

Improving the Appeal Process in the Planning System: Making it proportionate, customer focused, efficient and well resourced - Consultation

Development Control, item 12

Committee: Development Control

Agenda Item

Date: 25 July 2007

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Title: Improving the Appeal Process in the Planning System: Making it proportionate, customer focused, efficient and well resourced - Consultation

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Item for decision

Summary

1. This report relates to one of four consultations associated with the White Paper and is entitled:

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The consultation paper includes many proposals which have the aims of speeding up the appeal system, stopping abuses of it, recouping costs to the tax payer and passing some of the responsibilities of the appeal process from the Inspectorate to Local authorities.

As well as outlining the proposals the consultation asks ten questions. Suggested answers are included below.

Recommendations

That the views set out in this report, together with other views of Members, are forwarded to DCLG

Background Papers

The document is accessible via the consultations section on the DCLG website (www.communities.gov.uk)

Impact

Communication/Consultation	The Council is a consultee
Community Safety	None
Equalities	Some of the proposals are to make the planning system more accessible to all
Finance	None
Human Rights	None specific
Legal implications	None at this stage

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Ward-specific impacts	All
Workforce/Workplace	None

Background

2. The Government is seeking comments on its proposal to speed up the appeal system. In 1997/8 14,000 appeals were received nationally, rising to 22,000 in 2005/6. By 2010 25,000 appeals are predicted to be submitted each year. The consultation document proposes changes to the system to speed it up – recognising that changes to internal processes can only achieve so much - and recoup the costs. The cost of running planning appeals is now £30m a year.

The proposals

Householder and tree appeals

3. Householder applications will need to be submitted within eight weeks of a decision on the application rather than the current six months. For those householder appeals determined under the written representation procedure they would be determined within a target of eight weeks. Circumstances should not have changed from when the application was determined and there would be minimal opportunity to amend the proposal, although the appellants would be asked to explain their grounds of appeal. Submission of an appeal against tree preservation orders would remain at 28 days but the procedure would be shorter, again relying on the material available to the authority when determining the application. Tree appeals would be dealt with by the Inspectorate rather than the nine regional offices (e.g. Go-East) as at present.

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

Overall a quicker and less time consuming appeal process would have advantages. If it is as fast as proposed it may encourage appeals to become standard practice thereby boosting the number of appeals submitted. Officers have detected a drop in the quality of appeal decisions in recent years and have raised this with the Inspectorate. Any change must not erode the quality of appeal decisions. Last time the period for submitting appeals was shortened (from six months to three months) there was a resultant significant increase in appeal submissions. It would be unwelcome if that situation were to re-occur. The Inspectorate should have sensitive detection mechanisms in place at the time of any change so that such an increase in appeals could be quickly detected and addressed.

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Member Review Panels

4. It is proposed that local authorities set up a panel or three, four or five Members to review decisions made under delegated powers at the request of the applicant. This would cover small developments such as householder schemes, shop fronts, small changes of use and trees. This would be in place of the appeal procedure which would be repealed for these types of schemes. Reviews would be based on the information available at the time of decision. Members on these panels would receive training but would not normally need to receive specialist advice. Panels would have the power to uphold, reverse or vary the original decision and would be subject to review under the existing system of Ombudsman and the courts.
5. With regard to non determination appeals on simple cases there are two options. One would require non determinations to be determined by the Inspectorate as at present the other would be to submit them to Member Review Panels (with the power to appeal its decision retained).

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

This is an interesting idea but it seems to involve the Inspectorate divesting itself of work and handing it on to local planning authorities. There is no indication of further resources being given to local planning authorities. These review panels might suffer from a lack of credibility as applicants might feel there was little point in appealing to the Council about a Council decision. It would be interesting to see the results of a trial arrangement.

Determining the appeal method

6. Primary legislation is proposed to empower the Secretary of State to choose the most appropriate form of appeal rather than the appellant. It is predicted that there would be a greater proportion of appeals determined by the written representation procedure and fewer dealt with by hearings and inquiries. This has the potential for cost reductions and increase in speed of decision.

Q3: Do you agree with allowing the Planning Inspectorate, on behalf of the Secretary of State, to determine the appeal method for each case by applying Ministerially approved and published indicative criteria?

Yes. More time consuming and costly methods should be reserved for those cases that justify them rather than being chosen for 'non planning reasons'.

Nature and content of appeals

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7. The Inspectorate considers that much of the documentation submitted to it is poor. It is often incomplete, repetitive and fails to aid an understanding of the issues. The Inspectorate wants to remove itself from some of the routine administration of appeals by encouraging the parties to send copies of documents to the other parties themselves. The Inspectorate will have the power to turn away revisions to schemes in order to encourage applicants to reapply to local planning authorities rather than seek permission for revised schemes through the appeal system. Similarly local planning authorities should be confident in their ability to defend their decisions without commissioning new evidence.
8. The Inspectorate also wishes to deal with various tactics employed (particularly by appellants) for example linking different appeals, refusing suggested appeal dates etc. The Inspectorate wants to have streamlined procedures to amend factual errors in appeal decisions i.e. information that is incorrect but doesn't change the decision.

Q4: Do you agree with the package of proposals detailed in Chapter Two (the two paragraphs above) to improve the customer focus and efficiency of the appeals process?

There are advantages in requiring revisions to be part of a revised application rather than an evolving appeal proposal as this allows local planning authorities to have a greater influence on decisions. It may also encourage applicants/appellants to invest effort into the application proposal rather than thinking that they can revise it later. However under the current fee regime a follow up application would not attract a planning fee and therefore may result in a greater number of fee free applications. This would be unwelcome.

Addressing some of the bad practice employed by appellants (and some authorities) will be welcome but some of the restrictions to timescales will put local authorities under further pressure. Unlike the appellant they have no control over when an appeal is submitted and will have to comply with imposed timescales. Allowing the Inspectorate to correct technical errors on its decision letters is sensible.

Costs

9. The Inspectorate plans to provide further guidance on making applications for costs possibly including fixed penalties for not following procedures. Consideration will be given to extending the costs regime to written representation appeals.

Q5: Do you agree with the changes proposed for the award of costs?

Clearer guidance will be welcome; fixed penalty fees could apply where no harm has been caused and sometimes missing deadlines etc can be entirely justified. Such penalties would be unwelcome. Introducing costs for written representation appeals

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may add to the complexity of dealing with appeal documentation. Officers are confident that costs would not be awarded against this authority other than in very rare cases. It may encourage local authorities to adopt a more aggressive stance in making applications for costs which we have tended not to do in other than exceptional cases.

Enforcement appeals

10. To avoid appellants playing the system with appealing against enforcement notices (must be within 28 days of service) and planning refusals (6 months of determination) thereby buying extra time to continue with unlawful but profitable activities, appeals for planning appeals may be governed by the more restrictive timetable for enforcement appeals where there an enforcement notice has been served relating to the same development.

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, to allow the appeals to be linked?

This would be helpful in protecting neighbours and others from abuses in the appeal system and shorten the period within which unacceptable developments are 'allowed' to continue.

11. The paper proposes to review the procedures for enforcement appeals and those relating to lawful development certificates for example by introducing time limits for lodging the latter. Local authorities would have the power to decline to deal with such applications in line with similar powers for planning applications. It is also proposed that the whole fee for enforcement appeals (twice that for a planning application for the same proposal) would be paid to the local authority rather than being split with the Inspectorate.

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

Yes.

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Appeal fees

12. The paper proposes the introduction of a fee for planning appeals based on either a flat fee or of a proportion of the original planning fee. The proposals would levy a small charge (maybe £50) on householder schemes. No fee would be levied on the local planning authority. It is not clear whether this would be for all forms of appeal (i.e. written representations, hearings and inquiries).

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

The paper provides evidence to show that the appeal system has become costly (currently £30m pa) the funding of which currently falls on the tax payer. Successful appellants may realise a significant rise in the value of their asset and it seems reasonable that appellants should bear some part of the cost of the service from which they stand to benefit.

This will have no effect on the local planning authority, only on the Inspectorate and the appellant. However the methods of charging proposed seem to be aimed simply at reducing the cost of appeals to the exchequer. A more logical approach would be to vary the fees to reflect the costs or resources involved in dealing with appeal under written representations, hearing or inquiries.

General observations

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

The main impacts are as set out above. Members may wish to add further comments.

Q10: Do you have any comment on the outcomes predicted in the partial RIAs (Regulatory Impact assessment) in particular the costs and benefits?

This is a technical question based on the supporting an explanatory information provided with the Government's consultation paper. No particular comments are offered.

Risk Analysis

The risk analysis forms part of the consultation