

Catholic Bishops' Conference of England and Wales
Subcommittee for Church Patrimony

GUIDELINES FOR APPEALS

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Introduction

1. The Catholic Church in England and Wales has exemption from certain controls over listed buildings. The terms upon which Parliament has allowed this exemption to continue oblige the Church to operate a system of internal control based on its own procedures. These procedures operate at diocesan level and form part of canon law. They involve a Historic Churches Committee (HCC) making a decision on behalf of the Bishop. Sometimes two or more dioceses operate their procedures jointly. The procedures are described more fully in the *Directory on the Ecclesiastical Exemption from Listed Building Control* ("the Directory") issued by the Bishops' Conference of England and Wales.
2. After an application is made to the HCC for work to be carried out to an exempt building there is a period of consultation.
3. After the HCC has met and made its decision the Secretary sends out Form IV (Determination of Application) to the applicant, English Heritage or Cadw (Welsh Historic Monuments), the local authority, the national amenity societies and to all those who sent written representations to the Secretary during the consultation period.
4. **What is an appeal?**

The "appeal" described in the Directory is against a decision of a Historic Churches Committee in its exercise of administrative (or executive) power delegated to it by the Bishop. Since in the Church judicial authority does not judge executive authority, the "appeal" is in fact a hierarchical recourse to the Bishop against an executive decision made on his behalf by his delegate (the HCC). This is referred to in the Directory (and will from now on be referred to in this

document) as an “appeal” because this is more likely to be understood by those using the document.

The appeal described in this document is therefore the administrative procedure which is put in place by the Bishop to resolve such a hierarchical recourse. Accordingly, the procedure must comply with the principles set out in canon law including any general norms regarding administrative acts and any norms laid down by the Bishop. Subject to such norms, the commission has power to regulate its own procedure, and this guidance is intended to assist them in doing so. Because, by their nature of appeals can polarise opinions, it is important that the process must not only be fair and just in itself but must also be seen to be so.

Although the commission has a wide discretion in deciding upon its own procedure, the norms within which this discretion operates have certain important implications for those unfamiliar with canon law procedures:

- the process for the appeal is not confrontational nor adversarial - this may differ from expectations based on experience of secular hearings (for example planning (or listed building consent) appeals);
- some of the terminology used in connection with canon law has specialised meaning, but the appeal commission (or its Secretary) will be happy to explain any terms that may be unfamiliar.

5. **Who can appeal?**

- The applicant.
- All those consulted before the HCC made its decision (the local planning authority, the national amenity societies, English Heritage or Cadw and also the relevant Royal Commission if the works include works of demolition).
- Any person who submitted written representations to the HCC during the consultation period.

All these people are referred to in the Directory as "interested parties".

6. **How is an appeal made?**

By sending Form VIII (notice of appeal) to the HCC Secretary within 28 days of the date on Form IV. The notice of appeal must contain valid reasons or grounds for appeal (see below). Form VIII is available from the HCC Secretary if it has not already been sent out to the interested parties.

7. **What can be appealed against?**

- The merits of a decision of the HCC.
- An error in the procedure used to make a decision.

If the appeal is on the merits of an HCC decision the notice of appeal must be accompanied by reasons for the challenge to that decision. If the appeal is based on procedural error then the notice of appeal must contain the grounds upon which the procedural error is alleged. (The appeal may be based both on the merits and on questions of procedure, in which case both of the above comments apply.) The Secretary to the HCC, or the HCC itself, may treat as invalid any notice of appeal which does not contain the reasons or grounds described above.

8. **Who hears the appeal?**

The appeal is heard by an appeal commission of three members commissioned by the diocesan Bishop (or Ordinary) to act in his name.

The members of the commission are appointed by the Bishop to provide a balanced panel with expertise in the relevant areas. The Directory provides that the commission should consist of three persons, one of each with:

- canonical qualifications and experience which will enable them to preside at an appeal;
- relevant architectural knowledge and practical experience of listed buildings;

- practical pastoral involvement in the care of church buildings.

The Subcommittee for Church Patrimony is willing to assist bishops to find persons suitable for appointment to appeal commissions and early consultation with the Subcommittee is strongly encouraged.

9. **Is a new commission appointed for an appeal relating to the same project which has already been the subject of an appeal against a previous decision of the HCC?**

It is recommended that, unless there are good reasons for not doing so, the same commission hears each appeal which is related to the same project because of the prior knowledge of the project which they will have acquired.

10. **Who else can get involved and how?**

After the 28 day period has elapsed (cf. Paragraph 6) the Secretary sends out Form IX (Acknowledgement of Appeal and Notification of Hearing) to all interested parties (i.e. those listed in 5 above) giving details of the appeal. Interested parties other than the appellant may submit material at this point. The commission may wish at its preliminary meeting to seek the views of other parties (see below).

11. **How does the rest of the process work?**

The appeal commission may or may not decide to have a preliminary meeting to look at the submissions and to decide the format of the appeal. There then follows the main part of the appeal process at the end of which the commission makes known its decision to all parties. This decision is then published with reasons.

12. **What is the timescale?**

The commission should be appointed within 28 days of Form IX being sent out and the appeal should be determined in 6 months unless there is agreement between all parties for an extension.

13. **Can a party be represented?**

Any party to the appeal (see 10 above) is entitled to be represented by a procurator or an advocate. The judicial vicar (or *officialis*) of the diocese concerned will be able to supply details of those approved as procurators or advocates for the diocese. The commission may allow a party to be represented by another person. If a party wishes to be represented by a civil lawyer, the commission will wish to be satisfied that he or she is sufficiently competent in his or her understanding of the canonical procedures.

The Appeal

14. **How is the appeal organised?**

The appeal will be determined by an administrative hearing in accordance with the norms of canon law. It should be noted here that “hearing” consists of the whole process beginning with the submission of a valid Form VIII and including the gathering of relevant evidence and the discussion and decision of the commission (the use of the word does not therefore imply the use of an oral process) However, to avoid confusion this guidance tries to use the word “hearing” only in relation to that part of the oral process where all parties are present. The Commission has the choice of proceeding either by written process or by oral process – see paragraphs 19, 21 and 23 below.

15. **Where is the appeal held?**

Although the meetings of the appeal commission may be held at any convenient place, it is recommended that, where possible, they are held at or near to the building in question. The commission can then familiarise themselves with the issues raised and (especially if there is an oral process) points can be demonstrated and details checked. This will, however, be unnecessary in appeals solely relating to procedural points.

The Preliminary Meeting

16. **Who attends the meeting?**

The three members of the appeal commission and the Secretary of the HCC who will act as Secretary to the commission. The Secretary plays no part in the decision making process but acts on behalf of the commission in any administrative matters. The Secretary is the first point of contact for anyone having dealings with the commission.

17. **What documents are available to the commission?**

- The original application, and all papers originally presented to HCC (including representations from consultees and interested parties).
- The minutes of the HCC recording its decision.
- The appellant's Form VIII. This will include the appellant's submissions on the appeal.
- Any subsequent documents submitted by any party following Form IX. This will normally consist of the submissions of other parties in response to the appellant's submissions.

The commission will not normally expect substantial new evidence to be submitted at this stage, as it is assumed that parties ensure that all relevant facts are put before the Historic Churches Committee in the first place. If new evidence is submitted, the commission may decide to refer the matter back to the Historic Churches Committee for a fresh decision.

18. **What is at issue in the appeal?**

The commission will need to identify the nature of the appeal – whether it is on procedural grounds or against the merits of a decision of the HCC or a mixture of both. In the light of this information they will then decide whether the appeal concerns the whole of the original application or just part of it.

19. **What will be the subsequent format of the appeal?**

Following the identification of the nature of the appeal, the commission has a wide scope as to the format of the appeal. There are two main formats for the appeal: a written process or an oral process. Matters of procedure might best be dealt with by a written process; appeals on the merits of a decision of the HCC with an oral process. But the commission is at complete liberty to decide on the format taking into account the individual nature of the case.

20. **Can the commission reject a notice of appeal?**

A notice of appeal can be rejected by the commission if they consider that:

- there are no reasons or valid grounds given in Form VIII; or
- there has been a previous appeal on the application and no new case has been presented.

Written Process

21. **Further submissions**

Any party to the appeal (including the statutory consultees) may make a written submission to the hearing and such submissions will be circulated in advance to all other parties, each of whom may comment – in writing– on that submission.

22. **What procedure is followed?**

The business of the commission is to study the documentation and come to a decision. Details of the nature and format of the decision are common to both procedures and are detailed below.

Oral Process

23. **Who may attend?**

- Any party to the appeal (see 10 above).
- Any procurator or advocate representing a party (see 13 above).
- Any other person permitted to attend by the commission. The commission will need to notify those it wishes to attend an oral hearing.

Witness will not normally be invited to attend unless the commission has decided that the proofs are to be gathered at the oral hearing.

24. **What procedure is followed?**

The point of the oral part of the hearing is to clarify points identified by the commission from its examination of the submissions. With this objective the commission will initially meet together to agree the points to be raised with each party. This part of the hearing is not, and should not be seen as, a trial with cases being presented by each party and an adversarial atmosphere.

Each party will be interviewed by the commission in turn. After asking any questions on that party's submission they may invite the party briefly to add any further observations they wish to make. If the situation allows observations may be demonstrated *in situ*. The commission should make it clear to each party before this part of the hearing what format the interview will take and what opportunity, if any, they will have to make any further points.

Questions are normally asked by the members of the commission. Unless the commission provides otherwise, the parties are to ask questions by submitting them through the commission.

The Determination

25. **How is a decision reached?**

The decision of the commission is a collegiate decision. Though a 2-1 majority is acceptable all must sign the final decision.

The simple decision, without reasons, will normally be made known to all parties at the end of an oral hearing or by post following a written process.

A full determination will normally be made available to all parties within 28 days.

26. **What is the format of the Determination?**

The decision will be recorded and communicated initially by means of Form X.

The full determination of the appeal commission will contain a brief record of the procedure that has been adopted. This will be followed by the reasons for the conclusions reached. Each Commission will need to consider how much detail the determination should cover. It is not necessary for the determination to enter into a detailed discussion of all the evidence before the commission. A short list describing each point requiring a decision together with the reasoning behind the decision made may well be sufficient. It may be helpful if the determination follows the grounds of appeal set out in the original notice of appeal, but the commission has complete liberty to use the format which best suits the needs of the case.

27. **What possible determinations are there?**

The decision of the appeal commission is final. Subsequent applications to the HCC may, of course, be appealed against. There are four possible determinations.

a. Upheld:

The appeal is upheld. If it is the applicant who lodged the appeal, the building scheme is deemed approved. If a third

party lodged the appeal, the applicant will be obliged (if he so wishes) to submit a new application to the HCC taking note of the points of the appeal.

b. Dismissal:

The appeal is dismissed and the decision of the HCC is upheld.

c. Application remitted to HCC for full rehearing:

This will usually be the case where it has been established that the correct procedure was not followed.

d. Remit part of the application for rehearing:

If the commission is satisfied that part of a scheme should be reconsidered. The full procedure for application is followed.

28. 'Vexatious Litigant'

The appeal commission may identify an appellant as a 'vexatious litigant', for example, where an appellant has had an appeal dismissed due to insufficient grounds on two separate applications.

29. For the reasons outlined in the Introduction, this advice is subject to and should be read in conjunction with canonical norms.