



Subject:	Protocol for Planning Appeals Commission hearings
Date:	16 May 2017
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<b>Restricted Reports</b>	
Is this report restricted?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
<b>If Yes, when will the report become unrestricted?</b>	
<b>After Committee Decision</b>	<input type="checkbox"/>
<b>After Council Decision</b>	<input type="checkbox"/>
<b>Some time in the future</b>	<input type="checkbox"/>
<b>Never</b>	<input type="checkbox"/>

<b>Call-in</b>	
Is the decision eligible for Call-in?	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>

<b>1.0</b>	<b>Purpose of Report or Summary of main Issues</b>
	To present for consideration a protocol for appeals to the Planning Appeals Commission ('the PAC').
<b>2.0</b>	<b>Recommendations</b>
	It is recommended that the Committee notes the proposed protocol.

<b>3.0</b>	<b>Main report</b>
3.1	<p>The PAC has a wide range of appeal functions which include:</p> <ul style="list-style-type: none"> <li>• appeals against the refusal or conditional grant of planning permission, consent, agreement or approval;</li> <li>• appeals in default of a planning decision;</li> <li>• listed building consent appeals;</li> <li>• conservation area consent appeals;</li> <li>• appeals concerning lawful development certificates;</li> <li>• appeals concerning consent to display an advertisement;</li> <li>• appeals concerning consent to cut down, uproot, top or lop a protected tree.</li> </ul>
3.2	<p>An appeal to the PAC or the WAC may be made only by the person who submitted the application for permission or consent. Appeals must be lodged within <b>four months</b> from the date of receipt of the planning authority's decision; appeals in default of a planning decision must be lodged within <b>four months</b> from the date the authority should have given its decision. The PAC has no power to extend the period for appealing.</p>
3.3	<p>On receipt of a valid appeal, the PAC will write to the authority concerned and ask for a set of background documents relating to the application. These documents may include representations in favour of or against the proposal. The PAC will write to all third parties and invite them to participate in the appeal process.</p>
3.4	<p>The PAC is also required to publish notice of planning appeals in the local press. People who respond to the press notice within <b>14 days</b> of publication will also be listed as third parties and their letters of objection or support will be copied for information to the appellant.</p> <p>Appeals can be considered in either of the following ways:-</p> <ul style="list-style-type: none"> <li>• by a <b>hearing</b>, whether formal or informal; or</li> <li>• by exchange of <b>written representations</b>, with or without an accompanied site visit.</li> </ul> <p>The PAC will ask the appellant and the authority which type of procedure they wish to use. If a hearing is requested, the PAC will decide whether it is to be formal or informal, taking into account the preferences of the appellant and the authority, the nature and scale of the subject matter of the appeal, the likely complexity of the legal and technical issues and the number of third parties. The PAC tend to favour informal hearings as they represent, in its view, an effective and efficient method of gathering information in a non-confrontational atmosphere.</p>
3.5	<p>An informal hearing is intended to be a round-table discussion led by the Commissioner, who will invite comments on what appear to be the main issues and matters requiring further clarification. Cross-examination and formal legal submissions are not supposed to take place at informal hearings but that has not always been the experience of officers who routinely face situations in which applicants are represented by senior counsel, solicitors and other experts.</p>
3.6	<p>The PAC has no procedure or process which requires the parties to give prior notification that they will be legally represented at an appeal hearing. The failure to put in place a process or procedure which requires parties to give prior notification that they will be legally represented at an appeal hearing creates situations where there is an inequality of arms at what are supposed to be informal hearings.</p>

3.7	Legal Services has lodged an application for leave to judicially review the PAC in respect of a hearing where the Council officer was not aware that the appellant was represented by senior counsel, a solicitor and several other expert witnesses until he attended on the morning of the hearing. One of the grounds of relief sought in respect of that application is that the PAC put in place a procedure which requires the parties to indicate in advance whether they will be legally represented.
3.8	In the interim however, it is proposed that Legal Services continue to be advised of all appeals in relation to major applications, or other applications where officers believe the appeal relates to a site or type of application that is strategically important, as soon as they are received. It is envisaged that legal representation will be provided at most of these appeals whether that be a representative from Legal Services or counsel. In deciding whether to instruct counsel officers will have regard to the nature of the proposal and the issues relevant to the case. Consideration will also be given to the use of other experts, for example design consultants and commercial real estate agents, in the preparation of Statements of Case and if necessary to attend the hearing. Planning Service will also ensure that a senior or principal planning officer attends to represent the Council, unless the Director of Planning and Place is of the view that another appropriately experienced officer should attend.