



LAPPC/ LA-IPPC Advice Notes

Appeals

Introduction

The aim of this Advice Note is to give operators general advice on what they must do if they wish to appeal against a decision made by the Borough Council.

Advice & Guidance

It is recommended that each operator should at least be aware of the general requirements of the following legislation and as a minimum obtain a copy of the PG Note that relates to their Permitted Installation.

- Pollution Prevention and Control Act 1999
- Pollution Prevention and Control (England and Wales) Regulations 2000 (as amended)
- Process Guidance Notes (PG Notes)
- Specific Guidance Notes (SG Notes Part A2's only)
- General Guidance Manual on Policy and procedures for A2 and B Installations

Permit Conditions

Conditions contained within permits are legally binding. Amongst other things, conditions will require operators to use the best available techniques (BAT) (regulation 11(2)). This, together with a consideration of local circumstances, provides the main basis for setting emission limit values and operational controls.

Appeals

Operators of LAPPC and LA-IPPC installations may appeal to the Secretary of State under regulation 27 against certain decisions made by the Borough Council. Schedule 8 of the PPC Regulations sets out the detailed procedures.

In accordance with regulation 27(11), appeal decisions can be delegated to persons appointed by the Secretary of State for that purpose in line with section 114 of the Environment Act 1995. In practice, many appeal cases are determined by the Planning Inspectorate.

Types of Appeal

Under section 27 operators have the right of appeal against the enforcing authority in the following circumstances:

- a) refusal or deemed refusal to grant a permit;
- b) refusal of an application for a variation notice;
- c) if the operator disagrees with the conditions imposed by the authority as a result of a permit application or an application for a variation notice;
- d) refusal of an application to transfer a permit, or if the operator disagrees with the conditions imposed by the authority to take account of such a transfer;
- e) refusal of an application to surrender a permit, or if the operator disagrees with the conditions imposed by the authority to take account of the surrender; or
- f) the service of a variation notice (not following an application by the operator), a revocation notice, an enforcement notice, or a suspension notice on the operator.

Under section 31(6)-(8) operators have the right of appeal against a decision that information will not be withheld from the public register for reasons of commercial confidentiality.

The rights to appeal, listed in a) – f) above, do not apply where the decision or notice implements a direction given by the Secretary of State.

Appeals under point c) - e) above do not stop the conditions coming into effect. Appeals against variation, enforcement and suspension notices do not stop the notices coming into effect. Appeals against revocation notices do prevent the notices coming into effect until the appeal is decided or withdrawn. Appeals do not have the effect of suspending permit conditions, or any of the mentioned notices except revocation notices.

Timing of appeals

Notice of appeal must be given within the time-scales detailed below. The Secretary of State has the power to extend some of the limits but would only do so in the most compelling circumstances.

- for the appeals detailed under (a) to (e) ; an appeal must be received by the Planning Inspectorate within six months of the date of the decision or deemed decision which is the subject matter of the appeal;
- for appeals detailed under (f): an appeal made against a revocation notice must be received by the Planning Inspectorate before the date on which the revocation takes effect; and
- appeals made against a variation notice, (not requested by the operator), an enforcement notice, or a suspension notice, must be received by the Planning Inspectorate within two months of the date of the notice which is the subject matter of the appeal.

How to appeal

There are no forms or charges for appealing. However, for an appeal to be valid, appellants (the person/operator making the appeal) are legally required to provide (see Schedule 8, paragraph 1):

- written notice of the appeal;
 - a statement of the grounds of appeal;
 - a statement indicating whether the appellant wishes the appeal to be dealt with by written representations procedure or a hearing - a hearing must be held if either the appellant or enforcing authority requests this, or if the Planning Inspector or the Secretary of State decides to hold one.
- (appellants must copy the above three items to the local authority when the appeal is made)
- a copy of any relevant application;
 - a copy of any relevant permit;
 - a copy of any relevant correspondence between the appellant and the regulator;
- and
- a copy of any decision or notice, which is the subject matter of the appeal.

Appellants should state whether any of the information enclosed with the appeal has been the subject of a successful application for commercial confidentiality under regulation 31 of the PPC Regulations, and provide relevant details. Unless such information is provided all documents submitted will be open to inspection.

Where to send your appeal documents

Appeals should be despatched on the day they are dated, and addressed to:

The Planning Inspectorate
Environmental Appeals Administration
Room 4/19 - Eagle Wing
Temple Quay House
2 The Square
Temple Quay
Bristol BS1 6PN

On receipt of an appeal and during the appeal process both main parties will be informed about the next steps, and will also normally be provided with additional copies of each other's representations.

To withdraw an appeal – which may be done at any time - the appellant must notify the Planning Inspectorate in writing and copy the notification to the local authority who must in turn notify anyone with an interest in the appeal.

Local authority responsibilities

Within 14 days of receipt of the notice of appeal the local authority must inform:

- statutory consultees
- any person who has made representations to the local authority with respect to the subject matter of the appeal; and
- any person who appears to the local authority to have a particular interest in the subject matter of the appeal.

The local authority must inform the above parties that an appeal has been made and by whom; describe the application or permit to which the appeal relates; and state that representations can be made in writing to the Planning Inspectorate within 21 days of the date of the notice. The note should also explain that any representations made will be copied to the appellant and the local authority, and will be entered in a public register unless that person requests otherwise.

Within 14 days of sending such a notice the local authority needs to inform the Planning Inspectorate to whom and on what date this notice was sent. If the appeal is withdrawn the local authority will inform all the people who received the original notice.

Written representations

Where the appeal is to be dealt with by written representations the local authority has 28 days (from first receiving notice of the appeal) in which to submit written representations to the Planning Inspectorate. The operator then has 17 days (starting from the date of the local authority's representations) to make further representations. Any representations made by the operator or the local authority must bear the date on which they were submitted to the Planning Inspectorate, and must be copied to the other party. In addition the Planning Inspectorate will send both parties copies of any representations made by third parties and will allow them at least 14 days in which to make representations on them.

Site visits

When the exchange of representations is completed a Planning Inspector will usually make an accompanied site visit and then issue a decision letter, or if the case is to be recovered for decision, make a report to the Secretary of State.

Hearings

If a hearing is to be held the two main parties will be asked to submit, well in advance, details of the case they wish to make at the hearing, and to copy this 'statement of case' to the other party. A date is fixed for the hearing after consultation with both parties, and a planning inspector is appointed. The two main parties will be formally notified of the hearing arrangements at least 28 days in advance (or earlier if agreed by both parties).

At least 21 days in advance of a public hearing, the Planning Inspectorate will place a notice about the hearing in a local newspaper and inform statutory consultees, and those parties who have made representations on the appeal. The Planning Inspectorate may vary the date of the hearing but would have to follow the same notification procedure, they may also vary the time and place of the hearing as long as they give reasonable notification.

Anyone may attend the hearing, and those interested persons may speak at it, at the Planning Inspector's discretion. The Inspector has powers to hold part or all of the hearing in private, but it is expected that this will happen only rarely, for example in cases involving commercial confidentiality.

Hearings may be relatively small and informal, or in very exceptional cases an inquiry may be held. For example, where particularly complex technical evidence is involved and cross-examination may be needed, or where there are a large number of submissions. Hearings include a site inspection. Afterwards the Inspector will issue a decision letter or if the case is to be recovered for decision, make a report to the Secretary of State

Assessors

In some hearing cases an assessor may be appointed by the Planning Inspectorate on behalf of the Secretary of State to advise the Inspector on specific technical matters. The assessor will sit alongside the Inspector and consider the representations made. The assessor will normally write a report to the Inspector, the contents of which will be made public (unless issues of confidentiality are involved). Where an assessor is appointed, everyone entitled to appear at the inquiry will be notified of the assessor's name and the matters on which he or she is to advise the Inspector.

Determination and notification of appeals

When determining appeals the Planning Inspector or the Secretary of State, if the case is recovered, will take into account all relevant information, giving the two main parties the opportunity to comment on new relevant evidence that he/she proposes to take into consideration, before issuing a decision letter.

On determination the Inspector or Secretary of State, if the case is recovered, can affirm or quash decisions, conditions and notices and can direct the local authority to grant and vary conditions of a permit. The Secretary of State can give directions as to the conditions to be attached to the permit. The Inspector can give directions on the Secretary of State's behalf.

The decision will be copied to interested parties and must be placed in the public register held by the relevant local authority. Reports of hearings must also be copied to the two main parties and placed in the public register.

Copies of decision letters can be obtained at a small charge from:

The Planning Inspectorate
Temple Quay House
2 The Square
Temple Quay
Bristol BS1 6PN
Telephone: 0117 372 6372
Fax: 0117 372 8782
E-mail: enquiries@planning-inspectorate.gsi.gov.uk

Recovery by the Secretary of State

As mentioned previously the Secretary of State reserves the right to recover individual appeal cases to determine herself. In these cases the Inspector will make a report to the Secretary of State rather than issuing a decision. The criteria for identifying recovered cases are:

- cases involving processes or sites of major importance;
- cases giving rise to significant public controversy;
- cases which raise significant legal difficulties;
- cases which can only be decided in conjunction with other cases over which Planning Inspectors have no jurisdiction;
- cases which raise major or novel issues of industrial pollution control which could set a policy precedent, for example case involving the use of new techniques; and other cases which, exceptionally, merit recovery because of particular circumstances.

Complaints about the decision

The decision can be challenged in court. If the appeal is quashed in proceedings before any court the main parties will be notified and asked to provide any further representations within 28 days. The Secretary of State may then ask for a hearing to be held or re-opened and the appeal will be re-determined.

Complaints against the Planning Inspectorate

The letters acknowledging receipt of the appeal will give the name of the Case Officer. The Case Officer should be the first person contacted with any enquires or complaints about the handling of the appeal. If this is not satisfactory the Complaints Officer can be contacted at the following address:

Costs

Guidance from the Planning Inspectorate states that operator and regulator would be normally expected to pay their own expenses during an appeal. Where a hearing or enquiry is held as part of the appeal process, by virtue of Schedule 8, paragraph 4(10), either the appellant or the local authority can apply for costs. Applications for costs are normally heard towards the end of the proceedings and will only be allowed if the party claiming them can show that the other side behaved unreasonably and put them to unnecessary expense. There is no provision for costs to be awarded where appeals are dealt with by written representatives.

Contact Details

Environmental Quality Team
Environmental Health & Housing Department
Borough Council of King's Lynn & West Norfolk
King's Court, Chapel Street
King's Lynn, Norfolk, PE3- 1EX
Tel: 01553 616200
Fax: 01553 775163
Email: envhealthandhousing@west-norfolk.gov.uk
Website: www.west-norfolk.gov.uk