



The Planning
Inspectorate

Appeals under Regulation 19 of the Town and Country Planning (Tree Preservation) (England) Regulations 2012

A Guide for Appellants (Tree Preservation Orders- consents for works)

This guidance sets out the procedures for appeals made to the Secretary of State under regulation 19 of The Town and Country Planning (Tree Preservation) (England) Regulations 2012 against decisions issued by councils in respect of applications for consent to cut down or carry out work on a tree protected by a tree preservation order.

This guidance relates only to appeals in England.

Only the courts can give an authoritative interpretation on any point of law, so this guidance has no legal force.

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1. Introduction

Regulation 16 of the Town and Country Planning (Tree Preservation)(England) Regulations 2012 – SI 2012 605 gives local authorities (this may be a district council or a unitary authority but we will call them "councils") powers to deal with applications for consent to carry out works on or remove trees protected by preservation orders, to make decisions and issue consents with or without conditions. Regulation 19 gives people who are unhappy with a council's decision a right of appeal to the Secretary of State.

The Secretary of State has delegated his appeal functions to the Planning Inspectorate (known as "PINS" - see *section 19: The Planning Inspectorate - who we are and what we do*).

This guidance is issued by PINS and explains how and when an appeal must be made, and how we will deal with it. The regulations are available at larger public libraries. You can also find them on the Internet at: <http://www.legislation.gov.uk/>.

The Department for Communities and Local Government (CLG) has issued guidance about Tree Preservation Orders as part of the Planning Practice Guidance suite. You can access the guidance via the internet: [Tree Preservation Orders and trees in conservation areas | Planning Practice Guidance](#).

2. Do I have the right to make an appeal?

An appeal to the Secretary of State must be triggered by a decision issued by a council in response to an application for consent to cut down or carry out work on a protected tree, or by that council's failure to issue a decision within 8 weeks of the date on which the application was received.

You, or an agent acting on your behalf, can appeal if you were the person who made the application for the works on the tree.

Grounds of appeal

An appeal against a Council's decision may be brought against any of the following:

- the council's refusal of consent;
- any condition attached to the council's consent;
- the council's refusal/failure to notify the applicant of their decision within 8 weeks from the date they received the application, (in these circumstances the application is deemed to have been refused).
- The council's failure to agree a matter that required their agreement under the terms of a condition of consent.

You cannot appeal

- if you wish to object to a TPO.
- if you are objecting to the Forestry Commission's refusal of a felling licence application (even where the tree in question is covered by a TPO).

3. How and when do I appeal?

Your appeal should be made on the relevant TPO (consents) appeal form obtained from PINS. You can find the form on the Planning Portal web site at:

<https://www.gov.uk/government/publications/tree-preservation-order-appeal-form>

You may also obtain a form by telephoning or writing to us (*see section 19 of this guidance*). If you visit the .GOV web site, you will be able to complete the appeal form and return it to us electronically by e-mail to: environment.appeals@pins.gsi.gov.uk (you will need Adobe Professional software) or you can complete it, print it out and post it.

Where possible we would prefer appeals to be made electronically, but do not worry if you cannot do that. Whether an appeal is sent electronically or on paper will not influence its chances of success.

When submitting an appeal electronically you do not need to complete it with an electronic signature. If you submit the form electronically but post supporting documents, please include your name and address on the papers so that we can link the form with your other documents. If you submit an appeal electronically please do not send an additional paper copy.

When completing the appeal form you must explain **fully** why you disagree with the council's decision, where one has been issued. To do this, you need to go through their reasons for the decision, and explain why you disagree. Only the reasons within the council's decision and re-iterating any reasons put forward by you at the application stage which have not been addressed by the council's decision can be included on your appeal form. You cannot introduce any new reasons for the appeal.

If appealing against a refusal of consent to fell a tree or against a condition requiring replacement planting you should indicate the species and size of any tree/s you would be prepared to plant if the appeal were to be allowed.

You do not need to submit the documents already held by the council because they will be forwarded to us at a later stage (*see section 7 of this guidance*). However, if you want to make a point that would be best illustrated by a plan or photograph, you should send a copy with the appeal form.

The completed appeal form and any supporting documents must be received by PINS

- within 28 days of the date of the council's decision, or any later date set out in it;
- at any time after the date upon which the council's 8 week determination period expires if they have failed to issue a decision.

When submitting your appeal to us please attach a copy of the council's decision, where they have issued one. You should keep an additional copy of your appeal form and supporting documents for your own reference. You **must** send a copy of the completed form and any attachments to the council.

You need to specify clearly the works for which consent is sought. If your application/appeal does not specify the proposed works clearly enough it will be deemed invalid and we will turn it away. An application to "cut back" or "lop" some branches will be considered to be too vague and would be turned away because it doesn't indicate the extent of the works.

Representations can only be taken into consideration if they are made known to both parties and, in the interests of transparency, representations will also normally be made publically available. The Inspector cannot consider representations other than those made available to the parties.

Although we have discretion to accept late appeals, this is only exercised when an appellant has very exceptional reasons for having been unable to comply with the statutory timetable. Where we are satisfied that there are no exceptional reasons, we will reject any late appeal.

If you do not understand the reasoning set out in the council's decision you should ask them for clarification before deciding whether to lodge an appeal. We also advise you to continue a dialogue with the council, and any other parties involved in the process, after you have made your appeal because you may reach agreement on an alternative solution. Issues resolved in this manner may ultimately lead to the withdrawal of the appeal saving resources for all parties involved.

It is your responsibility to ensure that the representations that you submit are appropriate to the appeal. Representations may be returned where they contain comments which are offensive or which include personal data that is clearly unrelated to the determination of the appeal.

4. Who is involved?

The parties to an appeal relating to a decision on an application to carry out works to protected trees are:

- the appellant; and
- the council.

The council will forward to us any written representations made about the application by third parties, and the Inspector will take them into account when making the decision. Third parties may include the owner or occupier of the land where the tree is situated (e.g. where the application has been made by a neighbour), local residents or groups.

If you choose to be heard interested parties may attend the hearing or inquiry and request permission to speak.

5. How much will it cost?

There is no charge for making an appeal but you will have to pay your own costs. This means that if you employ a professional adviser (e.g. a solicitor or arboriculturalist) to help you make your appeal, you will have to pay for their services. If you choose to be heard at a hearing you must meet your own preparation costs and any loss of income brought about by your attendance at the event. Although there is no charge for submitting appeals, they are expensive to administer and time-consuming for everyone and so should not be made lightly.

6. How will my appeal be decided?

You and the council have a right to be heard (i.e. appear before an Inspector at either a hearing or inquiry). When deciding which procedure to choose you should bear in mind that the fast-track process is considerably quicker and cheaper than the hearing or inquiry procedures. Although you have a right to be heard, we will decide which procedure (hearing or inquiry) is adopted, although when reaching a decision we will take your views, and any views expressed by the council, into account. Hearings and inquiries are not governed by statutory rules of procedure but we administer them in accordance with the guidance sections 11 and 12 of this Guidance.

Whichever procedure is used will have no bearing on the quality of the decision which will be based entirely on the merits of the case. A site visit will be undertaken regardless of the

procedure unless, due to very exceptional circumstances, we decide that an inspection is not required.

7. What happens when you receive my appeal?

When we receive your appeal, we will check that you have completed the form correctly, that you have a right of appeal against the decision in question (*see section 2*) and that it has been received within the statutory deadline.

Your appeal should relate to the same **works** as those specified in your application to the council. Exceptionally we may be able to accept your appeal even if you are seeking a variation to the works originally applied for. We will only be able to do so if the changes do not materially alter the nature of the application and no one who should have been consulted would be prejudiced by our doing so. For instance, you may have originally applied for consent to crown thin a tree by reducing the percentage of leaf area by 40%, whereas on appeal you may seek a lesser reduction of 20%. However, to avoid the possibility of us having to conclude that the changes are for more works or are too extensive to be considered it is recommended that you submit an application to the council for any additional works rather than seek to amend your original application at appeal stage.

Similar limitations apply in respect of the **reasons** you give for seeking consent, especially under the fast-track procedure where your council has no opportunity to respond to your grounds of appeal. The Inspector will only consider the matters that were before your council when the decision on your application was made. This means that if the reason you submitted on your application form was that the tree was causing overshadowing, you should not, on appeal make a claim that tree roots are causing subsidence. If you want to make a different case for the work applied for you should make a fresh application to the council.

We will also look at the original application to check that it clearly specifies the proposed work. If we decide that the works you have applied for are so vague that we cannot be sure how much work is involved, we may decide that the appeal is invalid and reject it.

8. What happens if something is missing?

If, at any stage of the appeal process, we, or the Inspector, decide further information is required we will write to you and/or the council to request it. The information requested must be submitted within the period we specify and, unless you/the council can provide exceptional reasons for not being able to meet a deadline, we will reject submissions that are received after the specified period.

9. Fast Track (written) Procedure

The Fast Track (written) procedure is one where by an Inspector will make a decision based upon the documents submitted with the appeal and also upon documents submitted as a result of a questionnaire sent to the council. This procedure aims to reduce the length of time for a decision to be made and is one that we would recommend for most cases.

The council, as soon as is practicable after receiving notification from you of your appeal, will send us the following documents: the application for consent, the decision of the council, if any, including any condition(s) made by the council in relation to the decision. If you do not send your appeal documents to the council we may decide that your appeal is invalid.

As soon as is reasonably practicable, after receiving an appeal, we will send the council a questionnaire which we shall copy to you. The council then send us and you a copy of the completed questionnaire and any documents submitted with it.

10. The Inspector's site visit

When we are satisfied that we have all the relevant documentation, we will pass the appeal file to the Inspector who will conduct a site inspection, unless we decide that a site visit is unnecessary, but this will happen very rarely.

Unaccompanied site visit (USV)

During the appeal process we will ask you whether the tree(s) can be inspected at close quarters from public land, a footpath, the roadside or whether it is (they are) on readily accessible private land e.g. in an open-access front garden. Where the answer to this question is yes an unaccompanied site visit will be arranged.

Access required site visit (ARSV)

If the tree cannot adequately be viewed from public land the Inspector will need to be given access and we will write to ask you either to be there yourself, or to arrange for a relative or friend to be there, simply to facilitate access to the tree (s). No council representative will be present at the visit and for this reason it is particularly important that you or your representative do not attempt to engage the Inspector in conversation about the merits of the appeal, although points of particular interest can be drawn to the Inspector's attention. If the tree is situated on a neighbouring property we will also consult with the owner in order to arrange access to the land in question, if it is deemed to be appropriate.

Accompanied site visit (ASV)

Where there is a need for both the appellant and the council to be present at the site visit, an accompanied site visit will be arranged. If a party fails to turn up on the appointed day the Inspector will decide the best course of action, which may mean that the visit is aborted and would have to be rearranged.

Third parties

Third parties will not normally be invited to a site visit unless the tree is on their property or there is a need for the Inspector to view the tree from their property.

Conduct at the site visit

Whether you attend the site visit or not will have no bearing on the decision since discussion is not permitted during the inspection and the Inspector will not accept any supplementary oral or written evidence on site. However, while on site, those in attendance will be allowed to point out things that have been referred to in the written statements. Similarly any third party would be allowed to point out any factual matter that they have referred to in writing. The Inspector may also take photographs during the visit.

Tree(s) in a wood, park or farmland

If the tree(s) in question is not situated in a garden but in a wood or park or on farmland we will ensure that all parties who are permitted to attend receive clear instructions about where to meet the Inspector.

Requests for further information

If necessary, the Inspector may request further information after the site inspection has taken place. However, unsolicited representations received after the site inspection will be returned to the sender unless the person submitting them can demonstrate that there were exceptional reasons which prevented their submission in accordance with the regulations or as otherwise specified by us.

11. Hearing procedure

A hearing is a round table discussion which is led by the Inspector. It is more informal and usually quicker than an inquiry and the Inspector will encourage the parties to focus upon the main issues of disagreement. A hearing will usually be a more appropriate forum to consider tree appeals, unless the case involves cross-examination of a number of witnesses or generates such interest that large numbers of people wish to attend.

When we receive your appeal we will write to the council, copying the letter to you, asking for preliminary information. As soon as practicable after receipt of all of the necessary information we will write to you and to the council to give notice of the start date for your appeal. The start letter will confirm the contact details of the case officer who will process your appeal, and the procedure to be adopted. The start date is the date the clock starts ticking for the submission of further representations, and our letter will set out the timetable which applies to you and to the council. **It is your responsibility to keep to this timetable - we will not send you reminders.**

When sending the start letter to the council we will enclose a questionnaire which they must complete and return to us, copying it to you.

The 2-week deadline

Within 2 weeks of the start date the council must have provided us with a copy of the completed questionnaire together with all of the documents listed on it which they indicate are being submitted to the Inspector for consideration.

The 6-week deadline

We must receive your **statement of case**, which sets out your side of the argument, within 6 weeks of the start date **unless** you intend to rely only upon the grounds that you entered onto your appeal form. The statement does not have to be in any particular format and it can be submitted on paper or electronically. If you decide not to send a statement of case within 6 weeks you will still be given the opportunity to comment on the statements and representations submitted by the council and third parties (*see The 8-week deadline below*).

The council may also notify any third parties who commented on your application that you have lodged an appeal and that they may also submit representations to us. All representations that have been received within the specified time will be copied to you and the council once the 6-week deadline has passed. Your statement of case and the council's will be despatched by us to the other party at the same time.

Your statement of case should be concise and should concentrate on the main issues. It should set out the key facts, reasoning and conclusions necessary to make your case in a logical form. Each party will only get the full benefits of the hearing if you, the council and the Inspector have an opportunity to consider the issues beforehand. The hearing can then be an open discussion of the main issues without witnesses having to be examined. If appropriate, expert opinions should also be obtained and backed up with evidence. If you intend to call somebody to speak on your behalf their statement should be included in your statement of case.

The statement of case may be used, in whole or in part, for reference at the hearing and by the Inspector in writing his/her decision. When preparing your statement you should bear in mind that evidence will not necessarily be accepted just because it has not been challenged by another party. Our Inspectors bring their own experience, knowledge and judgement to all evidence presented to them.

If more than one document is referred to in your statement of case and will be submitted as evidence, an index should be provided and each page of the statement numbered.

Photographs should be representative of actual views, rather than distorted by special lenses or digitally manipulated. The Inspector will inspect the site, and may wish to see it from the viewpoints shown in photographic evidence.

The 8-week deadline

Within 8 weeks of the start date you and the council may comment on each other's statements made before the 6-week deadline and on any comments submitted by third parties. We expect both you and the council to have given us all evidence in the grounds of appeal and statements of case, so the opportunity to comment at 8 weeks must not be used as a means of introducing new material or putting forward arguments that should have been included in your 6-week statement. **We will reject and return representations received at this stage if they raise new issues.**

Unless a shorter period of notice is agreed with you and the council we will give at least 4 weeks notice of the arrangements for a hearing. We *may* require the council to place a notice of a hearing in a local newspaper not less than 2 weeks before the hearing is due to open.

We have a duty to decide all appeals as efficiently and cost-effectively as possible whilst giving equal opportunities to all parties to produce valid evidence. For this reason you and the council will only be able to refuse one date offered for the hearing. If you refuse the first date, we will choose an alternative. We will do our best to avoid any dates that you tell us are not convenient, but we cannot guarantee that we will be able to find a more convenient day. If you are unable to attend on the date fixed for your hearing, you should consider sending somebody to present your case for you.

We will also request the council to notify any third parties so that they may attend if they wish to. At a hearing third parties have no *right* to speak, but may be heard at the discretion of the Inspector.

The Inspector will usually adjourn the hearing to the site and allow further discussion to take place there before closing it. However, where the Inspector considers there would be no benefit from continuing discussion on site, the visit will take place after the hearing has been closed. The Inspector will conduct the inspection in the company of the main parties unless one party drops out or is unhappy about giving another party access to their land, in which case an unaccompanied site visit will take place (*see section 10*).

12. Inquiry Procedure

The procedures are the same as set out above for the hearing procedure (*see section 11*) but additionally there will be an opportunity to submit a **proof of evidence**. Exceptionally there may also be a need for a pre-inquiry meeting (PIM) in order to agree the topics that will be discussed at the inquiry and those which will not be raised. At any PIM you will normally be required to agree a statement of common ground.

The procedure at the Inquiry will be determined by the Inspector who conducts it, however, as a general guide, it will normally take the following form:

- The Inspector will introduce him/herself. He/she will then explain how the inquiry will continue.
- The Inspector will then identify the likely main issues – again referring to the pre-inquiry meeting if there was one, and the position on the receipt of proofs of evidence.
- You (or your representative) and the council may be invited to make a brief opening statement of not more than 15 minutes.
- The council will give evidence first and you will then have the right to make your case in full. Third parties will be heard in the order determined by the Inspector. Regardless of who is speaking, the Inspector may refuse to hear evidence that is irrelevant or repetitious or offensive.

- The council calls their witnesses in turn to give evidence. Witnesses may then be cross-examined by you. You must use this opportunity to ask questions only. If the Inspector considers that you are making a statement rather than asking questions, or if your questions are repetitive, he/she will stop you. The witnesses are then re-examined by the council, but this must be strictly confined to matters raised in cross-examination.
- The Inspector may ask you, the council and witnesses questions to obtain relevant information. If the questions asked by the Inspector raise matters which could harm that party's case additional re-examination will be allowed.
- This process is then repeated for you and your witnesses.
- Only you and the council have the right to cross-examine, although the Inspector may permit other persons to do so if they have stated they wish to speak.
- You will have the right of final reply.
- The Inspector may then make arrangements for a site visit before formally closing the inquiry.

13. What happens if I decide to withdraw my appeal?

You can withdraw your appeal at any time. If you decide to withdraw your appeal you must confirm it in writing to us as soon as possible so that we may write to the other parties and let them know that we will take no further action on the appeal. In these circumstances the original decision issued by the council will again become live and any conditions to which it is subject will take effect from the date the appeal is withdrawn. However, you should be mindful of costs implications if you have asked to be heard and only withdraw your appeal at a late stage (*see section 16*).

14. The decision

The Inspector may proceed to a decision in the absence of any representations if it appears to him/her that there is sufficient information to enable a determination to be made.

In determining the appeal the Inspector may **allow** it, either in total or in part, or **dismiss** it. The Inspector may reverse or vary any part of the council's decision.

The Inspector's decision in respect of the tree is final and applies not only to the current owners but also to any future owners of the tree(s), as well as anyone who has applied for or intends to implement the decision. Whatever the decision, when it is issued, our involvement in the appeal comes to an end and it is for the council to ensure that any conditions and deadlines that have been attached to the consent, where one is granted, are complied with.

Should your appeal be unsuccessful there is nothing to stop you from making a further application to the council. However, if you are simply repeating your application you may be asked to provide evidence that the circumstances have changed since you last applied.

15. Who will be notified of the decision?

We will notify you, the council, and, where appropriate, the owner/occupier of the land where the tree is situated of the Inspector's decision as soon as possible. A copy will also be sent, on request, to any third party who submitted representations.

16. Costs

In general, whether your appeal proceeds under the fast-track procedure or is heard by an Inspector at a public hearing or inquiry you must meet your own expenses. However, an application for an award of costs may be made by a party on the grounds that the other party's unreasonable behaviour has caused the person applying for costs unnecessary expense.

Fast track procedure

If your appeal is proceeding under the fast track procedure you should submit your full written costs application at the same time that you submit your appeal. Your application must be supported by a full statement on why an award of costs is considered justified. You will need to show that the council's decision on your application was unreasonably made on the information available to them at the time. It is not enough to submit a vaguely worded application or to merely say that you intend to make an application for costs.

Any costs application made by the council will be required to be submitted to us on or before the date on which the completed questionnaire is returned to us.

In fast-track appeals the decision on the costs application will be dealt with after the appeal decision has been issued and will involve an exchange of written representations between the applicant and the party against whom the application is brought.

Hearings and inquiries

If your appeal is to be heard a costs application, regardless who is making it, should be submitted in writing before the hearing or inquiry is opened, but all applications **must** be made before the hearing or inquiry is closed. Applications for costs made after the hearing or inquiry has closed are only accepted in very exceptional circumstances. However, a written application may be made if the party who asked for the hearing causes its cancellation at a late stage by requesting a change of procedure or by withdrawing the appeal, thus causing the other party unnecessary expense in preparing for it. In such cases a written application should be submitted within 4 weeks from the date on which notice of the cancellation is given.

At the hearing or inquiry the Inspector will hear the application, and any response from the party from whom costs are being sought, and will write a separate decision on it. The decision will not go into the actual amount of costs involved – only the principle and what the award is broadly for. The decision on the costs application will be issued at the same time as the appeal decision is despatched.

Comprehensive guidance on the award of costs is set out in the Planning Practice Guidance suite:

<http://planningguidance.planningportal.gov.uk/blog/guidance/appeals/the-award-of-costs-general/>

17. How do I complain if I am not happy about the way my appeal has been dealt with?

If you have any complaints about the decision or the way we have handled your appeal please write to:

The Planning Inspectorate
Customer Quality Unit
4/05 Kite Wing
Temple Quay House
2 The Square
Temple Quay,
Bristol
BS1 6PN

email: feedback@pins.gsi.gov.uk

The Customer Quality Unit will reply to you, or they will ask someone else within PINS to reply if they have specialist knowledge of the issues raised. They will investigate your complaint and will reply as soon as possible. They aim to reply to 80% of all correspondence within 20 working days.

However, PINS cannot reconsider your appeal if the decision has already been issued unless the decision is overturned in the High Court (*see section 19 below*).

18. How can I challenge the decision?

We may correct errors in decisions provided the error is not part of the reasoning that supports the decision. Correction notices will usually apply to errors of a relatively minor nature such as typographical errors. We may issue a correction notice if we receive a request from any party in writing but when doing so will first seek the written permission of the applicant/landowner. There is no separate right of appeal against a decision issued by an Inspector appointed by the Secretary of State. An appeal decision can be challenged by applying to the High Court for a review under s288 of the Town and Country Planning Act 1990, which could lead to the quashing of the decision and reconsideration of the appeal. Such a review is designed to ensure that the powers laid down in statute have been exercised properly. It follows that statutory review can only be used to challenge the way in which the Inspector has interpreted the law in making the decision or if the relevant statutory requirements have not been complied with such that they were seriously defective. To be successful you would have to show that a serious mistake e.g. failure to take an important factor into account, had been made or that procedural aspects of the appeal were seriously defective. It follows that what is at issue is not the strength of your arguments and/or the merits of the appeal decision. Permission is needed to bring an application for statutory review and a challenge must be made within 6 weeks of the appeal decision. Permission to bring a challenge will only be granted to someone other than you where they are able to satisfy the court that they have both sufficient interest in the matter and a reasonable case to put forward. Anyone who is considering an application to the court is strongly advised to seek legal advice. Community Legal Service (CLS) can help you to find the right legal advice. You can search their website at: <http://www.clsdirect.org.uk> or telephone them on 0845 3454345.

19. The Planning Inspectorate - who we are and what we do

The Planning Inspectorate is an executive agency of the Department for Communities and Local Government. Its primary function is to determine appeals.

Its TPO Appeal Team is based at:

Environment Team
Room 3/25 Hawk Wing
Temple Quay House
2 The Square
Temple Quay
Bristol
BS1 6PN

Telephone: 0303 444 5584

e-mail: environment.appeals@pins.gsi.gov.uk

The team is responsible for the administration of TPO cases and for ensuring that appeals are processed in a timely manner. The team will also answer general queries on appeal procedures and on the progress of specific cases.

You will find more detailed information about the Planning Inspectorate at:

<https://www.gov.uk/government/organisations/planning-inspectorate>

and in the Inspectorate's Annual Report and Accounts which can be found on the website or bought from Government bookshops.

20. How we use personal information

In processing a TPO appeal, we receive information from the appellant, LPA and other interested people who provide appeal representations. The personal information normally includes name and contact details and any other personal information within the representations themselves.

In line with our statutory obligations, we copy the representations we receive to the appellant, the LPA and any other statutory appeal parties. In the interests of transparency, representations are also normally made publically available. Inspector decisions may also contain some personal data (based on the information received in the representations) and these are also made publically available.

When you provide information about another person it is your responsibility to ensure that these are appropriate. However, we may return representations that are offensive or clearly unrelated to the determination of the appeal.

We normally hold information on appeal files for 1 year following the date of the appeal decision. We hold appeal decisions for 5 years.

If you have any queries about our use of your personal data please contact our Information Manager:

Information Manager
4/05 Temple Quay House
2 The Square
Temple Quay
Bristol
BS1 6PN

Email: feedback@pins.gsi.gov.uk – please clearly mark your email for the attention of the Information Manager