'. It is important that you read this guide because it explains how, when and on what basis you can make an application or have an application made against you. Further information on costs including a form which can be used to apply for costs in writing is available from our website.

COMPLETING THE APPEAL FORM

In this guidance we use the same lettering and numbering as the lawful development certificate appeal form.

SECTION A

Appellant details

Name

Only the person(s) who made the application for a LDC may appeal.

Email

If you tick the box to say that you prefer to be contacted by email where possible we will send you our letters by email and we will not send paper copies.

SECTION B

Agent details

You do not have to employ an agent to handle your lawful development certificate appeal. If you decide to employ an agent he or she will probably complete the appeal form for you.

If you have an agent we will send all of our letters or emails to the agent. We will not send a copy to you. You should ensure that you keep in touch with your agent about the appeal arrangements.

SECTION C

Local planning authority details

The name of the LPA, date of application, LPA reference number and decision notice (if issued) will probably be in the letter you received from the LPA.

SECTION D

Appeal site address

Postcode

This information is very important to us. If the appeal site does not have a postcode please provide the postcode of the nearest building. If the site is very rural and remote, please provide information to help us identify it, eg a sketch map showing the site and at least two named or numbered local roads.

Q1 Health and safety at the site

The site is likely to be inspected during the course of the appeal and we will need to know what safety equipment and protective clothing will be required. The following questions indicate the type of information we will need about the appeal site and any land or building that will need to be entered. Please supply any relevant information on a separate sheet of paper.

1. Is the site uneven or does it present any other known risks? Is special footwear or any other Personal Protection Equipment required, and will this be supplied at the site? (Please list)
2. Is there any likelihood of exposure to pets or other animals that may present a risk to personal safety?
3. Is the site remote and/or can it be seen from other occupied buildings/property/public land/roadside?
4. Does the site have a good mobile phone signal or is there easy access to a public telephone should the emergency services be required?
5. Are there any areas that require specialist equipment or training for access – any confined spaces?

6. Are there any dangerous pieces of equipment or substances stored at the location?
 7. Is there any likelihood of exposure to chemicals, asbestos, radiation or are there any other risks, requiring the use of Personal Protection Equipment, which may affect personal health & safety? (Asbestos is referred to directly as it was present in buildings built before it was banned in 1977).
 8. Will a ladder be required to view the appeal site?, If so please: -
 - a. explain why this will be necessary;
 - b. give the height to which it will be necessary to climb the ladder;
 - c. state whether the ladder will be fixed or removable – if removable how will it be secured?
 9. Will it be necessary to view the site from a height, eg roof, balcony?
 10. Is the site easily accessible for someone in a wheelchair?
-

SECTION E

Details of the appeal

The LPA's decision notice should make it clear if they have refused or partly refused to grant a certificate of lawful use or development or have granted it in a different form to the application.

There are two types of LDC that may be applied for, under s191 and s192 of the Town and Country Planning Act ("the Act") (as amended) :-

- a. Section 191 – saying whether an **existing** use of land, operational development or activity in breach of a planning condition is lawful; and
 - b. Section 192 – saying whether a **proposed** use of buildings, land or operations intended to be carried out would be lawful.
-

SECTION F

Appeal statement

The appeal should contain a clear and concise statement of your full case and the reasons why you consider the subject of the application to be lawful.

You should note that there is no provision for the planning merits of what has been applied for to be considered. As there is no power to grant planning permission it follows that the planning merits of the development are not relevant in deciding an LDC application or appeal; it rests entirely on the facts involved in each case. It is open to you to apply to the LPA for planning permission in the normal way, without prejudice to your application or appeal for a lawful development certificate.

In your appeal statement you may wish to put forward the case that the development that has taken place or the development that you propose: -

- does not amount to development, under s55 of the Act 1990, or that the change of use is not a material one (i.e. it is not subject to the requirements of planning control);
- is permitted by the Town and Country Planning (General Permitted Development) Order 1995 (as amended), or that the change of use is within the terms of the Town and Country Planning (Use Classes) Order 1987;
- has been done, or built, within the terms of a planning permission;
- has become lawful as it is too late for the LPA to take enforcement action. The time limits are as follows: -
 - S171B(1) of the Act gives a time limit of 4 years for notices alleging operational development such as building, mining or engineering works;
 - S171B(2) gives a 4 year limit for change of use from a building/part of a building to a single dwellinghouse. This time limit applies either where the change to use as a single dwellinghouse involves development without planning permission, or where it involves a failure to comply with a condition or limitation subject to which planning permission has been granted;
 - S171B(3) states that any other change is subject to a limit of 10 years from the date of the breach. This applies to changes of use and to breaches of any conditions attached to previous planning permissions.

These time limits are set out in s171B of the Act and are confirmed in Annex 2 of Circular DETR 10/1997 Enforcing planning control: legislative provisions and procedural requirements.

It is not enough to say "the breach of planning control occurred more than ten years ago", or "The building was finished more than four years ago". You need to be able to provide evidence to establish this and the onus of proof rests with you.

You could say, for example: "The present use was started by the late George Smith in the summer of 1997. He continued it until his death in 2005. Then I bought the premises and have carried on the same use continuously until now" or, "The builder dug foundations of the building in March 2003 but he was only working part-time. Then during the summer he was able to work full time. The roof was tiled by the end of September and we started using the building in mid-October as it was very nearly finished."

SECTION G

Choice of procedure

There are 3 possible procedures: - written representations, hearings and inquiries. You should consider carefully which suits your circumstances before choosing your preferred procedure. Inspectors give equal attention to every appeal regardless of the procedure. To help you decide which procedure to choose we have criteria which indicate which is likely to be the most suitable procedure. These criteria are set out in Annexe 1¹.

Please refer to Annexe 1 before indicating which method is your preferred procedure. The Statutory Instruments give details of the procedures and the timescales.

The written representations procedure

This is normally the simplest, quickest and most straightforward way of making an appeal. About 40% of LDC appeals proceed by the written procedure. This is quicker and simpler to undertake than a hearing or inquiry and you are likely to get your appeal decided sooner.

You may wish to look at The Town and Country Planning (Enforcement) (Written Representations Procedure) (England) Regulations 2002, Statutory Instrument 2002 No. 2683.

We will use your responses to questions 1a) and 1b) to help us decide how the site visit should be conducted.

The hearing procedure

This procedure is likely to be suited to cases which require detailed discussion. Although you may indicate a preference for a hearing, the Planning Inspectorate must also consider that your appeal is suitable for this procedure. It is unlikely to be suitable if the evidence needs to be tested ie. where the factual evidence about how long the development has been on site is in dispute.

You may wish to look at The Town and Country Planning (Enforcement) (Hearings Procedure) (England) Rules 2002, Statutory Instrument 2002 No. 2684.

The inquiry procedure

This is the most formal of the procedures. The parties to the appeal will usually be legally represented and expert witnesses may be called to give evidence. It is likely to be required if the evidence needs to be tested i.e. where the factual evidence about how long the development has been on site is in dispute.

You may wish to look at The Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2002, Statutory Instrument 2002 No. 2685.

¹ These criteria are for enforcement appeals. However, they are a guide for considering the appropriate procedure for your LDC appeal.

Q3a) How long do you estimate the inquiry will last?

In answering this question you should say how long you estimate the inquiry will last, including the time you think will be required to present all of your case. The estimate should include the time you consider may be necessary for questions to be put to both your and the LPA's witnesses.

We will take account of your estimate, the estimate we receive from the LPA and our own experience when we set the likely length of the inquiry. Once set we will expect the length of the inquiry to stay within the agreed timetable.

To help us to do this please indicate at Q3b) how many witnesses you intend to call to give evidence at the inquiry and the topic areas they will cover and any other information which will help us to decide on the appropriate timetable for the inquiry.

SECTION H

Other appeals

If you have made any other related appeals which are awaiting a decision for this site or for nearby sites please supply the reference numbers. Where practical, and depending on the relevant timescales, we may consider related cases together.

SECTION I

Essential supporting documents

We have listed the documents currently required on the certificate of lawful use or development appeal form. Due to the number of appeals we receive we do not routinely 'chase' missing documents and so please make sure that you have sent us everything; if not your appeal will be delayed.

Please ensure that you have listed all the plans/drawings that you are sending to us and that they include reference to scale, orientation and paper size. You should send us copies of **all** plans sent to the LPA with your application (including plans which have been superseded, you should clearly mark these "superseded").

You should not seek to submit new material when you make your appeal that was not considered by the LPA as part of the application. Therefore, any documents submitted during the application should be directly relevant and essential to the case and in response to the reasons for refusal (if any). The Inspector will normally only consider the documents and plans which were put before and considered by the LPA.

SECTION J

Check, sign and date

This section provides a useful summary of the things you need to have done. Please check your completed form carefully, then sign and date it.

SECTION K

Now send

You must send a copy of the completed appeal form to the LPA. If you do not do this we may not accept your appeal. You do not need to send them all the documents again. If you are submitting any supporting documents that were not part of your LDC application you must send these to the LPA with the appeal form.

How we use your personal information

Under the Data Protection Act 1998 we have a legal duty to inform you about the personal information that we collect and how we use it.

When considering an appeal, the Inspectorate receives personal information from a number of sources including:

- the appellant – eg. name, address and contact details on the application and appeal form,
- the local planning authority – eg. in copies of the application documents and representations that they have received,
- other statutory appeal parties and interested parties - eg. their name and contact details in their representations.

Sometimes other personal information, such as details about a medical condition, may be relevant to the development. You should only provide personal information about yourself if you are happy for it to be placed in the public domain. You should only provide information about others, including family members, if you have their consent.

We will circulate copies of documents received to the appellant, the local planning authority and other statutory parties. The appeal papers will also be open for inspection at the local planning authority's office where anyone can view them. We will not normally refuse any requests to the Inspectorate to inspect the appeal documents.

In addition, where the appeal or case is one which we make available on our on-line Planning Casework Service (for further details see www.planningportal.gov.uk/pcs), copies of appeal documents may be made accessible over the internet. This may include your name and address, but we will remove telephone numbers, email addresses and signatures of individuals. The Inspector's decision, may contain some personal information, such as the name of the appellant or interested party, and will be made available on the internet or on request.

We may also use the personal information you submit on an appeal to contact you and seek views on the service that you received. In doing so, we may pass your contact information to a third party for the sole purpose of conducting a survey on our behalf. Although the survey may be published, any information you provide will be made anonymous unless you have otherwise been notified and provided your consent.

Further information

Further information about our privacy policy is available on our website at www.planning-inspectorate.gov.uk, or on request. If you have any queries about our policy, or wish to make a request for your personal data then please contact our Data Manager through the address below:

Contacting us

The Planning Inspectorate
Customer Support Unit
Room 3/05
Temple Quay House
2 The Square
Temple Quay
Bristol
BS1 6PN

Telephone: 0117 3726372
Fax: 0117 3728782
Email: enquiries@planning-inspectorate.gsi.gov.uk

Criteria for Determining the Procedure (Indicative) (Enforcement)

Written representations

If your appeal meets the following criteria, the most appropriate procedure would be written representations: -

1. the grounds of appeal and issues raised can be clearly understood from the appeal documents plus a site inspection and do not include a ground (d) appeal; and/or
2. the Inspector should not need to test the evidence by questioning or to clarify any other matters; and/or
3. a an environmental impact assessment (EIA) is either not required or the EIA is not in dispute; and/or
4. the alleged breach and the requirements of the notice are clear and there are no complex legal issues.

Hearing

If the criteria for written representations are not met because questions need to be asked, for example where any of the following apply: -

- the status of the appellant is at issue, eg Gypsy/Traveller;
- the need for the proposal is at issue eg agricultural worker's dwelling; Gypsy/Traveller site;
- the personal circumstances of the appellant are at issue, eg; people with disabilities or other special needs;

the most appropriate procedure would be a hearing if: -

1. there is no need for evidence to be tested by formal cross-examination; and
2. the grounds of appeal, the allegation and the requirement of the notice are straightforward (and do not require legal or other submissions to be made) and you should be able to present your own case (although you can choose to be represented if you wish); and
3. your case and that of the LPA and interested persons is unlikely to take more than one day to be heard.

Inquiry

If the criteria for written representations and hearings are not met because the evidence needs to be tested and/or questions need to be asked, as above, the most appropriate procedure would be a local inquiry if: -

1. the issues are complex and likely to need evidence to be given by expert witnesses; and/or
2. you are likely to need to be represented by an advocate, such as a lawyer or other professional expert because material facts and/or matters of expert opinion are in dispute and formal cross-examination of witnesses is required; and/or

3. legal submissions may need to be made or evidence needs to be heard under oath (e.g. where a witness is giving factual evidence about how long the alleged unauthorised use has been taking place); and/or
4. the alleged breach or the requirements of the notice are unusual and particularly contentious.

NOTE: Where proposals are controversial and have generated significant local interest they may not be suitable for the written representation procedure. We consider that the LPA is in the best position to indicate that a hearing or inquiry may be required in such circumstances.