



Enforcement appeals

Unlike a planning appeal, you have very little time to lodge an appeal against an Enforcement Notice so you must act quickly. If you wish to lodge a simultaneous planning appeal, you must adopt the timescale for the Enforcement appeal. You cannot assume that because you have six months to appeal against the associated planning decision, this will also apply to the Enforcement Notice. It does not.

The appeal papers must be lodged with the Inspectorate at the appropriate address for England, Scotland, Wales and Northern Ireland, before the date on which the notice is stated to take effect. If that date is a weekend, Monday or Public Holiday, it must be posted in time to arrive on the last day on which there is a postal delivery, before those days. The importance of lodging the appeal in time cannot be emphasised too strongly. There are no discretionary powers to extend the period – one day too late and you must comply with the notice (or face prosecution).

It is beyond the remit of this advice to suggest that you should employ professional help when handling an enforcement appeal. In some straightforward cases it may be possible to deal with matters yourself but, where legal arguments need to be advanced to present your case as well as possible, this may require outside help. The following advice may assist your decision making.

Your Local Planning Authority (**LPA**) should send appeal forms with the Enforcement Notice but you might have to obtain them for yourself from the address given. Do not delay in requesting them, even if you subsequently decide not to appeal. In Scotland, at the time of writing, no forms are available and you appeal by letter.



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The advantages and disadvantages of different methods of appealing are set out in *Fact Sheet 9* and are equally relevant to enforcement appeals, although Informal Hearings are not usually available for enforcement cases. (Please check with the appropriate Inspectorate as this could change).

An enforcement appeal can be made on seven (eight in Northern Ireland) grounds. (The additional ground in Northern Ireland relates to cases where it is possible to prove continuous and similar use of land or a building prior to 26 August 1964).

When you have completed the form, you need to enclose a copy of the related Enforcement Notice and send them both to the Inspectorate at the address shown on the form. Unless you have already paid a fee for an associated planning application, a fee will be payable in due course and you will be invoiced by the Inspectorate. Depending on where you live, the fee will vary. In England, Wales and Scotland it will be twice the equivalent fee you would have had to pay the LPA if you had applied to the authority for planning permission for the matters to which the Enforcement Notice relates.

In Northern Ireland, a flat rate fee is payable upon submission of the appeal together with the deemed planning application fee. If you do not pay the appropriate fee, the merits of your case cannot be examined, only legal or procedural issues. There are some exemptions from paying a fee and refunds can be made in some circumstances. Full details are available in the Planning Inspectorate, Planning Appeals Commission and Scottish Office booklets.



Grounds of appeal

There are seven (or eight in Northern Ireland) grounds of appeal upon which you can base your case. Unless you have failed to pay the required fee, all appeals should include ground (a). The other grounds are only relevant in certain cases. The following relates to the seven grounds of appeal only:

Ground (a) (Planning permission should be granted or the condition/limitation alleged not to have been complied with should be discharged).

This ground relates to the planning merits of your case and allows you to put forward all the arguments you would make had this been an appeal against refusal of a planning application.

Ground (b) (The breach has not occurred).

You will need to demonstrate that what was alleged in the notice has not actually taken place. It is not sufficient to simply state this - you will need to back up any such claim with facts.

Ground (c) (There has not been a breach of planning control).

There is a distinction between grounds (b) and (c). One argues that there has not been any breach as a matter of fact. The other argues that the matters enforced against have not breached planning legislation and are therefore “permitted development”. If you find yourself in the position of having to argue on this (or other) legal grounds you are strongly advised to seek professional help.

Ground (d) (It was too late for enforcement action to be taken).

Certain actions are exempt from enforcement action after a four year period and others (such as changes of use or non compliance with



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conditions) are exempt after ten years. If you can prove your case falls into the relevant category you should appeal on this ground. You need to clearly set out facts to support your contention. It is not enough to say that “the use commenced ten years ago”. The Inspectorates’ booklets are helpful on this matter. The keeping of good records, such as accurate logbooks, is very important. If you wish to appeal on this ground, it is highly likely that the appeal will be dealt with by way of a Public Inquiry, as evidence will need to be taken on oath. This should be taken into consideration when assessing the overall cost of the appeal.

(Note: Fact Sheet 12 on Lawful Development Certificates may also be of interest on this issue).

Ground (e) (The Notice was not properly served).

Advice on this ground is set out in the Inspectorates’ booklets. You will need to show that the person, who should have had a notice served on them, has been substantially prejudiced by the failure to do so. If you cannot do this, the Planning Inspector (or Secretary of State) may disregard this ground of appeal.

Ground (f) (The steps required to remedy the breach are excessive).

This ground is used quite frequently. You will need to explain why you feel the steps are excessive. It may be that compliance with the steps set out on the notice could prevent you from carrying out an otherwise lawful use of the land.

Ground (g) (The period for compliance is too short).

This ground is included in most appeals. It is useful to argue for an extension of time as, if the Inspector agrees to this, but dismisses the other grounds, you will give yourself a few months longer in which to settle matters.