

Hearings

Robert Walton

16th October 2017

Appeals by subject matter:



	Major development	Minor development	Change of Use	Householder	Not Classified	Total
2010/11	1,010	7,389	1,604	1,073	64	11,140
2011/12	891	7,356	1,375	870	22	10,514
2012/13	907	7,460	1,260	917	18	10,562
2013/14	1,031	6,746	1,287	908	15	9,987
2014/15	1,316	6,995	1,340	967	135	10,753
2015/16	1,408	7,293	1,580	1,325	300	11,906
2016/17 ^P	1,292	7,923	1,377	979	450	12,021

Appeal – determination procedure



	Written Representations	Hearings	Inquiries	Total	Written Representations	Hearings	Inquiries
2010/11	9,320	1,318	502	11,140	84%	12%	5%
2011/12	8,984	1,091	439	10,514	85%	10%	4%
2012/13	9,043	1,067	452	10,562	86%	10%	4%
2013/14	8,543	964	479	9,986	86%	10%	5%
2014/15	9,376	864	472	10,712	88%	8%	4%
2015/16	10,424	905	448	11,777	89%	8%	4%
2016/17	10,725	673	393	11,791	91%	6%	3%

Results



% allowed

Written Representations	Hearings	Inquiries	All
30%	40%	49%	32%
32%	43%	54%	34%
33%	43%	63%	35%
32%	47%	60%	34%
31%	44%	54%	32%
31%	44%	59%	32%
31%	41%	54%	33%

Decision date:



	Receipt to Start	Start to Event	Event to Decision
Written reps	7	9	4
Hearing	13	15	10
Inquiry	15	34	18

Key points

- Written representations dominate: 90%+
- More hearings than inquiries (just): 6% v 3%
- Inquiries much slower
- Approval rates very different:
 - Written reps: 30%
 - Hearings: 40%
 - Inquiries 55%

Deciding how to decide...

- Section 319A of the 1990 Act;
- PINS *Planning Appeals* Procedural Guide (August 2016):
 - Section 2.7
 - Decision within 7 days
 - Take into account views of Appellant and LPA (and others)
 - Will give reasons where reach a different view
 - Appellant / LPA can ask for review
 - High Court challenge
 - Annex K (see next slides)

Annex K – written reps

- issues can be clearly understood from the appeal documents and a site inspection (if required);
- the issues are not complex;
- the Inspector is not likely to need to test the evidence by questioning or to clarify any other matters;
- in an enforcement appeal the alleged breach, and the requirements of the notice, are clear.

Annex K: hearings

- need to test the evidence by questioning or to clarify matters;
- the case has generated a level of local interest;
- issues are relatively straightforward;
- No need for:
 - Evidence on oath
 - Formal testing of evidence
 - Representation by advocate

Annex K: inquiries



- there is a clearly explained need for the evidence to be tested through formal questioning by an advocate; or
- the issues are complex;
- substantial local interest;
- evidence needs to be given on oath;
- Issues are unusual and particularly contentious;

Playing the system?

- Increased prospect of success at hearing or inquiry
- Justification letter stressing complexities
- Unresolved issues (e.g. viability) to get to hearing / inquiry
- Threat of JR

Hearing procedure

- **Town and Country Planning (Hearings Procedure) (England) Rules 2000**
 - Regulation 3A: SS to serve notice on Appellant and LPA “as soon as practicable after” s.319A determination.
 - Everything runs from “start date” – i.e. date of regulation 3A notice.

Procedural requirements:



Party	Requirement	Due date
Appellant	Appeal form, full statement of case, supporting documents draft statement of common ground I.E: FRONT LOADING CRITICAL	n/a
LPA	Appeal questionnaire	1 week from Start Date
LPA	Statement of Case and Statement of Common Ground	5 weeks from Start Date
3 rd parties	Comments	5 weeks from Start Date
PINS	Confirms hearing date	Hearing within 10 weeks of Start Date
Appellant	s.106	No later than 10 days before the hearing
-	Costs application	In writing before hearing

Change of procedure?

- Write to PINS pursuant to regulation 8 of the 2000 Rules;
- Request if necessary during the hearing itself;
- Threat of JR
- Inspector can change the procedure – must consult parties;

Procedure at hearing

- Rule 11:
 - Inspector to determine procedure except as otherwise provided by the Rules;
 - Discussion led by the Inspector;
 - No cross examination unless Inspector considers it necessary; may result in closure of hearing and upgrade to Inquiry;
 - Inspector must identify issues at the start of hearing
 - Person entitled to appear may call evidence
 - Other evidence at Inspector's discretion

How to get the Inspector on side...

- Comply with rules!
- Structured presentation
 - Who is leading / summarising
 - Who is covering which issue
 - Keep it short and to the point
 - Refer to documents
 - Know your case
 - Stick to the script
 - LPA – avoid using Members on overturn decisions

Site Inspection



- Rule 12
 - Inspector may adjourn hearing to site visit

Decision



- Reasoned decision: regulation 16
- High Court Challenge...?