

IMPROVING THE APPEAL PROCESS: MAKING IT PROPORTIONATE

A planning white paper 'daughter' consultation response
from the Royal Town Planning Institute (RTPI)



RTPI

mediation of space · making of place

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1. Introduction

This 'daughter document' represents part of the RTPI planning white paper response, addressing the government's proposals on the appeals process.

It forms part of a suite of responses to the planning white paper which are listed below:

- Planning for a Sustainable Future: a High Level Response;
- Planning for Major Infrastructure: Making the New System Work;
- Permitted Development Rights for Householders;
- Planning Fees; and
- Planning Performance Agreements.

Copies of all the white paper responses can be downloaded from:

- <http://www.rtpi.org.uk/item/606>

2. The Appeals Proposals

The appeals proposals are seen largely as refinements of the existing system, with the exception of a proposal for Local Member Review Panels, which is a major departure, the benefits of which are hard to appreciate and the risks and costs from which appear likely to be substantial.

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

There are a range of opinions on this proposal within the RTPI, with some support for the changes proposed and some opposition.

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

The RTPI does not agree with this proposal. This is a position to which we have come after some considerable internal debate, having resolved not to object to a similar proposal placed into legislation under the Planning Etc Scotland Act 2006, which we do note however has not commenced and from which there is therefore no useful monitoring data.

Internal consultations and debates within the RTPI highlighted that this proposal was a major concern to members for a number of reasons.

From a public perspective

- A 'Council' is perceived by the public typically as a decision maker in its own right. Strong distinctions are not made in the public mind between a decision by a Councillor (or a Panel of Councillors) and decisions by a delegate.
- It follows that a Local Member Review Body is likely to be perceived as insufficiently independent, as an 'appeal from Caesar unto Caesar'.
- The proposal appears to confuse the operation of an appeal, where the substantive elements should be independence and a re-determination of the facts; a review, which also requires independence but does not re-determine the facts; and a 'complaints procedure', where independence is not necessary.
- If the proposal seeks to provide an appeal or review, it is insufficiently independent. If it seeks to act as a pragmatic complaints procedure, then it may be justifiable, but the right to independent appeal or review should not be removed.
- The Planning Inspectorate is publicly perceived as being independent and offering a high quality service in most cases. Whilst action can be taken to improve resources and timeliness, it does not appear justified to divert a significant workstream away from a broadly 'working' Inspectorate into a poorly framed and unproven alternative process.

From an applicants' agent perspective

- Applicants are often motivated to appeal in circumstances where they consider that a gulf has opened up between the (broadly reasonable) technical appraisal of a proposal against policy by a planning officer, and wider political considerations that drive the application towards refusal, in circumstances where those political considerations are not fully

supportable by policy or sometimes are not even founded on material planning considerations.

- Applicants remain concerned about the degree to which political pressure is placed on some officers exercising delegation, and hence at the degree to which delegated decisions against which an appeal might only lie to a Local Member Review Body might in itself contain significant political elements.
- When applicants reach this perception, their demand is for an independent re-appraisal of the application, which they do not identify a Local Member Review Body as providing.

From a local planning authority perspective

- Significant probity issues would be raised by the operation of a Local Member Review Body that was required to be advised by the same staff that advised the delegate decision maker.
- However, the possible solutions, of using Councillors and staff not otherwise associated with planning decision making within an authority are likely to have serious cost and training implications.
- There must be a relationship of trust between officers and Councillors, and the operation of such a body could undermine that.

The proposal is flawed and should not proceed.

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?

The RTPPI supports this proposal, subject to the proviso that a determination of route should not exclude the capacity to seek costs. Further the criteria used to determine the appeal route for matters should make clear that matters of broad public interest, significance or controversy should be publicly heard.

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

Yes.

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

Yes. However, the extension of the costs regime to written representation planning appeals must take place if parties are capable of being directed to this stream, against their request.

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?

Whilst this proposal is superficially supportable, experience suggests that changes to the time limits for appeals need to be carefully tested to ensure that adverse unlooked for consequences in terms of the numbers of appeals are not generated. The RTPPI would be concerned if the change were to result in an avoidable rise in the number of appeals, in tandem with a reduced willingness of parties on all sides to negotiate voluntary solutions to the enforcement issues that would otherwise be the subject of an appeal.

The capacity to join enforcement and development appeals that relate to the same matter is eminently sensible and supported.

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

The RTPI has similar concerns about time limits as outlined above in respect of conjoint enforcement appeals. It will be important to ensure that any effects on caseload flowing from time limit changes is thoroughly understood before the changes are put into effect.

Turning to the broader proposals, the RTPI supports a power to make written representations regulations and a power to decline a repeat application on the basis of a recent similar appeal having been refused.

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

Views within the RTPI on proposals for fee charges varied:

- Some members acknowledged the difficulty of structuring an appeals service (PINS) in circumstances where income is not linked directly to incoming workload. Others noted the levy of a significant fee as being a reasonable means to reduce the number of frivolous appeals. To this extent, a move to increasing cost reliance on fees could be supported.
- Others were concerned that fees should be outcome based. For example, if an appeal finds that an original refusal of planning permission is not justified, applicants' agents took the view that their clients should be entitled to a refund of fee.
- Others took the view that fee charging is not justified as a planning appeals service is an essentially public service.

On balance, the RTPI does recognise the difficulties that PINS faces without a direct relationship between its income and workloads and therefore supports the fee proposals. If fees are to be charged, it would seem fairer that they are charged on a proportionate basis, an approach that will also render a more significant contribution of income than the imposition of an administrative charge alone.

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 there be unintended consequences?

Possible unintended consequences might include:

- a significant and regrettable decline in public and applicant perceptions of service quality and independence in the appeals service, if the Local Member Review Body proposal is proceeded with; and
- a possible rise in the number of enforcement appeals if the time limit is reduced, thus curtailing the capacity to negotiate positive outcomes.

3. Conclusions and Recommendation

The RTPI broadly supports the bulk of these proposals to refine and improve the operation of the appeals process, subject to minor and operational comments set out below.

The only matter of outstanding concern is the proposal to introduce Local Member Review Panels as a route of appeal that would exclude the right to proceed to an appeal conducted by a truly independent body. This proposal is flawed and should not proceed.

Recommendation

- The Local Member Review Panel proposals should be abandoned.