

APPEALING PLANNING DECISIONS

Introduction

- 1 Local councils may become involved in planning in a number of ways. They could be applicants for planning permission or objectors to planning applications. They could become involved as proposers for a Neighbourhood Development Plan or Neighbourhood Development Order. They could also be interested parties in normal planning applications under the Town and Country Planning Act 1990 (“the 1990 Act”) or applications for major infrastructure projects under the Planning Act 2008.

Appealing decisions as an applicant for planning permission

- 2 Section 78 of the Town and Country Planning Act 1990 (“the 1990 Act”) provides that applicants for planning permission can appeal the decision of a local planning authority (“LPA”) where the decision of the LPA is:
 - to refuse an application for planning permission or to grant it subject to conditions;
 - to refuse an application for any consent, agreement or approval required by a condition imposed on a grant of planning permission or to grant it subject to conditions; or
 - to refuse an application for any approval required under a development order, a local development order, a neighbourhood development order or to grant it subject to conditions.
- 3 In England, applicant appeals are made to the Secretary of State. Any appeal must be made in accordance with the time limits prescribed in Article 37(2) of the Town and Country Planning (Development Management Procedure) (England) Order 2015. Type A appeals (that is, an appeal relating to land which is the subject of an enforcement notice) have to be made within 28 days from the date of the decision notice or determination giving rise to the appeal. Type B appeals (an appeal relating to land which is the subject of an enforcement notice) have to be made within 28 days from the date on which the enforcement notice is served. An appeal by a householder against a refusal of planning permission or a minor commercial appeal against a refusal of planning permission other

than a Type A or Type B appeal has to be made within 12 weeks of the date of the decision notice or determination giving rise to the appeal. Any other appeal must be made within six months of the date of the decision notice or the determination giving rise to the appeal.

- 4 In Wales, appeals are made to the Welsh Ministers. An applicant's appeal against a planning decision or a failure to take a decision must be made pursuant to the time limits set out in Article 26(2) of the Town and Country Planning (Development Management Procedure) (Wales) Order 2012. The limit is within six months (or a longer period if allowed by the Welsh Ministers) from (i) the date of the decision notice or determination giving rise to an appeal; (ii) in a case where there has been no decision notice or determination, within six months from the expiry of the eight week period beginning with the date on which the application was received by the LPA (unless a longer period has been agreed by the applicant and the LPA) or (iii) in a case in which the LPA has served a notice on an applicant who has made an application for outline planning permission that it requires further information and the applicant has not provided the information, within six months from the date of service of that notice,

Appealing decisions when a local council is an interested party

- 5 Local councils may request the LPA to notify them of planning applications in their area (paragraph 8 of Schedule 1 to the 1990 Act for England and paragraph 2 of Schedule 1A to the 1990 Act for Wales). The LPA must (i) send a copy of relevant planning applications to the local council (ii) give them an opportunity to make representations as to how the application should be determined, (iii) take into account the representations made by the local council and (iv) notify the local council of their decision. However, as stated above, only an applicant for planning permission can appeal the decision of an LPA and such an appeal can only be made in limited circumstances. The right of appeal does not extend to interested parties such as local councils or local residents. Any action they contemplate will need to be outside of legislation for planning appeals and would usually be by way of judicial review ("JR").

Judicial Review

- 6 The decisions of LPAs can be challenged outside of planning legislation by way of Judicial Review ("JR"). In respect of JR claims which challenge decisions made by the Secretary of State or the LPA under the 1990 Act, the Planning (Listed Buildings and Conservation Areas) Act 1990, the Planning (Hazardous Substances) Act 1990 and the

Planning (Consequential Provisions) Act 1990, the claim must be lodged at court within six weeks of the decision being challenged. For more information on JR please see Legal Topic Note 15 - Legal Proceedings.

- 7 Parties who wish to bring a JR are advised to follow the Pre-Action Protocol for JR, which is explained on the Ministry of Justice website and can be accessed at the following link: https://www.justice.gov.uk/courts/procedure-rules/civil/protocol/prot_jrv. Before making a claim, the protocol requires the proposed claimant to send a letter to the defendant. The purpose of this letter is to identify the issues in dispute and establish whether litigation can be avoided. The Pre-Action Protocol contains a standard template letter, which is set out in the Annex to this Note. The Protocol also contains the proposed defendant's standard letter of response. Defendants should normally respond within 14 days.

Other Sources of advice

- 8 Planning Aid gives free and independent legal advice: <http://www.planningaid.rtpi.org.uk/>
- 9 The Planning Portal is the Government's online resource for information and guidance on planning and the building regulations: <http://www.planningportal.gov.uk>.

Other Legal Topic Notes (LTNs) relevant to this subject:

LTN	Title	Relevance
15	Legal Proceedings	Sets out the law in respect of JR in more detail.
59	The rights of local councils to be notified of planning applications and decisions	Details power of local councils to make representations in respect of planning applications in their area.
61	Status of Parish, Town and Community Councils at Public Inquiries	Details involvement of local councils at planning inquiries.
62	Planning Control over Agricultural Land and Buildings	Details when planning permission may be exempt.
63	Planning & Building Control Enforcement	Sets out the powers of local authorities to take enforcement action in respect of planning breaches.
83	Neighbourhood Planning	Sets out the procedure for obtaining a Neighbourhood Development Plan or Neighbourhood Development Order.

Annex

SECTION 1. INFORMATION REQUIRED IN A LETTER BEFORE CLAIM

Proposed claim for judicial review

1

To

(Insert the name and address of the proposed defendant – see details in section 2)

2

The claimant

(Insert the title, first and last name and the address of the claimant)

3

Reference details

(When dealing with large organisations it is important to understand that the information relating to any particular individual's previous dealings with it may not be immediately available, therefore it is important to set out the relevant reference numbers for the matter in dispute and/or the identity of those within the public body who have been handling the particular matter in dispute – see details in section 3)

4

The details of the matter being challenged

(Set out clearly the matter being challenged, particularly if there has been more than one decision)

5

The issue

(Set out the date and details of the decision, or act or omission being challenged, a brief summary of the facts and why it is contented to be wrong)

6

The details of the action that the defendant is expected to take

(Set out the details of the remedy sought, including whether a review or any interim remedy are being requested)

7

The details of the legal advisers, if any, dealing with this claim

(Set out the name, address and reference details of any legal advisers dealing with the claim)

8

The details of any interested parties

(Set out the details of any interested parties and confirm that they have been sent a copy of this letter)

9

The details of any information sought

(Set out the details of any information that is sought. This may include a request for a fuller explanation of the reasons for the decision that is being challenged)

10

The details of any documents that are considered relevant and necessary

(Set out the details of any documentation or policy in respect of which the disclosure is sought and explain why these are relevant. If you rely on a statutory duty to disclose, this should be specified)

11

The address for reply and service of court documents

(Insert the address for the reply)

Proposed reply date

(The precise time will depend upon the circumstances of the individual case. However, although a shorter or longer time may be appropriate in a particular case, 14 days is a reasonable time to allow in most circumstances)

SECTION 2. ADDRESS FOR SENDING THE LETTER BEFORE CLAIM

Public bodies have requested that, for certain types of cases, in order to ensure a prompt response, letters before claim should be sent to specific addresses.

- **Where the claim concerns a decision in an Immigration, Asylum or Nationality case:**

—The claim may be sent electronically to the following email address:

UKVIPAP@homeoffice.gsi.gov.uk

—Alternatively the claim may be sent by post to the following UK Border Agency postal address:

Judicial Review Unit
 UK Border Agency
 Lunar House
 40 Wellesley Rd
 Croydon CR9 2BY

- **Where the claim concerns a decision by the Legal Services Commission:**

—The address on the decision letter/notification;

Legal Director
 Corporate Legal Team
 Legal Services Commission
 102 Petty France
 London SW1H 9AJ

- **Where the claim concerns a decision by a local authority:**

—The address on the decision letter/notification; and

—Their legal department⁸

- **Where the claim concerns a decision by a department or body for whom Treasury Solicitor acts and Treasury Solicitor has already been involved in the case a copy should also be sent, quoting the Treasury Solicitor's reference, to:**

The Treasury Solicitor,
 One Kemble Street,
 London WC2B 4TS

In all other circumstances, the letter should be sent to the address on the letter notifying the decision.

SECTION 3. SPECIFIC REFERENCE DETAILS REQUIRED

Public bodies have requested that the following information should be provided in order to ensure prompt response.

- **Where the claim concerns an Immigration, Asylum or Nationality case, dependent upon the nature of the case:**

- The Home Office reference number
- The Port reference number
- The Asylum and Immigration Tribunal reference number
- The National Asylum Support Service reference number

Or, if these are unavailable:

- The full name, nationality and date of birth of the claimant.

- **Where the claim concerns a decision by the Legal Services Commission:**

- The certificate reference number.