

2002 No. 2684

TRIBUNALS AND INQUIRIES, ENGLAND

The Town and Country Planning (Enforcement) (Hearings Procedure) (England) Rules 2002

Made - - - - - *23rd October 2002*

Laid before Parliament *1st November 2002*

Coming into force - - *23rd December 2002*

The Lord Chancellor, in exercise of the powers conferred on him by section 9 of the Tribunals and Inquiries Act 1992(a) and of all other powers enabling him in that behalf, and after consultation with the Council on Tribunals, hereby makes the following Rules:

Citation, commencement, and extent

1.—(1) These Rules may be cited as the Town and Country Planning (Enforcement) (Hearings Procedure) (England) Rules 2002.

(2) These Rules shall come into force on 23rd December 2002.

(3) These Rules extend to England only.

Interpretation

2. In these Rules—

“certificate of lawful use or development” means a certificate under section 191 or 192 of the Planning Act;

“document” includes a photograph, map or plan;

“enforcement appeal” means an appeal against an enforcement notice;

“enforcement notice” means a notice under section 172 of the Planning Act or under section 38 of the Listed Buildings Act;

“hearing” means a hearing to which these Rules apply;

“hearing statement” means, and consists of, a written statement which contains full particulars of the case which a person proposes to put forward at a hearing and copies of any documents which that person intends to refer to or put in evidence;

“inquiry” means a local inquiry to which the Town and Country Planning (Enforcement) (Inquiries Procedure) (England) Rules 2002(b) or the Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2002(c) apply;

“inspector” means—

(a) in relation to a transferred appeal, a person appointed by the Secretary of State to determine an appeal;

(b) in relation to a non-transferred appeal, a person appointed by the Secretary of State to hold a hearing or a re-opened hearing;

(a) 1992 c. 53, to which there are amendments not relevant to these Rules.

(b) S.I. 2002/2686.

(c) S.I. 2002/2685.

“land” means the land or building to which the hearing relates;

“the Listed Buildings Act” means the Planning (Listed Buildings and Conservation Areas) Act 1990(a);

“local planning authority” means in relation to—

- (a) an enforcement appeal, the body who issued the relevant enforcement notice;
- (b) an appeal against the refusal or non-determination of an application for a certificate of lawful use or development, the body to whom that application was made;

“non-transferred appeal” means an appeal which falls to be determined by the Secretary of State, including an appeal which falls to be so determined by virtue of a direction under paragraph 3(1) of Schedule 6 to the Planning Act or paragraph 3(1) of Schedule 3 to the Listed Buildings Act;

“Planning Act” means the Town and Country Planning Act 1990(b);

“questionnaire” means a document in the form supplied by the Secretary of State to local planning authorities for the purpose of proceedings under these Rules;

“the relevant notice” means the Secretary of State’s written notice under rule 4(1) informing the appellant and the local planning authority that a hearing is to be held;

“starting date” means the date of the—

- (a) Secretary of State’s written notice to the appellant and the local planning authority that he has received all the documents required to enable him to entertain the appeal pursuant to regulation 10 of the Town and Country Planning (Enforcement Notices and Appeals) (England) Regulations 2002(c); or
- (b) relevant notice,

whichever is later;

“transferred appeal” means an appeal which falls to be determined by a person appointed by the Secretary of State under Schedule 6 to the Planning Act or Schedule 3 to the Listed Buildings Act.

Application of the Rules

3.—(1) These Rules apply in relation to any hearing held in England for the purposes of a non-transferred or a transferred appeal made on or after 23rd December 2002 under—

- (a) section 174 of the Planning Act (appeal against enforcement notice);
- (b) section 195 of the Planning Act (appeal against refusal or non-determination of an application for a certificate of lawful use or development);
- (c) section 39 of the Listed Buildings Act (appeal against listed building enforcement notice) or under that section as applied by section 74(3) of that Act (appeal against conservation area enforcement notice);

but do not apply to any hearing by reason of the application of any provision mentioned in this paragraph by or under any other enactment.

(2) Where these Rules apply in relation to an appeal which at some time fell to be disposed of in accordance with the Town and Country Planning (Enforcement) (Inquiries Procedure) (England) Rules 2002(d) or the Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2002(e), any step taken or thing done under those Rules which could have been done under any corresponding provision of these Rules shall have effect as if it had been taken or done under that corresponding provision.

Preliminary information to be supplied by local planning authority

4.—(1) The Secretary of State shall, as soon as practicable after it is determined to hold a hearing under these rules, inform the appellant and the local planning authority in writing that a hearing is to be held.

(a) 1990 c. 9.
(b) 1990 c. 8.
(c) S.I. 2002/2682.
(d) S.I. 2002/2686.
(e) S.I. 2002/2685.

- (2) The local planning authority shall within 2 weeks of the starting date—
 - (a) send to the Secretary of State and the appellant a completed questionnaire and a copy of each of the documents referred to in it;
 - (b) in the case of an enforcement appeal, notify any—
 - (i) person on whom a copy of the enforcement notice has been served;
 - (ii) occupier of property in the locality in which the land to which the enforcement notice relates is situated; and
 - (iii) other person who in the opinion of the local planning authority is affected by the breach of planning control or contravention of listed building or conservation area control which is alleged in the enforcement notice,

that an appeal has been made and of the address to which and of the period within which they may make representations to the Secretary of State.

Hearing statements

5.—(1) The appellant and the local planning authority shall send 2 copies of their hearing statement to the Secretary of State within 6 weeks of the starting date.

(2) The Secretary of State may in writing require the appellant and the local planning authority to provide such further information about the matters contained in their hearing statement as he may specify; such information shall be provided in writing and the appellant or the local planning authority, as the case may be, shall send 2 copies to the Secretary of State within such period as the Secretary of State may reasonably require.

(3) Any person who was notified about the appeal under rule 4(2)(b), shall send to the Secretary of State 3 copies of any written comments they wish to make concerning the appeal within 6 weeks of the starting date.

(4) The appellant and the local planning authority shall send to the Secretary of State 2 copies of any comments the local planning authority and the appellant wish to make on—

- (a) each other's hearing statement;
- (b) comments made pursuant to paragraph (3); and
- (c) comments made to them by any other person,

within 9 weeks of the starting date.

- (5) The Secretary of State shall send, as soon as practicable after receipt, a copy of any—
 - (a) hearing statement received by him pursuant to paragraph (1), further information provided pursuant to paragraph (2) and any comments received pursuant to paragraph (4) from, in each case, the appellant or the local planning authority to the other of those two parties; and
 - (b) written comments made by persons pursuant to paragraph (3), to the local planning authority and the appellant.

(6) The local planning authority shall give any person who so requests a reasonable opportunity to inspect, and where practicable, take copies of—

- (a) the local planning authority's completed questionnaire, hearing statement and any document copied to the authority under paragraph (5); and
- (b) further information provided by the authority under paragraph (2) and comments made by the authority under paragraph (4),

and shall specify in their hearing statement the time and place where such documents may be inspected.

(7) The Secretary of State shall send to the inspector, as soon as practicable after receipt, any hearing statement, document, part of any document or written comments sent to the Secretary of State within the relevant period specified for sending such documents pursuant to paragraphs (1) to (4).

(8) In the case of a non-transferred appeal, the Secretary of State, and in the case of a transferred appeal, the inspector, may in determining the appeal disregard any comments made pursuant to paragraphs (3) and (4) which are sent after the relevant specified period.

Date and notification of hearing

- 6.—(1) The date fixed by the Secretary of State for the holding of a hearing shall be—
- (a) not later than 12 weeks after the starting date, unless he considers such a date impracticable; or
 - (b) the earliest date after that period which he considers to be practicable.
- (2) Unless the Secretary of State agrees a lesser period of notice with the appellant and the local planning authority, he shall give not less than 4 weeks written notice of the date, time and place fixed by him for the holding of a hearing to every person entitled to appear at the hearing.
- (3) The Secretary of State may vary the date fixed for the holding of a hearing, whether or not the date as varied is within the period of 12 weeks mentioned in paragraph (1); and paragraph (2) shall apply to a variation of a date as it applied to the date originally fixed.
- (4) The Secretary of State may vary the time or place for the holding of a hearing and shall give notice of any such variation as appears to him to be reasonable.
- (5) The Secretary of State may in writing require the local planning authority to take one or both of the following steps—
- (a) not less than 2 weeks before the date fixed for the holding of a hearing, to publish a notice of the hearing in one or more newspapers circulating in the locality in which the land is situated;
 - (b) to send a notice of the hearing to such persons or classes of persons as he may specify, within such period as he may specify.
- (6) Every notice of hearing published or sent pursuant to paragraph (5) shall contain—
- (a) a clear statement of the date, time and place of the hearing and of the powers enabling the Secretary of State or inspector to determine the appeal in question;
 - (b) a written description of the land sufficient to identify approximately its location;
 - (c) a brief description of the subject matter of the appeal; and
 - (d) details of where and when copies of the local planning authority's completed questionnaire and documents sent by and copied to the authority pursuant to rule 5 may be inspected.

Notification of name of inspector

- 7.—(1) Subject to paragraph (2), the Secretary of State shall notify the name of the inspector to every person entitled to appear at the hearing.
- (2) Where the Secretary of State appoints another inspector instead of the person previously appointed and it is not practicable to notify the new appointment before the hearing is held, the inspector holding the hearing shall, at its commencement, announce his name and the fact of his appointment.

Method of procedure

- 8.—(1) If either the appellant or the local planning authority at any time before or during the hearing is of the opinion that the hearings procedure is inappropriate in determining the appeal and that the appeal should not proceed in this way then they may inform the Secretary of State, before the hearing, or the inspector, during the hearing, of their opinion and the reasons for it and—
- (a) the Secretary of State, before the hearing, shall, after consulting the other party who may inform the Secretary of State of his opinion pursuant to this paragraph, decide whether an inquiry should be arranged instead; or
 - (b) the inspector, during the hearing, shall, after consulting the other party who may inform the inspector of his opinion pursuant to this paragraph, decide whether the hearing should be closed and an inquiry held instead.
- (2) If at any time during a hearing it appears to the inspector that the hearings procedure is inappropriate, he may, after consulting the appellant and the local planning authority, decide to close the proceedings and arrange for an inquiry to be held instead.

Appearances at hearing

9.—(1) The persons entitled to appear at the hearing are—

- (a) the appellant;
- (b) the local planning authority;
- (c) in the case of an enforcement appeal, any person on whom a copy of the enforcement notice has been served; and
- (d) in the case of an enforcement appeal or an appeal under section 195 of the Planning Act, any person having an interest in the land.

(2) Nothing in paragraph (1) shall prevent the inspector from permitting any other person to appear at a hearing, and such permission shall not be unreasonably withheld.

(3) Any person entitled or permitted to appear may do so on his own behalf or be represented by any other person.

Inspector may act in place of Secretary of State in respect of transferred appeals

10.—(1) This rule applies where a hearing is to be held or has been held for the purposes of a transferred appeal.

(2) An inspector may take such steps as the Secretary of State is required or enabled to take under or by virtue of rules 5(2), 5(5), 6 and 18, in place of the Secretary of State.

(3) Where an inspector requires further information or copies pursuant to rules 5(2) or 18(2) that information or copies shall be sent to him.

Procedure at hearing

11.—(1) Except as otherwise provided in these Rules, the inspector shall determine the procedure at a hearing.

(2) A hearing shall take the form of a discussion led by the inspector and cross-examination shall not be permitted unless the inspector considers that cross-examination is required to ensure a thorough examination of the main issues.

(3) Where the inspector considers that cross-examination is required under paragraph (2) he shall consider, after consulting the appellant and the local planning authority, whether the hearing should be closed and an inquiry held instead.

(4) At the start of the hearing the inspector shall identify what are, in his opinion, the main issues to be considered at the hearing and any matters on which he requires further explanation from any person entitled or permitted to appear.

(5) Nothing in paragraph (4) shall preclude any person entitled or permitted to appear from referring to issues which they consider relevant to the consideration of the appeal but which were not issues identified by the inspector pursuant to that paragraph.

(6) A person entitled to appear at a hearing shall be entitled to call evidence but, subject to the foregoing and paragraphs (7) and (8), the calling of evidence shall otherwise be at the inspector's discretion.

(7) The inspector may refuse to permit the—

- (a) giving or production of evidence; or
- (b) presentation of any other matter,

which he considers to be irrelevant or repetitious; but where he refuses to permit the giving of oral evidence, the person wishing to give the evidence may submit to him any evidence or other matter in writing before the close of the hearing.

(8) The inspector may—

- (a) require any person appearing or present at a hearing who, in his opinion, is behaving in a disruptive matter to leave; and
- (b) refuse to permit that person to return; or
- (c) permit him to return only on such conditions as he may specify,

but any such person may submit to him any evidence or other matter in writing before the close of the hearing.

(9) The inspector may allow any person to alter or add to a hearing statement received under rule 5 so far as may be necessary for the purposes of the hearing; but he shall (if necessary by adjourning the hearing) give every other person entitled to appear who is appearing at the hearing an adequate opportunity of considering any fresh matter or document.

(10) The inspector may proceed with a hearing in the absence of any person entitled to appear at it.

(11) The inspector may take into account any written representation or evidence or any other document received by him from any person before a hearing opens or during the hearing provided that he discloses it at the hearing.

(12) The inspector may from time to time adjourn a hearing and, if the date, time and place of the adjourned hearing are announced at the hearing before the adjournment, no further notice shall be required.

Site inspections

12.—(1) Where it appears to the inspector that one or more matters would be more satisfactorily resolved by adjourning the hearing to the appeal site he may adjourn the hearing to that site and conclude the hearing there provided he is satisfied that—

- (a) the hearing would proceed satisfactorily and that no party would be placed at a disadvantage;
- (b) all parties present at the hearing would have the opportunity to attend the adjourned hearing;
- (c) the local planning authority and the appellant have not raised reasonable objections to it being continued at the appeal site.

(2) Unless the hearing is to be adjourned to the appeal site pursuant to paragraph (1), the inspector—

- (a) may inspect the land during the hearing or after its close; and
- (b) shall inspect the land if requested to do so by the appellant or the local planning authority before or during the hearing.

(3) Where the inspector intends to make an inspection under paragraph (2), he shall ask the appellant and the local planning authority whether they wish to be present.

(4) Where the appellant or the local planning authority have indicated that they wish to be present the inspector shall announce the date and time at which he proposes to make the inspection during the hearing and shall make the inspection in the company of—

- (a) the appellant, the local planning authority and any other person who has an interest in the land; and
- (b) at the inspector's discretion, any other person entitled or permitted to appear at the hearing who is appearing or did appear at it.

(5) The inspector shall not be bound to defer an inspection of the kind referred to in paragraph (2) where any person mentioned in paragraph (4) is not present at the time appointed.

Procedure after hearing—non-transferred appeals

13.—(1) This rule applies where a hearing has been held for the purposes of a non-transferred appeal.

(2) After the close of the hearing, the inspector shall make a report in writing to the Secretary of State which shall include his conclusions and his recommendations or his reasons for not making any recommendations.

(3) When making his determination the Secretary of State may disregard any written representations, evidence or other document received after the hearing has closed.

(4) If, after the close of the hearing, the Secretary of State—

- (a) differs from the inspector on any matter of fact mentioned in, or appearing to him to be material to, a conclusion reached by the inspector, or
- (b) takes into consideration any new evidence or new matter of fact (not being a matter of government policy),

and is for that reason disposed to disagree with a recommendation made by the inspector, he shall not come to a decision which is at variance with that recommendation without first notifying the persons entitled to appear at the hearing who appeared at it of his disagreement and the reasons for it.

(5) Where persons entitled to appear at the hearing who appeared are notified pursuant to paragraph (4), the Secretary of State shall give them an opportunity to make written representations to him or (if the Secretary of State has taken into consideration any new evidence or new matter of fact, not being a matter of government policy) to ask for the re-opening of the hearing.

(6) Those making written representations or requesting the hearing to be re-opened pursuant to paragraph (5), shall send such representations or requests to the Secretary of State within 3 weeks of the date of the Secretary of State's notification under that paragraph.

(7) The Secretary of State may, as he thinks fit, cause a hearing to be re-opened, and he shall do so if asked by the appellant or the local planning authority in the circumstances mentioned in paragraph (5) and within the period mentioned in paragraph (6).

(8) Where a hearing is re-opened pursuant to rule (7) (whether by the same or a different inspector)—

- (a) the Secretary of State shall send to the persons entitled to appear at the hearing who appeared at it a written statement of the matters on which further evidence is invited; and
- (b) paragraphs (2) to (6) of rule 6 shall apply as if the reference to a hearing were references to a re-opened hearing.

Procedure after hearing—transferred appeals

14.—(1) This rule applies where a hearing has been held for the purposes of a transferred appeal.

(2) When making his decision the inspector may disregard any written representations, or evidence or any other document received after the hearing has closed.

(3) If, after the close of the hearing, an inspector proposes to take into consideration any new evidence or any new matter of fact (not being a matter of government policy) which was not raised at the hearing and which he considers to be material to his decision, he shall not come to a decision without first—

- (a) notifying persons entitled to appear at the hearing who appeared at it of the matter in question; and
- (b) giving them an opportunity to make written representations to him or to ask for the re-opening of the hearing,

and they shall send such written representations or requests to re-open the hearing to the Secretary of State within 3 weeks of the date of the notification.

(4) An inspector may, as he thinks fit, cause a hearing to be re-opened and he shall do so if asked by the appellant or the local planning authority in the circumstances and within the period mentioned in paragraph (3).

(5) Where a hearing is re-opened pursuant to paragraph (4)—

- (a) the inspector shall send to the persons entitled to appear at the hearing who appeared at it a written statement of the matters on which further evidence is invited; and
- (b) paragraphs (2) to (6) of rule 6 shall apply as if the references to a hearing were references to a re-opened hearing.

Notification of decision—non-transferred appeals

15.—(1) This rule applies where a hearing has been held for the purposes of a non-transferred appeal.

(2) The Secretary of State shall notify his decision on an appeal, and his reasons for it, in writing to—

- (a) the appellant and the local planning authority;
- (b) all persons entitled to appear at the hearing who did appear; and

- (c) any other person who, having appeared at the hearing, has asked to be notified of the decision.

(3) Where a copy of the inspector's report is not sent with the notification of the decision, the notification shall be accompanied by a statement of his conclusions and of any recommendations made by him; and if a person entitled to be notified of the decision has not received a copy of that report, he shall be supplied with a copy of it on written application to the Secretary of State.

(4) In this rule "report" does not include any documents appended to the inspector's report; but any person who has received a copy of the report may apply to the Secretary of State in writing for an opportunity to inspect any such documents and the Secretary of State shall give him that opportunity.

(5) A person applying to the Secretary of State under—

- (a) paragraph (3) shall send his application to the Secretary of State within 4 weeks;
- (b) paragraph (4) shall send his application to the Secretary of State within 6 weeks, of the date of the Secretary of State's decision.

Notification of decision—transferred appeals

16.—(1) This rule applies where a hearing has been held for the purposes of a transferred appeal.

(2) An inspector shall notify his decision on an appeal, and his reasons for it, in writing to—

- (a) the appellant and the local planning authority;
- (b) all persons entitled to appear at the hearing who did appear; and
- (c) any other person who, having appeared at the hearing, has asked to be notified of the decision.

(3) Any person entitled to be notified of the inspector's decision under paragraph (2) may apply to the Secretary of State in writing, for an opportunity to inspect any documents listed in the notification and the Secretary of State shall give him that opportunity.

(4) A person applying to the Secretary of State under paragraph (3) shall send his application to the Secretary of State within 6 weeks of the date of the inspector's decision.

Procedure following remitting of appeal

17.—(1) Where an appeal, for which a hearing has been held, is remitted by any court to the Secretary of State for rehearing and redetermination, the Secretary of State—

- (a) shall send to the persons entitled to appear at the hearing who appeared at it a written statement of the matters on which further representations are invited in order for him to consider the appeal further;
- (b) shall give those persons the opportunity to make written representations to him on those matters or to ask for the re-opening of the hearing; and
- (c) may, as he thinks fit, cause the hearing to be re-opened or an inquiry held instead (whether by the same or a different inspector) and if he re-opens the hearing paragraphs (2) to (6) of rule 6 shall apply as if the reference to a hearing were to a re-opened hearing.

(2) Those persons making representations or asking for the hearing to be re-opened under paragraph (1)(b) shall send such representations or requests to the Secretary of State within 3 weeks of the date of the written statement sent under paragraph (1)(a).

Further time and additional copies

18.—(1) The Secretary of State may at any time in any particular case allow further time for the taking of any step which is required or enabled to be taken pursuant to these Rules, and references in these Rules to a day by which, or a period within which, any step is required or enabled to be taken shall be construed accordingly.

(2) The Secretary of State may at any time before the close of a hearing request from any person entitled to appear additional copies of the following—

(a) a hearing statement or comments sent in accordance with rule 5; or
(b) any other document or information sent to the Secretary of State before or during a hearing,
and may specify the time within which such copies should be sent to him and any person so requested shall ensure that the copies are sent within the specified period.

Notices sent by post

19. Notices or documents required or authorised to be sent under these Rules may be sent by post.

23rd October 2002

Rosie Winterton
Parliamentary Secretary,
Lord Chancellor's Department

EXPLANATORY NOTE

(This note is not part of the Rules)

These Rules regulate the procedure to be followed for hearings in England caused by the Secretary of State to be held before he or an inspector determine appeals made to him against enforcement notices, listed building and conservation area consent enforcement notices and non-determination of applications for a certificate of lawful use development on or after 23rd December 2002. The Rules come into force on 23rd December 2002.

Rule 4 provides for the preliminary procedure to be followed, in particular the information to be provided by the local planning authority, on receipt by it of a notice that a hearing is to be held.

Rule 5 provides which documents are to be sent to the Secretary of State before a hearing and for the documents to be copied by him to the appellant, the local planning authority and the inspector. It sets down the time limits within which those documents must be sent to the Secretary of State and provides a discretion for the Secretary of State or the inspector to disregard documents received outside the set time limits. It also provides for the local planning authority to make certain documents available for public inspection.

Rule 6 provides for the date of the hearing to be fixed and notified to the parties and rule 7 requires the Secretary of State to notify persons entitled to appear at the hearing of the name of the inspector.

Rule 8 provides for an inquiry to be held in place of the hearing.

Rule 9 prescribes those entitled to appear at a hearing and rule 10 provides for an inspector, in a transferred appeal, to take steps in place of the Secretary of State.

Rule 11 provides for the procedure at a hearing and rule 12 makes provision for the hearing to be adjourned to the site and for site inspections.

Rules 13 and 14 respectively provide for the procedure after a hearing in respect of appeals to be determined by the Secretary of State (non-transferred appeals) and transferred appeals. They include a discretion for the Secretary of State or an inspector to disregard documents received after the close of the hearing.

Rules 15 and 16 respectively provide for the notification of decisions for non-transferred appeals and transferred appeals.

Rule 17 provides for the procedure where a decision is remitted by the court to the Secretary of State for rehearing and redetermination.

Rule 18 gives the Secretary of State a discretion to allow further time for the taking of any step and to request additional copies of documents or information sent to him before or during a hearing.

Rule 19 makes provision for service by post.

A Regulatory Impact Assessment has been prepared in relation to the Rules. It has been placed in the Library of each House of Parliament and copies may be obtained from Development Control Policy Division, Office of the Deputy Prime Minister, Eland House, Bressenden Place, London SW1E 5DU (Telephone 020 7944 3969).

STATUTORY INSTRUMENTS

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