

Recent Changes to the Planning Appeals System

One of the aims of the Planning Act 2008¹ is to improve the efficiency of the planning appeals process in order “...to ensure that the appeal process is simpler, easier and more efficient for all the main parties”.² The changes to be made are contained within a combination of primary legislation (sections 184, 196, 197, 198, 200 and Schedules 10 and 11 of the 2008 Act in particular), secondary legislation and policy. The first wave of changes came into force on 6 April 2009 with the remainder following either later in the year or early next year. The main changes are explained below.

Determining how an appeal will be heard

Previously the Planning Inspectorate (PINS) has informed appellants and local planning authorities which procedure it considers to be most appropriate to an appeal. In most cases this was accepted by the parties but parties could insist on an alternative procedure, whether or not that was appropriate in the circumstances. There was also a reluctance from appellants to choose the written representations procedure if they thought that they might want to seek a costs award because generally costs could not be claimed via written representations.

From 6 April 2009 the Secretary of State has the power to determine by which procedure an appeal will be heard (i.e. by written representations, hearing or local inquiry).³ The determination must be made by PINS within the ‘prescribed period’ which is seven working days from the date of receipt of a “valid appeal”.⁴

PINS has published policy guidance; “PINS 01/2009 Procedural Guidance: Planning appeals and called in planning applications” and “PINS 02/2009 Procedural Guidance: Enforcement appeals and determination of appeal procedure”, which include indicative criteria for determining how a planning or an enforcement appeal will be heard. Criteria include matters such as the complexity of the case, the need to test evidence by questioning or cross examination, the need for environmental impact assessment, the personal circumstances or status of the appellant and the need for legal submissions. Appellants and local planning authorities will be invited to identify which procedure they consider to be most appropriate by reference to the criteria. PINS will give reasons for its choice of procedure if it disagrees with the main parties’ choice. The choice of procedure can be varied later if needs be.⁵

Costs Awards

Linked to the new power for the Secretary of State to determine how appeals will be heard is the introduction of the new CLG Circular 03/2009 entitled “Costs Awards in Appeals and Other Planning Proceedings”. This takes effect from 6 April 2009 and cancels DoE Circular 8/93. The Circular aims to reinforce the message that parties who act unreasonably and cause other to incur unnecessary expense in appeals risk costs being awarded against them. In order to address the concerns of appellants that their right to claim costs might be taken away by the Secretary of State determining the appeal procedure, Circular 03/2009 extends the costs regime to all appeals dealt with by way of written representations. The Circular also makes it clear that an appellant who withdraws their appeal at any time risks an award of costs against them.

¹ The Planning Act 2008 received Royal Assent on 26th November 2008

² http://www.planning-inspectorate.gov.uk/pins/21st_century/index.html

³ Section 196 of the Planning Act 2008 Act inserts a new section 319A into the Town and Country Planning Act 1990

⁴ The Town and Country Planning (Determination of Appeal Procedure) (Prescribed Period) (England) Regulations 2009, Regulation 2

⁵ PINS 01/2009 ‘Procedural Guidance: Planning appeals and called in planning applications’, paragraph 2.1

Procedural Changes

Householder Appeals/Written Representations

New Regulations governing procedure in written representations appeals have been made.⁶ The main change is the introduction of the new procedure for “householder appeals”, in relation to which the appeal period has been reduced from six months to twelve weeks.⁷ A new definition of ‘householder application’ is inserted in to the Town and Country Planning (General Development Procedure) Order 1995 and a ‘householder appeal’ is an appeal in relation to a householder application.⁸ New notices have been produced which must be served or published where an application or appeal for householder development is made.⁹ Householder appeals are subject to an expedited procedure in which the appellant is not allowed to submit any further material after the appeal, grounds of appeal and supporting documents have been lodged (unless the Secretary of State asks for further information). The local planning authority must rely on its completed appeal questionnaire and supporting documents. PINS will aim to determine householder appeals within 8 weeks of the start date.

Receipt of a “Valid Appeal”

Article 23 of the Town and Country Planning (General Development Procedure) Order 1995 has been amended to specify precisely what documents must be served upon the Secretary of State for different types of appeal (including householder appeals).¹⁰ A new definition of “receipt of a valid appeal” is introduced by the Town and Country Planning (Determination of Appeal Procedure) (Prescribed Period) (England) Regulations 2009, the inference being that an appeal which does not comply with Article 23 as amended will not be a valid appeal. PINS Guidance 01/2009 (see below) states “*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*”.¹¹

Suggesting Hearing and Inquiry Dates

Where an appellant considers the criteria point towards their appeal being heard by way of a hearing or inquiry then they must seek to agree with the local authority at least two dates on which the hearing or inquiry could take place. The dates should be within the timescales for the appeal being heard as published by PINS and appellants are expected to seek to agree these dates **before** they lodge their appeal. Where an appellant feels an inquiry is required then they will also be expected to submit details of the number of witnesses, topics, time estimates and details of legal representation with or on the appeal form.¹²

Other Procedural Changes to Hearings and Inquiries

Amendments have also been made to the 2000 Rules governing hearings and inquiries, including the removal of the 9 week deadline for commenting on another person’s statement of case and also the bringing forward of the date for sending the Statement of Common Ground to the Secretary of State (now to be submitted within six weeks of the starting date).¹³

⁶ The Town and Country Planning (Appeals) (Written Representations Procedure) (England) Regulations 2009 (SI 2009/452)

⁷ The Town and Country Planning (General Development Procedure) (Amendment) (England) Order 2009 (SI 2009/453)

⁸ Except appeals against the grant of planning permission etc subject to conditions – see definitions in The Town and Country Planning (General Development Procedure) (Amendment) (England) Order 2009 (SI 2009/453), Regulation 3 and The Town and Country Planning (Appeals) (Written Representations Procedure) (England) Regulations 2009 (SI 2009/452), Regulation 2

⁹ The Town and Country Planning (General Development Procedure) (Amendment) (England) Order 2009 (SI 2009/453), Regulation 6

¹⁰ See also Schedule 11 to the 2008 Act, inserting new sections 4A and 4B into section 78 of the 1990 Act.

¹¹ PINS 01/2009 ‘Procedural Guidance: Planning appeals and called in planning applications’, paragraph 1.7.2

¹² Ditto paragraph 1.8.1

¹³ The Town and Country Planning (Hearings and Inquiries Procedures) (England) (Amendment) Regulations 2009 (SI 2009/455) amend the Town and Country Planning (Hearings Procedure) (England) Rules 2000, the Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2000 and the Town and Country Planning (Major Infrastructure Project Inquiries Procedure) (England) Rules 2005.

Amendments to Schemes

PINS has a concern about 'case creep' in which the scheme being considered on appeal is altered from that considered by the local planning authority at application stage. The concern is that 'case creep' results in a lack of fairness, with PINS, the LPA and interested parties considering a scheme at appeal which differs from that originally submitted. Whilst acknowledging that PINS can accept amendments to a scheme at appeal stage, PINS now intends to develop more detailed guidance on how it will consider whether amendments should be accepted, having regard to the case of *Bernard Wheatcroft Ltd v SSE*¹⁴. The starting point will be that wherever possible, amendments which seek to overcome objections to a scheme should be made at the planning application stage.¹⁵ Similarly, PINS will generally resist the late submission of evidence other than in exceptional circumstances.¹⁶

Correctable Errors

Since 2004, the Secretary of State has been able to correct simple errors in decision notices which do not form part of the reasons given for the decision and therefore do not go to its substance.¹⁷ However the consent of the applicant and the landowner has been required before an error can be corrected. Section 184 of the 2008 Act removes that requirement for the consent of the landowner/applicant in relation to England (although it still applies in respect of decisions relating to Wales). It is anticipated that this will greatly increase the speed at which errors can be corrected.

Fees for Appeals

At present there is no charge for appealing to PINS (unless a deemed application for planning permission is made on an enforcement appeal). Section 200 of the 2008 Act inserts s.303ZA into the Town and Country Planning Act 1990 which allows for regulations to be made which provide for a fee to be payable in respect of planning, listed building and conservation area appeals. It is anticipated that a consultation paper on charging for appeals will be issued in around October of this year, with the charges being introduced by regulations in early 2010 at the earliest.

¹³ The Town and Country Planning (Hearings and Inquiries Procedures) (England) (Amendment) Regulations 2009 (SI 2009/455) amend the Town and Country Planning (Hearings Procedure) (England) Rules 2000, the Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2000 and the Town and Country Planning (Major Infrastructure Project Inquiries Procedure) (England) Rules 2005.

¹⁴ [1982] JPL 37

¹⁵ PINS 01/2009 'Procedural Guidance: Planning appeals and called in planning applications', paragraph 1.9

¹⁶ Ditto, paragraphs 1.10 and 2.4

¹⁷ Planning and Compulsory Purchase Act 2004, Section 56



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