
STATUTORY INSTRUMENTS

2004 No. 3305

The Access to the Countryside (Means of Access, Appeals) (England) Regulations 2004

PART 3

DETERMINATION OF APPEALS

CHAPTER II

Appeals to be determined by way of a hearing

Date and notification of hearing

16.—(1) The date fixed by the Secretary of State for the holding of a hearing shall be—

- (a) not later than 22 weeks after the start date, unless she considers such a date is not practicable; or
- (b) the earliest date after that period which she considers to be practicable.

(2) In considering whether a date is practicable for the purposes of paragraph (1), the Secretary of State shall have regard to the desirability of arranging consecutive or concurrent hearings as mentioned in regulation 17.

(3) Unless the Secretary of State agrees a lesser period of notice with the appellant and the access authority, she shall give the appellant, the authority and every interested person not less than four weeks' written notice of the date, time and place fixed by her for the holding of a hearing.

(4) The Secretary of State may at any time change the date fixed for the holding of a hearing (whether or not the new date is within the period mentioned in paragraph (1)(a)) and paragraph (3) shall apply to the new date.

(5) The Secretary of State may at any time change the time or place for the holding of a hearing and shall give such notice of any change to the persons mentioned in paragraph (3) as appears to her to be reasonable.

(6) The Secretary of State—

- (a) may require the access authority to publish, not less than two weeks before the date fixed for the hearing, a notice of the hearing in one or more newspapers circulating in the locality in which the appeal land is situated;
- (b) may require the access authority to affix a notice of the hearing firmly to the appeal land or to some object on or near the land in such manner as to be readily visible to and legible by members of the public; and the access authority shall not remove the notice, or cause it to be removed, for such period before the hearing as the Secretary of State may specify; and
- (c) shall ensure that the Planning Inspectorate Executive Agency makes a notice of the hearing available for inspection on a website which it maintains until the appeal is determined.

(7) Every notice of a hearing referred to in paragraph (6) shall contain –

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- (a) a statement of the date, time and place of the hearing and of the powers enabling the Secretary of State to determine the appeal in question; and
 - (b) a brief description of the appeal land and of the grounds of appeal.
- (8) A notice referred to in paragraph (6) may relate to more than one hearing.

Consecutive and concurrent hearings

17. The Secretary of State may arrange for two or more appeals to be heard consecutively or concurrently where they relate to the same area of land or to areas of land which she considers to be in such proximity as to make it expedient for the hearings to be held consecutively or concurrently.

Appearances at hearing and notification of name of inspector

18.—(1) The persons entitled to appear at the hearing are –

- (a) the appellant; and
- (b) the access authority;

but the inspector may permit any other person to appear at a hearing, and such permission shall not be unreasonably withheld.

(2) Any person entitled or permitted to appear may appear in person or be represented by any other person.

(3) The inspector shall, at the commencement of the hearing, announce his name and the fact of his appointment.

Procedure at hearing

19.—(1) Except as otherwise provided in these Regulations, the inspector shall determine the procedure at a hearing.

(2) A hearing shall take the form of a discussion led by an inspector, and cross-examination shall 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), he shall consider, after consulting the appellant and the access authority, whether the hearing should be closed and an inquiry held instead.

(4) At the start of the hearing the inspector shall identify what are, in his opinion, the main issues to be considered at the hearing and any matters on which he requires further explanation from any person appearing at the hearing; but this shall not preclude the addition in the course of the hearing of other issues for consideration or any persons appearing at the hearing from referring to issues which they consider relevant to the consideration of the appeal but which were not issues so identified by the inspector.

(5) The appellant and the access authority shall be entitled to give, or to call another person to give, oral evidence, and any other person may give, or call another person to give, oral evidence if so permitted by an inspector at his discretion, but notwithstanding any such entitlement or permission, the inspector may, at any stage in the proceedings, refuse to permit the giving of evidence or presentation of any other matter which he considers to be irrelevant or repetitious.

(6) Where the inspector refuses to permit the giving of oral evidence, the person wishing to give, or call any other person to give, evidence may submit to him any evidence or other matter in writing before the close of the hearing.

(7) The inspector may require any person appearing or present at a hearing who, in his opinion, is behaving in a disruptive manner to leave the hearing; and the inspector may then refuse to permit

that person to return or permit him to return only on such conditions as he may specify, but any such person may submit to the inspector any evidence or other matter in writing before the close of the hearing.

(8) The inspector may allow the appellant or the access authority to alter or make any addition to a statement of case submitted under regulation 9 (a) or (b) so far as may be necessary for the purposes of the hearing.

(9) The inspector may –

- (a) proceed with a hearing in the absence of any person entitled to appear at it;
- (b) take into account any written representations or evidence or any other document received by him from any person before a hearing opens or during the hearing provided he discloses it at the hearing; and
- (c) 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 shall be required.

Site inspections

20.—(1) Where it appears to an inspector that one or more matters would be more satisfactorily resolved by adjourning the hearing to the site of the appeal land he may adjourn the hearing to that site and conclude the hearing there provided he 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; and
- (c) neither the appellant nor the access authority have raised any reasonable objections to the hearing being continued at the site of the appeal land.

(2) Unless the hearing is to be adjourned to the appeal land pursuant to paragraph (1), the inspector may, where it appears to him necessary or expedient to do so, arrange to make an inspection of the appeal land in the company of the appellant and the access authority or their representatives; and the inspector shall arrange to make such an inspection if requested to do so by the appellant or the authority at any time before or during the hearing in relation to an appeal.

(3) In all cases where the inspector intends to make a site inspection he shall announce during the hearing the date and time at which he proposes to make it.

(4) The inspector shall not be bound to defer an inspection if the appellant or the access authority are not present at the appointed time.

Procedure after hearing – appeals determined by the Secretary of State

21.—(1) This regulation applies where a hearing has been held for the purposes of any appeal determined by the Secretary of State.

(2) After the close of the hearing, the inspector shall make a report in writing to the Secretary of State which shall include his conclusions and his recommendations or his reasons for not making any recommendations.

(3) When making her determination the Secretary of State may disregard any written representations, evidence or other document received after the hearing is closed.

(4) If, after the close of the hearing, the Secretary of State –

- (a) differs from the inspector on any matter of fact mentioned in, or appearing to her to be material to, a conclusion reached by the inspector, or

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(b) takes into consideration any new evidence or new matter of fact, and is, for that reason, disposed to disagree with a recommendation made by the inspector, she shall not come to a decision which is at variance with that recommendation without first notifying the appellant, the access authority and any other person who appeared at the hearing of her disagreement and the reasons for it, and affording them an opportunity of making written representations to her or, if the Secretary of State has taken into consideration any new evidence or new matter of fact, of asking for the re-opening of the hearing.

(5) Those persons making written representations or requesting the re-opening of the hearing pursuant to paragraph (4) shall ensure that such representations or requests are received by the Secretary of State within three weeks of the date of the Secretary of State's notification under that paragraph.

(6) The Secretary of State may, if she thinks fit, cause a hearing to be re-opened, and she shall do so if asked by the appellant or the access authority in the circumstances mentioned in paragraph (4) and within the period mentioned in paragraph (5); and where a hearing is re-opened (whether by the same or a different inspector) –

- (a) the Secretary of State shall send to the appellant, the access authority and any other person who appeared at the hearing a written statement of the matters with respect to which further evidence is invited; and
- (b) paragraphs (3) to (8) of regulation 16 shall apply as if the references to a hearing were references to a re-opened hearing.

Procedure after hearing – transferred appeals

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

(2) Where an assessor has been appointed he shall, after the close of the hearing, make a report in writing to the inspector of the matters on which he was appointed to advise, and the inspector shall state in the notification of his decision pursuant to regulation 24 that such a report was made.

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

(4) If, after the close of the hearing, an inspector proposes to take into account any new evidence or matter of fact which was not raised at the hearing and which he considers to be material to his decision, he shall not come to a decision without first –

- (a) notifying the appellant and the access authority and any other person who appeared at the hearing; and
- (b) affording them an opportunity of making written representations to him or of asking for the re-opening of the hearing,

and they shall ensure that such written representations or request to re-open the hearing are received by the Secretary of State within three weeks of the date of notification.

(5) An inspector may, if he thinks fit, cause a hearing to be re-opened and he shall do so if asked by the appellant or the access authority in the circumstances and within the period mentioned in paragraph (4); and where a hearing is re-opened –

- (a) the inspector shall send to the appellant, the access authority and any other person who appeared at the hearing a written statement of the matters with respect to which further evidence is invited; and
- (b) paragraphs (3) to (8) of regulation 16 shall apply as if the references to a hearing were references to a re-opened hearing.

Notification of decision – appeals determined by the Secretary of State

23.—(1) This regulation applies where a hearing has been held for the purposes of any appeal determined by the Secretary of State.

(2) The Secretary of State shall, as soon as practicable, notify her decision on an appeal, and her reasons for reaching it, in writing to –

- (a) the appellant;
- (b) the access authority;
- (c) every other person who appeared at the hearing or who is an interested person;
- (d) every other owner or occupier of the land who has been notified by the access authority as mentioned in regulation 4(3) or section 37(3) of the Act; and
- (e) the local access forum.

(3) Where a copy of the inspector’s report is not sent with the notification of the decision, the notification shall be accompanied by a statement of his conclusions and of any recommendations made by him; and if a person entitled to be notified of the decision has not received a copy of that report, he shall be supplied with a copy of it on written application made to the Secretary of State within four weeks of the receipt of the notification of the decision as mentioned in paragraph (2).

(4) In this regulation, “report” does not include any documents appended to the inspector’s report; but any person who has received a copy of the report may, within two weeks of such receipt, apply in writing to the Secretary of State for an opportunity to inspect any such documents and the Secretary of State shall afford him that opportunity.

(5) The Secretary of State shall ensure that, as soon as practicable after any notification has been given under paragraph (2), a copy of the notification is made available for inspection on the website maintained by the Planning Inspectorate Executive Agency for a period of three months.

Notification of decision – transferred appeals

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

(2) An inspector shall notify his decision on an appeal, and his reasons for it, in writing to –

- (a) the appellant;
- (b) the access authority;
- (c) every other person who appeared at the hearing or who is an interested person;
- (d) every other owner or occupier of the land who has been notified by the access authority as mentioned in regulation 4(3) or section 37(3) of the Act; and
- (e) the local access forum.

(3) Any person entitled to be notified of the inspector’s decision under paragraph (2) may apply in writing to the Secretary of State for an opportunity of inspecting any documents referred to in the notification and the Secretary of State shall afford him that opportunity.

(4) Any person making an application under paragraph (3) shall ensure that it is received by the Secretary of State within six weeks of the receipt of the notification of the decision as mentioned in paragraph (2).

(5) The Secretary of State shall ensure that, as soon as practicable after any notification has been given under paragraph (2), a copy of the notification is made available for inspection on a website maintained by the Planning Inspectorate Executive Agency for a period of three months.

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Changes and effects yet to be applied to :

- Regulations revoked by [S.I. 2011/2019 reg. 45](#)