

Appeals, purchase notices and compensation: the rights of the applicant

- 7.1 This section deals with the actions which can be taken by an applicant for listed building consent and the recipient of a listed building enforcement notice when they are not content with the decision granted or the terms of the notice respectively.

APPEAL AGAINST REFUSAL OF LISTED BUILDING CONSENT

- 7.2 If listed building consent is refused by a planning authority or granted subject to conditions, or if the authority fails to reach a decision on an application within the prescribed period of 2 months, or such longer period as the applicant may agree with the authority, the applicant may appeal to Scottish Ministers within the prescribed period of 6 months from receipt of the decision or expiry of the prescribed period.

The relevant form can be obtained from Scottish Ministers on application to:

The Scottish Office Inquiry Reporters
2 Greenside Lane
Edinburgh
EH1 3AG

An appeal may also be lodged where the terms of an original consent required further approval by the authority in respect of certain details and the authority refuses, or is deemed to refuse, approval when it is subsequently requested, and where an application to modify or discharge conditions already imposed is refused.

Scottish Ministers have discretion to extend the period within which appeals may be made, with the exception of appeals against listed building enforcement notices, but will not normally be prepared to exercise this power unless there are special circumstances which excuse the delay in giving notice of appeal.

*section 18 Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997
Regulation 8 Town and Country Planning (Listed Buildings in Conservation Areas) (Scotland) Regulations 1987*

section 18(1)(b) and (c) Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997

- 7.3 Appeals must be made in writing and must be accompanied by a copy of:
- a the application made to the planning authority
 - b plans, drawings, particulars or documents submitted with the application
 - c a certificate, or, in respect of applications relating to Crown land, a copy of the documents lodged, in accordance with the Regulations
 - d the notice of the decision, if any
 - e all other relevant correspondence with the planning authority

Regulations 6, 7 and 8 Town and Country Planning (Listed Buildings in Conservation Areas) (Scotland) Regulations) 1987 (SI 1997/1529)

The applicant may, in this case, include among the grounds of the appeal the argument that the building concerned is not of special architectural or historic interest and ought not to be listed, or that the building should not be included in the list following issue of a building preservation notice by the planning authority and the temporary application of listed building controls (see 1.18 to 1.23). In determining the appeal Scottish Ministers may remove the building from the list.

sections 19(3) and (4) and 20(1) Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997

APPEAL AGAINST LISTED BUILDING ENFORCEMENT NOTICE

- 7.4 Any person on whom a listed building enforcement notice is served, or any other person having an interest in the building to which the notice relates, may appeal to Scottish Ministers against the notice before the date specified in the notice as that on which it is to take effect.

section 35 Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997

Enforcement notices can take a number of forms (see 3.3), specifying works of restoration, of alleviation or of compliance with the terms of a listed building consent.

The grounds of appeal are comprehensive enough to cover all forms of notice served. The appellant is, for example, entitled to argue:

- a that the building is not of special architectural or historic interest, and/or
- b that the unauthorised works to which the notice refers were urgently necessary in the interests of safety and health, that temporary works would not have been practicable and that the works carried out were limited to the minimum immediately necessary, and/or
- c that the requirements of the notice exceed what is necessary for restoring the building to its condition before the works are carried out, and/or

d that the steps required by the notice would not serve to restore the character of the building to its former state

An appellant who does not submit with the notice of an appeal a statement of the grounds on which they are appealing and of the facts on which they propose to rely must provide such a statement within 14 days of being so requested by Scottish Ministers.

Town and Country Planning (Enforcement of Control) (No 2) (Scotland) Regulations 1992 (SI 1992/2086)

METHODS OF DETERMINING APPEALS

7.5 When an appeal is made to Scottish Ministers against refusal of consent for a full application, for an application for the modification or discharge of conditions, for reserved details, against conditional consent, or against the terms of an enforcement notice, Scottish Ministers are obliged to offer the appellant and planning authority an opportunity of appearing before and being heard by a person appointed by Scottish Ministers for the purpose.

sections 20(2) and 36(2) Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997

Scottish Ministers may also decide to hold a public local inquiry were the case to merit full public examination, but this power is very rarely used.

section 256 Town and Country Planning (Scotland) Act 1997

7.6 The great majority of appeals, however, are dealt with on the basis of the written submissions of parties and a site inspection. Circular SDD 7/1990 contains guidance on the operation of these Regulations.

Town and Country Planning (Appeals) (Written Submissions Procedure) (Scotland) Regulations 1990 (SI 1990/507)

7.7 When an appeal is lodged, Scottish Ministers will write to the planning authority either indicating that a public inquiry or hearing is to be held, if the appellant has indicated that they wish to exercise their right to be heard, or asking if the planning authority is content that the appeal should be dealt with on the basis of written submissions.

However, while provision will usually be made for parties to be heard by way of a public local inquiry, if either the appellant or the planning authority wish, in appropriate cases Scottish Ministers may decide that the right to be heard should take the form of a hearing rather than an inquiry. A hearing may be appropriate, for example, where there is likely to be limited third party interest or where the areas to be considered are relatively narrow or straightforward.

Scottish Ministers will seek a statement of observations by the planning authority on the appeal. The timetable and procedure relating to the submission of a statement in respect of listed building enforcement appeals provides that the statement must be submitted within 28 days. For other appeals, the timetable for submission, and for subsequent stages, is the same as that for planning permission appeals.

Regulation 6 Town and Country Planning (Enforcement of Control) Regulations 1992

Where a public local inquiry, or a hearing, is to be held, the Scottish Office Inquiry Reporters Unit will make the arrangements which

will be communicated to parties. Where the written submissions procedure referred to above is to be used, the procedure following receipt of planning authority observations is as follows:

- a the appellant is invited to comment in writing on the planning authority's observations and submit any documents, plans or maps they may wish in support of the case
- b the appellant's comments and other submissions are then referred to the planning authority for information. This will normally conclude the exchange of written evidence, but if the Reporter considers that the appellant's comments contain new evidence material to the case, the planning authority will be invited to submit further observations
- c any such further observations are then passed to the appellant for final comment
- d thereafter, a site inspection is made by Scottish Ministers. Parties are given the opportunity to attend the site inspection if they wish, but it is not essential for them to do so.

The purpose of the site inspection is solely to acquaint the Reporter with the physical aspects of the site and discussion of the merits of the case will not be permitted. Parties may, of course, point out physical considerations relating to the site.

- 7.8 Where an interested person who is not a party to the appeal submits comments, these will be passed to the appellant and to the planning authority for information. Any such person wishing to view the appeal papers should make application to the planning authority to do so.
- 7.9 Where the site inspection is to be an accompanied one, the Scottish Office Inquiry Reporters Unit will contact the appellant and the planning authority to arrange a mutually convenient date.
- 7.10 Scottish Ministers have exercised powers to delegate decisions on listed building appeal cases to Reporters. However, Scottish Ministers retain an overriding power to recall any case for decision, and may do so where a building listed at category A is involved, where the listed building appeal is associated with a planning appeal which is either non-delegated or subject to recall, where another government department is involved, and where major issues of national importance are raised by the case.

In most cases, however, appeal decisions are made by Reporters with delegated authority under the Town and Country Planning Appeals (Determination by Appointed Person) (Inquiries Procedure) (Scotland) Rules 1997 (SI 1997/750). SODD Circular No 13/97 Planning Inquiries and Hearings: Procedures and Good Practice describes revised procedure rules.

*section 20(4) Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 and Town and Country Planning (Determination of Appeals by Appointed Persons) (Prescribed Classes) (Scotland) Regulations 1987 (SI 1987/1531)
Schedule 3 paragraph 3 Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997*

COMPENSATION ARISING FROM BUILDING PRESERVATION NOTICE

- 7.11 Compensation is paid by a planning authority for loss or damage caused where a building preservation notice ceases to have effect and the building concerned has not subsequently been included by Scottish Ministers in the statutory list. The claim for compensation may include any sum for which the applicant has become liable in respect of breach of contract caused by the requirements of the notice.

section 26 Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997

COMPENSATION FOR REVOCATION OR MODIFICATION OF LISTED BUILDING CONSENT

- 7.12 Where a listed building consent is revoked or modified, compensation may be payable for any abortive expenditure or any other loss or damage caused by the revocation order.

section 25 Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997

PROCEDURE IN RESPECT OF COMPENSATION CLAIMS

- 7.13 Any claim for compensation should be made in writing to the planning authority within 6 months of the date of the decision.

*sections 25 or 26 Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997,
Regulation 9 Town and Country Planning (Listed Buildings and Buildings in Conservation Areas) (Scotland) Regulations 1987
(SI 1987/1529*

LISTED BUILDING PURCHASE NOTICES

- 7.14 The owner or lessee of a building in respect of which listed building consent has been refused, or granted subject to conditions, or revoked or modified, is enabled to serve a listed building purchase notice on the appropriate planning authority if they are able to claim following the decision that the land has become incapable of a reasonably beneficial use in its present state. The notice has the effect of requiring the planning authority to purchase the owner's or lessee's interest in the land.

section 28 Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997

- 7.15 The detailed procedure to be followed in respect of listed building purchase notices is set out in the relevant legislation. This includes the action to be taken by the planning authority on whom a listed building purchase notice is served and the procedural steps to be followed once the notice has been forwarded to Scottish Ministers.

sections 28-32 Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997

The relevant legislation also sets out the range of options open to Scottish Ministers in relation to a listed building purchase notice, and the effect of Scottish Ministers' decision to confirm or not to confirm, or to modifying a listed building purchase notice.

- 7.16 A purchase notice must be served on a planning authority within 12 months of the date of that authority's decision, although this period may be extended by Scottish Ministers.

*Regulation 9 Town and Country Planning (Listed Buildings and Buildings in Conservation Areas) (Scotland) Regulations 1987
(SI 1987/1529*

- 7.17 Before serving a refusal notice, the planning authority must already

have referred the case to Scottish Ministers with a copy of the original purchase notice and of the refusal notice it proposes to serve.

- 7.18 The question to be decided in respect of a listed building purchase notice is whether the land in its existing state is incapable of 'reasonably beneficial use', not whether it is of less use to the owner in its present state than if developed.

The remedy by way of listed building purchase notice is not intended for the case where the owner shows merely that they are unable to realise the full development value of their land: it is intended to provide for situations in which refusal of consent has left the building incapable of any reasonably beneficial use, whether or not a concrete proposal for such use is in prospect.

It should not be assumed that a refusal of listed building consent will necessarily be followed by a successful listed building purchase notice. Further guidance on the procedure to be followed in ordinary purchase notices given in Department of Health for Scotland Circular No 74/1959 is generally applicable to listed building purchase notices.