



Department for
Communities and
Local Government

Response form

Technical review of planning appeals procedures - Consultation

We are seeking your views to the following questions on the proposals to make the planning appeals process faster and more transparent, improve consistency and increase certainty of decision timescales.

How to respond:

The closing date for responses is 13 December 2012.

Responses should be sent preferably by email to:

AppealsReview@communities.gsi.gov.uk

Written responses to:

Maria Darby
Appeals Review – Consultation
Planning Development Management
Department for Communities and Local Government
Zone 1/J3 Eland House
Bressenden Place
London SW1E 5DU

About you

i) Your details:

| | |
|---------------------------------------|--|
| Name: | Ellie Smith BSc (Hons) MSc MRTPI |
| Position: | Associate Planner |
| Name of organisation (if applicable): | Planning Issues Ltd on behalf of Churchill Retirement Living |
| Address: | Millstream House, Parkside, Ringwood, Hampshire, BH24 3SG |
| Email: | ellie.smith@planningissues.co.uk |
| Telephone number: | 01425 462144 |

ii) Are the views expressed on this consultation an official response from the organisation you represent or your own personal views?

- Organisational response
- Personal views

iii) Please tick the box which best describes you or your organisation:

- District Council
- Metropolitan district council
- London borough council
- Unitary authority/county council/county borough council
- Parish council
- Community council
- Non-Departmental Public Body (NDPB)
- Planner
- Professional trade association
- Land owner
- Private developer/house builder

- Developer association
- Residents association
- Voluntary sector/charity
- Other

| | |
|-------------------|--|
| (please comment): | |
|-------------------|--|

**iv) What is your main area of expertise or interest in this work
(please tick one box)?**

- Chief Executive
- Planner
- Developer
- Surveyor
- Member of professional or trade association
- Councillor
- Planning policy/implementation
- Environmental protection
- Other

| | |
|-------------------|--|
| (please comment): | |
|-------------------|--|

Would you be happy for us to contact you again in relation to this questionnaire?

Yes No

Questions

Please refer to the relevant parts of the consultation document for narrative relating to each question.

Q1: Do you agree with the proposed changes to the appeal procedure?

Yes No

Comments

It is not appropriate for the full statement to be provided by the appellant at the time of appeal submission when the decision over the type of procedure has not been made. This would potentially prejudice the appellant's case and allow LPA's to benefit from additional time to review statements and tailor responses in a format appropriate to the then determined type of procedure. This process would undoubtedly lead to the submission of additional information or rebuttal statements following the LPA exchange of evidence.

What would be more appropriate would be for a Rule 6 Statement of Case to be submitted at the time of appeal submission and then set a strict 3/4 week timetable for submission of the appeal statement. This could work well for both Hearings and Inquiries with the later timeframe being double that allowed for the preparation of the Hearing Statement. This would allow cases going to Inquiry to benefit from advice from Counsel were appropriate.

Furthermore, it is not always possible to liaise with an LPA following the issuing of a refusal notice as they can often be reluctant to engage with the appellant/applicant until the appeal procedure or application process is commenced. Therefore, it is inappropriate to suggest that the appeal procedure should be amended to require full statements for hearings at the time of appeal submission. As mentioned above, it is considered that in this instance the submission of a Rule 6 Statement of Case would be more appropriate for the purposes of setting out the key issues between the parties and making the process more transparent.

Q2: Do you agree with the proposed approach to agreeing a Statement of Common Ground up front, and that a Statement should be required for hearings?

Yes No

Comments

In principle, we would agree with this approach as it helps to narrow the issues between the parties and allows the Inspector time to explore these areas further without constraint. We regularly employ this method for both Hearings and Inquiries, although it is not always possible to get an LPA to engage on the preparation of the document until a few short weeks before the date of the Hearing/Inquiry.

In this regard, setting a time limit of 5 weeks following the date of the appeal submission for the Council to respond seems quite lenient, especially in light of

the fact that it is not uncommon for at least 6 versions of a SOCG document to be exchanged before the final version is agreed. This would not allow sufficient time for the document to be agreed and submitted to PINS prior to the opening of a Hearing or Inquiry. Furthermore, to allow sufficient time for the Inspector to review this document ahead of the Hearing or Inquiry, a time limit to restrict when the document needs to be agreed by should be set and we would recommend a time period of no less than 1 week before the appeal is opened.

Notwithstanding the above, it is not always possible to engage a Council in negotiations either before or during the appeal process with regards to agreeing a Statement of Common Ground. With this in mind, the Duty to Cooperate Provision 110 of the Localism Act 2011 should be extended to require Local Planning Authorities to engage with appellants/applicants in a constructive manner and an on-going basis. There are occasions when LPAs refuse to engage and in these circumstances it is felt that an appellant/applicant could be penalised during the appeal process for not being able to agree an SOCG. Moreover this duty to cooperate could also have significant benefits in enabling negotiation which may result in the reduction of the number of appeals submitted.

Q3: Do you agree with the proposed approach to shortening the time before the appeal event?

Yes No

Comments

In principle, we would agree with the proposals for shortening the time period before the appeal event. This will help to eliminate unnecessary delays at the start of the process as it is considered that appeal Hearing or Inquiry statements could be produced within weeks 3/4 respectively. Submission timescales for the two separate procedures will need to reflect the differences between the two procedures.

In terms of the proposed amendments to the costs procedures to allow an Inspector to initiate the process, we would be generally in favour of the proposal and would suggest that this should be extended to include third party submissions which were sent late or extended beyond their estimate without adequate reasons.

Q4: Do you agree with proposals for the development of a Commercial Appeals Service?

Yes No

Comments

In principle, we would agree with the creation of a Commercial Appeals Service. However, it appears that this will allow the small scale appeals normally dealt with by way of written representations (Adverts, Changes to shopfronts, change of use, etc) to be dealt with by a specialist team within PINS much the same as the current Householder Appeal Service. The creation of this service is anticipated to speed up the process for small businesses to receive decisions on these types of appeals.

However, this service does not extend to include the provision of a dedicated service for developer appeals – in terms of Major Major strategic housing applications. If this were to be streamlined and taken out of the mainstream appeals process, this would have a greater impact on the speed of delivery for decisions and therefore negate the need for these relatively minor small scale appeals to be dealt with under a separate service.

Furthermore, there is little clarification for whether or not the suggested entitlement for appellants to be able to appeal a non-determined application after 12 weeks extends only to these small scale types of applications or is open across the board. In this respect, it may not be appropriate to only allow this procedure as part of a standard written representations appeal.

Q5: What type of less complex non-householder written representations appeals would benefit from inclusion in a commercial appeals service?

- Advertisement consent Change of shop front
- Change of use Minor development less than 1000m2
- Other (please note below)

Comments

Certificate of Lawful Use for Proposed and Existing development
Erection of Site Compound hoardings
Erection of Porta Cabins/temporary building accommodation
Enforcement
Telecommunication Part 24 appeals

Q6: Do you agree with the proposed approach to align other appeal processes?

Yes No

Comments

In principle, we would agree with this approach to align the Section 78 and Enforcement appeal proceedings. This will simplify the appeals process overall and make the process clearer to understand for non-professionals.

Q7: Do you have a view on whether proposals A-C should be applied more

broadly to other types of appeals, in particular enforcement, and whether the further comments stage at week 9 should be removed from Enforcement hearings and inquiries?

Yes No

Comments

In principle, we are in favour of the approach to simplify the current appeal processes and guidance subject to the aforementioned comments.

Q8: Do you agree with the proposed approach to reviewing and simplifying guidance?

Yes No

Comments

In principle, we are in favour of the approach to simplify the current appeal processes and guidance subject to the aforementioned comments.

Q9: Do you agree with the proposed revisions to the determination criteria?

Yes No

Comments

In principle, we are in favour of the approach to simplify the current appeal processes and guidance subject to the aforementioned comments.

Q10: Do you agree with the proposal to extend the offer of a bespoke procedure to inquiries lasting 3 or more days?

Yes No

Comments

In principle, we are in favour of the approach to simplify the current appeal processes and would suggest that a procedure similar to that adopted for EiP DPD Inquiries is adopted with a pre-Inquiry meeting to set the agenda and timeframe for the Inquiry. This will help to ensure that expert witnesses are only required for set days, which will help to reduce costs overall as well as ensure that the procedure is more transparent for third parties and members of the public to follow.

Q11: Do you have any other proposals to further improve the appeals system?

Yes No

Comments

Please refer to the aforementioned comments which we would be happy to expand upon should it be required.

Impact Assessment

The consultation includes a draft impact assessment of the proposals. Do you have any comments or additional evidence on the costs and benefits of the proposals?

A: Securing earlier submission and notification of appeal statements

B: Agreeing 'Common Ground' upfront

C: Starting hearings and inquiries sooner

D: Introducing an expedited 'Commercial Appeals Service'

Full package of proposals A-D for making the appeal process faster and more transparent

E: Aligning other planning-related appeal processes

F: Issuing one guide to planning appeal procedures

Full package of proposals E-F for improving the certainty and consistency of the process

Combined approach – total package of proposals A-F

Yes No

Comments

Further to the aforementioned comments, whilst a simplified appeals process and procedural guidance is welcomed, it is unlikely to reduce the overall cost of the process. The most pertinent issue for appellants is ensuring that the proposed revisions can be delivered and in this respect the Duty to Cooperate Provision 110 of the Localism Act 2011 should be extended to require Local Planning Authorities to engage with appellants/applicants in a constructive manner and an on-going basis. As mentioned above, there are occasions when LPAs refuse to engage and in these circumstances it is felt that an appellant/applicant could be penalised during the appeal process for not being able to agree key issues or common ground. Moreover this duty to cooperate could also have significant benefits in enabling negotiation which may result in the reduction of the number of appeals submitted.

Thank you for your comments.