

MINUTES OF THE PLANNING, MAJOR DEVELOPMENTS, TRANSPORTATION AND ENVIRONMENT COMMITTEE HELD AT THE COUNCIL OFFICES, THE GROVE, SWANSCOMBE ON WEDNESDAY 25 MARCH 2015 AT 7.00PM

PRESENT: Councillor B E Read (Chairman)
Councillor P J Scanlan
Councillor P M Harman
Councillor P C Harris
Councillor B R Parry

ALSO PRESENT: Graham Blew – Town Clerk
Gill Franz – Administration Assistant

ABSENT: Councillor K G Basson
Councillor V Openshaw
Councillor P A Read

487/14-15. APOLOGIES FOR ABSENCE.

Apologies for absence were received and accepted from Councillors' Mrs S P Butterfill (other commitments), Mrs A R Harvey (holiday), J B Harvey (holiday), and J A Hayes (holiday).

Recommended: That the apologies for absence and reasons, as listed, be formally approved.

488/14-15. SUBSTITUTES.

There were none.

489/14-15. DECLARATIONS OF INTEREST IN ITEMS ON THE AGENDA.

There were none.

The Chairman gave the opportunity for the meeting to be adjourned at this point to accept questions from the public.

490/14-15. ITEMS DEEMED URGENT BY THE CHAIRMAN / MATTERS ARISING FROM PREVIOUS MINUTES AND THEIR POSITION ON THE AGENDA.

The Chairman advised members that an informal meeting had been held with Peter Nelson (MD Camland Developments), on 18 March 2015, regarding the Discussion Document entitled "Leisure and Recreation Opportunities in and around Eastern Quarry" previously supplied by Land Securities and dated May 2004.

491/14-15. **TO CONFIRM AND SIGN THE MINUTES OF THE MEETING HELD ON 4 March 2015.**

Recommended: The Minutes of the meeting held on 4 March 2015 were confirmed and signed.

492/14-15. **DIVERSION OF PUBLIC FOOTPATHS (x3) : DS30 (PART) and DS3 (PART), DS1 (PARTS) and DS30 (PART), DS1 (PART) – DARTFORD BOROUGH (DBC) AND KENT COUNTY COUNCIL (KCC).**

Notices of Public Path Orders (x3), as above, had been received from DBC and KCC. The deadline for any objections is Wednesday 8 April 2015. Members noted the response that the Ramblers Association had submitted and, after deliberation, the Committee agreed to endorse the comments/concerns that had been submitted by the Ramblers Association.

Recommended: That the Town Council respond endorsing the comments/concerns submitted by the Ramblers Association.

TOWN PLANNING:

493/14-15. **PLANNING APPLICATIONS SUBMITTED BY DARTFORD BOROUGH COUNCIL FOR MEMBERS' OBSERVATIONS.**

DA/15/00306/FUL	Raising height of the roof by 6 metres to create additional storage space (no additional floor space) and external associated alterations to elevations. Simpsons Removals and Storage Ltd, A1 and A2 Manor Way Business Park, Manor Way, Swanscombe.
OBSERVATIONS:	No observations.
DA/15/00240/REM	Submission of Reserved Matters relating to appearance and landscaping pursuant to condition 1 of outline planning permission DA/10/00872/OUT for demolition of existing buildings and erection of a part 3/4/5 storey building to provide 50 dwellings comprising 24 x 2 bedroom and 12 x 3 bedroom apartments and 14 x 4 bedroom maisonettes with associated parking at ground and underground level, access road, landscaping and amenity areas. 1A, 1B, 1C Knockhall Road, Greenhithe.
OBSERVATIONS:	No observations.

DA/15/00360/EQCHRM	<p>Submission of reserved matters pursuant to condition 2 of planning permission DA/12/01451/EQVAR in respect of provision of public art within Castle Hill North East Local Park and Neighbourhood Green.</p> <p>Eastern Quarry, Watling Street, Swanscombe.</p>
OBSERVATIONS:	No observations.
DA/15/00345/FUL	<p>Use of car park for a one day (19:00 – 20:30) vehicle stunt show on Wednesday 8 April 2015.</p> <p>Car Park D, Ebbsfleet International Station, International Way.</p>
OBSERVATIONS:	<p>The Town Council object to this application as there are concerns regarding the noise levels that will be generated by the proposal and the disturbance this would cause to the occupied properties that are in close proximity to the site and also the surrounding area.</p>
DA/15/00351/VCON	<p>Application under S73 for variation of condition G1, G2, G3, G4, G7, G9, G10, G14 and G18 in respect of outline planning permission DA/96/00047/OUT for up to 789,550 sqm mixed development.</p> <p>Ebbsfleet bounded by A2, Southfleet Road, Springhead Road, North Kent Rail Line excluding Blue Lake, Springhead Enterprise Park and CTRL Alignment, Swanscombe/Northfleet.</p>
OBSERVATIONS:	<p>The Town Council objects to the application for the following reasons :-</p> <p>G1, G2, G4 – Any delays in provision of educational facilities will have an adverse effect on the surrounding facilities (schools, parking, traffic) and the council would like to see educational facilities provided at the earliest opportunity.</p> <p>G3 – The Town Council object to any proposed amendments and fell that the original condition regarding GP surgery provision should be adhered to.</p> <p>G7 – No observations.</p> <p>G10 – The Town Council would like to see the inclusion in any S106 Agreement of a financial contribution to the Town</p>

	<p>Council towards the improvement of the current facilities within Swanscombe and Greenhithe to take into account the increase in population in the area and the effect this will have.</p> <p>G14 – The Town Council objects to any reduction in what was originally agreed for the provision of recycling and waste transfer facilities.</p> <p>G18 – The Town Council feels that the original provisions for Adult Education should not be altered.</p>
DA/15/00393/FUL	<p>Erection of a first floor rear extension to existing first floor flat.</p> <p>Flat above 12 – 14 Milton Street, Swanscombe.</p>
OBSERVATIONS:	<p>The Town Council have concerns that the drawings for the proposal appear to indicate a staircase already leading from the first floor to the roof space and would seek clarification regarding this.</p> <p>The Town Council would like to request that all neighbouring properties are consulted prior to the consideration of this application.</p>

494/14-15. **PLANNING APPLICATIONS SUBMITTED BY NEIGHBOURING AUTHORITIES FOR MEMBERS' OBSERVATIONS.**

20150155	<p>Consultation on an application for vary/delete the following planning conditions insofar as they relate to community and infrastructure requirements of the Springhead Quarter (Springhead Park) of the grant of outline planning permission reference 20120186 (which itself was a variation of the original outline planning permission reference 19960035 for the development of land at Ebbsfleet for mixed use up to 789,550m2 gross floorspace comprising employment, residential, hotel and leisure uses, supporting retail and community facilities and provision of car parking, open space, roads and infrastructure): D4 (open space quantum), D9 (affordable housing quantum), D10 (lifetime homes quantum), D15 (employment timing), F6 (Springhead highway improvement), G1 (pre-school nursery timing), G2 (primary school timing), G3 (health care provisions), G4 (family centre timing), G7 (local park timing), G9 (playing fields quantum), G10 (sports centre requirement), G11 (affordable housing timing), G12</p>
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	<p>(Lifetime Homes timing), G15 (adult education provisions) and G16 (recycling facility provisions) within Gravesham Borough Council.</p> <p>Land At Ebbsfleet Bounded By A2, Southfleet Rd, Springhead Rd, North Kent Rail Line Excluding Blue Lake, Springhead Enterprise Park And CTRL Alignment, Swanscombe/Northfleet.</p>
OBSERVATIONS:	<p>The Town Council objects to the application for the following reasons :-</p> <p>G1, G2, G4 – Any delays in provision of educational facilities will have an adverse effect on the surrounding facilities (schools, parking, traffic) and the council would like to see educational facilities provided at the earliest opportunity.</p> <p>G3 – The Town Council object to any proposed amendments and felt that the original condition regarding GP surgery provision should be adhered to.</p> <p>G7 – No observations.</p> <p>G10 – The Town Council would like to see the inclusion in any S106 Agreement of a financial contribution to the Town Council towards the improvement of the current facilities within Swanscombe and Greenhithe to take into account the increase in population in the area and the effect this will have.</p>

495/14-15. GRANTED DECISION NOTICES SUBMITTED BY DARTFORD BOROUGH COUNCIL FOR MEMBERS' INFORMATION.

The following granted decision notices were noted.

DA/15/00011/FUL	<p>Provision of new shop front with disabled ramp, erection of a single storey rear extension and internal alterations to create open plan retail area.</p> <p>Greenhithe Market Place, 102 – 104 Knockhall Road, Greenhithe.</p>
DA/14/01825/FUL	<p>Provision of hard standing to provide vehicle parking and a vehicular crossover onto St Peters Close.</p> <p>6 St Peters Close, Swanscombe.</p>

496/14-15. **GRANTED DECISION NOTICES SUBMITTED BY KENT COUNTY COUNCIL FOR MEMBERS' INFORMATION.**

The following granted decision notices were noted.

DA/14/1532	Variation of planning application DA/13/1491 (Temporary consent (5 years) for the operation of a construction and recycling facility for concrete and road/base planings and ancillary plant storage areas, reception weighbridge office and parking) to amend conditions 2 (development to be built in accordance with approved details), 4 (hours of operation), 5 (increase in maximum throughput per annum) and 6 (increase in maximum HGV movements). Eastern Quarry, Watling Street, Swanscombe.
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There being no further business to transact, the Meeting closed at 8.00 pm.

Signed: _____ Date: _____
(Chairman)

02 APR 2015

3/25 Hawk Wing
Temple Quay House
2 The Square
Bristol, BS1 6PN

Direct Line: 0303 444 5463
Customer Services: 0303 444 5000
Fax No: 0117 372 6153
e-mail: yvonne.oddy@pins.gsi.gov.uk

Swanscombe and Greenhithe
Town Council
c/o Mr G Blew
Council Offices, The Grove
SWANSCOMBE
Kent
DA10 0GA

Your Ref:
Our Ref: FPS/W2275/14A/14
Date:

31 MAR 2015

Dear Sir

WILDLIFE AND COUNTRYSIDE ACT 1981 SECTION S14

Kent County Council

Refusal for Footpath running from the High Street to the foreshore adjacent to the Sir John Franklin public house

I enclose for your information a copy of the Inspector's decision on this Appeal.

Also enclosed are two leaflets entitled *Our Complaints Procedure* and *Challenging the Decision in the High Court*.

Please note that this decision can only be challenged by applying to the Administrative Court for a judicial review.

If you have any queries about the enclosed decision, please contact the Quality Assurance Unit at the following address:

Quality Assurance Unit
The Planning Inspectorate
1/23 Hawk Wing
Temple Quay House
2 The Square
Temple Quay
Bristol
BS1 6PN

Tel: 0303 444 5884

<http://www.planningportal.gov.uk/planning/planninginspectorate/customerfeedback/feedback>

An electronic version of the decision will shortly appear on the Inspectorate's website.

Yours faithfully

Yvonne Oddy (Mrs)
(Rights of Way Section)

APPdesp



Appeal Decision

by Susan Doran BA Hons MIPROW

an Inspector on direction of the Secretary of State for Environment, Food and Rural Affairs

Decision date: 31 MAR 2015

Appeal Ref: FPS/W2275/14A/14

- This Appeal is made under Section 53(5) and Paragraph 4(1) of Schedule 14 of the Wildlife and Countryside Act 1981 against the decision of Kent County Council not to make an Order under Section 53(2) of that Act.
- The Application dated 11 February 2011 was refused by Kent County Council on 1 December 2014.
- The Appellant claims that the appeal route from the High Street to the foreshore adjacent to the Sir John Franklin Public House, Greenhithe should be added to the definitive map and statement for the area as a footpath.

Summary of Decision: The appeal is dismissed

Preliminary Matters

1. I have been directed by the Secretary of State for Environment, Food and Rural Affairs to determine an appeal under Section 53(5) and Paragraph 4(1) of Schedule 14 of the Wildlife and Countryside Act 1981 ("the 1981 Act").
2. I have not visited the site but I am satisfied I can make my decision without the need to do so.

Main issues

3. The application was made under Section 53(2) of the 1981 Act, which requires a surveying authority to keep their Definitive Map and Statement under continuous review, and to modify them upon the occurrence of specific events cited in Section 53(3).
4. Section 53(3)(c)(i) of the 1981 Act specifies that an Order should be made following the discovery of evidence which, when considered with all other relevant evidence available to them, shows "that a right of way which is not shown in the map and statement subsists or is reasonably alleged to subsist over land in the area to which the map relates...". The case of *R v Secretary of State for the Environment ex parte Mrs J Norton and Mr R Bagshaw* held that this involves two tests:

Test A. Does a right of way subsist on a balance of probabilities? This requires clear evidence in favour of the Appellant and no credible evidence to the contrary.

Test B. Is it reasonable to allege on the balance of probabilities that a right of way subsists? If there is a conflict of credible evidence, and no incontrovertible evidence that a way cannot be reasonably alleged to subsist, then I must conclude that it is reasonable to allege that one does subsist.

For the purposes of this appeal therefore, I need only be satisfied that the evidence meets test B.

Reasons

5. The appeal route runs from the High Street, Greenhithe, along the west side of the Sir John Franklin public house (formerly the White Hart Inn) to the foreshore/flood defence wall of the River Thames. The evidence in this appeal includes both documentary evidence and statements or user evidence forms completed by members of the public. Although a number of documents are referred to in the submissions, copies of most have not been provided. Nevertheless, their contents have not been disputed and I have no reason to doubt the descriptions given as to what they show or record.

Documentary evidence

6. The earliest document available, Mudge's c.1801 Map, does not show the appeal route. This may be due to the scale of the map, or that the appeal route did not exist at that time. However, a feature is shown on the Swanscombe Tithe Map of 1843 alongside and behind the then White Hart Inn, coloured in the same manner as other routes which appear to be public roads. This may suggest some form of public way, although these maps were prepared to identify titheable land rather than to identify public rights of way, and the relevant land is not identified with an apportionment number. Thus the Map does not provide evidence of a public status, but neither can such a status be ruled out.
7. The First Edition Ordnance Survey ('OS') Map of 1860 shows a passageway corresponding with the appeal route. It continues to a feature leading from the mean high water mark which is annotated "Hard", interpreted by Kent County Council ('the Council') as a causeway. Although the extract provided does not show them, the Council comments that other causeways are shown to the east and west. Second, Third and Fourth Edition OS Maps are said to show the appeal route running between a church to the west and the public house to the east, and leading to the causeway. The OS mapping confirms the physical existence of the appeal route rather than its status. It also confirms the physical existence of the connecting causeway, but this does not provide evidence of the existence of a public right over it, although there is anecdotal evidence as to its reputation as a public route in some of the user evidence considered below.
8. The Finance Act 1910 Map is said to show the appeal route as a feature of the OS base mapping, but there is no reference to a public right of way in the accompanying Valuer's Field Book. Accordingly, I find this evidence does not assist in determining a status for the appeal route.
9. Documents drawn up in preparation for the Definitive Map and Statement include the Swanscombe Parish Map (1950). On it, the appeal route and causeway are shaded in the same manner as is the B255 which includes, amongst other roads, the High Street. This suggests those responsible for drawing up this Map regarded the appeal route as enjoying some sort of public right. By contrast though, the Draft Definitive Map did not show the appeal route as one to be included in the subsequent Definitive Map. Neither, I understand, did the Provisional Map. With no recorded objections to the omission of the appeal route, the Definitive Map and Statement of 1952 consequently do not depict it. Neither was it claimed for inclusion in the

Council's 1970 Draft Revised Map. Similarly it is not recorded on the 1987 Definitive Map as a public right of way, although as previously it appears as a physically mapped feature, but by this date the causeway which led from it is no longer shown.

10. A series of postcards are said to show the appeal route prior to the erection of the flood defence. Two dating to around 1939 and 1940 are of the appeal route looking towards the river, whilst two show the causeway from the river looking towards the church and public house. These confirm its physical existence, but do not provide evidence of its status.
11. A 1967 list of marked landing places on the River Thames, held by the Port of London Authority, does not, I understand, include the location of the appeal route. Had it been included, then it seems that an alternative free public landing place would have been required as a replacement following the subsequent loss of the draw dock (referred to by some of those providing knowledge of the appeal route, described below) and causeway. Other documents held confirm the existence of the draw dock, and of the causeway. However, they do not indicate whether it was a public facility from the land to the River. A "Licence to embank" was granted in 1977 under Section 66 of the Port of London Act 1968 which includes a map of the White Hart Draw Dock Greenhithe, dated 1974, which it is said is annotated "public right of way paved" beside the public house. This suggests those who drew up the map believed that public rights existed over at least part of the appeal route, but it appears inconsistent with the need to grant the licence, which concerned the granting of a private right, and with the earlier list. This evidence on balance appears inconclusive as to the status of the appeal route.

Summary

12. Of the evidence reviewed above, that of the 1843 Tithe Map does not demonstrate the existence of public rights over the appeal route, but neither does it preclude the possibility of such rights existing. The OS mapping does not provide evidence of the appeal route's status. The inclusion of the appeal route on the 1952 Parish Map suggests those compiling it considered public rights of some sort existed over it. However, it was omitted from the subsequent maps that led to the publishing of the Definitive Map itself, apparently without objection from the Parish or anyone else, reducing the weight that can be attached to this map. There is nothing in the historic documentary evidence to indicate a public status for the causeway, or draw dock, where the appeal route meets the River, and this is confirmed by the 1967 Port of London Authority list. A 1974 map attached to a 1977 Port of London Authority Licence marks the passageway beside the public house as a public right of way, but this document was drawn up with regard to the grant of a private right which is unlikely would have been necessary if a public right already existed.

User evidence

13. Knowledge and evidence of use of the appeal route is provided by nine witnesses, whose accounts I summarise. They regarded it as a public right of way providing access to the River and some believed other members of the public used it. One witness described using it to view activities on the River, and typically used it once a week. Another witness used it in the 1980s. One witness had used the appeal route "often" from 1999 to access activities on the River and for longer walks until it was obstructed. This occurred in 2010 when

the Managers of the public house erected a gate across it, although it appears it was never locked. One referred to its use by sailors mooring nearby and for access to the public house, although I would regard this as private rather than public use. One witness had used it twice between around 1990 and 2000 when having a drink beside the River, although again this suggests private use connected with the public house. One witness said he had used it after 1920 and believed it was always in use. Two believed that a public ferry operated there, one stating it ran either from this causeway or next to it, and would have been so used since mediaeval times, one stating it was traditionally the point where pilgrims from Essex and East Anglia crossed on their way to Canterbury. Two stated the appeal route gave access to a public causeway and public draw dock. This meant that any vessel could be moored in the dock space, and anyone could bring their vessel to the draw dock for repair.

14. The land over which the appeal route runs is unregistered. However, a Land Registry document concerns a caution by the Managers of the public house against first registration of the land over which the appeal route runs. Prior to obtaining the lease for the public house they obtained a statutory declaration sworn by the previous publican which states that since 1983 the land "has been used as a right of way by members of the public as well as my customers and by myself and has in particular been used by visitors to the Property as a means of access to the yard at the rear of the Property".
15. The former publican therefore considered that the appeal route was used by the public at least from 1983, although the frequency, volume and period of use are not quantified. Neither is the purpose of such use clarified, nor is it clear what is meant by visitors to the property, or the yard. She also refers to use of the appeal route both by herself as the proprietor and by her customers. I would regard this as likely to be a private right, which is not relevant to the appeal. The frequency of actual use of the appeal route described by those providing statements or user evidence forms is low and/or not quantified. Indeed, most of the witness evidence concerns the reputation it was believed the appeal route had as a public right of way, although there is little support for this in the historic documentary evidence considered above, or as regards the existence here of an ancient public ferry point. Port of London Authority records confirm the existence of the draw dock. However, other than hearsay, no evidence has been provided that this was for the use of or used by the public, with access being provided by way of the appeal route.

Summary

16. The statutory declaration of a former publican is that the appeal route has been used by the public since 1983, and this lends some support to the appeal, but the statement contains no clarification of the amount and frequency of use. The use claimed by nine members of the public adds little and in my view is of insufficient quality and quantity in terms of claimed use. Few describe the periods during which they used the appeal route, how often they used it or for what purpose. Most refer to an understanding that it is a public right of way and that it is used by others, although some of the use described I would regard as private in connection with the public house.

Conclusions on the evidence as a whole

17. The documentary evidence notably the Tithe Map, which shows the appeal route alongside the public house; and OS mapping, confirms the longstanding existence of the appeal route as a physical feature. However, a conclusion that

it was a public right of way does not follow from this evidence as it stands. Limited weight can be attached to the appeal route's inclusion in the Parish Map in view of its unchallenged omission from the maps which led to the Definitive Map, and its subsequent reviews. I have seen no evidence to support a public status for the alleged public ferry point, causeway or draw dock. The 1974 plan, statutory declaration of the former publican and user evidence offer some support for the alleged existence of public rights over the appeal route, but both the declaration and user evidence are deficient, lacking in detail. In my view, the evidence available in this appeal is insufficient on a balance of probabilities to satisfy test B (paragraph 4) that there is a reasonable allegation that a public right of way subsists over the appeal route.

Other matters

18. The Appellant considers that the appeal route is similar to one nearby which accesses the riverfront and which was added to the Definitive Map and Statement as a public right of way. The Council comments that the evidence in that case was different. That another similar route has been recorded as a public right of way is not a matter for my consideration. Each case is considered on its own merits.
19. The Appellant also remarks that the appeal route is a valuable community asset that should be protected. I understand this viewpoint, but this is not a relevant consideration in my determination of the evidence submitted with this appeal.

Overall Conclusion

20. Having regard to these and all other matters raised in the written representations I conclude that the appeal should be dismissed.

Formal Decision

21. The appeal is dismissed.

S Doran

Inspector

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Our Complaints Procedures

Complaints

We try hard to ensure that everyone involved in the rights of way process is satisfied with the service they receive from us. Applications and orders to amend the rights of way network can raise strong feelings and it is inevitable that someone will be disappointed with the decision. This can sometimes lead to a complaint, either about the decision itself or the way in which the case was handled.

Sometimes complaints arise due to misunderstandings about how the system for deciding application appeals and orders works. When this happens we will try to explain things as clearly as possible. Sometimes the objectors, applicant, the authority or another interested party may have difficulty accepting a decision simply because they disagree with it.

Although we cannot re-open a case to re-consider its merits or add to what the Inspector has said, we will answer any queries about the decision as fully as we can.

Sometimes a complaint is not one we can deal with (for example, complaints about how long an order making authority took to submit an order to the Secretary of State) in which case we will explain why and suggest who may be able to deal with the complaint instead.

How we investigate complaints

Inspectors have no further direct involvement in the case once their decision is issued and it is the job of our Quality Assurance Unit to investigate complaints about decisions or an Inspector's conduct. We appreciate that many of our customers will not be experts on the system for deciding rights of way appeals and orders and for some, it will be their one and only experience of it. We also realise that your opinions are important and may be strongly held.

We therefore do our best to ensure that all complaints are investigated quickly, thoroughly and impartially, and that we reply in clear, straightforward language, avoiding jargon and complicated legal terms.

When investigating a complaint we may need to ask the Inspector or other staff for comments. This helps us to gain as full a picture as possible so that we are better able to decide whether an error has been made. If this is likely to delay our full reply we will quickly let you know.

What we will do if we have made a mistake

Although we aim to give the best service possible, we know that there will unfortunately be times when things go wrong. If a mistake has been made we will write to you explaining what has happened and offer our apologies. The Inspector concerned will be told that the complaint has been upheld.

We also look to see if lessons can be learned from the mistake, such as whether our procedures can be improved upon. Training may also be given so that similar errors can be avoided in future. However, the law does not allow us to amend or change the decision.



Taking it further

If you are not satisfied with the way we have dealt with your complaint you can contact the Parliamentary Ombudsman, who can investigate complaints of maladministration against Government Departments or their Executive Agencies. If you decide to go to the Ombudsman you must do so through an MP. Again, the Ombudsman cannot change the decision.

Frequently asked questions

"Why can't the decision be reviewed if a mistake has happened?" – The law does not allow us to do this because a decision is a legal document that can only be reviewed following a successful High Court challenge.

"If you cannot change a decision, what is the point of complaining?" – We are keen to learn from our mistakes and try to make sure they do not happen again. Complaints are therefore one way of helping us improve.

"How can Inspectors know about local feeling or issues if they don't live in the area?" – Using Inspectors who do not live locally ensures that they have no personal interest in any local issues or any ties with the council or its policies. However, Inspectors will be aware of local views from the representations people have submitted.

"I wrote to you with my views, why didn't the Inspector mention this?" – Inspectors must give reasons for their decision and take into account all views submitted but it is not necessary to list every bit of evidence.

"How long will I have to wait for a reply to my complaint?" – We will aim to send a full reply within 20 working days. In some cases where the issues raised are complex, a more detailed investigation will be needed, often requiring the views of those involved with the case. This may mean that we cannot reply to you as quickly as we would like.

Further information

Each year we publish our Annual Report and Accounts, setting out details of our performance against the targets set for us by Ministers and how we have spent the funds the Government gives us for our work. We publish full statistics of the number of cases dealt with during the preceding year on our website, together with other useful information (see 'Contacting us').

Contacting us

Website

www.planningportal.gov.uk/planning/countyrside

General Enquiries

Phone: 0303 444 5000

E-mail: enquiries@pins.gsi.gov.uk

Complaints and Queries in England:

Please refer to our website:

<http://www.planningportal.gov.uk/planning/planninginspectorate/customerfeedback/feedback>

or write to:

Quality Assurance Unit
The Planning Inspectorate
1/23 Hawk Wing
Temple Quay House
2 The Square
Temple Quay
Bristol BS1 6PN
Phone: 0303 444 5884

Cardiff Office

The Planning Inspectorate
Room 1-004
Cathays Park
Cardiff CF1 3NQ
Phone: 0292 082 3866
E-mail: Wales@pins.gsi.gov.uk

Parliamentary and Health Service Ombudsman

Millbank Tower, Millbank
London SW1P 4QP

Complaints Helpline: 0345 015 4033

Website: www.ombudsman.org.uk

Email: phso.enquiries@ombudsman.org.uk



Challenging a Decision in the High Court

Important Note - This leaflet is intended for guidance only. It should be noted that there are different procedures involved for statutory challenges and judicial reviews and they follow different timetables. Because High Court challenges can involve complicated legal proceedings, you may wish to consider taking legal advice from a qualified person such as a solicitor if you intend to proceed or are unsure about any of the guidance in this leaflet. Further information is available from the Administrative Court (see overleaf).

Challenging a decision

Once a decision is issued we have no power to amend or change it. Decisions are therefore final unless successfully challenged in the High Court. We can only reconsider a decision if a challenge is successful and the decision is returned to us for re-determination.

Grounds for challenging the decision

A decision cannot be challenged merely because someone disagrees with the Inspector's judgement. For a challenge to be successful, you would have to show that the Inspector had misinterpreted the law or that some relevant criteria had not been met. If, in relation to an order decision, a mistake has been made, and the Court considers it might have affected the decision, it will quash the decision and return the case to us for re-determination or it will quash the order completely. If the Court considers a mistake has been made on a Schedule 14 Appeal or Direction, it will quash the decision and return the case to us for re-determination.

Different order types

The Act under which the order decision has been **confirmed** will specify the conditions under which it can be challenged, and is thus a statutory right to challenge a confirmed order - often referred to as a Part 8 claim as it is brought under Part 8 of the Civil Procedure Rules 1998. There is no statutory right to challenge where an order is '**not confirmed**'; in these circumstances a judicial review under Part 54 of the Civil Procedure Rules 1998 of the decision not to confirm may be applied for. Both scenarios are set out in more detail below.

Challenges to confirmed orders made under the Wildlife and Countryside Act 1981

Any person aggrieved by the confirmed order can make an application to the High Court under paragraph 12 of Schedule 15 to the 1981 Act on the grounds i) that the order is not within the power of section 53 or 54; or ii) that any of the requirements of the Schedule have not been complied with. If the challenge is successful, the court will either quash the order or the decision. The Inspectorate will only be asked to re-determine the case if the decision only is quashed.

Challenges must be received by the Administrative Court within 42 days (6 weeks) of the date of publication of the notice of confirmation - this period cannot be extended.

Challenges to confirmed orders made under the Town and Country Planning Act 1990 and the Highways Act 1980

Any person aggrieved by the confirmed order can make an application to the High Court under paragraph 287, in the case of an order made under the 1990 Act, or paragraph 2 of Schedule 2 in the case of an order made under the 1980 Act, on the grounds that i) the order is not within the powers of the Act; or ii) that any of the requirements of the Act or regulations made under it have not been complied with. If the challenge is successful, the court will either quash the order or the decision. The Inspectorate will only be asked to re-determine the case if the decision only is quashed.

Challenges must be received by the Administrative Court within 42 days (6 weeks) of the date of publication of the notice of confirmation - this period cannot be extended.

Challenges to orders which are not confirmed and all Schedule 14 Appeal and Direction decisions

If an order made under any of the Acts is not confirmed, an aggrieved person can only challenge the decision by applying for a judicial review to the Administrative Court for a court order to quash the decision, the matter will then go back to the Inspectorate to re-determine. This also applies to an aggrieved person to a Schedule 14 Appeal or Direction decision as there is no statutory right to challenge.

For applications for judicial review, the Claim form must be filed with the Administrative Court promptly and in any event not later than 3 months after the date of the decision (for orders made under the Highways Act 1980 or the Wildlife and Countryside Act 1981) or 6 weeks (for orders made under the Town and Country Planning Act 1990), unless the Court extends this period.

Who should be named as Defendant in the claim form?

In order cases the Inspector is usually appointed on behalf of the Secretary of State for Environment, Food and Rural Affairs to confirm an order made by a local authority. In Schedule 14 appeal cases the Inspector is acting as the Secretary of State. The claim form for all types of proceedings should therefore be issued against the Secretary of State for Environment, Food and Rural Affairs and served upon The Treasury Solicitor, One Kemble Street, London, WC2B 4TS. For telephone queries, please call the Treasury Solicitor's Department on 0207 210 4700.

Interested parties

Interested parties can find out whether a case has been challenged by contacting the Administrative Court. If you do not know the name of the likely claimant, you will need to provide the Court with the date of the decision and the full title of the order or appeal (including the name of the relevant local authority). The more information you can provide, the easier it will be for the Court to identify it. If a person wants to become a formal party to the Court proceedings then they can make representations to the Court under Part 19 of the Civil Court Procedure Rules 1998 (see overleaf). Should you wish to become a formal party you may wish to seek legal assistance or ask the court for guidance. To be a party to a judicial review a person would have to have a sufficient interest.

Frequently asked questions

"Who can make a challenge?" – In principle, a person must have a sufficient interest (sometimes called standing) in the decision to be able to bring a challenge. This can include statutory objectors, applicants, interested parties as well as the relevant local authority.

"Who is notified of the challenge?" – In Part 8 statutory claims, the claimant will serve proceedings on the named defendants. In Judicial Review claims the claimant will serve proceedings on the persons the

challenge is against and anyone else they have identified as an interested party. The Planning Inspectorate will not notify anyone of the challenge. The claimant would be expected to identify and include the Council as an interested party. If the defendant and any interested party are aware that another party should be made aware of the proceedings as an interested party they should include the details of that party in the acknowledgment of service.

"How much is it likely to cost me?" - A relatively small administrative charge is made by the Court for processing your challenge (the Administrative Court should be able to give you advice on current fees – see 'Further information'). The legal costs involved in preparing and presenting your case in Court can be considerable though. It is usual for the costs of a successful party to be paid by the losing party, therefore if the challenge fails you will usually be ordered to pay the defendant's costs as well as having to cover your own. If the challenge is successful, the defendant may be ordered to pay your reasonable legal costs. However, the court ultimately has the power to issue whatever costs it sees fit.

"How long will it take?" - This can vary considerably.

"Do I need to get legal advice?" - You do not have to be legally represented in Court but it is advisable to do so, as you may have to deal with complex points of law.

"Will a successful challenge reverse the order decision?" - Not necessarily. The Court will either quash the order or quash the decision. Where the decision is quashed, we will be required to re-determine the order. However, an Inspector may come to the same decision again, but for different or expanded reasons. Where the order is quashed, jurisdiction will pass back to the Order Making Authority. They will need to decide whether to make a new order.

"Will a successful challenge reverse the appeal decision?"

Yes. We will be required to re-determine the appeal. However, an Inspector may come to the same decision again, but for different or expanded reasons.

"If the decision is re-determined will it be by the same Inspector?"

The same Inspector will be used unless there is a good reason not to do so.

"What can I do if my challenge fails?" - The decision is final. Although it may be possible to take the case to the Court of Appeal, a compelling argument would have to be put to the Court for the judge to grant permission for you to do this.

"What happens if the order is quashed?" - Jurisdiction will pass back to the Order Making Authority. They will need to decide whether to make a new order.

"What can I do if I am not listed as an interested party on the challenge but want to be involved?" - You can contact the Administrative Court and ask to be listed as an interested party (see Part 54.1(2) of the Civil Procedure Rules 1998 for the definition of an interested party).

"Can the Planning Inspectorate or the Department for Environment, Food and Rural Affairs, provide me with advice about making a challenge?" - Neither the Planning Inspectorate nor the Department for Environment, Food and Rural Affairs can advise you on a challenge or on becoming a formal party - you should seek advice from your own legal adviser.

"Where will I find the claim forms?"

The forms are available on the Administrative Court's website at www.justice.gov.uk/courts/procedure-rules/civil/forms. The Part 8 Claim form is number n208 and the form for making a Judicial Review is n461. Guidance notes for claimants are also available.

"Where do I send the completed claim forms?"

They need to be filed with the Administrative Court at The Royal Courts of Justice, Queen's Bench Division, Strand, London, WC2A 2LL. They also need to be served on the Treasury Solicitor, One Kemble Street, London, WC2B 4TS.

Further Information

Further advice about making a High Court challenge can be obtained from the Administrative Court at the Royal Courts of Justice, Queen's Bench Division, Strand, London WC2A 2LL, telephone 0207 9476655. Information can also be found on their website at

www.justice.gov.uk. Please see the attached flow charts setting out the main steps to be followed for both the statutory and judicial review procedures.

Inspection of order documents

We normally keep most case files for one year after the decision is issued, after which they are destroyed. You can inspect order documents at our Bristol office, by contacting the case officer dealing with the case, or our General Enquiries number to make an appointment (see 'Contacting us'). We will then ensure that the file is obtained from our storage facility and is ready for you to view. Alternatively, if visiting Bristol would involve a long or difficult journey, it may be more convenient to arrange to view the documents at the offices of the relevant local authority.

CONTACT INFORMATION

The Planning Inspectorate

Rights of Way Section

Mrs Annie Owen
Rights of Way Section Manager
The Planning Inspectorate
3/25 Hawk Wing
Temple Quay House
2 The Square
Temple Quay
Bristol BS1 6PN

Phone: 0303 444 5466

E-mail: annie.owen@pins.gsi.gov.uk

Website: www.planningportal.gov.uk/planning/countryside

General Enquiries

Phone: 0303 444 5000

E-mail: enquiries@pins.gsi.gov.uk

Cardiff Office

The Planning Inspectorate
Room 1-004
Cathays Park
Cardiff CF1 3NQ

Phone: 0292 082 3866

E-mail: Wales@pins.gsi.gov.uk

Complaints

Please refer to our website:

<http://www.planningportal.gov.uk/planning/planninginspectorate/customerfeedback/feedback>

Phone: 0303 444 5884

Treasury Solicitor

The Treasury Solicitor
One Kemble Street
London
WC2B 4TS
Phone: 0207 210 4700
Website: www.tsol.gov.uk

Administrative Court

Royal Courts of Justice
Queen's Bench Division
Strand
London
WC2A 2LL
Phone: 0207 9476655
Website: www.justice.gov.uk

Parliamentary and Health Service Ombudsman

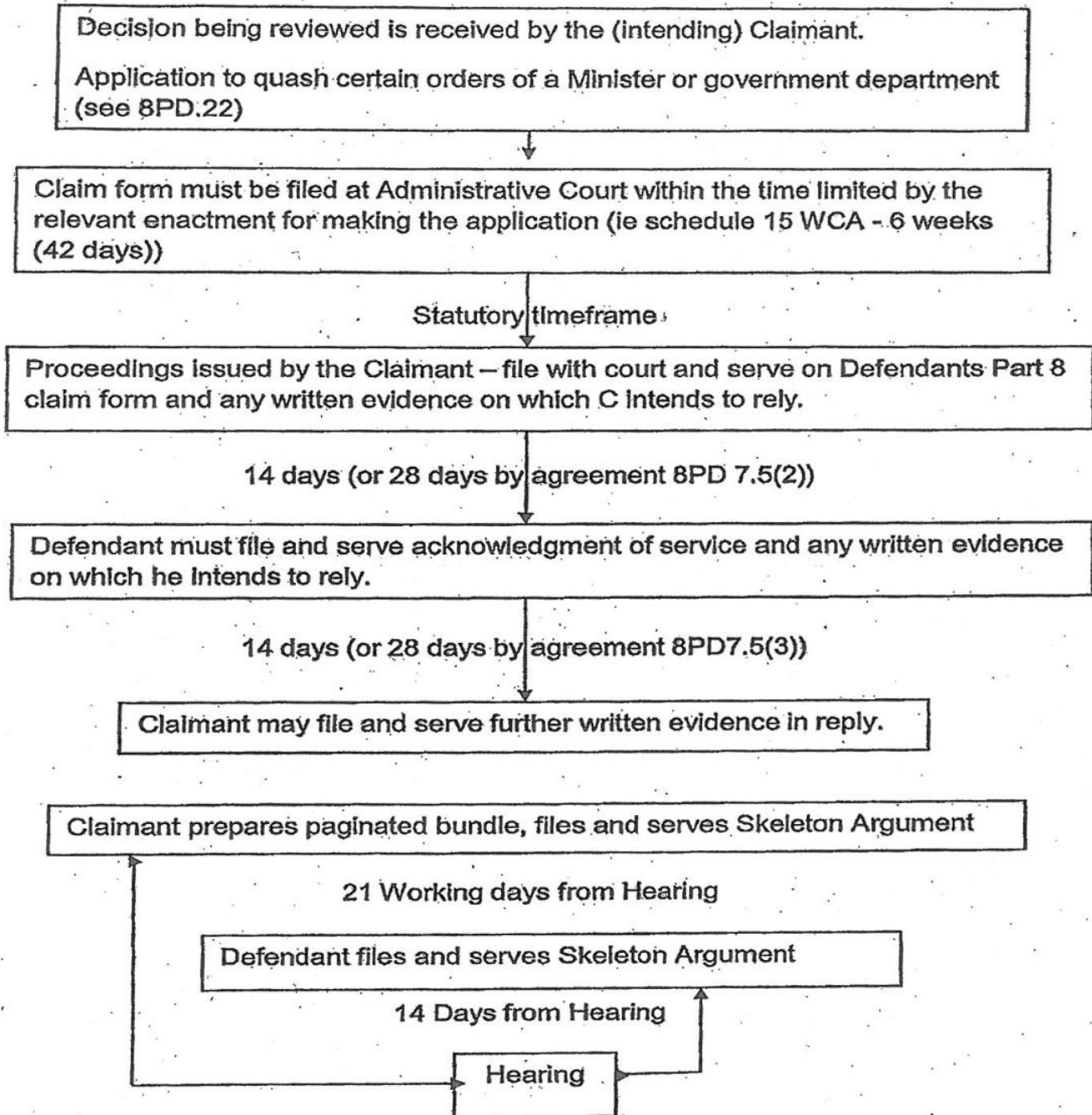
Parliamentary and Health Service Ombudsman
Millbank Tower, Millbank
London SW1P 4QP

Complaints Helpline: 0345 015 4033

Website: www.ombudsman.org.uk

Email: phso.enquiries@ombudsman.org.uk

Timetable for Part 8 Claims



Timetable for Judicial Review

