

KENNET DISTRICT COUNCIL

REGULATORY COMMITTEE – APRIL 21ST 2005

APPEALS PROCEDURE & REPRESENTATION

Report by Ted Howles Planning Services Manager

1.00 PURPOSE OF REPORT

- 1.01 The purpose of this report is to review the current appeals procedure and method of choosing legal representation at public inquiries.

2.00 FINANCIAL IMPLICATIONS

- 2.01 If members decide that the council should be represented at public inquiries by a barrister, the cost to the council of handling these will inevitably increase. It is impossible to put an annual figure forward as the council has no way of knowing how many appeals it will receive each year and how many of these will be dealt with by public inquiry. However, the approximate figure for hiring a barrister for a day long public inquiry is £1,000 for initial instructions plus £750 per day.

3.00 STAFFING IMPLICATIONS

- 3.01 No additional staff will be required.

4.00 LEGAL IMPLICATIONS

- 4.01 There are no legal implications arising from the recommendations set out in this report.

5.00 CURRENT PRACTICE

- 5.01 When planning applications are refused or enforcement notices served, the applicant has the right of appeal. These appeals are dealt with on behalf of the Secretary of State by independent inspectors from the Planning Inspectorate. The Inspectorate allows appeals to be dealt with in one of three ways. The most popular format is the written representation method. Appeals dealt with by this method simply involve both sides in sending in their written arguments setting out their respective cases. The inspector reads these, together with a copy of all the representations made by third parties, visits the site and subsequently sends his decision letter to both parties. The second method is a hearing. This involves the inspector leading a public hearing that discusses the main points at issue around a table.

He then visits the site and subsequently sends his decision letter to both parties. The least used and most formal method is the public inquiry. At these, the inspector sits and listens to witnesses called by both parties, in addition to members of the public who wish to speak. This is the only form of appeal where

there is legal representation. The Inspectorate encourage most appeals to be dealt with by the written representation method. However, the choice on the format is normally left to the two parties to decide.

- 5.02 The table below sets out the number of appeals received by Kennet in the last five years and the method by which they have been determined. (The table does not include appeals lodged but subsequently withdrawn before determination).

Year	Appeals Received	Public Inquiry	Hearing	Written Representations
2000	36	2	6	28
2001	52	1	12	39
2002	58	2	18	38
2003	74	2	17	55
2004	55	6	7	42

- 5.03 The figures demonstrate that the written representation method is the most popular procedure and that public inquiries are comparatively rare. Under the Scheme of Delegation to the Planning Services Manager, the decision on the procedure is delegated to the PSM. The appellant indicates on the appeal forms his preferred procedure and the PSM normally agrees this. Exceptions occur where the PSM may consider that an appeal has no reasonable prospect of success and may therefore request a hearing in place of written representations as this gives the council the opportunity to make a claim for costs (costs cannot be awarded on written representation appeals, except on enforcement cases). The other ground for an exception may be where the application is refused at the Regulatory Committee and the extent of public interest and range of issues may mean that a public inquiry is a better method. An example is the Manor Farm Urchfont appeal, where the PSM asked members to consider whether a public inquiry should be requested, a decision the members supported. The appellants request for the written representation method was therefore rejected in this case.
- 5.04 Decisions on who should represent the council are normally made by the PSM. On written representation appeals, the case officer is expected to prepare the council's case, including those cases where a decision is made against officer recommendation. This has not created any problems. However, at a recent Regulatory Committee meeting it was agreed that ward members should see the council's case before it is submitted where the appeal concerns a decision made against officer recommendation. As appeals are conducted within a tight timescale for submission of documents, a proper procedure is required for this and is outlined in appendix 1 below. At hearings, the case officer is also expected to represent the council, with the exception of those that are refused against officer recommendation. In these cases, member involvement is required and the choice as to who should be involved is agreed with the Chairman of the Regulatory Committee and the individual member concerned. They are assisted and accompanied by a planning officer. Member involvement in public inquiries is only required where they concern applications refused against officer recommendation and where there is no officer able to defend the case.

5.05 Legal representation is only required at public inquiries. The practice has been that the PSM advises the council's solicitor that a public inquiry is to be held and the solicitor decides on the appropriate level of legal representation. The most recent public inquiries have been handled by external solicitors appointed by the council. In most instances, this is perfectly adequate as the inquiries have been single issue or matters of fact (such as certificates of lawfulness). However, with more complex appeals that have lasted for longer than a day, the difficulties of using external solicitors to both assist the preparation of the case and conduct cross examination have become more apparent. Following a review of the Kvernerland and Spitalcroft public inquiries, the external solicitors themselves have advised that in future, it may help the presentation of the council's case if a barrister is instructed for controversial public inquiries and those likely to last more than one day. Accordingly, a barrister will be instructed for the forthcoming public inquiries concerning Manor Farm Urchfont and the former Thames Valley Foods site at Aldbourne. However, a greater transparency as to when barristers will be used is considered necessary.

6.00 FUTURE PRACTICE

6.01 It is suggested that in the future, where a public inquiry is to be held on a planning or enforcement appeal, the council should instruct a barrister to represent its case in the following circumstances:

- Where the appeal is against officer recommendation and the council will be represented by an elected member;
- Where the appeal is scheduled to last more than one day;
- Where, in the opinion of the PSM, the appeal challenges important policies in the local plan or local development document;

In appeals on decisions made against officer recommendation and dealt with by written representation or hearings, the procedure for member involvement should be as set out in appendix 1.

7.00 RECOMMENDATION

7.01 It is recommended that the council:

- 1. Agree that a barrister should be instructed to represent the council in public inquiries concerning planning and enforcement appeals in the circumstances set out in paragraph 6.01 above;**
- 2. Agree that member involvement in the preparation of the councils case for planning and enforcement appeals concerning appeals on decisions made against officer recommendation shall follow the procedure set out in Appendix 1;**

Appendix 1

Procedure for member involvement in appeals where the decision was made against officer recommendation

Background

This procedure applies solely to appeals that are to be dealt with by the **written representation** or **hearing** procedure and where the decision to refuse and/or to take enforcement action was made against officer recommendation. It does not apply to public inquiries as the timescales for the submission of evidence are different and may also involve meetings with the council's legal team. The timetable for member involvement in **public inquiries** will therefore be agreed on a case by case basis.

It is essential that those involved stick to the timescales outlined in this procedure. The council has less than **six weeks** from receiving notice of the appeal to submit its full case. Failure to comply with this timetable means that the Planning Inspectorate will not accept the council's statement and could leave the council open to an application for an award of costs for unreasonable behaviour.

Timescale

Week 1	Notice and grounds of appeal received by council.
Week 2	Ward member notified of appeal. Appeal assigned to planning officer
Weeks 2-4	Planning Officer prepares draft of council statement
Week 4/5	<p>Planning Officer sends draft statement to ward member.</p> <p>Ward member given 7 days to request any changes.</p> <p>If no changes are received by the expiry of this period, the planning officer can proceed to despatch the statement to the Inspectorate.</p> <p>If the planning officer considers that the changes can be accommodated, the statement shall be amended and despatched to the Inspectorate.</p> <p>If the planning officer does not consider that the changes can be justified (for example, introducing new grounds not included in the reasons for refusal), he/she shall discuss the outstanding matters with the ward member. If no agreement can be reached, the matter shall be referred to the Planning Services Manager (or in his absence, the DC & Conservation Team Leader) whose decision shall be final.</p>
Week 6	Statement despatched to the Inspectorate.