



Planning Committee

No Specific Ward Relevance

31 March 2009

PLANNING APPEALS PROCEDURES – CHANGES

(Report of Acting Head of Planning & Building Control)

1. Summary of Report

To inform Planning Committee members of changes to the regulations and thus procedures and practices relating to the planning appeals system.

These changes are significant for all those engaged in the planning appeals system, especially those who are in receipt of a refusal of a householder planning application. Care should be taken in all cases to ensure that the new procedures are followed accurately, and thus it is recommended that professional advice be sought by Members from Development Control Officers should the need arise.

2. Recommendation

The Committee is asked to RESOLVE that

the information provided below be noted and taken into account in the future decision making and advisory processes.

3. Financial, Legal, Policy, Risk and Sustainability Implications

3.1 The increased number of opportunities to seek costs could result in an increase in the number of applications and thus awards made to the Council. However, providing that Officers and Members provide a robust planning case, the risk should be minimal, as the criteria for awarding costs will be published and so attempts to avoid such situations can be made.

3.2 Changes to internal procedures and systems, and training of staff may have minimal internal costs associated with them but will take time.

Legal

3.3 Officers and Members must be aware of the legislative changes when carrying out their daily functions to ensure compliance with the revised statutory framework.

Policy

- 3.4 There are no policy implications at this stage, although the revised legislation may influence the need for and content of future documents. There is a slight risk that, as the Local Development Framework (LDF) gains weight as it proceeds through to adoption, the Local Plan weight will reduce and result in appeal outcomes that are not as expected at the time of the original planning decision.

This is no different from the current system.

Risk

- 3.5 There are few perceived additional risks, above those already inherent within the appeal system.

Sustainability / Environmental

- 3.6 These are material considerations in each case, and so will always be considered through the statutory planning process and therefore need no further consideration here as they will not result in any specific implications.

Report

4. Background

- 4.1 The appeals system is set up to provide an independent review of planning decisions, in the light of the information submitted to the Local Planning Authority (LPA), the Development Plan framework for the site and any other relevant material considerations.
- 4.2 Through the legislative framework the procedures surrounding the appeals system are set out, implemented and enforced by the Planning Inspectorate (PINS). There are strict requirements and timescales clearly set out, for both LPAs and appellants to follow.
- 4.3 There are many different situations in which a planning applicant can make an appeal, and the most common are:
- a) Against refusal
 - b) Against the imposition of a condition
 - c) Against non-determination
 - d) Against the service of an Enforcement Notice.
- 4.4 The intention of the government, as advised by PINS, is to change the system to provide a *'modern, 21st century appeal service that is focused on the principles of proportionality, customer focus and efficiency'*.

In order to do this, these changes seek to alter the appeal system so that it is brought up to date, and made easier to engage in as well as being simpler and quicker to make decisions. The Inspectorate have circulated details of the proposed changes in a letter to LPAs. However the statutory instruments are yet to be published.

- 4.5 The new guidance and regulations will be provided on the appropriate websites and links to these will be provided to Members once they are available. The information summarised in this report is based on information provided by the Planning Inspectorate regarding legislation that is proposed to be enacted and come into force on 6 April 2009. However it has yet to be published at the time of writing.

Method of appeal

- 4.6 There are three methods of determining a planning appeal – written representations, where each side provide a written statement of case; informal hearings, where an Inspector leads an informal discussion following submission of statements from both sides; and public inquiries, which are a formal arena where each side has to submit initial and detailed statements, a joint statement of common ground (SCG) and have a barrister acting as advocate. This process is formal, with timescales for submission of documents set out in secondary legislation and takes longer to prepare and for the inquiry, and includes cross examination of expert witnesses. Currently, the appellant requests which procedure should be used when making their appeal and, whilst the LPA can challenge this, it is rarely successful as the Inspectorate tend to give appellants their right to be heard, if they have requested it.
- 4.7 Currently, the type of proposed development that is the subject of the appeal makes no difference to the choice of process to be followed.

Costs

- 4.8 Currently, there are strict rules regarding the circumstances in which an award of costs can be upheld by an Inspector, usually relating to unreasonable behaviour of either party. However, costs applications can only be made if the appeal is being determined at a hearing or inquiry, and not when dealt with using the written representations method.

Third party representations

- 4.9 Under the current appeal system, any representations made on the planning application are forwarded to the Inspectorate by the LPA, and the LPA also have a duty to notify all concerned of the appeal,

giving the Inspectorate address, making them aware that they are able to engage in the appeal process, and telling them how to get more information.

Notification of outcome

- 4.10 An appeal against a planning decision currently has to be made within 6 months of the LPA planning decision date (or expiry of determination period if no decision made). The Inspectorate's decision letter is sent by post to the appellant, LPA and anyone else who has requested a copy, as well as published on their website.

5. Key Issues

Method of appeal

- 5.1 The Planning Inspectorate will now have the power to decide which method will be used to determine an appeal – written representations, informal hearing or public inquiry – on the basis of the complexity or otherwise of the case, and, it is anticipated, a set of criteria yet to be published.

Householder appeals

- 5.2 For appeals relating to householder applications, a new 'Householder Appeals Service' has been set up within the Inspectorate, which will provide a quicker service and be fully electronic, operating along similar lines to the current written representations process. This includes the following changes:-
- a) There is no longer an invitation for third party representations to be made specifically in relation to the appeal (see para 5.4).
 - b) The LPA will no longer be allowed to write a statement of case when the appeal is made, it will have to rely on the information contained on the planning file – either a delegated Officer report or a Committee report and minutes of the meeting, and also the decision notice itself, as before. This clearly has implications for Officers in terms of the way decisions are reached and recorded. Officers from appropriate teams are working together to find the best way forward on this matter. Members may note changes to the way this meeting is minuted in the future as a result of this.

Particular attention will need to be paid to the record of reasons why Members may sometimes seek to overturn Officer recommendations for approval. (Appendix 2 refers)

- c) Changes to the standard information that the LPA provides regarding the appeal process will need to be made internally, particularly in relation to making third parties aware of their potential involvement (or lack of) within any future appeal. The letter notifying of an appeal will also need to be amended in line with the new procedures, as well as the initial planning application notification letter. All these administrative tasks are being undertaken by officers in readiness for the changes in early April. This will be the case for all appeals, not just those relating to householder development.
- d) All information relating to householder appeals will need to be submitted to the Inspectorate electronically, either through their website or via email. Therefore, additional material will need to be scanned in order to be transmittable, and internal processes will need to change to accommodate this.
- e) It will become the LPA's responsibility to ensure that third parties are made aware of the outcome of the appeal, and that they capture and record the appeal decision in their planning file.

Costs applications

- 5.3 It appears that it will now be possible for appellants and LPAs to apply for costs in all cases, regardless of the method of appeal, and thus new procedures will be published regarding the criteria against which costs can be awarded, and the procedure to be followed for making applications for costs. It seems likely that the criteria for awards of costs would be similar to those currently in place, which relate to unreasonable and/or delaying behaviour by either party, failure to comply with procedural matters, incurrence of additional costs unnecessarily and other similar issues. Further information can be circulated to Members regarding these matters once they are published, if they are significantly different from the current system.

Third party representations

- 5.4 Third parties will no longer have an opportunity to make written comments direct to the Inspectorate. However the comments they made in relation to the planning application will still be forwarded to the Inspectorate by the LPA. The information provided at application stage to third parties will need to be altered to reflect this.
- 5.5 It is understood that third parties will, however, be given a right to be heard where the appeal is heard at an informal hearing or a public inquiry, whereas this is currently at the discretion of the Inspector. It is possible that procedures relating to registering to speak may be included in the new regulations.

Statements of Common Ground (SCGs)

- 5.6 The deadline for both parties to submit their SCG for a Public Inquiry has been moved earlier in the process, in order to provide more clarity and avoid wasted time and evidence, which is considered by your officers to be a sensible approach. This means that only the elements that are in dispute will be covered in proofs of evidence and at the inquiry, and those where agreement is reached need not be discussed, thus saving inquiry and preparation time.

Appeal decision notice publication

- 5.7 Appeal decision letters will no longer be posted to LPAs and appellants, but simply be published on the PINS website. This will prevent the current situation where third parties and appellants often make Officers aware of decisions by contacting the LPA about them after they are published online and prior to the receipt by the LPA of a hard copy in the post. It was not previously considered a good use of Officer time to regularly check the website for outcomes. However a new procedure will need to be put in place now to make regular checks for decisions.

6. Other Implications

Asset Management	-	Not normally applicable.
Community Safety	-	No perceived impact (it is a material planning consideration).
Human Resources	-	None perceived currently.
Social Exclusion	-	No perceived implications.

7. Lessons learnt

- 7.1 As this is a new procedure, there are no cases yet that have been processed this way, and therefore it is difficult to review any areas where improvements could be made. However, the changes to the system are in response to lessons learnt in relation to the operation of the current system, and therefore in principle to be welcomed.
- 7.2 It should be noted that the changes appear to relate to all appeals against planning applications registered on or after 6 April 2009, not all appeals received by the Inspectorate after that date, and therefore a period of 'bedding in' will occur over the next few months.

8. **Background Papers**

- 8.1 Town & Country Planning Act 1990 (as amended).
- 8.2 The Planning Act 2008.
- 8.3 Secondary legislation - when published (likely to be between report writing / publication and committee meeting).
- 8.4 Existing secondary legislation and circular (8/93) regarding appeal processes.

9. **Consultation**

There has been no consultation other than with relevant Borough Council Officers.

10. **Author of Report**

The author of this report is Ailith Rutt (Development Control Manager), who can be contacted on extension 3374 (email: ailith.rutt@redditchbc.gov.uk) for more information.

11. **Appendices**

Appendix 1 – Inspectorate letter detailing imminent changes to the system.

Appendix 2 – Annex to Inspectorate letter

There are no further appendices to this report, as the legislation and accompanying guidance have yet to be published at the time of writing.

12. **Key**

LDF	Local Development Framework
LPA	Local Planning Authority
PINS	Planning Inspectorate
SCG	Statement of Common Ground

INSPECTORATE LETTER DETAILING IMMINENT CHANGES TO THE SYSTEM

The Planning Inspectorate



*From the
Chief Executive*

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Temple Quay House	Swit chb oard	0117-372 8000
2 The Square	Fax No	0117-372 8408
Temple Quay Bristol BS1 6PN	GTN e-mail: Katrine.Sporle@pins.gsi.gov.uk http://www.planning-inspectorate.gov.uk	1371 8963

All Chief Executive Officers
Local Planning Authorities
England

Our Ref: 21cas.lpa.1
Chief Planning Officer, Chief
Development Control Officer

Date: 03rd March 2009

Dear Chief Executive Officer

APRIL 2009 – CHANGES TO THE APPEAL PROCESS

I am delighted to be able to write to you today about the suite of changes to the appeal process that we will be implementing in April 2009. The Planning Act 2008, along with new secondary legislation and general guidance, allow me to offer you a modern 21st century appeal service that is focused on the principles of proportionality, customer focus and efficiency.

The changes that we are now implementing were consulted on in 2007 by Communities and Local Government in the Planning White Paper and the associated document 'Improving the Appeal Process in the Planning System'. The Government listened carefully to the views expressed by stakeholders in response to the consultation exercise, and these views helped focus our efforts in bringing forward the policy changes we believe will have the greatest impact in terms of delivering real improvements to the appeal service.

I am pleased to announce that the following changes will come into force on 6 April:

- The Planning Inspectorate will use its new power under s.319A of the Town and Country Planning Act 1990 to determine the appeal procedure to be followed for all planning and enforcement cases.

- A new, expedited process for householder appeals which are suitable for written representations, to be known as the “Householder Appeals Service”.
- The extension of the Costs regime to planning appeals and other planning proceedings dealt with via written representations.
- Amendments to the Hearings and Inquiries Rules to remove the 9 week written comment stage. Parties will still have the opportunity at the hearing or inquiry event itself to make comments.
- Amendments to the Inquiries Rules to require the submission of Statements of Common Ground 6 weeks after the appeal’s start date, rather than 4 weeks before the inquiry event itself (as now).
- New Guidance which will explain the changes and the procedures to be followed at appeal.

I’d like to draw specific attention to the “Householder Appeals Service”. This expedited process will bring a quicker, more proportionate appeals service to householders, many of whom find the current appeal process confusing and lengthy. I am also confident that Local Authorities will soon realise the efficiency savings that will result from a simpler system.

As with many new initiatives, there are a number of initial changes that need to be introduced in order to secure the long term advantages. Local Authorities will need to make some changes to processes at both the application and appeal stage to enable the Householder Appeals Service to work. I have attached some general guidance on this at **Annex 1** and urge you to take a closer look at this and share it with staff who will be responsible for implementing these changes. When the secondary legislation enabling the new process is made (within the next two weeks), we intend to issue more detailed guidance to Local Authorities explaining exactly what needs to be done to prepare for the Householder Appeals Service. Further information will also be made available on the Planning Portal website at www.planningportal.gov.uk under “21st Century Appeals Service”.

We are also emailing a copy of this letter to your Chief Planning Officer together with a link to two PowerPoint presentations one of which outlines all the changes being made to bring in the 21st century appeals service and the other provides a further overview of the HAS. These can be found at :

http://www.planning-inspectorate.gov.uk/pins/21st_century/appeals.ppt
http://www.planning-inspectorate.gov.uk/pins/21st_century/has.ppt

You may find these useful for when you cascade the necessary training or general awareness to your planning officers, administrators, elected Members and stakeholders. A copy of this letter and Annex is therefore enclosed for you to pass on to your Chief Planning Officer and Chief Development Control Officer or manager appointed to support these planning changes.

Finally if you require any further information or assistance specifically on the Householder Appeal Service please contact Gavin Ewing on 0117 372 8397 or by

emailing gavin.ewing@pins.gsi.gov.uk. For further information on the more general changes to our appeals service please contact our Customer Services Team on 0117 372 6372 or by emailing enquiries@pins.gsi.gov.uk.

Yours sincerely

Katrine Sporle

Katrine Sporle

ANNEX TO INSPECTORATE LETTER

Householder Appeals Service

What Local Planning Authorities need to do prior to 6 April 2009 to be ready for the new Householder Appeals Service

The Householder Appeals Service is officially going LIVE on 6 April 2009. This is the day that the relevant secondary legislation will come into force, bringing legal weight to a new, expedited procedure for householder appeals which proceed on the basis of written representations (to be known as the “Householder Appeals Service”). The secondary legislation will apply to householder applications (not appeals) submitted on or after 6 April. The Householder Appeals Service will be suitable for appeals against refusals on householder applications.

There are a number of changes that local planning authorities need to implement prior to 6 April 2009 to processes at both the application and appeal stage to enable the Householder Appeals Service to work.

When the new legislation enabling the process is made (within the next two weeks) we will publish more detailed guidance on exactly what actions you need to take – so please keep a look out for this.

We have outlined below the key changes:

- **Ownership notices (for applications and appeals); Site notices/Press notices/Website/Neighbour notification letters (for applications).** The minimum requirements for the content of these notices are set out in the Town and Country Planning (General Development Procedure) Order 1995 – we are making some minor amendments to these notices. You will need to ensure that notices relating to householder applications are changed to state that any representations made at the application stage are those that will be taken forward if an appeal against refusal is subsequently made, and that there will be no further opportunity to comment. When we issue more detailed guidance, we will advise of the wording which should be used and will provide templates. These will also be made available on the Planning Portal for you to either link to from your own websites or use as the basis for your own notices.
- **Delegated reports/Decision notices.** These documents will now form the basis of your Council’s position for householder applications which are refused under delegated powers and then proceed to appeal and are dealt with via the Householder Appeals Service. It will not be possible to submit any further written statements setting out your case. You may therefore wish to take this opportunity to review the structure and content of your delegated reports and decision notices for householder applications. You should make sure that in delegated reports you carefully explain the reasons for your decision, and that in decision notices you set out your reasons for refusal

clearly and precisely, including identifying any relevant policies contained in your LDF.

- **Committee reports and minutes/Decision notices.** These documents will now form the basis of your Council's position for householder applications which are refused by a planning committee

and then proceed to appeal and are dealt with via the Householder Appeals Service. It will not be possible to submit any further written statements setting out your case. It is particularly important, therefore, in cases where an officer's recommendation to approve is overturned by a committee, that the committee minutes are sufficiently detailed to explain the reasons for this decision. You should also make sure that in decision notices the reasons for refusal are set out clearly and precisely, including identifying any relevant policies contained in your LDF.

- **Advising applicants of the right to appeal on decision notices.** For householder applications which are refused, we are reducing the appeal time limit to 12 weeks. For other applications, the time limit to appeal will remain at 6 months. You will therefore need to ensure that the time limit specified in the notification of the right to appeal is altered depending on the type of decision. The minimum requirements for the content of this notification are set out in the Town and Country Planning (General Development Procedure) Order 1995 – we are making amendments to the wording in this notification. When we issue more detailed guidance, we will advise of the wording to be used and will provide a template for this notification. This will also be made available on the Planning Portal.
- **Appeal notification letters.** For appeals progressing through the Householder Appeals Service, although third parties will not be given the opportunity to comment, you will still need to notify interested parties that an appeal has been submitted. This will need to be done within 5 working days of the appeal start date. Your letters should notify third parties that an appeal has been submitted, and state that any representations made before the planning application was determined will be forwarded by the Council to the Secretary of State for consideration at appeal. The letters should not invite parties to submit representations. The minimum requirements for the content of this notice will be set out in new Written Representations Regulations. When we issue more detailed guidance, we will provide a form of suggested words in a template. This will be made available on the Planning Portal.
- **Provision of case file in electronic format.** For the Householder Appeals Service, councils will be expected to provide their completed questionnaire and a copy of each of the documents referred to in it to the Planning Inspectorate in electronic format. Please contact us as soon as possible if you cannot arrange for files to be sent electronically by April. Councils are encouraged to send us a sample of an electronic file ("test file"), before the new service is introduced. Please send all test files to gavin.ewing@pins.gsi.gov.uk

- **Appeal decisions.** The Planning Inspectorate will publish the Inspector's decision promptly on the Planning Portal. You are expected to provide any third parties who have requested a copy of the appeal decision when it is issued, or alternatively to direct them to where they can find an electronic copy of the decision on the Planning Portal, or your website.