



The Planning Inspectorate
Yr Arolygiaeth Gynllunio

The Planning Inspectorate

Appeals against a notice issued under section 36(3) or
37(1) of the Countryside Rights of Way Act 2000.

A guide for Interested Persons

Contents

	Page
Introduction	2
1. Who can appeal?	4
2. How do I take part?	4
3. The Procedure for dealing with appeals	6
4. The written procedure	8
5. The hearing procedure	8
6. The inquiry procedure	9
7. Costs	13
8. Complaints and Challenges	14
9. How we use your personal information	16

Appeals against a notice issued by a relevant authority (RA) (RA) requesting that works be carried out to give the public reasonable access to an area of access land.

Chapter three of the Countryside and Rights of Way Act 2000 (otherwise referred to in this booklet as **the Act**) contains measures for a RA to issue a notice requesting that works be carried out to give the public reasonable access to an area of access land. The RA can be the Countryside Council for Wales (CCW), or where the land falls within a National Park, the National Park Authority. If the land has been dedicated to the care of the Forestry Commission and is predominantly woodland, the Commissioners will deal with any access issues.

Section 38 of the Act makes provision for an owner or occupier of access land to appeal to the Planning Inspectorate against such notices. Appeals can be made against a notice under section 36(3) if the works requested in the notice are not necessary to fulfil the agreement, if the works have already been carried out or if the amount of time given by the RA for completion of the works is not long enough. Appeals against a notice under section 37(1) can be made when the works requested in the notice are not necessary to allow the public reasonable access to the land, when the owner or occupier feels that the means of access should be provided elsewhere or by other means and if any of the works have already been carried out.

Any appeals that are made will be decided by the Planning Inspectorate on behalf of the National Assembly for Wales.

This guidance explains the procedure for those wishing to participate in appeals against a notice issued by a RA requesting that works be carried out to give the public reasonable access to an area of access land under section 36(3) or section 37(1) of the Countryside and Rights of Way Act 2000.

The information it contains was correct when it was published, but it has no legal status.

About the Planning Inspectorate

We are an agency of the National Assembly for Wales and the Office of the Deputy Prime Minister. From our office in Cardiff, we deal with appeals against the refusal of the RA in Wales not to restrict or exclude access to land for the purposes of land management, fire and danger or nature conservation and heritage preservation or not to have acted in accordance with the representation(s) made by a person interested in the land. From our office in Bristol we deal with similar appeals for land in England.

The Inspectors, who judge the appeals, have a variety of backgrounds. We choose the Inspectors very carefully and train them thoroughly. They generally work from home.

When our office staff receive an appeal, they will collect information about the case from both the RA and the Appellant. If you have any questions about the appeal you can contact the case officer. We will give you their name and phone number. Just before the site visit, hearing or inquiry, the case officer will send the appeal papers to the Inspector, who will study them. After visiting the site, or holding a hearing or inquiry, the Inspector writes the decision.

1. Who can appeal?

Only people who have been served by the RA with a notice issued by a RA requesting that works be carried out to give the public reasonable access to an area of access land under section 36(3) or section 37(1) of the Act can appeal.

An appeal must be made within the ***appeal period***. This is the period specified for completion of works in the notice that gave rise to the appeal.

We will not normally accept late appeals.

The appeal must be made on our standard appeal form.

2. How do I take part?

If an interested person wishes to make representations they should write direct to us. Timetables and procedures to be followed are outlined later in this document.

You should be aware that any submissions you make will be made available for inspection and copying. You should not, therefore, include personal information unless you are happy for it to be seen by others.

Before commenting on any appeal, please take a look at our website (www.planning-inspectorate.gov.uk/accesswales/wal/index.htm) which will display information about every appeal. This will help you identify the exact location of the appeal site and the nature of any restriction. This will help you make your comments more relevant to the issues at the heart of the appeal.

Any representations about means of access appeals in Wales should be sent to us at:

The Planning Inspectorate
The Access Mapping and Restriction Team
Crown Buildings
Cathays Park
Cardiff
CF10 3NQ

accesswales@planning-inspectorate.gsi.gov.uk

We welcome representations in Welsh or English

Publicity

We must publish notice of every appeal we receive on our Welsh and English language websites (www.planning-inspectorate.gov.uk/accesswales/wal/index.htm and www.planning-inspectorate.gov.uk/accesswales/cym/index.htm) to give people and organisations an opportunity to comment. The notice provides details of where members of the public can view documents relating to the appeal.

We also publish scanned versions of the appeal documents on our website. This includes the appellants appeal form and supporting documents, the RA's questionnaire, representations from the appellant, RA and interested persons at the six week stage and further representations from the appellant and RA at the nine week stage.

We must notify the access authority for the area, the local access forum and anyone who has commented to the RA about the original application. They will have an opportunity to comment further on the representations that they made at application stage. They will also be told where they can see documents relating to the appeal.

There will be an opportunity for the appellant and RA to comment on any representations from interested persons. The Inspector will consider these and those of the interested persons, before coming to a decision, provided that they are received within the timetable.

You should be aware that any submissions you make will be published on our web site and will be made available for inspection and copying. You should not, therefore, include personal information unless you are happy for it to be seen by others.

3. The Procedure for dealing with appeals

The initial stages are the same for all appeal procedures, whether they are decided by way of written representations, hearing or inquiry. Interested persons will be told of an appeal if they have already made representations in respect of the appeal site (at application stage) and will have six weeks from the **start date** to either add to or withdraw their comments.

If you did not make representations previously (and so will not be told of an appeal), you will be able to find out if an appeal has been made on a site by checking our web site. Again, any comments must be made before the six week deadline.

The 'start date'

As soon as we have received a valid appeal, we will copy it to the RA. They will then complete a questionnaire which they will send to the appellant and us, together with copies of any relevant correspondence.

We will then tell the appellant, RA, the Local Access Forum and anyone who has commented about the original application the procedure the appeal will follow as well as the start date.

The start date is the date from which the timetable for each stage of the procedure is calculated. We will be setting start dates after the appeal period has ended. The letter we send you will set out the timetable for submission of evidence by all parties.

The six week time limit

Interested persons must submit any representations within six weeks of the start date. The appellant and the RA must also provide written statements of case by the same date. **We will not normally accept late representations, except in exceptional circumstances.**

If we consider that any of your representations contain racist or abusive comments, we will send them back to you before the Inspector sees them. If you take out the racist or abusive comments, you can send your comments back to us. But we must receive them before the time limit ends.

When the start date is set, we will also post notice of the appeal on our web site to allow anyone to be aware of the appeal and make representations about it if they wish.

The nine-week time limit

Within nine weeks of the start date, appellants and the RA can comment on each other's statements of case and on any comments from interested persons.

Welsh language

The Planning Inspectorate delivers an equally high standard of service to its customers in Welsh and English.

We recognise that our customers can express their views better in their preferred language of communication. Accordingly, we welcome communications to us in Welsh or English.

Any person wishing to speak at an inquiry or a hearing in the Welsh language may do so, but it would be helpful if you could inform The Planning Inspectorate beforehand so that arrangements can be made.

It is not always possible to arrange for a Welsh speaking Inspector to attend the site visit. On these occasions we will arrange for an interpreter to assist the Inspector and ensure that the parties have the opportunity to communicate in the language of their choice.

The three types of procedure

4. The written procedure

This is likely to be the easiest and least expensive procedure for the appellant and the RA because they do not need to attend a hearing or inquiry. Appeals dealt with by written representations are decided based upon the written statements that the appellant, RA and interested persons have made. The appellant and RA can comment on each other's arguments and those made by interested persons.

Normally the Inspector will visit the site to make an inspection of it before making a decision.

5. The hearing procedure

A hearing is a discussion about the appeal led by the Inspector. It is more informal and usually quicker than an inquiry and gets the parties to focus upon the main issues of disagreement. We expect most hearings to be completed within an hour and a half.

Hearings are not always suitable for all appeals, especially those which are complicated or controversial, or have caused a lot of local interest or where it is necessary to cross-examine witnesses.

Notice of the hearing

Once the arrangements have been finalised we will give the appellant, the RA and any interested persons who have made representations about the appeal at least four weeks notice of the hearing.

Conduct of the hearing

The procedure to be followed at a hearing is for the Inspector to decide.

The Inspector will normally open at the appointed time, even if the appellant or RA is absent. The Inspector will introduce him/herself and describe the purpose of the hearing. The Inspector will summarise his/her understanding of the case from reading the papers and will outline what he/she considers to be the main issues and indicate any matters which require further clarification or explanation. This will not prevent any party raising issues that the Inspector does not mention.

The appellant and the RA are the only parties with a statutory right to speak at the hearing. But, the Inspector will not unreasonably withhold permission from any other person to appear provided they have something relevant to say that has not already been said. Regardless of who is speaking, the Inspector may refuse to hear evidence that is irrelevant, repetitious or offensive.

Where the Inspector refuses to permit someone to give oral evidence, that person may submit to the Inspector any evidence or other matter in writing before the close of the hearing.

The Inspector may require anyone present at the hearing who is behaving in a disruptive manner to leave the hearing and refuse to allow him or her to return, or to return only on conditions specified by the Inspector. But that person may submit to the Inspector any evidence or other matter in writing before the close of the hearing.

After the hearing

A site visit will normally take place (see Hearing/Inquiry site visits)

After the site visit has taken place the Inspector will give a written decision based on all relevant evidence. When making the decision the Inspector will, in all but exceptional circumstances, disregard any written representations, evidence or any other document received after the hearing has closed.

6. The Inquiry procedure

This is the most formal and demanding of the three procedures. We consider that public inquiries will only be required for appeals involving very complex or numerous issues, or where large numbers of people wish to attend. An application for costs may be made by any party against any other party at an inquiry (see section seven).

The early stages of an appeal following the inquiry procedure are very similar to those for hearings and written representations appeals. *But there some differences that the parties will have to adhere to.*

Statement of common ground

At least four weeks before the opening of the inquiry the appellant and the RA must send us a statement of common ground. This is a written statement that the appellant and the RA must prepare jointly. It should contain such basic matters such as a site description and any other undisputed factual matters, as well as any

agreements as the evidence that the main parties have been able to reach. Its purpose is to set out the agreed factual information about the appeal and it should, by narrowing the areas of dispute, result in shorter inquiries.

Advertising the inquiry

We will tell your local authority, the relevant local access forum and any people who have written to us about the arrangements for the inquiry.

At the inquiry

The Inspector will start by introducing him or herself, announce the subject of the inquiry and ask for the names of all those who wish to speak. The Inspector will then normally explain the procedure.

Everyone who takes part in the inquiry must follow the same rules. This is to make sure that the procedure is fair to everyone. The Inspector will make sure that he has all the information needed to decide the appeal.

The RA will usually present their case first, then call any witnesses. The appellant can then present their case in the same way. Either party or the Inspector can ask questions during this process.

The appellant and the RA are the only parties with a statutory right to speak at the inquiry. But the Inspector will not unreasonably withhold permission from any other person to appear provided they have something relevant to say which has not already been said. Regardless of who is speaking, the Inspector may refuse to hear evidence that is irrelevant, repetitious or offensive.

Where the Inspector refuses to permit someone to give oral evidence, that person may submit to the Inspector any evidence or other matter in writing before the close of the inquiry.

The Inspector may require anyone present at the inquiry who is behaving in a disruptive manner to leave the inquiry and refuse to allow him or her to return, or to return only on conditions specified by the Inspector. But that person may submit to the Inspector any evidence or other matter in writing before the close of the inquiry.

Hearing/Inquiry site visits

In the majority of cases, the Inspector will visit the appeal site before making the decision. In hearing of inquiry cases, the site

visit will normally take place after the Inspector has heard all the evidence. The site visit may take place on the day of the hearing or inquiry, but if not shortly after.

At the end of the hearing or inquiry, the Inspector will ask if the appellant, the RA and anyone else wish to attend. When deciding whether to accompany the Inspector you should bear in mind that the Inspector will be unable to accept new evidence or discuss the evidence already given **including interested person representations**. But the Inspector may ask for physical features referred to in the evidence to be pointed out at the site.

This rule will be strictly observed by Inspectors. Should you try to raise points of evidence during the visit, the Inspector will ask you not to do so and explain why. If you continue to discuss the evidence, the Inspector may ask you to leave the site.

Late comments

The Inspector will only consider any evidence we receive after the inquiry has closed in extraordinary circumstances. If we get new evidence after the inquiry but before we issue the Inspector's decision, we will pass it to the Inspector to decide if he/she will consider it. If, in very unusual circumstances they do, we will pass it on to the other people who were involved in the inquiry. If necessary, we will re-open the inquiry.

People with disabilities

We want to hold all inquiries in buildings that give proper facilities for people with disabilities. The RA usually choose and provide the place and we have asked them to pay particular attention to the needs of people with disabilities. If you, or anyone you know want to go to the inquiry and you have particular needs, please contact the RA to confirm they can make proper arrangements.

Meetings before an inquiry

Sometimes, if a lot of people want to go to the inquiry or the appeal is complicated and likely to last for more than eight days, we will arrange a meeting before the inquiry (a pre-inquiry meeting). Its purpose will be to identify the key issues to be discussed at the inquiry. **The pre-inquiry meeting will not hear any evidence which must be heard at the full inquiry.**

No-one other than the two main parties has a right to attend a pre-inquiry meeting (and for this reason we will not give notice of it).

Where the Inspector thinks it desirable for anyone in addition to the appellant and the RA to be present, those people or organisations may be invited to the pre-inquiry meeting. We will give at least two weeks written notice if someone is to be invited.

The decision

The Inspector's decision on an appeal will always be made in writing. It will usually:

- Briefly describe the reason for the appeal;
- Identify the important issues; and
- Examine the main arguments for and against the appeal and explain why the Inspector has come to the decision.

A copy will be sent to the appellant, the RA, interested persons and anyone else who is entitled to a copy or who has asked for one. All decision letters will be displayed on our websites in English

www.planning-inspectorate.gov.uk/accesswales/wal/index.htm

and in Welsh

www.planning-inspectorate.gov.uk/accesswales/cym/index.htm.

7. Costs

You will normally have to pay your own expenses for making representations in an appeal, whether it is decided by way of written representations, a hearing or inquiry. If the appeal is decided by a hearing or inquiry and you can show that the appellant or the RA behaved unreasonably and put you to unnecessary or wasted expense you can ask the Inspector to order the appellant or the RA to pay some or all of your costs.

In general, interested persons will not have costs awarded to them, or against them, where unreasonable behaviour by the appellant or RA relates to the substance of the case. But, where unreasonable conduct relating to procedural matters caused unnecessary expense, interested persons may be awarded costs, or have costs awarded against them.

For further information on the rules relating to costs, please see Welsh Office Circular 23/93 available from the Stationery Office, telephone number 0870 6005572 or their website www.hmsso.gov.uk, or on the Inspectorate's website www.planning-inspectorate.gov.uk/cymru/wal/index_e.htm.

8. Complaints and Challenges

Complaints about us

If you have any complaints or questions about the decision, or the way we have handled the appeal, please write to:

Complaints Manager
The Planning Inspectorate
Crown Buildings
Cathays Park
Cardiff
CF10 3NQ

Phone: 029 2082 3889

Fax: 029 2082 5150

E-mail: wales@planning-inspectorate.gsi.gov.uk

The Complaints Manager will reply to you, or they will ask a section within the Inspectorate to reply because they have specific specialist knowledge.

We will investigate your complaint and you can expect a full reply within three weeks. **However, we cannot reconsider an appeal if the decision has already been made on it.**

How can I challenge a decision?

You may be able to challenge the decision by way of judicial review in the High Court. The Inspectorate strongly recommends that you seek legal advice if you intend to do so.

The Welsh Administration Ombudsman

If you think that we have not treated you fairly, you can ask the Ombudsman to investigate. The Ombudsman has no power to question the merits of an appeal or to alter the decision. The Ombudsman is only concerned with the way we deal with and administer appeals. The Ombudsman will usually expect you to have made a complaint to us first before investigating your case. You can complain to the Ombudsman at:

The Welsh Administration Ombudsman
Fifth Floor
Capital Tower
Greyfriars Road
Cardiff
CF10 3AG

The Council on Tribunals

If you feel that there was something wrong with the basic procedure we used for dealing with an appeal, you can complain to the Council on Tribunals at:

Council on Tribunals
22 Kingsway
London
WC2B 6LE

The Council will take up your complaint if they think it concerns them. Like the Ombudsman, they are not concerned with the merits of an appeal and have no power to alter the decision.

Appeals in England

If you want to enquire about appeals against a notice issued by a RA requesting that works be carried out to give the public reasonable access to an area of access land in England, please contact the English Access and Restriction Team at;

English Access and Restriction Team
Room 215
Regus House
1 Friary
Temple Quay
Bristol BS1 6EA

Phone: 0117-344 5680 or 5738

Fax: 0117-344 5242 E-mail: access@pins.gsi.gov.uk

9. How we use your personal information

If you participate in an appeal against a notice issued under section 36(3) or 37(1) of the Countryside and Rights of Way Act 2000, then the type of personal information contained in your representations will normally include your name, contact details and any other personal information you choose to provide.

We use the information provided to process the appeal, and this includes making your written representations available to the appellant, the relevant authority and other statutory parties.

We publish the Inspector's decision on the Planning Portal. In some cases, we also publish appeal documents and representations, including names and addresses. Phone numbers, fax numbers and e-mail addresses are removed before publication.

The guidance in this leaflet explains the appeal process in more detail and you are advised to read this leaflet before providing any representations. For further details please see our privacy statement:

www.planningportal.gov.uk/planning/appeals/online/about/privacysatement

If you have any queries about our use of your personal information please contact us at the address below.

Further information

Further information about our privacy policy is on the Planning Portal at www.planningportal.gov.uk/planning/appeals/online/about/privacysatement=wa or on request. If you have any queries about our policy, or wish to request your personal data, then please contact us through the address below:

Contacting us

The Planning Inspectorate
Crown Buildings
Cathays Park
Cardiff CF10 3NQ
Phone: 029 2082 3866
E-mail: wales@planning-inspectorate.gsi.gov.uk
Website: www.planning-inspectorate.gov.uk