

# Winning an Appeal

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# What is different about a decision made at appeal?

- TCPA applications are to be determined in accordance with the development plan, unless material considerations dictate otherwise.
- This requires the exercise of judgement and balance; especially where subjective matters such as visual impact are concerned.
- At appeal, the judgement in question is that of an Inspector / Reporter, or a Secretary of State
- This removes the local political element

\* Footnotes must be inserted manually (via “Copy” and “Paste”).

## Does the proposal comply with the development plan?

Key here are:

- Understanding the development plan – current and likely changes
- Site selection
- Project design
- Robust EIA to ensure the decision maker has all necessary information

So this goes right back to the inception of the project

## Does the proposal comply with the development plan?

- Take account of designations and policies in the development plan; talk to the LPA; take account of locational guidance from consultees
- Don't ignore "softer" disciplines, not susceptible to "lines on a map", such as visual effects on settlements
- If appropriate, take professional advice on likely acceptability of impacts
- Begin gathering site specific data on key issues eg bird monitoring

## Does the proposal comply with the development plan?

- Follow this through the design evolution and EIA stages; take time to talk to consultees
- Bear in mind the policy framework when looking at trade-offs between different environmental effects, or between commercial and environmental factors
- This should provide a Project design that is as compatible with the development plan as reasonably possible
- This can be promoted through the appln stage and hopefully will attract officer support at the LPA

## What about the material considerations?

- The obvious “other material consideration” is Government Renewable Energy Policy – BUT is it really an “other material consideration”? – depends what the development plan says.

## What about the material considerations?

- The grim reality is that the most vexatious “material consideration” is the question of alternative sites.
- You don’t need to demonstrate the need for your project to be sited in the location you’ve chosen – but if the decision maker concludes there will be sufficient harm caused that (s)he could reasonably refuse permission, then (s)he may look to see if there is a reasonable prospect of an alternative location. If not, then this should weigh in your favour. If there are, you’re in trouble.

## What about the material considerations?

- The situation is more complex if there are other live applications in the area which give rise to cumulative effects. This can give rise to lengthy co-joined inquiries at which the merits – and relative merits – of all the proposals are examined.
- If the decision-maker concludes that (s)he cannot grant permission for all of the proposals, then factors such as “which of the proposals best co-exist together” come into play.

# So you need to appeal?

- If you've been refused, stop and look at the RFR; can the scheme be modified to take account of objection? Or further information provided?
- Having taken the decision to appeal, look again at the RFR and the consultee responses. The more these can be dealt with and agreement reached, the fewer grounds there are for the decision maker to refuse you consent.
- Be ready to negotiate, or provide additional information.

# Preparing your case

- You need to make sure you have a proficient appeal team to present your case either at inquiry or in writing; and you need to go through not just the RFR but also any other important issues that anyone might raise that could be regarded as material by the Inspector / Reporter.
- And you need to check that the ES remains adequate, that there haven't been changes in circumstances or policy that need to be commented on in evidence, and that there aren't additional items that with the passage of time can now be assessed more fully – such as grid connection.

# Summary

To win at appeal you need:

- A “good project”
- Support from the Development Plan
- A good appeal team
- To take an active part in the development of the case
- Luck !