Making your appeal

How to complete your enforcement notice appeal form

Wales

This guide shows you how to:

- Complete your appeal form
- Submit your appeal form
- Contact us
- Troubleshoot problems

February 2014
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If you need this guidance displayed in a larger font or to have it read out loud, please use the ‘zoom’ and ‘view’ toolbars in Adobe Reader. You will need to have Adobe 6 or higher in order for this to work.
This advice is important to you. Please read it immediately. You must act quickly in deciding whether to appeal.

Before you start

Before you make your appeal, you should enter into discussions with the local planning authority (LPA). We encourage you to continue these discussions, during the appeal. This will help to narrow the areas in dispute.

You should make your appeal only when all else has failed.

Dealing with an appeal online

You can submit your appeal on-line using the Appeals Casework Portal. This is an on-line service that gives people in Wales and England wider and easier access to the appeals service.

System Availability

Our online facilities will usually be available 24 hours a day. We will sometimes need to take the system out of service for a while to implement upgrades. Wherever possible, we will do this outside of usual office hours.

System Requirements

Before you start, you should ensure that you have the following system requirements -

- Adobe Acrobat (Version 9 or higher recommended);
- an internet browser (Internet Explorer/Chrome/Firefox recommended);
- an email account.

Registration

You need to create an account with us in order to make an appeal or make representations on an appeal. Registering will enable you to access our full range of electronic services, including a personal homepage.

Please click https://acp.planningportal.gov.uk/account/register.aspx to access the registration page.

If you are already registered with us and wish to log in, please click https://acp.planningportal.gov.uk/
Your online account

Personal homepage

From this page you are able to –

- make a new appeal;
- view your submitted appeal forms through ‘My cases’. These will not be editable as they have already been submitted to us. You will have been emailed a PDF version of any appeal form you have submitted;
- search for a case using either the quick search facility (using the 7 digit case reference number) or, alternatively, you can search using other criteria (such as site address) with our advanced search;
- access any of your appeals or representations which you are still working on via the ‘Awaiting submissions’ facility. Please note that any appeals or representations which are still awaiting submission after 180 days will be automatically deleted;
- view submitted representations through ‘My representations’. This will include any representations you have submitted for your own case(s) and any representations which you may have submitted for other cases which you are interested in (for example, as an interested party). These will not be editable as they have already been submitted to us. You will have been emailed a PDF version of the form upon submission;
- watch any cases which are of interest to you. Once you have found a case which you want to follow, you can click the ‘Watch case’ button on the Case Summary screen and the case will then be added to your ‘Watched cases’ list. If at any time you want to remove the case from your list, simply click the ‘Stop watching’ button on the Case Summary screen or click the red ‘x’ button on your homepage and the case will be removed from your list.

My Details

This is where all the details you entered when creating your account are held. If at any time your details change, you should make amendments to them through this page, but please note you cannot change your name once your account has been created. It is your responsibility to ensure that your details are kept up to date.

If you make a change to your address details, telephone number or fax number then these details will be updated instantly on your account. If you change your email address, you will be sent an email confirming this change and asking you to verify the new email address. Once verified, your account will be updated.

You can change your password using the ‘Change Password’ button. You will be sent an email confirming that a change has been made. You will then need to log into your account again, using your new password.
Selecting the correct online appeal form

Once you have logged into your account, start the appeal process by clicking on the ‘Make a new appeal’ button.

Enter the name of your local planning authority

Here you should type in the name of your local planning authority. As you type, possible matches will be returned. You can then select the correct one from the list. Note you cannot change your local authority once you are in the appeal form.

Selecting your appeal form

You will be asked a series of questions about your appeal, with each answer you give determining the next question. You may need to consult the enforcement notice issued from your LPA.

If you want to make an appeal in relation to more than one enforcement notice or in relation to eg an application for planning permission, you must make a separate appeal for each.

If you believe that you may have selected the wrong form, please select the ‘Restart’ button to begin the appeals process again.

Meaningful name

This name will be used to identify this appeal on your personal homepage. Please use a name that clearly identifies the appeal to you, for example, the first line of the site address. This is of particular importance if you are an agent who may be dealing with multiple cases.
Guidelines for submitting documents

<table>
<thead>
<tr>
<th>Acceptable file formats</th>
<th>PDF</th>
<th>.pdf</th>
</tr>
</thead>
<tbody>
<tr>
<td>Microsoft Word</td>
<td>.doc or .docx</td>
<td></td>
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<tr>
<td>TIF</td>
<td>.tif or .tiff</td>
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<td>JPEG</td>
<td>.jpg or .jpeg</td>
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<tr>
<td>ZIP</td>
<td>.zip</td>
<td></td>
</tr>
</tbody>
</table>

**File sizes**

Documents submitted may be no bigger than 5mb each. It is your responsibility to keep your documents to a manageable size.

If you have documents that are larger than this you can try the following:

- Break long documents into several files, but note the document naming conventions below.
- Try and use black and white wherever possible (unless submitting photographs).
- If submitting images, your software may have file/image compression facilities to make them smaller.
- Note scanned documents are usually bigger than non-scanned versions.
- Provided you are using the acceptable file types above, you can use ZIP files to compress documents.
- If you have a large file and you are unable to use the options listed, you can email anything up to 10mb to appeals@pins.gsi.gov.uk

**Security**

Remove any document security and enable macros if necessary. Documents should not be password protected, they should not be formatted as ‘read only’ and printing should be enabled.

**Copyright**

Ensure you have the owner’s permission and have paid any copyright licence fee before sending in documents.

**File names**

- Ensure all documents have descriptive names, including the type of document you are sending, eg ‘Proposed plan 1 March 2014’.
- Number appendices and submit them as separate documents. Ensure the first page includes the appendix number. Name them to indicate what they form part of, and their sequence eg ‘Appeal statement Appendix 2 Traffic census.’
- Use ‘Part 1’, ‘Part 2’ etc in the file name if you have split up a large document eg ‘Appeal statement in Appendix 1 Environmental Assessment Part 1 of 3’.
- Include the required paper size in the document name for plans and drawings eg ‘Proposed plan A3 size 1 March 2014’.
- Include scale bar(s) on all plans and drawings.
- Do not use a colon ‘:’ in any file names.
<table>
<thead>
<tr>
<th>Scanning</th>
<th>Ensure documents are complete and legible and avoid scanning more than one document into a single file. Use black and white unless colour is essential.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ordnance Survey</td>
<td>People may only scan an Ordnance Survey map if they;</td>
</tr>
<tr>
<td></td>
<td>• Have an annual licence to make copies; or</td>
</tr>
<tr>
<td></td>
<td>• Have purchased a bulk copy arrangement; or</td>
</tr>
<tr>
<td></td>
<td>• Are using a local planning authority supplied map under the ‘map return scheme’ (for which a fee is normally payable at the local planning authority’s discretion), or</td>
</tr>
<tr>
<td></td>
<td>• Have purchased the site-specific map from the Planning Portal for the purposes of attaching to a planning application, appeal or representation.</td>
</tr>
<tr>
<td></td>
<td>More information on map licensing is available on the Ordnance Survey website: <a href="http://www.ordnancesurvey.co.uk/support/licensing.html">http://www.ordnancesurvey.co.uk/support/licensing.html</a></td>
</tr>
<tr>
<td>Images</td>
<td>Send pictures, photographs, plans, maps or drawings as individual files. Avoid the use of bitmap images as they are very large.</td>
</tr>
<tr>
<td>Hyperlinks</td>
<td>• You should not use hyperlinks within documents you send to us. Instead, you should download such documents yourself and attach them separately.</td>
</tr>
<tr>
<td></td>
<td>• You should not use hyperlinks to a website page containing multiple documents or links.</td>
</tr>
<tr>
<td>Formatting</td>
<td>You should ensure that you number all pages accordingly.</td>
</tr>
<tr>
<td>Sending emails</td>
<td>If you send anything by email you should get an automatic acknowledgement, provided it is sent to <a href="mailto:appeals@pins.gsi.gov.uk">appeals@pins.gsi.gov.uk</a> or to a team email address (which can be found at the top of letters from us about the appeal). If you do not get an automatic acknowledgement, then you should contact us.</td>
</tr>
<tr>
<td></td>
<td>For any correspondence which you send to us via email, you should;</td>
</tr>
<tr>
<td></td>
<td>• Quote the appeal reference and/or appellant’s name, site address and local planning authority name in the subject line or in the body of your email.</td>
</tr>
<tr>
<td></td>
<td>• If you are attaching more than one document, please list them in the covering email.</td>
</tr>
<tr>
<td></td>
<td>• If you are sending a series of emails, include ‘1 of 5’, ‘2 of 5’ etc in the subject line of the email, so we know how many to expect and can check with you if any appear to be missing.</td>
</tr>
</tbody>
</table>
Making your appeal by post, e-mail or fax

You can post, e-mail or fax your appeal form to us. You can also deliver your appeal form by hand. You should ask us for a receipt if you do so. Our contact details are given on the appeal form and on page 32 of this guide.

Handwritten appeal forms and other documents

Please complete the appeal form in **CAPITAL LETTERS** using **black ink**.

Typed documents

Documents in a sans serif font are easier to read. Please use a font such as Arial or Verdana in a size of 11 point or larger.

Please

- use A4 paper wherever possible;
- number the pages of the documents;
- make sure **photocopied** documents are clear and legible;
- put photographs (colour if possible), maps, plans, etc, in a **separate appendix** and cross-reference them within the main body of the document;
- bind documents so that they can be undone quickly without damaging the document. Do not use wire or plastic spiral binders;
- do not use cover sheets, sleeves or other bindings that do not add value or information;
- do not send original documents unless we specifically ask for them;
- do not include self adhesive notes or small attachments which might be dislodged easily or lost;
- print documents on both sides of a page. You should use paper of good enough quality that something printed on one side of the page does not show through to the other side;
- ensure that the scale, orientation and paper size of any maps and plans are shown clearly.

You must provide your grounds of appeal when making your appeal.

Deadlines

We must receive your enforcement appeal **before** the date on which the notice takes effect. This date should be shown on the enforcement notice and should be at least 28 days from the date of issue of the enforcement notice which should also be shown on the notice. You should not wait until the last few days.
Issuing an enforcement Notice

A local planning authority has discretion on whether to issue an enforcement notice. A local planning authority will issue an enforcement notice because it considers that what is being done or has been done is a breach of planning control because it is development that is not authorised by a planning permission or is a breach of condition(s) attached to a planning permission.

Before you decide to appeal, please consider carefully the LPA’s reasons for serving the enforcement notice on you. These are set out on the enforcement notice.

Who can appeal?

An appeal may be made by:
(i) a person who has a legal interest in the land when the appeal is made (irrespective of his/her standing when the notice was served); or
(ii) a relevant occupier in occupation of the land both when the notice was served and when the appeal is made.

The terms “a person” and “a relevant occupier” includes a limited company or unincorporated body. If this is the case the appeal must be made by the company. A director or shareholder does not have the right of appeal on the Company’s behalf. Or in the case of an unincorporated body, their authorised representative.

Interest in this context has a special significance. It means either a legal or equitable interest in the land. It includes owners, lessees, some tenants and Official Receivers. Mortgagees or other lenders also have an interest in the land (as security for the loan they have advanced to the borrower).

A “relevant occupier” means a person who:
(a) on the date on which the enforcement notice is issued occupies the land to which the notice relates by virtue of a licence (the consent of the owner whether oral, written or implied); and
(b) continues so to occupy the land when the appeal is brought.

If you “have an interest” or are a “relevant occupier” you may appeal even if the notice has not been served on you.

Sometimes, more than one person may have a legal interest in the land to which an enforcement notice relates and their different interests may conflict with each other. For example, the owner of the land may wish the enforcement notice to be upheld, while the occupier of the land may wish to continue with the present use and/or retain the works. In these circumstances, it is up to each person with a legal interest to decide how his or her interests will best be served once an enforcement notice has been issued.
If you own the land and you do not appeal against an enforcement notice but someone else does appeal against it, in law you will have the status of an ‘interested person’. This does not entitle you to receive a copy of all the representations made by the appellant and other interested people (though you would be able to see such representations at the LPA’s offices).

However, in those circumstances, you may wish to request to be considered as an ‘interested owner’. This status is given at our discretion. It means that we will give you similar treatment as to an appellant. You will be able to attend any hearing or local inquiry, or be present when the Inspector visits the site. You will also be able to see and comment on any written representations made by the appellant, the LPA, and any other interested people, during the progress of the appeal. It is important you notify us to request this at the earliest opportunity.

A person

- who does not have an interest in the land or is not a relevant occupier; or
- who is a trespasser;

does not have a right of appeal – even if the local planning authority serves a copy of the enforcement notice on them.

**Lawful development certificates**

Section 177(1) of the 1990 Act gives the Welsh Ministers certain discretionary powers on the determination of an enforcement notice appeal under section 174. Section 177(1)(c), enables him to determine whether, on the date the appeal was made, any existing use of the land was lawful, any operations which had been carried out were lawful, or any matter constituting a failure to comply with a condition or limitation subject to which planning permission was granted was lawful.

In exceptional circumstances the Inspector may issue a certificate of lawful use or development (usually referred to as a lawful development certificate (LDC)) when determining your appeal, if you have specifically asked him or her to do so. However, the LDC procedure is intended to be administered primarily by LPAs. They are usually best placed to identify all the relevant details about a use, operation or activity which may need to be specified in an LDC. These details, including suitable plans to attach to the certificate, may not be readily available to the Welsh Ministers or an Inspector, even at the decision stage of an enforcement notice appeal.

Therefore, except very rarely, where an enforcement appeal succeeds on grounds (c) or (d) in section 174(2), the notice will be quashed with no grant of a LDC and the appellant advised that it is open to him or her to apply to the LPA for an LDC under section 191.

*This only applies where a fee has been paid.* If an LDC were, exceptionally, to be granted on your appeal, the “deemed application fee” would not be refunded.
Openness and transparency

Hearings and inquiries are open to journalists and the wider public, as well as interested people. Provided that it does not disrupt proceedings, anyone will be allowed to report, record and film proceedings including the use of digital and social media. Inspectors will advise people present at the start of the event that the proceedings may be recorded and/or filmed, and that anyone using social media during or after the end of the proceedings should do so responsibly.

If anyone wants to record or film the event on equipment larger than a smartphone, tablet, compact camera, or similar, especially if that is likely to involve moving around the venue to record or film from different angles, they should contact us and the local planning authority in advance to discuss arrangements.

Application for appeal costs

You and the LPA normally have to meet your own appeal expenses, whether we decide it by the written procedure, a hearing or an inquiry.

If you have good reason you can ask the Welsh Ministers or the Inspector to order the LPA to pay all or some of your costs. The LPA can also ask for you to pay some or all of their costs if they have good reason. The Welsh Ministers or the Inspector will only do this if the person applying can show that the other side behaved unreasonably, and put them to unnecessary or wasted expense.

We will send you our separate guide ‘Costs awards in planning appeals’. It is important that you read this guide because it explains how, when and on what basis you can make an application or have an application made against you. Further information is available on the planning portal (www.planningportal.gov.uk).
Completing the appeal form

In this guidance, we use the same section headers as within the enforcement notice appeal form.

If you are using the Appeals Casework Portal to submit your appeal there will be useful information at the end of each section (if required).

Appellant Details

Preferred contact method

Please see earlier section ‘Who can appeal?’ to ensure that you are entitled to appeal against the enforcement notice.

If you are an unrepresented appellant and you prefer to be contacted by email, where possible, we will send you our letters and appeals correspondence by email and we will not send paper copies.

Appeals Casework Portal

If you are the appellant, by responding ‘Yes’, the details registered to your account will be displayed on the form. Select ‘No’ and you will be deemed to be acting as an agent for the appellant and so you should provide the appellant’s details.

If for any reason your details have changed since you created your account, you should change them through the My Details link at the top of the page.
Agent Details

You do not have to employ an agent to handle your enforcement appeal. If you decide to employ an agent he or she will probably complete the appeal form for you.

If you have an agent we will send all of our communications to them. We will not send a copy to you. The only exception to this is that we will send you and your agent a copy of the appeal decision. You should ensure that you keep in touch with your agent about the appeal arrangements, particularly times and dates for site visits, hearings or inquiries.

Preferred contact method

If you prefer to be contacted by email, where possible, we will send you our letters and appeals correspondence by email and we will not send paper copies.

Appeals Casework Portal

If you are the agent completing the form, by selecting ‘No’ to the question ‘Are you the appellant?’ the details registered to your account will be displayed on the Agent Details section of the form.
Local Planning Authority Details

This information should all be on the enforcement notice.

Appeals Casework Portal

The name of the LPA and relevant details of the enforcement notice will have transferred through to the form from when you entered it at the start of the process. If you need to change the LPA you will need to restart from your homepage.
Appeal Site Details

The appeal site must be the same as the site given in the enforcement notice.

Postcode

If the appeal site does not have a postcode, please provide the postcode of the nearest building. Also please provide information to help us identify the site, eg a map or plan showing the site and at least 2 named or numbered local roads.

Health and safety at the site

The site is likely to be inspected during the course of the appeal and the Inspector needs to be made aware of any potential problems. The following questions indicate the type of information we need about the appeal site such as the condition of the land or any building to be entered.

We take seriously our duties with regard to the health and safety of our employees and those affected by our work. Inspectors may abort the site visit if the conditions on site are unsatisfactory. Failure to provide the necessary information may therefore result in a delay to your appeal.

The following questions indicate the type of information we need about the appeal site, such as the condition of the land or any building to be entered. Please note that the questions do not actually feature on the appeal form. The information should be supplied within the free text field underneath the Health and Safety question.

1) Will the Inspector be expected to wear Personal Protection Equipment? Please give details.

2) Are any building works or other operations taking place on the site? If it is a workplace, is there a risk assessment in place for visitors?

3) Are there any animals (eg pets or livestock) within the site? If so, you must ensure that ALL animals (both livestock or pets) will be kept away from the area to be visited.

4) Is the site remote or in an area likely to have a poor mobile phone signal?

5) Are there any areas that require specialist equipment or training for access e.g. confined spaces or use of ladders / scaffolding? If a ladder will be used, you must explain why and give details of the heights involved and arrangements for securing the ladder.
6) Does the Inspector need to be aware of specific dangers within the site? This would include uneven surfaces, equipment or substances kept at the site, risk of exposure to chemicals, asbestos or radiation.

7) Will it be necessary to view the site from a height, e.g. roof, balcony? Are any railings or guards in place?

8) Are there any site specific safety arrangements in place?

9) Is the site accessible for persons with limited mobility?

10) Is there any overgrown vegetation that could restrict access to the site? If so, you will need to ensure that the site is made accessible to our Inspector and any other people accompanying him or her.

You must also inform us of any relevant changes to the site which occur in the period leading up to the planned site visit date.

**Interest in the land**

‘Interest in the land’ is explained in the earlier section ‘Who can appeal?’

Please state your interest in the building. If it is none of the above you will need to indicate whether you/the appellant occupied the land/building under a written or oral licence BOTH on the date the enforcement notice was issued AND on the of making this appeal? . Use the text box to explain your interest.

Please see previous ‘Who can appeal?’ section for an explanation.

**Appeals Casework Portal**

If the address of the affected building is not the same as the appellant’s address you will be asked an additional question as to whether the appeal relates to an existing property. If it does, you can use the address finder to complete your details quickly.

If you confirm that the address of the affected land is the same as the appellant’s address then this information will transfer over from the Appellant Details section (provided you have completed the Appellant Details section before the Appeal Site Details section).
Grounds and Facts

**Grounds and facts**

If you intend to rely on a planning obligation you should send a final draft version with your appeal form. However, if you have not reached this stage you should send in your latest draft. The "start letter" we will send you will tell you when you must send the final draft to us. You may wish to look at the Welsh Office Circular 13/97 Planning Obligations, which gives further details and information about planning obligations.

There are seven different grounds, in section 174(2) of the Act, on which you can make your appeal. You may wish to appeal on one ground only or on several grounds. The following is information about the different grounds and advice on what to include in your grounds of appeal.

Your appeal must give facts in support of each chosen ground of appeal. You should think carefully about the facts on which you will rely.

**Ground (a) -** that planning permission should be granted (or that the condition or limitation referred to in the enforcement notice should be removed).

If you appeal on ground (a) you should set out in detail why you think that permission should be granted.

**You do not have to pay a fee to appeal against the enforcement notice. However, if you want your appeal to be considered under ground (a) you must pay a fee.** The full fee must be paid to the LPA. Information about fees is given in The Town and Country Planning (Fees for Applications, Deemed Applications and Site Visits) (Wales) Regulations 2015; this contains the current fees payable. The LPA should have told you the fee that is payable when they served the enforcement notice.

If you only put ground (a) forward and you do not pay the fee, your appeal will lapse. This means that your appeal will end.

If you decide to pay the fee, but do not want to give any information to support ground (a), the Inspector will still consider the planning merits of the development.

You cannot withdraw ground (a). But, you can advise us and the LPA that you will not be providing evidence on this ground to prevent any abortive work.

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1 A planning obligation - often referred to as a 'section 106 agreement' – is either:
- a legal agreement made between the LPA and a person ‘interested in the land’; or
- a legally binding undertaking signed unilaterally by a person ‘interested in the land’.

2 Every person who appeals against an enforcement notice is considered to have made an application for planning permission for the development set out in the alleged breach. This is called the "deemed planning application" and it is in addition to ground (a) and arises automatically from the provisions of s177(5) of the Act. However, it and ground (a) are considered and decided by the Inspector only if the fee is paid.
taking place. It will be at the Inspector’s discretion whether to consider the planning merits or not.

In these circumstances, you will not be able to have your fee refunded. The only way you could get a refund at this stage would be to withdraw the whole appeal at least 21 days before the site visit, hearing, or inquiry take place.

If you plead ground (a):

- You should set out all your grounds of appeal clearly and concisely and focus upon the planning merits of the development. You should avoid repetition and information that does not relate to the issues involved. The grounds of appeal should be clear and concise and we would not expect them to exceed 3,000 words.

- You should include a clear explanation of why you disagree with each of the LPA’s reasons for issuing the enforcement notice. It is not enough to say that you do not accept them – that will not help the Inspector decide your appeal.

- The enforcement notice will refer to policies in the Development Plan and/or supplementary planning documents. You do not need to describe any local policies in full. Simply give the number and the name of the relevant development plan or supplementary planning document. The LPA will provide these to the Inspector so you do not need to. However, before submitting your appeal you should read the policies referred to. You should include in your grounds of appeal why you think that any policy referred to in the notice is not relevant or why the development complies with it.

- If you think there are other relevant policies, not referred to in the LPA’s enforcement notice, but on which you intend to rely, you should attach the relevant extracts and include them with your appeal, indicating their status, i.e. whether they have been adopted by the LPA and/or have been saved by a direction of the Welsh Ministers and form part of the development plan.

- There is no need to set out national policy (such as PPW or TAN’s) as Inspectors have these documents. However, you should refer to any paragraphs by number that you think are relevant.

- It will be helpful to attach previous decisions by the LPA or on appeal if they are directly relevant but you should indicate why you consider them to be so.

- You may include details of similar developments in the immediate area if you think these are relevant to what you have done. You should identify them on a street map and supply their addresses and, where possible, photographs of them. Where you are aware of the history of any such

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3 Planning Policy Wales (PPW) or Technical Advice Notes (TAN's)
development you should set it out briefly in your grounds of appeal or in a separate annexe.

- Where the effect on the neighbours is mentioned in the notice, if you dispute this you should include measurements of the distances between your and your neighbours’ properties, particularly the distances to any of their windows.

- You may use photographs (preferably in colour) to illustrate your grounds of appeal – for example to show the site and its relationship to its neighbours. If you submit photographs you must give details of where they were taken, on a map showing the viewpoints, and when and what they show. If you take photographs in public places please take reasonable care to respect the privacy of individuals whose images you may inadvertently capture. We are unable to return photographs.

Note: The Inspector will look at the planning merits of your development afresh and so there is no need to give a detailed history of discussions with LPA officers.

The following grounds (b), (c), (d) and (e) are often referred to as “the legal grounds”. If you are pleading any of these grounds it is your responsibility to provide evidence to prove what you are saying.

Ground (b) - That the breach of control alleged in the enforcement notice has not occurred as a matter of fact.

If you plead ground (b) you are saying that whatever is alleged in the notice has not taken place (i.e. that the alleged use is not occurring or that the alleged structure has not been erected). You should provide facts to support this. You may wish to show the difference between the actual use (or lack of it) and what is alleged in the notice.

If you wish to argue that planning permission is not needed, do not do that under Ground (b). You should do that under Ground (c).

Ground (c) - That there has not been a breach of planning control.

You may wish to claim that:-

- the operations alleged in the notice do not amount to development, under s55 of the Act, or that the change of use is not a material one (i.e. it is not subject to the requirements of planning control);

- the development that has taken place is permitted by the Town and Country Planning (General Permitted Development) Order 1995 (as amended), or that the change of use is within the terms of the Town and Country Planning (Use Classes) Order 1987;

- what has been done, or built, is within the terms of a planning permission, or that the relevant condition on a permission has been complied with.
Note:- Appellants and agents often confuse ground (b) with ground (c) and vice versa. Put simply, ground (b) is that you did not do it, and ground (c) is that you did, but planning permission is not needed.

**If your appeal succeeds on Ground (c) the Inspector may grant a certificate of lawful use or development if you have specifically asked him or her to do so. However, this only applies where you have paid the fee.**

**Ground (d) –** That at the time the enforcement notice was issued it was too late to take enforcement action against the matters stated in the notice.

The time limits are as follows:-

- S171B(1) of the Act gives a time limit of 4 years for notices alleging operational development such as building, mining or engineering works.

- S171B(2) gives a 4 year limit for change of use from a building/part of a building to a single dwellinghouse. This time limit applies either where the change to use as a single dwellinghouse involves development without planning permission, or where it involves a failure to comply with a condition or limitation subject to which planning permission has been granted.

- S171B(3) states that any other change is subject to a limit of 10 years from the date of the breach. This applies to changes of use and to breaches of any conditions attached to previous planning permissions.

These time limits are set out in s171B of the Act and are confirmed in Annex 2-of WO Circular 24/97 Enforcing planning control: legislative provisions and procedural requirements.

It is not enough to say “the breach of planning control occurred more than ten years ago”, or “The building was finished more than four years before the notice was issued”. You need to be able to provide evidence to establish this.

You could say, for example: “The present use was started by the late George Smith in the summer of 1997. He continued it until his death in 2005. Then I bought the premises and have carried on the same use continuously until now” or, “The builder dug foundations of the building in March 2003 but he was only working part-time. Then during the summer he was able to work full time. The roof was tiled by the end of September and we started using the building in mid-October as it was very nearly finished.”

**If your appeal succeeds on Ground (d) the Inspector may grant a certificate of lawful use or development if you have specifically asked him or her to do so. However, this only applies where you have paid the fee.**

**Ground (e) –** That the notice was not properly served on everyone with an interest in the land.
You will need show the copies of the notice were not served as required by Section 38(4):-

(a) on the owner and on the occupier of the land to which it relates; and
(b) on any other person having an interest in the land, being an interest which, in the opinion of the authority, is materially affected by the notice.

The service of the notice shall take place:-

(a) not more than twenty-eight days after its date of issue; and
(b) not less than twenty-eight days before the date specified in it as the date which it is to take effect.

Note: If the notice was not served as specified in section 38(4), this can be disregarded if no substantial prejudice has been caused to anyone’s interests. For example if the appellant or other person is present at the inquiry/hearing or submitted written representations it is likely that he or she has been given adequate notice.

You should be aware that even if you succeed in this ground of appeal, the Inspector or the Welsh Ministers might disregard the matter and will give reasons for doing so. It depends whether he or she thinks the failure to serve a copy of a notice on a person has caused that person some injustice.

You should provide the details of anyone who has an interest in the land. You should indicate who received the notice and who did not.

**Ground (f)** - That steps required to comply with the requirements of the enforcement notice are excessive and lesser steps would overcome the objections.

You should say why you think that the steps are excessive and what lesser steps you consider would remedy the problem. You cannot argue that planning permission should be granted under this ground, if you wish the planning merits of the development to be considered you must argue that under ground (a).

**Ground (g)** – That the time given to comply with the notice is too short.

You should say what you consider to be a more reasonable period and why. If you intend to appeal solely on this ground you should consider negotiating the timescale with the LPA, as they may be willing to extend the period for compliance, removing the need for an appeal.
Preferred Procedure

There are 3 possible procedures for the determination of an appeal: written representations, hearings and inquiries. We will take into account any views you have expressed about which procedure would be most suitable for your case and the views of the LPA. The LPA can inform us of their preferred procedure either in writing before the appeal is started or on the questionnaire they submit within two weeks of the start of the appeal. You should note that the procedure for your appeal may be reviewed throughout the appeal process. Your appeal may not necessarily follow your preferred procedure. For instance, where legal grounds are involved, the inquiry procedure may be required. Inspectors give equal attention to every appeal regardless of the procedure.

Annexe 1 provides guidance to help you choose the most suitable procedure for your appeal.

The written representations procedure

This is normally the simplest, quickest and most straightforward way of making an appeal. Over 50% of enforcement appeals proceed by the written procedure. This is quicker and simpler to undertake than a hearing or inquiry and you are likely to get your appeal decided sooner.

You may also wish to look at The Town and Country Planning (Enforcement) (Written Representations Procedure) (Wales) Regulations 2003, Statutory Instrument 2003 No.395 (W.54)

We will use your responses to questions 1a) and 1b) on the form to help us decide how the site visit should be conducted.

The hearing procedure

This procedure is likely to be suited to cases which require detailed discussion. Although you may indicate a preference for a hearing, the Planning Inspectorate must also consider that your appeal is suitable for this procedure. It is unlikely to be suitable if the evidence needs to be tested ie. where the factual evidence about how long the development has been on site is in dispute.

You may also wish to look at The Town and Country Planning (Enforcement) (Hearings Procedure) (Wales) Rules 2003, Statutory Instrument 2003 No.1268.

The inquiry procedure

This is the most formal of the procedures. The parties to the appeal will usually be legally represented and expert witnesses may be called to give evidence.

\footnote{The Town and Country Planning (Determination of Procedure) (Wales) Order 2014; The Town and Country Planning (Determination of Procedure) (Prescribed Period) (Wales) Regulations}
You may also wish to look at The Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (Wales) Rules 2003, Statutory Instrument 2003 No.1267.

**How long do you estimate the inquiry will last?**

In answering question 3(a) you should say how long you estimate the inquiry will last, including the time you think will be required to present all of your case. Please be realistic - the estimate should include time for opening and closing the inquiry, any sessions on conditions and any section 106 obligation and the time you consider may be necessary for questions to be put to both your and the LPA’s witnesses. If you have instructed someone to represent you at the inquiry (your “advocate”) it may be useful for you to get their views on the likely length of the inquiry.

We will take account of your estimate, the estimate we receive from the LPA and our own experience when we set the likely length of the inquiry. Once set we will expect the length of the inquiry to stay within the agreed timetable.

To help us to do this please indicate at Q3(b) how many witnesses you intend to call to give evidence at the inquiry and the topic areas they will cover and any other information which will help us decide on the appropriate timetable for the inquiry. If you have an advocate it may be useful for you to get their views on this.
Fee for the deemed planning application

If you have applied for planning permission for the same development as in the enforcement notice and paid the appropriate fee, you do not have to pay the fee to have the planning merits considered on your enforcement appeal if:-

i. the LPA had not issued their decision on the application before the date on which the enforcement notice was issued; or

ii. you have appealed against the refusal of planning permission and the appeal has not been decided before the date on which the notice is to take effect.

If ii. applies please write the reference of your current planning appeal in the space provided on the form.

Planning applications and enforcement appeals are exempt from the need to pay a fee if they:-

- relate solely to-
  
  (a) the carrying out of operations for the alteration or extension of an existing dwellinghouse; or
  
  (b) the carrying out of operations (other than the erection of a dwellinghouse) in the curtilage of an existing dwellinghouse;

  for the purpose, in either case, of providing means of access to or within the dwellinghouse for a disabled person\(^5\) who is resident in, or is proposing to take up residence in, that dwellinghouse, or of providing facilities designed to secure his greater safety, health or comfort;

Or

- where the local planning authority to whom the application is made are satisfied that it relates solely to the carrying out of operations for the purpose of providing means of access for disabled persons to or within a building or premises to which members of the public are admitted (whether on payment or otherwise);

Or

- the development, that is normally permitted, requires planning permission because the permitted development rights have been withdrawn by a direction made by the LPA under Article 4 of The Town and Country Planning (General Permitted Development) Order 1995;

\(^5\) A “disabled person” is defined as-

(a) a person who is within any of the descriptions of persons to whom section 29 of the National Assistance Act 1948 applies; or

(b) a child who is disabled for the purposes of Part III of the Children Act 1989.
Or

- the development, that is normally permitted, requires planning permission because of a condition on a planning permission which restricts permitted development;

Or

- the development is for another purpose, in the same Use Class as that for which the building or land is used but permission is necessary because of the requirements of a condition on the original planning permission.

If you feel one of these circumstances apply, please explain why and attach any relevant documentation.

The fee requirements are explained under section D – “Other Appeals/Applications. Please ensure that if you are paying a fee that the full amount to the LPA.
Other appeals

If you have made any other related appeals which have not yet been decided on this site or for nearby sites please supply the reference numbers. Where practical, and depending on the relevant timescales, we may consider related cases together.

Appeals Casework Portal

The name of the LPA will have transferred through to the form from when you entered it at the start of the process. If you need to change the LPA you will need to start a new form from your homepage.
Personal Details

Appellant Personal Details/Agent Personal Details

Personal details supplied on this page will not be made publicly available

Email

If you tick the box to say that you prefer to be contacted by email, where possible we will send you our letters by email and we will not send paper copies.

Appeals Casework Portal

These details will have transferred through to the form from when you entered it at the start of the process.
Supporting Documents

Any supporting documentation other than a copy of the enforcement notice should be kept to a minimum and should be essential and directly relevant to the appeal.

You may wish to send appendices to your representations. These can include reports and information that relate directly to the reasons for issuing the enforcement notice. Appendices should be used sparingly.

You may use photographs (preferably in colour) to illustrate your grounds of appeal – for example to show the site and its relationship to its neighbours. If you send photographs you must give details of where they were taken, on a map showing the viewpoints, and when and what they show. If you take photographs in public places please take reasonable care to respect the privacy of individuals whose images you may inadvertently capture. We are unable to return photographs.

Submitting your appeal

You must read this section carefully and then check the box to confirm you have read the content. If you have any queries regarding our Data Protection policy, further information can be found on our website under Privacy Statement.

Please note that we must receive written notification of your appeal before the date the notice comes into effect. So please make sure that you send your appeal in good time before that date.

You should ensure that you send a copy of the completed appeal form and a copy of any supporting documents you are sending to us and to the LPA. If you choose to send us a copy of a proof of posting you should also send a copy of that to the LPA.

Appeals Casework Portal

The appeal will be signed electronically

Further instructions on how to send the documents to the LPA are within the confirmation of appeal email which you will receive upon successful submission of your appeal form.
Contacting us

The Planning Inspectorate
Crown Buildings
Cathays Park
Cardiff
CF10 3NQ

Telephone: 02920 823866
E-mail: wales@pins.gsi.gov.uk

Getting help

If you would like help in taking part in a planning appeal, you can contact Planning Aid Wales, which provides a free and independent advice service on town and country planning issues to people and groups who cannot afford consultancy fees. **You should be aware that Planning Aid Wales operates eligibility criteria to ensure that its services are provided to those most in need.** You can contact:

Planning Aid Wales
First Floor
174 Whitchurch Road
Heath
Cardiff
CF14 3NB
Phone: 02920 625000
Website: www.planningaidwales.org.uk
Troubleshooting

- Ensure that your internet browser has JavaScript enabled, which is usually the default setting.
- Ensure that cookies are allowed.
- Ensure that the web address http://www.planningportal.gov.uk/ for the Planning Portal is NOT added to the IE proxy server exceptions. **Note** – This is normally only applicable to corporate networks.

How we use your personal information

We receive personal information from the appellant, LPA and other interested people who provide representations. The personal information normally includes name and contact details and any other personal information included within their representations.

We copy the representations we receive to the appellant, the LPA and any other statutory appeal parties. Representations will also be open for inspection at the LPA where anyone can ask to view them.

We publish appeal documents and representations for the appeals that we process, which may include the name and address of the appellant and agent, on the Planning Portal. We also publish the Inspector’s decision.
Annexe 1

Criteria for determining the procedure for planning; enforcement; listed building; listed building enforcement; lawful development certificate; tree replacement notice; hazardous substance appeals and called-in applications.

The criteria for each procedure cannot be fully prescriptive or entirely determinative; they require judgement to be applied using common sense. More than one criterion may apply.

**Written representations** - written representations would be appropriate if:

- the planning issues raised or, in an enforcement appeal, the grounds of appeal, can be clearly understood from the appeal documents and a site inspection (if required); or
- the issues are not complex and the Inspector is not likely to need to test the evidence by questioning or to clarify any other matters; or
- in an enforcement appeal the alleged breach, and the requirements of the notice, are clear; or
- there is not an application for costs.

1 A small number of appeals do not require a site visit and can be dealt with on the basis of the appeal documents.

2 Appeals involving Gypsy and travellers’ sites, or agricultural workers/rural enterprise dwellings will not fall within this criterion.

3 This does not apply to enforcement appeals

**Hearing** - a hearing would be appropriate if:

- the Inspector is likely to need to test the evidence by questioning or to clarify matters but there is no need for evidence to be tested through formal questioning by an advocate or given on oath; or
- the status or personal circumstances of the appellant are at issue; or
- the case has generated a level of local interest such as to warrant a hearing; or
- it can reasonably be expected that the parties will be able to present their own cases (supported by professional witnesses if required) without the need for an advocate to represent them; or
- in an enforcement appeal, the grounds of appeal, the alleged breach, and the requirements of the notice, are relatively straightforward.
4 For example where detailed evidence on housing land supply needs to be tested by questioning.

5 For example, whether in Gypsy and travellers’ site appeal(s) the definition in Welsh Government document 'Travelling to a Better Future' and the Gypsy and Traveller Framework for Action and Delivery Plan is met, or in agricultural / rural enterprise dwelling appeals, whether the tests set out in TAN6 are satisfied.

6 Where the proposal has generated significant local interest a hearing or inquiry may need to be considered. In such circumstances the local planning authority should indicate which procedure it considers would be most appropriate taking account of the number of people likely to attend and participate at the event. We will take that advice into account in reaching the decision as to the appropriate procedure.

Note – Although appellants may be represented by advocates at a hearing, and can test the evidence by way of questioning, cross examination will not be permitted by the Inspector.

Inquiry - an inquiry would be appropriate if:

- there is a clearly explained need for the evidence to be tested through formal questioning by an advocate; or

- the issues are complex; or

- the appeal has generated substantial local interest to warrant an inquiry as opposed to dealing with the case by a hearing; or

- in an enforcement appeal, evidence needs to be given on oath; or

- in an enforcement appeal, the alleged breach, or the requirements of the notice, are unusual and particularly contentious.

7 This does not preclude an appellant representing themselves as an advocate.

8 For example where large amounts of highly technical data are likely to be provided in evidence.

9 Where the proposal has generated significant local interest a hearing or inquiry may need to be considered. In such circumstances the local planning authority should indicate which procedure it considers would be most appropriate taking account of the number of people likely to attend and participate at the event. We will take that advice into account in reaching the decision as to the appropriate procedure.

10 For example where witnesses are giving factual evidence about how long the alleged unauthorised use has been taking place.

Note - It is considered that the prospect of legal submissions being made is not, on its own, a reason why a case would need to be conducted by inquiry. Where a party considers that legal submissions will be required (and are considered to be complex such as to warrant being made orally), the Inspectorate requires that the matters on which submissions will be made are fully explained – including why they may require an inquiry - at the outset of the appeal or otherwise at the earliest opportunity.