

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

GUIDELINES FOR APPEALS

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1 INTRODUCTION

- 1.1 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 which while based on its own procedures is comparable to the secular system in terms of due process, rigour, consultation, openness, transparency and accountability. The Church's 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* issued by the Bishops' Conference of England and Wales.
- 1.2 After an application is made to the HCC for work to be carried out to an exempt building there is a period of consultation.
- 1.3 After the HCC has met and made its decision the Secretary sends out Form 4 (Determination of Application) to the applicant, Historic England/Cadw, the local authority, the national amenity societies and to all those who sent written representations to the Secretary during the consultation period.

What is an appeal?

- 1.4 Parliament requires that the operation of the ecclesiastical exemption should include a clear and fair procedure for settling disputes between the local congregation or community and the decision-making body. The ‘appeal’ is against a decision of an HCC 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.
- 1.5 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.
- 1.6 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 or 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.

Who can appeal?

1.7 An appeal may be lodged by:

- The applicant
- Any statutory consultee (the local planning authority, a national amenity society, Historic England or Cadw)
- Any person who submitted written representations to the HCC during the consultation period.

1.8 These are referred to in the Directory as ‘interested parties’. Where there is more than one appellant, the appeals will be considered together by a single appeal commission.

How is an appeal lodged?

1.9 An appeal is lodged by sending Form 9 (Notice of Appeal) to the HCC Secretary within 21 days of the determination of application (the date given on Form IV). The notice of appeal must contain valid reasons or grounds for appeal (see below). Form 9 is downloadable from Catholic Historic Churches website¹, or is available from the HCC Secretary.

¹ <https://www.catholic-historic-churches.org.uk/>

What can be appealed against?

- 1.10 An appeal may be against:
- The merits of a decision of the HCC, and/or
 - An error in the procedure used to make a decision.
- 1.11 If the appeal is against 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 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.
- 1.12 Upon receipt of the Notice of Appeal, the HCC Secretary will send Form 10 (Acknowledgement of Appeal) to the appellant and other interested parties.

Who hears the appeal?

- 1.13 The appeal is heard by a commission consisting of three people with expertise in the relevant areas, each appointed by the diocesan Bishop (or Ordinary) to act in his name. There should be one person of each with:
- canonical qualifications and experience which will enable them to preside at an appeal;
 - relevant architectural and historical knowledge and practical experience of listed buildings;
 - practical pastoral involvement in the care of church buildings.
- 1.14 The Subcommittee for Church Patrimony (Patrimony Committee) is able to advise bishops on persons suitable for appointment to appeal

commissions, and early consultation with the committee is strongly encouraged.

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

- 1.15 It is recommended that, unless there are good reasons for not doing so, the same commission hears each appeal related to the same project because of the knowledge of the project which they will have acquired.
- 1.16 The HCC Secretary will normally be the secretary to the appeal commission. Once the members of the appeal commission have been appointed, and the time and venue for the appeal hearing confirmed, the secretary will send form 11 (Notice of Appeal Hearing) to interested parties, giving them an opportunity to make further representations up to one week before date of the appeal hearing.

How does the rest of the process work?

- 1.17 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. It may also wish to seek the views of other parties or specialists who may be able to help them in their deliberations. 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, and the reasons for it, are then published.

What is the timescale?

- 1.18 The appeal commission should normally be appointed within eight weeks of Form 10 being sent out. The appeal should be determined within 6 months of its being lodged (the date on Form 9) unless there is agreement between all parties for an extension.

Can a party be represented?

- 1.19 Any party to the appeal (see 1.7 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.

2 THE APPEAL

How is the appeal organised?

- 2.1 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 9 and including the gathering of relevant evidence and the discussion and decision of the commission; the use of the word does not necessarily 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 below.

Where is the appeal held?

- 2.2 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 itself 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 relating solely to procedural points.

The preliminary meeting

- 2.3 This will be attended by the members of the appeal commission and the secretary of the HCC, who will normally 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.

What documents are available to the commission?

- 2.4 The secretary shall make the following documents available:
- The original application, and all papers originally presented to the HCC (including representations from consultees and interested parties).
 - The minutes of the HCC recording its decision.
 - The appellant's Form 9. This will include the appellant's submissions on the appeal.
 - Any subsequent documents submitted by any party following the serving of Form 11. This will normally consist of the submissions of other parties in response to the appellant's submissions.
- 2.5 The commission will not normally expect substantial new evidence to be submitted at this stage, as it is assumed that parties will have

put all relevant facts before the HCC in the first place. If new evidence is submitted, the commission may decide to refer the matter back to the HCC for reconsideration.

Can the commission reject a notice of appeal?

2.6 Even at this stage, the notice of appeal can be rejected if the commission considers that:

- there are no reasons or valid grounds given in Form 9; or
- there has been a previous appeal relating to the same proposal and no new case has been presented, or
- the appellant is identified as a ‘vexatious litigant’ (e.g. one who has had an appeal dismissed due to insufficient grounds on two separate occasions previously).

What is at issue in the appeal?

2.7 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.

What will be the format of the appeal?

2.8 The commission has discretion as to the format of the appeal. There are two options: a written process or an oral process. Appeals on the merits of a decision of the HCC may be best dealt with by an oral process, while for matters of procedure a written process may suffice. The decision on format is one for the appeal commission, taking into account the circumstances of the case.

Written process

2.9 Determination by written process will be made on the basis of the documentation provided to the appeal commission (see 2.4). At its

discretion, and if further comment or clarification is needed, the appeal commission may circulate to other interested parties copies of representations received following the serving of Forms 10 and 11.

Oral process

- 2.10 The following may attend an oral hearing:
- Any party to the appeal (see 1.7 above).
 - Any procurator or advocate representing a party (see 1.19 above).
 - Any other person permitted to attend by the commission. The commission will need to notify those it wishes to attend an oral hearing.
- 2.11 Witnesses will not normally be invited to attend unless the commission has decided that the proofs are to be gathered at the oral hearing.
- 2.12 The purpose 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.
- 2.13 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. 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.

- 2.14 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.

Determination

How is a decision reached?

- 2.15 When considering the appeal, the commission is under a specific duty to take into account, along with canon law and pastoral/liturgical factors, the desirability of preserving listed ecclesiastical buildings and the importance of protecting features of special historic, archaeological, architectural or artistic interest and any impact on setting.²
- 2.16 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.

What is the format of the determination?

- 2.17 The decision of the appeal commission is final and will be initially notified to all interested parties by the HCC Secretary, using Form 12.
- 2.18 The full determination of the appeal commission is issued subsequently and will contain a brief record of the procedure that has been adopted. This will be followed by the reasons for the

² DCMS, *The Operation of the Ecclesiastical Exemption*, Annex A: Code of Practice, 2010

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 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 liberty to use the format which best suits the needs of the case.

What possible determinations are there?

2.19 There are four possible determinations:

- *Appeal upheld:* If it is the applicant who lodged the appeal, the proposal is thereby approved. A Form 5 Faculty, incorporating any stipulated injunctions or conditions imposed by the appeal commission, will be issued by the HCC Secretary, if necessary after the next HCC meeting. If the appeal was lodged by a third party, the applicant may submit a new application to the HCC, taking account of the conclusions of the appeal commission.
- *Appeal dismissed:* The appeal is rejected and the original decision of the HCC upheld. If the appeal was lodged by a third party, a faculty may be issued to the applicant, as in *appeal upheld*.
- *Application remitted to HCC for full rehearing:* This will usually apply where it has been established that the correct procedure was not followed.
- *Application remit in part to HCC for rehearing:* This applies if the commission concludes that part of a scheme should be

reconsidered. The full procedure for applications will then follow.

Costs

- 2.20 The applicant is responsible for all costs incurred throughout the appeal process. However, the appeal commission may also, at its discretion, request third party appellants to make a reasonable contribution towards the cost of holding the appeal.

Canon law

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