

2003 No. 1268

TRIBUNALS AND INQUIRIES, WALES

The Town and Country Planning (Enforcement) (Hearings Procedure) (Wales) Rules 2003

<i>Made</i> - - - -	<i>8th May 2003</i>
<i>Laid before Parliament</i>	<i>9th May 2003</i>
<i>Coming into force</i>	<i>1st June 2003</i>

The Lord Chancellor, in exercise of the powers conferred on him by section 9 of the Tribunals and Inquiries Act 1992(a) and of all other powers enabling him in that behalf, and after consultation with the Council on Tribunals, hereby makes the following Rules:

Citation, commencement and application

1.—(1) These Rules may be cited as the Town and Country Planning (Enforcement) (Hearings Procedure) (Wales) Rules 2003 and come into force on 1st June 2003.

(2) These Rules apply to Wales.

Interpretation

2. In these Rules—

“certificate of lawful use or development” means a certificate under section 191 or 192 of the Planning Act;

“document” includes a photograph, map or plan;

“electronic communication” has the meaning assigned to that term by section 15(1) of the Electronic Communications Act 2000(b);

“enforcement appeal” means an appeal against an enforcement notice;

“enforcement notice” means a notice under section 172 of the Planning Act or under section 38 of the Listed Buildings Act;

“hearing” means a hearing to which these Rules apply;

“hearing statement” means, and consists of, a written statement which contains full particulars of the case which a person proposes to put forward at a hearing and copies of any documents which that person intends to refer to or put in evidence;

“inquiry” means a local inquiry to which the Town and Country Planning (Enforcement) (Inquiries Procedure) (Wales) Rules 2003(c) or the Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (Wales) Rules 2003(d) apply;

(a) 1992 c.53, to which there are amendments not relevant to these Rules.

(b) 2000 c.7.

(c) S.I. 2003/1269.

(d) S.I. 2003/1270.

“inspector” means—

- (a) in relation to a transferred appeal, a person appointed by the National Assembly to determine an appeal;
- (b) in relation to a non-transferred appeal, a person appointed by the National Assembly to hold a hearing or a re-opened hearing;

“land” means the land or building to which the hearing relates;

“the Listed Buildings Act” means the Planning (Listed Buildings and Conservation Areas) Act 1990(a);

“local planning authority” means in relation to an—

- (a) enforcement appeal, the body who issued the relevant enforcement notice;
- (b) appeal against the refusal or non-determination of an application for a certificate of lawful use or development, the body to whom that application was made;

“the National Assembly” means the National Assembly for Wales;

“non-transferred appeal” means an appeal which falls to be determined by the National Assembly, including an appeal which falls to be so determined by virtue of a direction under paragraph 3(1) of Schedule 6 to the Planning Act or paragraph 3(1) of Schedule 3 to the Listed Buildings Act;

“the Planning Act” means the Town and Country Planning Act 1990(b);

“questionnaire” means a document in the form supplied by the National Assembly to local planning authorities for the purpose of proceedings under these Rules;

“the relevant notice” means the National Assembly’s written notice informing the appellant and the local planning authority that a hearing is to be held;

“starting date” means the date of the—

- (a) National Assembly’s written notice to the appellant and the local planning authority that it has received all the documents required to enable it to entertain the appeal pursuant to regulation 9 of the Town and Country Planning (Enforcement Notices and Appeals) (Wales) Regulations 2003(c); or
- (b) relevant notice,

whichever is later;

“transferred appeal” means an appeal which falls to be determined by a person appointed by the National Assembly under Schedule 6 to the Planning Act or Schedule 3 to the Listed Buildings Act.

Application of these Rules

3.—(1) These Rules apply in relation to any hearing held in Wales for the purposes of a non-transferred or a transferred appeal made on or after 1st June 2003 under—

- (a) section 174(d) of the Planning Act (appeal against enforcement notice);
- (b) section 195(e) of the Planning Act (appeal against refusal or non-determination of an application for a certificate of lawful use or development);
- (c) section 39(f) of the Listed Buildings Act (appeal against listed building enforcement notice) or under that section as applied by section 74(3) of that Act (appeal against conservation area enforcement notice),

(a) 1990 c.9.

(b) 1990 c.8.

(c) S.I. 2003/394 (W.53).

(d) section 174 was amended by section 6(1) of, and paragraph 22 of Schedule 7 to, the Planning and Compensation Act 1991 (c.34).

(e) section 195 was amended by paragraph 32 of Schedule 7 to the Planning and Compensation Act 1991 (c.34).

(f) section 39 was amended by paragraph 3 of Schedule 3 to that Act.

but do not apply to any hearing by reason of the application of any provision mentioned in this paragraph by or under any other enactment.

(2) Where these Rules apply in relation to an appeal which at some time fell to be disposed of in accordance with the Town and Country Planning (Enforcement) (Inquiries Procedure) (Wales) Rules 2003 or the Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (Wales) Rules 2003, any step taken or thing done under those Rules which could have been done under any corresponding provision of these Rules has effect as if it had been taken or done under that corresponding provision.

Preliminary information to be supplied by local planning authority

4.—(1) The National Assembly must, as soon as practicable after it is determined to hold a hearing under these Rules, inform the appellant and the local planning authority in writing that a hearing is to be held.

(2) The local planning authority must—

- (a) send to the National Assembly and the appellant a completed questionnaire and a copy of each of the documents referred to in it so as to be received within 2 weeks of the starting date;
- (b) in the case of an enforcement appeal, notify any—
 - (i) person on whom a copy of the enforcement notice has been served;
 - (ii) occupier of property in the locality in which the land to which the enforcement notice relates is situated; and
 - (iii) other person who in the opinion of the local planning authority is affected by the breach of planning control or contravention of listed building or conservation area control which is alleged in the enforcement notice,

that an appeal has been made and of the address to which, and of the period within which, they may make representations to the National Assembly; such notification to be received within 2 weeks of the starting date.

Hearing statements

5.—(1) The appellant and the local planning authority must ensure that, within 6 weeks of the starting date, 2 copies of their hearing statement are received by the National Assembly.

(2) The National Assembly may in writing require the appellant and the local planning authority to provide such further information about the matters contained in their hearing statement as it may specify; such information must be provided in writing and the appellant or the local planning authority, as the case may be, must ensure that 2 copies are received by the National Assembly within such period as the National Assembly may reasonably require.

(3) Any person who made representations to the local planning authority about the appeal or who was notified about the appeal, must ensure that the National Assembly receives 3 copies of any written comments they wish to make concerning the appeal within 6 weeks of the starting date.

(4) The appellant and the local planning authority must ensure that the National Assembly receives 2 copies of any comments the local planning authority and the appellant wish to make on—

- (a) each other's hearing statement;
- (b) comments made pursuant to paragraph (3); and
- (c) comments made to them by any other person,

within 9 weeks of the starting date.

(5) The National Assembly must send, as soon as practicable after receipt, a copy of any—

- (a) hearing statement received by it pursuant to paragraph (1), further information provided pursuant to paragraph (2) and any comments received pursuant to paragraph (4) from, in each case, the appellant or the local planning authority to the other of those two parties; and

(b) written comments made by persons pursuant to paragraph (3), to the local planning authority and the appellant.

(6) The local planning authority must give any person who so requests a reasonable opportunity to inspect, and where practicable, take copies of—

(a) the local planning authority's completed questionnaire, hearing statement and any document copied to the authority under paragraph (5); and

(b) further information provided by the authority under paragraph (2) and comments made by the authority under paragraph (4),

and must specify in their hearing statement the time and place where such documents may be inspected.

(7) The National Assembly must send to the inspector, as soon as practicable after receipt, any hearing statement, document, part of any document or written comments received by the National Assembly within the relevant period specified for receiving such documents pursuant to paragraphs (1) to (4).

(8) In the case of a non-transferred appeal, the National Assembly, and in the case of a transferred appeal, the inspector, may in determining the appeal disregard any comments made pursuant to paragraphs (3) and (4) which are received after the relevant specified period.

Date and notification of hearing

6.—(1) The date fixed by the National Assembly for the holding of a hearing must be—

(a) not later than 12 weeks after the starting date, unless it considers such a date impracticable; or

(b) the earliest date after that period which it considers to be practicable.

(2) Unless the National Assembly agrees a lesser period of notice with the appellant and the local planning authority, it must give not less than 4 weeks' written notice of the date, time and place fixed by it for the holding of a hearing to every person entitled to take part in the hearing.

(3) The National Assembly may vary the date fixed for the holding of a hearing, whether or not the date as varied is within the period of 12 weeks mentioned in paragraph (1); and paragraph (2) applies to a variation of a date as it applied to the date originally fixed.

(4) The National Assembly may vary the time or place for the holding of a hearing and must give notice of any such variation as appears to it to be reasonable.

(5) The National Assembly may in writing require the local planning authority to take one or both of the following steps—

(a) not less than 2 weeks before the date fixed for the holding of a hearing, to publish a notice of the hearing in one or more newspapers circulating in the locality in which the land is situated;

(b) to send a notice of the hearing to such persons or classes of persons as it may specify, within such period as it may specify.

(6) Every notice of hearing published or sent pursuant to paragraph (5) must contain—

(a) a clear statement of the date, time and place of the hearing and of the powers enabling the National Assembly or inspector to determine the appeal in question;

(b) a written description of the land sufficient to identify approximately its location;

(c) a brief description of the subject matter of the appeal; and

(d) details of where and when copies of the local planning authority's completed questionnaire and documents sent by and copied to the authority pursuant to rule 5 may be inspected.

Notification of name of inspector

7.—(1) Subject to paragraph (2), the National Assembly must notify the name of the inspector to every person entitled to take part in the hearing.

(2) Where the National Assembly appoints another inspector instead of the person previously appointed and it is not practicable to notify the new appointment before the hearing is held, the

inspector holding the hearing must, at its commencement, announce their name and the fact of their appointment.

Method of procedure

8.—(1) If either the appellant or the local planning authority at any time before or during the hearing is of the opinion that the hearings procedure is inappropriate in determining the appeal and that the appeal should not proceed in this way, they may inform the National Assembly, before the hearing, or the inspector, during the hearing, of their opinion and the reasons for it and—

- (a) the National Assembly, before the hearing, must, after consulting the other party who may inform the National Assembly of their opinion pursuant to this paragraph, decide whether an inquiry should be arranged instead; or
- (b) the inspector, during the hearing, must, after consulting the other party who may inform the inspector of their opinion pursuant to this paragraph, decide whether the hearing should be closed and an inquiry held instead.

(2) If at any time during a hearing it appears to the inspector that the hearings procedure is inappropriate, the inspector may, after consulting the appellant and the local planning authority, decide to close the proceedings and arrange for an inquiry to be held instead.

Attendance and participation at a hearing

9.—(1) The persons entitled to take part in the hearing are—

- (a) the appellant;
- (b) the local planning authority;
- (c) in the case of an enforcement appeal, any person on whom a copy of the enforcement notice has been served; and
- (d) in the case of an enforcement appeal or an appeal under section 195 of the Planning Act, any person having an interest in the land.

(2) Nothing in paragraph (1) precludes the inspector from permitting any other person to take part in a hearing; and such permission is not to be unreasonably withheld.

(3) Any person entitled or permitted to take part may do so on their own behalf or be represented by any other person.

Inspector may act in place of the National Assembly in respect of transferred appeals

10.—(1) This rule applies where a hearing is to be held or has been held for the purposes of a transferred appeal.

(2) An inspector may take such steps as the National Assembly is required or enabled to take under or by virtue of rules 5(2) and (5), 6 and 18, in place of the National Assembly.

(3) Where an inspector requires further information or copies pursuant to rule 5(2) or 18(2), that information or copies must be sent to the inspector.

Procedure at hearing

11.—(1) Except as otherwise provided in these Rules, the inspector is to determine the procedure at a hearing.

(2) A hearing must take the form of a discussion led by the inspector and cross-examination will not be permitted unless the inspector considers that cross-examination is required to ensure a thorough examination of the main issues.

(3) Where the inspector considers that cross-examination is required under paragraph (2), the inspector must consider, after consulting the appellant and the local planning authority, whether the hearing should be closed and an inquiry held instead.

(4) At the start of the hearing, the inspector must identify what are, in the inspector's opinion, the main issues to be considered in the hearing and any matters on which the inspector requires further explanation from any person entitled or permitted to take part.

(5) Nothing in paragraph (4) precludes any person entitled or permitted to take part from referring to issues which they consider relevant to the consideration of the appeal but which were not issues identified by the inspector pursuant to that paragraph.

(6) A person entitled to take part in a hearing is entitled to call evidence but, subject to the foregoing and paragraphs (7) and (8), the calling of evidence will otherwise be at the inspector's discretion.

(7) The inspector may refuse to permit the—

- (a) giving or production of evidence; or
- (b) presentation of any other matter,

which the inspector considers to be irrelevant or repetitious; but where the inspector refuses to permit the giving of oral evidence, the person wishing to give the evidence may submit to the inspector any evidence or other matter in writing before the close of the hearing.

(8) The inspector may—

- (a) require any person attending (whether or not they take part) a hearing who, in the inspector's opinion, is behaving in a disruptive manner to leave; and
- (b) refuse to permit that person to return; or
- (c) permit that person to return only on such conditions as the inspector may specify,

but any such person may submit to the inspector any evidence or other matter in writing before the close of the hearing.

(9) The inspector may allow any person to alter or add to a hearing statement received under rule 5 so far as may be necessary for the purposes of the hearing; but the inspector must (if necessary by adjourning the hearing) give every other person entitled to, and who does, take part in the hearing an adequate opportunity of considering any fresh matter or document.

(10) The inspector may proceed with a hearing in the absence of any person entitled to take part in it.

(11) The inspector may take into account any written representation or evidence or any other document received by the inspector from any person before a hearing opens or during the hearing provided that the inspector discloses it at the hearing.

(12) The inspector may from time to time adjourn a hearing and, if the date, time and place of the adjourned hearing are announced at the hearing before the adjournment, no further notice is required.

Site inspections

12.—(1) Where it appears to the inspector that one or more matters would be more satisfactorily resolved by adjourning the hearing to the appeal site, the inspector may adjourn the hearing to that site and conclude the hearing there provided the inspector is satisfied that—

- (a) the hearing would proceed satisfactorily and that no party would be placed at a disadvantage;
- (b) all parties present at the hearing would have the opportunity to attend the adjourned hearing;
- (c) the local planning authority and the appellant have not raised reasonable objections to it being continued at the appeal site.

(2) Unless the hearing is to be adjourned to the appeal site pursuant to paragraph (1), the inspector—

- (a) may inspect the land during the hearing or after its close; and
- (b) must inspect the land if requested to do so by the appellant or the local planning authority before or during the hearing.

(3) Where the inspector intends to make an inspection under paragraph (2), the inspector must ask the appellant and the local planning authority whether they wish to be present.

(4) Where the appellant or the local planning authority have indicated that they wish to be present, the inspector must announce the date and time at which the inspector proposes to make the inspection during the hearing and must make the inspection in the company of—

- (a) the appellant and the local planning authority; and
- (b) at the inspector's discretion, any other person entitled or permitted to take part in the hearing who is doing, or did, so.

(5) The inspector may (but is not required to) defer an inspection of the kind referred to in paragraph (2) where any person mentioned in paragraph (4) is not present at the time appointed.

Procedure after hearing—non-transferred appeals

13.—(1) This rule applies where a hearing has been held for the purposes of a non-transferred appeal.

(2) After the close of the hearing, the inspector must make a report in writing to the National Assembly which must include the inspector's findings of fact, conclusions and recommendations or the inspector's reasons for not making any recommendations.

(3) When making its determination, the National Assembly may disregard any written representations, evidence or other document received after the hearing has closed.

(4) If, after the close of the hearing, the National Assembly—

- (a) differs from the inspector on any matter of fact mentioned in, or appearing to it to be material to, a conclusion reached by the inspector, or
- (b) takes into consideration any new evidence or new matter of fact (not being a matter of National Assembly policy),

and is for that reason disposed to disagree with a recommendation made by the inspector, it must not come to a decision which is at variance with that recommendation without first notifying the persons entitled to, and who did, take part in the hearing of its disagreement and the reasons for it.

(5) Where persons entitled to, and who did, take part in the hearing are notified pursuant to paragraph (4), the National Assembly must give them an opportunity to make written representations to it or (if the National Assembly has taken into consideration any new evidence or new matter of fact, not being a matter of National Assembly policy) to ask for the re-opening of the hearing.

(6) Those making written representations or requesting the hearing to be re-opened pursuant to paragraph (5) must ensure that such representations or requests are received by the National Assembly within 3 weeks of the date of the National Assembly's notification under that paragraph.

(7) The National Assembly may, as it thinks fit, cause a hearing to be re-opened, and it must do so if asked by the appellant or the local planning authority in the circumstances mentioned in paragraph (5) and within the period mentioned in paragraph (6).

(8) Where a hearing is re-opened pursuant to paragraph (7) (whether by the same or a different inspector)—

- (a) the National Assembly must send to the persons entitled to, and who did, take part in the hearing a written statement of the matters on which further evidence is invited; and
- (b) paragraphs (2) to (6) of rule 6 apply as if references to a hearing were references to a re-opened hearing.

Procedure after hearing—transferred appeals

14.—(1) This rule applies where a hearing has been held for the purposes of a transferred appeal.

(2) When making a decision, the inspector may disregard any written representations, or evidence or any other document received after the hearing has closed.

(3) If, after the close of the hearing, an inspector proposes to take into consideration any new evidence or any new matter of fact (not being a matter of National Assembly policy) which was not raised at the hearing and which the inspector considers to be material to his decision, the inspector must not come to a decision without first—

- (a) notifying persons entitled to, and who did, take part in the hearing of the matter in question; and

- (b) giving them an opportunity to make written representations to the inspector or to ask for the re-opening of the hearing,

and they must ensure that such written representations or requests to re-open the hearing are received by the National Assembly within 3 weeks of the date of the notification.

(4) An inspector may, as the inspector thinks fit, cause a hearing to be re-opened and must do so if asked by the appellant or the local planning authority in the circumstances and within the period mentioned in paragraph (3).

(5) Where a hearing is re-opened pursuant to paragraph (4)—

- (a) the inspector must send to the persons entitled to, and who did, take part in the hearing a written statement of the matters on which further evidence is invited; and
- (b) paragraphs (2) to (6) of rule 6 apply as if references to a hearing were references to a re-opened hearing.

Notification of decision—non-transferred appeals

15.—(1) This rule applies where a hearing has been held for the purposes of a non-transferred appeal.

(2) The National Assembly must notify its decision on an appeal, and its reasons for it, in writing to—

- (a) the appellant and the local planning authority;
- (b) all persons entitled to, and who did, take part in the hearing; and
- (c) any other person who, having taken part in the hearing, has asked to be notified of the decision.

(3) Where a copy of the inspector’s report is not sent with the notification of the decision, the notification must be accompanied by a statement of the inspector’s conclusions and of any recommendations made by the inspector; and if a person entitled to be notified of the decision has not received a copy of that report, that person must be supplied with a copy of it on written application to the National Assembly.

(4) In this rule, “report” does not include any documents appended to the inspector’s report; but any person who has received a copy of the report may apply to the National Assembly in writing for an opportunity to inspect any such documents and the National Assembly must give that person that opportunity.

(5) A person applying to the National Assembly under—

- (a) paragraph (3) must ensure that their application is received by the National Assembly within 4 weeks;
- (b) paragraph (4) must ensure that their application is received by the National Assembly within 6 weeks,

of the date of the National Assembly’s decision.

Notification of decision—transferred appeals

16.—(1) This rule applies where a hearing has been held for the purposes of a transferred appeal.

(2) An inspector must notify their decision on an appeal, and their reasons for it, in writing to—

- (a) the appellant and the local planning authority;
- (b) all persons entitled to, and who did, take part in the hearing; and
- (c) any other person who, having taken part in the hearing, has asked to be notified of the decision.

(3) Any person entitled to be notified of the inspector’s decision under paragraph (2) may apply to the National Assembly in writing for an opportunity to inspect any documents listed in the notification and the National Assembly must give that person that opportunity.

(4) Any person making an application under paragraph (3) must ensure that it is received by the National Assembly within 6 weeks of the date of the inspector’s decision.

Procedure following remitting of appeal

17.—(1) Where an appeal, for which a hearing has been held, is remitted by any court to the National Assembly for re-hearing and re-determination, the National Assembly—

- (a) must send to the persons entitled to, and who did, take part in the hearing a written statement of the matters on which further representations are invited in order for it to consider the appeal further;
- (b) must give those persons the opportunity to make written representations to it on those matters or to ask for the re-opening of the hearing; and
- (c) may, as it thinks fit, cause the hearing to be re-opened or an inquiry held instead (whether by the same or a different inspector) and, if it re-opens the hearing, paragraphs (2) to (6) of rule 6 apply as if references to a hearing were references to a re-opened hearing.

(2) Those persons making representations or asking for the hearing to be re-opened under paragraph (1)(b) must ensure that such representations or requests are received by the National Assembly within 3 weeks of the date of the written statement sent under paragraph (1)(a).

Further time and additional copies

18.—(1) The National Assembly may at any time in any particular case allow further time for the taking of any step which is required or enabled to be taken pursuant to these Rules; and references in these Rules to a day by which, or a period within which, any step is required or enabled to be taken are to be construed accordingly.

(2) The National Assembly may at any time before the close of a hearing request from any person entitled to take part in the hearing additional copies of the following—

- (a) a hearing statement or comments sent in accordance with rule 5; or
- (b) any other document or information sent to the National Assembly before or during a hearing,

and may specify the time within which such copies must be received by it and any person so requested must ensure that the copies are received within the specified period.

Transmission of documents

19.—(1) Any document required or authorised to be sent by one person to another under these Rules may be sent by post or by means of electronic communication and any reference in these Rules, however expressed, to writing is to be construed as including a reference to a form capable of being stored on, transmitted to and from, and read by means of a computer.

(2) Where, under these Rules, there is a requirement that a copy of a statement, representation, notice or other document should be sent by one person to another, then, if that copy is sent by means of electronic communication, any further requirement that more than one copy should be sent is to be disregarded.

Signed by authority of the Lord Chancellor

Dated 8th May 2003

Rosie Winterton
Parliamentary Secretary,
Lord Chancellor's Department

EXPLANATORY NOTE

(This note is not part of the Rules)

These Rules regulate the procedure to be followed for hearings in Wales caused by the National Assembly for Wales (“the National Assembly”) to be held before it, or an inspector, determines appeals made to it against enforcement notices, listed building and conservation area consent enforcement notices and non-determination of applications for a certificate of lawful use development on or after 1st June 2003. The Rules come into force on 1st June 2003.

Rule 4 provides for the preliminary procedure to be followed, in particular the information to be provided by the local planning authority, on receipt by it of a notice that a hearing is to be held.

Rule 5 provides which documents are to be sent to the National Assembly before a hearing and for the documents to be copied by him to the appellant, the local planning authority and the inspector. It sets down the time limits within which those documents must be sent to the National Assembly and provides a discretion for the National Assembly or the inspector to disregard documents received outside the set time limits. It also provides for the local planning authority to make certain documents available for public inspection.

Rule 6 provides for the date of the hearing to be fixed and notified to the parties and rule 7 requires the National Assembly to notify persons entitled to take part in a hearing of the name of the inspector.

Rule 8 provides for an inquiry to be held in place of the hearing.

Rule 9 prescribes those entitled to take part in a hearing and rule 10 provides for an inspector, in a transferred appeal, to take steps in place of the National Assembly.

Rule 11 provides for the procedure at a hearing and rule 12 makes provision for the hearing to be adjourned to the site and for site inspections.

Rules 13 and 14 respectively provide for the procedure after a hearing in respect of appeals to be determined by the National Assembly (non-transferred appeals) and transferred appeals. They include a discretion for the National Assembly or an inspector to disregard documents received after the close of the hearing.

Rules 15 and 16 respectively provide for the notification of decisions for non-transferred appeals and transferred appeals.

Rule 17 provides for the procedure where a decision is remitted by the court to the National Assembly for rehearing and re-determination.

Rule 18 gives the National Assembly a discretion to allow further time for the taking of any step and to request additional copies of documents or information sent to him before or during a hearing.

Rule 19 authorises documents to be sent by post or by means of electronic communication.

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TRIBUNALS AND INQUIRIES, WALES

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