



# *Improving the Appeal Process in the Planning System –*

*Making it proportionate, customer focused,  
efficient and well resourced*

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Consultation



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efficient and well resourced*

Consultation

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# SUMMARY

The right of appeal is a key element of a democratically accountable planning system. The Planning Inspectorate is the agency responsible for administering the appeals system on behalf of the Secretary of State for Communities and Local Government<sup>1</sup>. The appeals system is widely recognised for delivering a high quality service, however its efficiency and effectiveness is suffering from the large volume of appeals being received. In England, the number of planning appeals has risen sharply from around 14,000 in 1997-98 to over 22,000 in 2005-06 and is forecast to rise to around 25,000 appeals per year by 2010.

The existing system is not equipped to efficiently handle such large appeal numbers, leading to delays in decision making. Some of the existing appeal processes are disproportionately complex for the type of appeals, while some administrative processes are not as efficient as they could be. This consultation paper proposes some fundamental changes to how the appeal system operates as well as some changes to existing procedures, aiming to deliver an appeals system that:

- is more proportionate to the type and complexity of each appeal;
- has improved customer service and efficiency at its core; and
- is better resourced.

Chapter One sets out proposals to ensure a more proportionate response to deal with the large and increasing volume of appeals in a timely manner. We propose to introduce a fast track approach to dealing with householder appeals which proceed via the written representations method. We are also considering allowing minor appeals in each local authority area to be determined by a board of Councillors, to be known as Local Member Review Bodies. In addition, to ensure that the procedure used to determine an appeal is best matched to the complexity of the subject matter, we propose to enable the Planning Inspectorate, acting on behalf of the Secretary of State, to apply Ministerially approved, published criteria to determine the most appropriate appeal method (written representations, hearing or inquiry).

Chapter Two consults on changes to existing procedures to address identified areas of concern so as to increase efficiency and improve customer focus.

Chapter Three sets out proposals to introduce an appeal fee. Under the existing system, no fees are charged for making planning appeals – they rely entirely on public funds. With the cost of running planning appeals now in the region of £30.1 million per annum, they represent a substantial cost to the tax payer. Therefore we are considering whether the introduction of fees would be a viable way of contributing funding to the system so as to have less burden on public funds whilst also being sustainable and fair.

We believe that, if the measures relating to the Planning Inspectorate's work set out in this consultation document are implemented, they will be able to achieve tougher performance targets for the time taken to determine appeals. These targets are set out in the Introduction.

<sup>1</sup> The Planning Inspectorate also administers the appeals system in Wales on behalf of the National Assembly for Wales. However, the appeals proposals contained herein relate to England only.

# INTRODUCTION

## Background

1. The appeal process is an integral component of the planning system. It plays a significant role in ensuring that the Government's objectives to deliver places where people want to live are met in a sustainable way, together with addressing the challenges of globalisation and climate change. As Kate Barker recognised in her Review of Land Use Planning, the current appeals system in England is widely acknowledged to deliver a high quality service. Surveys consistently show that the majority of appellants are satisfied with the way their appeal is handled, and this is further evidenced by the small number of High Court challenges that successfully overturn inspectors' decisions.
2. However, the delivery of a well-functioning appeals system is being affected by the sheer volume of planning appeals being received. In England, numbers have risen sharply from around 14,000 planning appeals in 1997-98 to over 22,000 in 2005-06 and are forecast to rise to around 25,000 planning appeals per year by 2010. The existing appeals system is not equipped to handle efficiently such large appeal numbers and the delays in decision making are symptomatic of this. Some of the existing appeal processes are disproportionately complex for the type of appeals while some administrative processes are not as efficient as they could be.
3. The Planning Inspectorate administers the appeals system and is a publicly funded executive agency of the Department for Communities and Local Government<sup>2</sup>. Its role is to decide a wide range of appeals and other casework under planning, housing, environmental and allied legislation on behalf of the Secretary of State. The Planning Inspectorate has and will continue to make considerable efforts to deliver high quality and timely decisions in a transparent and efficient manner. But there is a limit to what can be achieved by internal process improvements alone, if the appeals system is to respond to the challenges it faces.

## Aims

4. Given the forecast increase in appeal numbers and subsequently what this could mean for tax payer 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 authorities and the Planning Inspectorate and where responsibility is devolved to the principal parties where appropriate.
5. This consultation paper identifies proposals that we consider will, as a package, improve the functioning of the appeals system without compromising on quality. We want to introduce measures to ensure a more proportionate response to deal with the large and increasing volume of appeals in a timely manner. The proposed measures will better equip the appeals system to make determinations more efficiently, while still allowing public involvement and quality outcomes.

<sup>2</sup> The Planning Inspectorate also administers the appeals system in Wales on behalf of the National Assembly for Wales. However, the appeals proposals contained herein relate to England only.

These measures will make the system better value for money for the tax payer and increase certainty in the system for all. They will maintain the openness, fairness and impartiality of the appeals system.

## Targets

6. The key Planning Inspectorate appeal targets for 2006-07 were that by the end of the year:
  - 50% of all written representation 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.
7. The Planning Inspectorate is already working towards achieving a target of determining 80% of all written representation cases within 16 weeks by the end of 2007-08.
8. If the measures relating to the Planning Inspectorate's work set out in this consultation paper are introduced, we are confident that they will be able to achieve tougher performance targets for the time taken to determine appeals. We envisage that by the end of 2008-09:
  - 80% of fast tracked householder appeals (dealt with by written representations) will be determined within eight weeks and all other written representations appeals to be determined within 13 weeks;
  - 80% of all hearings will be determined within 16 weeks;
  - 80% of inquiries will be determined within 22 weeks (although some inquiries would be subject to bespoke timetabling agreed between the main parties and the Planning Inspectorate);
  - The Planning Inspectorate will aim to ensure that all appeals are determined within six months.
9. This consultation paper applies in England only. Responsibility for planning and its appeals system is devolved in Scotland, Wales and Northern Ireland.

## INVITATION TO COMMENT

If responding, please make clear to which element of the consultation paper each comment relates. Ideally, comments should be supported with evidence or data, though even ‘anecdotal’ evidence can serve to illustrate a wider point or identify a risk.

We would be particularly interested in your views on the following:

- Q1:** Do you agree with the proposal to fast track householder and tree preservation order appeals?
- Q2:** Do you agree with the proposal to require local authorities to establish Local Member Review Bodies for the determination of minor appeals?
- Q3:** 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?
- Q4:** Do you agree with the package of proposals detailed in Chapter Two to improve the customer focus and efficiency of the appeals process?
- Q5:** Do you agree with the changes proposed for the award of costs?
- Q6:** 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 both are appealed, to allow the appeals to be linked?
- Q7:** Do you agree with the changes proposed for enforcement and lawful development certificate appeals?
- Q8:** Do you agree with the proposal to charge a fee for appeals?
- Q9:** What are the likely effects of any of the changes on you, or the group or business or local authority you represent? Do you think there will be unintended consequences?
- Q10:** Do you have any comment on the outcomes predicted in the partial RIAs (attached at Annex C), in particular the costs and benefits?

We would like your feedback on the key issues raised in this consultation paper which should be sent to:

Appeals Responses  
Planning System Improvement Division – Branch C  
Department for Communities and Local Government  
Zone 3/J3, Eland House  
Bressenden Place  
London  
SW1E 5DU

e-mail: [appealsresponses@communities.gsi.gov.uk](mailto:appealsresponses@communities.gsi.gov.uk)

This consultation document has been produced in accordance with the Government's Code of Practice on Consultation. There is more about that in **Annex D**. When commenting, please say whether you represent an organisation or group, and in what capacity you are responding. A summary of responses will be published on the web site within three months of the end of the consultation period together with an account of how the concerns raised have influenced the policy. Hard copies of the summary can also be obtained thereafter, by contacting the Planning System Improvement Division – Branch C at the above address.

All responses will be made public on request, unless confidentiality is requested. Should consultees require the information they provide be treated as confidential, we will take full account of reasons behind this request and accommodate them wherever possible in line with the statutory Code of Practice with which public authorities must comply. The automatic confidentiality disclaimer generated by your IT system will not be respected unless you specifically include a request to the contrary in the main text of your response. In any event, the substance of responses may be included in statistical summaries of comments received.

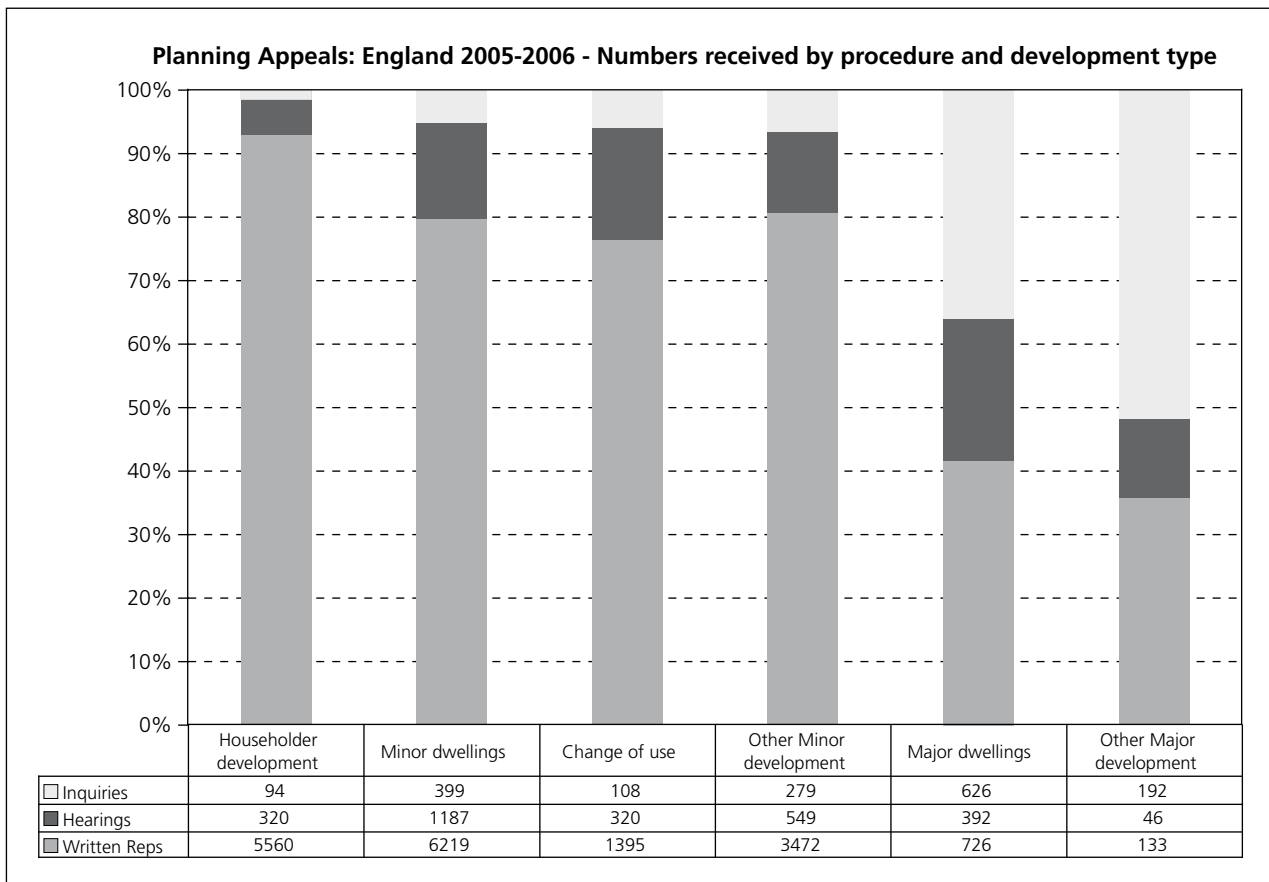
The period of consultation will last 12 weeks and responses should be submitted to arrive by 17 August 2007.

# CHAPTER ONE

## A MORE PROPORTIONATE APPROACH

- 1.1 In 2005-06, the Planning Inspectorate dealt with over 22,000 planning appeals in England. Forecasts are that appeal numbers will continue to grow. However, the current appeals system does not distinguish between different types and scales of development in terms of procedure – therefore all appeals dealt with by written representations, whether for a small house extension or a large office building, will follow a similar process. Similarly, a proposal for a single house dealt with by inquiry will follow the same rules as a large housing or commercial development. This is disproportionate to the issues involved and does not reflect the modern approach to regulation. Nor does it serve the best interests of the customer.
- 1.2 We want to introduce measures to ensure a more proportionate response to deal with the large and increasing volume of appeals in a timely manner. This should equip the appeals system to make determinations more efficiently, increasing speed and certainty without compromising on quality, openness, fairness and impartiality.
- 1.3 There are currently three appeal methods, each of which has different resource and time implications.
  - The *written method* is the least complex and quickest with the inspector deciding the appeal on the basis of written representations and a site visit;
  - *Hearings* allow parties to present their case informally in front of an inspector who can ask questions both at the hearing and on site. However, they take on average 3.2 times longer to deal with than written method appeals (measured by days of effort);
  - *Inquiries* typically deal with the larger more complex cases and can be multi-day events where the inspector hears witnesses give evidence which can be subject to cross examination by the other parties' legal representatives. Inquiries are on average 9.2 times more time consuming than written method appeals (again measured by days of effort).

The graph below shows appeal numbers received by procedure method and development type:



### Fast tracked householder and tree preservation order appeals

- 1.4 Around 6000 appeals are made each year to the Planning Inspectorate for householder development.<sup>3</sup> Most householder appeals proceed via the written method and for the majority of appellants it will be their first and possibly only experience of the appeal system. These appeals rarely raise matters of policy and are the least complex cases, making up around 28% of the total number of cases determined by the Planning Inspectorate. Yet they are subject to the same rules, timescales and procedures as larger and potentially more controversial schemes. We consider that this ‘one size fits all’ approach is disproportionate in its impact on appellants and all those involved in the appeals process. A more bespoke, simplified process would benefit householders by speeding up their appeals.
- 1.5 We propose to fast track the way the Planning Inspectorate deals with householder appeals which proceed via the written representations method. For all householder appeals, the intention is to reduce the period for lodging an appeal from six months to eight weeks and then, for those householder appeals that proceed via written representations (which would be the majority), to apply a compressed appeal timetable so that the planning inspector would then determine the appeal, with a site visit, within a tighter target of eight weeks. The significant shortening

<sup>3</sup> Householder developments are defined as those within the curtilage of residential property which require an application for planning permission and are not a change of use. **Included** in householder developments are, extensions, alterations, garages, swimming pools, walls, fences, vehicular accesses, porches and satellite dishes. **Excluded** from householder developments are applications to change the number of dwellings within an existing building.

of timetables would mean that in most cases there would be no material change in circumstances between the planning application and the appeal stage, so any original representations made to the local authority would still remain relevant. At the planning application consultation stage, the local authority would advise that any representations received would be forwarded to the Planning Inspectorate should there subsequently be an appeal. Accordingly, the planning inspector would determine the appeal on the basis of the information that was before the local authority when they determined the application, with limited opportunity for the submission of additional material beyond that, although the appellants would be asked to explain their grounds of appeal.

- 1.6 Considerations of proportionality similarly apply to the 750 or so appeals against local authority decisions relating to tree preservation orders which are determined each year by the Government Offices for the Regions. We propose to introduce the fast tracked processes outlined above for tree preservation order appeals as well. The 28 day period for lodging an appeal would remain unchanged but, instead of the lengthy exchange of representations between the parties, decisions would be based chiefly on the material that was before the tree officer when a determination on the original application was made – together with a visit to the site. Such a simplified process should deliver a quicker decision than the current average of around 26 weeks.
- 1.7 The current arrangement of dispersing tree preservation order appeals around the nine regional Government Offices is inefficient. Nor is this in keeping with the more strategic direction now being taken by the Government Offices. We propose to transfer administration of tree preservation order appeals to the Planning Inspectorate who would be responsible for implementing the fast tracked process, with decisions on individual cases being delegated to the inspector who visits the site.
- 1.8 A fast tracked process for householder and tree preservation order appeals would require changes to secondary legislation and could be implemented in 2008-09. This process would require us to consider how local authorities should handle applications in the case of appeals against non-determination. The fast tracked approach would be further strengthened by granting the Planning Inspectorate the ability to determine, on behalf of the Secretary of State, the appeal method, as set out in paragraphs 1.16 to 1.21. This would help to ensure that all householder appeals that were suitable for fast tracking were dealt with in this way.

## **Local Member Review Bodies**

- 1.9 A fast tracked process would still, however, leave responsibility for determining minor appeals, say for house extensions or works to a protected tree, with the Planning Inspectorate on behalf of the Secretary of State. In line with the Government's wish to devolve decision making powers to the local level, there is a case for allowing some appeals to be determined locally. The Government is therefore considering allowing minor appeals to be determined within each local authority by a board of councillors, to be known as Local Member Review Bodies.

- 1.10 The applications that would be eligible for review by the Local Member Review Body would only be those which have been determined in the first place by officers acting under powers delegated to them by the local authority. The local authority would be required to have in place an effective system of delegation to officers. We would establish a right of review of the original decision for some minor appeals (e.g. householder development, new shop fronts, small change of use proposals, works to protected trees) by the Local Member Review Body whose councillors would have had no previous involvement in the case. Only the applicant would be able to request a review, and the right of appeal to the Secretary of State would be repealed.
- 1.11 Each Local Member Review Body would comprise of, say, three or five elected councillors. These councillors would be expected to undertake training on planning and arboriculture matters to assist them in their decision making. In many cases, it is not envisaged that the Review Body would need to seek expert advice given that they will handle minor appeals which are unlikely to be overly complex. However, should the Review Body wish to seek professional advice, they would be able to do so from independent experts such as planners, solicitors or arboriculturalists. To ensure impartiality, these experts would be required to limit their involvement in work within the particular Council area to only act in an advisory role to the Review Body. Another option may be for local authorities to develop reciprocal arrangements for the provision of expert advice – so if one authority’s Local Member Review Body wished to have expert advice say on technical planning matters, they could request that a suitably qualified and experienced planner from a neighbouring authority attend their meeting to provide such and vice versa.
- 1.12 The Review Body would have the power to uphold, reverse or vary any decision which is subject to their review. If someone considered the Review Body had not applied the law properly or had treated them unfairly, they would be able to use the local authority’s formal complaints procedure and/or complain to the Local Government Ombudsman. They would also have the right to challenge in the High Court as now.
- 1.13 Fast tracked processes would apply. The Review Body would base its decisions on the information and evidence that was before the case officer at the time the decision was made on the planning application. Through the introduction of the standard application form, we are working to improve the quality of applications and ensure that all relevant information is provided from the outset. Therefore it should not normally be necessary for new material to be presented to the Review Body. We propose, however, that they should have a reserve power to request additional information where they consider this necessary to enable them to make a fully informed decision. We propose that other procedural matters, such as whether to allow the public to attend Review Body meetings or whether to visit the site, should be determined locally.
- 1.14 Where an officer fails to determine an application under delegated powers within the prescribed time, there appears to be two options for dealing with these cases:
- The first option is for the Review Body to be required to determine the application afresh, although with the same documentation that was on the local authority’s file at the expiration of the prescribed time. In such cases the right of appeal to the Secretary of State would be retained, as the Review Body would be taking the first decision on the application;

- The second option would be for the application to go straight to the Planning Inspectorate (on behalf of the Secretary of State) as happens at present.

1.15 The Local Member Review Body proposal would require primary legislation.

**Q1. Do you agree with the proposal to fast track householder and tree preservation order appeals?**

**Q2. Do you agree with the proposal to require local authorities to establish Local Member Review Bodies for the determination of minor appeals?**

## Determining the appeal method

- 1.16 The current appeals system allows the principal parties to select the appeal method – written representations, hearing or inquiry. However, appellants often choose a hearing for appeals which could just as appropriately be determined via the written method, or choose an inquiry for appeals which could be considered at a hearing. While there are many reasons for this, the important factor for prospective appellants to understand is that all appeals are dealt with fairly and on their merits. The outcome will depend on how convincing the inspector finds the planning arguments, not the method of their presentation.
- 1.17 We want to ensure that the procedure used is best matched to the complexity of the subject matter. We believe that cases that do not need an oral hearing could be fairly and effectively handled by means of written representations with no loss of quality or equity to the process and decision. Similarly, we also believe that cases that do not need an inquiry could be fairly and effectively handled by means of a hearing. It would still be possible to ensure that all appellants received the same level of service, based on the nature of their appeal and not on their access to ‘expert’ advice.
- 1.18 The Planning Inspectorate already applies non-statutory criteria to convert planning and enforcement cases in England to the appeal method they consider most suitable, where the appellant has not insisted upon an oral hearing. The criteria ensure that any case that is complex, controversial or would benefit from the scrutiny offered by a hearing or inquiry would be dealt with in this way. They can also ensure that people in vulnerable groups are given appropriate opportunity to put forward their case, which may mean that a hearing or inquiry is appropriate even where this would not normally be justified by the complexity of the case.
- 1.19 For the 12 months between April 2006 and March 2007, 335 appeals that would otherwise have been dealt with by the hearing method were dealt with under the written method, delivering savings worth around £340,000. An additional 914 were also suitable for the written method but appellants maintained their right to a hearing or inquiry and a further 187 were suitable for a hearing but were dealt with at an inquiry at the appellants’ request. If these cases had been dealt with by written representations or a hearing respectively, this would have resulted in further savings of approximately £1.2 million.

- 1.20 We propose that the Planning Inspectorate, acting on behalf of the Secretary of State, should be empowered to apply Ministerially approved and published criteria to determine the most appropriate appeal method. We believe this would accord with the principles of an open, fair and impartial appeals system, ensuring that all appellants receive the same level of service and that no vulnerable groups would be disadvantaged as a result. It would enable all appeals to be decided by the most appropriate and proportionate appeal method and assist in speeding up the appeals process. In the event of legal challenge, the Planning Inspectorate would have to demonstrate that it had acted reasonably in applying the criteria. Proposed criteria – based upon the current indicative criteria – are attached at Annex A (for planning appeals) and Annex B (enforcement appeals). If this proposal is implemented, the criteria would be closely scrutinised and carefully structured before use to ensure that they were fit for purpose.
- 1.21 Primary legislation would be required to implement this proposal. We propose that this procedure would apply to planning and enforcement appeals initially. If successful, we would consider extending it to other appeal types in the future.

**Q3. 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?**

# CHAPTER TWO

## IMPROVING CUSTOMER FOCUS AND EFFICIENCY

- 2.1 In the context of rising appeal numbers, it is increasingly important for the appeals system to function as effectively and efficiently as possible and for it to operate on a collaborative relationship based on trust, with good communication and regular exchange of information between appellants, local authorities and the Planning Inspectorate. The measures proposed in this chapter address identified areas of concern and involve changing existing procedures to increase the efficient functioning of the system. Our aim is to provide a high quality service that provides value for money for the tax payer. There is also a need to reduce opportunities for perverse behaviour which can place undue pressure on the system.

### Nature and content of appeal documents

#### The issue

- 2.2 When making appeals, appellants are required to submit an appeal form with essential supporting documents, such as the application made to the local planning authority, together with any plans, drawings and certificates. However, some 10-15% of appeals are submitted to the Planning Inspectorate without all or some of these essential supporting documents, which means that at any given time there are around 250-300 appeals awaiting these documents in order to be made valid. This is poor behaviour.
- 2.3 On the other hand, there has also been a remarkable rise in the quantity of evidence submitted in support of appeals even for the most minor of cases. It appears that for many appeals, there is a lack of care in the preparation of evidence – with much of the evidence produced being repetitious, poorly focused, unnecessary and of little value to the decision maker. Time can be wasted considering evidence that does not add much to a case and this does not benefit anybody.
- 2.4 In the Courts and Tribunals, it is becoming common practice to impose a word limit on any additional material produced.

#### The proposal

- 2.5 We propose to provide better guidance (both on the Planning Inspectorate's web site and on appeal forms) to appellants and others as to what evidence is helpful to an inspector in reaching a decision and what is not. To reinforce this, it is proposed to prescribe the nature of the material to be produced at appeal by the preparation and wide publication of templates that indicate the matters that should be addressed and the level of detail required. In addition, to increase discipline we will consider imposing word limits on appeal documents, including written representation submissions, hearing statements and proofs of evidence.
- 2.6 For hearings, we propose requiring parties to submit a short summary of their statement (eg. 500 words maximum) prior to the actual event. The summary would not be read out at the hearing, but it would enable the inspector to more easily acquaint him/herself with the key issues to concentrate on.

## Submission of evidence

### The issue

- 2.7 Under current rules, the appellant and the local planning authority each send to the other, respectively, a copy of the appeal form and the questionnaire and, simultaneously, send a copy to the Secretary of State. Both parties are also required to send two copies of their statement, further comments and (if an inquiry is to be held) proof of evidence to the Secretary of State. The Secretary of State then sends copies of those documents to the other party. However, this latter part of the process takes responsibility away from the principal parties and is administratively inefficient.
- 2.8 To ensure fairness to the parties, from the outset of the current rules the Planning Inspectorate took a robust and sometimes controversial line with late representations, accepting and passing them on only in extraordinary circumstances (for example where a delay had been caused by postal difficulties or because one or other party had been incapacitated through illness). Delays in forwarding documents to the parties can result in extending the appeal timetable and can, especially in written representation cases, either delay the site visit or result in the inspector being unable to finalise his/her decision because the final comments are still due. This does not benefit anybody. Both instances can delay the issue of appeal decisions and leave third parties and the other side (who complied with the rules) feeling they have been put at a disadvantage. In inquiry cases, this approach has, at times, led to the inspector being disadvantaged. This is because parties will often exchange proofs anyway, even when these are late, and turn up fully prepared at the inquiry leaving the inspector with no alternative but to accept the late documents into the evidence.
- 2.9 Whilst the current costs regime can bear on such matters to a degree, it is a blunt tool and is only initiated if one or other party claims that another's behaviour has been unreasonable and has led to unnecessary expense. It has so far not proven effective in resolving what is a commonplace and harmful practice. Proposals to amend the costs regime are set out in paragraphs 2.30 to 2.33.

### The proposal

- 2.10 We consider, with our emphasis on a collaborative relationship based on trust, good communication and regular exchange of information between local authorities and appellants, that the responsibility for the cross-copying of evidence should be devolved to the principal parties. We propose to require the appellant and the local planning authority to send directly to each other and to the Secretary of State a copy of their statement of case, any further comments and, as the case may be, proof of evidence. No change is proposed to the current arrangements for handling representations from third parties.
- 2.11 It is of course recognised that, despite the rules, natural justice must be met, such that the Secretary of State, or an inspector, must always be allowed the discretion to accept evidence at any stage prior to the determination of an appeal if she/he considers it to be appropriate. That said, to avoid the problems outlined above, those wishing to put evidence before the Secretary of State or the inspector may reasonably be expected to understand that they must comply with the rules, only exceptionally submitting late evidence. To encourage best practice, the Planning Inspectorate has placed inquiry guidance on its website. It will elaborate upon this to provide better

guidance to local authorities, appellants and others with the aim of ensuring the submission of late evidence is eradicated in all but extraordinary circumstances.

- 2.12 As this proposal will make parties responsible for their own behaviour, changes are being considered to the costs awards regime to penalise parties who abuse the rules for cross-copying or submission of evidence (see paragraphs 2.30 to 2.33).

## **Introducing new material at appeal**

### **The issue**

- 2.13 There is increasing evidence of the practice of ‘case creep’ – where a scheme is revised during the course of the appeal. This practice uses the appeal process to progress amendments or alternatives to a scheme which should have been submitted as a new planning application to the local authority. It can also occur when the evidence base in support of a development is revised leading up to the inquiry/hearing event (for example, new retail assessments provided in proofs of evidence/statements) or prior to determination of a written representations appeal (for example, in telecommunications cases it is not unusual for appellants to introduce new evidence on further alternative sites). Turning away revisions at a hearing or inquiry can be difficult for the inspector without risk of challenge. The current rules and advice are not limiting as to the material that can be produced at the appeal stage; either side can introduce new material in addition to that originally considered by the local authority. This can leave the opposing party and third parties at a disadvantage.

### **The proposal**

- 2.14 We propose to give the Secretary of State the power to refuse to consider any change to the scheme or evidence beyond that which was before the local authority when it made its decision. This will encourage those who wish to amend their scheme to first progress any alternative scheme via a fresh planning application through the local authority. It should also ensure that the appellant is ready to proceed when an appeal is lodged, thereby reducing the potential for delays resulting from late changes to evidence or proposed schemes. We would, similarly, expect that local authorities, in making their decisions, are confident in their ability to defend those decisions without commissioning new evidence.

## **Fixing inquiry and hearing dates**

### **The issue**

- 2.15 The current process for fixing inquiries and hearing dates is set out in Circular 05/2000. The Planning Inspectorate is required to arrange an inquiry where the parties request one and the aim is to fix a date for the inquiry which is not later than 20 weeks after the starting date. A single date for an inquiry is offered to both parties which, if refused, leads to further negotiation over an alternative date (which can be fixed by the Planning Inspectorate if not agreed). Alternatively, provided that the parties notify their intention so to do, they may mutually agree a date to put to the Planning Inspectorate. There are similar rules for hearings.

- 2.16 Although the Planning Inspectorate's objective is to fix inquiry and hearing dates as early as possible, parties' objectives are often different. Hence there is a high rate of rejection of first offer dates (currently 88% for inquiries and 70% for hearings). The main reasons given for this are either the lack of availability of Counsel/expert witnesses or ongoing negotiations with the local authority. The problem has become particularly acute in recent years with the escalation of appeal volumes and the complexity of much of the inquiry casework. As a result, a high proportion of inquiry and hearing dates slip, leading to delay in the issue of appeal decisions. Furthermore, around 50% of appeals where an inquiry has been requested are withdrawn. This results in inefficiencies for all involved in the appeals process and uncertainty for the local community.
- 2.17 The practice of linking later appeals with appeals where an inquiry has already been arranged can have a perverse impact on timeliness, as some parties use the ability to link appeals to establish a bargaining position (on another submitted alternative scheme) and/or to queue jump. Particular problems arise where, once linked, earlier appeals are then withdrawn. In such an event where an inquiry has been fixed within the 20/22 weeks target, the final appeal has frequently been prepared at a very late stage and is at high risk of causing an inefficient inquiry, with the prospect of unavoidable adjournments and susceptibility to charges of unfair queue jumping. Furthermore, the local community may feel disengaged from the process. 'Case creep' is also an issue and has already been described along with proposals to address it in paragraphs 2.13 to 2.14 above.
- 2.18 Appellants should be ready when they appeal rather than consider the appeal as marking their place in the queue and then (by declining inquiry dates) resist the Planning Inspectorate's efforts to hold an early inquiry. There is a need for more proactive case management by the Planning Inspectorate (as is operated in the civil courts) with greater engagement between the parties prior to and during an appeal.

## The proposal

- 2.19 We propose that two inquiry or hearing dates be offered to the parties with one to be mutually agreed within five working days of the start date of the appeal, otherwise a date (either one of the proposed offered dates or a fresh date) would be imposed by the Planning Inspectorate on the parties. This would rely upon successful frontloading by the parties in preparing their cases and the local authority and appellant being committed to pursuing the appeal. Parties should only appeal when they are ready and would be expected to have thought about the availability of witnesses and Counsel and be prepared to offer suitable dates.
- 2.20 A provision in primary legislation would be required to enable the Planning Inspectorate (on behalf of the Secretary of State) to impose a date. Changes would be required to the appeal forms and questionnaire to require appellants and the local authority to give more information on the likely duration of an inquiry, number of witnesses, and details of discussions on suitable dates. The Secretary of State would need to be given the power to refuse to register appeals that do not include this information. We would also need to update relevant Circulars to clearly set out that the Planning Inspectorate's policy will be to resist adjournments, withdrawals and postponements and to decline to link appeals unless they are made at the same time.

- 2.21 These proposals would minimise the prospect of delays in the conduct of casework and incurring wasted costs at all stages, and would assist in speeding up the appeals process. The Planning Inspectorates' and other parties' resources would be better deployed and greater certainty and transparency brought to the appeal process.

## **Statements of Common Ground**

### **The issue**

- 2.22 Current rules require the Statement of Common Ground to be submitted to the Planning Inspectorate four weeks before the date of the inquiry, at the same time as proofs of evidence. Inspectors' experience is that, in many cases, this is too short a time frame and tends to result in the production of statements which do little to contribute to the appeal process.
- 2.23 To be of value the Statement of Common Ground needs to be prepared early in the appeal process so that it can be used to inform the production of evidence for the inquiry and to inform those interested in the case where the areas of agreement and disagreement are focused. Experience has shown that the early discussion and production of Statements of Common Ground can be particularly useful in identifying the matters at issue and where the parties should be directing their witnesses' efforts. At the inquiry, evidence and cross examination will be more focused and inquiry time saved in not discussing matters that are not in dispute.

### **The proposal**

- 2.24 We propose that the rules should be amended to require the Statement of Common Ground to be prepared jointly by the local authority and the appellant and submitted to the Planning Inspectorate six weeks from the start of the appeal process.

## **Comments at the nine week stage**

### **The issue**

- 2.25 Parties to appeals decided by hearing or inquiry are currently offered a final opportunity to comment in writing at the nine week stage. However, we consider that this is unnecessary as there is an opportunity at the hearing or inquiry for such additional comments to be made. Furthermore, this opportunity to comment in writing is rarely used for inquiries in particular, and restricts the ability to speed up the appeals process.

### **The proposal**

- 2.26 We propose to amend the hearing and inquiry rules to remove the nine-week comment stage. This would require secondary legislation.

## Correction of errors in appeal decisions

### The issue

- 2.27 The Secretary of State (or the Planning Inspectorate acting on her behalf) has the power to issue a formal notice correcting an error in an appeal decision that is not part of the reasoning on which that decision is based. The errors that can be corrected under this power are those that would not change the substance of the decision and therefore no party is at a disadvantage. Examples of such errors include incorrect house numbers, incorrect appeal and application numbers, and obvious errors in measurements and compass points.
- 2.28 In order to be able to exercise such powers, the Secretary of State or the Planning Inspectorate must first obtain the unconditional written consent of the appellant and the relevant landowner(s). Obtaining consent can prove problematic in practice (i.e. where the error is perceived to be to the applicant's advantage) and, if land ownership changes after an appeal is submitted, the Secretary of State or the Planning Inspectorate's information becomes out of date and identifying the current landowner(s) can be difficult. Failure to obtain the necessary consent can in some circumstances lead to a High Court challenge that might otherwise be avoided (for example, where one of the parties feels there may be an opportunity to have the case redetermined in their favour).

### The proposal

- 2.29 It is in the wider public interest to have errors in appeal decisions corrected and, provided a request to do so is received within the relevant High Court challenge period, the Secretary of State (or the Planning Inspectorate acting on her behalf) should have discretion to consider it. We therefore propose that changes be made to both primary and associated secondary legislation to enable the Secretary of State (or the Planning Inspectorate on her behalf) to issue a Correction Notice without obtaining the consent of the applicant/landowner(s). This proposal would greatly improve the efficiency of the correction of errors process.

**Q4. Do you agree with the package of proposals detailed in Chapter Two to improve the customer focus and efficiency of the appeals process?**

## Award of costs

### The issue

- 2.30 The costs awards regime seeks to increase the efficiency and discipline of the appeals system by instigating consequences for parties who do not adhere to the statutory procedures for appeals. Policy guidance on the application of this regime is contained within DoE Circular 8/93 'Award of Costs Incurred in Planning and Other (Including Compulsory Purchase Order) Proceedings'.

2.31 The Circular sets three tests to be met if costs are to be awarded:

- that the application is made at the appropriate time;
- that the party against whom the application for an award is made has behaved unreasonably; and,
- that unreasonable behaviour has resulted in unnecessary or wasted expense being incurred in the appeal proceedings.

2.32 Practical experience is that if a party has merely been inconvenienced or frustrated by the other party's tardiness in supplying documents or exchanging proofs it can be difficult to prove that there was any unnecessary expense. There is therefore scope for the costs regime to be modified to operate in a more proactive way to encourage better behaviour.

## The proposal

2.33 We propose to update the Costs Circular to reflect new legislation, clarify more accurately the extent of full awards and re-affirm examples of unreasonable behaviour. We will consider allowing fixed penalties to be imposed where a party has behaved poorly or has abused the appeal process, including in instances where parties abuse the new processes for evidence submission and/or submit late evidence. We will also consider extending the costs regime to written representation planning appeals.

**Q5. Do you agree with the changes proposed for the award of costs?**

## Reducing the time limit for planning appeals when the same development is the subject of an enforcement notice

### The issue

2.34 At present, some applicants manipulate the different time scales for appealing against planning decisions (six months) and enforcement notices (a minimum of 28 days) to retain unauthorised building works and/or to continue operating unauthorised uses for as long as possible. In some cases, applicants do not submit an appeal against a planning decision until the last possible juncture (up to six months after the decision was issued) resulting in the Planning Inspectorate having to hear the two appeals separately. Under these circumstances, it can take 78 weeks after the enforcement notice was first served before a decision on the planning appeal brings final resolution to the planning matters. This perverse behaviour reduces confidence in the appeals process and the planning system overall. It is also wasteful of resources, as the Planning Inspectorate, in effect, must process what is substantially the same appeal twice.

## The proposal

- 2.35 We propose to reduce the time limit for appealing against a planning decision from six months to 28 days where the same or substantially the same development is the subject of an enforcement notice. Applicants would be made aware of the reduced time period within which to lodge an appeal, either when notified of the planning decision or by way of a notice attached to an enforcement notice, depending on the circumstances of the case. This will allow appeals to be linked and dealt with more quickly, thus improving the efficiency of the process and the use of resources by the Planning Inspectorate.
- 2.36 There may be circumstances where a planning application is submitted after the enforcement notice is served. For the Planning Inspectorate to be able to link the two appeals, the planning appeal must be submitted no later than week 12 of the enforcement appeal. This would therefore rely on local planning authorities determining a planning application by week eight of the enforcement appeal. Whilst it is in the best interests of the authority to do so, this may not always be achievable – particularly if the application has been submitted late into the running of the enforcement appeal. In this situation, any appeals would have to be considered and determined separately.

**Q6. 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 both are appealed, to allow the appeals to be linked?**

## Enforcement and lawful development certificate appeals

### The issue

- 2.37 The Government acknowledges that effective enforcement is an integral part of a successful planning regime. In its response to the 2002 Enforcement Review, the Government undertook to give a higher profile to the enforcement of planning control, including better funding. Some legislative change has been introduced as a result of that Review, but further changes are required to address the problems identified by practical experience and case law.
- 2.38 The general principle is that the enforcement appeals and lawful development certificate appeals procedures should be on the same footing as that for planning appeals. This will simplify matters for all the participants in the process.

## The proposal

2.39 We propose a number of changes to both primary and secondary legislation to improve the lawful development certificate appeals process. In particular:

- imposing a time-limit for lodging these appeals; and
- a power to make written representations regulations for these appeals.

2.40 We also propose changes to both primary and secondary legislation to improve the enforcement appeals process. In particular, we propose:

- a power to decline repeat applications where, within the last two years, the Secretary of State has refused a similar deemed application arising from an enforcement notice appeal.

2.41 Additionally, the Government would like to see a change in the payment of fees for enforcement appeals. A fee is payable on enforcement appeals if the appellant wants the planning merits to be considered by the inspector. The size of the fee is double that charged for the equivalent application for planning permission to carry out the same kind of development. At present half of the double fee is paid to the Planning Inspectorate and half to the local authority. The 2002 Review consulted on the proposal that the fee should be paid in full to the local authority. The idea was favourably received, and as the Treasury has agreed to the proposal it is proposed to include this change in a Bill as soon as legislative time allows.

**Q7. Do you agree with the changes proposed for enforcement and lawful development certificate appeals?**

# CHAPTER THREE

## RESOURCING THE APPEALS SERVICE

- 3.1 The Planning Inspectorate is a publicly funded agency. Under the existing system, no fees are charged for making planning appeals – they rely entirely on public funds to be pursued. With the cost of running planning appeals now in the region of £30.1 million per annum, they represent a substantial cost to the tax payer.
- 3.2 Rising demand for the appeals service has put the Planning Inspectorate's resources under considerable pressure. Kate Barker recognised this pressure in her Review, and recommended that the Government consider the case for additional public funding to be directed towards the appeals system. While the Government is considering this option, it must also consider whether there are other ways of contributing funding to the system which would have less burden on public funds whilst also being sustainable.
- 3.3 The cost to the Planning Inspectorate of running each appeal is individual to each case. The real cost differences lie in the appeal method – inquiries and hearings are considerably more expensive to conduct than written representation appeals.
- 3.4 Planning applications and appeals are made because some benefit would be derived if permission were granted. Given this, it seems appropriate that those appealing should contribute to the cost of the service in the same way as they do for planning applications.
- 3.5 We propose two options for charging for appeals, both of which would involve fees to recover costs. The fees would be levied on the appellant and payable to the Planning Inspectorate. Both options would require primary legislation to enact the power to charge an appeal fee, and subsequent statutory instruments to set the fee level.

**An administrative fee:**

A fixed administrative fee, applied across appeal types.

or

**A proportionate fee:**

A proportionate fee, levied on a sliding scale, as a percentage of the planning application fee charged by local planning authorities, with a minimum fee of say £50.

- 3.6 We consider that these options would be the most transparent, easiest to implement, and provide appellants with the most certainty in terms of cost.

- 3.7 The Planning Appeals Commission in Northern Ireland charges an appeal fee, and levies it as a flat fee of £126 for all appeal types. Under the administrative fee option, using the £126 flat fee levied in Northern Ireland as an example, the Planning Inspectorate estimate that if the same fee were applied to all the planning appeals in England in 2005/06, the revenue would have been around £2.8 million.
- 3.8 Under the proportionate fee option, the appeal fee would be calculated as a percentage of the original planning application fee, thereby more accurately reflecting the size of the development and consequently the likely complexity of the case. If for example, appeal fees were levied at 20% of current planning application fees but with a minimum fee of say £50, an income estimate based on 2005/06 appeal receipts would have amounted to around £7 million.
- 3.9 If the proportionate fee type were to be introduced, we propose that householder appeals would be set at the minimum fee or the lower end of the fee range so as not to unduly deter such people from proceeding to appeal. Taking into account the numbers of appeals received by development type, we envisage that most appellants would pay appeal fees at the lower end of the range. In 2005-06, householder appeals accounted for 28% of all appeals, and minor development appeals 54%.
- 3.10 Under both options, no fee would be levied on the local authority as in inquiries and hearings they either provide or cover the cost of the venue. If an appellant felt that they had been forced to appeal because a local authority had behaved unreasonably in coming to its decision or through non-determination, they would have the option of applying for an award of costs, which could include a claim for the appeal fee paid (See paragraphs 2.30 to 2.33).
- 3.11 This proposal would initially be implemented for planning appeals only, with a view to extending the fee to some other appeal types dealt with by the Planning Inspectorate in the future.

**Q8. Do you agree with the proposal to charge a fee for appeals?**

# ANNEX A

## **Proposed indicative criteria to determine whether an appeal against a planning decision or non-determination (section 78) is most appropriately decided using the written representations, hearing or inquiry procedures.**

### **Appeals where written representations is considered the most appropriate procedure would satisfy all the following criteria:**

1. The appeal can be reasonably argued and understood by all parties using the planning application and plans, the reasons for refusal (where the appeal is against a decision), the information provided by the local planning authority with their questionnaire, the grounds of appeal, any third party letters received on the application and/or appeal and any additional written submissions together with any photographs and an inspector's site visit.
2. There is no indication of the need to test evidence by cross-examination or to take evidence under oath.
3. The appeal does not raise extraordinary issues relating to the status of the appellant, for example relating to agricultural workers, Gypsies/Travellers or another specific needs group.
4. The appeal does not raise extraordinary issues about the need for/availability of accommodation, for example relating to agricultural workers, Gypsies/Travellers or another specific needs group.
5. An Environmental Impact Assessment is not required.

### **Appeals where a hearing is considered the most appropriate procedure would satisfy all of the following:**

6. The appeal does not fall within the criteria for written representations.
7. There is no indication of the need to test evidence by cross-examination or to take evidence under oath.
8. The hearing will be capable of being completed within one day.

### **A hearing may also be considered the most appropriate procedure if:**

9. The appeal raises extraordinary issues relating to the status of the appellant, for example relating to agricultural workers, Gypsies/Travellers or another specific needs group but the appellant does not consider it necessary/does not intend to be legally represented; or
10. The appeal raises extraordinary issues relating to the need for/availability of accommodation, for example relating to agricultural workers, Gypsies/Travellers or another specific needs group but the appellant does not consider it necessary/does not intend to be legally represented.

**Appeals where an inquiry will be considered the most appropriate procedure will be those where:**

11. The appeal does not fall within the criteria described above for appeals by written representations or hearings; and,
12. There is an indication of the need to test evidence by cross-examination or to take evidence under oath; or,
13. An Environmental Impact Assessment is required.

**An inquiry may also be the most appropriate procedure if:**

14. The appeal raises extraordinary issues relating to the status of the appellant, for example relating to agricultural workers, Gypsies/Travellers or another specific needs group and the appellant considers it necessary/intends to be legally represented; or
15. The appeal raises extraordinary issues relating to the need for/availability of accommodation, for example relating to agricultural workers, Gypsies/Travellers or another specific needs group and the appellant considers if necessary/intends to be legally represented.

**There may be some other reason which means the Secretary of State will decide that a hearing or inquiry will be held.**

## ANNEX B

### **Proposed indicative criteria to determine whether an appeal against an enforcement notice (section 174) is most appropriately decided using the written representations, hearing or inquiry procedures.**

#### **Appeals where written representations is considered the most appropriate procedure would satisfy all of the following criteria:**

1. The appeal can reasonably be argued and understood by all parties using the enforcement notice/s and plan/s, the grounds of appeal, the information provided by the local planning authority with their questionnaire, any third party comments and any additional written submissions, together with any photographs and an inspector's site visit.
2. There is no indication of the need to test evidence by cross-examination or to take evidence under oath, or that material facts are at issue or in dispute.
3. The appeal does not raise extraordinary issues relating to the status of the appellant, for example relating to agricultural workers, Gypsies/Travellers or another specific needs group.
4. The appeal does not raise extraordinary issues about the need for/availability of accommodation, for example relating to agricultural workers, Gypsies/Travellers or another specific needs group.
5. An Environmental Impact Assessment is not required.
6. The alleged breach is neither unusual nor contentious.

#### **Appeals where a hearing is considered the most appropriate procedure would satisfy all of the following:**

7. The appeal does not fall within the criteria for written representations.
8. There is no indication of the need to test evidence by cross-examination or to take evidence under oath, or that material facts are at issue or in dispute.
9. The hearing will be capable of being completed within one day.

#### **A hearing may also be considered the most appropriate procedure if:**

10. The appeal raises extraordinary issues relating to the status of the appellant, for example relating to agricultural workers, Gypsies/Travellers or another specific needs group but the appellant does not consider it necessary/does not intend to be legally represented; or

11. The appeal raises extraordinary issues relating to the need for/availability of accommodation, for example relating to agricultural workers, Gypsies/Travellers or another specific needs group but the appellant does not consider it necessary/does not intend to be legally represented.

**Appeals where an inquiry is considered to be the most appropriate procedure will be those where:**

12. The appeal does not fall within the criteria for written representations.
13. There is an indication of the need to test evidence by cross-examination or to take evidence under oath, where material facts are at issue or in dispute.
14. The appeal raises extraordinary issues relating to the status of the appellant, for example relating to agricultural workers, Gypsies/Travellers or another specific needs group and the appellant considers it necessary/intends to be legally represented.
15. The appeal raises extraordinary issues relating to the need for/availability of accommodation, for example relating to agricultural workers, Gypsies/Travellers or another specific needs group and the appellant considers it necessary/intends to be legally represented.
16. An Environmental Impact Assessment is required.
17. The alleged breach is unusual or contentious.
18. The inspector will need to take evidence from specific witnesses which may require the issue of a witness summons.

**There may be some other reason which means the Secretary of State will decide that an inquiry will be held.**

# ANNEX C

## Partial Regulatory Impact Assessment (RIA) Improving the Appeal Process

This partial Regulatory Impact Assessment (RIA) analyses the likely impacts of proposed policy changes to the appeals system which exists under the Town and Country Planning Act 1990 (as amended). The RIA is divided into seven separate sections, each dealing with different policy proposals. The proposals have been considered independently of each other. Based on consultation feedback and further work, the policies will continue to evolve and develop and a full RIA will be prepared which will calculate the cumulative impacts of the final proposals. In addition, transitional costs (whilst not expected to be high at this stage) will be assessed in detail in the full RIA.

### **(1) Title of proposal: Improve efficiency of the system for minor appeals**

#### **1. Purpose and intended effect**

##### **Objective**

To improve the speed and proportionality of the appeals process for minor appeals.

##### **Background**

Minor appeals include householder appeals, other minor appeals and tree preservation order appeals. Last year there were approximately 6000 householder appeals. These account for around 28% of the total number of planning appeals, and typically comprise the simplest appeal cases such as house extensions and garages. For this proposal, the other minor appeals include cases such as changes to shop fronts and small changes in use. There are over 2000 of these appeals a year, nearly 10% of all planning appeals<sup>4</sup>.

Householder and other minor planning appeals are made to the Secretary of State and, in the vast majority of cases, decided on his/her behalf by appointed planning inspectors. Tree preservation order appeals (of which there are approximately 750 a year) are made to the Secretary of State and decided by the Government Offices for the Regions.

Under the current system, minor appeals are dealt with in the same way as all other development types, meaning that they are subject to the same rules, timescales and procedures than larger and potentially more controversial schemes. In 2005/06 only 40.9% of householder appeals made through written representations were processed by the target time of 16 weeks, while the average processing time was 17 weeks. Only 13.5% of hearings and 24.4% of inquiries were processed within the target time of 30 weeks.

<sup>4</sup> This estimate is based on: 50% change of use appeals (692), all minor manufacturing, storage and warehousing (96), all minor offices (85), all minor retail, distribution and servicing (211), and 50% of other minor development excluding telecoms masts and wind farms (1049).

## **Rationale for government intervention**

The existing appeals system is not equipped to handle the large and increasing volumes of appeals efficiently. This has led to delays in decision making. It is considered that more bespoke, simplified and quicker processes for householder and other minor types of planning appeals would benefit the functioning of the appeals system and its users. The proposals set out here are intended to improve the efficiency of the planning appeals process.

In the current system, an executive agency (the Planning Inspectorate), acting on behalf of the Secretary of State for Communities and Local Government, works throughout the country to make decisions on minor appeals that have only local impacts. We propose to introduce Local Member Review Bodies to allow appeals with local impacts to be determined at the local level. Local Member Review Bodies would reduce the demands on the Planning Inspectorate by removing the processing of the more minor appeals, thereby freeing its inspectors to concentrate efforts and resources on more complex appeals.

## **2. Consultation**

### **Within government**

This RIA accompanies a public consultation document which has been agreed across Government.

### **Public consultation**

This RIA accompanies a public consultation document. The proposal for Local Member Review Bodies was trailed in the Local Government White Paper, October 2006.

## **3. Options**

### **A. Do nothing**

Under this option, all minor planning appeals would continue to be processed under the current system.

### **B. Fast tracked householder and tree preservation order appeals (could be implemented in combination with option C or stand alone)**

Under this option, all but a small number of householder appeals would be dealt with by written representations. There would be a shorter period of eight weeks in which to lodge an appeal, and then a compressed timetable would be applied so that the inspector would determine the appeal with a site visit, within a tighter target of eight weeks. The inspector's decision would be made on the basis of the information that was before the local authority when they determined the application, including any third party representations. Third parties would have already been advised by the local authority that any representations they made at the application stage would be considered in the event that the application proceeded to an appeal.

The fast tracked process outlined above would be introduced for tree preservation order appeals as well. The 28 day period for lodging a tree preservation order appeal would remain unchanged but, instead of the lengthy exchange of representations between the parties, decisions would be based chiefly on material gathered during consideration of

the original application together with a site visit. This simplified process should deliver a quicker decision than the current average of around 26 weeks. The administration of these appeals would also be transferred to the Planning Inspectorate, with decisions being taken by appointed inspectors on behalf of the Secretary of State.

### **C. Set up Local Member Review Bodies for minor appeals**

This option would allow minor appeals to be made to and determined within each local authority by a board of councillors. Each local authority would be required to implement a mandatory Scheme of Delegation to enable officers to determine certain planning and tree preservation order applications outright. For these applications, applicants would be able to request a review of the officer's determination by the board of councillors, to be known as a Local Member Review Body, and we would repeal the right of appeal to the Secretary of State. We envisage that most of these appeals could be dealt with via written representations, although it would be for the local authority to decide whether or not to allow parties to present their case orally before the Review Body.

It is envisaged that each Review Body would comprise of say three to five elected councillors who would be expected to undertake training on planning and arboriculture matters to assist them in their decision making. Should the Review Body wish to seek professional advice, they would be able to do so from independent experts – such as planners, solicitors or arboriculturalists. Such experts could also be tasked with writing the decision letter.

If someone considered the Review Body had not applied the law properly or had treated them unfairly, they would be able to use the local authority's formal complaints procedure and/or complain to the Local Government Ombudsman. They would also retain the right to challenge in the High Court.

## **4. Costs and benefits**

### **Sectors and groups affected**

- Public sector (local authorities, the Planning Inspectorate and Government Offices)
- Appellants (including business, voluntary sectors, charities and the public)
- Third parties (including business, voluntary sectors, charities and the public)

### **Option A: Do nothing**

#### *Benefits*

- Familiarity – appellants and public sector workers would not need to learn a new set of procedures.

#### *Costs*

- There are no additional costs with this option, but a resource intensive and disproportionate system would continue, and appellants would continue to experience delay.

## Option B: Fast tracked householder and tree preservation order appeals

### *Benefits*

- Cost savings for the Planning Inspectorate: Based on 2005/06 figures, we estimate a saving to the Planning Inspectorate on administrative duties for householder appeals of approximately £90,000 a year<sup>5</sup>.
- Time savings for appellants: The average time for a householder appeal to be decided (from when it is lodged) will decrease from approximately 17 weeks to eight weeks. The time taken for tree preservation order appeals would decrease from the current 26 weeks to approximately 12 weeks.
- Cost savings to Communities and Local Government/Government Offices: Currently, tree preservation order appeals are undertaken by Government Offices at an annual cost of £900,000.
- Administrative saving for local authorities: Local authorities would no longer need to prepare a separate appeals statement on householder appeals and could rely on the report prepared for the application decision. In practice however, this saving is likely to be counter-balanced by the need for the application report to be sufficiently detailed.

### *Costs*

- Cost to the Planning Inspectorate: Under this option the Planning Inspectorate would undertake tree preservation order appeals. This has an estimated annual cost of approximately £365,000<sup>6</sup>.
- Opportunity for third party comments: Third parties would not be given the opportunity to comment again at the appeal stage. Any representations they made at the application stage would be taken into account at appeal stage.
- Proportionality: Decisions with local impacts will continue to be taken by national/regional organisations with less understanding (but neutral view) of the local area.

## Option C: Local Member Review Bodies

### *Benefits*

- Cost savings for the Planning Inspectorate: The Planning Inspectorate estimate that householder appeals cost approximately £2.7 million a year to process, and other minor appeals that would be appropriate for Local Member Review Boards cost them approximately £1 million a year to process.
- The Planning Inspectorate's performance: The Planning Inspectorate would be able to redistribute resource and expertise to concentrate on the more complex cases.

<sup>5</sup> This estimate is based on: 5854 householder appeals a year; savings of one hour of administrative officer time per case, median Planning Inspectorate administrative officer salary = £18,293, cost per hour = £10.99, plus National Insurance, pensions and overheads = £15.39.

<sup>6</sup> This estimate is based on: 5 inspectors at median salary £44,156 = 220,780, plus National Insurance, pensions and overheads = £309,092; 1 median Planning Inspectorate administrative officer salary £18,293, plus National Insurance, pensions and overheads = £25,610.20; 750 cases a year with £40 expenses each = £30,000

- Cost savings to Communities and Local Government/Government Offices: Currently, tree preservation order appeals are undertaken by Government Offices at an annual cost of £900,000.
- Time savings for appellants: The average time for all household appeals to be decided will decrease from approximately 17 weeks to approximately 10 weeks.
- Proportionality: This is a devolutionary measure that would allow decisions with local impacts to be made at local level.

### Costs

- Opportunity for third party comments: Third parties would have less time to contribute to the appeal process, although any representations they made at the application stage would be taken into account at appeal stage.
- Costs to local authorities: Local authorities would have to pay for member time, expert advice and meeting rooms to process these minor appeals. We estimate that this would have an additional annual cost of £2.1 million (see tables below). For tree preservation order cases, we estimate an additional annual cost of £1 million.

## Annual costs for local government of using Local Member Review Bodies for householder and other minor development appeals

### Time on review board

Staff	No. of staff	Salary in 2006/07	Cost per hour	+40% <sup>1</sup>	No. of hours per case	Cost per case
Admin	1	£15,000	£9.01	£12.61	1	£12.61
Councillor	3	£25,000	£15.02	£21.02	1	£63.06
Expert Advice	1	£116,550	£70.00	£98.00	1.5	£147.00
				Total cost per case		£222.67
				<b>Total cost per authority<sup>2</sup></b>		<b>£4,898.74</b>

<sup>1</sup> 20% for pensions and national insurance, 20% for overheads

<sup>2</sup> There are 22 cases per authority (5854 householder appeals and 2130 other minors; 362 authorities)

### Training costs

Staff	No. of staff	Salary per hour + 40%	No. of hours on training course	Cost of training (per person)	Cost per authority
Councillor	3	£21.02	16	£500	<b>£2,508.96</b>

### Meeting room costs

Cost of meeting room per hour	Number of cases	Meeting hours required per case	Cost per authority
£10.00	22	1	<b>£220.00</b>

**Total costs**

Total cost per LA for 2006/07	£7,627.70
Total cost for 2006/07	<b>£2,761,227.40</b>

**Annual cost savings for local government from not using current appeals system for householder and other minor development appeals**

**Time spent on appeals**

Staff	No. of staff	Salary in 2006/07	Cost per hour	+40% <sup>1</sup>	No. of hours per case	Cost per case
Planning Officer	1	£18,200	£10.93	£15.30	4	£61.21
Planning officer manager	1	£31,000	£18.62	£26.07	0.5	£13.03
Admin	1	£15,000	£9.01	£12.61	0.5	£6.31
				Total cost saving per case		£80.55
				<b>Total saving per authority<sup>2</sup></b>		<b>£1,772.10</b>

<sup>1</sup> 20% for pensions and national insurance, 20% for overheads

<sup>2</sup> There are 22 cases per authority (5854 householder appeals and 2130 other minors; 362 authorities)

**Total savings**

Total savings 2006/07	<b>£641,500.20</b>
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**Net annual cost for local government of using Local Member Review Bodies for household and other minor development appeals**

Cost of LMRBs	<b>£2,761,227.40</b>
Savings from old system	<b>£641,500.20</b>
Net costs	<b>£2,119,727.20</b>

**Annual costs to local government of processing tree preservation order appeals**

**Time on review board**

Staff	No. of staff	Salary in 2006/07	Cost per hour	+40% <sup>1</sup>	No. of hours per case	Cost per case
Admin	1	£15,000	£9.01	£12.61	1	£12.61
Councillor	3	£25,000	£15.02	£21.02	1	£63.06
Independent Arboriculturalist	1	£116,550	£70.00	£98.00	1.5	£147.00
				Total cost per case		£222.67
				<b>Total cost per authority<sup>2</sup></b>		<b>£467.61</b>

<sup>1</sup> 20% for National Insurance and pensions, 20% for overheads

<sup>2</sup> There are 2.1 cases per authority (750 TPO appeals; 362 authorities)

### Training costs

Staff	No. of staff	Salary per hour + 40%	No. of hours on training course	Cost of training (per person)	Cost per authority
Councillor	3	£21.02	16	£500	<b>£2,508.96</b>

### Meeting room costs

Cost of meeting room per hour	Number of cases	Meeting hours required per case	Cost per authority
£10.00	2.1	1	<b>£21</b>

### Total costs

Total cost per LA for 2006/07	£2,997.57
Total cost for 2006/07	<b>£1,085,120.10</b>

NB. There is a potential additional cost if additional site visits were required.

### Annual cost savings for local government from not using current appeals system for tree preservation order appeals

#### Time spent on current tree preservation order appeals

Staff	No. of staff	Salary in 2006/07	Cost per hour	+40% <sup>1</sup>	No. of hours per case	Cost per case
Case Officer	1	£18,200	£10.93	£15.30	3.5	£53.55
Case manager	1	£31,000	£18.62	£26.07	0.5	£13.03
Admin	1	£15,000	£9.01	£12.61	1	£12.61
					Total cost saving per case	£79.19
					<b>Total saving per authority<sup>2</sup></b>	<b>£166.30</b>

<sup>1</sup> 20% for pensions and national insurance, 20% for overheads

<sup>2</sup> There are 2.1 cases per authority (750 TPO appeals in 2005/06; 362 authorities)

### Total savings

Total savings 2006/07	<b>£60,200.60</b>
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### Net annual cost of using Local Member Review Bodies for tree preservation order appeals

Cost of LMRBs	<b>£1,085,120.10</b>
Savings from old system	<b>£60,200.60</b>
Net costs	<b>£1,024,919.50</b>

## Potential impact of introducing appeal fees on Local Member Review Body proposal

(See section 7 of this partial RIA).

- If we assume £120 per appeal would go to the Local Authority this would decrease the annual net cost by  $((5854+2130) \times 120) = \text{£}958,000$ .
- If we assume that £50 minimum per appeal would go to the Local Authority this would decrease the annual net cost by  $((5854+2130) \times 50) = \text{£}400,000$ .
- TPO appeals are not included in the proposal for fees. If the fee was set at £120 per appeal, the annual net cost would decrease by  $(\text{£}120 \times 750) = \text{£}90,000$ .

## 5. Small Firms Impact Test

Small developers are more likely to be proposing minor developments of the types that will be fast tracked or made to local authorities under these proposals. This proposal will therefore have a disproportionate positive effect for small firms, who will benefit from faster decisions.

Small businesses and their representatives are being consulted on this proposal in parallel with the wider public consultation. The Small Business Service has acknowledged our approach.

## 6. Competition assessment

The competition filter was applied to this proposal. There are many appellants from the development industry where a few firms have a large market share. However, this proposal would not have a substantial different effect on firms, affect the market structure, penalise new firms or place restrictions on the services or products that firms provide.

## 7. Environmental impacts

There are no environmental effects expected from this proposal.

## 8. Race equality impacts

We have considered these possible effects. Our preliminary view is that the Local Member Review Body proposal could have a greater impact on some vulnerable groups, such as Gypsies and Travellers. We would seek to mitigate these impacts by specifying, in secondary legislation, that planning cases which involved such groups would not be suitable for delegation and subsequent consideration on appeal by a Local Member Review Body, and therefore the right of appeal to the Secretary of State would remain.

In addition, Local Member Review Bodies would be subject to the strict rules and procedures which are already established to ensure the propriety of the decision making process. Local authorities and their Members are under a duty to act fairly in relation to persons affected by planning decisions and to adopt decision making procedures which provide adequate fairness safeguards to comply with the Human Rights Act. There are legal and administrative safeguards to ensure fair and proper decision making – these being a right to challenge in the High Court, the use of the local authority formal complaints procedures and the ability to complain to the Local Government Ombudsman.

We welcome views on the extent to which these proposals for minor appeals could have a greater impact on certain groups and how these might be further mitigated. If we decide to go ahead with Local Member Review Bodies, we will conduct a full Race Equality Impact Assessment (REIA).

## 9. Rural, health and other social effects

We have considered these possible effects. At this stage we do not consider that there would be any race equality, rural, health or other social effects from these proposals. If evidence emerges as a result of our consultation that suggests otherwise, this will be taken into account with the further development of the policy.

Under Options A and B, responsibility for making appeal decisions would remain with the Secretary of State. While under Option B third parties would have less time to comment at appeal stage, any representations they made at the application stage would be taken into account at appeal stage also.

Under Option C, Local Member Review Bodies would only have responsibility for determining minor appeals. It is envisaged that the larger and/or contentious types of planning applications would be caught out by each Council's Scheme of Delegation, which would not allow such applications to be determined outright by Officers and not allow them to proceed to the Local Member Review Body in the event of an appeal. These larger and/or contentious planning applications would continue to be determined as per existing processes and would retain a right of appeal to the Secretary of State.

## 10. Other risks

There is a risk attached to Option C about the quality of decision making. While we would expect councillors on Local Member Review Bodies to undertake training on planning and arboriculture issues to assist in decision making, there would still be a difference in level of expertise when compared with planning inspectors. Quality of decision making could decrease and complaints to the Local Government Ombudsman could increase. There may also be more cases going to the High Court.

## 11. Enforcement, sanctions and monitoring

The fast tracked process for determining written representation householder appeals would be subject to a target, this being that, by end 2008/09, 80% of these appeals are to be decided within eight weeks. In these cases, just as is the case now, there would be a right of challenge to the High Court by any person aggrieved by the decision.

For the Local Member Review Body proposal, the strict rules and procedures which are already established to ensure the propriety of the decision making process and the decisions taken would apply. Local authorities and their councillors are under an obligation to act fairly in relation to persons affected by planning decisions and to adopt decision making procedures which provide adequate fairness safeguards to comply with the Human Rights Act. There are legal and administrative safeguards to ensure fair and proper decision making – these being a right to challenge in the High Court, the use of local authority formal complaints procedures and the ability to complain to the Local Government Ombudsman.

## 12. Summary table

	<b>A. Do nothing</b>	<b>B. Fast tracked approach</b>	<b>C. Local Member Review Bodies</b>
<b>Local authorities</b>	No effect	No effect	Net additional cost of £3.1m
<b>Planning Inspectorate</b>	Maintain current costs	Net additional cost of £275,000	Saving of £3.7 million
<b>Communities and Local Government/ Government Offices</b>	Maintain current cost of tree preservation order appeals	Saving of £900,000 a year	Saving of £900,000
<b>Net financial saving</b>	<b>£0</b>	<b>£625,000</b>	<b>£1.5 million</b>
<b>Appellants</b>	Maintain delay from slow system	Faster decisions on appeals	Faster decisions on appeals
<b>Other</b>	Decisions with local impacts are undertaken by national body	Decisions with local impacts are undertaken by national body	Decisions with local impacts are undertaken by local body. Potentially some risk to quality.

N.B. All figures are annual estimates

## **(2) Title of proposal: Determining the appeal method**

### **1. Purpose and intended effect**

#### **Objective**

To improve the efficiency and speed of the appeal process.

#### **Background**

There are three methods by which planning and enforcement appeals can be determined – inquiry, hearings and written representations. The current appeal system allows the principal parties to select the appeal method, which means a party can insist upon an inquiry or a hearing even for the least complex of appeal cases. The Planning Inspectorate currently uses non-statutory indicative criteria to encourage parties to select suitable appeal methods, which is proving somewhat successful. During the last financial year, the Planning Inspectorate sent over 1200 letters suggesting written representations instead of an inquiry or hearing and 27% were converted. In addition, the Planning Inspectorate sent over 200 letters requesting a change to hearing from inquiries and 17% were converted.

#### **Rationale for government intervention**

We believe that some of the existing appeal methods can be disproportionately complex for some types of appeals, and that resource is being wasted as a result. This proposal would ensure that each appeal would be decided by the most appropriate and proportionate appeal method. It would also allow the Planning Inspectorate to manage its workload better.

### **2. Consultation**

#### **Within government**

This RIA accompanies a public consultation document which has been agreed across Government. Also, this was a Barker recommendation and other Government Departments have responded to Barker's final report and its recommendations.

#### **Public consultation**

Interest groups and key stakeholders have responded to Barker's final report and its recommendations. This RIA accompanies a public consultation document.

### **3. Options**

#### **A. Do nothing**

The Planning Inspectorate would continue to apply the non-statutory indicative criteria.

**B. Empower the Planning Inspectorate, on behalf of the Secretary of State, to apply Ministerially approved indicative criteria to determine the appeal method**

Acting on behalf of the Secretary of State, the Planning Inspectorate would have the power to determine the most suitable appeal method for both planning and enforcement cases, having first considered them against the indicative criteria. Principal parties would no longer be able to select the appeal method.

**4. Costs and benefits**

**Sectors and groups affected**

- Public sector (local authorities and the Planning Inspectorate)
- Appellants (including business, voluntary sectors, charities and the public)
- Third parties (including business, voluntary sectors, charities and the public)

**Option A: Do nothing**

*Benefits*

- The principal parties retain the right to select the appeal method.

*Costs*

- There are no additional costs of this option, although the Planning Inspectorate and local authorities would retain the costs of participating in complex methods for simple appeal cases.

**Option B: Appeal method to be determined by the Planning Inspectorate, on behalf of the Secretary of State, by applying Ministerially approved indicative criteria**

*Benefits*

- Cost savings to the Planning Inspectorate: Based on the numbers of appellants who chose an alternative method from that recommended by the Planning Inspectorate in 2006, we calculate a cost saving of £1.2 million a year to the Inspectorate for planning appeals and a potential saving of £800,000 a year for enforcement appeals.

**Planning appeals**

<b>Appeal method</b>	<b>Administrative Officer time</b>	<b>Administrative Officer salary</b>	<b>Administrative Officer costs</b>	<b>Administrative Officer costs + 40%<sup>1</sup></b>
<b>Written reps</b>	1 day	£18,293	£83.15	£116.41
<b>Hearing</b>	1 day	£18,293	£83.15	£116.41
<b>Inquiry</b>	1.25 day	£18,293	£103.94	£145.51

<sup>1</sup> 20% for National Insurance and pensions, 20% for overheads

Appeal method	Inspector time	Inspector salary	Inspector costs	Inspector costs + 40% <sup>1</sup>	Costs for overnight stay	Total costs (Administrative Officer and Inspector)
Written reps	1 days	£44,156	£238.68**	£334.15	£12.22***	£462.78
Hearing	3 days	£55,126*	£893.94	£1,251.51	£110	£1,477.92
Inquiry	5 days	£55,126*	£1,489.89	£2,085.85	£110	£2,341.36

<sup>1</sup> 40% is added to account for pensions and National Insurance (20%) and overheads (20%).

\* Senior planning inspectors are required for hearings and inquiries

\*\* Inspectors have 185 working case days a year

\*\*\* Based on one overnight stay (£110) for every nine written representation cases

Change in appeal method	Change in no. of cases <sup>2</sup>	Cost difference per case	Total cost difference
Inquiry to hearing	187	£863.44	£161,463.28
Inquiry to written reps	114	£1,878.58	£214,158.12
Hearing to written reps	800	£1,015.14	£812,112.00
		<b>Total saving</b>	<b>£1,187,733.40</b>

<sup>2</sup> These estimates are based on the number of cases between April 2006 and March 2007 where the Planning Inspectorate wrote to appellants encouraging them to change to a more appropriate appeal method, but the method did not change as a result.

## Enforcement appeals

For enforcement appeals, a hearing is an alternative only to a written representations case, not an inquiry. The Planning Inspectorate estimate that 90% of current enforcement hearings could be dealt with by written representations. The remaining 10% would be the cases where a party has advised of illiteracy or where all parties including the Planning Inspectorate agreed that a hearing was the best option.

781 enforcement hearings were held in 2005/06; 90% of 781 = 703

2.34 extra days per case for a Inspector = (703 x 2.34) = 1645 days or 8.9 working years

At an Inspector's salary £55,126 + 40% = £686,869.96

Saving per case for overnight stays = 703 x £110 = £77,330

Total travel savings = £30,000

Total saving = £794,199.96

- Performance of the Planning Inspectorate: The Planning Inspectorate will be able to redistribute resources in the way it considers most efficient and proportionate. The saved resource could be used to help deal with casework for which there is insufficient administrative and Inspector resource available at present.
- Cost savings to appellants: It is difficult to estimate the full costs of appeals to appellants. Our indicative estimate suggest there could be a saving of £1.4 million a year for appellants with less use of more time-consuming options such as inquiries and hearings. Whilst there is the potential for these financial savings, experience of using the appeal method criteria on a non-statutory basis shows that some appellants choose to pay this cost to secure their selected appeal method.

### Planning appeals – costs to appellants

Appeal method	Estimated consultancy fees	Estimated legal fees
Written reps	£500	None
Hearing	£1,000	None
Inquiry	£2,000	£2,000

Change in appeal method	Change in no. of cases	Cost difference per case	Total cost saving
Inquiry to hearing	187	£3,000	£561,000
Inquiry to written reps	114	£3,500	£399,000
Hearing to written reps	800	£500	£400,000
<b>Total saving</b>			<b>£1,360,000</b>

- Time savings to appellants: The time savings for determining an appeal would be equivalent to a reduction from over 30 weeks to 17 weeks for 1500 appeal cases.

There are also potential savings to appellants who do not have their appeal method changed but would now not be subject to the delays caused by appeal backlogs. This could have a monetary benefit if it allowed individuals and businesses to deliver the benefit at lower cost and/or gain revenue from the development in the intervening period. These costs are difficult to quantify.

- Cost savings for local authorities: Local authorities would be likely to spend less time at inquiries and oral hearings, and have less need to hire legal representation at inquiry. Our indicative estimate of this saving is £2 million per year.

### Planning appeals – costs to local authorities

Appeal method	Planning officer costs + 40%	Legal fees	Total cost
Written reps	(1 day) £110.78	None	£110.78
Hearing	(1.5 days) £166.17	None	£166.17
Inquiry	(3 days) £332.35	£2,000	£2,332.35

Change in appeal method	Change in no. of cases	Cost difference per case	Total cost saving
Inquiry to hearing	187	£55.39	£10,357.93
Inquiry to written reps	114	£2,221.57	£253,258.98
Hearing to written reps	800	£2,166.18	£1,732,944
<b>Total saving</b>			<b>£1,996,560.80</b>

## Costs

- Rights to a hearing: All parties would lose their right to insist upon an oral hearing. There is little evidence to suggest that the appeal route is related to a difference in appeal outcome, and so no monetary value has been attributed to this loss of right. In 2005/06 the percentage of appeals approved was 33% for written reps, 36% for hearings, and 42% for inquiries. The Planning Inspectorate maintains that the reason for this difference is due to the difference in the cases being seen through inquiry and hearings (they tend to be more soundly based), rather than a difference that can be attributed to the route.

## 5. Small Firms Impact Test

This proposal could have a disproportionate impact on small and medium sized developers. This is because larger developers are more likely to be proposing larger developments that justify a hearing or inquiry, and are therefore less likely to have a change in appeal method. However, on the premise that the appeal route itself does not affect outcome, small and medium sized developers will not be disadvantaged by this proposal. Indeed, they will have the advantage of accruing savings from using less expensive appeal methods and receiving decisions quicker.

There is a possibility that this proposal will lead to less business for consultancies and law firms who represent appellants at hearings and inquiries, and these businesses tend to be small in size. However, this effect will be small (only 1,500 appeal cases a year will be affected) and the potential savings from this proposal outweigh any negative effects.

Small businesses and their representatives are being consulted on this proposal in parallel with the wider public consultation. The Small Business Service has acknowledged our approach.

## 6. Competition assessment

The competition filter was applied to this proposal. There are many appellants from the development industry where a few firms have a large market share. However, this proposal would not have a substantial different effect on firms, affect the market structure, penalise new firms or place restrictions on the services or products that firms provide.

## 7. Environmental impacts

This proposal will not have any environmental impacts.

## 8. Race equality impacts

There is a risk that this proposal will be seen as a loss to human rights, since the principal parties will no longer have the right to request an oral hearing. However, the use of indicative criteria to guide appeals to the most suitable method would ensure that all principal parties received a level of service suited to the complexity of their appeal.

The indicative criteria would specify that cases that were better suited to a hearing or inquiry, which would include cases involving vulnerable groups such as Gypsies and Travellers, would be dealt with in that way. We believe that this would mitigate against any disproportionate impact on vulnerable groups, but would welcome views on this.

## **9. Rural, health and other social effects**

We have considered these possible effects. At this stage we do not consider that there would be disproportionate impacts to different groups from this proposal in terms of race equality, rural, health or other social effects. If evidence emerges as a result of our consultation that suggests otherwise, this will be taken into account in the further development of the policy.

There is a risk that this proposal will be seen as a loss to human rights, since the principal parties will no longer have the right to request an oral hearing. However, the use of indicative criteria to guide appeals into being processes by the most appropriate method would ensure that all principle parties received a level of service proportionate to the complexity of their appeal and also that no vulnerable groups would be disadvantaged as a result.

## **10. Other risks**

There is a risk that there will be a higher number of cases going to the High Court, to challenge the procedure chosen for their appeal by the Planning Inspectorate on behalf of the Secretary of State. This is difficult to estimate but should be noted for future monitoring.

## **11. Enforcement, sanctions and monitoring**

Parties would have recourse to the High Court in the event that they wished to challenge the appeal procedure chosen for their appeal. In the event of legal challenge, the Planning Inspectorate (who would be acting on behalf of the Secretary of State) would have to demonstrate that they have acted reasonably in applying the criteria.

When implemented, the Secretary of State would monitor how the indicative criteria were being applied as well as public reaction to this to ensure that they remain fit for purpose.

## **12. Summary**

Based on the evidence above, we consider that the implementation of Option B would improve proportionality and efficiency in the appeals system.

### **(3) Title of proposal: Changes to administrative procedures for appeals**

#### **1. Purpose and intended effect**

##### **Objective**

To improve the customer focus and efficiency of the appeals process.

##### **Background**

See individual options below, as background context varies.

##### **Rationale for government intervention**

Some of the existing administrative processes used in the appeals system are not as efficient as they could be. Action is required to improve the appeal system's functioning to allow it to better respond to increasing pressures.

#### **2. Consultation**

##### **Within government**

This RIA accompanies a public consultation document which has been agreed across Government.

##### **Public consultation**

This RIA accompanies a public consultation document.

#### **3. Options**

##### **A. Do nothing**

The current appeals system would be maintained.

**Options B, C and D below could be applied separately or in combination.**

##### **B. Submission of evidence**

Under the current rules, the principal parties are required to send two copies of their statement, further comments and (if an inquiry is to be held) proof of evidence to the Planning Inspectorate. The Planning Inspectorate then sends copies of these documents to the other party. This process takes responsibility away from the parties and is administratively inefficient.

Option B proposes that the appellant and the local authority would send directly to each other and simultaneously to the Secretary of State a copy of their statement of case, any further comments, and in the event of an inquiry, proofs of evidence – rather than the Planning Inspectorate serving as the intermediary in this task.

### **C. Fixing inquiry and hearing dates**

Under the current appeal system, the appellant and the local authority are each permitted one refusal of a date before one is fixed. If a first date is refused, a second date is offered to the party which didn't refuse, or the parties have the option of mutually agreeing a date. The Planning Inspectorate allows one month from the notification of the first offer date for the parties to mutually agree an alternative.

Option C proposes that the Planning Inspectorate would offer the appellant and the local authority two inquiry or hearing dates, with one to be agreed within five working days of the start date of the appeal, otherwise a date (either one of the original dates offered or a fresh date) would be imposed by the Planning Inspectorate on the parties.

Relevant circulars would also be strengthened to more clearly set out the Planning Inspectorate's policy to resist adjournments, withdrawals and postponements and to decline to link appeals unless they are made at the same time.

### **D. Nature and content of appeal documents**

In making appeals, there are certain information requirements that appellants are required to submit. However, at any time there are at least 250-300 appeals where essential supporting documents are missing. On the other hand, there has also been a remarkable rise in the quantity of evidence submitted in support of appeals for even the most minor of cases. Often, quantity does not mean quality – with too much repetitious, poorly focused evidence being submitted.

We propose to provide better guidance as to what evidence is helpful to the inspector, and to describe the nature of material that should be submitted, including indications of what matters should be addressed and the level of detail required. We propose requiring parties to submit a short summary of their appeal statement in hearing cases prior to the event. We are also considering the imposition of word limits on appeal documents such as appeal statements and proofs of evidence.

## **4. Costs and benefits**

### **Sectors and groups affected**

- Public sector (the Planning Inspectorate and local authorities)
- Appellants (including business, voluntary sectors, charities and the public)
- Third parties (including business, voluntary sectors, charities and the public)

### **Option A: Do nothing**

There are no new or additional costs and benefits from this option.

## Option B: Submission of evidence

### *Benefits*

- Cost savings for the Planning Inspectorate: The cost savings for the Planning Inspectorate are estimated to be £30,000 per year<sup>7</sup>.

### *Costs*

- Cost to appellants and local authorities: The savings to the Planning Inspectorate would be shared amongst all local authorities and appellants. Therefore, there would be small additional costs to local authorities and appellants in the extra postage of having to send appeal papers to two recipients rather than one.

### *Risk*

There is a risk that the Planning Inspectorate will no longer have proof of what information is sent to each party. There is also the risk that one party may behave unfairly by not sending their appeal papers to the other party within the given time frame, thereby giving the other party less time to consider the evidence, which could possibly result in the postponement of hearings and inquiries so as to give the other party enough time to take evidence into account. The Costs Awards system may provide some deterrent to unreasonable behaviour, but this is not a guarantee that it won't occur.

## Option C: Fixing inquiry and hearing event dates

### *Benefits*

- Time savings for the Planning Inspectorate, appellants, local authorities and third parties: This proposal would minimise prospect of delays in the conduct of appeals and other incurred wasted costs, i.e. in fixing the date or avoiding postponement or adjournment.
- Better service: The Planning Inspectorates' and other parties' resources would be better deployed and greater certainty would be built into the appeals process. It would assist in speeding up the appeals process.

### *Costs*

- Costs to appellants: Appellants may lose business if they have to miss other appointments to attend hearings/inquiries, or have to withdraw their appeal if they or their experts are not able to attend on the fixed date. A penalty may be applicable where behaviour was thought to be unreasonable.

## Option D: Nature and content of appeal documents

### *Benefits*

- Cost saving for the Planning Inspectorate: This would save Inspectors time reading unnecessary material and organising the evidence presented. This would be an estimated saving of £1.6 million a year<sup>8</sup>.

<sup>7</sup> The Planning Inspectorate estimate this would require 1250 hours for an administrative officer; administrative officer salary = £18,293, cost per hour = £10.99, with pensions, National Insurance and overheads = £15.39; 20,000 letters with 32p postage, 2,000 packages posted at £1 each = approx £10,000 for stationery.

<sup>8</sup> This estimate is based on: two hours per case; 22,017 cases; Housing and planning inspector median salary is £44,156, £26.54 an hour, with pensions, National Insurance and overheads £37.15 per hour.

- Time and cost savings for the local authorities: This is estimated to be one hour per case, and using planning officers salaries, represents an annual cost saving of approximately £340,000.
- Time and cost savings for appellants: Appellants would have a better idea of what information would be required at appeal, so they would spend time only producing what is necessary. It is difficult to estimate the monetary benefit here.
- Time savings for third parties: This is estimated to be one hour per case, so 22,017 hours (the equivalent of approximately 3,000 working days, or 13.6 working years). It is difficult to estimate the monetary benefit here.

#### *Costs*

- Costs to appellants and local authorities: Appellants and local authorities would have to change the way they prepare their appeal evidence. The current appeals good practice guidance and forms are not widely used – the reasons for this are not clear.

## **5. Small Firms Impact Test**

This proposal is unlikely to have any impact on small businesses. Small businesses and their representatives are being consulted on this proposal in parallel with the wider public consultation. The Small Business Service has acknowledged our approach.

## **6. Competition assessment**

The competition filter was applied to this proposal. There are many appellants from the development industry where a few firms have a large market share. However, the proposal will not have a substantially different effect on firms, affect the market structure, penalise new firms or place restrictions on the services or products that firms provide.

## **7. Environmental impact**

This proposal has no effect on the environment.

## **8. Race equality impacts**

We have considered these possible effects. At this stage we do not consider that there would be disproportionate impacts to different groups from most of these proposals. Nevertheless, we would need to monitor the impact of fixing inquiry and hearing dates on Gypsies and Travellers as their cases would always be dealt with by one of these methods and we are aware that the number of law firms who will represent them is more limited, hence we would need to make sure that these law firms were not at a disadvantage due to the sheer number of cases they were dealing with in the timeframes set by the Planning Inspectorate.

We would welcome views on the potential equality impacts of all these proposals and how we could mitigate these. If evidence emerges that suggests disproportionate impacts to different groups, this will be taken into account in the further development of policy and a full Race Equality Impact Assessment carried out.

## **9. Rural, health and other social effects**

We have considered these possible effects. At this stage we do not consider that there would be such impacts. If evidence emerges as a result of our consultation that suggests otherwise, this will be taken into account in the further development of the policy.

## **10. Enforcement, sanctions and monitoring**

Changes to the Costs Awards regime will be considered to guard against abuses of the system, for example not forwarding appeal papers to other parties on time. The Consultation Document to which this RIA is attached sets out proposals for updating the current Costs Awards Circular and invites views. Proposed changes include updating the Circular to reflect new legislation, clarify more accurately the extent of full awards, and re-affirm examples of unreasonable behaviour. We are also considering allowing fixed penalties to be imposed where a party has abused the appeal procedure and extending the costs regime to written representation planning appeals.

If parties feel that the Planning Inspectorate has acted unfairly they will have right of recourse to the High Court.

## **11. Summary**

Based on the above evidence, we consider the implementation of Options B, C and D (whether individually or collectively) would have the effect of increasing efficiency in the appeals system.

## **(4) Title of proposal: The introduction of new material at appeal**

### **1. Purpose and intended effect**

#### **Objective**

To improve the efficiency and integrity of the appeals process by introducing changes that would limit the introduction of new material at appeal.

#### **Background**

The 2000 Appeal Regulations and the advice in Circular 05/2000 are not limiting as to the material that can be produced at the appeal stage by the appellants, local planning authority or third parties. Under the current rules either side can introduce new issues at appeal in addition to those originally considered by the local planning authority at the planning application stage.

The Planning Inspectorate calls this 'case creep'. There are two main ways there can be 'case creep' – changes to the evidential base (for example new retail assessments, housing supply figures, further alternative sites investigated) and revisions to the proposed development itself (such as changes to the number of units proposed or to the layout of a scheme). It is often argued that the new information or revised scheme is provided in response to the case made by the opposing party and/or third party objectors and thus should be taken into account by the inspector.

'Case creep' can occur in all three types of appeal method. 'Case creep' can lengthen the appeal process, particularly at inquiries and hearings due to the need to consider new material, which can often lead to requests for adjournments. In inquiries, new material often comes in with the proofs of evidence which are due four weeks before the event itself. Time can be taken up at the inquiry event discussing the acceptability of this new material and in dealing with late rebuttal evidence that the Inspector has difficulty in resisting without the potential for challenge from disadvantaged parties. It can also be difficult to resist requests to consider a revised scheme specifically amended to address objections. However the introduction of new material is confusing for third parties who can feel disadvantaged if the inspector opts to consider material that they have only just seen and have not had time to digest and respond to, leading to a general perception of a lack of transparency and openness and dissatisfaction with the appeal process.

#### **Rationale for government intervention**

The Barker Review of Land Use Planning recommends that appeal processes be revised to reduce the potential for 'case creep', and thereby reduce the delay and cost of the appeals system for appellants. The late introduction of new material is often perceived as unfair by the opposing party as well as third parties involved in appeals, and our response will ensure a fairer service.

### **2. Consultation**

#### **Within government**

This RIA accompanies a public consultation document which has been agreed across Government. Also, this was a Barker recommendation and other Government Departments have responded to Barker's final report and its recommendations.

## Public consultation

This RIA accompanies a public consultation document. Interest groups and key stakeholders have responded to Barker's final report and its recommendations.

## 3. Options

### A. Do nothing

The current appeals system would be maintained.

### B. Limit introduction of new material

That the regulations be changed to limit the material considered at appeal stage to that which was before the local authority when it made its decision on the planning application. This should be subject to the provision that the inspector should be able to ask for further information if there had been a relevant change in circumstances or if the information is considered by the inspector to be deficient in some way, for example it did not address issues that were considered to be material.

We are also proposing to amend the inquiry and hearing rules to remove the nine week comment stage. Parties to appeals decided by inquiry or hearing are currently offered a final opportunity to comment in writing at the nine week stage. Given that there is opportunity at the inquiry or hearing event itself for such additional comments to be made, we do not consider that parties would be significantly disadvantaged by this proposal. Indeed, the existing opportunity to comment at the nine week stage is rarely used for inquiries in particular, and restricts the ability to speed up the appeals process.

## 4. Costs and benefits

### Sectors and groups affected

- Public sector (the Planning Inspectorate and local authorities)
- Appellants (including business, voluntary sectors, charities and the public)
- Third parties (including business, voluntary sectors, charities and the public)

### Option A: Do nothing

There are no new or additional costs or benefits with this option.

### Option B: Limit the introduction of new material

#### *Benefits*

- Cost savings for the Planning Inspectorate: The Planning Inspectorate will no longer have to deal with new information presented late in the appeal process. This is estimated to save £340,000 a year<sup>9</sup>.

<sup>9</sup> This estimate is based on: One hour per case; 22,017 cases; administrative officer's salary is £18,293, £10.99 an hour, with pensions, National Insurance and overheads £15.39 per hour.

- Cost savings for local authorities: There would not be significant cost savings to local authorities through this proposal. They would have reduced burdens by not having to consider new material submitted late, but this may be discounted by more information being presented at application stage. There may also be some savings to planning staff from the limited opportunity to produce new material themselves.
- Time savings for third parties: Third parties would no longer have to deal with new information presented at a late stage. This is estimated to require the equivalent of over 4500 working days<sup>10</sup>.
- Confidence in the system: This amendment would increase the integrity of the appeals system by making it more transparent as to appeal material allowances. It would also be fairer to all.

#### *Costs*

- No costs have been identified.

## **5. Small Firms Impact Test**

It is possible that there may be some loss of consultancy and legal business to small firms, but this impact will be very minimal. Small business and their representatives are being consulted on this proposal in parallel with the wider public consultation. The Small Business Service has acknowledged our approach.

## **6. Competition assessment**

The competition filter was applied to this proposal. There are many appellants from the development industry where a few firms have a large market share. However, the proposal will not have a substantially different effect on firms, affect the market structure, penalise new firms or place restrictions on the services or products that firms provide.

## **7. Environmental impact**

This proposal has no effect on the environment.

## **8. Race equality impacts**

We have considered these possible effects. At this stage we do not consider that there would be disproportionate impacts to different groups from this proposal in terms of race equality. If evidence emerges as a result of our consultation that suggests otherwise, this will be taken into account in the further development of the policy.

<sup>10</sup> 1.5 hours per case; 22,017 cases; 33,025.5 hours a year, 7.25 hours in a working day.

## 9. Rural, health and other social effects

We have considered these possible effects and at this stage we do not consider that there would be rural, health or other social effects. If evidence emerges as a result of our consultation that suggests otherwise, this will be taken into account in the further development of the policy.

## 10. Other risks

- There may be a greater risk of more cases going to challenge in the High Court if parties feel that they have not been allowed to submit new material that they believe should have been put before the Secretary of State or the appointed inspector. However, we believe this risk to be small as the Secretary of State or the inspector will have the discretion to accept evidence if he/she considers it to be appropriate.
- Applicants may submit overly comprehensive planning applications in an attempt to cover all angles if they consider it likely that their application may progress to appeal. This could result in local authorities having to expend more time during the planning application assessment teasing out the important information necessary to make a decision. However, we are working on various measures, including the production of a standard application form, to improve the overall quality of planning applications and to ensure that only relevant, necessary information is provided from the outset. These efforts to ensure the quality of information submitted at planning application stage should go some way in reducing this risk.
- Local planning authorities may see this proposal as demanding fuller reports for planning applications with more detailed reasons for refusal. However, this is already current good practice.

## 11. Enforcement, sanctions and monitoring

Any party who is aggrieved by the Secretary of State or his/her inspectors' decisions regarding what information can be submitted at appeal stage would have recourse to challenge in the High Court.

## 12. Summary

Based on the evidence above, we consider that the implementation of Option B would improve the efficiency and integrity of the appeals system.

## **(5) Title of proposal: The correction of errors in appeal decisions**

### **1. Purpose and intended effect**

#### **Objective**

To improve the efficiency and outcome of the procedures by which errors in appeal decisions can be corrected

#### **Background**

The Secretary of State and the Planning Inspectorate acting on her behalf have the power to issue a formal notice correcting an error in an appeal decision that is not part of the reasoning on which that decision is based. The errors that can be corrected under this power are of such a nature that they would not put any party at a disadvantage. Examples of such errors include incorrect house numbers, incorrect appeal and application numbers, and obvious errors in measurements and compass points. However, in order to be able to exercise such powers, the Secretary of State or the Planning Inspectorate must first obtain the unconditional written consent of the appellant and the relevant landowner(s). Obtaining consent can prove problematic in practice (i.e. where the error is perceived to be to the applicant's advantage) and, if land ownership changes after an appeal is submitted, the Secretary of State or Planning Inspectorate's information becomes out of date and identifying the current landowner(s) can be difficult. Failure to obtain the necessary consent can in some circumstances lead to a High Court challenge that might otherwise be avoided (for example, where one of the parties feels there may be an opportunity to have the case redetermined in their favour).

#### **Rationale for government intervention**

Acceptance of this proposal would greatly improve the effectiveness of the procedures which allow for the correction of errors in appeal decisions.

### **2. Consultation**

#### **Within government**

This RIA accompanies a public consultation document which has been agreed across Government.

#### **Public consultation**

This RIA accompanies a public consultation document.

### 3. Options

#### A. Do nothing

The current process would be maintained.

#### B. Introduce amendments to procedures for the correction of errors in appeal decisions

That changes both to primary and associated secondary legislation are made to enable the Secretary of State or the Planning Inspectorate to issue a Correction Notice without obtaining the consent of the appellant/landowner(s), with the provision that they would not issue a Correction Notice where the amendments would cause a clear disadvantage to the appellant.

### 4. Costs and benefits

#### Sectors and groups affected

- Public sector (the Planning Inspectorate and local authorities)
- Appellants (including business, voluntary sectors, charities and the public)
- Third parties (including business, voluntary sectors, charities and the public)

#### Option A: Do nothing

There are no new or additional costs and benefits with this option.

#### Option B: Introduce amendments to procedures for the correction of errors in appeal decisions

##### *Benefits*

- Cost savings for the Planning Inspectorate: 150 hours reduction in the amount of administrative time to deal with these corrections to appeal decisions, costed at approximately £3000 per year<sup>11</sup>.
- Cost savings to all responding to the Planning Inspectorate: In 80% of cases the parties are content with the changes made. Under this proposal parties will no longer be required to consider and respond to matters of little consequence to them.
- Less risk of cases going to the High Court: Approximately 20% of the 100 cases fail and so approximately 20 cases a year have the risk of proceeding to the High Court. High Court proceedings have costs for the appellant, for the Planning Inspectorate, for third parties and the Court itself.

<sup>11</sup> This estimate is based on: 100 cases per year; 1.5 hours of executive officer time per case for writing to landowner and applicant, following up, recording responses; executive officer costs are £23,168 a year, £13.92 an hour, plus pensions, National Insurance and overheads equals £19.49 per hour.

### *Costs*

- No right of consent: Whilst this measure may be regarded as taking away a right of consent, this right is currently only used by less than 20 parties a year. In addition, correcting a decision without first seeking consent would not affect anyone's fundamental rights or prejudice their position since legal recourse through the High Court would remain as an option.

## **5. Small Firms Impact Test**

It is possible that there may be some loss of consultancy and legal business to small firms, but this impact will be very minimal. Small businesses and their representatives are being consulted on this proposal in parallel with the wider public consultation. The Small Business Service has acknowledged our approach.

## **6. Competition assessment**

The competition filter was applied to this proposal. There are many appellants from the development industry where a few firms have a large market share. However, the proposal will not have a substantially different effect on firms, affect the market structure, penalise new firms or place restrictions on the services or products that firms provide.

## **7. Environmental impact**

This proposal has no effect on the environment.

## **8. Race equality impacts**

We have considered these possible effects. At this stage we do not consider that there would be disproportionate impacts to different groups from this proposal in terms of race equality. If evidence emerges as a result of our consultation that suggests otherwise, this will be taken into account in the further development of the policy.

## **9. Rural, health and other social effects**

We have considered these possible effects. At this stage we do not consider that there would be disproportionate impacts to different groups from this proposal in terms of race equality, rural, health or other social effects. If evidence emerges as a result of our consultation that suggests otherwise, this will be taken into account in the further development of the policy.

## **10. Enforcement, sanctions and monitoring**

All appellants and other parties would have a right to challenge in the High Court.

## **11. Summary**

Based on the evidence above, we consider that the implementation of Option B would improve the efficiency and outcome of procedures for correcting errors in appeal decisions.

## **(6) Title of proposal: Reducing the time limit for planning appeals when the same development is the subject of an enforcement notice**

### **1. Purpose and intended effect**

#### **Objective**

To increase efficiency in dealing with linked planning and enforcement appeals, and improve the use of the Planning Inspectorate's resources.

#### **Background**

At present, applicants have six months from the notification of a refusal of planning permission within which to lodge an appeal and a minimum of 28 days (local authorities rarely extend the 28 day minimum) to lodge an appeal against an enforcement notice. Where planning permission has been refused and the same or substantially the same development is the subject of an enforcement notice, applicants can manipulate the different appeal timescales to delay the processing of the appeals. This allows them to retain unauthorised building works and/or to continue operation unauthorised uses for as long as possible.

For example, where planning permission has been refused and an enforcement notice issued, the applicant may lodge an appeal against the enforcement notice within the specified 28 days and the appeal starts to be processed by the Planning Inspectorate. Despite the fact that a planning application has also been refused, the applicant can choose not to submit an appeal against the planning decision until the last possible moment, this being six months after the decision letter has been issued.

This means that when the applicant lodges the planning appeal up to six months later, the Planning Inspectorate is, in many cases, forced to delay the enforcement appeal proceedings in order to handle the two appeals together so as not to waste resources. This allows the applicant further time to retain their unauthorised building works and/or use, as the enforcement notice cannot take effect until any appeal has been resolved.

The Planning Inspectorate may choose not to link the two appeals, particularly if the subsequent planning appeal is submitted close to the enforcement appeal event date (in the case of a hearing or inquiry) or near the end of processing (in the case of written representations). The Inspectorate then has to send two inspectors to the site to consider the same development within a short period of time and issue separate decisions, which is wasteful of resources. Even where the two appeals are not linked and an enforcement appeal is heard at the earliest opportunity and the notice upheld, local planning authorities are often reluctant to take action to uphold the enforcement notice, until the related planning appeal is heard. This means that in the worst case scenario, where the two appeals are not linked, a decision on the planning appeal might not be issued until 78<sup>12</sup> weeks after an enforcement notice was served.

#### **Rationale for government intervention**

Reducing the time limit within which applicants can lodge a planning appeal when an enforcement notice exists for the same or substantially the same development will improve the likelihood that related planning and enforcement appeals can be linked, thus allowing

<sup>12</sup> Using data supplied by the Planning Inspectorate on average appeal times.

the speedier issue of decisions on both appeals and more efficient use of the Planning Inspectorate's resources.

## 2. Consultation

### Within government

This RIA accompanies a public consultation document which has been agreed across Government.

### Public consultation

This RIA accompanies a public consultation document.

## 3. Options

### A. Do nothing

The time limits for lodging planning and enforcement appeals (6 months, and a minimum of 28 days respectively) would remain the same.

### **B. Reduce the time limit for appealing against a planning decision when the same or substantially the same development is the subject of an enforcement notice**

The General Development Procedure Order 1995 sets out the time limits for lodging appeals against planning decisions. Changes to this Order could be made to reduce the time limit for appealing against a planning decision to 28 days (or a different period between 28 days and the current 6 months) in instances where the same or substantially the same development is the subject of an enforcement notice.

Where an enforcement notice has already been issued, and this is followed by a planning decision on the same or substantially the same development, applicants would be notified of the reduced timescale (28 days) for appealing against the planning decision at the time of issue of the planning decision.

Where an enforcement notice is served following refusal of a planning application for the same or substantially the same development, the period for appeal against the planning decision would be reduced to 28 days starting from the date of the enforcement notice (i.e. the appellant would be informed of the reduced time period for appeal against the planning decision by virtue of a notice attached to the enforcement notice.)

There may be circumstances where a planning application is submitted after the enforcement notice is served. For the Planning Inspectorate to be able to link the related appeals, the planning appeal must be submitted no later than week 12 of the enforcement appeal. This would therefore rely on local authorities determining a planning application by week 8 of the enforcement appeal. Whilst it is in the best interests of the authority to do so, this may not always be achievable – particularly if the application has been submitted late into the running of the enforcement appeal. In this situation, any appeals would have to be heard separately.

We are also consulting on fast-tracking the processing of householder planning appeals. In instances where there is a householder planning appeal and there is also an enforcement appeal for the same development, the fast-tracked process would not be applied. If the appeals were linked, the enforcement appeal timetable would be used.

## 4. Costs and benefits

### Sectors and groups affected

- Public Sector (the Planning Inspectorate and local authorities)
- Appellants (including business, voluntary sectors, charities and the public)
- Third parties (including business, voluntary sectors, charities and the public)

### Option A: Do nothing

#### Benefits

There are no additional benefits from this option.

#### Costs

Doing nothing would not impose any additional costs although the economic, social and environmental costs of the status quo are set out below.

##### *Social*

The presence of unauthorised building works and/or the operation of unauthorised uses without planning permission can be detrimental to the amenities of nearby residents and reduce confidence in the planning system overall and its appeals system.

##### *Environmental*

The presence of unauthorised development may be harmful to the environment, particularly in areas designated for their special qualities e.g. Conservation Areas, Green Belt or Sites of Special Scientific Interest.

##### *Economic*

The following table provides estimates of the costs per case incurred by the Planning Inspectorate for dealing with planning and enforcement appeals.

Table 1

	<b>Enforcement Appeal</b>	<b>Planning Appeal<sup>13</sup></b>
1 day Inquiry	£2,4143 <sup>14</sup>	£2,341
1 day Hearing	£2,3414 <sup>15</sup>	£1,478
Written representations	£6795 <sup>16</sup>	£462

<sup>13</sup> See figures provided under section 2 of this RIA for the "Determining the appeal method" proposal.

<sup>14</sup> Administrative officer salary = £18,293 + 40% for National Insurance, pensions and overheads. Administrative officer effort = 1.5 days. Administrative officer cost = ((£18,293.00/220)x1.5)x40% = 218.27  
Inspector salary = £55,126 = 40% for National Insurance, pensions and overheads. Inspector effort = 5 days. Travel & Subsistence = £110. Inspector costs = (((£55,126/185)x5)x40%)+ £110 = 2,195.

<sup>15</sup> Same calculation as detailed in footnote 3, but reduce administrative officer effort to 1.25 days (£145.51).

<sup>16</sup> Same calculation as detailed in footnote 3, but reduce administrative officer effort to 1.25 days (£145.51) and inspector effort to 1.25 days (£533.68).

In addition, the profit which may be derived from an unauthorised development may far outweigh any penalties incurred as a result of the enforcement process. For example, those involved in continuing an unauthorised use are likely to be foregoing the cost of renting land or premises which have the necessary planning permission in place.

## **Option B: Reduce planning appeal time limits**

### **Benefits**

#### *Social*

Speeding up the appeal process would mean that unauthorised development would remain in place for much shorter periods of time before either being granted retrospective planning permission or having permission refused so that the local authority could uphold an enforcement notice. A quicker resolution to appeals should increase public confidence in the planning system and its appeals processes and will give greater certainty to third parties and local residents. These shorter timescales may encourage applicants to seek to negotiate solutions with their local authorities, which could reduce casework levels and be beneficial to everyone.

#### *Environmental*

The ability to resolve appeals more quickly should have a positive impact on the environment, since unauthorised development would be allowed to remain for shorter periods of time. If a planning appeal was dismissed and an enforcement notice upheld, action could be required quickly to remove the unauthorised development and the inspector would have the ability to impose conditions to make a development more acceptable in planning terms.

#### *Economic*

It is not possible to estimate the savings to be made from more effective linking of cases, but, if the figures and workings for table 1 are used, by combining appeals rather than having two separate appeals, it is possible that a saving of 10 inquiries could save the Planning Inspectorate some £23k and release 50 Inspector days for other casework.

### **Costs**

Appellants would have less time to prepare their appeal documentation, although we do not consider this to be a substantial cost since much of the information needed to support their appeal is likely to have been submitted in with the original planning application documentation. The statutory timescales for the processing of the appeals would not be shortened, providing ample opportunity for main and third parties to comment during the course of the appeal. We do not envisage any social or environmental costs in taking forward this proposal.

## 5. Small Firms Impact Test

This proposal would impact on small businesses that may be operating unauthorised uses, since it will reduce the time they can continue their business activities on the land without the necessary permission. However, since the unauthorised use may be resulting in harm, we consider this negative impact to be justifiable.

There is a possibility that the linking of appeals will lead to less work per case for consultancies and law firms who represent appellants, since they will only be working on one linked case rather than two separate cases. However, if appeals are likely to be processed more quickly and related planning and enforcement appeals linked, this should mean that law firms and consultancies can take on extra cases. This should be of particular benefit to Gypsies and Travellers, who currently struggle to find firms that are willing and who have the resources to represent Gypsies and Travellers.

Small businesses and their representatives are being consulted on this proposal in parallel with the wider public consultation. The Small Business Service has acknowledged our approach.

## 6. Competition assessment

The competition filter was applied to this proposal. This proposal may affect businesses that are operating unauthorised uses which may be benefiting from profits without paying rent for more suitable premises. We consider this proposal will have little effect on competition, however it could improve competition since in some cases, since businesses benefiting from occupying premises without the necessary planning permission may be required to leave the site sooner than at present and find more suitable premises, paying market rents.

## 7. Environmental Impact

The environmental impacts of the proposal are outlined in the cost and benefits section.

## 8. Race Equality Impact

Due to the large number of Gypsy and Traveller caravans on unauthorised developments (2234<sup>17</sup> of which 1253 are 'not tolerated' i.e. likely to be subject to enforcement action), many of which are occupied by Romany Gypsies and Irish Travellers, this proposal is likely to impact disproportionately on these two recognised ethnic groups.

Accordingly, an initial Race Equality Impact Assessment has been prepared and is as follows:

(a) If taken forward, this proposal will impact on all those who use or occupy unauthorised development or continue on with unauthorised uses where they are the subject of an enforcement notice and planning permission has been refused.

(b) At the moment, there are 2234 caravans occupied by Gypsies and Travellers on unauthorised developments, of which 1253 are reported as not tolerated (i.e. the local planning authority is taking or is likely to take enforcement action against the site). Due to the lack of ethnic monitoring of Gypsies and Irish Travellers by the majority of local authorities, it is not possible to estimate how many of the 2234 caravans on unauthorised developments are occupied by Romany Gypsies and Irish Travellers (distinct ethnic groups) but it is likely that they occupy a large proportion of the total number.

(c) In 2006/07, the Planning Inspectorate considered 4000 enforcement appeals, 110 – or 2.75% – of which were identified as relating to Gypsies and Travellers. We cannot identify figures for the number of linked planning and enforcement appeals, but given that Gypsies and Travellers are disproportionately represented in enforcement appeal numbers, it is a fair assumption that they will be more affected by this proposal than other appellants.

(d) In many cases, the presence of Gypsies and Travellers on unauthorised developments indicates a lack of alternative suitable sites and the difficulty that they have had in gaining planning permission in the past, due to the restrictive criteria imposed by local planning authorities.

(e) A reduced time limit for submitting planning appeals will mean that those wishing to appeal will have less time to submit their case to the Planning Inspectorate. Again this might disproportionately impact on Gypsies and Travellers since we understand that few law firms and consultants are prepared to represent them at appeal. However, at present, the few law firms cited may have to prepare for and attend two separate hearings when this proposal will only require one linked appeal hearing, with largely the same information being relevant for both the planning and enforcement appeals. This proposal should actually reduce the work involved in appeal cases and allow lawyers to take on more cases.

(f) In addition, this proposal will not affect or influence the outcome of planning appeals, only the time within which they are heard. If appeals are heard earlier and dismissed, this means that Gypsies and Travellers could be evicted from land earlier than they might have been had the appeals been delayed. However, we believe that the benefit of this proposal (the greater certainty to those involved in the appeal and the saving to Planning Inspectorate resources) outweighs any adverse impact on Gypsies and Travellers.

<sup>17</sup> Figures from the Caravan Count, a bi-annual count of all Gypsy and Traveller caravans on unauthorised sites, undertaken by local government on behalf of Communities and Local Government.

(g) When planning inspectors consider the merits of the planning case they may taken into account information such as the availability of sites in the area and the level of need for accommodation before reaching a decision. Where inspectors are convinced of the merits of the appeal they will grant planning permission, giving certainty to those Gypsies and Travellers occupying the site, earlier than would otherwise have been the case. Where inspectors dismiss the appeal, they have the ability to vary the compliance period with the enforcement notice to allow those occupying the site time to find an alternative site, where this viewed as necessary.

(h) We would welcome views on our initial assessment of the impact on different ethnic groups.

## **9. Rural, Health and other social effects**

We have considered these possible effects and at the moment we do not consider that there will be rural, health or other social effects. However, if evidence emerges as a result of our consultation that suggests otherwise, this will be taken into account in the further development of the policy.

## **10. Enforcement, sanctions and monitoring**

Failure to submit a planning appeal within the specified timescale would mean that the developer had no further right of appeal. The only recourse would be to seek judicial review of the local planning authority's decision making process which led to the refusal of planning permission.

If implemented, the impact of this proposal would be monitored by analysing the Planning Inspectorate database to examine whether it had the desired effect of reducing the time taken to hear linked appeals as well as reducing the amount of inspector resource dedicated to appeals relating to the same or substantially the same development.

## **11. Summary**

Based on the evidence above, we consider that the implementation of Option B would increase efficiency in the appeals system, as well as make better use of the Planning Inspectorate's resources.

## **(7) Title of proposal: Introducing fees for planning appeals**

### **1. Purpose and intended effect**

#### **Objective**

To reduce the cost of the appeals system to the Exchequer.

#### **Background**

The Barker Review recognised that the Planning Inspectorate is under funded. The annual cost of running planning appeals in England is now in the region of £30.1 million per annum.

In Northern Ireland a flat fee of £126 per appeal is currently levied.

#### **Rationale for government intervention**

This proposal considers the use of fees to increase the budget whilst ensuring that the cost burden falls on the beneficiary, through charging fees.

If the revenue were directed to the Planning Inspectorate (in full or part), it would enable the Inspectorate to increase its resources in order to process appeals in a more timely and efficient manner.

### **2. Consultation**

#### **Within government**

This RIA accompanies a public consultation document which has been agreed across Government.

#### **Public consultation**

This RIA accompanies a public consultation document.

### **3. Options**

#### **A. Do nothing**

The current appeals system would be maintained and no fees charged.

#### **B. Introduce an administration fee**

Under this option the fee would be a flat rate applied across all appeal types. As a minimum, the fee would have to cover the cost of an administrative officer for one day (approximately £120).

#### **C. Introduce fees to cover a proportion of service provision costs**

Under this option, the fee would pay a proportion of the costs of processing the appeal (both administrative and Inspector decision time). We propose that the fee would be based on the original application fee (for example, 20%), but with a minimum charge to ensure the revenue from the fee adds real value (for example, £50).

## Alternative options

Other options for charging were considered but discarded. We considered allowing fees to be returned where appeals were upheld. However, this would introduce a considerable burden to the Planning Inspectorate in processing fees and was considered unnecessary because parties retain the right to claim costs from those who had acted unreasonably. In addition, we considered setting Option C, the proportionate fee, against the full cost to the Planning Inspectorate of providing the service or the value of the development. In both cases, these options were considered too difficult to calculate and administer.

## 4. Costs and benefits

### Sectors and groups affected

- Public sector (the Planning Inspectorate and local authorities)
- Appellants (including business, voluntary sectors, charities and the public)
- Third parties

### Option A: do nothing

There are no new or additional costs of this option.

### Option B: Introduce an administration fee

#### *Benefits*

- Cost savings for the Planning Inspectorate: If we introduced a flat fee of £120 per planning appeal, this would generate an estimated income of £2.6 million a year.
- The Planning Inspectorate's performance: If the full or part of the revenue was directed to the Inspectorate, it would be able to distribute resources where it felt necessary, and be better able to respond to peaks and troughs in work. This would enable a more efficient and professional service. It is possible that the funds could be used to recruit and train more inspectors. It could also reduce the burden of funding on the Exchequer.

#### *Costs*

- Cost to appellants: For planning appeals, the costs to appellants would total an estimated £2.6 million a year. Under this option, the cost would be the same for all appellants (£120) regardless of the size of the development.
- Costs to the Planning Inspectorate: The Planning Inspectorate estimate that it will take an additional six administrative officers and one executive officer to administrate a fees system for planning appeals. This would have an annual cost of approximately £186,000<sup>18</sup>.

<sup>18</sup> This estimate is based on: Executive officer median salary is £23,168, + 40% for pensions, National Insurance and overheads. Administrative officer salary is £18,293, + 40% for pensions, National Insurance and overheads.

## **Option C: Introduce fees to cover a proportion of the service**

### *Benefits*

- **Cost savings for the Planning Inspectorate:** If we introduced a fee that charged 20% of the planning application fee per appeal, with a minimum charge of £50, this would generate an estimated income of £7 million a year for planning appeals (see table at end of this section).
- **The Planning Inspectorate's performance:** If the full or part of the revenue was directed to the Inspectorate, it would be able to distribute resources where it felt necessary, and be better able to respond to peaks and troughs in work. This would enable a more efficient and professional service. It is possible that the funds could be used to recruit and train more Inspectors. It could also reduce the burden of funding on the Exchequer.

### *Costs*

- **Cost to appellants:** For planning appeals, the costs to appellants would total an estimated £7 million a year, on current application fee rates. Under this option, the cost would be more for those appellants who were proposing larger developments.
- **Costs to the Planning Inspectorate:** The Planning Inspectorate estimate that it will take an additional six administrative officers and one executive officer to administrate a fees system for planning appeals. This would have an annual cost of approximately £186,000.

## **5. Small Firms Impact Test**

Small businesses and their representatives are being consulted on this proposal in parallel with the wider public consultation. The Small Business Service has acknowledged our approach.

## **6. Competition assessment**

The competition filter was applied to this proposal. There are many appellants from the development industry where a few firms have a large market share. However, the proposal will not have a substantially different effect on firms, affect the market structure, penalise new firms or place restrictions on the services or products that firms provide.

## **7. Environmental impact**

This proposal has no effect on the environment.

## **8. Race equality impacts**

We have considered these possible effects. The cost of the fee would fall to the appellant, whether or not the local authority's decision is upheld. The reason for this is to ensure that the costs fall to the party who may benefit from the appeal. The appellant would retain the right to claim costs (including the appeal fee) under the Cost Awards regime from the local authority if they consider that they have behaved unreasonably.

Our analysis of typical planning application fees for Gypsy and Traveller cases suggests that such cases would typically be subject to the minimum appeal fee under the 'proportionate fee' option. We therefore do not believe that this proposal would have disproportionate impacts on different groups. However, we are seeking views on this. If evidence emerges as a result of our consultation that suggests there might be a problem, this will be taken into account in our further development of the policy and a full Racial Equality Impact Assessment (REIA) would be completed.

## **9. Rural, health and other social effects**

We have considered these possible effects and at this stage we do not consider that there would be rural, health or other social effects. If evidence emerges as a result of our consultation that suggests otherwise, this will be taken into account in the further development of the policy.

## **10. Other risks**

Whilst there is a possibility that fees could deter genuine appeals, the fee levels proposed here are not believed high enough to do so. In Northern Ireland where appeal fees have been used in recent years, the number of appeals has increased.

## **11. Enforcement, sanctions and monitoring**

If this proposal were introduced, appeals would not be validated for processing until the required fee had been paid.

## **12. Summary**

Based on the evidence above, we consider the implementation of Option B or C would meet the objective of reducing the cost of the appeals process to the Exchequer.

## TABLE RELATING TO OPTION C – INTRODUCING FEES FOR PLANNING APPEALS

Fee calculations, based on 2005–06 receipts of s.78 planning appeals in England

Development type	Appeals received in 2005/06	Assumed planning application fee rate <sup>a</sup>	Planning application fee cost for purposes of exercise <sup>b, c, d</sup>	Appeal fee income (20% of planning application fee with minimum £50) <sup>e</sup>
Change of use	1805	10 (a)(i)	300 <sup>1</sup>	90250
Householder development	5854	6(a)	300 <sup>1</sup>	292700
Major dwellings	1713	1(b)(i)	13250 <sup>2</sup>	4539450
Major manufacturing, storage and warehousing	29	2(b)(v)	13250 <sup>2</sup>	76850
Major offices	18	2(b)(v)	13250 <sup>2</sup>	47700
Major retail distribution and servicing	46	2(b)(v)	50000 <sup>3</sup>	460000
Mineral working	9	9(a)(ii)	20250 <sup>2</sup>	36450
Minor Dwellings	7654	1(b)(i)	300 <sup>1</sup>	382700
Minor manufacturing, storage and warehousing	144	2(b)(iii)	300 <sup>1</sup>	7200
Minor Offices	117	2(b)(iii)	300 <sup>1</sup>	5850
Minor retail distribution and servicing	187	2(b)(iii)	300 <sup>1</sup>	93500
Other Major Development	269	2(b)(v)	13250 <sup>2</sup>	712850
Other minor development	3775	2(b)(iii)	300 <sup>1</sup>	188750
Development type unknown	397	2(b)(iii)/ 12	300 <sup>1</sup>	19850
<b>Total</b>	<b>22017</b>			<b>£6,954,100</b>

Fee assumptions and caveats:

- We have been unable to identify any data that directly records the number of applications or appeals received by their fee category, consequently the calculations are based on an approximate alignment between the above Development Description categories and the fee rates of Schedule 1 of *The Town and Country Planning (Fees for applications and Deemed Applications) Regulations 1989 (amended)*. The above table illustrates the fee rate chosen for each Development Description category.
- <sup>1</sup> indicates application fee rates that start at £135–£265, and increase depending on the number of additional hectares and/or units. We have chosen to represent these rates at £300.
- <sup>2</sup> indicates application fee rates at the starting range for high fee scales, and increases depending on the number of additional hectares and/or units. We have chosen to represent these rates at the starting point for the range.
- <sup>3</sup> indicates the application fee rate ceiling under category 2(b)(v) for the erection of buildings “where the area of gross floor space to be created exceeds 3750 . . .” where additional fees are charged “for each 75 square metres in excess of 3650 square metres, subject to a maximum in total of £50,000.” We have chosen this to capture very large developments, but there is a risk that the resultant figure overstates likely income.
- We assume that a minimum appeal fee of £50 pounds would be imposed. The appeal fee would then be 20% of the planning application fee or £50, which ever is the greater.

# ANNEX D

## Article II. The consultation criteria

The Government has adopted a code of practice on consultations. The criteria below apply to all UK public consultations on the basis of a document in electronic or printed form, and will often be relevant to other sorts of consultation.

Though they have no legal force, and cannot prevail over statutory or other mandatory external requirements (e.g. under European Community Law), the instructions below should otherwise generally be regarded as binding on UK departments and their agencies, unless Ministers conclude that exceptional circumstances require a departure.

**Consult widely throughout the process, allowing a minimum of 12 weeks for written consultation at least once during the development of the policy.**

**Be clear about what your proposals are, who may be affected, what questions are being asked and the timescale for responses.**

**Ensure that your consultation is clear, concise and widely accessible.**

**Give feedback regarding the responses received and how the consultation process influenced the policy.**

**Monitor your department's effectiveness at consultation, including through the use of a designated consultation co-ordinator.**

**Ensure your consultation follows better regulation best practice, including carrying out a Regulatory Impact Assessment if appropriate.**

The full consultation code may be viewed at

[www.cabinet-office.gov.uk/regulation/Consultation/Introduction.htm](http://www.cabinet-office.gov.uk/regulation/Consultation/Introduction.htm)

If not satisfied that this consultation has followed these criteria, or if you have other observations about ways of improving the consultation process, contact:

Albert Joyce,  
Communities and Local Government Consultation Co-ordinator,  
Zone 6/H10, Eland House, Bressenden Place, London, SW1E 5DU;  
or by e-mail to:  
[albert.joyce@communities.gsi.gov.uk](mailto:albert.joyce@communities.gsi.gov.uk)