

# Independent Review of Planning Appeal Inquiries

Executive Summary

Bridget Rosewell OBE



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# Foreword

Planning appeal inquiries are an essential part of the planning process. Development can be difficult for communities to accept and the ability to explore evidence and challenge proposals is an important part of the democratic process. But this does not mean it should either be protracted or difficult to engage with. My review of the way in which inquiries are planned and managed has focused on how to improve in practical ways the operation of the appeal process for those planning appeals where an inquiry is required or relevant.

There are around 15,000 appeals against local authority planning decisions<sup>1</sup> each year and only a small minority are sufficiently large or complex to require the kind of investigation that an inquiry represents. In 2017/18, just over 300 cases were determined following an inquiry but of course each one is very resource intensive for local authorities, appellants, and for other interested parties such as local residents, community groups, heritage interests and transport bodies.

We need to make sure that resources are used by all of us in the most effective way possible and it is this challenge that I have tried to address in my review. This will help speed up decision making, and also speed up the development of much needed houses, where the inquiry agrees this. Slightly more than half of inquiries result in development being approved, but even where it is not, a faster and more effective process will produce clearer outcomes.

My investigation has shown that, at present, the inquiry process takes nearly a year to complete from lodging the appeal to a decision for inspector decided cases. This is just too long, and I believe that there are some relatively simple changes that can make it a shorter process, which is easier for all parties. I've been impressed by how willing all stakeholders are to see change and how much agreement there has been between all parties to the change that is required. I have reviewed data for the last several years, conducted a survey and held stakeholder meetings in Bristol, London, Birmingham and Manchester. In addition, I have had the support of an expert panel who have also commented on the emerging conclusions.

The most significant changes require the Planning Inspectorate to become more proactive in managing the inquiry process and to be more insistent in imposing dates and deadlines than has recently been the case. Inspectors need to be appointed as soon as an appeal has been validated so that a review of the statement of case can help inform how the inquiry can be managed and set dates and timelines for an inquiry. This should be combined with active case management to focus evidence on the key issues and avoid wasting time at inquiry. When such active management is

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<sup>1</sup> Financial years 2013/14-2017/18 – Section 78 Planning Appeals and Called in applications

matched with effective technology and web-based document control, I believe that we can halve the length of time from lodging an appeal to a decision to about 6 months.

The changes that will make a difference are straight-forward, but their implementation will require everyone to get behind them to make them possible. Participants need to support inspectors in being more proactive and the Planning Inspectorate will need to train more inspectors to be able to respond to these needs. A change in approach is also a culture change – all stakeholders have agreed this is necessary, but they also need to support it in practice!

Inquiries, like all processes, rely on having the right people to undertake them and the data to support the conclusions. My inquiry into the planning inquiry process is no exception and I would like to thank the team which has supported me, led by Tony Thompson at the Ministry of Housing, Communities and Local Government. The staff at the Planning Inspectorate have also been helpful and full of ideas. The teams have chased down required information indefatigably. Together, they have made my task both easy and pleasant. I look forward to an early adoption of our proposals.

**Bridget Rosewell – Chair of the Review**

**December 2018**

# Executive summary

1. The aim of the Independent Review of Planning Appeal Inquiries<sup>2</sup> (the Review) is to make the use and operation of the planning appeal inquiries procedure quicker and better.
2. This report sets out the findings of the Review and our recommendations to the Secretary of State for Housing, Communities and Local Government on the improvements needed to significantly reduce the time taken to conclude planning inquiries, while maintaining the quality of decisions and reports.
3. Two critically important elements of our work have been to engage with those parties who have knowledge and/or direct experience of the process and to undertake detailed analysis of recent decisions and performance. This engagement and analysis, and our work with the Planning Inspectorate to understand current processes, have directly informed our conclusions and our recommendations.
4. What emerged clearly from the Call for Evidence responses and our wider engagement, is that the inquiry process is highly regarded, notwithstanding the delays and procedural shortcomings that are evident.
5. Planning inquiries are valued by most users of the process, because they offer a good opportunity for those who support, or oppose, development schemes, to ensure that there is a detailed presentation, and cross-examination, of the key issues, before an independent inspector.
6. There is also strong consensus about the high quality of the decisions made, and the recommendations made to the Secretary of State, by inspectors.
7. Equally, there is widespread agreement among those directly involved, that there is substantial scope to improve the planning inquiry appeal process from start to finish.
8. On average, about 315 planning appeals each year<sup>3</sup> are the subject of an inquiry (inquiry appeals), comprising 2% of the total number of planning appeal decisions. Around 81% of inquiry appeals are decided by planning inspectors on behalf of the Secretary State. The remaining 19% of cases (recovered appeals and called-in applications<sup>4</sup>) are decided directly by the Secretary of State, having

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<sup>2</sup> For the purposes of this review, planning appeal inquiries includes Section 78 appeals and called-in applications that are the subject of an inquiry. They do not include enforcement or listed building consent inquiries. Appeals dealt with by written representations and hearings are also not within the scope of the review.

<sup>3</sup> Average annual number of inquiry appeal decisions Financial Years 2013/14 – 2017/18

<sup>4</sup> A recovered appeal is where, instead of an inspector making a decision on behalf of the Secretary of State, the inspector submits a report with recommendations to the Secretary of State, who will then decide the appeal himself. The Secretary of State has the power to take over ('call-in') planning applications rather than letting the

regard to an inspector's report.

9. Although relatively small in number the scale of development, particularly housing development, that is determined through inquiry appeals is significant. In 2017/18 over 42,000 residential units were included in inquiry appeal schemes, of which just over 18,600 units were allowed/approved. This represents 5.4% of the 347,000 total approved residential units in the year 2017-18.
10. In 2017/18, it took an average of 47 weeks<sup>5</sup> for inspector-decided cases from receipt of the appeal to a decision letter being issued. On average, it took 60 weeks from the point of validation<sup>6</sup> of an appeal to the submission on an inspector's report to the Secretary of State for recovered appeals and 50 weeks (from validation to submission of the inspector's report) for called-in applications. It then took, on average, a further 17 weeks after the inspector's report had been submitted for the Secretary of State to issue a decision for recovered appeals and a further 26 weeks for called-in applications. In 2017/18, 111 inquiry appeals were withdrawn before a decision was made.
11. Our detailed statistical analysis confirms what we heard from stakeholders, that the timescales for inquiry appeals are not primarily a function of the complexity of the case, rather they reflect the way the system operates and the actions of the parties involved. The scale and nature of the appeal scheme, its location, the status of the development plan and other scheme specific variables were associated with only a marginal impact on timescales.
12. Planning appeals are an option of last resort. The prospects of securing planning permission through negotiation with the local planning authority are generally far greater, and the timescales shorter, than pursuing approval through an appeal. At 56%, the proportion of inquiry appeals that are allowed<sup>7</sup> is higher than other appeal procedures<sup>8</sup>, but the inquiry appeal procedure is typically longer, and more costly, than the other appeal routes.
13. Notwithstanding the increased cost and timescales, many appellants will seek an inquiry, rather than a hearing or written representations, where it is possible to do so. But the decision on whether an appeal should be the subject of an inquiry, rests with the Planning Inspectorate, under powers delegated from the Secretary of State<sup>9</sup>. The number of inquiry appeals decided has remained relatively low and stable for some years and there is no strong evidence of concern from

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local authority decide. See also <https://www.gov.uk/government/collections/planning-applications-called-in-decisions-and-recovered-appeals>

<sup>5</sup> See main report for further information on timescales for inspector decided cases

<sup>6</sup> Timescales from receipt to validation are not available

<sup>7</sup> And called-in applications approved

<sup>8</sup> 44% hearings allowed, 31% written representations allowed, 39% householder and minor commercial appeals allowed – (5 year average rates Financial Years 2013/14 – 2017/18)

<sup>9</sup> And exercised by the Planning Inspectorate on his behalf

stakeholders about the type of schemes being determined by inquiry.

14. On the other hand, there is a widespread recognition that the current timescales for determination are excessive and that the substantial opportunities for improved transparency and efficiency, available through the use of technology, have not been exploited.
15. A range of factors underpin the current problems and delays, principally:
  - out-dated administrative processes and poor information technology, which unnecessarily delay the submission and validation of appeals and harm the efficiency and transparency of the process at every subsequent stage
  - a back-loaded process, which has been further reinforced by the delays in setting up inquiries. As a result, parties are more reluctant to agree matters early because new matters may emerge before the inquiry is held
  - a flexible approach to timescales and evidence borne out of delays in other parts of the process, a genuine desire to be fair to parties, all underpinned by a fear of judicial review, which further lengthens the process
  - the restricted availability of suitable inspectors to conduct the inquiries
16. These factors have led to, what one stakeholder termed, a 'culture of deferral' pervading the process, which has been exacerbated by changes in national policy and guidance, court judgements and resource pressures in many local planning authorities.
17. Extended timescales have a range of harmful and potentially serious consequences. For the development industry, extended decision times can lead to increased development and land holding costs. For local authorities and local communities, extended decision times can increase uncertainty and anxiety about the future development of an area and undermine plan-making and wider confidence in the planning system.
18. Furthermore, the longer the process, the greater the risk that delays become self-reinforcing, because it increases the prospects that new or changed material considerations will emerge that must then be considered.
19. Alongside consensus about the current problems, there is also a strong measure of agreement about how the process could be improved. The recommendations have been informed by our engagement with the users and operators of the process.
20. We do not advocate wholesale changes to the process: they are not necessary and could be counter-productive to delivering the aim of the Review.
21. We have focussed on ways to make the current process more effective and efficient, building on its core strengths of fairness, rigorous examination of evidence and the quality of the inspectors' reports.



22. Furthermore, apart from Recommendation 3, which will need a change in legislation, the other recommendations can be achieved through changes in guidance and procedures, so can be delivered within the next 18 months.

23. Our recommendations are set out in an annex to this document and are explained in detail in the main report. In brief summary, the principal areas of improvement needed can be grouped into three main themes:

- earlier engagement by all parties
- greater certainty about timescales
- harnessing technology to improve efficiency and transparency

### **Earlier engagement by all parties**

24. To deliver earlier engagement we propose:

- identification of the inspector who will conduct the inquiry at the outset of the process (Recommendation 4)
- initial pre-inquiry engagement between the inspector and the parties involved<sup>10</sup>, no later than week 7 after the start letter<sup>11</sup> (Recommendation 8)
- case management directions, issued by the inspector to the parties about the final stages of preparation and setting out how evidence will be examined at the inquiry (Recommendations 8 & 9) within 8 weeks of the start letter

### **Greater certainty about timescales**

25. To deliver greater certainty we propose:

- the Planning Inspectorate leading on the identification of the date for the inquiry (Recommendation 5)
- challenging targets for each key stage of the process and the overall length of the process (Recommendations 4, 5 & 21)
- a stronger focus on the timely submission of inquiry documents by parties backed up by sanctions (Recommendation 11) which better addresses the requirements set out in procedural guidance (Recommendations 2 & 7)

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<sup>10</sup> The parties involved will be the appellant and local planning authority, the Rule 6 parties and any other parties invited by the Inspector. Further information on Rule 6 parties:

<https://www.gov.uk/government/publications/apply-for-rule-6-status-on-a-planning-appeal-or-called-in-application>

<sup>11</sup> The start letter is issued by the Planning Inspectorate providing the date that an inquiry will open and expected dates for the submission of representations and documents. Further information on the start letter:

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/743495/Procedural\\_Guide\\_Planning\\_appeals\\_version\\_3.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/743495/Procedural_Guide_Planning_appeals_version_3.pdf)

## **Harnessing technology to improve efficiency and transparency**

26. To improve efficiency and effectiveness we propose:

- the introduction of a new online Planning Appeal portal (the new portal) for the submission of inquiry appeals by December 2019, with pilot testing to start in May 2019 (Recommendation 1)
- that all documents for an appeal are published on the new portal at the earliest opportunity following their submission (Recommendation 10)
- that the Planning Inspectorate identify further ways to use technology to improve the efficiency and transparency of the inquiry event (Recommendation 13) and the efficiency of the post-inquiry process (Recommendation 17)

27. The Planning Inspectorate will need to play a pivotal role in delivering an improved planning appeal inquiry process. It already has advanced plans in place to increase recruitment of inspectors and substantially improve the use of information technology throughout the organisation and in each process they manage. Our recommendations seek to build on these proposals, which should help expedite the delivery of the necessary improvements.

28. We don't under-estimate the scale of the challenges these recommendations pose for the Planning Inspectorate. Clearly a number of these improvements need to be integrated into broader reforms and changes the Inspectorate already has in hand. Nor can the implications of these proposals for the resources available and timescales for other work undertaken by the Inspectorate, be ignored.

29. In order to ensure these measures can be delivered effectively, in ways that do not undermine other business objectives, we have recommended that the Planning Inspectorate prepare an action plan by April 2019 on how it will ensure that the necessary organisational measures (in particular, senior inspector resources) are put in place to deliver the timescale targets and wider improvements set out in the report by no later than June 2020. There should also be challenging, but realistic, intermediate milestones to be achieved by September 2019. (Recommendation 18).

30. If the improvements we recommend are taken forward, the overall timescale from receipt to decision of an appeal should be between 24 and 26 weeks for inspector-decided cases. This range makes some allowance for inquiries that sit longer than 11 days and we recommend that these timescales are adopted as targets for this type of appeal (Recommendation 21).

31. We also recommend that an initial target of 30 weeks is adopted for the submission of inspectors' reports on Secretary of State cases, although this timescale should be reduced once new technology is in place to enable faster writing up of evidence by inspectors. The Planning Inspectorate should regularly report on its performance in meeting these timescales and what steps it is taking

to expedite any cases that take longer.

32. The recommended timescales for inspector decided cases marginally exceed the current Planning Inspectorate key performance target of 22 weeks for non-bespoke planning appeal inquiries from start letter to decision<sup>12</sup>. But the 22 week target, which ignores the additional time between receipt and start letter is very rarely met<sup>13</sup>. In practice, a 24-26 week timescale will represent a near halving of the 47 weeks average timescale (receipt to decision) achieved for inspector decided cases in 2017/18 and the 52 week estimated timescale (valid to decision) currently quoted by the Inspectorate<sup>14</sup>. A simple comparison of existing and recommended timescales for inspector decided inquiry appeals is set out in Table 1 below.

*Table 1. Existing and proposed timescales for planning appeal inquiry decisions (Inspector decisions)*

|  | <b>Inquiry Appeal (inspector decision)</b> |   |                                     |                                    |
|--|--|---|-------------------------------------|------------------------------------|
|  | <b>Stage Length (weeks)</b>                |   |                                     |                                    |
|  | <b>Receipt to start letter</b>             | <b>Start letter to start of inquiry</b> | <b>Start of inquiry to decision</b> | <b>Receipt to decision</b>         |
| <b>Average timescales achieved 2017-18</b> | 7  | 29                                      | 11                                  | 47                                 |
| <b>Recommended timescales</b>              | 1  | up to 16                                | 90% up to 7<br>10% up to 9          | 90% up to 24 weeks<br>10% up to 26 |

33. Achieving these targets won't just need the introduction of technology or improving the availability of suitable inspectors: it also requires a significant culture change on the part of all the main parties involved, led by the Planning Inspectorate, so that a rigorous performance culture is embedded within the behaviours of all parties. With earlier and more effective engagement and a firmer adherence to existing deadlines, coupled with better information technology and inspector availability, it will be possible to replace the current

<sup>12</sup> The current key performance target doesn't include the time from receipt to validation.

<sup>13</sup> Only 13.7% non-bespoke inquiries met the 22 week target in 2017/18.

<sup>14</sup> <https://www.gov.uk/guidance/appeals-average-timescales-for-arranging-inquiries-and-hearings> 11 December 2018

vicious cycle of deferral and delay, with a virtuous circle of shorter timescales, greater transparency and clearer processes. Thus, the changes we recommend should benefit all parties involved in the process and maintain the high quality of decision making already being achieved.

# Annex - Review Recommendations

1. The order of these recommendations, with brief supporting commentary, reflect the stages in inquiry appeal process and the structure of the main report which sets out the Review findings in detail.
2. It will be for the Secretary of State to decide which recommendations he takes forward and the timing of any changes. We would note that although each recommendation is focussed on an element of the process, many of these proposals are interdependent and will only be effective if taken forward together as part of a comprehensive programme of improvement.

## From receipt to start letter

### **Making it easier to submit an appeal**

#### **Recommendation 1**

**The Planning Inspectorate should ensure the introduction of a new online portal for the submission of inquiry appeals by December 2019, with pilot testing to start in May 2019.**

3. The Planning Inspectorate already has well advanced plans to deliver a much-improved process for submitting an appeal. The new system will, among other things:
  - have mandatory fields to be completed by the appellant / agent (supported by concise embedded “pop-up” guidance) – reducing the risk of appellants using the wrong form or submitting incomplete information
  - be capable of accepting all sizes of supporting document without difficulty or delay – addressing a key concern of many appellants about current size restrictions and up-loading delays that are regularly encountered
  - provide for automatic notification to the relevant local planning authority who can immediately access the documents and data – which will reduce work for the Planning Inspectorate and ensure local planning authorities get information immediately

### **Improving the quality and usefulness of statements of case**

#### **Recommendation 2**

**The Planning Inspectorate should work with representatives of the key sectors involved in drafting statements of case to devise new pro formas for these statements which can then be added to the new portal and include, where appropriate, the introduction of mandatory information fields and word limits.**

4. Introduction of the new portal provides an excellent opportunity for achieving greater clarity and certainty about the information that is submitted by, and for ensuring greater consistency in approach between, appellants, local planning authorities and Rule 6 parties.

## **Confirming the appeal procedure**

### **Recommendation 3**

**The process of confirming the procedure to be used should be streamlined. Where an inquiry is requested, appellants should notify the local planning authority of their intention to appeal a minimum of 10 working days before the appeal is submitted to the Planning Inspectorate. This notification should be copied to the Inspectorate.**

5. Current practice is for the Planning Inspectorate to give the local planning authority five working days after they have received an appeal to confirm their view on whether the appeal should be the subject of an inquiry. Giving local planning authorities advance notice will allow the Inspectorate to request a view within 1 working day and increase the prospects of the local planning authority submitting its statement of case on time. This change will require new or amended legislation to bring into effect.

## **Issuing a start letter within 5 working days**

### **Recommendation 4**

**The Planning Inspectorate should ensure that only complete appeals can be submitted and ensure that a start letter is issued within 5 working days of the receipt of each inquiry appeal. The start letter should include the name of the inspector who will conduct the appeal.**

6. With these measures in place, the Planning Inspectorate should be able to issue a start letter within 5 working days of receipt of an inquiry appeal, some 6 weeks faster than the average timescale achieved in 2017/18.

## **Preparing for the inquiry**

### **Agreeing the date of the inquiry**

#### **Recommendation 5**

**The practice of the Planning Inspectorate leading on the identification of the date for the inquiry should be restored, with all inquiries commencing within 13 to 16 weeks<sup>15</sup> of the start letter.**

7. The current expectation<sup>16</sup> that the appellant, local planning authority and Rule 6 parties will discuss and agree a timetable, before submitting an appeal, is largely unworkable, because frequently parties don't agree on timings and/or no inspector is available for the chosen date. The Planning Inspectorate should lead the process of identifying a suitable date and corresponding inspector, which meets the target that all inquiries commence within 16 weeks of the start letter. Before approaching parties, a senior inspector should briefly review the case to confirm that the parties initial estimate of inquiry time is sensible.

## **Inquiry Venue**

### **Recommendation 6**

**The Ministry of Housing, Communities and Local Government (MHCLG) should consult on the merits of appellants contributing towards the accommodation costs of the inquiry.**

8. At present, all the costs of accommodation for an inquiry are met by the local planning authority. Finding a way to help fund the cost of accommodation could reduce the financial burden on local planning authorities. It may also widen the choice of accommodation, bringing forward the likely identification of a suitable venue in a timely manner, which will benefit all parties. As a minimum requirement, all inquiry venues must allow internet access for all attending the inquiry.

## **Statements of common ground**

### **Recommendation 7**

**MHCLG and the Planning Inspectorate should substantially overhaul the approach to the preparation of statements of common ground.**

9. Although the concept is sound, in many cases statements of common ground have not delivered the benefits they could. In most cases they are too vague and/or too late to have any meaningful impact. A number of changes are required, principally:
  - encouraging a topic-based approach, where appropriate, which would ensure that disagreement on some issues did not hold up the submission of agreed positions on others
  - identification of areas where the parties are working together and there is the prospect of resolving reason(s) for refusal
  - strengthening the requirement for parties to identify issues of disagreement as well as agreement – to reinforce this point the documents should be renamed as “Statement of Areas of Agreement and Disagreement”

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<sup>16</sup> Procedural guide – Planning Appeals England – Paragraphs H 2.2 – 2.4

- including an agreed list of conditions and the reasons for them, as well as setting out those in dispute, draft terms of any s106 agreement and a statement of compliance with statutory and policy requirements for the conditions and s106
- new detailed pro formas on the new portal (supported by guidance) which drive a more structured approach and the clearer identification of issues of agreement and disagreement for common topics, such as highway or landscape impacts or housing land availability. The Planning Inspectorate should work with leading topic experts and others who have inquiry experience to develop the online pro formas and guidance. As with nationally significant infrastructure projects, best practice examples should also be published

(see also Recommendation 11 regarding the timeliness of the process)

## Earlier engagement by the inspector

### Recommendation 8

**(a) In every inquiry appeal case, there should be case management engagement between the inspector, the main parties, Rule 6 parties and any other parties invited by the inspector, not later than 7 weeks after the start letter.**

**(b) Following the case management engagement, the inspector should issue clear directions to the parties about the final stages of preparation and how evidence will be examined, no later than 8 weeks after the start letter.**

10. At present, in around 70% of inquiry appeals, the first substantive engagement between the inspector and the main parties is on the first day of the inquiry. There was strong consensus that early engagement by the inspector appointed to conduct the inquiry would be beneficial for all the main parties and help speed up the inquiry process. Pre-inquiry engagement could take the form of a conference call or, for the largest and most complex or controversial schemes, a pre-inquiry meeting led by the inspector.
11. Engagement would be with the appellant, local authority, Rule 6 parties identified at that time and any other party invited by the inspector, although the note of the engagement should be published for the benefit of all interested parties. New guidance will be required to support this important change. If any scheme amendments are proposed, they should be raised and discussed at this stage, rather than the appellant waiting until the inquiry to raise them. The full range of matters to be covered at this stage would be left to the discretion of the inspector, but should always include:
- preliminary identification of main issues/considerations
  - instructions to parties to seek agreement on further matters before the inquiry, through the use of position statements, updated statements of common ground or topic papers



- identification of how evidence can best be examined at the inquiry (see Recommendation 9)

## **Early consideration on how main issues should be considered**

### **Recommendation 9**

**The inspector should decide, at the pre-inquiry stage, how best to examine the evidence at the inquiry and should notify the parties of the mechanism by which each topic or area of evidence will be examined, whether by topic organisation, oral evidence and cross-examination, round-table discussions or written statements.**

12. If the inspector has sight of the appeal documents at an earlier stage, they will be able to take an informed view of what areas are in dispute. It is not necessary that all matters in dispute need to be subject to cross-examination at the inquiry. The inspector may conclude that there is sufficient evidence on some matters in the written submissions already made, such that there is no need to hear any oral submissions on these. The inspector may also consider that a round-table discussion would be the most appropriate way to consider some issues.
13. In addition, the inspector could also adopt a topic by topic approach for the event, which can shorten the inquiry process by reducing repetition and allowing a more efficient programming of expert witnesses.
14. At present, it appears that the full potential of a hybrid and/or topic by topic approach is not being exploited, nor are the full benefits being achieved, not least because the main parties sometimes only learn they will be approached in this way on the first day of the inquiry.
15. In our view, greater use of round table discussions and/or a topic by topic based approach to the consideration of evidence should be strongly encouraged by the Planning Inspectorate. The inspector should decide how areas of evidence will be examined and should notify parties of their decision at the pre-inquiry stage.

## **Ensuring documents are readily available**

### **Recommendation 10**

**The Planning Inspectorate should ensure all documents for an inquiry appeal are published on the new portal, in a single location, at the earliest opportunity following their submission.**

16. Many parties, particularly Rule 6 and other interested parties, reported their frustration at not having easy or convenient access to appeal documents. Ensuring documents are available will help reduce delays and increase the transparency of the process and the issues. Any new system should allow parties to opt for alerts when new documents are added.

## **Ensuring the timely submission of documents**

## **Recommendation 11**

**The Planning Inspectorate should ensure the timely submission of documents. It should also initiate an award of costs where a party has acted unreasonably and caused another party to incur unnecessary or wasted expense.**

17. The current inquiry rules set out a number of deadlines for the submission of key documents, such as the statement of common ground, yet we heard that many deadlines are routinely ignored. Earlier and more direct engagement by the inspector should help drive up performance in meeting deadlines, but inspectors should also be more proactive in awarding costs, on their own initiative, where they encounter unreasonable behaviour.

## **Encouraging early identification of Rule 6 parties**

### **Recommendation 12**

**The Planning Inspectorate should amend guidance and the model letter provided for local planning authorities to notify parties of an appeal, to make it clear that those interested parties who want Rule 6 status, should contact the Inspectorate immediately.**

18. Given their important role in the process, we found it odd that there wasn't stronger emphasis on the importance of interested parties seeking Rule 6 status at the earliest opportunity. Early identification of Rule 6 parties will benefit the party itself, and the other parties involved in the inquiry.
19. Rule 6 parties who have not put themselves forward by week 7 will potentially miss out on case management engagement with the inspector.

## **The inquiry and post inquiry stage**

### **Conduct of the inquiry**

#### **Recommendation 13**

**The Planning Inspectorate should consult with key stakeholder groups, to update its procedural guidance to set out clear expectations on the conduct of inquiries, based on a consistent adoption of current best practice and technology. Updated guidance should encourage and support inspectors in taking a more proactive and directional approach.**

20. Updated guidance should specifically address the following issues:
- the importance of an inquiry timetable
  - the need for inspectors to be assertive with witnesses
  - ensuring cross-examination is effective

- the involvement of parties who do not have Rule 6 status
- the handling of proposals to amend the appeal scheme
- closing submissions

## **Use of technology**

### **Recommendation 14**

**The Planning Inspectorate should ensure that its programme for improving operational delivery through greater use of technology fully exploits the opportunities available to enhance the efficiency and transparency of the inquiry event, such as the use of transcription technology for inspectors and publishing webcasts of proceedings.**

21. As a minimum, all inquiry venues should provide universally available access to the internet (Recommendation 6). But new technology also offers the opportunity to go much further in terms of improving efficiency and transparency. For example, the availability of inquiry webcasts in Scotland has revealed the benefits (and popularity) of this innovation, including allowing interested parties who work full time the opportunity to follow the debate, making it easier for witnesses to prepare for their appearance and as a training tool for new inspectors.

## **The involvement of interested parties at inquiries**

### **Recommendation 15**

**Alongside other recommendations that will improve the transparency and clarity of the process (Recommendations 10, 12, 13 and 14), the Planning Inspectorate should develop a more effective and accessible guide to the inquiry process for interested parties, including members of the public.**

22. Many interested parties only have one engagement with the planning inquiry process, so are unfamiliar with almost every aspect of it. There is an existing guide, but the feedback from stakeholders was that more could be done, again using technology, to improve interested parties understanding of the process and how best to engage with it. In addition to helping interested parties it may reduce inquiry time spent discussing procedural matters.

## **Enabling inspectors to write up cases immediately**

### **Recommendation 16**

**Programming of inspector workloads should ensure there is enough time to write up the case immediately after the close of the inquiry**

23. We learnt of many instances where inspectors were programmed to go directly from conducting one inquiry to another (and in some cases, a number of inquiries). Such an approach extends the time taken to write up a report for the

Secretary of State, or to issue a decision, and increases the risk of further delay, because new issues may emerge that require a reference back to parties.

## **Secretary of State decisions**

### **Recommendation 17**

**(a) To minimise the number of cases that need to be decided by the Secretary of State, MHCLG should keep their approach to the recovery of appeals and called-in applications under review.**

**(b) The Planning Inspectorate should work with MHCLG to identify ways that technology can be used to speed up the process of preparing the inspector's report to the Secretary of State.**

24. The time taken to decide recovered appeals and call-in applications was identified by a range of stakeholders as a point of particular concern. The cases that are decided by the Secretary of State are likely to involve complex or controversial matters. Once an inspector's report on a recovered appeal or call-in application is submitted to the Secretary of State, the statutory timetable provides 13 weeks for a decision in most cases. Performance in meeting that target has improved significantly in recent years.
25. Secretary of State decisions usually take longer to decide than inspector decided cases, because they involve an additional stage in the process. Therefore, it is important to ensure that the approach to the recovery of appeals and the calling in of applications minimises the number of cases that are caught, if the overall objective of reducing inquiry appeal timescales is to be met.
26. Furthermore, and in line with Recommendation 14, we would encourage the Planning Inspectorate to identify ways in which new technology, such as speech to text software, could be harnessed to reduce the burden on inspectors in preparing their reports to the Secretary of State.

## **Inspector availability and the management of casework**

### **Recommendation 18**

**The Planning Inspectorate should submit an action plan to the Secretary of State by April 2019. The action plan should set out how it will ensure that the necessary organisational measures are put in place to deliver the proposed timescale targets and wider improvements by no later than June 2020. This should include the mechanisms by which sufficient inspectors can be made available. The action plan should also set out challenging, but realistic, intermediate milestones to be achieved by September 2019.**

27. It is clear from the responses to the Call for Evidence, and our wider stakeholder engagement, that the scheduling and management of cases by the Planning

Inspectorate and, in particular, the level of inspector resource, are key points of concern for many parties.

28. The Planning Inspectorate already has advanced plans in place to increase recruitment of inspectors and to substantially improve the use of information technology throughout both the organisation and in each process they manage.
29. Our recommendations seek to build on these existing plans, which should help expedite the delivery of the necessary improvements. But there is need to integrate these proposals into those plans and to ensure that the implications of delivering these proposals for other important objectives of the Planning Inspectorate, and its other casework, are carefully considered, and any adverse consequences avoided.

## Other issues and suggestions

### Withdrawal of inquiry appeals

#### Recommendation 19

**The Planning Inspectorate should review the issue of withdrawn appeals and consider how this impact on its work can be minimised. To deliver this the Inspectorate should:**

- (a) always collect information from appellants about why an appeal is withdrawn**
  - (b) initiate an award of costs where there is evidence of unreasonable behaviour by a party in connection with a withdrawn appeal**
  - (c) with the benefit of more detailed information, review whether further steps can be taken to reduce the impact of withdrawals on its resources and other parties.**
30. There is very little information available about withdrawn appeals. Yet in 2017-18 111 inquiry appeals were withdrawn, compared to 308 inquiry appeals decided or submitted to the Secretary of State for decision. This represents a significant use of resources for the Planning Inspectorate and the other parties involved. The limited evidence we have suggests that some withdrawals are linked to 'twin track' applications being approved. Shortened timescales for determining appeals, as a result of this review, may reduce twin tracking and, therefore, withdrawals.
  31. A withdrawn appeal may well be the best outcome for, and reflect the successful conclusion of negotiations between, the appellant and the local planning authority. However, this approach imposes costs and unnecessary work on others. At the very least, given the scale of withdrawals, the Planning Inspectorate needs far better information. For example, if the reasons for withdrawal are not known, unreasonable behaviour by parties could go unpunished. And with the benefit of better information, there may be other steps

the Inspectorate can take to reduce the unnecessary work and expenditure involved with withdrawal.

## **Improving the national policy feedback loop**

### **Recommendation 20**

**The Planning Inspectorate and MHCLG should regularly discuss the practical impact of new policy and guidance on the consideration of evidence at inquiries, with those parties who are frequently involved in the planning appeal inquiry process.**

32. It was apparent that some elements of policy and guidance are debated time after time at inquiries, sometimes at great length. A more proactive approach to obtaining feedback could, at the very least, inform future policy and guidance. In some instances, there may be scope for simple changes to be introduced which could address points of unnecessary concern or ambiguity.

## **Implementing the proposals and monitoring future performance**

### **Recommendation 21**

**The Planning Inspectorate should adopt the following targets for the effective management of inquiry appeals from receipt to decision**

**(a) Inquiry appeals decided by the inspector**

**Receipt to decision – within 24 weeks – 90% of cases**

**Receipt to decision – within 26 weeks – remaining 10% of cases**

**(b) Inquiry appeals decided by the Secretary of State**

**Receipt to submission of inspector's report – within 30 weeks – 100% of cases**

**The Inspectorate should regularly report on its performance in meeting these timescales and what steps it is taking to expedite any cases that take longer.**

33. If the improvements we recommend are taken forward, the overall timescale from receipt to decision of appeals should be between 24 and 26 weeks for inspector-decided cases. This range makes some allowance for the small percentage of cases (5% in the period 2013-2018) where inquiries sit for more than 11 days

34. The 30 week target for the submission of an inspectors' report on Secretary of State cases, should be reduced once new technology is in place to enable faster writing up of evidence by inspectors.

35. Once these targets (and any intermediate targets) are in place, it will be very important for the Planning Inspectorate to regularly monitor and report on its

performance in meeting them and to have processes in place to expedite any cases that take longer.

## **Reforming data collection and performance measurement**

### **Recommendation 22**

**(a) The Planning Inspectorate should use its Transformation Programme to ensure there is robust and comprehensive management and business information, which is regularly collected and reported, on all aspects of their operation.**

**(b) In developing an improved suite of information the Inspectorate should also:**

- **ensure their digital case management record system records information on key variables in a consistent way**
- **agree with MHCLG a new set of key performance indicators to effectively monitor the inquiry appeal process from end to end, including the availability of senior inspectors.**

36. During the Review, it became apparent that there are some important gaps and weaknesses in the data that is currently collected and analysed by the Planning Inspectorate. The Review itself commissioned additional data collection which was supported by the Inspectorate.

37. The Planning Inspectorate is already implementing a comprehensive Transformation Programme, which will include improved management information and business intelligence. The introduction of the new portal, with mandatory fields, should also ensure that comprehensive and more accurate information is available on appeals and their timings.

38. With this new investment, better quality information should become available on every aspect of the Planning Inspectorate's work. However, for this to be fully effective there needs to be a common understanding with MHCLG, about what information is needed, in what format and at what frequency.

39. The Planning Inspectorate needs to ensure that its digital case management file for each appeal records, in a consistent way, key parameters of that appeal, in line with the approach adopted for the detailed case analysis undertaken for this Review.

40. In terms of inquiry appeals, the Planning Inspectorate's performance in meeting the timescales for issuing a start letter, commencing an inquiry and the overall receipt to decision timings set out in this report should be monitored and reported on regularly. These target timescales should replace the current key performance indicators for bespoke and non-bespoke inquiry appeals reported in the Planning

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<sup>17</sup> Existing key performance indicators: To determine 80% of s78 inquiries (non-bespoke) in 22 weeks from the start date. To determine 100% of s78 (bespoke) according to the agreed timetable.