



Transfer of Planning Appeals to Inspectors

Government response to consultation replies



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Section 1

Introduction

- 1.1 In August 2007, the Government published a consultation paper on its proposals to transfer further categories of planning appeals for determination by a person appointed by the Secretary of State for the purposes (normally a Planning Inspector) instead of by the Secretary of State in person. This included a Partial Impact Assessment.
- 1.2 The consultation paper was placed on the Communities and Local Government website, and was drawn to the attention of a wide range of bodies by means of e-mail/letter. The consultation exercise ran for 12 weeks from 13 August 2007 until 5 November 2007. Thirty-four formal responses were received. These included one from a Welsh local authority, one late response and two separate responses from one local authority which have been treated here as one response. All the responses are considered in Section 5 below, with a list of respondents annexed to this report.

Copies of the individual formal responses to the consultation have been placed in the Communities and Local Government library at Ashdown House, 123 Victoria Street, London, SW1E 6DE and will be available for viewing for a period of six months from the date of this publication. If you wish to make an appointment to inspect please telephone 020 7944 3039.

Section 2

Consultation questions

2.1 Consultees were asked to consider the following questions:

1. Do you agree that decisions on appeals relating to Buildings in Receipt of Grant Aid under section 3A or 4 of the Historic Buildings and Ancient Monuments Act 1953 should be transferable to Inspectors?
2. Do you agree that decisions on enforcement appeals accompanied by environmental statements should be transferable to Inspectors?
3. Do you agree that decisions on planning and enforcement appeals involving statutory undertakers' operational land should be transferable to Inspectors except where either or both of the relevant Secretaries of State indicate to the contrary?
4. Do you agree that decisions on appeals relating to old mining and mineral permissions should be transferable to Inspectors?
5. Do you agree that decisions on appeals against refusal of hazardous substances consent should be transferable to Inspectors?
6. Do you agree that decisions on tree preservation order appeals (including appeals under section 208 of the Town and Country Planning Act 1990 against notices to replace trees) should be transferable to Inspectors?
7. Do you have any evidence to suggest that the proposed changes would have any specific impacts on particular sectors of society?

Section 3

Respondents to consultation

- 3.1 The majority of responses were from stakeholder groups with a wide interest in the application of the planning system, though there were also responses from individuals with a professional interest in the administration of planning appeals in relation to their particular fields of expertise.
- 3.2 The responses to the consultation can be broken down as follows:
- 47% – National representative body or organisation
 - 26% – Local authority
 - 12% – Public or private company
 - 12% – Individual
 - 3% – Local organisation
- 3.3 Of the 34 responses received, 18 (53%) gave views on all seven questions included in the consultation document. All 18 of these were either fully or broadly supportive of the proposals, mainly on the basis of the positive effect of reducing the time taken to decide planning appeals in the context of the wider approach to speeding up the planning system. A common view was that Inspectors with appropriate skills and experience should determine appeals relating to their particular field of expertise.
- 3.4 Reflecting the specialist nature of much of the subject matter dealt with in this consultation, nine respondents (26%) gave comments on one question only, whilst a further three respondents (9%) commented only on two of the seven consultation questions. One respondent simply indicated that their organisation had no comments.
- 3.5 Of the nine respondents who expressed a view on only one issue, eight responded to Question 6 (decisions on tree preservation order appeals) and one responded to Question 1 (buildings in receipt of grant aid under section 3A or 4 of the Historic Buildings and Ancient Monuments Act 1953). Of the three respondents who expressed a view on only two issues, one responded to questions 2 and 3, one responded to questions 3 and 6, and one responded to questions 5 and 7.

- 3.6 One respondent objected to the statement in the Consultation Paper that it was not intended to make provision for the transfer of appeals under section 106B of the Town and Country Planning Act 1990 to Inspectors. However, as such transfers were, in fact, transferred in the Town and Country Planning (Modification and Discharge of Planning Obligations) Regulations 1992 (SI 1992 No.2832), there is no need for further action on this comment.

Section 4

Next steps

- 4.1 In accordance with the commitment in the Planning White Paper to streamline the planning process, we intend to introduce the necessary primary legislation and amend the relevant Regulations to implement the changes put forward in the Consultation Paper at the earliest opportunity. Careful consideration has been given to all the responses received but, for the reasons set out in section 5 below, we do not consider that the consultation exercise demonstrated the need for any radical changes from the proposals set out in the Consultation Paper.

Section 5

The Government's responses to the replies received

5.1 **Do you agree that decisions on appeals relating to Buildings in Receipt of Grant Aid under section 3A or 4 of the Historic Buildings and Ancient Monuments Act 1953 should be transferable to Inspectors?**

Over two thirds of respondents to the consultation did not express a view either way and, of those who did respond, no-one objected to the proposal. One respondent stressed the importance of using Inspectors with appropriate skills to handle these appeals, and another requested clarification as to whether there would be special weight given to the fact that such buildings were receiving grant aid in determining the relevant appeals. It is already normal practice for this category of appeals to be handled by specialist Inspectors, but a blanket assurance that special weight would be given to the receipt of grant aid would not be appropriate as each case has to be considered on its own merits.

5.2 **Do you agree that decisions on enforcement appeals accompanied by environmental statements should be transferable to Inspectors?**

All those who responded to this question said that they were in favour of transferring such appeals.

5.3 **Do you agree that decisions on planning and enforcement appeals involving statutory undertakers' operational land should be transferable to Inspectors except where either or both of the relevant Secretaries of State indicate to the contrary?**

Respondents who expressed a view on this issue were supportive of the proposals and stressed that the current arrangements, with all appeals involving statutory undertakers' operational land requiring the joint decision of more than one Secretary of State, often led to extensive delays. One respondent suggested that only major utility development of regional or national significance should remain for determination by the Secretaries of State, and two respondents stressed that it would be important for there to be clear criteria for determining which appeals would be transferred. In practice, it is likely that future major utility developments of national significance will be transferred to the Infrastructure Planning Commission for consideration and, of the remaining cases, it will be for the relevant Secretaries of State to decide on the individual merits of each one whether it should be transferred to an Inspector.

5.4 Do you agree that decisions on appeals relating to old mining and mineral permissions should be transferable to Inspectors?

All those who responded to this question were in favour of transferring such appeals. One respondent suggested that a team of specialist mineral Inspectors should be established to determine appeals relating to minerals permissions. This is in line with current practice.

5.5 Do you agree that decisions on appeals against refusal of hazardous substances consent should be transferable to Inspectors?

No one objected to the principle of this proposal, subject to cases not being transferred if they related to applications for major infrastructure projects or were potentially in conflict with significant areas of Government policy, and so long as Inspectors were prepared to take account of specialist advice. This reflects the Government's intentions.

One respondent also commented that the proposals in the consultation paper did not appear to cover cases where the appeal is against the conditions applied as part of the consent or against deemed refusal where there has been a delay in granting consent. However, the intention is that the proposed regulations should facilitate (where appropriate) the transfer of all the categories of appeals listed in section 21 of the Hazardous Substances Act 1990.

5.6 Do you agree that decisions on tree preservation order appeals (including appeals under section 208 of the Town and Country Planning Act 1990 against notices to replace trees) should be transferable to Inspectors?

A high proportion of respondents commented on this proposal. No one expressed outright opposition to it, but a number were concerned that the Inspectors determining such cases should have a suitable level of arboricultural expertise. The consultation paper subsequently published by the Government on 27 November 2007¹ has clarified that, where appropriate, this would be the case.

5.7 Do you have any evidence to suggest that the proposed changes would have any specific impacts on particular sectors of society?

Those respondents who commented on this question expressed the view that the proposed changes to appeals as set out in questions 1-6 above would have an impact on those within each of the respective specialist fields affected. However, nobody offered any evidence or views that any particular sectors of society to which such specialist cases might apply could be particularly adversely affected.

¹ *Tree Preservation Orders: Improving Procedures – Consultation Paper*, available at: www.communities.gov.uk/publications/planningandbuilding/tposconsultation

Annex:

List of Respondents

| | |
|---|---|
| Ancient Tree Forum & Woodland Trust | – James Cooper |
| Arboricultural Association | – Guy Watson |
| Association of London Borough Planning Officers | – Michael Kiely |
| Aylesbury Vale District Council | – Jim Cannell |
| Brethren’s Gospel Trust | – John Shephard |
| British Property Federation | – Jonathan Seager |
| British Waterways | – Tom Deards |
| Campaign to Protect Rural England | – Paul Miner |
| Cornwall County Council | – Neale Hall |
| Council for National Parks | – Ruth Chambers |
| Doncaster MBC | – Jonathan Tesh |
| English Heritage | – Charles Wagner |
| Federation of Master Builders | – Peter O’Connell |
| Health and Safety Executive | – Pauline Nash |
| Hertfordshire Association of Parish & Town Councils | – |
| Institute of Historic Building Conservation | – James Caird |
| Landscape Planning Group Ltd | – Dealga O’Callaghan |
| Leicestershire County Council | – Kirsten Hannaford-Hill and Georg Urban |
| London Borough of Hammersmith & Fulham | – Matt Butler |
| London Borough of Hillingdon | Sue Barnard |
| Monmouthshire County Council | – George Weston |
| National Grid | – Hector Pearson |
| Natural England | – James Marsden |
| Northampton Borough Council | – John Edwards |
| Office of Rail Regulation | – Les Waters |
| Planning Officers Society | – Phil Kirby |

Regional Airports Ltd

Royal Institute of British Architects

Thames Water Property Services

Westminster City Council

Worcester City Council

– Paul Le Blond

– Steven Harding

– Mark Mathews

– Rosemary MacQueen

– Paul O’Connor

Ann Currell

Peter Holloway

Mark Hudson