



Six Pump Court

Community Participation in Planning Appeals

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Planning appeals – when, why and who ?

- Refusal by LPA planning officers using their delegated powers;
- The LPA fails to determine the application within the time limit;
- Refusal by the planning committee despite officer recommendation;
- Who? – no third party right to appeal.

Appeal basics

- Finding out about the appeal
- The Planning Inspectorate (“PINS”) and procedure used
- The parties, and Rule 6
- Written representations (Part 1 and Part 2)
- Hearings
- Inquiries
- Procedural Guides – important to follow ! See final slide for links

Inquiry procedure

- Venue
- Opening statements
- Evidence in chief
- Cross examination
- Site visit
- Closing statements and costs applications
- Decision

The inquiry running order



Inspector's opening address

Appellant's opening statement

Council's opening statement

Rule 6 opening statement

Interested Parties session

Inquiry topic 1

LPA witness gives evidence in chief ("EIC")

LPA witness cross examined by appellant's advocate ("XX")

LPA witness re-examined ("RX")

Rule 6 witness (if any) EIC

Rule 6 witness XX by appellant's advocate

Rule 6 witness RX

Appellant's witness EIC

Appellant's witness XX by LPA advocate

Appellant's witness XX by Rule 6 advocate

Appellant's witness RX

[repeat for each inquiry topic unless 'round table']

'Round table' session on conditions and planning obligations (s.106).

Accompanied site visit.

Closing statements : Usually LPA first, then Rule 6. Appellant has the last word.

Costs applications (if any).

Inquiry closed.



The golden rules of effective planning advocacy

- Put yourself in the Inspector's shoes at every stage - try to make their job easier, not harder.
- Make sure your documents are easy to read, clearly structured, and concise.
- Support your case with evidence (which doesn't have to be "expert evidence")
- Comply with the Procedure Rules and Guidance.
- For Rule 6 parties specifically : don't duplicate the Council's case.

The legal test

“in accordance with the development plan unless material considerations indicate otherwise”.

Section 38(6) Planning and Compulsory Purchase Act 2004, and s.70(2) Town and Country Planning Act 1990.

The Inspector must consider :

- The relevant **development plan policies** and whether the development complies with these
- Whether the development complies with **“the plan as a whole”**
- Any other **material considerations**
- All of the above in the **‘planning balance’** – does the balance fall for, or against, a grant of permission ?

What is a “material consideration” in planning ?

- ✓ Policies other than the development plan e.g. Supplementary Planning Documents (“SPD”)
- ✓ National Planning Policy Framework (“NPPF”)
- ✓ National Planning Practice Guidance (“NPPG”)

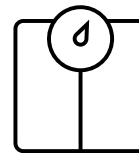
Wide range of other considerations which can be material if they **relate to the character/use of the land** and **reasonably relate to the development e.g.**

- ✓ Traffic and highway safety including parking
- ✓ Air quality
- ✓ Ecological impacts
- ✓ Pressure on local services e.g. schools and GPs
- ✓ Noise and disturbance once development is in use



Loss of property value

Loss of a view



NB : **weight** is a matter for the decision maker (subject to irrationality)

Appeals – where to begin ?

- Council's planning website : planning application and appeal documents.
 - Read at least the planning officer's report ('delegated report' or 'report to committee'), the decision notice ("DN") refusing permission, the appeal statement, the Design and Access Statement, and the site masterplan.
 - Check the PINS casework portal for the "**start letter**".
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- *What are the Council's reasons for refusal ?*
 - *What do the development plan policies in the decision notice say?*
 - *Any relevant NPPF policies?*
 - *What is the appellant's case ?*
 - *Are there policies not mentioned in the decision notice which could make a difference to the appeal?*
 - *Were "material considerations" left out of the DN?*

Thinking of asking for Rule 6 status ?

2.3. Depending on whether you oppose or support the appeal/application, you may wish to consult the LPA or the appellant to find out what their position will be at the inquiry. This will help you to decide whether your position can be satisfactorily represented by them. If this is the case, you would not need to ask us for rule 6 status.

Need to apply asap after receipt of LPA letter re appeal

Are there important planning issues not mentioned in the reasons for refusal ?

Will the Council be dropping any of the reasons for refusal ? Seek advice before pursuing..

Are you / can you form a group ?

Will you have time to prepare for an inquiry ?

Do you have witnesses to support your case (community members or experts on technical matters)?

Do you have a spokesperson willing to cross-examine professional witnesses / advocate ?

How will your group function : who makes the main decisions and instructs advocate/experts ?

Are you free for the CMC and inquiry dates ?

Does your group understand the risk of a costs award ?

If not, you can still speak as an interested person.

You can change your mind and withdraw as a Rule 6 party – but do it asap and ideally before submitting a statement of case.



Costs

- Rule 6 parties are potentially at risk of a costs award, but only if they act “unreasonably” and this causes another party unnecessary expense.
- Criteria for a costs award and examples of unreasonable behaviour are in the PPG on Costs: (see last slide).
- If you support your case with evidence, don’t raise new issues after the statement of case, and comply with the procedural timetable, an award against you is highly unlikely.
- Any party may apply for costs, or Inspector may award costs of their own accord but that is unusual.
- A costs award can be full or partial.
- NB the appellant might tactically threaten costs (they shouldn’t, but it has happened).

Example of unreasonable behaviour leading to partial costs award against Rule 6 party (Town Council) : major residential development of 650+homes, access/traffic issues, Town Council objected to proposed pedestrian access route, having initially asked for that same route (!).

What happens next ?

Apply for Rule 6 status **as soon as possible** after receipt of LPA letter re the appeal.

Think about whether to instruct **expert witnesses** and/or **counsel**.

Submit your **statement of case** within 4 weeks of letter granting Rule 6 status.

“all the details and arguments (as well as supporting documents and evidence) which a person will put forward to make their case in the appeal.” Procedural Guide para 12.1.1

Concise – no more than 3000 words.

Attend the **case management conference** usually within 7 weeks of the start date.

Be ready to tell the Inspector who you are calling as witness(es) and on which issues

Submit your **proof(s) of evidence** 4 weeks before the inquiry date. Finally, check the **inquiry timetable**.



After the appeal?

- If the appeal succeeds, consider a legal challenge?
- Decision must be **wrong in law** – not just disagreement with the Inspector's planning judgement
- Short **time limit** of 6 weeks (NB s.289 challenge to decision on an enforcement notice = 28days)
- Be mindful of time for '**letter before claim**'.
- Consider funds and costs protection, Aarhus Convention
- Take **legal advice** !

THANK YOU FOR LISTENING – ANY QUESTIONS ?



Links

[Planning Practice Guidance](#)

[Procedural Guide : Planning Appeals](#)

[Guide to taking part in appeals determined by written representations](#)

[Guide to taking part in appeals determined by hearing](#)

[Guide to Rule 6 for Interested Parties](#)

[Planning Practice Guidance : appeal costs](#)

[PINS casework portal](#)

