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STATUTORY INSTRUMENTS

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**2011 No. 2019**

**The Access to the Countryside (Appeals against Works Notices) (England) Regulations 2011**

**PART 3**

**Determination of Appeals**

**CHAPTER 2**

**Appeals to be determined by way of a hearing**

**Date and notification of hearing**

**16.**—(1) The date fixed by the Secretary of State for the holding of a hearing must be not later than eighteen weeks from the start date, unless the holding of the hearing on that date is not practicable.

(2) The Secretary of State must give the appellant, the appropriate authority and every interested person, not less than four weeks' written notice of the date, time and place fixed for the holding of a hearing.

(3) But the Secretary of State may agree with the appellant and the appropriate authority that a lesser period of notice may be given.

(4) The Secretary of State may—

- (a) change the date fixed for the holding of a hearing (whether or not the date as changed is within the period mentioned in paragraph (1)); or
- (b) change the time or place for the holding of a hearing.

(5) Where, under paragraph (4)(a), the Secretary of State changes the date for the holding of a hearing, paragraphs (2) and (3) apply to the new date as they applied to the date originally fixed.

(6) Where, under paragraph (4)(b), the Secretary of State changes the time or place for the holding of a hearing, the Secretary of State must give reasonable notice of such change.

(7) The Secretary of State—

- (a) may require the appropriate authority to publish, not less than two weeks before the date fixed for the hearing, a notice of the hearing in one or more newspapers circulating in the locality in which the appeal land is situated;
- (b) may require the appropriate authority to affix a notice of the hearing firmly to the appeal land or to some object on or near the land in such manner as to be readily visible to and legible by members of the public; and
- (c) must ensure that a notice of the hearing is made available for inspection on a relevant website until the appeal is determined.

(8) Where a notice is affixed pursuant to paragraph (7)(b), the appropriate authority may not remove the notice, or cause it to be removed, for such period before the hearing as the Secretary of State may specify.

- (9) Every notice of a hearing under paragraph (7) must contain—
  - (a) a statement of the date, time and place of the hearing and of the powers enabling the Secretary of State to determine the appeal; and
  - (b) a brief description of the appeal and of the grounds of appeal.
- (10) A notice under paragraph (7) may relate to more than one hearing.

### **Appearances at hearing**

- 17.—**(1) The persons entitled to appear at the hearing are—
- (a) the appellant; and
  - (b) the appropriate authority;

but the inspector may permit any other person to appear at a hearing, and such permission may not be unreasonably withheld.

- (2) Any person entitled or permitted to appear may appear in person or be represented by any other person.

### **Procedure at hearing**

**18.—**(1) Except as otherwise provided in these Regulations, the inspector is to determine the procedure at a hearing.

- (2) At the start of the hearing—
  - (a) the inspector's name and appointment must be announced by the inspector; and
  - (b) the inspector must identify—
    - (i) what are, in the inspector's opinion, the main issues to be considered at the hearing, and
    - (ii) any matters on which further information is required from any person appearing at the hearing.

(3) A hearing is to take the form of a discussion led by the inspector.

(4) Paragraph (2)(b) does not preclude the addition in the course of the hearing of other issues for consideration or preclude any person entitled or permitted to appear from referring to issues which that person considers relevant to the consideration of the appeal but which were not issues identified by the inspector pursuant to that paragraph.

- (5) The inspector may—
  - (a) require any person appearing at a hearing who, in the inspector's opinion, is behaving in a disruptive manner to leave; and
  - (b) refuse to permit that person to return or permit the person to return only on such conditions as the inspector may specify.
- (6) The inspector may—
  - (a) proceed with a hearing in the absence of any person entitled to appear at it; and
  - (b) from time to time adjourn a hearing.

(7) Where a hearing is adjourned, no further notice is required, provided that the date, time and place of the adjourned hearing are announced at the hearing before the adjournment.

## **Evidence at hearing**

**19.**—(1) The appellant and the appropriate authority are entitled to give, or to call another person to give, oral evidence, and any other person may give, or call another person to give, oral evidence if so permitted at the discretion of the inspector.

(2) But the inspector may, at any stage in the proceedings, refuse to permit the giving of evidence or presentation of any matter which the inspector considers to be irrelevant or repetitious.

(3) Where the inspector refuses to permit the giving of oral evidence, the person wishing to give, or call any other person to give, oral evidence may submit to the inspector any evidence or other matter in writing before the close of the hearing.

(4) Cross-examination is not permitted at the hearing unless the inspector considers that it is required to ensure a thorough examination of the main issues.

(5) Where under paragraph (4) the inspector considers that cross-examination is required, the inspector must consider, after consulting the appellant and the appropriate authority, whether the hearing should be closed and an inquiry should be held instead.

(6) Where, under sub-paragraph (a) of regulation 18(5), the inspector has required a person to leave and, under sub-paragraph (b) of that regulation, the inspector refuses to permit that person to return, or permits that person to return only on conditions, that person may submit to the inspector any evidence or other matter in writing before the close of the hearing.

(7) The inspector may allow the appellant or the appropriate authority to alter or add to a statement of case received by the Secretary of State and submitted under regulation 9 so far as may be necessary for the purposes of the hearing.

(8) The inspector may take into account any written representations, or evidence or any other document received by the inspector in connection with a hearing before the hearing opens or during the hearing provided it is disclosed at the hearing.

## **Site inspections**

**20.**—(1) Where it appears to an inspector that one (or more) matters would be more satisfactorily resolved by adjourning the hearing to the site of the appeal land, the inspector may adjourn the hearing to that site and conclude the hearing there provided the inspector 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; and
- (c) neither the appellant nor the appropriate authority have raised any reasonable objections to the hearing being continued at the site of the appeal land.

(2) Unless the hearing is to be adjourned to the appeal land pursuant to paragraph (1), the inspector may, where it appears necessary or expedient to do so, arrange to make an inspection of the appeal land in the company of the appellant and the appropriate authority or their representatives at any time before or during the hearing in relation to an appeal.

(3) Before making a site inspection the inspector must announce the date and time of the inspection during the hearing.

(4) The inspector is not bound to defer an inspection if the appellant or the appropriate authority or their representatives are not present at the appointed time.

### **Procedure after hearing—appeals determined by the Secretary of State**

21.—(1) This regulation applies where a hearing has been held for the purposes of any appeal determined by the Secretary of State.

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

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

(4) Paragraph (5) applies where, 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 the Secretary of State be material to a conclusion reached by the inspector, or

(b) takes into consideration any new evidence or new matter of fact,

and is, for that reason, disposed to disagree with a recommendation made by the inspector.

(5) Where this paragraph applies, the Secretary of State may not come to a decision which is at variance with the recommendation made by the inspector without first—

(a) notifying the appellant, the appropriate authority and any other person who appeared at the hearing of the disagreement and the reasons for it, and

(b) affording them an opportunity of making written representations, or, if the Secretary of State has taken into consideration any new evidence or new matter of fact, of asking for the re-opening of the hearing.

(6) Those persons making written representations or asking for the re-opening of the hearing pursuant to an invitation under paragraph (5)(b) must ensure that such representations or requests are received by the Secretary of State within three weeks of the date of the Secretary of State's notification under paragraph (5)(b).

(7) The Secretary of State may, if appropriate, cause the re-opening of a hearing, and must do so if asked by the appellant or the appropriate authority under paragraph (5)(b), in the circumstances mentioned in paragraph (4) and within the period mentioned in paragraph (6).

(8) Where a hearing is re-opened—

(a) the Secretary of State must send to the appellant, the appropriate authority and any other person who appeared at the hearing a written statement of the matters with respect to which further evidence is invited; and

(b) paragraphs (2) to (9) of regulation 16 apply as if the references to a hearing were references to a re-opened hearing.

### **Procedure after hearing—transferred appeals**

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

(2) Where an assessor has been appointed, the assessor must, after the close of the hearing, make a report in writing to the inspector of the matters on which the assessor was appointed to advise, and the inspector must state in the notification of the decision on the appeal pursuant to regulation 24 that such a report was made.

(3) When making a decision, the inspector may disregard any written representations, evidence or any other document received after the close of the hearing.

(4) If, after the close of the hearing, the inspector proposes to take into account any new evidence or new matter of fact which was not raised at the hearing and which the inspector considers is material to the decision, the inspector may not come to a decision without first—

- (a) notifying the appellant, the appropriate authority and any other person who appeared at the hearing; and
  - (b) affording them an opportunity of making written representations or of asking for the re-opening of the hearing.
- (5) Any person making written representations or asking for the re-opening of the hearing pursuant to an invitation under paragraph (4)(b) must ensure that such written representations or request to re-open the hearing are received by the Secretary of State within three weeks of the date of the notification.
- (6) An inspector may, if appropriate, cause a hearing to be re-opened and must do so if asked by the appellant or the appropriate authority under paragraph (4)(b), in the circumstances mentioned in paragraph (4) and within the period mentioned in paragraph (5).
- (7) Where a hearing is re-opened—
- (a) the inspector must send to the appellant, the appropriate authority and any other person who appeared at the hearing a written statement of the matters with respect to which further evidence is invited; and
  - (b) paragraphs (2) to (9) of regulation 16 apply as if the references to a hearing were references to a re-opened hearing.

#### **Notification of decision—appeals determined by the Secretary of State**

**23.**—(1) This regulation applies where a hearing has been held for the purposes of any appeal determined by the Secretary of State.

(2) The Secretary of State must, as soon as practicable, notify the decision on the appeal and the reasons for reaching it, in writing to—

- (a) the appellant;
- (b) the appropriate authority;
- (c) every other person who appeared at the hearing or who is an interested person;
- (d) every other owner or occupier of the land who has been notified by the appropriate authority as mentioned in regulation 4(4) or section 37(3) of the 2000 Act; and
- (e) the local access forum.

(3) Where a copy of the inspector’s report is not sent with the notification of the decision, the notification must be accompanied by a statement of the inspector’s conclusions and of any recommendations made by the inspector in the report.

(4) If a person entitled to be notified of the decision has not received a copy of the inspector’s report, the Secretary of State must, upon an application made by that person in writing, supply a copy of the inspector’s report within four weeks of the receipt of the notification of the decision on the appeal under paragraph (2).

(5) In paragraphs (3) and (4), “report” does not include any documents appended to the inspector’s report.

(6) But any person who has received a copy of the report may, within two weeks of such receipt, apply in writing to the Secretary of State for an opportunity to inspect any documents appended to the report, and the Secretary of State must afford that person that opportunity.

(7) The Secretary of State must ensure that, as soon as practicable after any notification has been given under paragraph (2), a copy of the notification is made available for inspection on a relevant website for a period of three months.

### **Notification of decision—transferred appeals**

**24.**—(1) This regulation applies where a hearing has been held for the purposes of a transferred appeal.

(2) An inspector must, as soon as practicable, notify the decision on the appeal and the reasons for it, in writing to—

- (a) the appellant;
- (b) the appropriate authority;
- (c) every other person who appeared at the hearing or who is an interested person;
- (d) every other owner or occupier of the land who has been notified by the appropriate authority as mentioned in regulation 4(4) or section 37(3) of the Act; and
- (e) the local access forum.

(3) Any person entitled to be notified of the inspector’s decision under paragraph (2) may apply in writing to the Secretary of State for an opportunity to inspect any documents referred to in the notification, and the Secretary of State must afford that person that opportunity.

(4) Any person making an application under paragraph (3) must ensure that it is received by the Secretary of State within six weeks of the receipt of the notification of the decision on the appeal under paragraph (2).

(5) The Secretary of State must ensure that, as soon as practicable after any notification has been given under paragraph (2), a copy of the notification is made available for inspection on a relevant website for a period of three months.