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Theresa Donohue
Department for Communities and Local Government
Eland House Zone 1/J10
Bressenden Place
London
SW1E 0RS

16 February 2009

Dear Ms Donohue

RESPONSE TO CONSULTATION ON PROPOSED CIRCULAR ON COSTS AWARDS IN APPEALS

Thank you for the opportunity to respond to the above consultation. The Royal Town Planning Institute (RTPI) is the leading professional body for spatial planners in the United Kingdom. It is a charity with the purpose to develop the art and science of town planning for the benefit of the public as a whole. It has over 22,000 members who serve in government, local government and as advisors in the private sector. This response was drafted following input from members through the RTPI Independent Consultants Network, the RTPI London Region, and from individual RTPI members.

The RTPI broadly supports the proposals set out in the draft Circular and notes that this consultation specifically relates to the way in which the proposed changes have been explained in the draft guidance, as opposed to the proposal to extend costs awards to written representations and the policy intentions contained in the circular.

The RTPI support the extension of the costs regime to the written representations procedure, as aggrieved appellants will no longer have to insist upon the Hearing or Public Inquiry route in order to make an application for costs. Indeed, we consider that this should have a significant impact in reducing workload on more time and resource consuming Hearings. It may also encourage potential appeal participants (whether they be the Local Planning Authority, applicant/appellant or third party) to consider positive negotiations on schemes close to acceptability. We note that costs decisions should not slow down the decision on the appeal, but have concerns that without additional PINS resources some delays may ensue due to the need to consider additional costs applications. We suggest that additional resources should be quantified and allocated by PINS.

The following section specifically responds to the consultation questions set out in the draft circular and draws attention to some areas where further clarification is required in the final document:

Does the attached draft provide greater clarity on when it might be appropriate to seek an award of costs? If not, how could it be improved?

Firstly, it is not clear if, having once introduced a charge for making an appeal, if that cost is always to be refunded should the appellant be successful. The RTPI recommends this be clarified in the final document.

Secondly it is often not clear until the hearing/inquiry is concluded whether one party has behaved so unreasonably as to merit an award of costs. It is not to "surprise" (paragraph A31 & A32) a party that a claim is made on the day of the hearing, it is often only when both sides' evidence has been heard that the claim can legitimately be made.

Lastly, the RTPI believes it should be recognised that a Local Planning Authority can act unreasonably in refusing an application solely to comply with a time target, when a small target infringement could have been supported by the applicant and have obviated the need for an appeal.

Do you have any other comments?

The RTPI supports the proposed changes to make third parties and statutory consultees liable for costs if they have been unhelpful or obstructive provided these parties are aware of these consequences. In some cases, the consultee may have limited time or resources to assist in appeals and in some cases no pre-appeal fee arrangements have been agreed by the LPA. Greater clarity on the process timetable and responsibilities of each party would be a considerable benefit.

The draft Circular does not adequately deal with the matter of making either a LPA or the appellant pay the successful party. It would be desirable to avoid parties having to pursue expensive claims in the Courts, which could ultimately result in disproportionate levels of expenditure to recover the costs of a planning case.

A similar point can be made in relation to the assertion at paragraph D8 that *"If an award of costs is made against the planning authority but the authority considers the statutory consultee should bear responsibility, the resolution of any difference of view will be a matter for the two parties"*. The RTPI suggests that the Circular should make it clear that the successful party should have the power to collect all costs, and recouping these from third party consultees/agents should not delay the payment to the party. This approach should be implemented for both the LPA and the applicant. It may be appropriate for a timescale for agreement to be proposed to encourage efficiency. However, there should be clear advice to local planning authorities about onward recovery from consultees and third parties.

The RTPI sees little benefit in reducing the right of appeal by householders to 3 months. Firstly, the RTPI has previously advised against the reduction for all appeals to 3 months and in that case we pointed out that the limited timeframe would prevent the opportunity for any meaningful dialogue with the local planning authority and would only lead to increasing the appeal workload. In the event we were proved right and the period was soon changed back to 6 months. Furthermore, we see no reason to deal with householders in any different way from any other appellant and in any event it is not clear what criteria to identify a "householder" is to be used, as some householders are actually commercial developers (paragraph 17). The proposed time limit for householder appeals to within 3 months of a decision may not permit sufficient time for an applicant to hold pre-application discussions and seek an alternative planning permission. Many householder applicants may chose to seek new advisors following a refusal, and this can take time. It is therefore likely to generate an increase the number of appeals and divert resources from negotiated solutions. We would therefore recommend that the time limit remains at 6 months.

The RTPI consider it important to continue the current flexibility in the classification by method of an individual appeal. We suggest that the proposed 'criteria' based system may reduce the current flexibility to engage in dialogue with PINS (as at present, where PINS suggests but does not impose an alternative approach). The

major incentive for appellants to select Written Representations over other methods however may be to secure a much faster decision, rather than the ability to make a claim for costs.

If you require any further assistance, please contact Rebecca Coates, Planning Policy Officer on 0207 929 9466 or email Rebecca.Coates@rtpi.org.uk.

Yours Sincerely

A handwritten signature in black ink, appearing to read 'Rynd Smith', with a long horizontal flourish extending to the right.

Rynd Smith
Director Policy and Partnerships