

Carlisle City Council

Department for Environment, Food & Rural Affairs

Appeals under Section 15 of the Environmental Protection Act 1990

Background

- 1 Operators whose processes are subject to Integrated Pollution Control (IPC) or Local Air Pollution Control (LAPC) may appeal to the Secretary of State against certain decisions by the relevant enforcing authority (The Environment Agency for IPC, and normally local authorities for LAPC).
- 2 This note briefly explains how to appeal. It has no legal status. The legal provisions it summarises are set out in section 15 of the Environmental Protection Act and in The Environmental Protection (Applications, Appeals and Registers) Regulations 1991 (SI 1991 No 507) as amended. A separate guidance note is available covering appeals under section 22 against decisions about commercial confidentiality.
- 3 Section 15 of the Act gives operators rights of appeal against:
 - refusal or deemed refusal to grant an authorisation, or refusal to vary one (*the appeal must be received by the Planning Inspectorate within 6 months of the date of the decision which is the subject-matter of the appeal: in the case of an appeal against deemed refusal of an application for authorisation, the appeal must be received by the Planning Inspectorate within six months of the date on which the application is deemed under the provisions of paragraph 5(2) of Schedule 1 to the Act to have been refused*)
 - conditions in an authorisation (*must be received by the Planning Inspectorate within 6 months of the date of the decision which is the subject-matter of the appeal*)
 - notices under section 12 (but not section 8) revoking authorisations (*must be received by the Planning Inspectorate before the notice takes effect*)
 - enforcement, variation and prohibition notices (*must be received by the Planning Inspectorate within 2 months of the date of the notice*).

Appeals made outside the time limits defined above will not normally be accepted.

- 4 Appeals do not have the effect of suspending authorisation conditions, or any of the above notices except revocation notices. When determining appeals against conditions the Planning Inspector, or the Secretary of State if he recovers the case, can change or add to conditions not appealed against. The parties will normally be given the opportunity (at any hearing or in writing) to comment on any change of this nature before the decision is made.
- 5 Before appealing, operators may find it helpful to speak to the enforcing authority about the matters at issue, particularly where there is disagreement about conditions in an authorisation, as this can be the quickest way of resolving problems and may make an appeal unnecessary. Prospective appellants are advised to speak to the enforcing authority to try to resolve any difficulties or disagreements. An appeal should be treated as a last resort.

How to appeal

- 6 There is no appeals form, and no charge for appealing. For an appeal to be valid, appellants are legally required to provide:
 - a notice of appeal;
 - a statement of the grounds of appeal;
 - a statement about whether the appellant wants the appeal to be dealt with by a written representations procedure or a hearing - a hearing must be held if either the appellant or enforcing authority requests this, or if the Secretary of State or his Inspector decides to hold one;
 - *(appellants must copy the above three items to the authority when the appeal is made);*
 - copies of the decision or notice appealed against;
 - any relevant authorisation;
 - any relevant application; and
 - any relevant correspondence between themselves and the authority.

Appellants should state whether any of the information enclosed with the appeal has been the subject of a successful application for commercial confidentiality under section 22 of the Act, and provide relevant details. Unless such information is supplied, all documents submitted with an appeal will be open to inspection.

- 7 Appeals should be despatched on the day they are dated, and addressed to: The Planning Inspectorate Environmental Pollution Appeals Room
14/13 Tollgate House Houlton Street Bristol BS2 9DJ telephone 0117 9878812
- 8 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.
- 9 To withdraw an appeal the appellant must notify the Planning Inspectorate in writing, and copy the notification to the authority.

Enforcing authority's notification of interested parties

- 10 The Regulations require the authority to notify certain parties that an appeal has been made, and to tell them where to send any comments about the appeal. For appeals against revocation, notices, enforcement, variation or prohibition notices, the authority must notify in writing those third parties who appear to it to be likely to have a particular interest in the subject-matter of the appeal: for other kinds of appeals, the authority must give written notice to anyone who made representations to it with respect to the grant or variation of the authorisation, and must also give notice to certain 'statutory consultees' identified by the Regulations, such as the Ministry of Agriculture, Fisheries and Food.
- 11 The enforcing authority will send a notice to all those who made representations on the original application giving details of the appeal and explaining that those parties are entitled to forward representations to the Planning Inspectorate. All representations must be received by the Planning Inspectorate within 21 days of the notice being sent and all representations will be copied to both the enforcing authority and the appellant.

Third party representations

- 12 All third party representations about the appeal received by the Planning Inspectorate will be copied to both main parties, and may be read out at a hearing if one is held. In written representations cases both parties must be given at least 14 days in which to comment on representations about the appeal. The two main parties will be asked to copy their comments to each other.

If appellant has asked for written representations

- 13 The authority will be asked if it agrees to a written procedure. If so, it has 28 days (from first receiving copies of the appeal documents) in which to

submit its representations. The authority must copy them at the same time to the appellant, who then has 17 days to submit further representations, starting from the date of the authority's representations.

- 14 When the exchange of representations is completed an 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.

If a hearing is to be held

- 15 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 an Inspector is appointed. The two main parties will be formally notified of the hearing arrangements at least 28 days in advance.
- 16 At least 21 days in advance the Planning Inspectorate will place a notice about the hearing in a local newspaper, and inform statutory consultees (if relevant), and those parties who have made representations on the appeal. Anyone may attend the hearing, and those interested persons may speak at it, at the Inspector's discretion. The Inspector has powers to hold part or all of a hearing in private, but it is expected that this will happen only rarely, for example in cases involving commercial confidentiality.
- 17 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

- 18 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 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.

Notification of determination

- 19 The Secretary of State or his Inspector will take into account all relevant information, giving the two main parties the opportunity to comment on any new relevant evidence that he proposes to take into consideration, before issuing a decision letter. The decision letter will be copied to interested parties and must be placed in the public register. Reports of hearings must also be copied to the two main parties and placed in the public register.
- 20 Copies of decision letters can be obtained at a small charge from: The Planning Inspectorate Decision Letter Library Room 1508 Tollgate House Houlton Street BRISTOL BS2 9DJ Tel 0117 987 8759

Recovery by the Secretary Of State

- 21 On 1 September 1997 The Secretary of State for the Environment, Transport and the Regions delegated his power to take decisions on Integrated Pollution Control and Local Air Pollution Control appeals to the Planning Inspectorate. However, the Secretary of State reserves the right to recover individual cases to determine himself. The criteria for identifying recovered cases are at Annex A. If a case is recovered the parties will be notified. In cases where appeals are recovered, the Inspector will make a report to the Secretary of State rather than issuing a decision letter.

Complaints about the Decision

- 22 Once the decision letter has been sent to the appellant, either by the Secretary of State or the Inspector, that decision is final. The Secretary of State, or the Inspector, can no longer consider further representations or make any further comments on the merits or otherwise of the case.

Complaints against the Planning Inspectorate

- 23 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 queries or complaints about the handling of the appeal. If this is not satisfactory the Complaints Officer can be contacted at the following address: The Complaints Officer The Planning Inspectorate Room 1404 Tollgate House Houlton Street BRISTOL BS2 9DJ Tel: 0117 987 8927

Costs

- 24 Costs may be awarded to either party to an appeal in certain circumstances on grounds of unreasonable behaviour of another party causing unnecessary expense.

Annex A

Recovery Criteria

- 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 Inspectors have no jurisdiction
- Cases which raise major or novel issues of industrial pollution control which could set a policy precedent, for example cases involving the use of new techniques
- Other cases which, exceptionally, merit recovery because of the particular circumstances

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