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New Appeal Guidance Issued by the Planning Inspectorate (PINS 01/2009)

Significant changes to the appeal system have been brought in by the Planning Inspectorate due to the new requirements introduced by the 2008 Planning Act. This took effect on 6 April 2009.

These changes primarily affect householder applications with a new expedited appeal service to simplify the appeal system and to speed up decisions. There are, however, significant other changes to the appeal procedure. We summarise the most important changes below.

Time Limit to Appeal

For **householders applications** the time limit to appeal is **12 weeks** from the date of notice of the decision or determination giving rise to the appeal.

In all other cases the time limit is 6 months.

Suggesting Hearing or Inquiry Dates

Where 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 the appeal and the proposed dates should be within the published timescale for hearing and Inquiries available on the PINS website.

These dates should be included with the appeal form including expected number of witnesses, topics to be covered and time estimates for the Inquiry.

Amendments to Schemes

If amendments to schemes are proposed at the appeal stage these will be considered on their own merits and the Planning Inspectorate will apply the principle of the Wheatcroft judgement (i.e. **no party should be prejudiced**).

The Planning Inspectorate encourage constructive dialogue throughout the planning process and

where possible to do so, amendments which seek to overcome objections to a scheme should be made at the application stage prior to the LPA's decision. This should minimise the need to make amendments at the appeal stage.

New Material

Although the Inspector can take into account new material at the appeal stage this is being discouraged unless it is to address some new policy that emerges. Greater working together during the application process should ensure that the evidence relied on by the main parties during the consideration of the application should form the basis for the appeal.

Postponement, Adjournment, Abeyance and Linked Cases

These are all to be discouraged. Appeals will only be put into abeyance for exceptional reasons and the Planning Inspectorate is likely to decline to link appeals unless made at the same time. This is to discourage the making of appeals prematurely which are later withdrawn.

Conditions and Planning Obligations

Conditions should be included with the appeal documentation details. Planning obligations should be submitted at the latest 10 days before the commencement of the hearing or Inquiry or 9 weeks after the start date of a written representations appeal.

Determining the Appeal Procedure

The **Secretary of State has the power to determine the procedure** for dealing with appeals and applications. However, appellants and LPA's will be invited to identify which appeal procedure they consider to be the most appropriate. The type of procedure is selected through the application of criteria. The type of procedure is determined within 7 days of the receipt of a valid appeal but will be reviewed following the LA's questionnaire. This can be raised at any point before a decision is made.

Late Representations and Evidence

These will not be accepted other than in exceptional circumstances.

New Householder Appeals Service

A **new expedited appeals service** has been introduced for householder appeals.

This is intended to be operated by PINS on an electronic service and uses only the material which was before the LPA when making its decision and which is included in its questionnaire and the “full grounds” set out by the appellant on the appeal form. These are to be dealt with by written representations only and there will be no further opportunity for anyone to submit representations unless requested by the Inspector.

Costs Awards can be awarded if any party has behaved unreasonably.

These appeals **must be submitted within 12 weeks of the decision** of the LPA using a Householder Planning Appeal form where the appellant indicates the preferred procedure for dealing with the case. The Appellant submits the planning application form and decision notice but does not need to submit the plans or any other material as this will be supported by the LPA. **Full grounds of appeal should be included with the appeal submission. There is no opportunity for the Applicants or the local planning authority to send a detailed statement at the six week stage.**

The LPA have **only 5 working days** from the start date to send in a **completed Householder Appeal Service Questionnaire plus copies of all documents, reports and minutes of Committee meetings.** This should include all of the material contained on the case file when the application was determined, copies all policies quoted in the reasons for refusal, all representations received and any conditions that the LPA would like considered.

The LPA will not be able to submit any further material after the questionnaire stage but will be expected to identify within their questionnaire any factual errors in the appellant's grounds of appeal and any new material or changes made which were not before it at the time of the decision. Furthermore, the LPA should alert PINS of any material change in circumstances e.g. new national, regional or local policy.

Interested parties must also be notified of the appeal within 5 working days of the start date. However, there will be **no opportunity for them to make further representations** although they can withdraw their earlier comments.

The Inspector's site visit will take place unaccompanied unless the Inspector needs to gain access to view the site.

Unlike the time limits imposed on the Appellant and LPA there is unsurprisingly **no time limit set out for the Planning Inspectorate** to make their decision.

Written Representations Appeal Procedure

There have been no changes made to the written representations appeal procedure.

Hearings Procedure

The guidance advises that **hearing statements should not exceed 3000 words** and should include a summary of no more than 500 words.

Inquiries Procedure

For appeals expected to last 8 days or more the Planning Inspectorate may agree a bespoke timetable with the main parties for the submission of evidence.

In other cases the amended timetable is as follows:

The **Statement of Common Ground is now to be submitted within 6 weeks** of the start date. If there is a delay to this any party found to be responsible for the delay will be at risk of an Award of Costs.

Proofs of Evidence should be concise and ideally contain facts and expert opinion deriving from witnesses' own professional or local knowledge. They should not include matters which are not in dispute and should focus on the issues of dispute remaining following the Statement of Common Ground. **Proofs of Evidence should be no longer than 3000 words.** Summaries should be provided when a proof exceeds 1500 words.

Award of Costs

The Secretary of State is now able to issue an Award of Costs in all cases including appeals by written representations.

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