



Department for  
Communities and  
Local Government

# Technical Review of Planning Appeal Procedures: Consultation

Summary of Responses

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## Introduction

1. In November 2012 the Government consulted on its proposals for streamlining and simplifying the planning appeals process<sup>1</sup>. The main proposals were to:
  - front-load the appeals procedures, with appellants being required to submit a full statement of case and, where applicable, a draft statement of common ground with their appeal
  - local planning authorities were to submit their questionnaire and notify parties one week earlier that an appeal had been made, and to submit a full statement of case earlier
  - introduce a statement of common ground for hearings
  - parties to submit comments earlier in process
  - earlier scheduling of appeal event dates
  - increased alignment of different appeal processes to planning appeals, and,
  - introduce a Commercial Appeals Service (an expedited appeals process for minor commercial appeals).

## Outcome of the consultation

### Overview of responses

2. 158 submissions were received in response to the consultation. The table below shows the breakdown by type of organisation.

<b>Organisation type</b>	<b>Number of responses</b>
Local planning authorities	55
Parish / town councils	34
Planning consultants	18
Professional bodies	15
Developers	14
Landowners	3
Others	19

### Summary of responses by question

3. The consultation invited responses to ten questions about the specific policy proposals, a general question seeking any other views for improving appeals and a question on the impact assessment. The questions, a summary of the responses to each question and the Government response are shown below.

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<sup>1</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/14632/2246948.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/14632/2246948.pdf)

## Ensuring earlier submission and notification of appeal statements

Question 1. Do you agree with the proposed changes to the appeal procedures?

4. There were 144 responses to this question which sought views on the appellant being required to submit their full statement of case at the time they appeal, and local planning authorities being required to submit their questionnaire and notify interested parties of an appeal within one week. 80% (115) of those who responded to this question supported the proposal to change the appeal procedures as suggested in the question and 20% (29) respondents were opposed. Within these responses, 85% were supportive of the proposal for appellants to submit their full case when they make their appeal. 76% supported the proposal that local planning authorities should notify interested parties and submit their questionnaire within one week, showing significant support.
5. Many respondents considered it a positive step to require the appellant to submit their full case on appeal, recognising that it made the appeals process more transparent and gave all other parties an earlier opportunity to address relevant issues.
6. Some respondents had views on the proposal to submit the full case at the start of the process, citing that this was too onerous; the appellant wouldn't know what procedure the appeal would follow; and, not all the information would be known. Some local planning authorities stated they already notified parties within one week of the appeal starting. Other local planning authorities had views about being able to meet this requirement.

### Government response

7. One of the aims of the review is to make the process more transparent and allow earlier decisions to be taken. Requiring the appellant to submit their full case at the beginning of the appeal process gives other parties sight of the appellant's whole case before they submit their representations. The appellant will have the opportunity to respond to other parties' representations later in the appeal process. The submission of detailed proofs of evidence four weeks before an inquiry will be retained. Earlier preparation of the full appeal case may assist the appellant in identifying issues which could be resolved with the local planning authority without the need to submit an appeal. The timing of when to submit an appeal within the statutory deadlines remains a matter for the appellant.
8. We intend to take forward our proposals to introduce measures to require appellants to submit their full statement of case when they appeal, and for local planning authorities to notify interested parties of an appeal and to submit their questionnaire within one week.

## **Agreeing 'Common Ground' upfront**

Question 2. Do you agree with the proposed approach to agreeing a Statement of Common Ground up front and that a Statement should be required for hearings?

9. There were 141 responses to this question. 89% (126) of those who commented on this question were supportive of this proposal, with 11% (15) against.
10. Many respondents welcomed early submission of the draft statement of common ground which would make the appeals process more transparent and enable all parties to focus on the issues in dispute, reducing the time of the appeal event.
11. Some respondents said that it would be difficult to collate the information at the start of the process. Others thought that statements of common ground were not particularly helpful in the appeals process, and that parties did not always engage constructively. It was suggested that introducing them for hearings may be onerous.

### **Government response**

12. Our proposals for the statement of common ground will make it easier for parties to engage with the appeal, following the up-front submission of the appellant's full statement of case.
13. The statement of common ground is a joint statement from the appellant and local planning authority in which they identify agreed matters which do not need to be considered at the appeal event, allowing all parties to focus their evidence on issues of dispute and avoid time being taken on matters that are agreed. This will make the appeal event in hearings and inquiries more efficient and reduce nugatory work for all parties.
14. We intend to implement our proposals for the up-front submission of a draft statement of common ground by the appellant, for the appellant and local planning authority to submit a jointly agreed version within five weeks, and to introduce statements of common ground for hearings.

## **Starting hearings and inquiries sooner**

Question 3. Do you agree with the proposed approach to shortening the time before the appeal event?

15. There were 134 responses to this question. 83% (111) were supportive and 17% (23) opposed the proposal.
16. Respondents commented positively about shortening the time before the appeal event. It was recognised that appellants would benefit by being able to begin (or exit from) proposed development more quickly and thereby reduce expenses incurred. It was felt that as the issues would be

fresher in parties' minds, the appeal event could be more efficient. Other responses raised views about whether the Planning Inspectorate and local planning authorities have sufficient resources to be able to meet the new timescales.

17. With regards to the proposal that parties to an inquiry should identify at the outset what witnesses they require and how long they would take to give evidence: respondents commented that it was difficult to provide this information accurately, and that it was therefore unfair to penalise parties much later in the process for getting it wrong. Some respondents felt that this proposal may lead to over-inflated estimates which would result in inquiries being programmed for longer than necessary, leading to inefficiencies for all parties.

### **Government response**

18. We are aware that the proposal to shorten the time before the appeal event may reduce the flexibility for parties. Apart from the new requirement for a statement of common ground for hearings, there are no additional work requirements in the new procedures, but some existing stages will happen earlier in the process. Any impact due to reduced flexibility is balanced by the benefits of the front-loading of the appeals process. The Planning Inspectorate has already started to offer earlier dates to begin hearings and inquiries (and set them where these have been agreed by the parties), and we will formalise this position through the implementation of these proposals. We intend to take forward our proposal to set earlier hearing and inquiry dates, for those of less than 3 days duration. Inquiries lasting longer than 3 days will be offered a bespoke timetable.
19. The intention of the consultation proposals was not that parties would be penalised if they didn't keep to their original estimates of time needed to give evidence. Rather that if appellants exceed their estimated time at the appeal event and after being challenged by the Inspector, they persisted with their evidence giving without adding anything new, they may be at risk of an award of costs against them. While it is not the Government's intention to seek to penalise unnecessarily, the Planning Inspectorate has the power to award costs for unreasonable behaviour. The award of costs regime applies to all parties during an appeal. In the light of the comments received, we consider that the current arrangements are sufficient. While parties will still be required to provide on their appeal forms the number of witnesses and length of time they need to give evidence, we do not intend to take forward the proposal to add this to secondary legislation.

### **Introducing an expedited 'Commercial Appeals Service'**

Question 4. Do you agree with the proposals for the development of a Commercial Appeals Service?
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20. There were 127 responses to this question, with 111 (87%) supportive and 16 (13%) against.

21. Respondents recognised that many minor commercial appeals were similar in nature to householder appeals and should be able to be dealt with in the same timescales, as this would be a cost effective way of dealing with straightforward appeals for all parties.
22. There were views about the loss of the ability for interested parties to make comments during this expedited appeal process. There were 22 specific comments on this – 6 from local planning authorities, 8 from parish councils or their representational bodies and 8 from others, including professional bodies and pressure groups.
23. On whether a word limit should be imposed on an appellant's statement, 5 respondents specifically commented that there should be a word limit and 4 that there should not be a word limit.

### **Government response**

24. The proposed Commercial Appeals Service is modelled closely on the Householder Appeals Service. It is an expedited form of the written representations procedure which does not provide the opportunity for interested parties to submit representations during the appeal. However, this does not mean that interested parties have no input: the representations which they made at the planning application stage will be forwarded as part of the local planning authority's appeal documents and taken into account by the Inspector, unless they are withdrawn by the interested party.
25. We have given further consideration to the proposal to introduce a word limit for the Commercial Appeals Service, to ensure that the process remains proportionate and acknowledging that these types of appeal are straightforward. We have concluded that a word limit should be suggested in guidance, to encourage proportionate submissions, but this would not be prescribed in legislation, in order to preserve natural justice.
26. We intend to introduce a Commercial Appeals Service in October 2013.

Question 5. What type of less complex non-householder written representations appeals would benefit from inclusion in a Commercial Appeals Service?
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27. This question invited respondents to comment in more detail on the proposals for the types of appeal to be in scope of the Commercial Appeal Service, and to suggest others that might be included. 112 respondents commented on this question, with the majority, 95 (85%) agreeing that advertisement consent appeals should be included in the Commercial Appeals Service, together with 94 (84%) for changes to shop fronts. 61 (54%) supported change of use being included in the Commercial Appeals Service, and 57 (51%) minor development less than 1000m<sup>2</sup>.
28. Of the 111 respondents who agreed with the proposal to introduce a Commercial Appeals Service (see Question 4), 24 (22%) were opposed to

the inclusion of change of use in the Commercial Appeals Service, or had views on whether it would work. A further 6 respondents, who did not support the Commercial Appeals Service, had strong views about the inclusion of change of use or opposed its inclusion, because it had the potential to raise issues which could not be appropriately considered through an expedited process.

29. 57 (51%) of respondents agreed with the inclusion of minor development less than 1000m<sup>2</sup>. 21 respondents (19%) commented that 1000m<sup>2</sup> was too large an area to be considered minor. There were no persuasive suggestions for the inclusion of any additional categories within the Commercial Appeals Service.

### **Government response**

30. We have reviewed what type of appeals would be suitable for the expedited Commercial Appeals Service. Reflecting on the consultation responses, we concluded that change of use and a floorspace threshold for development would not be appropriate, because it was impossible to define at the planning application stage those applications which would not raise complex planning issues and render them inappropriate for an expedited appeals process. We intend to include advertisement consent and shop front appeals in the Commercial Appeals Service.

### **Aligning other planning-related appeal processes**

Question 6. Do you agree with the proposed approach to align other appeal processes?

31. There were 125 responses to this question. Of these, 118 (94%) were supportive and 7 (6%) were not.

32. Many respondents commented that it would be clearer for appellants for more appeal types to be subject to the same appeal processes. There was support for the Planning Inspectorate, acting on behalf of the Secretary of State, to determine the appropriate appeals procedure for more appeal types.

### **Government response**

33. We will clarify the appeals procedures for advertisement appeals, including the power of the Planning Inspectorate to determine the appropriate appeals procedure for all advertisement appeals, from October 2013. We will continue to consider the scope to align the process for more appeal types with planning appeals, and the consolidation of the existing rules and regulations to bring them into a form that would be most helpful to the user.

Question 7. Do you have a view on whether proposals A – C should be applied more broadly to other types of appeals, in particular enforcement, and whether the further comments stage at week 9 should be removed from enforcement hearings and inquiries?

34. There were 114 responses to this question, of which 85 (75%) agreed that the new appeals procedures should be applied to a wider range of appeal types. 29 (25%) disagreed. Respondents generally welcomed any measures which increased consistency of approach and standardisation.

35. Of the 75 respondents who commented in detail on this question, 10 wanted to retain the existing enforcement appeals processes and 12 respondents sought to retain the week 9 comments stage. Respondents stated that enforcement appeals were different in nature from planning appeals, as appellants were reacting to action taken against them and they might have only 28 days to appeal. Respondents considered these sufficient reasons for retaining the existing enforcement appeals processes.

### **Government response**

36. We have considered that respondents had raised significant issues which justified the retention of the existing enforcement appeals procedures at this time. We have concluded that the nature of enforcement appeals, in terms of how they are initiated and the different timescales are fundamental issues which need further consideration. We will not be implementing any changes to enforcement appeals procedures at this time. We will apply the proposed new procedures to listed buildings and conservation area consent appeals so that they continue to remain subject to the same procedures as planning appeals.

### **Issuing one guide to planning appeal procedures**

Question 8. Do you agree with the proposed approach to reviewing and simplifying guidance?
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37. There were 136 responses to this question, of which 130 (96%) were supportive, and 6 (4%) were opposed. While there was a high level of support for this proposal and many supportive comments, respondents wanted the revised guidance to remain sufficiently comprehensive.

### **Government response**

38. The approach to appeals guidance has been informed by the Review of Planning Practice Guidance led by Lord Taylor of Goss Moor, which aimed to produce a clearer, reduced set of planning practice guidance. The new guidance website, launched in beta mode on 28 August, contains updated guidance on the planning system, including an overview of the appeals process. The guidance website is available through the Planning Portal: <http://planningguidance.planningportal.gov.uk/>

39. Alongside this, the Planning Inspectorate has consolidated the 'PINS 01/2009' procedural guide and the Good Practice Advice Notes into a single comprehensive and consolidated document. This has improved clarity by reducing the number of documents that an appeal party would need to refer to. The consolidated procedural guide, reflecting the changes

introduced as a result of the appeals review will be available on 1 October on the Planning Portal:  
<http://www.planningportal.gov.uk/planning/appeals/guidance/guidanceonthepapealprocess>

40. Separate guidance on the award of costs will remain.

## **Non-Regulatory Actions**

### **Revising the determination criteria**

Question 9. Do you agree with the proposed revisions to the determination criteria?

41. There were 127 responses to this question, with 118 (93%) supporting a revision to the determination criteria and 9 (7%) opposing. There was general support for the revision of the definition of the determination criteria. Some respondents thought it would be helpful for 'significant local interest' to be more clearly defined.

#### **Government response**

42. The Planning Inspectorate will revise the determination criteria and publish it on their website on 1 October 2013.

### **Agreeing bespoke timetables for more inquiries**

Question 10. Do you agree with the proposal to extend the offer of a bespoke procedure to inquiries lasting 3 or more days?

43. There were 124 responses to this question, with 120 (97%) in agreement. 4 (3%) opposed this suggestion.

44. Many respondents recognised the benefit of parties co-operating to ensure a mutually beneficial timetable for individual inquiries. Some respondents considered that bespoke timetables were more efficient and reduced resources overall because parties were ready for the appeal event and there was less likelihood of postponement. Other respondents commented that the process of bespoke timetabling itself was resource intensive and time-consuming.

#### **Government response**

45. We intend to extend the bespoke timetable to inquiries sitting for 3 and more days. Implementation of this proposal does not require legislative change. The Planning Inspectorate started to offer bespoke timetables for inquiries lasting 3 days or more from mid August 2013.

## **Other proposals**

Question 11. Do you have any other proposals to further improve the appeals system?

46. Some respondents sought the introduction of a right of appeal against the grant of planning permission for third parties.

### **Government response**

47. We consider that it would not be appropriate to introduce a right of appeal against the grant of planning permission for third parties. The planning system is centred on community involvement. It gives statutory rights for communities to become involved in the preparation of the Local Plan for the area, and to make representations on individual planning applications, and on planning appeals. Objections to planning applications are considered by the local planning authority or on appeal by an Inspector, on behalf of the Secretary of State. All views are taken into account in reaching a final decision to allow or reject an application.

## **Impact assessment**

### **Do you have any comments or additional evidence on the costs and benefits of the proposals?**

48. 15 respondents commented on this question about the accuracy of the consultation impact assessment. Some respondents felt that the costs of delays in decision-making had been underestimated.

### **Government response**

49. The Impact Assessment has been revised to include the most recent data and to reflect the policy proposals which are to be implemented. The final Impact Assessment will be published separately on GOV.UK at <https://www.gov.uk/government/organisations/department-for-communities-and-local-government> .