



The Planning Inspectorate

Procedural Guidance

Planning appeals and called-in planning applications



INVESTOR IN PEOPLE

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GUIDANCE ON PROCEDURES

PLANNING APPEALS & CALLED-IN PLANNING APPLICATIONS

1. INTRODUCTION

1.1 Context

1.1.1 This guidance explains the procedures in England for the handling of planning appeals¹ and planning applications which are called in for determination by the Secretary of State². It explains the main aspects of how the three procedures – written representations, hearings and inquiries - operate under the relevant rules and regulations.

1.1.2 Incorporated into this guidance is information on the changes which are being implemented following the Government's consultation³ in 2007 on a package of reforms designed to make the appeal process more proportionate, customer focused and efficient whilst maintaining the principles of fairness, openness and impartiality. Responses to this consultation⁴ were taken into account in the formulation of policy on the changes.

1.1.3 The content of this document is guidance only with no statutory status. The guidance contained herein is not definitive. An authoritative statement of the law can only be made by the Courts.

1.2 Application

1.2.1 This guidance will take effect from 6 April 2009 and replaces DETR Circular 05/2000 entitled "Planning Appeals: Procedures (Including Inquiries into Called-In Planning Applications)." The guidance also applies to appeals in respect of listed buildings consent and conservation areas but it does not apply to tree preservation order appeals.

¹ Under section 78 of the Town and Country Planning Act 1990 (as amended).

² Under section 77 of the Town and Country Planning Act 1990 (as amended).
The Government's call-in policy is set out at Annexe B.

³ Consultation: Planning White Paper "*Planning for a Sustainable Future*" (May 2007) and the daughter document "*Improving the Appeal Process in the Planning System – Making it proportionate, customer focused, efficient and well resourced*" (May 2007).

⁴ The Government's response to consultation replies can be viewed at:
www.communities.gov.uk/publications/planningandbuilding/improvingappealresponse

1.2.2 The guidance on the procedural issues for dealing with appeals/called-in applications applies in relation to:

- Planning appeals dealt with under written representations where the application was received by the local planning authority on or after 6 April 2009;
- Planning appeals dealt with by hearing or inquiry where the appeal was made on or after 6 April 2009; and
- Called-in cases where the application which is subsequently called-in was received by the local planning authority on or after 6 April 2009.

1.3 Regulatory framework

1.3.1 The regulatory framework supporting the appeal and called-in processes is set out in the Town and Country Planning Act 1990 (as amended) and the following Statutory Instruments:

- The Town and Country Planning (General Development Procedure) Order 1995 (SI 1995/419)⁵
- The Town and Country Planning (Determination of Appeal Procedure) (Prescribed Period) (England) Regulations 2009 (SI 2009/454)
- The Town and Country Planning (Appeals) (Written Representations Procedure) (England) Regulations 2009 (SI 2009/452)
- The Town and Country Planning (Hearings Procedure) (England) Rules 2000 (SI 2000/1626)⁶
- The Town And Country Planning (Inquiries Procedure) (England) Rules 2000 (SI 2000/1624)⁶
- The Town and Country Planning (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2000 (SI 2000/1625)⁶

1.3.2 The Planning Inspectorate exercises the powers of the Secretary of State when administering appeal and call-in processes. In relation to the exercise of these powers, except where specifically indicated, references to the Planning Inspectorate in this guidance can be read as the Secretary of State.

1.4 Policy basis

1.4.1 This guidance is underpinned by a written ministerial statement⁷ relating to the appeals process which was made in Parliament on 11 March 2009. This statement sets out the Government's policies on how the appeals regime should operate. A copy of this

⁵ Amended by the Town and Country Planning (General Development Procedure)(Amendment) (England) Order 2009 (SI 2009/453)

⁶ Amended by The Town and Country Planning (Hearings and Inquiries Procedure) (Amendment) (England) Rules 2009 (SI 2009/455)

⁷ This statement was made in the House of Commons by Iain Wright MP (Parliamentary Under Secretary of State) and in the House of Lords by Baroness Andrews. It can be accessed via the following link:

www.publications.parliament.uk/pa/ld200809/ldhansrd/text/90311-wms0001.htm#09031167000105

Statement is attached at **Annexe A**. The policies in that statement and this guidance will be taken fully into account by the Secretary of State and Inspectors when dealing with appeals and called-in applications.

1.4.2 There are a number of core principles which underpin the operation of a well functioning appeal system. These are:

- the critical importance of regular and continuing dialogue between the main parties to an appeal to ensure clarity of the issues between them and that there are no surprises;
- the importance of meeting the statutory timetables to ensure that no-one is disadvantaged and the appeal can be processed efficiently;
- the requirement that local planning authorities ensure that their reasons for refusal are clear, precise and comprehensive, with clear guidance as to how reasons for refusal might be overcome. Where the elected members' decision differs from that recommended by their officers it is essential that their reasons for doing so are similarly clear, precise and comprehensive;
- the need for appellants to ensure at the outset that their grounds of appeal are clear, precise and comprehensive and relate to the scheme as refused at application stage, without substantial changes which could lead to any party being prejudiced;
- that the appeal system should not be used as a bargaining tactic but as the last resort with appellants being ready to proceed with the appeal once it is made;
- that local planning authorities should be confident in their ability to defend decisions on the basis of their reasons for refusal and appellants confident in the strength of their case at the time of the appeal; and
- the importance of using the costs regime properly to regulate the system and ensure that all who use it act reasonably and do not lead others to incur unnecessary expense.

1.4.3 This guidance is also underpinned by the Government's Policy Statement on called-in planning applications for determination by the Secretary of State. This Statement was made in Parliament on the 16 June 1999 and a copy is attached at **Annexe B**. Called-in cases are usually dealt with by the inquiries procedure (see section 6 below).

1.5 Time limit to appeal

- 1.5.1 For householder applications⁸, the time limit to appeal is 12 weeks from the date of the notice of the decision or determination giving rise to an appeal. In all other cases, appeals should be submitted to the Planning Inspectorate within 6 months of the date of the local planning authority's decision notice giving rise to the appeal.
- 1.5.2 Where the local planning authority has failed to make a decision, an appeal against non-determination can be submitted up to 6 months after the expiry of the period the local planning authority had for dealing with the application.⁹

1.6 Appeal form

- 1.6.1 An applicant wishing to proceed to appeal should complete an appeal form in accordance with the guidance set out below. At the same time the appeal form and associated documents are sent to the Planning Inspectorate, they should be copied to the local planning authority who dealt with the application.

1.7 Grounds of appeal

- 1.7.1 In all types of appeal it is extremely important that the appellant sets out their full grounds of appeal on the appeal form, responding directly to the reasons for refusal set out in the local planning authority's decision notice. Where an appeal is against the failure of the local planning authority to make a decision, the appeal form should set out clearly why planning permission should be granted for the proposed development.
- 1.7.2 If the Planning Inspectorate considers that the appeal form has not been properly completed and it is wholly unclear why the appellant disagrees with the reasons for refusal (or in a failure case why planning permission ought to be granted) the Planning Inspectorate may refuse to accept the appeal as valid for processing.
- 1.7.3 In cases where the information submitted on the appeal form is not as clear as it might be, the appellant will be asked for more

⁸ "Householder application" means:

"(a) an application for planning permission for development of an existing dwellinghouse, or development within the curtilage of such a dwelling house for any purpose incidental to the enjoyment of the dwelling house, or
(b) an application for any consent, agreement or approval required by or under a planning permission, development order or local development order in relation to such development,
but does not include:

(i) an application for change of use,

(ii) an application to change the number of dwellings in a building".

This definition is within the Town and Country Planning (General Development Procedure) Order 1995 (as amended) and the Town and Country Planning (Appeals) (Written Representations Procedure) (England) Regulations 2009.

⁹ This will be 8 weeks for minor cases, 13 weeks for major cases, 16 weeks for applications accompanied by an environmental statement or whatever extended period has been agreed with the local planning authority.

details. If the further details are not submitted within the timescale set by the Planning Inspectorate, the appeal will proceed on the basis of the information supplied. The late submission of any requested further details may lead to delay and to the risk of costs being awarded.

1.8 Suggesting hearing or inquiry dates

1.8.1 Where, having regard to the criteria set out in **Annexe C**, the appellant considers a hearing or inquiry to be the most appropriate procedure, they should seek to agree with the local planning authority at least 2 dates on which the hearing or inquiry could take place. This should be done before lodging an appeal. The proposed dates should be within the published timescales for hearings and inquiries available on the Planning Inspectorate's website. These agreed dates should be included on or with the appeal form. Furthermore, where the appellant considers that the case ought to be dealt with by inquiry, the expected number of witnesses, topics to be addressed by witnesses, time estimates for the overall inquiry length and the presentation of the appellant's case and whether there will be legal representation should be included on or with the appeal form.

1.9 Amendments to schemes

1.9.1 In instances where the appellant wishes to amend a scheme at the appeal stage, each request must be examined on its own merits. In making a decision as to whether to accept any such amendments, the Planning Inspectorate will apply the principles set out in the *Wheatcroft* judgment.¹⁰ The Planning Inspectorate is developing more detailed guidance on how they will apply these principles.

1.9.2 In considering whether to make any amendments the appellant should have regard to the core principles set out at paragraph 1.4.2. In particular, the importance of the applicant and the local planning authority maintaining a constructive dialogue throughout the planning process should not be underestimated.

1.9.3 Where it is possible to do so, amendments which seek to overcome objections to a scheme should be made at the application stage, prior to the local planning authority's decision. This will allow the local planning authority to consider the changes during the processing of the application and minimise the need to make amendments at appeal stage. Any necessary consultation to be carried out in accordance with their agreed consultation arrangements (such as may be set out in their Statement of Community Involvement).

¹⁰ *Bernard Wheatcroft Ltd v SSE* [JPL, 1982, P37]. This decision has since been confirmed in *Wessex Regional Health Authority v SSE* [1984] and *Wadehurst Properties v SSE & Wychavon DC* [1990] and *Breckland DC v SSE and T. Hill* [1992].

1.10 New material

- 1.10.1 Section 79(1) of the Town and Country Planning Act 1990 states that on an appeal under section 78, the Secretary of State “may deal with the application as if it had been made to him in the first instance”. This means that the Secretary of State (or Inspector) can take into account material at the appeal stage which was not before the local planning authority at the time the decision on the application was made.
- 1.10.2 There will be occasions when new matters which have not been considered by the local planning authority at the application stage will arise during an appeal which ought to be considered by the Inspector. Having regard to the core principles underpinning the appeal system set out in paragraph 1.4.2, such occasions should be rare. The main parties should work together during the application process to seek to ensure that any subsequent appeal is about the proposal which was before the local planning authority. The evidence relied on by the main parties during the consideration of the application should be capable of forming the basis for an appeal.
- 1.10.3 New issues may arise in circumstances such as non-determination cases, or where new policy emerges. Although new issues are not expected in most cases, those matters which arise unexpectedly and which will need to be explored properly at appeal should be identified as soon as possible. The introduction of new issues at appeal could lead to costs sanctions if not handled appropriately.

1.11 Postponements, adjournments, abeyance, and linked cases

- 1.11.1 The Planning Inspectorate’s practice is to resist postponements and adjournments, and to decline to link appeals unless they are made at the same time. Furthermore, the Inspectorate will not put cases into abeyance unless there are exceptional reasons for doing so. This will help to prevent appellants submitting appeals before they are ready to do so and consequently having to withdraw them. It will also help to reduce wasted costs for all parties and to speed up the appeal process.

1.12 Conditions and Planning Obligations (Section 106 Agreements or Unilateral Undertakings)

- 1.12.1 Appellants and local planning authorities should include with their appeal documentation details of any conditions which ought to be considered by the Inspector when determining the appeal.
- 1.12.2 Parties are also reminded that any planning obligations should be submitted with the appeal, or at the latest 10 days before the commencement of the hearing or inquiry, or no later than 9 weeks after the start date on an appeal being dealt with by written representations under Part 2 of the Written Representations Regulations (see section 4 below). Where a case is likely to be dealt with by written representations they should be submitted in final form, completed and signed. In inquiry and

hearing cases, planning obligations may change as a result of discussion and examination. Nevertheless, the final draft as proposed by the parties (or party if a Unilateral Undertaking) should be submitted within the time periods specified above. Arrangements should be put in place to ensure that the document can be signed without delay to proceedings. The Inspector will not adjourn or delay writing the decision or report to await the completion of an obligation.

1.13 Expert evidence¹¹

1.13.1 Expert evidence is evidence that is given by a person who is qualified, by training and experience in a particular subject or subjects, to express an opinion. It is the duty of an expert to help an Inspector on matters within his or her expertise. This duty overrides any obligation to the person from whom the expert has received instructions or by whom he or she is paid. The evidence should be accurate, concise and complete as to relevant fact(s) within the expert's knowledge and should represent his or her honest and objective opinion. If a professional body has adopted a code of practice and professional conduct dealing with the giving of evidence, then a member of that body will be expected to comply with the provisions of the code in the preparation and presentation of the expert evidence.

1.13.2 Expert evidence should include an endorsement such as that set out below or similar (such as that required by a particular professional body). This will enable the Inspector and others involved in an appeal to know that the material in a proof of evidence, written statement or report is provided as 'expert evidence'. An appropriate form of endorsement is as follows:

"The evidence which I have prepared and provide for this appeal reference APP/xxx (in this proof of evidence, written statement or report) is true and has been prepared and is given in accordance with the guidance of my professional institution and I confirm that the opinions expressed are my true and professional opinions."

1.13.3 It should be understood that giving expert evidence does not prevent an expert from acting as an advocate so long as it is made clear through the endorsement or otherwise what is given as expert evidence and what is not.

1.14 Role of interested persons

1.14.1 Interested persons have an important role to play within the appeal process. Their representations indicating support for, or opposition to, a proposed scheme are taken into account by both the local planning authority (or Secretary of State in the case of

¹¹ This text is modelled on the Lands Tribunal practice direction. The approach is as agreed with the Planning Environmental Bar Association, the Royal Town Planning Institute, the Royal Institution of Chartered Surveyors and the Law Society.

called-in cases) at application stage and by an Inspector if a case goes to appeal.

- 1.14.2 For cases proceeding via the Householder Appeals Service, arrangements for representations from interested persons differ from those for other appeals – see section 3.4 for further detail.
- 1.14.3 In all other cases, the local planning authority will notify interested persons of an appeal and will advise them that representations should be submitted to the Planning Inspectorate within 6 weeks of the appeal's start date.
- 1.14.4 In practice, interested persons need only submit further representations at the appeal stage if they wish to add to the comments they made at the application stage, or if they did not comment at the application stage. If the comments made on the planning application remain valid at the appeal stage and there is nothing further to add, there is no need for interested parties to repeat them at the appeal stage. They will be forwarded to the Planning Inspectorate by the local planning authority for consideration by the Inspector when determining the appeal.
- 1.14.5 Any representations from interested persons on an appeal should be made within the time limits (see section 2.4 below) and should focus upon the planning merits of the proposed scheme. When considering an appeal the Inspector will not be able to take into account comments which do not directly relate to the merits of the scheme.

1.15 Role of the Mayor of London

- 1.15.1 Where the Mayor of London has directed the local planning authority to refuse an application, the applicant will be able to appeal against refusal of planning permission as normal. In instances such as this where an appeal arises, the Planning Inspectorate will notify the Mayor (at the same time as the appellant and the local planning authority) of the appeal, and the procedure to be followed. For cases proceeding by written representations, under Part 2 of the Written Representations Regulations (see section 4 below), the Mayor will be able to make representations on the appeal and make comments on other parties' representations. Where an appeal proceeds by way of a hearing or inquiry, the Mayor will assume a similar level of involvement as the appellant and the local planning authority. This means the Mayor will submit the same appeal documentation as the local planning authority (with the exception of the questionnaire) and will be subject to the same deadlines. The Mayor will also be entitled to appear at the hearing or inquiry.
- 1.15.2 In instances where the Mayor has been notified of a planning application and has not directed the local planning authority to refuse it yet it is subsequently the subject of an appeal, the Mayor

will have the same status as an interested person or statutory party.

1.16 Electronic submission of appeal material

- 1.16.1 All parties to an appeal are encouraged to communicate with the Planning Inspectorate electronically. In doing so, however, parties should adhere to best practice on electronic working. Where documents are submitted electronically it will be necessary to submit only one copy.

1.17 Copying documents

- 1.17.1 The Planning Inspectorate will copy documents to the main parties (the appellant and the local planning authority) and, where relevant, to any Rule 6¹² and statutory parties who have not already been copied the documents by the main parties.
- 1.17.2 The Planning Inspectorate will not copy documents to interested persons. Interested persons can access appeal documents via their local planning authority. Local planning authorities are encouraged to notify interested persons, in their communications, of where and how appeal documents can be inspected.
- 1.17.3 For appeals progressing through the Householder Appeals Service (see section 3 below), documentation will be available to view on the Planning Portal website at www.planningportal.gov.uk/pcs.

¹² Rule 6 parties are those who wish to appear at an inquiry and are required by the Secretary of State, under Rule 6(6) of the Inquiry Regulations, to provide a statement of case and proofs of evidence.

2. APPEAL PROCEDURES

2.1 Determining the appeal procedure

- 2.1.1 There are three procedures by which an appeal can proceed:
- on the basis of written representations (with an expedited process for those proceeding through the Householder Appeals Service);
 - by hearing; and
 - by local inquiry.
- 2.1.2 New section 319A of the Town and Country Planning Act 1990 (inserted by section 196 of the Planning Act 2008) gives the Secretary of State the power to determine the procedure for dealing with various appeals and applications. This power, which has been commenced in relation to planning and enforcement appeals,¹³ will be exercised by the Planning Inspectorate on behalf of the Secretary of State, with reference to the published criteria to be applied in making a determination (see **Annexe C** for planning appeals criteria).
- 2.1.3 Appellants and local planning authorities will be invited to identify which appeal procedure they consider to be the most appropriate for each appeal, by reference to the published criteria. The appellant will do this on the appeal form and the local planning authority will do this on their questionnaire.
- 2.1.4 In cases which are controversial and have raised significant local interest, local planning authorities will be expected to contact the Planning Inspectorate as soon as practicable after receiving notice of an appeal from the appellant, to indicate whether they believe a hearing or inquiry is required. In cases such as these the written representations procedure may not be suitable.
- 2.1.5 The Planning Inspectorate will ensure that the most appropriate and proportionate appeal procedure is selected through the application of the criteria, careful consideration of any representations and appropriate expert involvement. The Inspectorate will determine which procedure will be used within 7 working days of the receipt of a valid appeal.¹⁴ This will be reviewed on receipt of the local planning authority's questionnaire (see section 2.3 below) if the local planning authority has an alternative preferred procedure.
- 2.1.6 The Planning Inspectorate will give reasons for its choice where it disagrees with the procedure identified by either of the main parties. The determination under section 319A can be varied at

¹³ Separate guidance on the application of section 319A of the Town and Country Planning Act 1990 to enforcement appeals is available.

¹⁴ This 7 working day period is set out in The Town and Country Planning (Determination of Appeal Procedure) (Prescribed Period) (England) Regulations 2009 (SI 2009/454).

any point before a decision on the appeal is made. This power may need to be exercised where, for example, there is a change in circumstances or policy.

- 2.1.7 The exercise of the power to determine the appeal procedure and the application of the criteria will be monitored by the Advisory Panel on Standards for the Planning Inspectorate (APOS). APOS report directly and independently to the Secretary of State on the maintenance and enhancement of professional standards within the Planning Inspectorate.
- 2.1.8 To ensure fairness, the Costs regime is extended to planning appeals which proceed via written representations, including those which proceed through the Householder Appeals Service. If the Planning Inspectorate determines that an appeal is to proceed on the basis of representations in writing, the parties will be able to claim for an award of costs, just as they would have done if the appeal were to proceed by way of a hearing or inquiry.

2.2 Notification of receipt of appeal

- 2.2.1 Once an appeal is validated the Planning Inspectorate will confirm the procedure for dealing with the appeal and notify the appellant and the local planning authority of the appeal start date,¹⁵ reference number, the timetable for the appeal and the address to which any correspondence should be sent to the Planning Inspectorate.

2.3 Local planning authority questionnaire

- 2.3.1 For all appeals (except those proceeding via the Householder Appeals Service¹⁶) the local planning authority must, within 2 weeks of the start date of the appeal, complete the standard questionnaire and send it to the Planning Inspectorate and copy it to the appellant with all relevant documents to support the decision. These documents will include:

- copies of all relevant letters from any interested person, statutory consultee or public organisation commenting on the application;
- any relevant planning officer's reports;
- any relevant committee minutes, particularly where the decision goes against the officer's recommendation;

¹⁵ The 'start' date means the date of the Planning Inspectorate's written notice to the appellant and local planning authority setting out details relating to the appeal and confirming the procedure to be followed.

¹⁶ For appeals proceeding through Part 1 of the Town and Country Planning (Appeals) (Written Representations Procedure) (England) Regulations 2009 (SI 2009/452) (i.e. the Householder Appeals Service), local planning authorities must submit their questionnaire to the Planning Inspectorate and copy it to the appellant within 5 working days of an appeal's starting date. For further guidance on completing the questionnaire in relation to appeals proceeding via the Householder Appeals Service refer to section 3.3.

- extracts from the relevant plans or policies that the decision was based on, together with a statement as to their status.
- any other documents relevant to the appeal such as Tree Preservation Order Certificates, map of the Conservation Area etc.;
- any conditions which should be attached should the appeal be allowed.

2.3.2 The local planning authority must indicate on its questionnaire what appeal procedure it considers appropriate having regard to the published criteria (refer to **Annexe C**). If this differs from the appeal procedure selected by the Planning Inspectorate, the chosen procedure will be reviewed.

2.3.3 If a hearing or inquiry is considered likely to be appropriate, the local planning authority is expected to confirm the suggested dates for the hearing or inquiry (as agreed earlier with the appellant) (see section 1.8 above) within 2 weeks of the appeal's start date or on the questionnaire. Furthermore, where the local planning authority agrees with the appellant or considers that the case ought to be dealt with by inquiry, the expected number of witnesses, topics to be addressed by witnesses, time estimates for the overall inquiry length and the presentation of the local planning authority's case and whether there will be legal representation should be included on or with the questionnaire.

2.4 Late representations and evidence

2.4.1 The Planning Inspectorate is committed to ensuring that the timetables set for each type of appeal are met. Late submission of appeal material causes delay and can lead to the need to adjourn hearings or inquiries or to delay in reaching a decision on a written case. Late representations and evidence will not be accepted other than in exceptional circumstances. At the time of submission of any late material, these exceptional circumstances should be explained.

3. WRITTEN REPRESENTATIONS PROCEDURE

THE HOUSEHOLDER APPEALS SERVICE

Part 1 of The Town and Country Planning (Appeals) (Written Representations Procedure) (England) Regulations 2009 (SI 2009/452) (the Written Representations Regulations)

3.1 Process and scope

3.1.1 The Householder Appeals Service¹⁷ is an expedited procedure for householder appeals which proceed on the basis of written representations.

3.1.2 Appeals against refusals on householder applications¹⁸ which the Planning Inspectorate has determined will proceed on the basis of written representations will be within the scope of the Householder Appeals Service. This includes:

- appeals relating to an application for development such as dwelling house extensions, alterations, garages, swimming pools, walls, fences, vehicular access, porches and satellite dishes (this list is not exhaustive);
- appeals against the refusal of householder applications for planning permission, as well as refusal of any consent / agreement / approval required by or under a planning permission, development order or local development order;
- appeals against a local planning authority's decision to refuse to remove or vary a condition or conditions attached to a previous planning permission for householder development.

3.1.3 The following appeals will not be within the scope of the Householder Appeals Service:

- appeals in relation to proposals for additional dwellings within an existing building or within the curtilage of a residential property, replacement dwellings and any change of use;
- appeals in relation to proposals for any development to a flat;
- appeals against the decision of the local planning authority to impose a condition or conditions on a planning permission for householder development;

¹⁷ "Householder appeal" means an appeal under section 78(1) of the Town and Country Planning Act 1990 in relation to a householder application, except an appeal against the grant of any planning permission, consent, agreement or approval which is granted subject to conditions. This definition has been inserted into Article 23 of the Town and Country Planning (General Development Procedure) Order 1995 (as amended) and is in the Town and Country Planning (Appeals)(Written Representations Procedure)(England) Regulations 2009.

¹⁸ This is defined in the Town and Country Planning (General Development Procedure) Order 1995 (as amended) and the Town and Country Planning (Appeals) (Written Representations Procedure) (England) Regulations 2009 (see also footnote 8).

- appeals where the local planning authority has failed to make a decision (non-determination appeals);
- appeals against Listed Building Consent (LBC) applications or Conservation Area Consent (CAC) applications. Where a LBC or CAC appeal is lodged at or around the same time as a related appeal against a householder application, the expedited householder appeal procedure may not be suitable. The appeals are likely to be linked and dealt with under the standard written representations process described in section 4 below (i.e. the non-expedited process) so that they can proceed along the same time scales;
- appeals against lawful development certificate applications, enforcement notices, and against applications for advertisement consent.

Where a householder appeal is within the scope of the Householder Appeals Service, the appeal is likely to proceed under Part 1 of the Written Representations Regulations.

- 3.1.4 The Householder Appeals Service is intended to be operated by the Planning Inspectorate as an electronic service. It will use only the material which was before the local planning authority when it made its decision, and which is included in its questionnaire (see para 3.3.2 below), and the full grounds of appeal set out by the appellant on the appeal form. There will be no further opportunity for anyone to submit representations unless further information is requested by the Inspector.
 - 3.1.5 As noted at paragraph 2.1.8 above, Costs Awards will be available in cases which proceed through the Householder Appeals Service if any party can show that another has behaved unreasonably and caused unnecessary expense to be incurred.
 - 3.1.6 There may be circumstances where the Planning Inspectorate considers that an appeal which would otherwise proceed via the Householder Appeals Service is not suitable for that process. This may be evident at the beginning of the appeal, or may only come to light during the processing of an appeal (eg where new material which was not considered at application stage is introduced on the appeal form or during consideration of the appeal). In such instances the appeal will not be dealt with under the Householder Appeals Service but will proceed under Part 2 of the Regulations (as described in section 4) unless it is determined (under section 319A(4) of the Town and Country Planning Act 1990) that a different appeal procedure should be used.
- 3.2 The appellant**
- 3.2.1 All householder appeals must be submitted to the Planning Inspectorate within 12 weeks of the decision of the local planning authority to refuse planning permission or consent etc. Such appeals should be made using a Householder Planning Appeal

form, on which the appellant will be able to indicate their preferred procedure for dealing with the case.

- 3.2.2 The appellant must submit a copy of the planning application form and the local planning authority's decision notice with the Householder Planning Appeal Form. There will be no need to submit copies of plans or any other material submitted with the planning application, as this documentation will be supplied by the local planning authority. The appellant must copy the appeal form to the local planning authority.
- 3.2.3 The appellant's case will be the grounds of appeal set out in the appeal form and these must be concise, clear and comprehensive. They should respond to the reasons for refusal set out in the local planning authority's decision notice and should be clear as to why planning permission should be granted (see section 1.7 above).

3.3 The local planning authority

- 3.3.1 Upon notification from the Planning Inspectorate that a householder appeal is to proceed via the Householder Appeals Service, the local planning authority must send a completed Householder Appeal Service Questionnaire and copies of all of the documents referred to in it to the Planning Inspectorate within 5 working days of the start date of the appeal. The local planning authority must indicate on its questionnaire what appeal procedure it considers appropriate, having regard to the published criteria (see **Annexe C**). If this differs from that chosen by the Planning Inspectorate, the chosen procedure will be reviewed.
- 3.3.2 The documentation to be submitted with the questionnaire will include all of the material contained on the case file when the planning application was determined. In addition, the material must include copies of all policies quoted in the reasons for refusal, all representations made to the local planning authority during the consideration of the application and any conditions the local authority would like considered. At the same time they must send copies to the appellant. Copies of all relevant policies and any relevant plans (such as Conservation Area plans) must also be submitted with the questionnaire.
- 3.3.3 The local planning authority's case will comprise its reasons for refusal, which should be clear as to why planning permission has been refused, together with any reports prepared on the case during the processing of the application and any relevant Committee minutes, particularly where the decision taken goes against the officer's recommendation.
- 3.3.4 The local planning authority will not be able to submit any further material after the questionnaire stage, but will be expected to identify within their questionnaire any factual error in the appellant's grounds of appeal and any new material or changes made which were not before it at the time a decision was taken

on the application. Furthermore, the local planning authority should alert the Planning Inspectorate if they are aware of any material change in circumstances which have occurred since the application was determined, such as a new national, regional or local policy directly relevant to the appeal. In either of these circumstances the Planning Inspectorate will reconsider the procedure selected to ensure that the local planning authority has an appropriate opportunity to comment on such new material.

3.4 Interested persons

- 3.4.1 Within 5 working days of the start date the local planning authority must notify interested persons¹⁹ that an appeal has been made. This notice will advise interested persons that any representations made to the local planning authority in relation to the application, before it was determined, will be sent to the Planning Inspectorate and the appellant, by the local planning authority, and will be considered by the Inspector when determining the appeal. The notice will also set out how the interested person can withdraw the earlier comments if they wish to do so. The local planning authority will already have informed interested persons at the application stage that, in the event of an appeal, there will be no further opportunity to comment at appeal stage.

3.5 The site inspection

- 3.5.1 Inspections of the appeal site and of any relevant neighbouring land or properties are normally carried out where it is necessary to assess the impact of a development on its surroundings. The purpose of the inspection is for the site and its surroundings to be viewed, not for the case to be discussed with any parties.
- 3.5.2 Where the site is sufficiently visible from public land the inspection will be carried out unaccompanied. Where access is required, arrangements will be made with the appellant and/or landowner to allow the site to be inspected. In such circumstances there will be no discussion permitted on the case with any party on site. Similar arrangements will be made with neighbours where it is necessary to inspect the site from their property. The local planning authority should advise the Inspectorate if they are aware of any such need, and provide the Inspectorate with the relevant contact details.

3.6 The decision

- 3.6.1 The decision will be based on the grounds of appeal submitted by the appellant and the questionnaire and accompanying documents submitted by the local planning authority which will include any

¹⁹ "Interested persons" being (a) any person notified or consulted in accordance with the Act or a development order about the application which has given rise to the appeal; and (b) any other person who made representations to the local planning authority about that application, as per regulation 6 of The Town and Country Planning (Appeals) (Written Representations Procedure) (England) Regulations 2009.

interested persons' representations made on the planning application. The appellant and the local planning authority will be notified of the decision and provided with a copy of the decision notice, which will also be available to view on the Planning Portal website at www.planningportal.gov.uk/pcs. The local planning authority will provide a copy of the decision to any interested person who requests one.

4. WRITTEN REPRESENTATIONS PROCEDURE

THE STANDARD WRITTEN REPRESENTATIONS PROCEDURE Part 2 of the Written Representations Regulations

4.1 Process

- 4.1.1 Under the standard written representations procedure, the Inspector will decide the case on the basis of the written material provided by all parties during the appeal. The timetable for the standard written procedure, details of which are set out below, is designed to enable the appeal to proceed quickly and fairly. It is essential that all parties adhere strictly to the timetables. Failure to do so may lead to an award of costs.

4.2 Notice to interested persons

- 4.2.1 Within 2 weeks of the start date of an appeal, the local planning authority must notify interested persons²⁰ that an appeal has been made. The notice must inform interested persons that any representations made to the local planning authority in relation to the application, before it was determined, will be sent to the Planning Inspectorate and the appellant by the local planning authority and will be considered by the Inspector when determining the appeal. The notice must also tell interested persons that further written representations may be sent to the Planning Inspectorate within 6 weeks of the start date. The notice will also set out how the interested person can withdraw the earlier comments if they wish to do so.

4.3 The local planning authority's representations and the 6 week stage

- 4.3.1 The relevant background documents to the local planning authority's decision and any planning officer's report on the application, or full committee minute where the decision goes against the officer's recommendation, should be sufficient to present the local planning authority's case. Accordingly, where the local planning authority opts to treat the questionnaire and the documents sent with it as their representations in relation to an appeal, they shall notify the Planning Inspectorate and the appellant of this when sending the questionnaire and its supporting documents.
- 4.3.2 If the local planning authority does not elect to treat the questionnaire and documents sent with it as their representations, 2 copies of their further written representations must be submitted to the Planning Inspectorate within 6 weeks of the start

²⁰ "Interested persons" being (a) any person notified or consulted in accordance with the Act or a development order about the application which has given rise to the appeal; and (b) any other person who made representations to the local planning authority about that application, as per regulation 12 of The Town and Country Planning (Appeals) (Written Representations Procedure) (England) Regulations 2009.

date. The Planning Inspectorate will copy documents to the appellant.

4.4 The appellant's representations and the 6 week stage

4.4.1 The appellant may choose to rely on the appeal form and the documents accompanying it as their representations in relation to their appeal.

4.4.2 If the appellant elects to make any further representations to those submitted on or with the appeal form, 2 copies of any such representations must be submitted to the Planning Inspectorate within 6 weeks of the start date. The Planning Inspectorate will copy documents to the local planning authority.

4.5 Interested persons' representations and the 6 week stage

4.5.1 Interested persons notified of the appeal can rely on the representations they made to the local planning authority at the application stage, as all such representations will be forwarded to the Planning Inspectorate by the local planning authority and will be taken into account by the Inspector when deciding the appeal.

4.5.2 If an interested person wishes to make further representations on the appeal these must be made within 6 weeks of the start date. The Planning Inspectorate will send copies of any representations made by interested persons at the 6 week stage to the appellant and local planning authority. There is no further opportunity for interested persons to comment on the appeal after the 6 week stage.

4.6 9 week comments

4.6.1 If either the appellant or the local planning authority wishes to comment on any representations submitted at the 6 week stage, they must submit 2 copies of any such comments to the Planning Inspectorate within 9 weeks of the start date. The Planning Inspectorate will copy the comments to the other appeal party.

4.7 The site inspection

4.7.1 Inspections of the appeal site and any relevant neighbouring land or properties are normally carried out where it is necessary to assess the impact of a development on its surroundings. The purpose of the inspection is for the site and its surroundings to be viewed, not for the case to be discussed with any parties.

4.7.2 Where access is required, arrangements will be made with the appellant and/or landowner to allow the site to be inspected. Similar arrangements will be made with neighbours where it is necessary to inspect the site from their property. Depending on the nature of the case and the site, it may be necessary to seek the attendance at the site inspection of a representative of the appellant and other appeal parties including, where appropriate, interested persons. In all cases there will be no discussion in relation to the case with any party on site. /

4.8 The decision

- 4.8.1 The appeal decision will be based on the written material submitted within the time limits unless, exceptionally, late evidence is accepted by the Planning Inspectorate (see section 2.4 above). The appellant, the local planning authority and any interested person who has requested such will be notified of the decision and provided with a copy of the decision notice by the Planning Inspectorate. It will also be available on the Planning Portal website at www.planningportal.gov.uk/pcs.

5. HEARINGS PROCEDURE

The Town and Country Planning (Hearings Procedure) (England) Rules 2000 (SI 2000/1626), as amended by The Town and Country Planning (Hearings and Inquiries Procedures) (England) (Amendment) Rules 2009 (SI 2009/455)

5.1 Process

5.1.1 Under the hearings procedure the Inspector holds a public hearing with the main parties. Any interested person who wishes to participate in the hearing and can contribute to the discussion will also be welcome to attend. The hearing is an inquisitorial process led by the Inspector who identifies the issues for discussion based on the evidence submitted and any representations made. The hearing may include a discussion at the site or the site may be inspected, without discussion, on an accompanied or unaccompanied basis.

5.1.2 The timetable for the hearing procedure, which is set out in detail below, is designed to enable the appeal to proceed quickly and fairly. It is essential that all parties adhere strictly to the timetables. Failure to do so may lead to an award of costs.

5.2 Preliminary information to be supplied by the local planning authority

5.2.1 Upon receipt of notification from the Planning Inspectorate that the appeal is to proceed by way of a hearing, the local planning authority must inform the Planning Inspectorate and the appellant in writing of the name and address of any statutory party²¹ who has made representations to them. In turn, the Planning Inspectorate will inform the appellant and the local planning authority in writing of the name and address of any statutory party who makes representations on the appeal.

5.3 Fixing the date of the hearing

5.3.1 The Planning Inspectorate will make contact with the appellant and local authority to offer a date for the hearing within the published timescales, having regard to the two dates suggested by the appellant on the appeal form and confirmed by the local planning authority with their questionnaire (see paragraphs 1.8.1 and 2.3.3 above). If dates have not been offered to the Planning Inspectorate by the parties and/or the parties are unable to agree a date within the timescales indicated, a date for the hearing will be imposed by the Planning Inspectorate.

5.4 Hearing statement

5.4.1 The local planning authority and the appellant must submit 2 copies of their hearing statement to the Planning Inspectorate within 6 weeks of the start date. A copy must also be submitted

²¹ Statutory Parties are defined in The Town and Country Planning (Hearings Procedure) (England) Rules 2000, SI 2000/1626 (as amended) 2(1).

to any statutory party. The Planning Inspectorate will copy documents to the other appeal party.

- 5.4.2 Hearing statements should be concise and summarise the material already supplied by the appellant in the grounds of appeal (see section 1.7 above) and the local planning authority in the material they have supplied with the questionnaire (see section 2.3 above), highlighting where there are differences between the parties. They should be a succinct statement of the submitting party's reason for proposing or opposing the development concentrating on the main issues. Any case law cited should include the full report reference. The hearing statement conclusions should be briefly summarised at the end with appropriate references. The aim should be for the statement not to exceed 3000 words with a summary of no more than 500 words.

5.5 Statutory parties and interested persons

- 5.5.1 Within 2 weeks of an appeal's start date, the local planning authority will notify any statutory party and/or interested persons that an appeal has been made. The local planning authority will also give the address of the Planning Inspectorate to which any representations should be sent and the period within which they must be made.
- 5.5.2 Statutory parties and interested persons can rely on the representations they made to the local planning authority at the application stage, as all such representations will be forwarded to the Planning Inspectorate by the local planning authority and will be taken into account by the Inspector when deciding the appeal.
- 5.5.3 If any statutory party and/or interested person wishes to make representations concerning the appeal, they must send 3 copies of any written comments to the Planning Inspectorate within 6 weeks of the appeal's start date.²² The Planning Inspectorate will copy any representations received from any such parties to the appellant and local planning authority.
- 5.5.4 Statutory parties are entitled to appear at the hearing. Interested persons can attend and may participate in the discussion at the discretion of the Inspector.

5.6 Notification of the hearing

- 5.6.1 The Planning Inspectorate will notify the appellant, local planning authority and any statutory party of the date, time and place of the hearing and the name of the Inspector who will conduct it. The Planning Inspectorate will ask the local planning authority to notify any interested persons.

²² See section 1.16 above on electronic submission of appeal material.

5.7 The decision

- 5.7.1 All who participated at the hearing and any interested person who has requested such will be notified of the decision and provided with a copy of the decision letter by the Planning Inspectorate. It will also be available to view on the Planning Portal website at www.planningportal.gov.uk/pcs.

6. INQUIRIES PROCEDURE

The Town and Country Planning (Inquiries Procedure) (England) Rules 2000 (SI 2000/1624)²³; and The Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2000 (SI 2000/1625)²⁴; as amended by The Town and Country Planning (Hearings and Inquiries Procedures) (England) (Amendment) Rules 2009 (SI 2009/455)

6.1 Process

- 6.1.1 Under the inquiries procedure the Inspector holds an inquiry at which parties may be formally represented by advocates. The inquiry procedure provides for the investigation into, and formal testing of, complex and/or technical evidence, usually through expert witnesses. The site may be inspected before, during or after the inquiry.
- 6.1.2 The timetable for the inquiry procedure, which is set out in detail below, is designed to enable the appeal to proceed quickly and fairly. It is essential that all parties adhere strictly to the timetables. Failure to do so may lead to an award of costs.

6.2 Fixing the date of the inquiry

- 6.2.1 The Planning Inspectorate will seek to fix the date of the inquiry at the earliest possible stage in the appeal process having regard to the dates suggested and agreed by the main parties (see paragraphs 1.8.1 and 2.3.3). If dates have not been offered by the parties to the Planning Inspectorate and/or the parties are unable to agree a date within the timescales indicated, a date for the start of the inquiry will be imposed by the Planning Inspectorate.

6.3 Bespoke timetabling

- 6.3.1 For called-in applications, and for appeals where the inquiry is expected to last 8 days or more, the Planning Inspectorate may agree a bespoke timetable with the main parties to cover the dates of the inquiry, the submission of evidence and the issue of the decision or submission of the report to the Secretary of State, if applicable.
- 6.3.2 Cases of less than 8 days which are determined by the Secretary of State will be determined in accordance with any timetable published by the Secretary of State.

²³ The Inquiries Procedure Rules set out in SI 2000/1624 are used for both planning appeals which are recovered for determination by the Secretary of State (recovered appeals) and planning applications called-in for determination by the Secretary of State. In these cases the Inspector reports with recommendations to the Secretary of State.

²⁴ The Inquiries Procedure Rules set out in SI 2000/1625 are used for planning appeals determined by an Inspector on behalf of the Secretary of State.

6.4 Notification of the inquiry

- 6.4.1 The Planning Inspectorate will notify the appellant, local planning authority and anyone entitled to appear at the inquiry of the date, place, time and length of the inquiry and the name of the Inspector who will conduct it. A Pre-Inquiry Meeting may be held to discuss the programming of the inquiry and/or pre-inquiry notes may be issued in which a timetable for the inquiry may be set to which the parties will be expected to adhere.

6.5 Statutory parties and interested persons

- 6.5.1 In the case of an appeal, within 2 weeks of the start date the local planning authority will notify any statutory party and/or interested persons that an appeal has been made. The local planning authority will also give the address of the Planning Inspectorate to which any representations on the appeal should be sent and the period within which they must be made
- 6.5.2 Statutory parties and interested persons can rely on the representations they made to the local planning authority at the application stage, as all such representations will be passed to the Planning Inspectorate by the local planning authority and will be taken into account by the Inspector.
- 6.5.3 If any statutory party or interested person wishes to make further representations specifically on the appeal they should do so within 6 weeks of the start date of the appeal. The Planning Inspectorate will copy any representations received from any such parties to the appellant and local planning authority.
- 6.5.4 Statutory parties are entitled to participate in an inquiry. Interested persons can attend and may participate in an inquiry at the discretion of the Inspector.

6.6 Statement of common ground

- 6.6.1 A statement of common ground is essential to ensure that the evidence at an inquiry focuses on the material differences between the main parties. Effective use of such statements is expected to lead to more efficient inquiries. The statement should identify the areas of agreement and disagreement. Identification of these two matters will greatly assist the Inspector in preparing for the case, by clarifying the matters remaining in dispute. It will also provide a commonly understood basis for the parties to inform the evidence. This should lead to an improvement in the quality of the evidence and a reduction in the quantity of material which needs to be considered.
- 6.6.2 The local planning authority and the appellant (or applicant in called-in cases) must prepare the statement of common ground together, and ensure that the Planning Inspectorate and any statutory party receive a copy of it within 6 weeks of the appeal's start date. Early dialogue between these parties will be essential

to ensure that the statement is jointly prepared within the 6 week timescale.

- 6.6.3 If the statement of common ground is not submitted within the 6 week timescale (or a longer timescale if agreed with the Planning Inspectorate) the appeal will proceed on the basis of the information supplied. The complete absence or late submission of the statement of common ground may lead to delay. In such circumstances any party found to be responsible for such delay will be at risk of an award of costs.

6.7 Statement of case

- 6.7.1 The statement of common ground should inform the statements of case and the subsequent production of proofs of evidence.
- 6.7.2 The statement of case should contain the full particulars of the case which a party proposes to put forward at the inquiry. It should set out both the planning and legal arguments that a party intends to put forward at an inquiry, and describe, but not contain, the evidence. It should also cite any statutory provisions and case law that parties intend to call in support of its arguments. It should include a list of all the documents that a party will rely on when presenting their case at the inquiry and refer to in their proofs of evidence.
- 6.7.3 In a transferred appeal²⁵ both the appellant and the local planning authority must ensure that two copies of their statement of case are received by the Planning Inspectorate and copied to any statutory party. The statements of case should be submitted to the Planning Inspectorate within 6 weeks of the appeal's start date and must be copied to any statutory party. The Planning Inspectorate will copy the statements of case to the other appeal party or parties.
- 6.7.4 Where in a called-in or recovered case²⁶ the Secretary of State has arranged for a pre-inquiry meeting to be held, the statements of case should be submitted by both the appellant (in a recovered case) or applicant (in a called-in case) to the Planning Inspectorate within 4 weeks of its conclusion.
- 6.7.5 Any other person who has notified the Planning Inspectorate of an intention or wish to appear at the inquiry may be required to submit a statement of case. Such persons should provide 3 copies of their statement of case to the Planning Inspectorate and 1 copy to any statutory party within 4 weeks of being so required.

²⁵ Where the Inspector makes the decision and the Inquiry is held under the Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2000 SI 2000/1625.

²⁶ Where the Inspector reports to the Secretary of State and the Inquiry is held under the Town and Country Planning Appeals (Inquiries Procedure) (England) Rules 2000 SI 2000/1624.

The Planning Inspectorate will copy the statements of case to the local planning authority and the appellant (or applicant).

6.8 Proofs of evidence

- 6.8.1 The term “proofs of evidence” is used in the Inquiries Procedure Rules and refers to the document containing the written evidence about which a person appearing at a public inquiry will speak. Proofs of evidence should be concise and ideally contain facts and expert opinion deriving from witnesses’ own professional or local knowledge as applied to individual cases.
- 6.8.2 Proofs of evidence should not include matters which are not in dispute. They should focus on the issues of dispute remaining following the statement of common ground.
- 6.8.3 All persons entitled to appear at the inquiry and intending to do so (including Rule 6 parties²⁷) must produce proofs of evidence, and these must be submitted to the Planning Inspectorate no later than 4 weeks before the inquiry. The Planning Inspectorate will copy proofs of evidence to the Inspector and to the other appeal parties who have not already received a copy directly from the relevant party.
- 6.8.4 The aim should be for the proof of evidence to be no longer than 3000 words. Summaries should be provided when a proof of evidence exceeds 1500 words. This should be proportionate to the length of the proof of evidence but should not exceed 1500 words. It is normally only the summaries which are read out at the inquiry. Summaries should accurately condense the gist of the proof of evidence, concentrating on the main points at issue.

6.9 The decision

- 6.9.1 All who participated in the inquiry and any interested person who has requested such will be notified of the decision and provided with a copy the decision notice by the Planning Inspectorate. If it relates to a planning appeal it will also be available on the Planning Portal website at www.planningportal.gov.uk/pcs .

²⁷ Rule 6 parties are those who wish to appear at an inquiry and are required by the Secretary of State, under Rule 6(6) of the Inquiry Regulations, to provide a statement of case and proofs of evidence.

7. CORRECTION OF ERRORS

- 7.1 The Planning Inspectorate has the power to correct simple errors in decisions, subject to the agreement of the applicant/landowner. There is no longer a requirement to obtain the agreement of the applicant/landowner before making any such change. This will greatly increase the speed with which errors can be corrected.
- 7.2 This power only applies to errors that would not change the substance of the decision, ensuring that no parties are disadvantaged (for example, correcting typographical errors).

8. CHALLENGING DECISIONS AND MAKING COMPLAINTS

- 8.1 The High Court is the only authority that can require reconsideration of an Inspector's or Secretary of State's decision. Applications to the High Court to challenge decisions must be made within 6 weeks from the date of the Inspector's decision on the appeal.
- 8.2 Complaints against an appeal decision or the Inspector are dealt with by the Planning Inspectorate's Quality Assurance Unit. All complaints are investigated thoroughly and impartially. The Inspectorate operates to a ministerially imposed target that 99% of decisions are error free. The independent Advisory Panel on Standards monitors the way the Inspectorate manages this process and the way in which complaints are dealt with. The Planning Inspectorate provides detailed guidance on the operation of the complaints process. Guidance is also provided on the different roles of the Planning Inspectorate, the Parliamentary and the Local Ombudsman.

9. TRANSITIONAL ARRANGEMENTS

- 9.1 The legislative changes to the procedure rules and regulations come into force on 6 April 2009. Reference should be made to the Statutory Instruments themselves for the exact details on the application of the legislation and transitional arrangements.
- 9.2 Listed building appeals and conservation area consent appeals made on or after 6th April will be subject to the procedures set out in this guidance. However, the power under section 319A to determine the procedure does not apply to listed building and conservation area consent appeals.
- 9.3 The Written Representations Regulations do not apply to listed building and conservation area consent appeals. Where these appeals are conducted on the basis of written representations they will be conducted within the spirit of those regulations

Planning: Appeals

WRITTEN MINISTERIAL STATEMENT

11 MAR 2009: OFFICIAL REPORT: COLUMNS WS89 - 91

The Parliamentary Under-Secretary of State, Department for Communities and Local Government (Baroness Andrews): My honourable friend the Parliamentary Under-Secretary of State (Iain Wright) has made the following Written Ministerial Statement.

The planning White Paper *Planning for a Sustainable Future* published in May 2007 with the accompanying consultation paper *Improving the Appeal Process in the Planning System*, signalled the Government's intention to improve the planning appeals service to make it more proportionate, customer-focused and efficient, while maintaining the principles of fairness, openness and impartiality. Measures to achieve this were included in the Planning Act 2008²⁸ and in regulations which are being laid before Parliament²⁹ today. This Statement sets out the Government's policies on how the new regime should operate.

Section 196 of the Planning Act 2008 amended the Town and Country Planning Act 1990 to give the Secretary of State the power to determine the procedure by which appeals will be dealt with; on the basis of representations in writing, at a hearing or at a local inquiry. This power will commence in relation to planning and enforcement appeals on 6 April 2009. The principal parties to an appeal, being the appellant and the local planning authority, will have the opportunity to put forward their views on their preferred procedure. Final decisions will take account of any representations from these parties and will have reference to published criteria, which are approved by the Secretary of State and will be kept under review. The criteria are published on the Planning Inspectorate's website. Appeals on householder applications that are deemed suitable for written representations will normally proceed through an expedited procedure, designed to give a decision within eight weeks. The aim in all cases is to use the most appropriate procedure consistent with the complexity of the case without any loss of quality in the decision-making process.

The Government have asked the Advisory Panel on Standards (APOS) to continue to review the performance of the Planning Inspectorate. It will monitor the operation of the new regime and, in particular, will investigate

²⁸ Section 184—Correction of errors in decisions, Section 196—Determination of certain proceedings and Schedule 10. (See also The Planning Act 2008 (Commencement No. 1 and Savings) Order 2009 (2009 No. 400 (C. 22)).

²⁹ The Town and Country Planning (Appeals) (Written Representations Procedure) (England) Regulations 2009 (2009/452), The Town and Country Planning (General Development Procedure) (Amendment) (England) Order 2009 (2009/453), The Town and Country Planning (Determination of Appeal Procedure) (Prescribed Period) (England) Regulations 2009 (2009/454), The Town and Country Planning (Hearings & Inquiries Procedures) (England) (Amendment) Rules 2009 (2009/455).

any case of complaint about the application of criteria to the choice of appeal procedure. The Secretary of State will take account of advice from APOS when conducting an annual review of these criteria.

The Secretary of State's ability to deliver timely and high-quality decisions on planning and enforcement appeals will rely on all parties observing good practice. In anticipation of the possibility of appeal, local planning authorities should ensure that their reasons for a decision are clear, precise and comprehensive, especially when the decision taken by elected members differs from that recommended by their officers. When refusing an application, local planning authorities should consider carefully whether they have a sufficiently strong case, capable of being argued at appeal, on the basis of the material before them.

Appellants should also ensure that their grounds of appeal are clear, precise and comprehensive and relate to the scheme as refused at application stage, without substantial changes which could lead to any party being prejudiced. Applicants should not normally proceed to appeal unless all efforts to negotiate a solution with the local planning authority, including through amending their proposals, have been exhausted. They should be confident at the time of appeal that they have a clear case and do not need to commission further evidence.

Once an appeal is accepted and validated by the Planning Inspectorate, it is crucial that all parties adhere to the statutory deadlines at each stage. Parties should also maintain a regular and continuing dialogue to ensure that the issues can be clearly established between them, with no last-minute surprises arising.

Following consultation, the costs awards circular, *Costs awards in appeals and other planning proceedings*, will shortly be reissued and will be available on the Communities and Local Government website. It is important that all parties use the costs regime properly to regulate the system and to ensure that all who use it do not act unreasonably and lead others to incur unnecessary expense. The Secretary of State will be able to award costs in all cases when requested to do so by one or more of the parties, including those dealt with through written representations. Each case will be assessed on its merits.

The Planning Inspectorate is issuing more detailed guidance on the conduct of the appeal process, to assist parties in appeal cases. This guidance is endorsed by the Secretary of State and will provide a reference point for planning inspectors when determining appeal cases.

Call-in of planning applications - Government Policy Statement

GOVERNMENT POLICY STATEMENT

Hansard, Written Answer, 16 June 1999, 138

PLANNING APPLICATIONS

Mr. Bill Michie: To ask the Secretary of State for the Environment, Transport and the Regions if he will make a statement about his policy on calling in planning applications under section 77 of the Town and Country Planning Act 1990. [87392]

Mr. Caborn: My right hon. Friend's general approach, like that of previous Secretaries of State, is not to interfere with the jurisdiction of local planning authorities unless it is necessary to do so. Parliament has entrusted them with responsibility for day-to-day planning control in their areas. It is right that, in general, they should be free to carry out their duties responsibly, with the minimum of interference.

There will be occasions, however, when my right hon. Friend may consider it necessary to call in the planning application to determine himself, instead of leaving the decision to the local planning authority.

His policy is to be very selective about calling in planning applications. He will, in general, only take this step if planning issues of more than local importance are involved. Such cases may include, for example, those which, in his opinion:

- may conflict with national policies on important matters;
- could have significant effects beyond their immediate locality;
- give rise to substantial regional or national controversy;
- raise significant architectural and urban design issues; or
- may involve the interests of national security or of foreign Governments.

However, each case will continue to be considered on its individual merits.

Criteria for determining the procedure for planning appeals

Written representations

If your appeal meets the following criteria, the most appropriate procedure would be written representations:

1. the grounds of appeal and issues raised can be clearly understood from the appeal documents plus a site inspection; and/or
2. the Inspector should not need to test the evidence by questioning or to clarify any other matters; and/or
3. an environmental impact assessment (EIA) is either not required or the EIA is not in dispute.

Hearing

If the criteria for written representations are not met because questions need to be asked, for example where any of the following apply:

- the status of the appellant is at issue, eg Gypsy/Traveller;
- the need for the proposal is at issue eg agricultural worker's dwelling; Gypsy/Traveller site
- the personal circumstances of the appellant are at issue, eg; people with disabilities or other special needs;

the most appropriate procedure would be a hearing if:

1. there is no need for evidence to be tested by formal cross-examination; and
2. the issues are straightforward (and do not require legal or other submissions to be made) and you should be able to present your own case (although you can choose to be represented if you wish); and
3. your case and that of the LPA and interested persons is unlikely to take more than one day to be heard.

Inquiry

If the criteria for written representations and hearings are not met because the evidence needs to be tested and/or questions need to be asked, as above, the most appropriate procedure would be a local inquiry if:

1. the issues are complex and likely to need evidence to be given by expert witnesses; and/or
2. you are likely to need to be represented by an advocate, such as a lawyer or other professional expert because material facts and/or matters of expert opinion are in dispute and formal cross-examination of witnesses is required; and/or
3. legal submissions may need to be made.

NOTE: Where proposals are controversial and have generated significant local interest, they may not be suitable for the written representation procedure. We consider that the LPA is in the best position to indicate that a hearing or inquiry may be required in such circumstances.