
WELSH STATUTORY INSTRUMENTS

2018 No. 1182

The Sustainable Drainage (Enforcement) (Wales) Order 2018

PART 4

Appeals against enforcement notices

Right of appeal

12.—(1) A developer who is given an enforcement notice may by notice appeal to the Welsh Ministers against the decision to give it.

(2) The grounds of appeal are that—

- (a) the decision was based on an error of fact;
- (b) the decision was wrong in law;
- (c) the decision was unreasonable;
- (d) there is no breach of the requirement for approval.

(3) An enforcement notice is suspended until an appeal is determined or withdrawn.

Time limit for making an appeal

13. An appeal must be made within the period of 4 weeks beginning with the day on which a developer is given an enforcement notice.

Making an appeal

14.—(1) Notice of an appeal against an enforcement notice must—

- (a) be in writing, on a form obtained from the Welsh Ministers,
- (b) state the grounds of appeal,
- (c) state the facts on which the appellant will rely in support of each of those grounds and any other particulars of the case the appellant intends to put forward in relation to the appeal, and
- (d) include the name, address (including any email address) and telephone number of the appellant and any agent acting for the appellant.

(2) The notice must be sent to the Welsh Ministers accompanied by—

- (a) a statement as to whether the appellant wishes to have the appeal dealt with by way of written representations, a hearing or an inquiry,
- (b) a copy of the enforcement notice, and
- (c) a copy of any related stop notice or temporary stop notice.

(3) A developer who sends a notice of appeal to the Welsh Ministers must, at the same time, send a copy of the notice of appeal and accompanying documents to the approving body.

(4) In this article, “accompanying documents” means the documents mentioned in paragraph (2).

(5) Any notice or other document required in this article to be sent or provided, may be sent by post or electronic communication.

Use of electronic communications

15.—(1) Paragraphs (2) to (6) of this article apply where an electronic communication is used by an appellant for the purpose of fulfilling any requirement in article 14.

(2) The requirement is taken to be fulfilled where the notice or other document transmitted by means of the electronic communication is—

- (a) capable of being accessed by the recipient,
- (b) legible in all material respects, and
- (c) sufficiently permanent to be used for subsequent reference.

(3) In paragraph (2) “legible in all material respects” means that the information contained in the notice or other document is available to the recipient to no lesser extent than it would be if sent or given by means of a document in printed form.

(4) Where the electronic communication is received by the recipient outside the recipient’s business hours, it will be taken to have been received on the next working day.

(5) A requirement in article 14 that any notice or other document should be in writing is fulfilled where that document meets the criteria in paragraph (2) and “written” and cognate expressions are to be construed accordingly.

(6) Where an appellant sends any notice or other document to the Welsh Ministers using electronic communications, they will be taken to have agreed—

- (a) to the use of such communications for all purposes relating to the appeal which are capable of being carried out electronically;
- (b) that the appellant’s address for the purpose of such communications is the address incorporated into or otherwise logically associated with, the notice or other document;
- (c) that the appellant’s deemed agreement under this paragraph will subsist until the appellant gives notice in accordance with article 16, of a wish to revoke the agreement.

Withdrawal of consent to the use of electronic communications

16.—(1) Where an appellant is no longer willing to accept the use of electronic communications for any purpose of this Order which is capable of being effected electronically, the appellant must give notice in writing—

- (a) withdrawing any address notified to the Welsh Ministers or to an approving body for that purpose, or
- (b) revoking any agreement entered into with the Welsh Ministers or with an approving body for that purpose.

(2) Withdrawal or revocation under paragraph (1) is final and takes effect on the later of—

- (a) the date specified by the appellant in the notice but that date must not be less than 1 week after the date on which the notice is given, or
- (b) the expiry of the period of 1 week beginning with the date on which the notice is given.

Procedure for appeals

17.—(1) Paragraphs (2) to (4) of this article apply where the Welsh Ministers are in receipt of a valid notice of appeal.

(2) Section 319B (determination of procedure for certain proceedings: Wales) of the 1990 Act and the Town and Country Planning (Referred Applications and Appeals Procedure) (Wales) Regulations 2017(1) (“the 2017 Regulations”) apply to an appeal under this Order with the modifications described in paragraph (3), as if it was an appeal brought under section 174 (appeal against enforcement notice) of the 1990 Act.

(3) The modifications are—

- (a) any reference to an “appellant” has the meaning given in article 2;
- (b) any reference to an “appeal” under section 174 of the 1990 Act is to be read as a reference to an appeal under this Order;
- (c) any reference to an “appointed person” is a reference to a person appointed by the Welsh Ministers under this Order to report to the Welsh Ministers;
- (d) any reference to an “enforcement appeal” is to be read as a reference to an appeal against an enforcement notice under this Order;
- (e) any reference to an “enforcement notice” under section 172(1) of the 1990 Act is to be read as a reference to an enforcement notice under this Order;
- (f) a reference to “full statement of case” is to be read as a reference to the statement in article 14(1)(c);
- (g) any reference to “interested persons” is to be read as a reference to the statutory consultees specified in paragraph 11(3) of Schedule 3;
- (h) any reference to a “local planning authority” is to be read as a reference to the approving body which gave an enforcement notice under this Order.

(4) In this article “valid notice of appeal” means a notice of appeal—

- (a) which complies with the requirements of article 14(1),
- (b) is sent to the Welsh Ministers—
 - (i) in accordance with article 14(2),
 - (ii) within the period specified in article 13, and
- (c) in relation to which the appellant certifies that a copy has been sent to the approving body in accordance with article 14(3).

Determination of an appeal

18.—(1) An appeal under this Order is to be determined by the Welsh Ministers.

(2) For the purposes of paragraph (1), the Welsh Ministers may appoint a person (“the appointed person”) to report to the Welsh Ministers.

Powers of the Welsh Ministers when determining an appeal

19. When determining an appeal against an enforcement notice, the Welsh Ministers may—

- (a) determine that the notice is to cease to have effect, or
- (b) confirm or vary the notice.

Evidence and costs

20.—(1) Subsections (2) and (3) of section 250 of the Local Government Act 1972⁽²⁾ (local inquiries: evidence and costs) apply with the modifications described in paragraph (2) to an inquiry under this Order as they apply to local inquiries under that section.

(2) The modifications are—

(a) any reference to the person appointed to hold the inquiry is to be read as a reference to the person appointed by the Welsh Ministers under article 18(2);

(b) any reference to a local authority is to be read as a reference to an approving body.

(3) Section 322C of the 1990 Act⁽³⁾ (costs: Wales) applies in relation to a hearing or inquiry under this Order as it applies in relation to a hearing or local inquiry referred to in that section.

(4) Subject to paragraph (3), the costs of a hearing or inquiry held under this Order must be defrayed by the Welsh Ministers.

(2) 1972 c. 70. Section 250 has been amended by sections 37, 38 and 46 of the Criminal Justice Act 1982 (c. 48); section 49(2) of and Schedule 12 to the Housing and Planning Act 1986 (c. 63) and by the Statute Law (Repeals) Act 1989 (c. 43).

(3) Section 322C was inserted by section 49 of the Planning (Wales) Act 2015 (anaw 4).