

The Hedgerow Regulation 1997

Guidance on the Appeal Procedure

Introduction

1. This guidance covers the procedures for appeals against Hedgerow Retention Notices or Hedgerow Replacement Notices which have been issued by the local authority (LA).
2. The background to the procedures is set out in Section 97 of the Environment Act 1995; the Hedgerow Regulations 1997 and 'The Hedgerow Regulations 1997 - A Guide to the Law and Good Practice' (revised August 1998). These publications can be bought from the Publications Sales Centre, DTLR, Unit 21, Goldthorpe Industrial Estate, Rotherham, S63 9BL, an HMSO Bookshop, or borrowed from your local library.
3. The Regulations apply to most countryside hedgerows. In particular, they affect hedgerows which are 20 metres or more in length; which meet another hedgerow at each end; are on or adjoin land used for agriculture; forestry; the breeding or keeping of horses, ponies or donkeys; common land; village greens; Sites of Special Scientific Interest (SSSIs) or Local Nature Reserves. Garden hedges are not affected.
4. The Regulations are concerned with the removal of hedgerows either in part or whole. Removal not only includes grubbing out, but anything which could result in the destruction of the hedge.

Appeals

5. An appeal may be made to the National Assembly for Wales against either a Hedgerow Retention Notice or a Hedgerow Replacement Notice.
6. The National Assembly for Wales has delegated the power to decide appeals to Inspectors. There are no statutory time limits for dealing with appeals, but the Planning Inspectorate will provide the parties with provisional deadlines for representations.
a copy of any comments from the Community Council;

Appeals are dealt with in the spirit of the Town and Country Planning (Referrals and Appeals)(Written Representations Procedure)(Wales) Regulations 2003, SI 2003 No 390 (W.52).

Either party has a right to be heard by an Inspector appointed by the National Assembly for Wales.

Hearings are conducted in the spirit of the Town and Country Planning (Hearings Procedure) (Wales) Rules 2003, SI 2003 No 1271.

Either party may request a local inquiry or the National Assembly for Wales may decide that an inquiry is necessary. Inquiries are conducted in accordance with the Town and Country Planning (Determination by Inspectors) (Inquiries Procedure Rules) (Wales) Rules 2003, SI 2003 No 1267

In very exceptional circumstances, the appeal may be recovered for decision by the National Assembly for Wales. In these cases, inquiries will follow in the spirit of the Town and Country Planning (Inquiries Procedure)(Wales) Rules 2003, SI 2003 No 1266.

In cases where the National Assembly for Wales has decided to determine the appeal himself (see Paragraph 21), the Inspector will write a report to the National Assembly for Wales, a copy of which will be sent with the decision letter.

7. Prospective appellants are advised to speak to their LA to try to resolve any difficulties or disagreements before an appeal is made. An appeal should only be made as a last resort.

How to appeal

8. The appeal must be made within 28 days from the Retention or Replacement Notice was received. A longer period may be allowed in very exceptional circumstances.

9. Your notice of appeal should be made in writing (there are no appeal forms) and should include:

- your grounds of appeal;
- a copy of the Retention or Replacement Notice issued by the LA and any other relevant correspondence between you;
- any other documentation, which you think, will help to support your case;
- a statement indicating whether you would like the appeal dealt with by written representations, a hearing or local inquiry. (These three methods are described below in paragraphs 14, 17 and 19.)

10. Your notice of appeal and documents should be sent to:

The Planning Inspectorate
Crown Buildings
Cathays Park
Cardiff
CF10 3NQ

Tel: 029 2082 3857
Fax: 029 2082 5150

In England please contact:

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

Tel: 0117 372 8812
Fax: 0117 372 6093

11. At the same time as sending your appeal to the Planning Inspectorate, a copy should also be sent to the LA that issued the Notice.

The effect of making an appeal

12. When an appeal is made against a Retention Notice, the notice remains in effect until the appeal is decided.

13. The Planning Inspectorate will confirm receipt of your notice of appeal and will write to the LA to ask for their comments on the appeal. The authority are also asked to provide copies of the following:

- a copy of your application to remove the hedge (for Retention Notices);
- a copy of the Retention or Replacement Notice;
- a copy of any comments from the Community Council;
- a location plan;
- the authority's evaluation of the hedge. This should include a plan showing the location of the hedgerow and copies of source documents/plans where the hedgerow is claimed to be important for historic and/or archaeological reasons. Where species composition is relevant a survey will be required and this should also include associated features if relied upon.

These documents will be copied to you directly by the authority. The LA will also be asked if they agree to written representations or would wish to proceed by way of a hearing/local inquiry.

Written Representations

14. The written method of dealing with an appeal is an exchange of statements between you and the authority, followed by a visit to the hedgerow site by an Inspector who is responsible for determining the appeal. Appeals are dealt with in the spirit of the Town and Country Planning (Referrals and Appeals)(Written Representations Procedure)(Wales) Regulations 2003, SI 2003 No 390 (W.52).

15. The LA will be asked to provide information requested in Paragraph 13 within 2 weeks of the appeal being accepted as valid by the Planning Inspectorate (the start date). If they agree the written procedure, the Inspectorate will then make arrangements for the site visit. Within 6 weeks of the start date both you and the LA should send 2 copies of any statement to the Inspectorate. Any interested parties also have the opportunity to comment within this period. You and the LA can comment on all the representations within 9 weeks of the start date. The Inspector will then visit the site.

16. It is normal practice for the Inspector to be accompanied at the site by a representative of both parties in order to gain access to the site and for identification of the hedgerow. However, the Inspector will not allow any discussion about the merits of the case and will restrict questions to the physical features of the hedgerow itself. All evidence must be given in writing.

Hearings

17. Either party has a right to be heard by an Inspector appointed by the National Assembly for Wales. A hearing will allow the issues to be discussed under the direction of the Inspector and will be followed by a site visit, the arrangements for which will be made at the hearing. The timetable for the submission of statements is similar to that for written representations. Local residents and other interested people are allowed to attend a hearing and at the discretion of the Inspector, give their views.

18. Hearings are conducted in the spirit of the Town and Country Planning (Hearings Procedure) (Wales) Rules 2003, SI 2003 No 1271.

Inquiries

19. In exceptional circumstances an inquiry may be held. This may happen when cross-examination may be needed or when there are large numbers of submissions or a considerable amount of public interest. Either party may request a local inquiry or the National Assembly for Wales may decide that an inquiry is necessary. The timetable for the submission of statements is similar to that for written representations. You and the LA will be asked to provide a statement of common ground and also proofs of evidence if expert witnesses are to be called. Local residents and other interested people are allowed to attend an inquiry and at the discretion of the Inspector, give their views.

20. Inquiries are conducted in accordance with the Town and Country Planning (Determination by Inspectors) (Inquiries Procedure Rules) (Wales) Rules 2003, SI 2003 No 1267.

Recovery

21. In very exceptional circumstances, the appeal may be recovered for decision by the National Assembly for Wales. In these cases, inquiries will follow in the spirit of the Town and Country Planning (Inquiries Procedure)(Wales) Rules 2003, SI 2003 No 1266.

Decisions on Appeals

22. Following the site visit, hearing or inquiry, the Inspector will consider all the representations before a decision is made. The decision, which is issued by the Planning Inspectorate, will cover the most important and relevant points and give reasons for the decision reached. The Inspector may allow the appeal and quash the Notice, either in whole or in part, or modify it. Alternatively, the Inspector may dismiss the whole appeal, or part of it. Leaving the Notice to stand either in whole or in part. A copy of the decision letter will also be sent to the LA.

23. In cases where the National Assembly for Wales has decided to determine the appeal (see Paragraph 21), the Inspector will write a report to the National Assembly for Wales, a copy of which will be sent with the decision letter.

Copies of decision letters are available to interested persons at a small charge. These may be obtained from:

The Planning Inspectorate,
Crown Buildings
Cathays Park
Cardiff
CF10 3NQ

Tel: 029 2082 5670

Withdrawal of an Appeal

24. An appeal may be withdrawn at any time as long as notification is made to the Planning Inspectorate in writing. A copy should be sent to the LA. If the appeal is withdrawn, the Retention Notice/Replacement Notice will still stand.

Costs

25. Costs may be awarded to either party in cases dealt with by way of a hearing or local inquiry. An application for costs should be made to the Inspector at the

hearing/inquiry and can be awarded on the grounds that the other party has behaved "unreasonably" and has caused the party seeking costs to incur or waste expense unnecessarily (WO Circular 23/93 refers).

26. An application for costs may be submitted to the Inspectorate if the hearing or inquiry is cancelled as a result of a late withdrawal of the appeal. This type of application should be forwarded to the:

Planning Inspectorate
Crown Buildings
Cathays Park
Cardiff
CF10 3NQ

Tel: 029 2082 3857
Fax: 029 2082 5150

Complaints about the Decision

See our Making a Complaint section for further information.