

From: PEDW.Casework@gov.wales
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Subject: CAS-02547-L1N1S5 Easting: 307856, Northing: 198753 Land at Merthyr Vale CF48 4TD PP-11306495
Attachments: 2023-10-17 - Decision CAS-02547-L1N1S5.pdf; Feedback, Complaints and Challenges - Planning and Environment Decisions Wales.pdf

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Annwyl Syr/Madam / Dear Sir/Madam,

Amgaeaf benderfyniad yr Arolygydd ar yr apêl uchod. / I enclose the Inspector's decision on the above appeal.

Cofion / Regards

Paul Newland
Cymorth Busnes / Business Support
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Llywodraeth Cymru / Welsh Government
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Appeal Decision

by R H Duggan BSc (Hons) DipTP MRTPI

an Inspector appointed by the Welsh Ministers

Decision date: 17/10/2023

Appeal reference: CAS-02547-L1N1S5

Site address: Land Off Cardiff Road A4054 And To The North Of 21 Mount Pleasant Cardiff Road Merthyr Vale

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Navid Childs against the decision of Merthyr Tydfil County Borough Council.
 - The application Ref P/22/0215, dated 13 June 2022, was refused by notice dated 6 October 2022.
 - The development proposed is the erection of a 2 bedroom cottage.
 - A site visit was made on 9 October 2023.
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Decision

1. The appeal is dismissed.

Main Issues

2. I consider the main issues to be whether the development is justified having regard to the location of the site within the open countryside; and the impact of the development on the character and appearance of the area and on nature conservation interests.

Reasons

3. The site is located within open countryside as defined in the Merthyr Tydfil County Borough Council Replacement Local Development Plan (LDP) 2016-2031 by Policy SW4. The policy amongst other things, seeks to ensure that development in the countryside is strictly controlled. However, in exceptional circumstances policy SW4 sets out, amongst other criteria, that development 'associated with a rural enterprise or the winning and working of minerals' may be permitted where such locations can be fully justified and satisfies other relevant plan policies. Planning Policy Wales (PPW) Edition 11 states that new housing in the open countryside should be strictly controlled. One exception to this is where it is essential for a dwelling to house a worker in a rural enterprise.
4. Although PPW requires the strict control of new houses in the open countryside, Technical Advice Note (TAN) 6: Planning for Sustainable Rural Communities confirms in

paragraph 4.3.1 that one of the few circumstances in which new isolated residential development in the open countryside may be justified is when accommodation is required to enable rural enterprise workers to live at, or close to, their place of work. Whether this is essential in any particular case will depend on the needs of the rural enterprise concerned and not on the personal preference or circumstances of any of the individuals involved. TAN6 sets out how proposals for permanent rural enterprise dwellings should be assessed and is supplemented by Practice Guidance on Rural Enterprise Dwellings. These specify a series of tests to be considered and in particular, the functional, financial and 'other dwelling' tests. The functional test addresses the need for a resident worker for the proper functioning of the enterprise; the financial test considers the economic sustainability of the enterprise; whilst the 'other dwelling' test considers if a functional need could be fulfilled by some other dwelling.

5. TAN6 advises that in order for local planning authorities to determine planning applications the policy requires that all applications are supported by robust supporting evidence. In all cases a planning application must be supported by a 'Rural Enterprise Dwelling Appraisal' (TAN6 paragraph 4.7.1) which addresses the tests. Although the appellant has submitted a Rural Enterprise Business Plan for a Micro Horticulture Business, this does not assess the tests set out within TAN6. Therefore, from the evidence before me, a Rural Enterprise Dwelling Appraisal has not been submitted in this case. Nevertheless, I will refer to the information set out in the business plan in assessing the proposal against the TAN6 tests below.

Functional test

6. The functional test is to establish whether it is essential, for the proper functioning of the enterprise, for one or more workers to be readily available at most times. It should relate to unexpected situations that might arise, for which workers are needed to be on hand outside of normal working hours for the particular enterprise. It provides the example for which workers are needed to be on hand day and night to deal with an emergency that would threaten the continued viability and existence of the enterprise without immediate attention. Thus, the test is one of necessity rather than desirability, reflecting the policy principle that unnecessary development in the open countryside should be avoided.
7. A covering letter and business plan sets out the general background to the proposed development, and highlights that the land forms part of a 6-acre small holding purchased in 2020 and managed solely by the appellant to provide a sustainable income from horticulture, primarily through the sale of garden plants. The business plan states that the business and personal objectives of the enterprise is to provide a sustainable income stream from horticulture, produce the majority of food for up to 4 people, and promote a sustainable and ecologically responsible lifestyle. The business model and strategy for garden plant sales is to produce low volume high value plants in a non intensive way to undercut the typical sale value of large garden centres, and food production will be limited to fruit, veg, nuts, mushrooms. The aim of the coppice is to increase the sustainability of the business by producing wood for the garden plant growing operation, and to contribute to the revenue stream through the sale of raw material.
8. It is stated that the business is in year 2 of a 5-year plan (Phase 1: years 1-2) which involves setting up food production and growing infrastructure; The plan states that Phase 2 (years 3 to 5) would involve plant sale operations; and phase 3 is for year 6 onwards. Phase 1 has involved: 10 msq of test vegetable growing beds have been created; a 20 tree orchard was planted; 10 3m long soft fruit test beds; 5 hazel trees planted within the permanent tree area; A small greenhouse and cold frames for

propagation have been erected; 2 composting areas created; and a 2500 litre rainwater harvesting system fitted to the existing shed.

9. The business plan highlights that work is estimated to encompass a 240-day working year, and highlights that some work would be highly concentrated in the growing season and weekend work would be a necessity. It is estimated that daily tasks on the land (i.e. checking for pest damage, checking moisture levels of plants) would involve 1.5 hours per task, and weekly tasks would involve handling and dispatching customer orders and returns, delivering local orders and handling local pickups. However, the appellant has not provided any justification to demonstrate why it is essential for a worker to live on the site to support the needs of the enterprise, other than to state that close proximity affordable accommodation is important to the long term success of this business plan, improve efficiency and reduce costs.
10. It has not been demonstrated that it is essential, for the proper functioning of the enterprise, for one or more workers to be readily available at most times. Thus, my overall conclusion on the functional test is that, while there could be some benefits to the business for Mr Childs to live on the site, none of them (individually or cumulatively) provide an essential need for a worker to live on the site on a permanent basis. The proposal fails the functional test.

Financial test

11. The financial test should show that the enterprise concerned has been established for at least three years, profitable for at least one of them and both the enterprise and the business need for a job, is currently financially sound, and should have good prospects of remaining economically sustainable for a reasonable period of time, usually at least 5 years. Failure of the functional test leads to the conclusion that the proposed dwelling is contrary to policy and should be refused, regardless of any conclusions on the financial test. However, for completeness I have also considered that test.
12. The business plan states that year 1 investments have included fencing repair, drainage improvements, clearing work, tree planting, wildlife hedge creation, veg and fruit growing test area, greenhouse installation, trial compost and irrigation systems; and year 2 and 3 investments will cost £1,900. The appellant also provides evidence of cash reserves in the form of a statement dated 11 May to 10 June 2022 from his savings account showing a balance of over £20,000. The business plan sets out a 'yearly cost model' which lists a total target income of £21,710 and expected expenditure of £2,450 and states Pre-tax profits of £19,260. No justification has been provided to support these projections, and a detailed financial appraisal of the business providing historic information of past profit levels has not been evidenced in the form of audited accounts for Phase 1 (years 1-2). In addition, no financial projections have been provided for future years (Phases 2 and 3) based on Mr Child's own plan for growth of the business if he is able to live on the site and so be able to drive the business forward as he would wish.
13. It is clear that the business is very young and has not been established long enough to demonstrate that it has been established for at least 3 years and has been profitable for at least one of these years. Whilst Mr Child's aspirations are admirable, I can place little weight on the financial information/projections which have been provided. Accordingly, it cannot be justified that the business is financially sound and has a clear prospect of remaining so. Therefore, I conclude that the proposal fails to meet the financial test prescribed in TAN6.

Other dwellings test

14. Notwithstanding my findings on the functional and financial tests, TAN 6 refers to the 'other dwellings test'. The other dwellings test should identify whether there is an existing dwelling or building suitable for conversion on the enterprise or dwelling in the locality that could meet any identified functional need. Paragraph 6.1 of the Practice Guidance to TAN 6 clarifies that the onus is on an applicant to demonstrate that no reasonable alternative to a new dwelling is available.
15. The business plan sets out an 'accommodation plan' which states that the close proximity affordable accommodation is important to the long term success of the business plan; and longer term accommodation options are set out, including buying a new build house in the area, buying a small terraced house, renting locally or having a static caravan on site. The applicant acknowledges that these are potential options, but due to financial costs and other considerations the appellant is applying for permission to construct a new dwelling on the site.
16. Although being on one site would be preferable to the appellant, I am not convinced that a dwelling within a short distance of the land would make the business unviable. In any event TAN 6 makes it clear that whether it is essential in any particular case for rural enterprise workers to live at, or close to, their place of work will depend on the needs of the rural enterprise concerned and not on the personal preference or circumstances of any of the individuals involved. It also states in paragraph 4.6.2 that where the case is not completely proven for a dwelling, permission should not be granted for it, although it recognises that it may be appropriate to allow temporary accommodation for a limited period to allow the circumstances to be fully assessed. Nevertheless, the development before me is for a permanent dwelling and on the evidence, I am not satisfied that the functional need could not be fulfilled by other existing accommodation in the locality which is suitable and available for occupation by the appellant. The other dwellings test has therefore not been satisfied.

Other planning requirements

17. The other normal planning requirements test is required to demonstrate that the dwelling would be suitably located to fulfil its identified need and to minimise impact on the wider environment.
18. The site is located within open countryside and within the Pontygwaith Special Landscape Area (SLA4). The natural green and open characteristics of the site creates a strong boundary edge to this part of the settlement.
19. The proposed dwelling and driveway/parking area would, due to their elevated and prominent siting, be highly visible from the adjacent road and other public viewpoints. The development would introduce domestic activity into the site, in particular the parking of cars and locating domestic paraphernalia. Conditions could be imposed to restrict some forms of development which would otherwise be permitted, but the parking of cars at the site and the likely existence of domestic paraphernalia would be visible from outside of the site. In order to achieve the required vision splays, the hedge-line to the front of the dwelling would need to be set back or removed from the development to satisfy highway requirements. This would tend to jar within the landscape and detract from the open, verdant nature of the land. It would also be in marked contrast to the current character of the site which very obviously has no current domestic use and has largely blended into the wider landscape.

20. The presence of the dwelling, hardstanding/formal access and cars, light from the building and the activity from its occupation would all combine to significantly alter the character of the site. For the reasons set out above, I consider that the proposed development would have a significantly harmful effect on the character and appearance of the area and on the SLA, thus conflicting with Policy SW11 'Sustainable Design and Placemaking' and Policy EnW5 'Landscape Protection' of the LDP.

Nature Conservation

21. Having regard to the nature of the site, the proposal clearly has the potential to impact upon priority and protected species and/or their habitats. A Preliminary Ecological Appraisal (PEA) was submitted with the planning application, and this was assessed by the Council's ecologist. The Council's ecologist states that in considering the impact of the development on bats it is noted that the existing stable block has been assessed in the report as having negligible suitability for roosting bats, but questions whether this includes night roosting bats. In addition, insufficient information has been provided in the report to assess the impact of the proposal on reptiles and invertebrates.
22. The Council's ecologist also highlights that the site lies immediately adjacent to the Merthyr Vale Site of Importance for Nature Conservation (SINC), and although the PEA refers to this SINC there is no information presented regarding the potential impact on any other nearby locally designated sites, for example, there are at least 3 SINC's within 500m of the site. Additional information is also requested in connection to on-site lighting and the habitats which would be impacted by the proposed development. In conclusion, the Council's ecologist states that the PEA does not provide sufficient information to allow the local planning authority (LPA) to fully assess the potential ecological impacts of the proposed development, or to identify whether further survey work is required.
23. All native UK reptiles and all species of bat and their roosts are protected under the Wildlife and Countryside Act 1981 (as amended) and the Conservation of Habitats and Species Regulations 2010 (as amended). Paragraph 6.2.2 of Planning Policy Wales Technical Advice Note (TAN) 5 'Nature Conservation and Planning' indicates that any survey work that is required should be carried out before planning permission is granted where there is a reasonable likelihood of a protected species being present and affected, otherwise all relevant material planning considerations may not have been addressed in making the decision. TAN5 advises that planning permission should not be granted subject to a condition requiring a survey to be carried out.
24. On the basis of the information before me, including the appellant's PEA and the comments provided by the Council's ecologist, I find that there is insufficient evidence available to me to establish the potential impact of the scheme on biodiversity and ecology, including nearby SINC's. Mindful of the relevant national policy advice on protected species in TAN5, this is a matter that requires to be understood before planning permission is granted, rather than being addressed by planning condition.
25. I find that the circumstances of this case justifies a precautionary approach, in order to avoid potentially harmful impact on protected species which would conflict with Policy EnW1 of the LDP.

Conclusions

26. Having regard to the above and considered all other matters raised, I conclude that the appeal should be dismissed.
27. In reaching my decision, I have taken into account the requirements of sections 3 and 5 of the Well-Being of Future Generations (Wales) Act 2015. I consider that this decision is

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in accordance with the Act's sustainable development principle through its contribution towards the Welsh Ministers' well-being objectives of building a stronger, greener economy as we make maximum progress towards decarbonisation, making our cities, towns and villages even better places in which to live and work and embedding our response to the climate and nature emergency in everything we do.

R Duggan

INSPECTOR

Feedback, Complaints and Challenges - Planning and Environment Decisions Wales

1. Feedback

1.1. We try hard to ensure that everyone who uses the appeal system is satisfied with the service they receive from us.

1.2. We appreciate that many of our customers will not be experts on the planning system and for some it will be their one and only experience of it. We consider that your opinions are important and realise that they may be strongly- held.

1.3. All correspondence we receive after the appeal decision is issued is handled by the Quality Team which ensures that all comments are considered and complaints are investigated thoroughly and impartially. We will reply as soon as possible in clear, straightforward language, avoiding jargon and complicated legal terms. It should be noted that correspondence received without sufficient contact information may not be responded to. It is therefore prudent to ensure that you provide the Inspectorate with a name and contact details when providing your feedback.

1.4. You can contact us in any of the ways below.

- You can get in touch on 03001231590 if you want to make your complaint over the phone.
- You can e-mail us at PEDW.Complaints@gov.wales
- You can write a letter to us at the following address:
Planning and Environment Decisions Wales
Welsh Government
Cathays Park
Cardiff
CF31 3NQ

Whilst we are happy to talk to people on the phone, where there are a number of issues to relay you may find it easier to put these in writing setting out the points clearly. We will acknowledge your correspondence, advise you who is dealing with it and provide you with a timescale for replying. We aim to reply to 80% of all correspondence within 20 working days.

Appeal “Allowed” or “Dismissed

1.5. In planning appeals (under section 78 of the Town and Country Planning Act 1990) ‘Allowed’ means that planning permission has been granted, ‘Dismissed’ means that it has not. In enforcement appeals (under section.174), ‘Upheld’ means that the Inspector has rejected the grounds of appeal and the enforcement notice must be complied with; ‘Quashed’ means that the Inspector has agreed with the grounds of appeal and cancelled the enforcement notice.

2. Administrative Complaints

2.1 There may be occasions in which you feel there has been an administrative error during the handling of an appeal and you may well feel the need to complain to us.

How we investigate administrative complaints

2.2. We will acknowledge your complaint upon receipt and move onto investigating any issues raised.

2.3. Complaints regarding any administrative issues are independently investigated by a member of our management team. They are done so impartially and never within the team concerned. Where necessary we will speak to the member of staff concerned.

2.4. Once the investigation is complete we will issue a full response.

What we will do if we have made a mistake

2.5. If, upon completion of an investigation, it is apparent that we have made a mistake then first and foremost we will apologise, we will then take the necessary steps to correct this. Further to which, we will seek for any parties adversely effected to be returned to the position they were in prior to the mistake being made.

3. Complaints about Appeal Decisions

3.1. Planning appeals often raise strong feelings and it is inevitable that there will be at least one party who will be disappointed with the outcome of an appeal. This often leads to a complaint, either about the decision or the way the appeal was handled.

How we investigate post-decision complaints

3.2. It is the job of the Quality Assurance Team to investigate complaints about procedure, decisions or an Inspector's conduct. Inspectors have no further direct involvement in the case once their decision is issued.

3.3. To help with our investigations we may need to ask the Inspector or other staff for comments. This helps us to gain as full a picture as possible so that we are better able to decide whether an error has been made. If this is likely to delay our full reply we will quickly let you know.

3.4. Sometimes complaints arise due to misunderstandings about how the appeal system works. When this happens we will try to explain things as clearly as possible. Sometimes the appellant, the local planning authority or a local resident may have difficulty accepting a decision simply because they disagree with it. Although we cannot re-open an appeal to re-consider its merits or add to what the Inspector has said, we will answer any queries about the decision as fully as we can.

3.5. Once our investigations are complete, we will send a full reply comprehensively responding to all substantive points raised.

3.6. If you consider that our reply has not adequately responded to your concerns, our policy is that a senior manager will review your complaint and send a final reply.

3.7. Sometimes a complaint is not one we can deal with (for example, complaints about how the local planning authority dealt with another similar application), in which case we will explain this and suggest who may be able to deal with the complaint instead.

3.8. Similarly we cannot resolve any issues you may have with the local planning authority about the planning system or the implementation of a planning permission.

3.9. If planning permission is granted, either by the local planning authority at application stage or by the Inspector on appeal, the local planning authority have the sole responsibility for monitoring the implementation of the permission and ensuring that it is in accordance with the plans and any conditions. Planning and Environment Decisions Wales does not have this role.

3.10. If the local planning authority considers that the development does not comply with

the permission they have power to take enforcement action.

What we will do if we have made a mistake

3.11. Although we aim to give the best service possible, there will unfortunately be times when things go wrong and we fail to achieve the high standards we set ourselves. If a mistake has been made we will write to you explaining what has happened and offer our apologies. The Inspector or administrative support staff and their line manager will be told that the complaint has been upheld and we will look to see if lessons can be learned from the mistake, such as whether our procedures can be improved or training given, so that similar errors can be avoided in future.

Taking your complaint further

3.12. If we do not succeed in resolving your complaint, you may complain to the Public Services Ombudsman for Wales. The Ombudsman is independent of all government bodies and can look into your complaint if you believe that you personally, or the person on whose behalf you are complaining:

- have been treated unfairly or received a bad service through some failure on the part of the body providing it
- have been disadvantaged personally by a service failure or have been treated unfairly.

2.13. Normally the Ombudsman will not investigate a complaint if there is a legal route you can follow to challenge a decision. The Ombudsman cannot consider the merits of Inspector's appeal decisions, which can only be challenged through the courts (see section 3 for further details).

3.14. The Ombudsman expects you to bring your concerns to our attention first and to give us a chance to put things right. You can contact the Ombudsman by:

- phone: 0300 790 0203
- e-mail: ask@ombudsman-wales.org.uk
- the website: <http://www.ombudsman-wales.org.uk>
- writing to: Public Services Ombudsman for Wales 1 Ffordd yr Hen Gae, Pencoed CF35 5LJ

Correction of minor errors

3.15. Appeal decisions are legal documents and, with the exception of very minor slips, we cannot amend or change them once they have been issued.

3.16. In certain circumstances we are able to make minor changes to the decision under what is known as the 'Slip Rule'. This normally relates to minor errors in the decision such as typing mistakes or minor factual errors that do not affect the reasoning in the decision. For further information please see guidance note 'Correction of Errors under Section 56 of the Planning and Compulsory Purchase Act 2004'.

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What we cannot change

3.17. We **cannot change the Inspector's decision**, or re-open the appeal once the decision has been issued. Although we can rectify minor slips, we cannot reconsider the evidence the Inspector took into account or the reasoning in the decision or change the decision reached even if we acknowledge that an error has occurred. This can only be done following a successful High Court challenge (see 'Challenging decisions in the High Court' – below) resulting in the quashing of the original Inspector's decision.

Learning Lessons

3.18. We take your concerns and complaints seriously and try to learn from any mistakes we've made. Complaints and our responses to them are therefore one way of helping us improve the appeals system.

Putting things right

3.19. Where maladministration or an error by Planning and Environment Decisions Wales has led to injustice or hardship, we will try to offer a remedy that returns the complainant to the position they would have been in otherwise. If that is not possible, Planning and Environment Decisions Wales will provide compensation for unnecessary expense incurred as a result of an acknowledged error where there are compelling reasons to do so.

3.20. Planning and Environment Decisions Wales will consider carefully complaints and requests for financial compensation received within 6 months of the date of the error or of any subsequent appeal decision by us related to that error.

3.21. Remedies which may be offered include:

- an apology, explanation, and acknowledgement of responsibility;
- remedial action, which may include reviewing service standards;
- revising published material; revising procedures to prevent the same thing happening again; training or supervising staff; or any combination of these;
- financial compensation for costs incurred as a result of our error.

Frequently asked questions

3.22. *"Why did an appeal succeed when local residents were all against it?"* –

Local views are important but they are likely to be more persuasive

if based on planning reasons, rather than a basic like or dislike of the proposal. Inspectors have to make up their own minds on all of the evidence whether these views justify refusing planning permission.

3.23. *"How can Inspectors know about local feeling or issues if they don't live in the area?"*

– Using Inspectors who do not live locally ensures that they have no personal interest in any local issues or any ties with the appellant or their agent, the local planning authority or its policies.

However, Inspectors will be aware of policies and local views from the representations people have made on the appeal.

3.24. *"I wrote to you with my views, why didn't the Inspector mention this?"* – Inspectors must give reasons for their decision and take into account all views submitted but it is not necessary to list every piece of evidence.

3.25. *"Why did my appeal fail when similar appeals nearby succeeded?"*

– Although two cases may be similar, there will nearly always be some aspect of a proposal which is unique. Each case must be decided on its own particular merits having in mind the particular evidence produced by the parties on that case (which is likely to differ from case to case).

3.26. *"I've just lost my appeal, is there anything else I can do to get my permission?"* –

Perhaps you could change some aspect of your proposal to increase its acceptability. For example, if the Inspector thought your extension would look out of place, could it be re-designed to be more in keeping with its surroundings? If so, you can make a revised application to the local planning authority. Talking to a planning officer about this might help you explore your options.

3.27. *"What can I do if someone is ignoring a planning condition?"* – Planning and Environment Decisions Wales cannot intervene as it is the local planning authority's responsibility to ensure conditions are complied with. You should therefore contact

the local planning authority as it has discretionary powers to take enforcement action if a condition is being ignored.

4. Challenging a decision in the High Court

4.1. **Important Note** - This Note is intended for guidance only. Because High Court challenges can involve complicated legal proceedings, you may wish to consider taking legal advice from a qualified person, such as a solicitor, if you intend to proceed or are unsure about any of the guidance in this Note. Further information is available from the Administrative Court (see paragraph 3.14).

4.2. High Court challenges proceed under different legislation depending on the type of appeal and the period allowed for making a challenge varies accordingly.

4.3. **If you want to challenge a decision in the High Court the challenge must be made:**

- for planning appeals within 42 days (6 weeks) of the date the decision was issued – this period cannot be extended;
- in most enforcement appeals, within 28 days of the date the decision was issued, although the Courts can extend this period if they consider there is good reason to do so.

Grounds for challenging the decision

4.4. A decision cannot be challenged merely because someone disagrees with the Inspector's decision. For a challenge to be successful you would have to satisfy the High Court that the Inspector made an error in law, e.g. misinterpreting or misapplying a policy or failing to take account of an important consideration. If a mistake has been made and the High Court considers it might have affected the outcome of the appeal it will quash the Inspector's decision and return the appeal to Planning and Environment Decisions Wales for re-determination.

Challenges to planning appeal decisions

4.5. These are normally applications under section 288 of the Town & Country Planning Act 1990 to quash decisions on appeals for planning permission (including enforcement appeals allowed under ground (a) or lawful development certificate appeal decisions). For listed building or conservation area consent appeal decisions challenges are made under section 63 of the Planning (Listed Buildings and Conservation Areas) Act

1990. **Challenges must be received by the Administrative Court within 42 days (6 weeks) of the date of the decision - this period cannot be extended.**

Challenges to enforcement appeal decisions

4.6. Enforcement appeal decisions under all grounds can be challenged under section 289 of the Town & Country Planning Act 1990. For listed building or conservation area enforcement appeal decisions challenges are made under section 65 of the Planning (Listed Buildings and Conservation Areas) Act 1990. To challenge an enforcement decision under section 289 or section 65 you must first get the permission of the Court. If the Court does not consider that there is an arguable case, it can refuse permission.

Applications for permission to make a challenge must be received by the Administrative Court within 28 days of the date of the decision, unless the Court extends this period.

Frequently asked questions

4.7. *“Who can make a challenge?”* – In planning cases, anyone aggrieved by the decision may do so. This can include interested persons as well as appellants and local planning authorities. In enforcement cases, a challenge can only be made by the appellant, the local planning authority or any other person with a legal interest in the land. Other aggrieved people may apply for judicial review by the Courts but they must do this promptly (the Administrative Court can tell you more about how to do this – see ‘Further information’ below).

4.8. *“How much is it likely to cost me?”* - An administrative charge is made by the Court for processing your challenge (the Administrative Court should be able to give you advice on current fees – see Further information below). The legal costs involved in preparing and presenting your case in Court can be considerable, and if the challenge fails you will usually have to pay Planning and Environment Decisions Wales’s costs as well as your own.

However, if the challenge is successful Planning and Environment Decisions Wales will normally be required to meet your reasonable legal costs.

4.9. *“How long will it take?”* - This can vary considerably. Many challenges are decided within 6 months, some can take longer.

4.10. *“Do I need to get legal advice?”* - You do not have to be legally represented in Court but it is normal to do so, as you may have to deal with complex points of law made by Planning and Environment Decisions Wales’s legal representative.

4.11. *“Will a successful challenge reverse the decision?”* – Not necessarily. The Court can only require Planning and Environment Decisions Wales to reconsider the case and an Inspector may come to the same decision but for different or expanded reasons.

4.12. *“What can I do if my challenge fails?”* - Although it may be possible to take the case to the Court of Appeal, a compelling argument would have to be put to the Court for the judge to grant permission for you to do this.

Further information

4.13. Further advice about making a High Court challenge **in Wales** can be obtained from:

**Administrative Court at Cardiff Civil Justice Centre 2 Park
Street
Cardiff CF10 1ET**

Phone: **02920 376 400**

Website: <http://www.justice.gov.uk/about/hmcts/>

Re-determination following a successful challenge

4.14. Where a challenge is successful, the appeal will be returned to Planning and Environment Decisions Wales for re-determination. We will give all High Court redetermination cases priority status, and they will normally be dealt with quickly, though without prejudicing any party. Planning and Environment Decisions Wales will usually appoint a different Inspector to re-determine the appeal.

4.15. The appeal will usually be decided by either further written representations or an inquiry. We will rarely arrange a hearing even if the original appeal was dealt with this way. We consider that a hearing decision that has been examined and quashed in the formal setting of the

High Court would normally need to be re-determined under the formal inquiry procedure, in order to allow a full examination of the legal issues raised. However, where all parties agree that a hearing would be appropriate we will take this into account when determining the procedure for the re-determined appeal.

4.16. Where the appeal was originally dealt with by written representations, we would normally re-determine it by means of further written representations. However, where there has been a material change in circumstances we may consider this is no longer the most appropriate procedure.

4.17. Where the appeal was originally dealt with by an inquiry, a new one may be held. Where there have been significant changes in circumstances (e.g. new legislation or local or national policies) since the original inquiry or hearing the Inspector would normally allow the submission of further evidence to address these.

Timetable

4.18. For re-determined appeals where the inquiry is expected to last 8 days or more, Planning and Environment Decisions Wales would usually agree a bespoke timetable with the main parties to cover the dates of the inquiry, the submission of evidence and the issue of the decision or submission of the report to the Welsh Ministers, if applicable.

4.19. In other cases we would normally seek to agree dates for an inquiry or hearing in accordance with our standard practice. Where the re-determined case is proceeding by written representations we would normally contact the parties to make arrangements for a further visit, unless it has been agreed that a further visit is unnecessary.

5. Contacting Us

5.1. Planning and Environment Decisions Wales

Planning and Environment Decisions Wales
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Phone: 03001231590

E-mail: PEDW.Complaints@gov.wales

Website: <https://gov.wales/planning-and-environment-decisions-wales/contact-us>

5.2. Public Services Ombudsman for Wales

Public Services Ombudsman for Wales¹
Ffordd yr Hen Gae
Pencoed
CF35 5LJ

Helpline: 0300 790 0203

Website: <http://www.ombudsman.wales>

Email: ask@ombudsman.wales