Minutes of Annual Meeting between the Planning Inspectorate (PINS) and representatives of the Independent Consultants Network (ICN)

Rivergate House Bristol 3rd May 2016

For PINS

Ben Linscott (BL)  Acting Chief Planning Inspector
Tom Warth (TW)  Head of National infrastructure Operations
Simon Bliss (SB)  Casework Manager

For ICN


A list of topics had been collated by Deirdre Wells on behalf of ICN and all matters were covered during the discussion that followed.

Ben Linscott opened the meeting with a welcome and introduced his colleagues.

The Inspectorate – management focus

A new PINS Chief Executive, Sarah Richards, was appointed a couple of months ago. The focus of all staff was to be on improving casework through more integrated working. Significant pressure on spending continued. Steps taken to reduce fixed premises costs. IT improvements programmed.

TB explained that inter alia the new CX wanted greater openness and certainty shared about timetables. PINS need to tell Appellants what is going on throughout an appeal. The new way of working will include key dates which would appear on website.

Performance

Accepted that this had not been good enough in the last year. On average HA’s took 14 weeks, WReps /Sec78 18 weeks, Hearings 22 weeks and inquiries 34 weeks. There were too many appeals in the system. The aim was for 5000 live appeals at any one time. In November this was 8000 and it was now down to 7000. There had been a period of non recruitment of Inspectors. Temporary staff had been put into admin.

The old system was for a file to be made up and the case given to an Inspector after all docs submitted. The new system involved an Inspector playing an active role earlier. The
backlog had been substantially reduced - the service was improving with acknowledgement letters now at 3 weeks whereas it had been ten weeks.

There were 42 more Inspectors than in March 2015, who were allocated cases 3 to 4 weeks after joining, at the rate of 2 to 3 a week (involving a degree of learning on the job’ with additional quality checks). Currently a period of transition with some appeals running on old system while new ones benefited from earlier Inspector involvement.

Admin was being made more efficient. The new system of dealing with appeals CTP or the Casework Transformation Project (CT Prefix) involved two main aspects:-

1. E-working with 85 to 90% electronic paperwork and

2. Allocation to Inspectors at an earlier stage - Inspectors given ownership in 4 to 10 weeks, cases were to "be paper light" with just a few documents as hard copies. Inspectors were to liaise with the parties through Casework Officers at PINS.

There were no spare resources so far as Inspector numbers was concerned, so if upsets happened cases still had to rejoin the queue for a new Inspector to be appointed. This resource constraint had delayed the transfer of cases from the old to the new system but it was hoped this could be achieved within the next year.

There were currently 237 full time equivalent Inspectors and 30 non salaried Inspectors. This was estimated to be sufficient. (The highest ever was 323 in 1996).

DISCUSSION

ICN Members said it was difficult to get LPAs to agree Statements of Common Ground in a timely manner, and Case Officers appeared to be unable to insist. BL/TW commented that it was totally unacceptable for SOCG to be delayed to the start of a PI, and promised action to enforce timetables.

Discussion on submission of last minute important updates prior to Inquiry/Hearings. BL said all Inspectors had phones and lap tops and could be contacted by Case Officers late in the process. However Inspectors should not be expected to receive and read large documents at the last minute.

BL said PINS was constrained by Wain Homes South West Holdings Limited v SoS DCLG [2013] EWHC 597 (Admin) - 50 dwellings Widham Farm, Widham Grove, Station Road, Purton, in Wiltshire relating to procedural fairness. It is a difficult decision for the Case Officer or Inspector to accept submissions late.
ICN repeated previously expressed concerns about evidence for Hearings having to be submitted months before the Hearing date, and thus frequently updates being necessary, but rejected by Case Officers so updates not known to Inspectors and public until the day of the Hearing. Previous system far better with final documents submitted three weeks beforehand.

**ACTION: PINS AGREED TO TAKE THIS UP INTERNALLY**

Digital Transformation Project was examining input processes and trying to improve processes with stakeholder input. This was part of the CX drive to openness and transparency and would involve contact at validation and timetabling. This should cut out many calls to PINS which were about progress of appeals.

Appellants should not in future receive requests for hard copies in addition to electronic, unless extremely complex documents were involved.

ICN asked if proposed changes re more active liaison with parties were aspirational. BL replied that the technology would allow for this but it had to be funded although productivity gains would assist. New Inspectors were receptive to the new ways of working.

SB said one of the problems with electronic working was appeals being incomplete when submitted. 20 to 25% cannot be started.

ICN response - Because of delays in validation in 2015 some consultants only submitted barest details to get a place in the queue. Faster validation would eliminate this practice.

One possible reason suggested by ICN for omitted docs/incomplete appeals was the inability for appellants to see and check the complete appeal form prior to submission - the 1APP form allows for completing then review and editing prior to attaching docs, which is far more user friendly. Also, some questions on appeal online form did not cover all circumstances.

**ACTION: PINS TO PURSUE IMPROVEMENTS IN LIAISON WITH ICN MEMBERS.**

**AGENDA ITEMS RAISED BY ICN MEMBERS**

1. **DECISIONS ON METHOD OF APPEAL**

PINS said they use Annexe J and make an objective decision knowing someone may be disappointed. Generally Inspectors decision (or Line Manager).ICN had had problems not felt listened to. BL confirmed process should be open and fair with both sides views sought before deciding. ICN raised the wording of how the decision is communicated.
ICN said there was a lack of consideration sometimes for third parties in the process, especially where LPAs failed to alert PINS to high levels of genuine public interest when procedure was being determined. Experience from ICN was that LPAs always opted for WRReps to reduce costs and resources, and third parties felt excluded, and it may lead to problems further down the line. The early involvement of the Inspector might go someway to alleviate this problem.

BL commented that third parties increasingly instigating Judicial reviews. (see Case Law below).

**ACTION: PINS TO REVIEW ADVICE TO CASE OFFICERS.**

2. ENFORCEMENT APPEALS
ICN concerned that where evidence had to be taken on oath this always necessitated an Inquiry when a Hearing would otherwise be perfectly adequate – with huge additional costs for all parties. PINS said Section 250 Local Gov Act required this and there was no appetite for further legislation. Stat decs and affidavits were acceptable at Hearings.

3. SITE VISITS
ICN reported several instances where Inspectors site visits were being organised or changed without parties being informed. This had affected Appellants, LPAs and Inspectors.

**ACTION: PINS TO INVESTIGATE AND AVOID SIMILAR IN FUTURE**

4. RAISING ISSUES AT APPEAL NOT COVERED BY LPA REFUSAL REASONS
BL referenced *Engbers v Secretary of State for Communities and Local Government. Case Number: CO/2984/2015* (Thames Farm, Reading Road, Shiplake, Henley-on-Thames.) Inspectors decision to dismiss appeal re 110 houses cancelled when challenged on natural justice. Court concluded that Inspectors decision was based on matters which were not in dispute between the principal parties, but that no indication has been given that this issue was to be determinative, or comments sought. Inspector to give notice of issues to parties even if not a reason for refusal.

5. PART Q GPDO
Part Q and structural matters discussed, with ICN members raising a number of points regarding the LPA’s dislike of the new regime. BL confirmed they had received over 500 Prior notification appeals. Conditions being added challenged on basis Inspector did not have power to impose. Many High Court challenges on PD appeals. PINS sympathetic to confusion arising from new provisions.

**ACTION: PINS TO TAKE UP PROBLEMS OF INTERPRETATION OF PART Q WITH DCLG AT NEXT MEETING**
6. HOUSING LAND SUPPLY CASES

BL explained difficulties encountered with HLS cases and apparent inconsistencies in decisions. They were aware of LPAs where this was a problem and monitored them. Discussed FOX HOMES and CHESHIRE EAST subject of High Court challenges - similar issues in same area at roughly same time, but evidence put varied.

PINS will try to arrange joint Inquiries where possible, but Appellants may resist.

7. MISCELLANEOUS

Inspectors have twice awarded costs when two principal parties had not sought them since introduction of new procedure.

Charges for appeals not likely at present although a discussion paper was in hand.

ICN saw a trend for more appeals as LPA’S appear to delay/refuse projects to bring them within CIL when imminent.

HIGHLIGHTING IMPORTANT CASE LAW

(1) NPPF Paras 14 and 49

*Richborough Estates and Cheshire East BC and Sos CLG* also *Suffolk Coastal and Hopkins Homes and Sos CLG Court of Appeal [2015] EWHC 132 (Admin)*

NPPF green gaps and wedges case in relation to NPPF paras 14 and 49. If LPA unable to demonstrate 5 year supply policies in Local plan on housing not up to date and restrictive policies (outside settlement boundaries etc) not up to date under paras 49 and 14. (Note that earlier first instance cases said to have been wrongly decided.) Application to Supreme Court made.

(2) Wind Turbines

Ministerial statement Greg Clark 18 June 2015 changed rules. Need to demonstrate local support on allocated site. *Martin v Secretary of State for Communities and Local Government [2015] EWHC 3435. Case Number: CO/2094/2015*. Mr and Mrs Andrew Heyward, Beckwell Farm and West Devon Council. PINS and SOS said no harm but no local support so dismissed.

Challenged- decision awaited. Similar challenge by FOE in Suffolk.
(3) Travellers and Housing Land Supply


(4) Cemetery in Green Belt - Inappropriate development.

The correct approach to paragraphs 89 and 90 was set out in **R (Timmins) v Gedling Borough Council & Westerleigh Group [2015] EWCA Civ 10** which concerned whether the creation of a cemetery is inappropriate development in the Green Belt. Dismissing joint appeals, Richard LJ remarked that NPPF para.89, as well as para.90, was properly to be read as a closed list.

(5) Green Belt assessment of buildings being replaced and whether openness needs to be assessed if development defined in NPPF as not inappropriate.

Green Belt Inspector considered proposed development against multiple original buildings, Council claimed assessment should have been on principal one, challenged and lost. **Tandridge DC [2015] EWHC 2503 (Admin).**

**R (Lee Valley Regional Park Authority) v Epping Forest DC [2016] EWCA Civ 404.** “The first sentence of paragraph 88 of the NPPF must not be read in isolation from the policies that sit alongside it. The correct interpretation of it, I believe, is that a decision-maker dealing with an application for planning permission for development in the Green Belt must give “substantial weight” to “any harm to the Green Belt”.

When the policies in paragraphs 79 to 92 are read as a whole (consistent with the approach taken, for example, in the judgment of Sullivan L.J., with whom Tomlinson and Lewison L.JJ. agreed, in Redhill Aerodrome Ltd. v Secretary of State for Communities and Local Government [2015] P.T.S.R. 274 , at paragraph 18) - Reading these policies together, I think it is quite clear that “buildings for agriculture and forestry”, and other development that is not “inappropriate” in the Green Belt, are not to be regarded as harmful either to the openness of the Green Belt or to the purposes of including land in the Green Belt. This understanding of the policy in the first sentence of paragraph 88 does not require one to read into it any additional words.” [17]

(6) Section 66 assessment of impact on LB

**Jones v Mordue [2016] 1 P&CR 12** “Paragraph 134 of the NPPF appears as part of a fasciculus of paragraphs, set out above, which lay down an approach which corresponds with the duty in s.66(1) . Generally, a decision-maker who works through those paragraphs in accordance with their terms will have complied with the s.66(1) duty. When an expert planning inspector refers to a paragraph within that grouping of
provisions (as the Inspector referred to para.134 of the NPPF in the Decision Letter in this case) then—absent some positive contrary indication in other parts of the text of his reasons—the appropriate inference is that he has taken properly into account all those provisions, not that he has forgotten about all the other paragraphs apart from the specific one he has mentioned. Working through these paragraphs, a decision-maker who had properly directed himself by reference to them would indeed have arrived at the conclusion that the case fell within para.134, as the Inspector did.” [28]

(7) Accommodating third parties.

*Turner v The Secretary of State for Communities and Local Government. Case Number: C1/2015/0892.*

Shell Centre London South Bank. Large amount of rebuttal evidence on viability provided late. Inspector tried to keep appeal going to original time estimates and appeared dismissive of third party late submissions. SoS allowed appeal.

Challenged in HC and C of A on appearance of bias. Concluded that it was reasonable to accommodate third party, and Inspector had done this.

Comment – Inspectors have been reminded to ensure third parties have the opportunity to present relevant evidence, to avoid allegation of bias and potential challenge.

As always, we ran out of time to address everything that ICN members would have liked to discuss, but all present considered this a very useful meeting, with a genuine exchange of ideas and new information. Thanks to all who participated.

Minutes by Mark Carter/Deirdre Wells, with special thanks to Mark for all the Case Law references.