

IMPROVING THE APPEAL PROCESS IN THE PLANNING SYSTEM – MAKING IT PROPORTIONATE, CUSTOMER FOCUSED, EFFICIENT AND WELL RESOURCED

There has been a steep rise in the number of appeals lodged in the last 10 years and these are forecast to increase further to 25,000 appeals per year by 2010. Given the forecast increase in appeal numbers and subsequently what this could mean for taxpayer costs, the Government feels that changes need to be made to the current system to make it respond more robustly to external influences and to enable it to provide better value for money. With this in mind a number of changes are proposed including fast tracking householder and tree preservation order (TPO) appeals, introducing local member review bodies and making other administrative changes.

Fast tracked householder and TPO appeals – the changes proposed relate to appeals dealt with by written representation, and include :

- reducing the period for lodging an appeal from 6 months to 8 weeks;
- for householder appeals dealt with by written representations, to apply a compressed timetable so that the Inspector would determine the appeal, with a site visit, within 8 weeks;
- introduce the same fast tracked processes for TPO appeals (but with 28 day period to lodge an appeal unchanged), and decisions would be based on material that was submitted at the time when the application was made, with a site visit;
- transfer the administration of TPO appeals to the Planning Inspectorate (PINS) (at present they are dealt with on a regional basis).

Local Member Review Bodies (LMRB) – this proposal is in line with the Government's wish to devolve decision making powers to the local level. An LMRB would consist of a board of councillors but appeals considered by it would be subject to various conditions, including :

- the decision made by the local planning authority would have to have been made by officers acting under delegated powers;
- no members of the LMRB would have had any previous involvement with the case;
- only the applicant would be able to request a review.

The LMRB would consist of 3 to 5 councillors who would be expected to undertake training on planning and arboricultural matters. If additional advice was required the councillors would be able to seek professional advice from independent experts such as planners, solicitors or arboriculturalists. The LMRB would have the power to uphold, reverse or vary any decision which has been subject to their review. However complaints could still be made to the Ombudsman if an appellant felt they had been treated unfairly, and there would still be the right to a High Court challenge.

In respect of non-determination appeals there are two options. Firstly the LMRB could make a decision on the application, although the right to appeal to the Secretary of State would still stand as the LMRB would be taking the first decision on the application, but the second option would be for there to be no change to the current procedure.

Determining the appeal method – the current procedure of allowing the principal parties to select the appeal method would be dropped, and PINS would be empowered to apply Ministerially approved and published criteria to determine the most appropriate appeal method.

Nature and content of appeal documents – it is proposed that better guidance will be provided on what evidence is helpful to an inspector in reaching a decision and what is not. It is therefore proposed to prescribe the nature of the material to be produced and consideration will be given to imposing word limits on appeal documents.

Submission of evidence – the responsibility for cross-copying evidence is to be devolved to the principal parties, so that the appellant and lpa will send statements directly to each other rather than via PINS.

Introducing new material at appeal – the proposal is to give the Secretary of State the power to refuse to consider any change to the scheme or evidence beyond that which was before the local planning authority when it made its decision.

Fixing inquiry and hearing dates – it is proposed that 2 inquiry or hearing dates be offered to the respective parties with one date to be mutually agreed within 5 working days of the start date of the appeal. If this does not happen a date will be imposed by PINS. In this case more information would be required on appeal forms and questionnaires as to the likely duration, number of witnesses, etc.

Other changes – it is further proposed that :

- it will be a requirement that the Statement of Common Ground be submitted 6 weeks before the start of the appeal process;
- the nine-week comment stage is to be removed;
- changes to be made to legislation to allow appeal decisions to be corrected without first obtaining the consent of the applicant/landowner, provided that the request for the correction is made within the relevant High Court challenge period;
- the Costs Circular be updated to reflect new legislation, clarify more accurately the extent of full awards and re-affirm examples of unreasonable behaviour;
- the time limit for appealing against a planning decision should be reduced from 6 months to 28 days where the same or substantially the same development is also the subject of an enforcement notice;
- a time-limit should be imposed for lodging lawful development certificate appeals as well as power to make written reps regulations for such appeals;

- there should be the power to decline repeat applications where, within the last 2 years, the Secretary of State has refused a similar deemed application arising from an enforcement notice appeal;
- fees should be introduced for appeals on either a fixed rate or proportionate basis. The latter could be levied on a sliding scale as a percentage of the planning application fee, with a minimum of £50.

Questions

Q1 Do you agree with the proposal to fast track householder and tree preservation order appeals?

Yes. This proposal is accepted as it would result in the better management of appeals by the Planning Inspectorate (PINS), and would result in more timely decision making. However local authorities should be given the opportunity to comment at least once on new material raised in the grounds of appeal. The Planning Inspectorate (PINS) would need to be suitably resourced to deal with this proposal as the last time this was approached the appeals system collapsed. A reduction in the time limit could also result in unnecessary appeals being lodged which could have been avoided through negotiation.

Q2 Does the council agree with the proposal to require local authorities to establish Local Member Review Bodies for the determination of minor appeals?

No. There is already an independent system in place with Inspectors who are not subject to local issues that councillors face, particularly when they are members of a planning committee. There are also other issues relating to cost, probity, training, final decision letter writing etc.

Q3 Do you agree with allowing PINS to determine the appeal method for each case by applying Ministerially approved and published indicative criteria?

Yes – this should result in clearer guidance for appellants, and also reduce the time taken to deal with some enforcement appeals where the choice of appeal method is often dictated by the appellant’s desire to extend the unauthorised activity for the longest possible period.

Notwithstanding this, there are sometimes exceptional circumstances where the public interest is so acute that a public inquiry is necessary for third parties.

Q4 Do you agree with the package of proposals detailed in Chapter Two to improve customer focus and efficiency of the appeals process?

Yes. The changes include the method of exchange of statements, advice on the nature and content of appeal documents, a proposal to give the Secretary of State the power to refuse to consider additional evidence at appeal (other than that laid before the authority

at application stage), more stringent process of fixing of inquiry and hearing dates, etc. These are sensible procedural changes that would ultimately help all the parties. There may be a problem with the imposition of dates for hearings and inquiries due to availability of accommodation at relatively short notice. Also the advice on the nature and content of appeal documents suggests a word limit and this may not always be appropriate.

Q5 Do you agree with the changes proposed for the award of costs? (Extending the scope to include late submission of evidence, and possibly including written representations cases).

In part – this includes the possibility of introducing fixed penalties where a party has behaved poorly or has abused the appeal process.

However, the proposals also contradict other changes. It would be better to prevent the submission of late or poor evidence rather than accept it and invite a claim for costs. This should not be extended to written representations as it becomes too legalistic and will encourage long and expensive submissions, which defeats the object of this procedure.

Q6 Do you agree that the time limit for appealing against a planning decision should be reduced where there is an enforcement notice relating to the same development, so that in the event both are appealed, the appeals can be linked?

Yes – this recommendation would reduce the appeal time period to 28 days (from the current 6 months). Applicants would be made aware of this either when notified of the planning decision or by way of a notice attached to the enforcement notice, depending on the circumstances of the case. An application would need to be submitted no later than week 12 of the enforcement appeal and would be reliant on the local authority reaching a decision within 8 weeks.

Applications and appeals are often submitted as a delaying mechanism.

Q7 Do you agree with the changes proposed for enforcement and lawful development certificate appeals?

Yes – these changes involve the imposition of a time-limit for lodging LDC appeals and making written representation regulations for these, and the power to decline repeat applications where, within the last 2 years, a deemed application arising from an enforcement appeal has been refused on appeal.

Q8 Do you agree with the proposal to charge a fee for appeals?

Yes – however at least half such fees should be payable to the local authority as the application fee does not cover the cost of processing appeals.

Q9 What are the likely effects of any changes on you, or the group or business or local authority you represent? Do you think there will be unintended consequences?

No comment – it will depend on how and when any new procedures are introduced.