

SITES OF SPECIAL SCIENTIFIC INTEREST (SSSI) APPEAL GUIDANCE

2019

1. Introduction

This guidance covers the procedures for appeals where Natural Resources Wales (NRW) have refused consent or granted consent with conditions if they think your proposed activity, such as ploughing or removing plants, could damage a site of special scientific interest (SSSI). The guidance explains the legislative background, draws together the various publications which are relevant to this process and highlights some of the specific issues which may be the subject of appeal. This information was believed to be correct at the time of publication and relates to procedures in Wales only, but the guidance has no legal status.

Section 28F of the Wildlife and Countryside Act 1981 (the 1981 Act), as amended by Schedule 9 of the Countryside and Rights of Way Act 2000, gives you the right of appeal against a decision issued by NRW. The appeal procedures are set out in the Wildlife and Countryside (Sites of Special Scientific Interest, Appeals) (Wales) Regulations 2002 (the 2002 Regs).

2. Who can appeal

You can appeal as a SSSI owner or occupier if:

- you've been refused consent;
- you don't agree to the conditions attached to a consent;
- NRW haven't given you their decision within 4 months of your application (which you can treat as a refusal of consent) or by any subsequent date agreed with NRW; and
- a previous consent has been changed or withdrawn.

3. Appeal deadlines

You have 2 months from the date of NRW's notice, or by agreed extension date with NRW, in which to appeal to the Planning Inspectorate.

If you haven't received a decision from NRW within 4 months of the date you sent them your request for consent, you must appeal within the 2 months following those 4 months, or by agreed extension date with NRW.

4. Before you appeal

You may be able to avoid an appeal by discussing your reasons for wanting to carry out the activity with NRW.

You may be able to agree an extension of the appeal deadline with NRW, e.g. if you're working to avoid the need for a formal appeal. However, you must agree any extension in writing before the 2 month appeal period ends. If you do end up appealing you'll need to send a copy of this agreement to the Planning Inspectorate along with your appeal.

5. Submitting an appeal

You should submit your appeal on the appropriate appeal form provided by the Planning Inspectorate. Although there is no statutory requirement to submit an appeal form, it helps to ensure you submit all the necessary information. The appeal form can be obtained by contacting the Planning Inspectorate:

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

Tel: 0303 444 5940

Email: wales@planninginspectorate.gov.uk

This guidance and the appeal form are also available online:
<https://gov.wales/countryside-access-and-rights-way-appeals>

You must ensure all sections of the appeal form are completed correctly. Any errors on the appeal form could lead to delays validating your appeal.

The Appellant

Your appeal can only be made in the name of the applicant who submitted the consent request to NRW.

For each application or consent you should fill out a separate appeal form.

Choice of Procedure

The appeal form will ask you your preferred procedure by which the appeal will be determined. There are three options; written representations; a hearing; or an inquiry.

The Planning Inspectorate will consider your choice but may decide the appeal should follow a different procedure if it believes it's more appropriate to the case. For example, if your case is very complex, of great public interest or where an Inspector may need to cross-examine several witnesses, the Planning Inspectorate is most likely to choose an inquiry. Further information on the procedures are set out below in the "Appeal Procedures" section.

If any party asks to be heard in connection with the appeal there must be a hearing or an inquiry.

Whichever procedure your appeal goes through, an Inspector from the Planning Inspectorate will consider your case and write a report based on the evidence for the Welsh Government, who'll make the final decision.

Grounds of Appeal

You'll need to explain why you disagree with NRW refusing you consent. The reasons you give are known as your 'grounds of appeal'. You should try and provide as much detail as possible.

If you are appealing against the failure of NRW to determine your request for consent, the appeal is against a deemed refusal. You should explain why you think the appeal should be allowed and address any areas of dispute between you and NRW. You should try and provide as much detail as possible.

You'll be given a chance to supply supporting statements, e.g. expert views, later in the process. However, if you don't at least mention all of your main reasons when you request an appeal, it could lengthen the process and you might have to pay costs.

Documents to include

You must send the Planning Inspectorate the following documents when you appeal:

- the notice NRW sent you when your land was designated as a SSSI;
- the request for consent you submitted to NRW;
- the letter NRW sent to tell you they'd refused consent, including the reasons they gave you and any maps and plans they sent;
- any correspondence between you and NRW that you intend to rely upon;
- a copy of your agreement with NRW to extend the deadline for appeal beyond 2 months, if you have one and you're appealing after this time (our appeal notice must be received within the agreed extended time);
- NRW's registration letter acknowledging receipt/validation of your request for consent.

If any document you supply refers to any other document (such as a map, photograph or report, whether published or not) you must also supply a copy of that document.

If you wish to submit any policy documents that are publicly available online, then it is sufficient to provide the document name and reference the relevant section. You can also submit extracts from documents to save on the amount of paperwork to be submitted.

Any documents you submit will be shared by the agencies and parties involved in your appeal and made available to the public. Don't include personal information unless you're happy for it to be seen - and if you include the details of other people, check they're happy for you to do so first.

6. First steps for all appeals

The Planning Inspectorate will assess the validity of your appeal. If documents are missing, the Planning Inspectorate may write to you to request the missing document(s) within the appeal period. If these documents are not received or the appeal is submitted outside of the appeal period, then the appeal will be deemed invalid. If the appeal is deemed invalid no further action will be taken.

Once your appeal is valid the Planning Inspectorate will contact NRW to undertake consultation for the appeal. Within 14 days of the Planning Inspectorate's letter, NRW are required to give notice¹ to any person who made a representation and anyone who has a sufficient interest in the appeal.

The notice must:

- identify the SSSI to which the appeal relates;
- be dated;
- be accompanied by a copy of the notice of appeal and of any decision notice;
- state that, within 28 days beginning with the date of the notice, the recipient may –
 - i. make representations in writing to the Planning Inspectorate and that copies of those representations will be provided to both parties to the appeal; and
 - ii. request in writing to the Planning Inspectorate to be notified of the appeal decision.
- state that if a hearing or local inquiry is to be held, a recipient who makes representations will be notified of the date of the hearing or inquiry.

In addition to notifying interested persons to the appeal, within 28 days² of the Planning Inspectorate's letter NRW must also send the following to the Planning Inspectorate and to you:

- a statement as to whether they oppose the appeal, and if so, their grounds for doing so;
- copies of any relevant correspondence;
- copies of any representations made by interested persons;
- a copy of the notice sent under regulation 7(1) of the 2002 Regs, together with a statement of the names and addresses of the recipients and clearly showing the date on which it was sent; and
- a statement as to whether –
 - (i) they wish to be heard by the Inspector at an inquiry or a hearing;
 - (ii) if the hearing procedure is agreed, whether they object to the hearing being held in private if the appellant so requests.

¹ Regulation 7(1) of the 2002 Regs.

² Regulation 8 of the 2002 Regs.

7. Appeal procedures

As soon as practicable after receipt of all the necessary information the Planning Inspectorate will write to you and NRW to give notice of the start date for the appeal. The start letter will confirm the contact details of the case officer and the procedure to be adopted. The start date is the date the clock starts ticking for the submission of further representations, and the letter will set out the timetable which applies to you and NRW. **It is the party's responsibility to keep to this timetable – the Planning Inspectorate will not send reminders.**

Written representation procedure

The written procedure for dealing with an appeal is an exchange of statements between yourself and NRW, followed by a visit to the site by an Inspector. This is usually the quickest, simplest and most cost effective way of deciding an appeal. The written representation process is outlined below in accordance with Regulation 13 of the 2002 Regs.

NRW's statement of case

NRW must send you and the Planning Inspectorate a copy of their statement of case, which sets out their arguments, within 4 weeks of the start date. NRW must also send a copy to any other party in line with regulation 7(1)(b) of the 2002 Regs.

NRW's statement does not have to be in any particular format and it can be submitted on paper or electronically. A statement of case should be concise and should concentrate on the main issues. It should set out the key facts, reasoning and conclusions necessary to make the case in a logical form. The statement should be accompanied by a list of supporting documents and those documents should be clearly labelled. It should not contain full versions of policy documents which are publicly available. The statement only needs to reference certain paragraphs or provide extracts of documents to minimise paperwork.

Appellant's statement of case

Within 4 weeks of receiving NRW's statement of case, you must send NRW and the Planning Inspectorate a copy of your statement of case, which sets out your arguments. You must also send a copy to any party in line with regulation 7(1)(b) of the 2002 Regs.

Your statement does not have to be in any particular format and it can be submitted on paper or electronically. A statement of case should be concise and should concentrate on the main issues. It should set out the key facts, reasoning and conclusions necessary to make the case in a logical form. The statement should be accompanied by a list of supporting documents and those documents should be clearly labelled. It should not contain full versions of policy documents which are publicly available. The statement only needs to reference certain paragraphs or provide extracts of documents to minimise paperwork.

If you choose not to submit a statement of case then it will be taken that your grounds of appeal comprise your full statement for the appeal.

Further representations

The Planning Inspectorate may require further representations from you and NRW if considered necessary during the appeal process. This includes comments on any representations received from any other person after the start date.

Site visit

If a site visit is required, it is normal practice for the Inspector to be accompanied at the site visit by you and a representative from NRW. However, the Inspector will not allow any discussion about the merits of the case and will restrict questions to the physical features of the site itself.

Hearing procedure

A hearing allows you and NRW to present your case in a more relaxed and less formal atmosphere than at an inquiry (see below). It usually takes the form of a discussion led by the Inspector, followed by a site visit. If the Inspector so decides, the discussion may be extended to the site. The hearing process is outlined below in accordance with Regulation 14 of the 2002 Regs.

The 6-week deadline – statements of case

You and NRW must send to each other and the Planning Inspectorate a statement of case, which sets out your arguments, within 6 weeks of the start date. You and NRW must also send a copy to any other party in line with regulation 7(1)(b) of the 2002 Regs.

The statement does not have to be in any particular format and it can be submitted on paper or electronically. A statement of case should be concise and should concentrate on the main issues. It should set out the key facts, reasoning and conclusions necessary to make the case in a logical form. The statement should be accompanied by a list of supporting documents and those documents should be clearly labelled. It should not contain full versions of policy documents which are publicly available. The statement only needs to reference certain paragraphs or provide extracts of documents to minimise paperwork.

The 9-week deadline – final comments

You and NRW must send to each other and the Planning Inspectorate any final comments you have on each other's statement of case. You and NRW must also send a copy to any other party in line with regulation 7(1)(b) of the 2002 Regs.

The Planning Inspectorate expects both you and NRW to have given all their evidence in the grounds of appeal and statements of case, so the opportunity to comment at 9 weeks must not be used as a means of introducing new material or putting forward arguments that should have been included in the 6-week

statement. **The Planning Inspectorate will reject and return representations received at this stage if they raise new issues.**

Hearing arrangements

The Planning Inspectorate will confirm the hearing arrangements with you and NRW not later than 6 weeks before the hearing. The Planning Inspectorate will also notify any other person who has made a representation.

It is the responsibility of NRW to arrange a suitable venue for the hearing and at least 3 weeks before the hearing, NRW is required to put notice of appeal in the local press.

You may request that the hearing be held wholly or partly in private if there is confidential or sensitive information that needs to be discussed. Such a request will be at the discretion of the Inspector.

Inquiry procedure

You or NRW may ask for a public inquiry, or the Planning Inspectorate may decide that one is needed, but this procedure should only apply to exceptional cases. For example, where particularly complex technical evidence is submitted or cross examination may be needed, or where there are a large number of submissions or a considerable amount of public interest.

The inquiry timetable for the submission of evidence is the same as that for a hearing. Any additional steps are highlighted below.

Proofs of evidence

You and NRW must send to each other and the Planning Inspectorate a proof of evidence not later than 4 weeks before the inquiry. You and NRW must also send a copy to any other party in line with regulation 7(1)(b) of the 2002 Regs.

A proof of evidence is a written statement of the evidence a witness intends to give at the inquiry and, if it is more than 1,500 words long, there should also be a summary that is no more than 10% of the length of the proof. A statement of common ground is a list of all the matters that the appellant and NRW are agreed about.

Inquiry arrangements

An inquiry is more formal than a hearing and usually begins with brief opening statements from you and NRW. Witnesses can be called to give their evidence, which can be cross-examined by the other side. NRW will normally present its case first. Other interested parties may also attend the inquiry and will usually be allowed to give their views.

The Planning Inspectorate will confirm the inquiry arrangements with you and NRW not later than 6 weeks before the inquiry. The Planning Inspectorate will also notify any other person who has made a representation.

It is the responsibility of NRW to arrange a suitable venue for the inquiry and at least 3 weeks before the inquiry, NRW is required to put notice of appeal in the local press.

You may request that the inquiry be held wholly or partly in private if there is confidential or sensitive information that needs to be discussed. Such a request will be at the discretion of the Inspector.

8. Withdrawing your appeal

You can withdraw your appeal at any point up until the Welsh Ministers make a decision on the appeal. You should contact the Planning Inspectorate as soon as you decide to withdraw your appeal and you must confirm your decision in writing.

If you withdraw your appeal after a hearing or inquiry has been arranged and NRW or another interested party can show you acted unreasonably, you may have to pay costs.

9. Suspending an appeal

If you can show you're working with NRW to reach agreement, the Planning Inspectorate might agree to suspend your appeal - also known as holding an appeal in abeyance. You might want to do this if new information is available that could mean you can reach agreement.

If you want an appeal to be held in abeyance, discuss this with NRW and then write to the Planning Inspectorate, who will ask NRW for their comments. NRW may also request an appeal be held in abeyance, in which case you'll be asked for your comments.

Once your appeal is in abeyance, the Planning Inspectorate will ask you and NRW for updates. The Planning Inspectorate will take the appeal out of abeyance if it thinks your discussions are not going to resolve the issues.

10. Postponing a hearing or inquiry

The Planning Inspectorate will only postpone in exceptional circumstances and if there's time to tell everyone involved. For example, the Planning Inspectorate could agree to postpone if you and NRW find new common ground on the issues or if a crucial witness can't attend. A postponement is likely to significantly delay your appeal decision.

11. Costs

There's no fee for making an appeal but all parties are expected to cover their own expenses – e.g. for legal fees, travel and admin.

The Welsh Ministers could award costs where a hearing or inquiry is held and one party's unreasonable behaviour – e.g. late introduction of evidence - leads to unnecessary expense. Further information on the award of costs can be found in the Welsh Government's Development Management Manual – Section 12 Annex: Award of Costs: <https://gov.wales/sites/default/files/publications/2018-10/section-12-annex-award-of-costs.pdf>

You may also be awarded costs if you're appealing the withdrawal or modification of consent because you're defending rights set out in an earlier consent, a bit like appealing a compulsory purchase order. In this scenario you're most likely to be awarded costs if your appeal is upheld - NRW doesn't have to be judged to have behaved unreasonably.

A costs application can be submitted in advance of or at a hearing or inquiry.

12. Decisions

Once the appeal process has been completed, the appointed Inspector will write a report to the Welsh Ministers outlining their recommendations. The Planning Inspectorate aims to submit the Inspectors report to the Welsh Government not later than 5 weeks after the site visit (7 weeks for a hearing or inquiry). The Welsh Ministers will consider the Inspector's report and recommendations alongside the duty:

- to take reasonable steps to further conserve and enhance SSSIs (Wildlife and Countryside Act 1981 as amended)
- to have regard to the desirability of conserving the natural beauty and amenity of the countryside (Countryside Act 1968)
- to have regard to the needs of agriculture and forestry, and to the economic and social interests of rural areas (Countryside Act 1968)
- to comply with the requirements of the European Habitats and Birds Directives when a SSSI is also a Special Protection Area (SPA) or Special Area of Conservation (SAC) (or a candidate SAC, site of community importance, potential SPA or Ramsar site), (Conservation of Habitats and Species Regulations 2010 as amended)

You'll get a decision in writing from the Welsh Government - it'll include a summary of the Welsh Ministers conclusions, and you'll get a copy of the Inspector's report. NRW and interested parties will also get a copy of the decision and report from the Welsh Government.

13. Feedback and complaints

The Planning Inspectorate welcomes feedback both positive and negative about people's experience of dealing with the organisation.

Complaints against an Inspector's report or the Inspector or the way the Planning Inspectorate administered a case are dealt with by the Quality team. All complaints are investigated thoroughly and impartially.

14. How the Planning Inspectorate use your personal information

The Planning Inspectorate receives personal data from the appellant, NRW and other interested persons who provide representations. The personal data normally includes name and contact details and any other personal data included within their representations.

The Planning Inspectorate copies the representations received to the appellant, NRW and any other statutory appeal parties.

Further information about the Planning Inspectorate's privacy policy can be found at <http://planninginspectorate.gov.wales/?lang=en> or on request. If you have any queries about the policy, or wish to request your personal data, then please contact the Planning Inspectorate.