

**When to Appeal and Can You Get Your Costs Back?**

On the 3rd of October 2013 the Department for Communities and Local Government issued a 21 page Guidance document entitled "Planning and other appeals, and the award of costs".

The October 2013 Guidance is divided into five parts:

<b>A</b>	Introduction
<b>B</b>	Is there a right of appeal on planning and related decisions, such as advertisement consent, listed building consent, and enforcement?
<b>C</b>	What are the options for appeal if an application for planning permission is refused or is granted but with unacceptable conditions attached?
<b>D</b>	Can other related decisions and consents such as advertisement consent, listed building consent and enforcement be appealed?
<b>E</b>	Can an award of costs be sought if a party behaves unreasonably?

**Part A**

The Introduction to the Guidance notes that changes to appeal procedures came into force from 1 October 2013, including the introduction of a new Commercial Appeals Service and, as a result, it has necessitated the creation of replacement Guidance.

**Part B**

This part of the Guidance refers to section 78 of the Town and Country Planning Act 1990 (the statutory right of appeal against decisions about planning permission).

DCLG note the importance of discussing changes to proposals following a refusal to see if amendments can be made to a scheme to make it acceptable, rather than proceeding straight to appeal. It cautions applicants to consider the merits of their case and whether they have strong grounds of appeal prior to submission and the risk of a costs award being made against any appellant who proceeds to appeal with very weak grounds.

The Guidance notes an applicant can appeal against non-determination as well as refusal and the issue of consent with unreasonable conditions and that varying time periods apply.

There is reference to the fact that appeals are generally determined by a Planning Inspector on behalf of the Secretary of State but that the Secretary of State has powers to recover appeals in various circumstances. It is worth noting that Eric Pickles has recently extended his powers to recover renewable energy projects.

The determination of appeals in accordance with section 38(6) of the Planning and Compulsory Purchase Act 2004 (i.e. determination in accordance with the development plan unless material considerations indicate otherwise) is re-stated. The appeal is determined "de novo" in other words as if the application for planning permission had been made direct to the Secretary of State rather than the Local Planning Authority.

The procedure that will be followed at appeal depends upon the type of appeal with Householder Appeals and Commercial Appeals having their own expedited services. The majority of appeals are determined by written representations with hearings and inquiries used where the cases are more complex and evidence needs to be tested in greater depth.

The Guidance finally notes in Part B that the right of appeal is limited to the applicant and any challenge by a third party has to be by way of Judicial Review which must be brought within 6 weeks of the date when the ground to make the claim first arose, this is usually the date the decision is issued. Any challenge to the appeal decision is a statutory challenge under section 288 of the Town and Country Planning Act 1990 and must be brought within 6 weeks of the date of issue of the decision.

**Part C**

This part of the Guidance considers options for appeal in respect of a planning application. It firstly notes that the time period after which an appeal against non-determination can be lodged will depend upon the type of application: 8 weeks for non-major applications, 13 weeks for major applications and 16 weeks for applications accompanied by an Environmental Statement. The appeal must be submitted within six months of the date by which the planning decision should have been made. There is also the ability to appeal against non-validation of a planning application.

Most planning appeals must be received within six months of the date on the decision notice. If the application is a Householder Appeal then, as this is a fast-track process, there are only 12 weeks within which to submit the appeal. For Commercial Appeals the time periods are 12 weeks (appeals related to shop fronts) and 8 weeks (advertisement consent appeals). Finally, if an appeal on an application for planning permission is linked to enforcement action, then there are only 28 days to make the appeal.

The Planning Inspectorate's Performance Targets for the determination of appeals are set out:

<b>Householder appeals service</b>	80% within 8 weeks
<b>Commercial appeals service</b>	80% within 8 weeks
<b>Written representations</b>	80% within 14 weeks
<b>Hearings</b>	80% within 14 weeks
<b>Inquiries</b>	80% within 22 weeks.

Reference is also made to the Planning Guarantee which requires that all decisions are made within a maximum of 26 weeks – with the exception of inquiries lasting for more than 3 days for which a bespoke timetable is agreed between the parties.

Third party involvement in the appeals process is covered in brief terms. With regard to Householder appeals and Commercial appeals no new representations will be considered at appeal, only those submitted during the application stage are reviewed. For all other appeals, further representations by third parties can be submitted and certain parties have the right to appear at hearings or inquiries.

## Part D

Part D considers appeals in relation to:

- (i) a refusal of advertisement consent;
- (ii) the Community Infrastructure Levy on a development;
- (iii) an enforcement notice;
- (iv) the decision on an application for hazardous substances consent;
- (v) the refusal of a lawful development certificate;
- (vi) the refusal of a listed building consent;
- (vii) a listed building enforcement notice;
- (viii) the local planning authority's refusal to grant prior approval for development under the neighbours' consultation scheme;
- (ix) local planning authority decisions with regard to Tree Preservation Orders.

The Guidance refers parties to the Planning Inspectorate's Procedural Guide which is available on the Planning Portal:

<http://www.planningportal.gov.uk/planning/appeals/guidance/guidanceontheappealprocess>.

## Part E

The final part of the re-issued Guidance considers whether an award of costs can be sought if a party behaves unreasonably. The normal position is that parties bear their own costs of an appeal. However, where a party has behaved unreasonably and this has caused another party to incur unnecessary or wasted expense in the appeal process, they may be subject to a partial or full award of costs. Reference is made to the Planning Inspectorate's costs guidance publication, which is available on the Planning Portal:

<http://www.planningportal.gov.uk/planning/appeals/guidance/costs>

An award of costs can be made by either the Planning Inspector or the Secretary of State if they consider that a party has behaved unreasonably, even where no party applies for costs.

Decisions on cost awards are made entirely separately to the appeal decision. The Inspector/Secretary of State can only make a decision as to whether costs are awarded and not to the quantum of the award which is settled subsequently between the parties. If the parties cannot agree on the sum then an application can be made to the Senior Courts Costs Office.

## Conclusion

The Guidance provides a useful aide memoire about planning and other appeal processes and directs the reader to other Guidance available on the Planning Portal.

If you have any queries regarding the appeal process generally or a specific appeal then please do not hesitate to contact Julia Dixon or your usual contact within the Squire Sanders Planning & Consents Team.

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