

## Changes to Planning Appeals

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### Background

1. As part of the overall package of proposals in the White Paper the Government is also putting forward a package of suggestions to improve the system of planning appeals. In its aims the consultation states:

“Given the forecast in appeal numbers and what this could subsequently mean for taxpayer costs, changes need to be made to the current system to make it respond more robustly to external influences and to enable it to provide better value for money. We also want an appeals system that operates on a collaborative relationship based on trust, with good communication and regular exchange of information between appellants, local planning authorities and the Planning Inspectorate and where responsibility is devolved to the principal parties where appropriate.”

2. The Government is setting some challenging targets for the Planning Inspectorate, thus:
  - 50% of all written representations cases to be determined within 16 weeks
  - 50% of all hearings to be determined within 30 weeks
  - 50% of all inquiries to be determined within 30 weeks
3. In 2005-06 the Planning Inspectorate dealt with over 22,000 planning appeals in England, and this figure is expected to grow year on year. The system is essentially the same for all development types, whether the proposal is a house extension or some major infrastructure. The Government is keen to introduce a sense of “proportionality” into the way appeals are determined.

*Fast Track Appeals for Householder Applications and Applications for works to trees.*

4. The first proposal is to introduce a “fast track” approach to householder and tree preservation order appeals. This is primarily because these appeals rarely raise issues of policy and yet they account for around 28% of all appeals. At present these appeals, like all others, must be made within 6 months of the local planning authority’s decision. It is proposed to reduce this period to eight weeks. Furthermore there would be limited powers for applicants and the local planning authority to raise new issues in any representations. In essence the Inspector would be expected to determine the appeal on the basis of the same information which was presented to the local planning authority. In this way it is hoped to avoid lengthy exchanges of further information and copying sets of representations which are typically repetitive. Similar measures would be introduced in respect of tree preservation order appeals.

*Member Review Bodies*

5. The Government is also interested in comments on the concept of delegating some appeals back to local planning authorities in the form of Member Review Bodies which would be used to determine appeals where the original case was determined by officers under delegated powers. If an applicant chose to appeal to

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a Member Review Body then they would lose the right of appeal to the Planning Inspectorate. This proposal would require new Primary Legislation.

### *Determining the Appeal method.*

6. The appeal system when first set up in the 1940s gave the applicant the right to be heard at an Inquiry, and the appeal system has, for the most part, kept to this "Right". The Inspectorate will increasingly try to dissuade appellants from demanding a public inquiry in all but the most complicated cases. However, it remains true that where an appellant opts for the Written Representations method he/she is actually giving up the right to be heard by an Inspector in person. It is proposed to change this system for once and for all to give the Inspectorate the power to determine the method of appeal. There will be considerable savings to the Inspectorate and to local planning authorities alike in reducing the number of appeals dealt with by public inquiry.

### *Other Procedural Changes*

7. There are a variety of other minor changes to the system proposed concerning timetables for submission of evidence, the ability to correct minor factual errors in decision letters, and even a proposed system of a fixed award of costs where it can be shown that one of the parties to an appeal has deliberately ignored procedural rules. There are also proposed changes to the time limits for submitting enforcement appeals to prevent such cases being drawn out unnecessarily.
8. The list of consultation questions is set out below with the suggested response.

<b>Question 1</b>	<b>Do you agree with the proposal to fast track householder and tree preservation order appeals?</b>
Suggested response	Yes. It will, however, require good publicity to make sure that would-be appellants are fully aware of the reduced time to lodge appeals.
<b>Question 2</b>	<b>Do you agree with the proposal to require local authorities to establish Local member Review Bodies for the determination of minor appeals?</b>
Suggested response	This proposal has the fundamental problem that it means that the local planning authority would be determining both the application and the appeal against it. Delegated decisions are taken on behalf of the local planning authority on the basis of its own policies anyway. Consequently an appeal to another body within the same organisation would take away the chance for an appellant to seek external scrutiny of how the local policies are being applied. This proposal is, therefore, not supported.
<b>Question 3</b>	<b>Do you agree with allowing the Planning Inspectorate, on behalf of the Secretary of State, to determine the appeal method for each case by applying Ministerially approved and published indicative criteria?</b>
Suggested response	Yes. In most cases the method of appeal determination does not significantly affect the outcome. It could also avoid, for example, the problem of appellants in enforcement cases electing the public inquiry method in order to extend the time taken to conclude the

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	process.
<b>Question 4</b>	<b>Do you agree with the package of proposals to improve customer focus and efficiency of the appeal?</b>
Suggested response	Yes. These changes are largely focussed on expediting the process and avoiding appellants producing “surprises” including significant changes to their proposals during the appeal process.
<b>Question 5</b>	<b>Do you agree with the changes proposed for the award of costs?</b>
Suggested response	The changes largely comprise of setting out better guidance, especially for appellants, so that they are better aware of how the cost regime works. The proposals may include fixed penalties for, for example, missing key deadlines for the submission of supporting evidence. The Government is also considering extending the ability to claim costs to written representations appeals. (By way of background in the last two years the Council has not had any awards of costs against it but has successfully claimed costs in two cases.) Overall the proposed changes would appear to be sensible adjustments to the current regime. Much depends on the detail of the suggested new advice.
<b>Question 6</b>	<b>Do you agree that the time limit for appealing against a planning decision should be reduced where there is an enforcement notice relating to the same development so that, in the event that both are appealed, to allow the appeals to be linked?</b>
Suggested response	Yes. This would address the problem whereby, in response to the service of an enforcement notice, the developer makes a planning application in order to lengthen the process. In such cases by limiting the period for appeal against a “parallel” planning application the whole process can be expedited and one appeal deal with both the enforcement notice and the planning application.
<b>Question 7</b>	<b>Do you agree with the changes proposed for enforcement and lawful development certificate appeals?</b>
Suggested response	Yes – the proposed changes are largely concerned with bringing the procedural arrangements for these appeals into line with equivalent planning appeals. Enforcement appeals attract a double fee – with the standard fee for an equivalent planning application being paid to both the Inspectorate and to the local planning authority. The Government is proposing that the double fee is paid in its entirety to the local planning authority. This also would be welcome and would parallel the concept of a double fee for post-facto applications if that idea were to be accepted.