
STATUTORY INSTRUMENTS

1980 No. 1677 (S. 141)**TRIBUNALS AND INQUIRIES****The Town and Country Planning Appeals (Determination by Appointed Person) (Inquiries Procedure) (Scotland) Rules 1980***Made* - - - - 24th October 1980*Laid before Parliament* 13th November 1980*Coming into Operation* 22nd December 1980

ARRANGEMENT OF RULES

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In exercise of the powers conferred by section 11 of the Tribunals and Inquiries Act 1971(a) and now vested in me (b) and of all other powers enabling me in that behalf, and after consultation with the Council on Tribunals, I hereby make the following rules—

Citation and commencement

1.—(1) These rules may be cited as the Town and Country Planning Appeals (Determination by Appointed Person) (Inquiries Procedure) (Scotland) Rules 1980.

(a) 1971 c. 62; section 11(4) is to be read with paragraph 7(1) of Schedule 7 to the Town and Country Planning (Scotland) Act 1972 (c.52)

(b) S.I. 1972/2002.

(2) These rules shall come into operation on 22nd December 1980 but shall not affect any appeal brought before that date.

Application of rules

2.—(1) Subject to the provisions of this rule, these rules apply to any local inquiry held by a person appointed by the Secretary of State for the purpose of appeals to the Secretary of State under any of the classes of appeal specified in the Schedule to these rules where such appeals fall to be determined by that person instead of by the Secretary of State by virtue of the powers contained in Schedule 7 to the Town and Country Planning (Scotland) Act 1972(a) and of regulations made thereunder.

(2) These rules apply to hearings before a person appointed by the Secretary of State for the purpose of any of the appeals referred to in paragraph (1) hereof to the extent provided in rule 16.

(3) These rules shall not apply where the Secretary of State, in exercise of his powers under paragraph 3(1) or 6 of Schedule 7 to the Act, directs that an appeal which, by virtue of paragraph 1 of that Schedule, falls to be determined by a person appointed by the Secretary of State, shall, instead of being determined by that person either be determined by the Secretary of State or, as the case may be, not be begun or proceeded with.

Interpretation.

3.—(1) In these rules, unless the context otherwise requires—

“the Act” means the Town and Country Planning (Scotland) Act 1972;

“the 1973 Act” means the Local Government (Scotland) Act 1973(b);

“the application” means the application giving rise to the appeal to which the inquiry relates;

“the appeal” means the appeal to which the inquiry relates;

“the appointed person” means the person appointed by the Secretary of State to determine the appeal;

“development corporation” means the development corporation of a new town;

“documents” includes photographs, maps and plans;

“inquiry” means a local inquiry to which these rules apply;

“the land” means the land (including trees and buildings) to which the inquiry relates;

“planning authority” means the regional, general or district planning authority, as the case may be, who were responsible for dealing with the application or for service of the enforcement notice, as the case may be;

“section 26 parties” means persons from whom representations are received by the planning authority in pursuance of section 26(3) of the Act, or by the Secretary of State in pursuance of section 26(3) as applied by section 33(5) of the Act, before the end of the period mentioned in section 24(4) of the Act;

“trees” includes groups of trees and woodlands;

and other expressions have the same meaning for the purpose of these rules as they have for the purpose of the Act or, as the case may be, for the purpose of Part IX (planning functions) of the 1973 Act.

(a) 1972 c. 52.

(b) 1973 c. 65.

(2) Where the appeal is an appeal against an enforcement notice, any reference in these rules to an application shall be construed as a reference to that enforcement notice.

Preliminary information to be supplied to and by the planning authority

4.—(1) The planning authority, on being notified by the Secretary of State of the intention to proceed with the consideration of an appeal to which these rules apply and of the name and address of all section 26 parties who have made representations to the Secretary of State, shall forthwith inform—

- (a) the appellant in writing of the name and address of all section 26 parties; and
- (b) the Secretary of State of any such persons who have made representations to the planning authority.

(2) Where—

- (a) the Secretary of State has given to the planning authority a direction restricting the grant of permission for the development for which the application was made or a direction as to how the application is to be determined, or
- (b) any government department, local authority or development corporation have expressed in writing to the planning authority the view that the application should not be granted either wholly or in part, or should be granted only subject to conditions, or, in the case of an application for consent under a tree preservation order, should be granted together with a direction requiring the replanting of trees, or, in the case of any application, that it should be granted,

the planning authority shall inform the Secretary of State, government department, local authority or development corporation concerned, as the case may be, that such direction or expression of view is relevant to the appeal and the Secretary of State, government department, local authority or development corporation, as the case may be, shall (except where such action has already been taken) forthwith furnish to the planning authority a statement in writing of the reasons for the direction or expression of view.

Notification of identity of appointed person

5. The Secretary of State shall give to the appellant, to the planning authority and to all section 26 parties written notice informing them of the name of the appointed person:

Provided that, where, in exercise of his powers under paragraph 4 of Schedule 7 to the Act, the Secretary of State has appointed another person to determine the appeal instead of the person previously appointed for that purpose and it is not practicable to give written notice of the new appointment before the inquiry is held, the person holding the inquiry shall, in lieu of the Secretary of State giving such notice, announce his own name and the fact of his appointment at the commencement of the inquiry.

Notification of inquiry

6.—(1) A date, time and place for the holding of the inquiry shall be fixed by the appointed person who shall give not less than 28 days' notice in writing of such date, time and place to the appellant, to the planning authority, and to all section 26 parties at the addresses furnished by them:

Provided that—

- (i) with the consent in writing of the appellant and of the planning authority the appointed person may give such lesser period of notice as may be agreed with them and in that event he may specify a date for service of the statements referred to in rule 7(1) or (2), as the case may be, later than the date prescribed in that rule;
- (ii) the appointed person may vary the date, time and place fixed for the holding of the inquiry, where it becomes necessary or advisable to do so, and he shall give such notice of the variation as may appear to him to be reasonable in the circumstances.

(2) Without prejudice to the foregoing provisions of this rule, and, where the appointed person has not already done so, he may require the planning authority or, if the Secretary of State so directs, shall require the planning authority to take one or more of the following steps—

- (a) to publish in one or more newspapers circulating in the locality in which the land is situated such notices of the inquiry as he may direct;
- (b) to serve notice of the inquiry in such form as he may specify on such persons or classes of persons as he is so directed to specify and on such other persons or classes of persons as he may specify;
- (c) to post such notices of the inquiry as he may direct in a conspicuous place or places near to the land;

but the requirements as to the period of notice contained in paragraph (1) of this rule shall not apply to any such notices.

Statements to be served before inquiry

7.—(1) Not later than 28 days before the date of the inquiry (or such later date as the appointed person may specify under proviso (i) to rule 6(1)) the planning authority shall, where this has not already been done—

- (a) supply to the appointed person a written statement of any observations which the authority propose to put forward at the inquiry together with copies of all representations received by them in relation to the appeal; and
- (b) serve a copy of the statement and of the representations on the appellant and all section 26 parties:

Provided that where, having regard to the number of section 26 parties and the length of the planning authority's statement of observations, the appointed person considers it expedient, he may, at the request of the planning authority, authorise them, instead of serving a copy of the statement and, as the case may be, the representations on all section 26 parties, to give notice to all section 26 parties stating the times and places at which the statement and, as the case may be, the representations may be inspected by all section 26 parties; and the authority shall afford them a reasonable opportunity to inspect, and where practicable, to take copies of the statement and, as the case may be, the representations.

(2) Where the Secretary of State has given a direction restricting the grant of permission for the development for which the application was made or a direction as to how the application is to be determined, the planning authority shall refer to this in their statement and shall include in the statement a copy of the direction and the reasons given for it and shall, within the period specified in paragraph (1) of this rule, supply a copy of the statement to the appointed person.

(3) Where any government department, local authority or development corporation have expressed in writing to the planning authority the view that the application should not be granted either wholly or in part or should be granted only subject to conditions, or, in the case of an application for consent, or an appeal under a tree preservation order, should be granted together with a direction requiring the replanting of trees, or, in the case of any application, that it should be granted, and the planning authority propose to rely on such expression of view in their submissions at the inquiry they shall include it in their statement; provided that, in the case of an expression of view that the application should be granted, the planning authority shall in any event include it in their statement.

(4) The planning authority shall within the period specified in paragraph (1) of this rule, supply a copy of the statement to the government department, local authority or development corporation concerned.

(5) Where the planning authority intend to refer to documents or put them in evidence at the inquiry, the authority's statement shall be accompanied by a list of such documents, together with a notice stating the time and place at which the documents may be inspected by the appellant and all section 26 parties; and the authority shall afford them a reasonable opportunity to inspect and, where practicable, to take copies of the documents.

(6) The planning authority shall afford any other persons interested a reasonable opportunity to inspect and, where practicable, to take copies of any statement or document referred to in the preceding paragraphs of this rule as well as of any statement served on the authority by the appellant under paragraph (7) of this rule.

(7) The appellant shall, if so required by the appointed person, serve on the planning authority, all section 26 parties and the appointed person, within such time before the inquiry as the appointed person may specify, a written statement of the observations which he proposes to put forward at the inquiry; and such statement shall be accompanied by a list of any documents which the appellant intends to refer to or put in evidence at the inquiry, and he shall, if so required by the appointed person, afford the planning authority, all section 26 parties and such other persons as the appointed person may specify a reasonable opportunity to inspect and, where practicable, to take copies of such documents.

(8) Without prejudice to the foregoing paragraphs of this rule, the appointed person may direct a more extensive circulation of the statements or other documents referred to therein where he considers this to be appropriate and reasonable.

Appearances at inquiry

8.—(1) The persons entitled to appear at the inquiry shall be—

- (a) the appellant;
- (b) the planning authority;
- (c) where the Secretary of State has given a direction restricting the grant of permission for the development for which the application was made or a direction as to how the application is to be determined, a representative of the Secretary of State;
- (d) where a government department have expressed a view in writing on the application and the planning authority have included this in their statement of observations, a representative of that department;

- (e) any local authority;
- (f) where the land is in an area designated as the site of a new town, the development corporation;
- (g) all section 26 parties;
- (h) any person on whom the appointed person has required notice to be served under rule 6(2)(b).

(2) Any other person may appear at the inquiry at the discretion of the appointed person.

(3) Any local authority or development corporation may appear by an officer appointed for the purpose by the authority or corporation, as the case may be, or be represented by counsel or solicitor; and any other person may appear on his own behalf or be represented by counsel, solicitor or any other person.

(4) Where there are two or more persons having a similar interest in the matter under inquiry, the appointed person may allow one or more persons to appear for the benefit of some or all of the persons so interested.

Representatives of the Secretary of State or government departments at inquiry

9.—(1) Where either—

- (a) the Secretary of State has given a direction restricting the grant of permission for the development for which the application was made, or a direction as to how the application is to be determined; or
- (b) any government department have expressed in writing a view on the application and the planning authority have included this view in their statement as required by rule 7(3),

any of the persons mentioned in rule 8(1) may, not later than 14 days before the date of the inquiry, apply in writing to the Secretary of State for a representative of the Secretary of State or government department concerned to be made available at the inquiry.

(2) Where an application is made to the Secretary of State under the foregoing paragraph, he shall make a representative of his department available to attend the inquiry, or, as the case may be, transmit the application to the other government department concerned who shall make a representative of that department available to attend the inquiry.

(3) A representative who, in pursuance of this rule, attends an inquiry shall state the reasons for the Secretary of State's direction or, as the case may be, the reasons for the view expressed by the department which he represents and shall give evidence and be subject to cross-examination to the same extent as any other witness.

(4) Nothing in this rule shall require a representative of the Secretary of State or a government department to answer any question which in the opinion of the appointed person is directed to the merits of government policy and the appointed person shall disallow any such question.

Representatives of local authorities at inquiry

10.—(1) Where any local authority have expressed in writing the view that the application should not be granted wholly or in part, or should be granted only subject to conditions and the planning authority have included this view in their statement, as required under rule 7(3), any of the persons mentioned in

rule 8(1) may, not later than 14 days before the date of the inquiry, apply in writing to the appointed person for a representative of the authority concerned to be made available to attend the inquiry.

(2) Where an application is made to the appointed person under the last foregoing paragraph he shall transmit the application to the authority concerned, who shall make a representative of the authority available to attend the inquiry.

(3) A representative of a local authority who, in pursuance of this rule, attends an inquiry shall state the authority's reasons for the view expressed by them and included in the planning authority's statement under rule 7(3) and shall give evidence and be subject to cross-examination to the same extent as any other witness.

Procedure at inquiry

11.—(1) Except as otherwise provided in these rules, the procedure at the inquiry shall be such as the appointed person shall in his discretion determine.

(2) The appointed person shall state at the commencement of the inquiry the procedure which subject to consideration of any submission by the parties, he proposes to adopt.

(3) Unless in any particular case the appointed person with the consent of the appellant otherwise determines, the appellant shall be heard first and the other persons entitled or permitted to appear shall be heard in such order as the appointed person may determine; and any closing statements shall be made in the same order as that in which the parties were heard, unless the appointed person otherwise determines; at the discretion of the appointed person, the appellant may have the right to reply to the closing statements by the other parties.

(4) The appellant, the planning authority and all section 26 parties shall be entitled to call evidence and, subject to paragraph (5) of this rule, to cross-examine persons giving evidence and to make closing statements, but any other person appearing at the inquiry may do so only to the extent permitted by the appointed person.

(5) Where the appointed person considers that further cross-examination of a witness would lead to undue repetition or elaboration, the appointed person may disallow further cross-examination of the witness.

(6) The appointed person shall not require or permit the giving or production of any evidence, whether written or oral, which would be contrary to the public interest; but save as aforesaid, and without prejudice to rule 9(4) and section 267(4) and (5) of the Act (citing of witnesses and giving of evidence at local inquiries), any evidence may be admitted at the discretion of the appointed person, who may direct that documents tendered in evidence may be inspected by any person entitled or permitted to appear at the inquiry and that facilities be afforded him to take or obtain copies thereof.

(7) The appointed person may allow the planning authority or the appellant, or both of them, to alter or add to the observations contained in any statement served under rule 7(1) or (6), or to any list of documents which accompanied such statement, so far as may be necessary for the purpose of determining the questions in controversy between the parties, but shall (if necessary by adjourning the inquiry) give the appellant or the planning authority, as the case may be, and all section 26 parties an adequate opportunity of considering any such fresh observations or document; and the appointed

person may make to the Secretary of State a recommendation as to the payment of any additional expenses occasioned by any such adjournment.

(8) If any person entitled to appear at the inquiry fails to do so, the appointed person may proceed with the inquiry at his discretion.

(9) The appointed person shall be entitled (subject to disclosure thereof at the inquiry) to take into account any written representations or statements received by him before the inquiry from any person but shall circulate such documents in advance where he considers this to be practicable.

(10) The appointed person may from time to time adjourn the inquiry and, if the date, time and place of the adjourned inquiry are announced before the adjournment, no further notice shall be required.

Site inspections

12.—(1) The appointed person may at any time make an unaccompanied inspection of the land without giving notice of his intention to the persons entitled or permitted to appear at the inquiry.

(2) Subject to the provisions of this rule, the appointed person may, and shall if so requested by the appellant or the planning authority before or during the inquiry, inspect the land during or after the close of the inquiry in the company of such of the persons entitled under paragraph (3) of this rule to accompany him as desire to do so.

(3) Where the appointed person intends to make an inspection by virtue of paragraph (2) of this rule he shall during the inquiry announce the date and time at which he proposes to do so and the appellant, the planning authority, all section 26 parties and any other party to the inquiry shall be entitled to accompany him on any such inspection.

(4) The appointed person shall not be bound to defer his inspection if any person entitled to accompany him is not present at the time appointed.

Procedure after inquiry

13.—(1) If, after the close of the inquiry, the appointed person proposes to take into consideration any new evidence (including expert opinion on a matter of fact) or any new issue of fact (not being a matter of government policy) which was not raised at the inquiry and which he considers to be material to his decision, he shall not come to a decision without first notifying the appellant, the planning authority and any section 26 party who appeared at the inquiry of the substance of the new evidence or of the new issue of fact and affording them an opportunity of making representations thereon in writing within 21 days or of asking within 21 days for the reopening of the inquiry.

(2) The appointed person may, in any case if he thinks fit, cause the inquiry to be reopened and shall cause it to be reopened if asked to do so in accordance with paragraph (1) of this Rule; and if the inquiry is reopened rule 6 of these rules shall apply to the reopened inquiry as it applied to the original inquiry, with the substitution of the words "21 days" for the words "28 days".

Notification of decision

14.—(1) Unless the Secretary of State has, under paragraph 3 or 6 of Schedule 7 to the Act, directed that the appeal shall be determined by the Secretary of State, or, as the case may be, not be begun or proceeded with, the appointed person shall notify his decision and his reasons therefor in writing to

the appellant, the planning authority and all section 26 parties and to any person who having appeared or been represented at the inquiry has asked to be notified of the decision.

(2) Any person entitled to be notified of the decision of the appointed person under paragraph (1) of this rule may apply to the Secretary of State in writing within six weeks of the notification to him of the decision for an opportunity of inspecting any documents listed in the notification and the Secretary of State shall afford him an opportunity accordingly.

Service of notices by post

15. Notices or documents required or authorised to be served or sent under the provisions of any of these rules may be sent by post.

Hearings

16. These rules, except rules 6(2) and 8(1)(h), shall apply to any such hearing as is mentioned in rule 2, and for that purpose references in these rules to an inquiry shall be construed as references to such a hearing.

24th October 1980.

(Sgd.) *Mackay of Clashfern*,
Lord Advocate.

SCHEDULE

Rule 2

CLASSES OF APPEALS TO BE DETERMINED BY APPOINTED PERSON

Appeals under—

(1) section 33 of the Town and Country Planning (Scotland) Act 1972 as originally enacted (appeals against planning decisions) or under that section as applied by section 34 of the Act (appeals in default of planning decisions) or by section 51 of the Act (appeals against determinations as to whether a use or operation constitutes or involves development) or by regulations made under section 58 of the Act (confirmation of opposed tree preservation orders) or as applied by section 179(3) of the Local Government (Scotland) Act 1973 (appeals against decisions by regional planning authorities referred to them);

(2) section 85 of the Act as originally enacted (appeals against enforcement notices) or that section as applied by section 63 of the Act (appeals against notices requiring proper maintenance of waste land);

(3) section 91 of the Act (appeals against refusals of established use certificates);

(4) section 99 of the Act (appeals against an enforcement notice requiring the replacement of trees):

Provided that there shall be excluded from such classes, any appeal relating to

(a) Development by statutory undertakers on land where circumstances mentioned in section 214(2) of the Act apply and the appeal is to be dealt with by the Secretary of State and the appropriate Minister.

(b) Development where the same land is concurrently the subject or part of the subject of another appeal to the Secretary of State under Schedule 10 to the Act or of an application referred to him under any provisions of the Act.

EXPLANATORY NOTE

(This Note is not part of the Rules.)

These Rules are complementary to the Town and Country Planning (Inquiries Procedure) (Scotland) Rules 1980 (S.I. 1980/1676) and prescribe the procedure to be followed at local inquiries and hearings held in connection with appeals to the Secretary of State where such appeals fall to be determined by a person appointed for the purpose by the Secretary of State in accordance with regulations made under paragraph 1 of Schedule 7 to the Town and Country Planning (Scotland) Act 1972.

The classes of appeals to which the Rules apply are detailed in the Schedule to the Rules and reflect the terms of the Town and Country Planning (Determination of Appeals by Appointed Persons) (Prescribed Classes) (Scotland) Regulations 1980 (S.I. 1980/1675).

Rule 4 prescribes the procedure before an inquiry and Rule 5 the notification requirements. Rule 6 provides that not less than 28 days' notice of the inquiry must be given, unless the parties agree to shorter notice, and Rule 7 makes provision for statements of observations to be lodged and exchanged by parties. Rule 8 describes the persons who may appear at the inquiry and Rule 9 covers the appearance of representatives of the Secretary of State and government departments at inquiries. Rule 10 gives the appellant the right to apply to the Secretary of State for a representative of a local authority to attend the inquiry where that authority's statement of views has been included in the planning authority's statement of observations. Rule 11 prescribes the procedure for the conduct at the inquiry itself. Rule 12 makes provision for the site inspections by the appointed person. Rule 13 prescribes the procedure for dealing with any new evidence or issue of fact not raised at the inquiry. Rule 14 makes provision for notification of the decision and Rule 15 provides for the service of notices. Rule 16 applies the Rules, with certain modifications, to hearings before an appointed person.

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