

Public Inquiry

Usually only used for complex issues and normally will involve lawyers and planning and other consultants. All parties can present evidence and can be cross examined. It can be quite like a Court Hearing though without much of the formality. A public inquiry is invariably more expensive and time consuming than the other types of appeal and the result will take longer.

The decision

The Reporter will issue his decision in writing. Your appeal will either be granted or dismissed. If the appeal decision is to allow your proposed development to take place, the Reporter will usually impose planning conditions.

The Reporter's decision can only be challenged on legal grounds. You will be given advice on this with the appeal decision. Any challenge is to the Court of Session and you will probably need legal assistance – it can be costly.

Some general advice on appeals

On average only one Planning appeal in three in Scotland is successful.

An appeal can only consider the specific planning merits of the case and not, for instance, the planning procedures or the approach of the staff involved.

There is no fee for lodging an appeal (other than in an enforcement appeal), but there will be a cost if you employ professional advisors, particularly for a public inquiry.

Expenses can be awarded against either party on grounds of unreasonable behaviour. Expenses are not necessarily awarded directly as a result of the planning issues nor because an appeal succeeds. A claim for expenses must be made as part of your written representations or during a public inquiry. The Reporter will decide any application for expenses at the end of the process.

Making an appeal can be seen as a last resort. Even if you have been refused planning permission or have received an enforcement notice, you always have the opportunity to discuss matters with planning officers to try to achieve a more satisfactory result.

If in any doubt, please contact your local Planning and Building Control Office; details of locations given in Leaflet 1.

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This series of leaflets is intended to give you some general advice and guidance on the planning and building control system; they are not a definitive guide to the law. Please note that this list is being added to on a regular basis.

John Rennilson, Director of Planning and Development MA MSc MRTPI MRICS MCM1

Leaflet 7

How to Appeal

Planning & Building Control Help & Advice Leaflets

I'm unhappy with a planning decision - what can I do?

You may be unhappy with the Council's decision to refuse your planning application or to grant it with conditions that you think are unreasonable. You may equally be unhappy that although you objected to an application, the Council still granted it planning permission.

What can you do?

The easiest thing is to speak to the Officer handling the application. His or her name will be on letters from the Council or, if the application has gone to Committee, on the Committee Report. However, if you are not sure, contact the local Area Planning & Building Control Office who will be able to help. Their telephone numbers and addresses are given in the companion leaflet "Where to find us".

The Officer will be able to explain why your application was refused or why certain conditions were attached to it. If you are an objector then he or she will explain why the application was granted despite your objections and, in some cases, why conditions were put on the consent in the light of your concerns.

I'm still not satisfied

If you don't want to speak to the Officer or if, once you have done so, you are still not satisfied then what can you do?

If you are an applicant you can:

- Appeal against the decision to the Scottish Executive Inquiry Reporters Unit.
- Apply to the Court of Session to have the decision set aside.

The law does not give objectors similar rights of appeal.

If you are an applicant or an objector you can also complain to the Ombudsman if you have a concern about the way the matter was handled, within 12 months of the day on which you found out about the matter.

Scottish Public Services Ombudsman

Freepost EH641
Edinburgh EH3 0BR

Telephone: 0870 011 5378

www.scottishombudsman.org.uk

What can be appealed?

You can appeal if the Council:

- Refuses your planning application.
- Grants you planning permission subject to conditions that you are unhappy with.
- Doesn't decide your application within 2 months of it being registered if you haven't agreed to extend the time period.
- Serves you with an enforcement notice.

There are a number of other circumstances where an appeal may also be possible.

When the Council sends you the decision notice on your application, we will give information on how to appeal, including the time within which the appeal must be made.

How do I appeal?

You must contact the Scottish Executive Inquiry Reporters Unit; you can get details from the planning office, informing them that you wish to appeal. They will send you an appeal form together with helpful information. When completing the form you must be careful to set out the facts clearly and state all your reasons for appeal. You must send them all the documents they need along with your appeal form, including copies of:

- the planning application form and plans which you originally sent to the planning office;
- the decision notice; and
- all relevant correspondence.

You must also copy everything you send to the Reporters Unit to the Council at the same time. Similarly the Council and any third parties will send copies of their views and comments on your appeal to the Reporters Unit and to yourself.

Appeals can be dealt with by:

Written representations

The most common, least costly, quickest and easiest way. You set out your reasons for your appeal in the form from the Reporters Unit. The Council and any objectors can comment in turn. The Reporter then usually visits the site before deciding the appeal on the basis of the planning considerations involved and the statements made to him.

Informal hearings

Simpler and quicker than a public inquiry where there is limited third party interest and the issues are straightforward.