

Independent Review of Planning Appeal Inquiries

Report

Bridget Rosewell OBE

© Crown copyright, 2018

Copyright in the typographical arrangement rests with the Crown.

You may re-use this information (not including logos) free of charge in any format or medium, under the terms of the Open Government Licence. To view this licence visit <http://www.nationalarchives.gov.uk/doc/open-government-licence/version/3/>

This document/publication is also available on our website at www.gov.uk/mhclg

If you have any enquiries regarding this document/publication, complete the form at <http://forms.communities.gov.uk/> or write to us at:

Ministry of Housing, Communities and Local Government
Fry Building
2 Marsham Street
London
SW1P 4DF
Telephone: 030 3444 0000

For all our latest news and updates follow us on Twitter: <https://twitter.com/mhclg>

December 2018

ISBN: 978-1-4098-5414-2

Contents

Section 1 - The aim of the review and our approach	5
The aim of the review	5
Our approach to the Review	6
The structure of this report	7
Section 2 - Planning appeal inquiries process overview	8
Introduction	8
Key statistics for the last five years	8
The scale of housing development in inquiry appeal schemes	9
Views of respondents to the Call for Evidence	10
Section 3 - Are the right appeals subject to an inquiry?	14
Introduction	14
The number of inquiry appeals and the type of development scheme involved	14
Why do appellants seek an inquiry over other modes of determination?	15
Are the right appeals subject to an inquiry?	17
Conclusions	18
Section 4 – Submission to start letter	19
Introduction	19
Improving the submission and validation of appeals	19
Reforming the statement of case	21
Streamlining the process for deciding the appeal mode to be used	23
Issuing a start letter more quickly	24
Section 5 - Preparing for the inquiry (start letter to start of inquiry)	25
Introduction	25
Agreeing inquiry dates and finding a venue	26
Statement of common ground	28

Requiring early inspector engagement	30
Preparation in approaching the examination of the evidence	32
Making inquiry documents readily available	33
The timely submission of inquiry documents	34
Encouraging early identification of Rule 6 parties	35
Section 6 – Inquiry to decision	37
Introduction	37
The conduct of inquiries and the role played by inspectors	37
Use of technology	40
The role of interested parties during the event	42
Section 7 – Inspector availability and the management of casework	47
Introduction	47
Factors influencing inspector availability	47
Measures already in hand to improve inspector availability	49
Next steps	50
Section 8 – Other issues and suggestions	52
Introduction	52
The number of withdrawn inquiry appeals	52
The benefits of a policy feedback loop	54
The imposition of appeal fees	55
Section 9 – Implementing the proposals and monitoring future performance	56
Reforming data collection and performance measurement	57

Section 1 - The aim of the review and our approach

The aim of the review

- 1.1 Bridget Rosewell was appointed by the Secretary of State for Housing, Communities and Local Government to chair the Independent Review of Planning Appeal Inquiries¹ (the Review) in June 2018.
- 1.2 The aim of the Review is to make the use and operation of the planning appeal inquiries procedure quicker and better. It must make recommendations to significantly reduce the time taken to conclude planning inquiries, while maintaining the quality of decisions.
- 1.3 The terms of reference encourage an examination of the process from end to end and focus particularly on major housing schemes, which are a government delivery priority. The Review should also examine whether specific or general efficiencies in inquiries procedures could have wider benefits for timing and handling of other appeals processes.
- 1.4 The scope of the Review, as defined in the Terms of Reference, is as follows:

Scope

The Review should engage with all parties in the inquiry processes, including appellants, local planning authorities, third parties including statutory consultees, lawyers, Planning Inspectors, and other Planning Inspectorate staff. It should focus on the role of inquiries in major housing applications, with wider application to all inquiries. If appropriate, it should look at relevant good practice in comparable regimes. It should consider:

- *the circumstances in which the public inquiry procedure is favoured by appellants and whether a different procedure may be more appropriate*
- *the purpose of the inquiry procedure and whether current practice delivers this purpose*
- *the rules and procedures governing inquiries, the custom and practice during inquiries, and make recommendations for improvements, in particular what it would take to halve current end to end inquiry procedure times*
- *the specific implications for the Planning Inspectorate and appellants of any recommendations to change the inquiries procedure, including implications for other appeal procedures*

¹ For the purposes of this Review, planning appeal inquiries comprise Section 78 appeals and called-in applications that are 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.

- 1.5 **Annex A** sets out the full terms of reference of this report.
- 1.6 Bridget's work on the Review has been supported by a small group of officials drawn from the Ministry of Housing, Communities and Local Government (MHCLG) and the Planning Inspectorate. A full list of team members is set out in **Annex B**. This report sets out the Review Team's findings and makes recommendations to the Secretary of State.

Our approach to the Review

- 1.7 In line with the terms of reference, two critically important elements of our work have been to engage with as many parties as we can who have knowledge and / or experience of the process for planning appeals that are subject to an inquiry (inquiry appeals) and to undertake detailed analysis of recent decisions and performance.
- 1.8 Our engagement with stakeholders has included:
- publishing a Call for Evidence
 - undertaking a series of regional stakeholder seminars
 - holding meetings with a range of groups, organisations and individuals with an interest and involvement in the process, including developers, lawyers, local planning authorities, planning inspectors and interested parties
 - appointing an Expert Panel drawn from across the sectors involved in the inquiry appeal process to act as a sounding board for our emerging thinking
 - engaging in continuous dialogue with the Planning Inspectorate
- 1.9 We draw on the results of this engagement throughout this report. Further details about our engagement programme and the parties involved are set out in **Annex C**. In summary, there were:
- 104 responses to the Call for Evidence – from 60 organisations and 44 individuals. Around 70% of respondents had direct experience of 3 or more inquiries
 - four regional stakeholder events in Bristol, London, Birmingham and Manchester - attended by 51 stakeholders representing a wide range of interests
 - 14 meetings with groups or individuals drawn from a range of sectors
 - two meetings of the Expert Panel. More details about the Expert Panel are set out in **Annex D**
- 1.10 In terms of quantitative analysis, we published a technical annex of planning appeal statistics alongside the Call for Evidence². These statistics include

²https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/732525/Inquiries_Review_-_Planning_appeal_statistics_updated_20180808.xlsx

information³ about the number of inquiry appeals, the time taken at each stage of the process, the proportion of appeals that involve housing and the geographic distribution of appeal schemes. Throughout this report any figures reported in weeks refer to calendar weeks, and have been rounded to the nearest week. An updated chart showing the number inquiry appeals and how this compares to the total number of appeals is set out in **Annex E**.

- 1.11 In addition, over the summer of 2018, we undertook a very detailed evaluation of each of the 315⁴ inquiry appeal decisions issued in 2017/18 and a further 111 inquiry appeals that were withdrawn during that year before a decision could be made. For each of these 426 cases, we looked at up to 86 different aspects of the appeal scheme, the process of consideration and, where made, the decision.
- 1.12 As with the results of the stakeholder engagement, we draw on the findings of this quantitative analysis, and other published information throughout the report. In addition, in **Annex F**, we set further detailed statistical analysis of the 2017/18 data. We refer to the very detailed evaluation of 2017/18 appeals as the 'deep dive' in this report.

The structure of this report

- 1.13 This report is divided into 8 further sections. Section 2 provides an overview of the inquiry appeal process. Section 3 addresses the issue of whether the right appeals are subject to an inquiry. Sections 4 to 6 consider each key stage of the process from submission to decision. Section 7 is focussed on inspector availability. Section 8 picks up further issues and suggestions for improvement and the final section, Section 9, deals with implementation and monitoring future performance.
- 1.14 A separate Executive Summary of this report is available⁵. This includes a list of all the recommendations set out in this report. In addition, we have prepared further Annexes⁶, which include more detail on our stakeholder engagement, further summary information on the Call for Evidence responses and the deep dive analysis of inquiry appeals in 2017-18 that were decided or withdrawn.

³ Financial years 2013-2014 to 2017-18

⁴ The Call for Evidence reported that 308 inquiries were decided in 2017-18. However, the detailed data from the Planning Inspectorate provided after the Call for Evidence was published identified 315 decided cases.

⁵ [Executive Summary link]

⁶ [Insert URL to Annexes]

Section 2 - Planning appeal inquiries process overview

Introduction

2.1 In this section we set out:

- key statistics on inquiry appeals
- an assessment of the scale of housing development determined through this process
- the views of the respondents to the Call for Evidence on 4 key issues:
 - what they value most about the process
 - what works well
 - what doesn't work well
 - what improvements are needed

2.2 While the focus of the Review has been on identifying opportunities for improvement, we wanted to ensure that in developing our recommendations, we understood, and then did not lose sight of, those features that were most valued, and worked best in the current process.

Key statistics for the last five years⁷

2.3 The overwhelming majority of planning appeals⁸ (93%) are determined through the consideration of written representations, including householder and minor commercial appeals (written representations). A further 5% of planning appeals are dealt with through hearings. Only 2% of planning appeals are subject to an inquiry.

2.4 Further information on the number of appeals and the proportion allowed or dismissed in the last five years is set out in **Annex E**.

2.5 Over the five year period 2013 to 2018:

- on average 315 inquiry appeals were decided each year
- around 81% of inquiry appeals were decided by a planning inspector, with the remaining decisions taken directly by the Secretary of State
- 56% of decided inquiry appeals were allowed (or approved in the case of called-in applications)

⁷ Financial years 2013 to 2018

⁸ These are appeals made under s78 of the Town and Country Planning Act 1990, and exclude other types of appeals, such as enforcement and lawful development certificate. However, we do include s78 appeals which are linked to other appeal types.

- on average, from receipt of a valid appeal it took 42 weeks for a decision to be made by an inspector. Secretary of State decisions took longer although we do not have comprehensive figures for end to end timescales

Key statistics for 2017/18

2.6 In 2017/18 average timescales for each stage in the process for an appeal inquiry decided by an inspector were as follows:

Receipt to start letter	- 7 weeks
Start letter to start of inquiry	- 29 weeks
Start of inquiry to decision	- 11 weeks
Receipt to decision	- 47 weeks ⁹

2.7 On average, it took 60 weeks from the point of validation¹⁰ 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 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 26 weeks for called-in applications¹¹.

2.8 Our detailed statistical analysis of inquiry appeals considered in 2017/18 (**Annex F**) 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.

The scale of housing development in inquiry appeal schemes

2.9 A substantial proportion of inquiry appeals in the last financial year included housing development.

2.10 Our deep dive analysis of the decisions made in 2017/18 identified that, excluding withdrawn appeals:

- 86% of inquiry appeals include some element of housing, when all mixed-use schemes are included

⁹ The Planning Inspectorate measure valid to decision times, not receipt to decision, so we have assumed the sum of average times for the stages in the process – Call for Evidence Average times by appeal stage. Alternatively, adding the average valid to decision time (43.1 weeks) and average receipt to valid (4.7 weeks) would make it nearer 48 weeks.

¹⁰ Timescales from receipt are not available

¹¹ The timescales for Secretary of State decisions are based on a sample of 29 recovered appeals and 14 call-in applications decided in 2017/18, which were identified in the deep dive.

- the number of dwelling units that were proposed in the inquiry appeal schemes exceeded 42,000 (when mixed use development was included)
- just over 18,600 dwelling units were allowed on appeal in inquiry cases¹²
- this represents 5.4% of the 347,000 total approved residential units in the year 2017/18¹³

Views of respondents to the Call for Evidence

2.11 The Call for Evidence included a series of questions and opportunities for further comment. In this section we set out our analysis of the 104 responses we received. Further analysis of the responses is set in **Annex G**.

What is valued most about the process

2.12 As part of the Call for Evidence we asked respondents to identify what they valued most about the planning appeal inquiry process. We sought their views on 6 possible benefits of the appeal inquiry process and gave the opportunity for respondents to suggest other important factors.

What do you value most about the inquiries process? – positive net importance rating to each sector

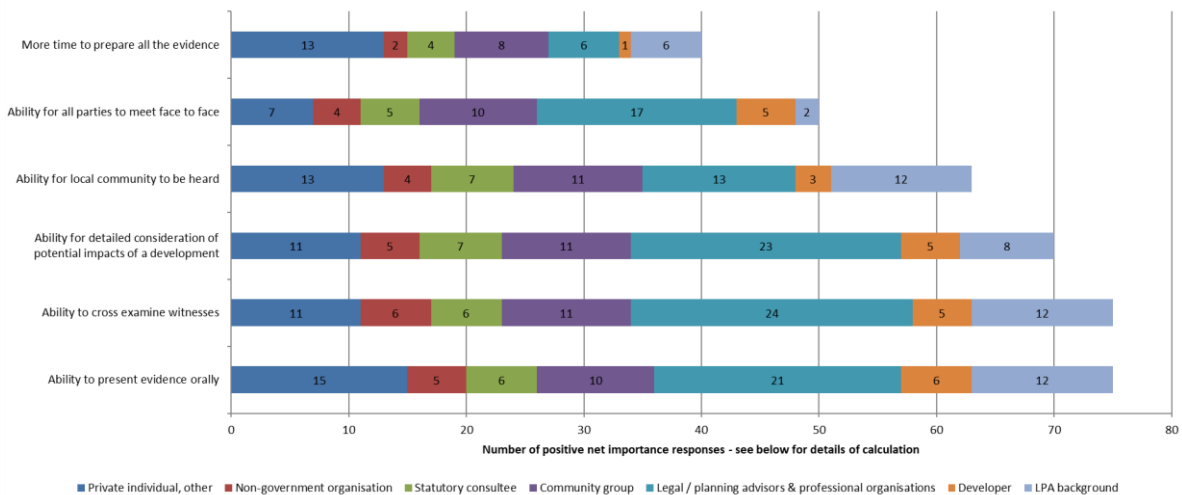


Figure 1. Most valued elements of inquiry by sector

2.13 The Call for Evidence asked respondents to rank how important the above elements of the process were to them. The positive net importance figure for each element (shown in Figure 1 above) was calculated for each sector as

¹²Or granted planning permission for called-in applications

¹³ <https://www.gov.uk/government/statistics/planning-applications-in-england-january-to-march-2018>

follows: the number of respondents choosing important plus quite important less the number choosing not very important and unimportant.

2.14 The responses to the Call for Evidence confirm what we consistently heard at the stakeholder meetings that the ability to present evidence, and have it rigorously tested through cross-examination are very important for all the groups involved in the process. Other factors which were also highly valued were the ability for some matters to be examined in more detail than might be possible through either a hearing or written representation process and the opportunities available for the views of communities to be heard.

What works well in the process

2.15 We invited respondents to the Call for Evidence to identify what features of the current process work well. We left this question open. Figure 2 shows the issues that were mentioned most frequently:

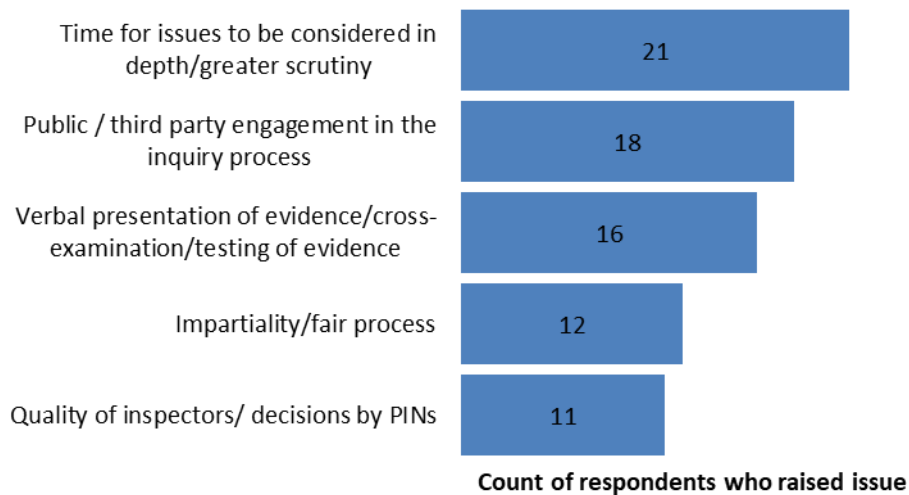


Figure 2. The 5 most commonly raised issues in response to the question 'what currently works well in the inquiries system?'

2.16 What emerged from the stakeholder events and is reflected in the responses summarised above, is that there is much to commend in the current process. The quality of inspectors holding inquiries and their decisions were often admired, as was their fairness to parties, including members of the public and others unfamiliar with the inquiry process. The value of oral presentation of evidence and the benefits of rigorous cross-examination in really testing the evidence presented were also often commended.

2.17 Unsurprisingly, these positive views were not shared universally on all matters. And as the next section reveals, they must be viewed in the context of serious concerns, which were equally widely shared and raised more frequently, about aspects of every stage of the current process.

What does not work well

2.18 We invited respondents to the Call for Evidence to identify what aspects of the current process do not work well. Again, the question was left open and Figure 3 shows the 5 most common issues raised by respondents

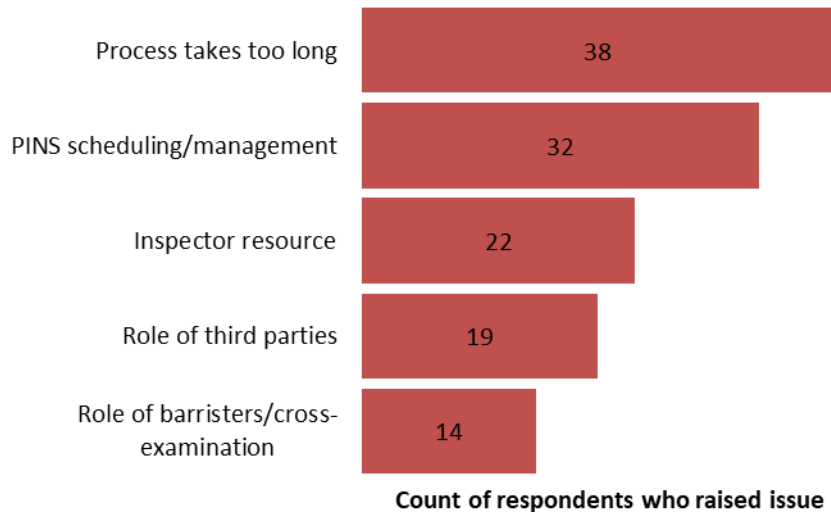


Figure 3. Showing the 5 most popular issues identified by respondents to the question 'what doesn't work well in the inquiries system?'.
Count of respondents who raised issue

2.19 Undoubtedly the principal concern, for most parties, was the excessive timescales for the process from start to finish. These frustrations were often compounded by a lack of transparency about the process and the evidence being considered, and the very limited availability, capability and use of technology in many instances.

2.20 On the central concern about delay, we heard that in some instances the main parties might seek to influence the speed of the process for tactical advantage. For example, it was alleged that some local planning authorities or local communities might seek to slow down the process to allow for a local or neighbourhood plan to progress, thus gaining weight as a material consideration. It was also suggested that appellants and other parties sometimes seek to delay the inquiry to secure the services of a preferred consultant or counsel. But for many respondents and stakeholders we spoke to, the problems with delay were primarily linked to the lack of availability of inspectors to take on the case.

What improvements are needed?

2.21 In the Call for Evidence we asked respondents to identify how much each stage in the process could be improved and in what way. In the Call for Evidence we set out a process map and timeline for the current inquiry appeal process¹⁴.

2.22 The stage identified as having the greatest scope for improvement was the inquiry preparation stage between the start letter and the start of the inquiry. The issues of inspector availability and the need to improve the use of technology also featured in many responses. Other important points that emerged strongly, and which reflected our stakeholder discussions, were the value in the inspector engaging earlier in the process and the more effective enforcement of the deadlines for the submission of evidence and other documents.

2.23 A summary of the common themes emerging from this question is set out below in Table 2.1:

Table 2. 1. The most frequent suggestions for improvement made in the responses to the Call for Evidence

	More resource for the Planning Inspectorate	More early engagement with inspectors	More use of technology to increase efficiency	Inspectors should more strictly set and enforce deadlines
How could the receipt to valid stage be improved?	9	N/A	11	8
How could the valid to start stage be improved	6	8	4	N/A
How could the start to event stage be improved?	19	12	N/A	18
How could the event to decision stage be improved?	18	N/A	N/A	4

2.24 An in-depth analysis was carried out to assess common themes that respondents refer to in the long form answers to these questions. The table above shows the number of respondents who identified each of the most frequent suggestions at each stage of the process.

¹⁴https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/727974/Inquiries_Review_-_inquiries_timeline.pdf

Section 3 - Are the right appeals subject to an inquiry?

Introduction

3.1 The terms of reference require us to consider the circumstances in which the public inquiry procedure is favoured by appellants and whether a different procedure may be appropriate.

The number of inquiry appeals and the type of development scheme involved

3.2 In the five year period 2013 to 2018 an average of 315 appeals each year were decided through an inquiry process.

Table 3. 1. Number of inquiry appeals received, decided and withdrawn, 2013 to 2018

Fiscal Year	Received	Decided	Withdrawn
2013/14	498	350	86
2014/15	488	310	70
2015/16	468	309	109
2016/17	418	299	150
2017/18	349	308 ¹⁵	111
Five Year Total	2221	1576 ¹⁶	526

3.3 The number of decisions has remained relatively constant in the last 4 years (although did drop by 11% between 2013/14 and 2014/15). By contrast, there has been a continuous decline in the number of inquiry appeals received (with numbers down from 498 in 2013/14 to 349 in 2017/18 – a reduction of around 30%).

3.4 In each of the last 5 years a substantial number of inquiry appeals have been withdrawn with numbers peaking in 2016/17. In 2017/18 111 inquiry appeals were withdrawn. Further commentary on the issue of withdrawn inquiry appeals is set out in Section 8.

3.5 Although we do not have detailed empirical evidence on the type of development included in inquiry appeals in the last few years, other than for the number of schemes that include residential development, anecdotally it appears that there has been:

¹⁵ The Call for Evidence reported that 308 inquiries were decided in 2017-18. However, the detailed data from the Planning Inspectorate provided after the Call for Evidence was published identified 315 decided cases.

¹⁶ In 16 cases an inspectors report has been submitted to the Secretary of State.

- a decline in retail development schemes
- a relatively short, but sharp, spike in the number of wind turbine inquiry appeals
- since the publication of the first National Planning Policy Framework in 2012, an increase in the number of inquiry appeals involving housing development

3.6 Table 3.2 below clearly reveals the dominance of housing related development schemes in the inquiry appeals decided in 2017/18. 86% of inquiry appeals decided last year included some form of housing development.

Table 3. 2. Type and size of development dealt with by inquiry (2017/18 decisions)

Size of development (by number of dwellings)	Number of inquiry appeals	Sum of number of dwellings
No housing development	44	0
1 - 9 dwellings	25	91
10 - 99 dwellings	129	6,965
100-199 dwellings	60	8,139
200 - 499 dwellings	45	13,656
500 - 999 dwellings	7	4,967
1000 plus dwellings	5	8,560
Total	315	42,378

Why do appellants seek an inquiry over other modes of determination?

- 3.7 In 2017/18 inquiry appeals decided by inspectors took, on average, 11 weeks longer to determine than hearings and around 24 weeks longer than written representations¹⁷. Although costs for individual cases can vary considerably, appellants we engaged with were clear that opting for an inquiry incurs far greater costs for them than the other appeal routes. In short, inquiries are typically the most expensive and slowest option available to appellants.
- 3.8 The starting point for appellants considering whether to seek an inquiry is Annex K of the Planning Inspectorate's procedural guidance¹⁸, which sets out the criteria that will be used by the Planning Inspectorate when it decides (on behalf of the Secretary of State) on the mode of determination for the appeal.

¹⁷ Source Call for Evidence: Average Valid to Decision Times. Timescale gap with Secretary of State decided cases will be greater

¹⁸ Annex K, Planning appeals: procedural guide, <https://www.gov.uk/government/publications/planning-appeals-procedural-guide>

3.9 However, what became clear from our engagement with appellants is that, where it is possible to argue the scheme accords with Annex K criteria, they will routinely opt for the slower and more expensive inquiry appeal option rather than a hearing or written representations because, as one respondent, put it, ‘they consider there is added value in the inquiry process’.

3.10 In the Call for Evidence we asked all respondents what they valued most about the inquiry process – the full results are set out in Section 2.

3.11 The aspects of the inquiry process that developers valued the most were the ability:

- to present evidence orally
- to cross-examine witnesses
- for detailed consideration of the potential impacts of the development
- for all parties to meet face to face

3.12 These reflected the views of other sectors involved in the process, in particular, legal and planning consultant respondents.

3.13 Another factor that influences the appellant’s choice of mode, which was raised by appellants, their advisers and other parties, is the increased prospects of the appeal being allowed, as compared to other options. The statistics on this point are clear.

Table 3.3. Percentage of appeals allowed 2013 to 2018 by mode of determination

Appeal	Written Representations ¹⁹	Hearings	Inquiries
Allowed	34%	44%	56%
Dismissed	66%	56%	44%

3.14 However, the percentage of inquiry appeals allowed is, if anything, on a downward trend, as shown in table 3.4.

Table 3. 4. Inquiry appeals allowed as percentage of all inquiry appeal decisions

Fiscal Year	Percentage of inquiry appeals allowed
2013/14	62%
2014/15	53%
2015/16	57%
2016/17	57%
2017/18	47%

¹⁹ “Written representations” rate quoted here includes Householder and Minor Commercial appeals dealt with by written representations.

Are the right appeals subject to an inquiry?

3.15 The Planning Inspectorate, on behalf of the Secretary of State, decides whether an appeal will be determined through written representations, a hearing appeal or an inquiry.

3.16 In the Call for Evidence we asked respondents to comment on whether the right appeals were subject to an inquiry. Around 55% of those responding on this point thought that the right appeals were being considered at an inquiry, with the other 45% disagreeing. This split in views was broadly reflected across the different sectors involved in the process. Among the 45% who disagreed, there was no clear consensus, with some arguing more schemes should be subject to an inquiry and slightly more respondents arguing that fewer schemes should be caught.

3.17 For those who thought there should be more inquiries, a key factor, particularly for developers and advisers, was the need for robust testing of evidence at inquiries. This is exemplified by the following quote:

'[at hearings] the evidence is not often sufficiently tested and areas of complex law are sometimes glossed over.'

3.18 The sense that inquiries are required to deliver high levels of scrutiny was also seen in the responses by community groups, as one noted:

'Written representations can leave residents feeling frustrated in the case of contentious appeals.'

3.19 For the respondents who thought that more appeals should be subject to hearings it was often argued that cases were not complex enough to merit a full inquiry. The quote below highlights this.

'there are cases which could easily be hearings which seem to go to inquiry, usually those where Human Rights are cited'

3.20 Others argued for more hearings on the basis that the adversarial nature of inquiries puts some third parties off from engaging.

'More hearings, with less adversarial style, would encourage community and NGO representation.'

3.21 Relatively few respondents raised concerns about the criteria set out in Annex K of the Planning Inspectorate's procedural guidance which the inspector must have regard to when considering which appeal schemes should be subject to an inquiry. However, a number of concerns were raised about approach and time taken by the Planning Inspectorate to confirm whether an appeal would be subject to an inquiry and changes in mode which sometimes occurred later in the process – points we will refer to further in Section 4.

- 3.22 Generally, our regional and sector stakeholder events did not reveal any serious concerns about the type or number of schemes that were subject to inquiry.
- 3.23 An exception to the general lack of concern was a more fundamental point that was raised by a number of community and environmental groups, that in the absence of a third party right of appeal, appellants should not have an unfettered right of appeal. For example, in circumstances where a planning committee decided, in line with officer advice, to refuse a scheme that did not accord with the local and or neighbourhood plan, it was argued that there should be a process of seeking permission to appeal – so that an assessment can be made of whether there is an arguable case (mirroring the judicial review approach).
- 3.24 Clearly, if taken forward, this would mark a fundamental change in the appeal process which would apply to all appeals, so is beyond the scope of this review. For that reason, we make no recommendation on this point, but we would observe, on a practical note, that requiring ‘leave to appeal’ would add another stage in the process, thus potentially increasing overall timescales for a decision, contrary to the thrust of this review.
- 3.25 Furthermore, as the number of inquiries remains relatively small and stable and there is strong consensus about the quality and robustness of decisions following an inquiry, its impact on outcomes would be limited.

Conclusions

- 3.26 Only a small proportion of appeals need to be the subject of an inquiry. In the vast majority of cases, an appeal can be dealt with far more efficiently and equally effectively through written representations or a hearing.
- 3.27 In terms of the distinction between appeals that are subject to a hearing or an inquiry, there is no strong view that the wrong types of appeal are subject to an inquiry or that the criteria in Annex K need substantial amendment. We see no basis for recommending a change to Annex K, although we do make recommendations later in this report which should improve the process of deciding whether the appeal should be subject to an inquiry.

Section 4 – Submission to start letter

Introduction

- 4.1 In this section we examine the opportunities for improvement of the process from the submission of the appeal, to the point where a start letter is issued by the Planning Inspectorate.
- 4.2 In 2017/18, the average time for an inspector inquiry appeal to move from receipt by the Planning Inspectorate, to the issuing of a start letter, was around 7 weeks.
- 4.3 Of all the respondents²⁰ to the Call for Evidence, 80% considered the process from receipt to validation could be improved. Furthermore, 67% of them²¹ thought the process leading to the issuing of the start letter could be improved.
- 4.4 In the light of our engagement with stakeholders and our analysis of performance we have identified four key areas of improvement for this stage of appeals:
 - improving the submission and validation of appeals
 - reforming the statement of case
 - streamlining the process for deciding the appeal mode to be used
 - issuing a start letter more quickly

Improving the submission and validation of appeals

- 4.5 Our detailed analysis of decisions issued in 2017/18 found that around 66% of submitted appeals had some missing information or documents, when first submitted.
- 4.6 A particular problem highlighted by respondents was the inability to submit large files through the current online system. This creates the need for complex file labelling systems, the submission of some documents by post and others online, and increases the likelihood of delay and frustration with the process.
- 4.7 In addition to this, respondents suggest that there is a need for better guidance on which documents need to be submitted.
- 4.8 A further criticism is the lack of transparency in the validation process. One respondent identifies that they *'believe the process would benefit from being more open and transparent'*. This is echoed by another who suggests that to improve the transparency of this process, the Planning Inspectorate appoint a

²⁰ **Annex G**, Call for Evidence analysis: 48% 'Yes a lot' and 32% 'Yes, but not much'

²¹ **Annex G**, Call for Evidence analysis: 35% 'Yes a lot' and 32% 'Yes, but not much'

single administrator for each case who is contactable through one email address.

4.9 This supports the wider narrative that the Planning Inspectorate need to make their proceedings clearer. This could be achieved by providing automated updates to appellants and interested parties when there is a change in the status of an appeal.

4.10 The most common suggestion we heard was that the submission of documents should be improved through the better use of technology. This comment reflected the views of many stakeholders:

'Applicants should be directed to a self-certifying form/ portal with some element of automation to speed up the back office checking of whether all the documents are provided and it is not out of time etc.'

4.11 And a number of stakeholders pointed to good practice emerging in other similar processes:

'[We] consider that nearly all documents could be provided electronically, with Inspectors using e-readers or laptops to read documents. We understand that the UK Supreme Court requires documents to be filed electronically and the Commercial Court is also taking steps to move to a paperless, or less paper heavy, system'

4.12 We expect that many of the current frustrations with submission and validation will be addressed by the Planning Inspectorate through the Operational Delivery Transformation project (ODT). This is expected to be delivered and functional for inquiry appeals by December 2019, following a pilot scheme to be launched in May 2019.

4.13 The principal change will be the introduction of a new online Planning Appeal Portal (the new portal). The ODT project at the Planning Inspectorate sets out the requirements for the new portal. The aim of this project is to improve the functioning of the appeals process through reforming the IT systems involved in the submission of planning appeals.

4.14 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 of 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

- 4.15 The new system will take away the need for a manual validation check to be carried out by an officer on most submitted appeals, as the structure of the new portal will not allow appellants to move through the forms without providing the required information and submitting the necessary supporting documents.
- 4.16 The validation of documentation does not take into consideration the content of documents submitted, only that they are present. We make separate recommendations about improving the statement of case and statement of common ground.

Recommendation 1

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

Reforming the statement of case

- 4.17 Statements of case must be submitted by the appellant (as part of their initial submission) and subsequently by the local planning authority and Rule 6²² parties. These are critically important documents in identifying the main issues and the evidence to be called. The appellant's statement informs the Planning Inspectorate's decision on the appropriate mode of appeal and their initial assessment of the duration of any inquiry.
- 4.18 Many stakeholders noted the volume and complexity of documents submitted at inquiry appeals has increased significantly in recent years. This is highlighted by the following quote:

'Inquiries are usually supported by large volumes of information which takes time to go through and in general this takes time to undertake properly.'

- 4.19 The simplification of documents, such as the statement of case, was supported by a number of respondents to the Call for Evidence, with the consensus being that shorter documents will allow parties to spend less time reviewing what is perceived as unnecessarily detailed documents. This is highlighted by the quote below, taken from the Call for Evidence.

'The scale and complexity of supporting evidence needs to be simplified in order to save time and avoid the need for protracted review. With this in mind, the size of evidence documents submitted by all parties should be

²² A Rule 6 party is an individual or group who has been granted status under Rule 6(6) of the Town and Country Planning (Inquiries Procedure) (England) Rules 2000 <http://www.legislation.gov.uk/ukxi/2000/1624/article/6/made>. This status gives the party the responsibility to submit a statement of case and also grants them additional rights, such as the ability to cross-examine, set out in the guidance; https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/514284/guide_rule_6_planning_April_2016.pdf

capped at a sensible level, (including appendices), to prevent these becoming excessive'

4.20 Another serious consideration that was raised, which may be linked to the parties' concerns about extended timescales and material circumstances changing, is that statements of case often don't provide the information that is required. As one respondent noted:

'...Statements of Case are often too limited in respect of main issues and/or evidence.'

4.21 A lack of clarity or limited coverage of issues in the statement of case can lead to extended correspondence and delay as further clarification is sought.

4.22 The current proposals for the new portal will allow appellants to submit the statement of case using their own document or an offline form that can then be uploaded to the new portal. The introduction of the new portal allows the opportunity to further drive improvements in the quality of documents, such as the statement of case, not just the ease and speed of their submission.

4.23 The use of mandatory fields on a standard pro forma could provide greater clarity and certainty about the information that is required from appellants, local planning authorities and Rule 6 parties, as part of wider culture change which both front loads the process and requires far greater engagement and precision on the part of the appellants and other main parties.

4.24 Furthermore, the Planning Inspectorate's current guidance on the statement of case already urges succinct submissions, although we heard that such guidance was not always followed:

*'The full statement of case should not normally exceed 3,000 words. Whilst this might not be appropriate in all circumstances, we do expect a concise document to be provided.'*²³

4.25 To help improve the clarity and coverage of submissions, we recommend that the Planning Inspectorate develops a standardised online form for the submission of a statement of case. This pro forma, together with very clear, comprehensive and easy to follow guidance to parties, should be developed in consultation with representatives of key sectors, such as planning and legal professions, whose members have extensive practical experience of drafting such statements.

4.26 Once agreed, the online pro forma should be the only option available to appellants and other parties submitting their statement of case. In developing the pro forma, we would encourage the use of mandatory information fields and word limits, although any word limit should be carefully applied to ensure that parties are not prevented or discouraged from setting out their case in full.

²³ Taken from the Planning Inspectorate's guidance; How to Complete Your Planning Appeal Form ([https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/740860/eHow To - Planning version 13.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/740860/eHow_To_-_Planning_version_13.pdf))

Once the pro formas are in place it should be far easier and quicker for parties, including the inspector and interested parties, to identify and compare the evidence being presented by the main parties on the key matters in relation to an inquiry appeal.

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.

Streamlining the process for deciding the appeal mode to be used

- 4.27 Once an appeal is deemed valid by the Planning Inspectorate, they must decide, on behalf of the Secretary of State, which appeal mode is most appropriate for the case²⁴, having regard to the criteria set out in Annex K: 'Criteria for determining the procedure for planning, enforcement, advertisement and discontinuance notice appeals'²⁵. We discuss the effectiveness of those criteria in Section 3 of this report.
- 4.28 In terms of process, the appellant will have justified their preferred procedure in their appeal form. On receipt of the appeal, the current practice is for the Planning Inspectorate to contact the local planning authority to ask whether they agree an inquiry is appropriate. The Planning Inspectorate gives the local planning authority 5 working days to respond.
- 4.29 The Planning Inspectorate do not collect any statistics on this aspect, but anecdotally, we understand that in around half of cases where the appellant requests an inquiry, the local planning authority will agree one is required. Where both main parties are agreed, it is likely that the Inspectorate will confirm that the appeal should be subject to an inquiry.
- 4.30 Where there is disagreement between the parties, the Planning Inspectorate estimate that in about half of those cases, they decide an inquiry is required. The Inspectorate provides the appellant with their justification if they decide not to allow an appellant's request for an inquiry. Similarly, the Inspectorate will explain to the local planning authority why an inquiry is necessary, where an authority has argued that one is not necessary.
- 4.31 To help frontload and streamline this process, there would be merit in requiring the appellant, where they propose to request an inquiry, to notify the local planning authority of their intention to appeal a minimum of 10 working days

²⁴ Section 319A Town and Country Planning Act 1990

²⁵ Annex K of the Planning Appeals: procedural guide, <https://www.gov.uk/government/publications/planning-appeals-procedural-guide>

before they submit their appeal, copying in the Planning Inspectorate. This notification should make it clear that an inquiry is being requested and the proposed length of the inquiry event. The appeal form should be amended²⁶ to require the appellant to confirm that such a notification had been sent to the local planning authority at the appropriate time.

- 4.32 The notification from the appellant could make it clear that the Planning Inspectorate will be in contact with the local planning authority as soon as the appeal has been validated. It would allow the Inspectorate to request a view from the local planning authority within 1 day of being contacted, on whether they agree the appeal should be subject to an inquiry or dealt with by another mode.
- 4.33 Not only would this measure increase the notice that the local planning authority has to prepare its statement of case, but it would allow the Planning Inspectorate to be in a position to issue a start letter within a maximum of 5 working days of the receipt of an inquiry appeal, rather than the average of 7 weeks taken in 2017/18.

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.

Issuing a start letter more quickly

- 4.34 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, around 6 weeks shorter than the average timescale from receipt to start letter in 2017/18.

Recommendation 4

The Planning Inspectorate should ensure that only complete appeals can be submitted and ensure 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.

²⁶ This will require an amendment to the Town and Country Planning (Development Management Procedure) (England) Order 2015 Regulations

Section 5 - Preparing for the inquiry (start letter to start of inquiry)

Introduction

- 5.1 This section covers the stage of the planning appeal inquiry process from the issuing of the start letter to the start of the inquiry event itself. It addresses the matters of the setting of the inquiry date and the submission of further documentation. This can include the local planning authority's statement of case, the final statement of common ground, third party representations, proofs of evidence and any s106 agreement. It then deals with the identification and involvement of Rule 6 parties and any pre-inquiry meeting.
- 5.2 Table 5.1 looks at timescales for inspector decided inquiry appeals in the past 5 financial years²⁷. The table confirms that the substantial increase in timescales for the determination of inquiry appeals has been mirrored by a substantial increase in the timescales for setting up an inquiry.
- 5.3 In 2013/14 the inquiry preparation stage took an average of 18 weeks whereas in 2017/18 it was 29 weeks – an increase of 11 weeks. During the same period, the total receipt to decision timescales for inspector decided inquiry appeals increased by 12 weeks.

*Table 5. 1. Planning appeals decided by an inspector – average timescales.
Source: Call for Evidence (Planning Inspectorate) Statistics Total decision time = receipt to valid average time + average valid to decision times*

Fiscal year	Total decision time (Receipt to decision) (weeks)	% change from 2013/14	Inquiry preparation stage (Start letter to start of event) (weeks)	% change from 2013/14	Inquiry preparation stage as a % of total decision time
2013/14	35	n/a	18	n/a	51%
2014/15	41	+ 17%	22	+22%	54%
2015/16	49	+ 40%	25	+39%	51%
2016/17	50	+ 43%	33	+83%	66%
2017/18	47	+ 34%	29	+61%	62%

²⁷ Taken from Call for Evidence Statistics (weeks rounded to nearest whole number): <https://www.gov.uk/government/consultations/independent-review-of-planning-appeal-inquiries-call-for-evidence>

- 5.4 Of all the respondents to the Call for Evidence who expressed an opinion, 82% considered that this stage of the inquiry process could be improved.
- 5.5 In the light of our engagement with stakeholders and our analysis of performance we have identified 7 key issues / opportunities for improvement:
- agreeing inquiry dates and finding a venue
 - statement of common ground
 - requiring early inspector engagement
 - the approach to the examination of evidence
 - making inquiry documents readily available
 - the timely submission of inquiry documents
 - encouraging early identification of Rule 6 parties

Agreeing inquiry dates and finding a venue

- 5.6 One area which stakeholders frequently mentioned was the difficulty in agreeing inquiry dates. Current guidance urges the appellant and local planning authority to agree a mutually acceptable date before the appellant submits their appeal, where the inquiry is likely to last for more than 3 days²⁸. Since August 2017 the Planning Inspectorate has processed all inquiries, whatever their length, as following a bespoke timetable, ie one where the parties agree a timetable.
- 5.7 Most appellants and their agents told us that the current expectation that parties agree a timetable before submitting an appeal is largely unworkable, because there is frequently no inspector available for the chosen date. So, in practice, appellants will usually contact the Planning Inspectorate before they start the process of discussion with the local planning authority. This is so they can factor in the likely earliest date that an inspector is likely to be available.
- 5.8 For some time now, the Planning Inspectorate have been indicating to parties that the earliest possible date for an inquiry is typically 4 to 8 months after the start date (depending on the type of inquiry) and this is now routinely factored into the discussion between parties about suitable dates.
- 5.9 The non-availability of suitable inspectors in agreeing dates was a significant factor in causing a delay to the start of the inquiry according to many stakeholders²⁹ and in Section 7 we discuss in detail the issue of inspector availability, its impact on the process and our recommendations on how this matter can be addressed.

²⁸ Nearly all inquiry appeals follow the bespoke timetable process. See Paragraphs H2.2-H2.4 of the Planning Inspectorate Procedural Guide.

²⁹ Taken from the Call for Evidence analysis

- 5.10 Analysis of the deep dive data shows that there were disputes over the inquiry date in 45% (142) of the 315 decided inquiries in 2017/18. On average, these appeals took 25 days longer than the general average of appeals.
- 5.11 The deep dive suggested that local planning authorities were responsible for rejecting suggested dates 45% of the time, appellants 28%, the Planning Inspectorate 21 % and Rule 6 parties 6%. Where specific reasons for not agreeing the date are known (110 occasions), the unavailability of an appeal party's key staff or barrister accounted for the vast majority (92%): the remainder were due to the lack of local planning authority venue.
- 5.12 Some stakeholders suggested that the Planning Inspectorate should revert back to imposing dates and only allow rescheduling in exceptional circumstances, because, for example, as one stakeholder said:
- 'there are sufficient numbers of barristers and solicitors specialising in planning in England and Wales for clients to be able to select someone else'*
- 5.13 Another suggestion was that inquiry dates should not be set until all the statements of case were submitted. This would enable a more informed estimate of the number of sitting days and facilitate more accurate scheduling of the inquiry.
- 5.14 Another factor cited as being problematic in agreeing dates was the lack of availability of a suitable venue, which is the responsibility of the local planning authority to organise. Some local planning authorities find it difficult to find a suitable venue. There is pressure over availability of rooms within council premises, especially since inquiries sit for an average of about 5 days³⁰. There can also be issues over cost if it is not possible to use council accommodation.
- 5.15 A number of stakeholders suggested that appellants should bear more of the cost of holding an inquiry and some of those who represented developer interests noted the benefit of more resources allowing an earlier date to be secured. Other stakeholders suggested that if there was an appeal fee, the Planning Inspectorate could organise the venue, using a series of fixed regional centres. However, a regional approach to venues would risk reduced accessibility of the event to the local community.
- 5.16 In our view, the current approach to setting an inquiry date is inefficient and ineffective and needs to be overhauled.
- 5.17 The Planning Inspectorate should lead the process of identifying a suitable date which ensures the overall target of a decision no later than 24 to 26 weeks from receipt to be met. It is therefore necessary that all inquiry events are started within 13 to 16 weeks of the start letter. Before approaching parties, a senior inspector should review the case to confirm that the parties' initial estimate of

³⁰ Call for Evidence – Average number of sitting days

inquiry time is sensible. (See also Recommendation 18 regarding inspector availability and Recommendation 21 regarding performance targets).

- 5.18 There should be clear guidance on the degree of flexibility that will be afforded parties when setting an inquiry date and the Planning Inspectorate should impose a date if there is no agreement between the parties.

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 of the start letter.

- 5.19 At present the burden of finding a venue for the inquiry and bearing its cost is entirely on the local planning authority. Detailed analysis of inquiry venues suggests that in the vast majority of cases³¹, a council owned venue was used for the inquiry. However, it was less clear whether those venues were always suitable and whether delays in identifying a venue arose because of resource constraints on local planning authorities.
- 5.20 In our view, this matter merits further consideration. 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 identification of a suitable venue, which will benefit all parties. As a minimum requirement all inquiry venues must allow internet access for all those attending the inquiry (see further commentary on this point below).

Recommendation 6

MHCLG should consult on the merits of appellants contributing towards the accommodation costs of the inquiry.

Statement of common ground

- 5.21 The appellant has to submit a draft statement of common ground as part of the suite of documents required for a valid appeal which is to be determined by inquiry. A statement of common ground, agreed by both the appellant and local planning authority, should be submitted within 5 weeks of the appeal start date.
- 5.22 The statement of common ground is designed to set out the areas on which parties agree: but it should also be used to identify areas of disagreement. By flagging up areas of agreement and areas of on-going dispute, the statement of common ground will help to narrow the issues, allowing parties to focus on the particular issues of dispute. They will be able to concentrate their efforts on the outstanding issues, and witnesses will be able to focus their evidence. This will save time and resources in preparing for the inquiry and at the inquiry itself.

³¹ Data for 447 inquiry events between 1 October 2017 and 30 September 2018, with 395 (88%) held in council premises / offices.

5.23 Statements of common ground can be extremely valuable to the Inspector. For example, the deep dive revealed that 30% of inquiries which had a statement of common ground (93 out of 308) were able to identify an agreed position which resolved, on average, two reasons for refusal per case.

5.24 Stakeholders had mixed views on the usefulness of statements of common ground. It was generally considered that they could be useful, especially if they covered both areas of agreement and disagreement, and were submitted on time. But, at present, they rarely delivered meaningful benefits. A number of key concerns emerged:

- the deadline for submission of an agreed document was rarely met or actively policed by the Planning Inspectorate. The deep dive showed that 3 statements of common ground were agreed prior to submission of the appeal and 57 before the proofs of evidence: so only 60 out of 312 were submitted in anything like a timely way
- parties (local planning authorities, in particular) often did not engage meaningfully until late in the process – in many cases, this was linked to a concern that new information would emerge before the inquiry given the extended timescales involved
- the agreed content was often limited in scope and usefulness – with too much focus on basic information or facts which were only of marginal relevance
- areas of disagreement were rarely identified or covered in any detail
- finalisation of the agreed document can be held up because of lack of agreement on one issue. This prevents a lot of useful evidence from being submitted

5.25 We also had a number of constructive suggestions about how the process and content of the statement of common ground could be improved, including:

- adopting a topic-based approach would enable pairs of witnesses to complete a topic-based statement of common ground in their area, before they write and submit their proofs of evidence
- there should be a much stronger focus on areas of disagreement (as well as agreement), so that it is clear to the inspector and all appeal parties what the areas of dispute are and where the focus of their attention should be

5.26 In our view, the statement of common ground could be a powerful and effective tool for improving the efficiency and effectiveness of the process, but currently it is not.

5.27 Many of the suggestions for improvement echo what is currently the process in Nationally Significant Infrastructure Project applications (NSIPs). For example, prescribing that the statement of common ground has to be submitted in a timely manner, and that it sets out clearly the areas where agreement has not been reached, as well as those where it has.

Recommendation 7

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

5.28 The overhauled approach should include:

- encouraging a topic-based approach, where appropriate, which would ensure that disagreement on some matters 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 and reinforcing this emphasis by renaming the statements – Statements of Agreement and Disagreement
- the statement of common ground should include an agreed list of conditions and the reasons for them, as well as setting out those in dispute, draft terms of any s106 and a statement of compliance with statutory and policy requirements for the conditions and s106
- new detailed pro formas on the new online Planning Appeal Portal (supported by guidance) which drive a more structured approach, and the clear identification of issues of agreement and disagreement for common topics, such as highway matters, landscape impacts, or housing land availability. The Planning Inspectorate should work with leading topic experts, and other bodies who have inquiry experience, to develop the online pro formas and guidance. As with nationally significant infrastructure projects, best practice examples should also be published³²

Requiring early inspector engagement

5.29 Although an inspector is allocated a case when inquiry dates are scheduled, they do not usually get actively involved until shortly before the inquiry. With improvements in technology, early inspector engagement is now more easily possible. Some inspectors are already working in this way, where their schedules allow it.

5.30 Our detailed analysis of cases found that there was no pre-inquiry meeting and / or pre-inquiry note issued by an inspector in 72% of decided cases in 2017/18 (226 out of 315 cases). It was difficult to establish what impact the current pre-inquiry engagement has on overall timescales, as typically, pre-inquiry meetings only occur for the largest or most complex cases.

5.31 Many stakeholders welcomed early engagement with inspectors and wanted more. As one developer noted: *'Pre-inquiry meetings are very effective in reducing the grounds and agreeing the approach. For larger appeals they should be mandatory.'* This was echoed by a local planning authority: *'More use*

³² <https://infrastructure.planninginspectorate.gov.uk/application-process/example-documents/>

of pre-inquiry meetings, perhaps in advance of the submission of proofs of evidence, could be used to limit the amount of evidence required.'

- 5.32 There was recognition that a pre-inquiry meeting was not always necessary and that other forms of engagement, such as pre-inquiry notes, could be equally effective. The Planning Inspectorate noted that each pre-inquiry meeting required 3 days of inspector time and other administrative support.
- 5.33 A number of respondents contrasted lack of pre-inquiry engagement for inquiry appeals with the more directional approach to pre-inquiry engagement taken by most inspector's handling local plan inquiries and nationally significant infrastructure cases.
- 5.34 Similarly, many parties commended the approach taken by the judiciary in holding teleconferences with the main parties before the case was heard. A legal respondent noted:

'It is commonplace in court litigation for there to be active case management hearings and often those case management hearings are conducted by telephone with all parties sitting in their respective offices. We see no reason why all pre-inquiry meetings need to take place at council offices which necessitates parties travelling unnecessarily. Such meetings could be carried out in the first instance by a senior Duty Inspector (with a role equivalent to that of a duty Judge in the High Court or District judges in the County Courts) dealing – that is a senior Inspector who can take responsibility for dealing with such matters even in cases where they are not directly involved).'

- 5.35 We are firmly of the view that there should be pre-inquiry engagement between the inspector, the main parties and Rule 6 parties in every inquiry appeal. Not only is this likely to save resources and time, but it will also ensure that there is a greater focus on the issues that are in dispute at the inquiry.
- 5.36 We recognise that any early engagement of inspectors would have to be factored into their schedule. But there was broad agreement that this early engagement would save all parties, including the inspector, time and effort in subsequent stages of the process.
- 5.37 To support this important culture change, which requires earlier engagement by all parties, the Planning Inspectorate should ensure that inspectors get training and detailed guidance which facilitates a far more proactive approach at the pre-inquiry stage. This can draw on existing good practice by inspectors³³. From our discussions with stakeholders we would recommend that the new guidance makes clear that:
- most pre-inquiry engagement should be by teleconference, rather than a formal pre-inquiry meeting to minimise impact on resources for all parties

³³ During the Expert Panel meetings one attendee identified that inspectors can issue comprehensive directions after engagement meetings. An example of this is shown in **Annex H**.

- engagement should be with the appellant, local planning authority and Rule 6 parties known at the time of the event/note and any other parties invited by the inspector
- the directions to parties should be published to ensure transparency of the process and to keep interested parties informed
- first engagement with parties should be no later than week 7 from the submission of the appeal. It will be for the inspector to decide if, and when, further pre-inquiry engagement takes place
- appellants are expected to discuss any proposed scheme amendments at this stage, rather than wait until the inquiry to raise them

5.38 The full range of matters to be covered would be left to the discretion of the inspector, but should always include:

- preliminary identification of main issues
- instructions to parties to seek agreement of 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)

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.

Preparation in approaching the examination of the evidence

5.39 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, so there is no need to hear any oral submissions on these.

5.40 In addition, the inspector may consider that a roundtable discussion would be the most appropriate way to consider some issues. We were told that some matters, such as consideration of the sites included in the 5 year land supply, seemed particularly well suited to roundtable discussion rather than cross-

examination. This approach will leave the inquiry to focus on the key matters in contention, where cross-examination of witnesses is required.

5.41 This response from a law firm reflects the views of a number of parties we spoke to:

'[Hybrid appeals] allow different issues to be dealt with in a proportionate and appropriate manner... A hybrid appeal process... would promote the efficient use of the time and resources of both the parties and PINS.'

5.42 We note that in Wales, the law has been amended to specifically allow inquiry appeals to be heard using different modes of appeal for different issues³⁴. We do not believe a change in the law is necessary, although this should be kept under review in the light of inspectors making greater use of these approaches.

5.43 In addition, the inspector could also adopt a topic by topic approach, which can shorten the inquiry process by reducing repetition and allowing a more efficient programming of expert witnesses.

5.44 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.

5.45 In our view, greater use of roundtable 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.

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, roundtable discussions or written statements.

Making inquiry documents readily available

5.46 Many parties, but particularly Rule 6 and other interested parties, reported their frustration at not having easy or convenient access to appeal documents. Currently, the local planning authority has to make available all appeal documents to anyone who wants to look at them: they usually do this by publishing all the documents on their website, on receipt from the different appeal parties. This arrangement is cumbersome and often prone to delay. It imposes an additional burden on the local planning authority and sometimes

³⁴ The Town and Country Planning (Referred Applications and Appeals Procedure) (Wales) Regulations 2017 (SI 2017/544 (W.121))

creates confusion as interested parties may expect to find appeal documents on the Planning Inspectorate's website.

- 5.47 Stakeholders told us that improved availability of documents electronically could save printing resources and local authority time both pre- inquiry and during the inquiry event. It would also facilitate the early involvement of inspectors, as well as other appeal and interested parties. If the appeal documents were available online it would also ensure that all parties were working from the same set of documents and all had access to the same information.
- 5.48 The current Inquiries Rules³⁵ date from 2000 and have not been completely updated to reflect the advances in technology. They require parties to send documents to the Planning Inspectorate, who in turn forward them to other parties, including the local planning authority who must make them available for inspection. This cross-copying of documents between parties would be unnecessary if the the Inspectorate published the documents online on their website for all parties to access.
- 5.49 Ensuring documents are available, subject to necessary data protection controls being in place, will help reduce delays and increase the transparency of the evidence and process. Any new system should allow parties to opt for alerts when new documents are added.

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.

The timely submission of inquiry documents

- 5.50 The current inquiry rules set out a number of deadlines for the submission of key documents³⁶, such as the statement of common ground. Yet we heard that many deadlines, in particular, for the statement of common ground are routinely ignored.
- 5.51 Parties involved in the process noted that because the timescales between the start letter and the start of the inquiry had become so extended there was little value in agreeing their position when new information (particularly assessments of land availability) or a new stage in an emerging plan is likely to be reached a few weeks later.
- 5.52 We heard from both local planning authorities and appellants that some local authorities will only appoint Counsel in the final few weeks before the inquiry,

³⁵ The Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2000 (SI 2000/1625)

³⁶ Article 37 of the Town and Country Planning (Development Management Procedure) (England) Order 2015 (SI 2015/595) and The Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2000 (SI 2000/1625).

which delays their willingness to finalise their position. Financial constraints appear to be the main driver of this approach. But it is also linked to a view that unnecessary work and cost can be reduced by engaging later in the process, particularly if it appears likely an appeal will be withdrawn.

- 5.53 A further factor influencing behaviour is the lack of consequences for late submission of documents. Although an inspector has the ability to initiate costs, this power is rarely / never used. The other appeal parties may not want to initiate costs, preferring to maintain a better on-going relationship with the other party.
- 5.54 Although the Planning Inspectorate does not keep a formal record, they could not recall any instance where an inspector or the Planning Inspectorate had initiated an award of costs (as opposed to deciding on an application for costs) in relation to an inquiry appeal.
- 5.55 The difficulty with the award of costs process is the lack of immediacy and, for the Planning Inspectorate, the additional work involved. Some stakeholders suggested that inspectors should be able to issue penalties to parties who infringed the process by submitting late or incomplete documents.
- 5.56 A number of our recommendations should deliver far shorter timescales, particularly in relation to the pre-inquiry stage. Shorter and more certain timescales reduce the risk of unnecessary work for parties and should encourage earlier engagement by all parties.
- 5.57 These changes and, most crucially, the early, direct engagement of the inspector holding the inquiry should drive better behaviour and deadlines being met. But to reinforce this approach, inspectors should be prepared to take a more proactive and assertive approach with parties (again mirroring the approach we heard that was often adopted in relation to local plans) and make it clear that they are not prepared to accept late submissions and are prepared to initiate an award of costs where other attempts to resolve unreasonable behaviour by a party have failed.

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.

Encouraging early identification of Rule 6³⁷ parties

- 5.58 Those interested parties who want to take an active part in an inquiry may apply for 'Rule 6' status to the Planning Inspectorate. A statement of case must

³⁷ Further information on 'Rule 6' status is set out in <https://www.gov.uk/government/publications/apply-for-rule-6-status-on-a-planning-appeal-or-called-in-application>

be submitted within 4 weeks of the letter from the Inspectorate confirming their status and Rule 6 parties must also then comply with other inquiry rules.

- 5.59 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, where it is appropriate for them to do so. We heard of instances where Rule 6 parties emerged late in the process, which can cause delay and additional cost for the other parties involved in the process.
- 5.60 We don't think it would be reasonable to entirely prohibit a party seeking Rule 6 status late in the process (for example, by setting an arbitrary deadline a fixed period before the start of the inquiry). But, we do think more could be done to encourage earlier identification of Rule 6 parties.
- 5.61 In particular, when the local planning authority writes to notify those who had commented on the planning application that there is an appeal, the letter could explicitly make it clear that those parties who wish to take an active part in the inquiry should seek Rule 6 status at the earliest opportunity. The current model letter recommended by the Planning Inspectorate is here³⁸. In due course, it would also be helpful, if the notification sent by local planning authorities where planning permission is refused or granted subject to planning conditions, also made reference to this requirement. This would require an amendment to secondary legislation³⁹.
- 5.62 Early recognition as a Rule 6 party benefits the interested party, for example, by ensuring that they can take part in the pre-inquiry engagement process with the appointed inspector, and it will also help the other parties involved understand the position of any Rule 6 party and improve the prospects of matters of common ground being identified before the proofs of evidence need to be finalised, thus saving inquiry time.

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.

³⁸ <https://www.gov.uk/government/publications/model-notification-letter-for-planning-appeals>

³⁹ Town and Country Planning (Development Management Procedure)(England) Order 2015

Section 6 – Inquiry to decision

Introduction

- 6.1 In this section we examine the opportunities for improvement of the inquiry and post inquiry process up to the point of a decision being issued. 75% of the respondents to the Call for Evidence thought that this stage of the process could be improved⁴⁰.
- 6.2 In the light of our engagement with stakeholders and our analysis of performance we have identified 5 key issues / opportunities for improvement:
- 6.3 At the inquiry:
- the conduct of the inquiry and the role played by planning inspectors
 - the use of technology
 - the involvement of interested parties
- 6.4 Post inquiry:
- allocation of time post inquiry for the inspector to write up the case
 - decisions made by the Secretary of State

The conduct of inquiries and the role played by inspectors

- 6.5 The respondents to the Call for Evidence identified that many aspects both worked well and were highly valued. These included:
- the time available for issues to be considered in depth
 - public / interested party engagement in the inquiry process
 - the oral presentation of evidence / cross-examination of evidence / testing of evidence
- 6.6 The impartiality and fairness of the process and quality of inspectors and the decisions they make was also commended, not just in the Call for Evidence, but in many of our stakeholder meetings.
- 6.7 Equally there was a clear view that further improvements could be made to the conduct of many inquiries. In particular, and building on Recommendation 8, there was a degree of consensus that parties would welcome inspectors taking a stronger, more directional, approach throughout the inquiry process:

⁴⁰ Call for Evidence analysis : 51 % ‘Yes a lot’, 24% ‘Yes, but not much’.

‘Inspectors should be encouraged to intervene more and steer parties in the right direction when time is being wasted on issues that do not need to be discussed... Inspectors should not be afraid to intervene when it is obvious to them that parties need their help’

- 6.8 Other themes that emerged were the need for consistency in how matters were addressed and the importance of sharing best practice.
- 6.9 Some consistent themes and issues emerged from our engagement with stakeholders are described below.

The importance of an inquiry timetable

- 6.10 Many parties highlighted the significant problems caused if inquiries overrun and particularly where this results in lengthy adjournments. Consequently, it is important for the inspector to manage the process to keep it on track as far as possible. As one respondent to the Call for Evidence stated:

‘Inquiries and hearings need to be realistically programmed, with timetables and target dates adhered to throughout, so that delay by overrun is minimised.’

- 6.11 There will always be an element of unpredictability about timescales for an inquiry, even after proofs of evidence have been exchanged. However, greater front loading and stronger management of the pre-inquiry process should allow a more accurate timetable to be developed and then delivered.

The need for inspectors to be assertive with witnesses

- 6.12 A response to the Call for Evidence from a professional organisation framed a concern we heard frequently about the importance of inspectors being more assertive in circumstances such as unnecessary repetition of evidence or verbose responses to questions:

‘At Inquiries themselves, members observe instances where (perhaps more junior) Inspectors are reluctant to stop witnesses speaking after main points have been put across. Whilst this is presumably out of respect for access to justice principles, there is perhaps more that could be done to encourage a more assertive but fair approach by Inspectors presiding over Inquiries’

- 6.13 Whilst we are keen to encourage a more assertive approach, we recognise that in the interests of fairness, an inspector may need to take a more lenient approach to witnesses who are unfamiliar with the inquiry process, than they take with expert witnesses.

Ensuring cross-examination is effective

- 6.14 Although highly valued and clearly in many instances, working well, the approach to cross-examination was also a source of frustration and concern for a number of respondents, particularly those from a local planning authority or Rule 6 / interested party background.

6.15 Frustration was expressed about instances where other approaches to examination of the evidence could be more time efficient and effective. For example, it is suggested that cross-examination on landscape impacts is rarely of value and that discussions of 5 year housing land supply issues can often be better dealt with through roundtable discussions.

6.16 Concern was raised about the approach taken to cross-examination in some instances:

‘Some barristers are over intimidating, which does not always bring out the best in the parties, and at other times is actually ineffective at "teasing out" the information the barrister is seeking (contrary to their interests)’

‘Timewasting on the part of appellants’ barristers who seek to undermine witnesses’ credibility and confidence... It is suggested that ...a hands on approach from the inspector during the inquiry should minimise or prevent the use of timewasting, intimidatory or bullying tactics’

6.17 Clearly the approach to cross-examination needs to reflect the particular circumstances of each case, and there are legal considerations governing the use of cross-examination. However, this should not preclude inspectors from managing the cross-examination process effectively. Inspectors should be prepared to report unacceptable behaviour to the relevant professional body.

Involvement of interested parties who do not have Rule 6 status

6.18 See detailed commentary below in relation to Recommendation 14.

Handling proposals to amend the appeal scheme

6.19 A number of respondents raised concerns about amendments to schemes proposed at the start of, or during, the inquiry. Some of those representing community and other 3rd party interests considered that scheme amendments at this late stage were unacceptable because they caused delay, unfairness and confusion. Some of those representing appellants were concerned about apparent inconsistency in the approach taken by some inspectors in deciding whether to allow amendments to be considered at this stage.

6.20 There is limited scope for amendments in the scheme. However, there may be scheme amendments that emerge during the course of the inquiry that are acceptable to all parties. Subject to the inspector exercising their discretion to consider a change at that stage, the key challenge is to ensure that anyone affected by such amendments has had a fair opportunity to comment on these, where this is necessary, without this process impacting on overall timescales⁴¹.

6.21 We think there is scope for the existing guidance on amendments⁴² to be strengthened to explicitly discourage amendments being proposed at the

⁴¹ Whether or not further consultation is required would depend, amongst other things, on the nature and extent of the proposed changes and their potential significance to those who might be consulted - R. (on the application of Holborn Studios Ltd) v Hackney LBC [2017] QBD and R. (on the application of Moseley) v Haringey LBC [2014] UKSC

⁴² Annex M Procedural Guide – Planning Appeals England – 26 January 2018

inquiry stage which might jeopardise the inquiry appeal being decided within the target timescale of 24 to 26 weeks. In particular, guidance should strongly encourage appellants to identify and discuss any proposed scheme amendments at the time of the pre-inquiry engagement in week 7.

- 6.22 On this matter, we found the note prepared by the Planning Inspectorate on Requesting Changes in relation to NSIP schemes⁴³ to provide a good model of how it is possible to provide greater certainty about the approach that will be taken to the consideration of amendments and the potential implications of proposing a change at different stages in the process.

Closing submissions

- 6.23 A range of stakeholders suggested that the practice of reading out written submissions, particularly closing submissions, is very time consuming and in many cases unproductive. As a respondent to the Call for Evidence explained:

‘Unnecessary time is taken at inquiries by advocates reading out closing submissions (which are in any event provided to the inspector in writing).’

- 6.24 Although it may not always be appropriate to rely only on written closing submissions, there does appear to be an opportunity to identify where such an approach would be acceptable and therefore save inquiry time.
- 6.25 Given the generally positive feedback on the conduct of inquiries, it is evident that there is already a great deal of existing good practice, particularly by the most experienced inspectors. It is important that this best practice is adopted more widely and consistently.

Recommendation 13

The Planning Inspectorate should consult with key stakeholder groups to update 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 to take a more proactive and directional approach.

Use of technology

- 6.26 In common with all other stages of the inquiry appeal process, there is very limited and often ineffective use of technology in most inquiries. We understand that at present accessible wifi is not always available and the use of visual technology for the projection of plans, maps and other visual material is also often limited and ineffective.
- 6.27 Using technology offers cost savings and increased transparency, and every effort should be made to maximise its use.

⁴³ <https://infrastructure.planninginspectorate.gov.uk/wp-content/uploads/2015/07/Advice-note-16.pdf>

6.28 Missing the opportunities provided by technology increases the cost of copying and sending paper documents, wastes time in searching manually for information, and increases difficulties in finding the correct information, even when the information is available on line:

‘Printing a set of documents for an inquiry can cost in excess of £5k which is a significant sum for individual project teams’

‘Lots of time can be wasted at inquiries wading through paper copies of Core Documents’

‘Some local authority planning appeal webpages seem poorly laid out with confusing document titles and no logical order... [It can be] laborious and time consuming... looking through numerous documents to find a particular document one is searching for, or contacting people to request a document be sent by email’

6.29 In our view, and as a minimum requirement, a good internet connection should be available for everyone at every inquiry venue. It would also be in the interests of all parties to have one central web-based library of all documents, with a consistent referencing system, to deliver benefits for all parties involved in the process by reducing or eliminating the need for paper documents and allowing faster identification of the evidence being considered. This would also improve the transparency of the process and the evidence for the public and other interested parties, who do not always have ready access to this information at present.

6.30 However, many respondents pointed to the opportunity to go much further in terms of the use of technology, for example:

- using transcription technology to generate records of oral evidence – this could offer particular benefits for inspectors who are writing a report to the Secretary of State on a recovered appeal or called-in application
- making webcasts of the inquiry available (ideally live webcasts)
- allowing witnesses to appear via video link
- providing pre-loaded devices for those attending the inquiry to view the evidence being discussed

6.31 A number of these advances are already being used, or are under active consideration, by other organisations who conduct similar events.

6.32 For example, webcasts are already provided by the Scottish Government Planning and Environmental Appeals Division for many inquiries being undertaken in Scotland. The 2017/18 annual report notes that there have been 45,000 hits to the site with over 1,200 live viewings⁴⁴. Benefits emerging from the availability of webcasts, include allowing interested parties who work full time the opportunity to follow the debate, making it easier for witnesses to

⁴⁴ Webcasts are available here: <https://dpea.public-i.tv/core/portal/webcasts>

prepare for their appearance at the inquiry and use of the webcasts as a training tool for new inspectors.

- 6.33 The judiciary are also starting to make significant use of information technology. The Supreme Court currently requires parties to use electronic filings, as set out in Practice Direction 14⁴⁵. This sets out strict guidelines for the format of any filings submitted to the court.
- 6.34 There are time and financial costs to the introduction of technological solutions, however, these are likely to reduce as the technology improves and is more widely used. And there are a number of benefits which accrue from the technology, which could lead to time and cost savings, particularly in terms of the availability of transcripts and recordings to help inspectors in writing up their findings.

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.

The role of interested parties during the event

- 6.35 Many of the stakeholders we met acknowledged the importance of the inquiry option in ensuring that the most complex and / or controversial proposals, that are the subject of an appeal, were subject to an open and fair process of examination accessible to the public and other interested parties. As one respondent noted:

'We would like to reiterate the crucial role inquiries play in providing an opportunity for different parties to put their case before an independent decision maker... First, this offers the potential for better reasoned, more informed decision making. Second, while parties may not necessarily agree with the final decision, each will have had an opportunity to put forward their view which they can reasonably assume the inspector has taken fairly into account in reaching their decision.'

- 6.36 But there were differing views about how effective the involvement of interested parties was at present. For example, an almost equal number of respondents to the Call for Evidence thought the process works well, as those who did not⁴⁶.
- 6.37 And there were different views about why the current involvement of interested parties was not working well.

⁴⁵ <https://www.supremecourt.uk/procedures/practice-direction-14.html>

⁴⁶ Taken from the Call for Evidence Analysis; see section 2.11 and 2.14 for analysis of responses.

6.38 Some community respondents argued that their involvement adds to the overall understanding of the context for the development, including in terms of local knowledge of the site and area. Respondents also flagged the importance of being able to make their case, although it was also recognised that third parties can sometimes struggle to participate effectively, either through a lack of understanding of the process, or because a lack of financial resources hampers their ability to represent their interests on an equal footing with the other parties.

6.39 Conversely other respondents considered that interested parties' involvement can lead to inefficiencies and delays in the inquiry process. Better guidance for interested parties, and / or setting a timetable for their involvement early in the inquiry event were suggested as ways to balance these issues.

6.40 One common theme emerging from these differing viewpoints is that interested parties don't understand the process well and how best to engage in it. One respondent identified a need for *'[m]ore assistance to unrepresented parties who do not understand the process.'* Another respondent suggested that *'[b]etter use of "plain English" would help. Also, possibly, greater use of visual/spoken materials to help to overcome literacy issues.'*

6.41 There is an existing guide to the inquiry process. But the feedback we obtained was that more could be done, again using technology, to improve interested parties' understanding of the process and how best to engage with it. For example, it could include best practice examples;

'We consider that it would be beneficial to establish a portal for best practice in the appeal process. PINs could offer tutorials on what they want to see in submissions and advice on how to write concisely. We consider that PINs writing style should be aspired to and if more appellants could do likewise then we consider it could shorten the amount of material submitted and reduce the amount of reading an Inspector has to do.'

6.42 Alongside the need for improved and more accessible guidance for interested parties, there are number of other measures that will further improve the opportunities for constructive involvement of interested parties in the process, including:

- making documents and updates on changes to those documents available online –will enable interested parties to keep up to date with the progress of the inquiry and access any information they need, when they need it (Recommendation 10)
- encouraging the earlier identification of Rule 6 parties (Recommendation 12)
- improvements to the conduct of inquiries (Recommendation 13)
- better use of technology to improve acces to information (Recommendation 14)

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.

Allocation of time post inquiry for the inspector to write up the case

- 6.43 In 2017/18 the average time taken from the start of the inquiry to the issuing of a decision after an inquiry was 11 weeks. For recovered appeals it took 23 weeks and for called-in applications it took 21 weeks from the start of the inquiry for the Inspector to submit their report to the Secretary of State⁴⁷.
- 6.44 For work planning purposes, we understand that the Planning Inspectorate generally assume one day of writing up time for each sitting day of an inquiry. Clearly some additional time must also be allowed for quality assurance and other administration associated with issuing the decision. However, the current average timescales appear excessive. Furthermore, it is evident from some recent decisions issued by the Inspectorate that decisions can sometimes be issued within a matter of 3 to 4 weeks post inquiry⁴⁸.
- 6.45 A key risk arising from these delays is further evidence emerging in the form of changes in material circumstances after the event has taken place. As one developer noted:

'It is these long running delays in issuing decisions, particularly following a change of circumstances post closing of an inquiry that can be particularly frustrating for appellants.'

- 6.46 Another respondent suggested that delays in issuing decisions are:

'not due to the speed with which an Inspector considers the material before them and the competing submissions but due to the extent of the workload which Inspectors face – i.e. the competing cases.'

- 6.47 Again, the issue of inspector resources is of critical importance here. But given the risks and costs associated with extended timescales, we think greater priority and attention should be given by the Planning Inspectorate to this stage in the process.
- 6.48 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

⁴⁷ Call for Evidence - Average times by appeal stages

⁴⁸ For example: appeal ref 3165730 was an 8 day inquiry, held in 2017, where the report was issued within 2 weeks of the end of the inquiry. Appeal ref 3171425 was a 3 day inquiry, held in 2017, where the report was issued within 2 weeks of the end of the inquiry.

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.

Recommendation 16

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

Decisions made directly by the Secretary of State

6.49 In the past 5 years, 16% of decided inquiry appeals (245 cases) were recovered. In addition, 3% of inquiry appeals decided (52 cases) were called-in applications.

6.50 The time taken to decide recovered appeals and call-in applications was identified by a range of stakeholders as a point of particular concern.

6.51 As one respondent noted:

‘Delays by the Department/Minister are always a bugbear’

6.52 The cases that are decided by the Secretary of State are likely to involve complex or controversial matters. Our analysis demonstrates that it is not simply the extra stage in the process (ie consideration of the inspector’s report by the Secretary of State) that adds to the overall timescale for a decision, earlier stages in the process typically take longer too. In 2017//18 it took 60 weeks for recovered appeals and 50 weeks for call-in applications, from validation to the submission of the inspector’s report to the Secretary of State.

6.53 It takes longer to draft an inspector’s report for the Secretary of State, than to issue an inspector’s decision letter, because the inspector’s report must include a summary of the parties’ cases. Moreover, the longer timescales for Secretary of State decisions presents an increased risk that new factors may emerge which might need to be taken into account before a final decision can be made.

6.54 Once an inspector’s report on a recovered appeal or called-in application is submitted to the Secretary of State, there is a statutory timetable for decisions to be made, subject to some limited exceptions⁴⁹. Since 2016 the statutory timetable provides 13 weeks for a decision⁵⁰. Over the last 4 years (2014//15 to 2017//18), performance against this statutory timetable improved significantly

⁴⁹ A statutory timetable does not apply if the case is decided jointly with another Secretary of State, or if the case is linked to a type of case for which another Secretary of State has responsibility.

⁵⁰ The timetable can only be varied in limited circumstances, including the submission of new evidence by the parties; a substantial change in Government policy; and during an election period. It cannot be varied simply because of other time pressure on officials or Ministers.

from 48% of appeals being decided on time in 2014//15, up to 75% in 2017//18⁵¹.

- 6.55 The improvement in timescales for this last stage in the process is encouraging. However, 13 weeks represents a significant addition to the overall timescale, so 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.
- 6.56 Furthermore, and in line with Recommendation 14, we would encourage the Planning Inspectorate to identify ways in which technology, such as speech to text software, could be harnessed to reduce the burden on inspectors in preparing their report to the Secretary of State.

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 call-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.**

⁵¹ [Compliance with statutory timetable 2014-15, 2015-16, 2016-17](#), [Compliance with statutory timetable 2017-18](#)

Section 7 – Inspector availability and the management of casework

Introduction

- 7.1 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 available are key points of concern for many parties⁵².
- 7.2 There was strong consensus across a range of industry representative bodies, such as the Royal Town Planning Institute, the British Property Federation, Home Builders Federation and the Planning and Environmental Bar Association that a key driver for the delays in the process is the lack of availability of inspectors. In this section, we look in detail at the issue of inspector availability, the Planning Inspectorate’s existing plans to improve it and how this critically important issue can best be addressed going forward.

Factors influencing inspector availability

- 7.3 From our discussions with the Planning Inspectorate and our own analysis it appears a combination of factors have contributed to the substantial increase in time needed to identify a suitable inspector for inquiry appeals.
- 7.4 There has been a decrease of about 20% in the number and capacity of more experienced inspectors (Band 2 and Band 3) in the last 3 years as the table below illustrates:

Table 7. 1. Band 2 and Band 3 Inspector headcount and full time equivalent at the Planning Inspectorate in 2015 and 2018

Inspector Band	Headcount		Full time equivalent	
	2015	2018	2015	2018
Band 2 (formerly Senior Inspector)	156	124	93	75
Band 3 (formerly Principal Inspector)	21	19	48	38
Total Band 2 & 3	177	143	141	113

⁵² See Section 2 – What doesn’t work well

7.5 The Planning Inspectorate has found it difficult to recruit sufficient inspectors to replace the loss of experienced staff that has taken place in recent years. As Figure 4 below for inquiry trained inspectors⁵³ illustrates, the Planning Inspectorate has taken active steps to maintain the scale of resource available for inquiry appeals, notwithstanding the fall in overall capacity. However, with fewer inspectors available and with many of them working part time, the opportunities for identifying a suitable inspector for an inquiry diminish.

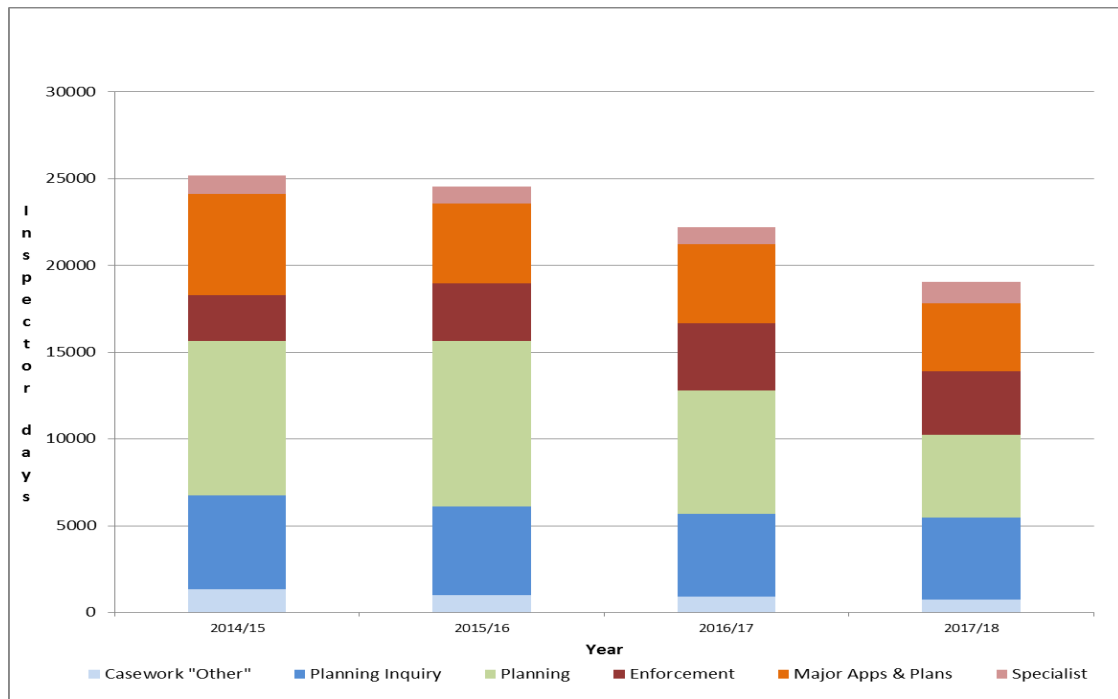


Figure 4. Total senior inspector resource (days) broken down by workstream

7.6 The Planning Inspectorate's difficulties in programming inspectors since 2013/14 appear to have been exacerbated by a range of other factors, principally:

- the number of sitting days for many inquiries has increased
- the process change which allowed an increasing number of appeals to be subject to bespoke timescales (ie the main parties to agree the timescales for the inquiry) and difficulties that have been encountered in agreeing dates, particularly for local planning authorities with resource constraints
- changes to national policy and court judgements causing delay, reference back exercises or lengthy legal submissions at inquiries

⁵³ All Band 2 and Band 3 inspectors are inquiry trained. A small number of experienced Band 1 inspectors are also inquiry trained.

- volatile levels of competing demand for the same inspector resource, principally in the last few years, the number of local plan inquiries
- poor resource and programme management tools, compounded by having four different teams programming the work of inquiry trained inspectors

7.7 Looking forward, the rapid rise in the number of NSIP applications that has recently taken place and is projected to increase still further, will create a substantial additional draw on the senior inspector resource available for inquiry appeals.

Measures already in hand to improve inspector availability

7.8 A summary of the efficiency and resourcing measures that the Planning Inspectorate have advised are in hand, is set out below:

- evolving the resourcing model for inspectors using a blend of salaried and non-salaried staff to undertake lower level casework where there is the greatest demand. This provides opportunities for greater promotion and training of more experienced inspectors to undertake inquiries, local plans and NSIPs
- adjusting the approach to recruitment. The Inspectorate is looking at new inspector models and for the first time recruiting 20 appeals planning officers who not only provide a more cost-effective resource, but also provide a route for development to inspector to aid longer-term succession planning
- a current recruitment campaign to bring in around 80 new inspectors, with 20 at a higher level, to be trained to undertake inquiries
- planning a further recruitment campaign to start early in the new year, which will include the use of fixed term contracts particularly to support NSIP casework
- investing in a strategic workforce planning capability, underpinned by technology to improve management information and enable agile resourcing. This will enable more timely and accurate projection of future resourcing needs, including workforce mix and skills / capabilities to support flexible and swift responses to changes in demand
- introduction of a new charting system to support more integrated charting of inspectors, taking better account of geographical considerations, providing a more realistic buffer between events and better charting where there are withdrawals
- the establishment of productivity and performance improvements to ensure the use of the existing (and future) workforce is maximised. This includes writing shorter more focussed decisions, expansion of electronic working and early inspector intervention for all inquiries
- a pilot 'pairing up' project to enable the existing senior inspector cohort to pass on their expertise to the next generation

Next steps

- 7.9 It is evident that the Planning Inspectorate faces a considerable challenge to resource all areas requiring experienced inspectors adequately, including inquiry appeal work. This is particularly so as the shortage of suitably experienced senior inspectors cannot be considered in isolation from the wider challenges that the Inspectorate is facing in tackling the significant increase of national infrastructure cases, local plan work and the backlog of cases of all types.
- 7.10 In this context, we note that the National Audit Office (NAO), as part of their current study on the planning system are looking, inter-alia, into the Planning Inspectorate's capacity and capability.
- 7.11 Clearly we do not wish to pre-empt the NAO's review, but without decisive and urgent action, there is a real prospect that the earlier availability of inspectors to conduct inquiry appeals will become more problematic, not less.
- 7.12 It is encouraging that the Planning Inspectorate are already taking forward a range of actions to boost the availability of inspectors, with plans to go further in terms of external recruitment and facilitating internal promotion to increase the number of senior inspectors.
- 7.13 Furthermore, from our discussions with the Planning Inspectorate, the Inspectorate appears to share our view that once the recommendations are fully implemented, the additional resources required for front loading inspector engagement should be more than offset by greater efficiency later in the process, through the pre-inquiry resolution of more matters where agreement is possible and with shorter inquiry events that are more focussed (and more transparent).
- 7.14 We do not underestimate 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 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.
- 7.15 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 the necessary organisational measures (in particular, 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 (with challenging, but realistic, intermediate milestones to be achieved by September 2019).
- 7.16 Recommendation 18 follows on the next page.

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.

Section 8 – Other issues and suggestions

Introduction

8.1 In this section we address three additional issues which were raised during the period of the Review that merit further discussion:

- the number of withdrawn inquiry appeals
- the benefits of a policy feedback loop
- the imposition of appeal fees

The number of withdrawn inquiry appeals

8.2 The proportion of appeals being withdrawn before a decision is substantial and has increased in recent years. Table 8.1 shows the number of appeals withdrawn over the last 5 years. This shows that there has been an increase in withdrawals over this period, peaking in 2016//17 at 150 withdrawals during a period where the number of inquiry appeals received has fallen. This level of withdrawn appeals represents a significant use of resources for the Inspectorate and the other parties involved.

Table 8. 1. Total received, and withdrawn inquiry appeals, and decision times from 2013/18

Fiscal Year	Total received	Total withdrawn	Average valid to decision times (weeks)⁵⁴
2013/142/014	498	86	36
2014//15	488	70	43
2015//16	468	109	50
2016//17	418	150	47
2017//18	349	111	45

8.3 As Table 8.1 shows, the number of withdrawals peaked in 2016//17. This follows the longest average time from valid to decision⁵⁵ in the preceding year. Some stakeholders pointed to the increase in the number of withdrawals being

⁵⁴ For called-in applications and recovered inquiry appeals the date the report was submitted to the Secretary of State is used

⁵⁵ Or submission of report to Secretary of State for recovered appeals and called-in applications

linked to the increase in timescales for determination. As one legal respondent noted;

‘Because of the long delay between lodging an appeal and Day 1 of the inquiry, many appellants are driven to making second applications in a bid to seek to obtain planning permission sooner’

8.4 The respondent goes on to suggest that by shortening the time for appeals, the number of withdrawals could also be reduced;

‘If the average time to conduct and determine an appeal by inquiry were significantly reduced, the need to make a second application... would diminish and thus fewer appeals fixed for inquiry would be withdrawn’

8.5 The Planning Inspectorate does not routinely record why an appellant has withdrawn an appeal.

8.6 Our deep dive analysis did reveal some limited information on the reasons for withdrawal which had been recorded by the Inspectorate.

- of the 111 withdrawn appeals in 2017//18, 89 did not have a reason for withdrawal recorded
- of the 22 where a reason is known, 10 were withdrawn because they had a twin tracked application approved by the local planning authority or appeared on track for approval
- 4 were withdrawn because the appellant wanted to focus on a second application
- 4 were withdrawn because a change in policy made the appeal unviable
- a further 4 were withdrawn with individual case-specific reasons

8.7 In the Call for Evidence, 19 respondents identified that when parties reach a negotiated settlement for the approval of schemes, they will withdraw an appeal. This is viewed positively by these respondents.

‘It should be noted that withdrawn appeals are often associated with the successful conclusion of a parallel negotiation on a twin track application with the relevant local authority.’

8.8 Inspectors have powers to award costs as set out in the national planning practice guidance. This includes instances where a party withdraws from an inquiry appeal as set out in paragraph 054 of the guidance⁵⁶. The quote below is taken from the guidance and sets out what is considered to be unreasonable behaviour.

‘If an appeal is withdrawn without any material change in the planning authority’s case, or any other material change in circumstances relevant to

⁵⁶ Planning Appeals Guidance (<https://www.gov.uk/guidance/appeals#behaviour-that-may-lead-to-an-award-of-costs-against-appeal-parties>)

the planning issues arising on the appeal, an award of costs may be made against the appellant if the claiming party can clearly show that they have incurred wasted expense as a result.'

- 8.9 The Planning Inspectorate do not keep data on which party sought or initiated an award of costs. However, they cannot recall any award of costs in relation to the withdrawal of an inquiry being initiated by the inspector.
- 8.10 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.
- 8.11 At very least, given the scale of withdrawals, the Planning Inspectorate needs far better information. For example, if the reasons for withdrawal are often 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.

Recommendation 19

The Planning Inspectorate should review the issue of withdrawn appeals and consider how the 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**

The benefits of a policy feedback loop

- 8.12 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 and, in some instances, there may be scope for simple changes to be introduced which could address points of unnecessary concern or ambiguity.
- 8.13 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.

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.

The imposition of appeal fees

- 8.14 Currently no fee is charged for deciding a planning appeal. The Planning Inspectorate is funded by central government to run the planning appeal process. The Inspectorate does, however, charge for some of their services, including for local plan examinations and NSIP applications. The fees for these are charged on a full cost recovery basis.
- 8.15 Although we did not seek views on the issue of appeal fees, 21 respondents to the Call for Evidence suggested appeal fees as a positive step that could be taken to improve the availability of inspectors. We heard similar support for appeal fees from appellants/developers attending our stakeholder events / meetings. Those in favour of appeal fees, including developers, would be willing to pay an appeal fee, provided the fees paid led to an overall increase in resources available to the Planning Inspectorate and were linked to measurable improvements in the service provided by them.
- 8.16 We have no objection in principle to the introduction of fees provided it is directly linked to specific performance outcomes (and assuming that the fee income is retained by, and provides additional resources for, the Planning Inspectorate). However, until the Inspectorate have completed their assessment of the impact of current changes in the pipeline and developed a detailed operational plan (Recommendation 18), it is not clear whether the imposition of an appeal fee is necessary to deliver the improvements we recommend.

Section 9 – Implementing the proposals and monitoring future performance

- 9.1 In the light of our findings, the focus of our recommendations is on making the current inquiry appeal process more effective and efficient in a practical way, building on its core strengths of fairness, rigorous examination of evidence and high quality decisions.
- 9.2 We have recommended a wide range of improvements, designed to achieve:
- earlier engagement by all parties
 - greater certainty about timescales
 - the harnessing technology to improve efficiency and transparency
- 9.3 We have not proposed altering the timescales for preparation and submission of key documents at the main pre-inquiry stage, so many aspects of the current statutory rules will remain unchanged.
- 9.4 The advantage of this approach is that most of the changes we propose rely on sharpened guidance, improved use of technology and organisational change, which can be delivered in the next 18 months.
- 9.5 The exception is Recommendation 3, which will need a change in legislation, although it could be given effect if appellants followed it as an example of best practice.
- 9.6 MHCLG and the Planning Inspectorate should keep the implementation of these proposals under review and, if necessary, take forward legislative changes to ensure the full effect of these measures is achieved.
- 9.7 Figure 9.1 (below) shows the current process and the process as it would look if the recommendations of this report are implemented.
- 9.8 If the improvements we recommend are taken forward, the overall timescale from receipt to decision of appeal should be between 24 and 26 weeks for inspector-decided cases. This range makes some allowance for the small percentage of cases (6% in the period 2013 to /18) that have inquiries that sit for more than 11 days.
- 9.9 We recommend that the Planning Inspectorate should adopt target end to end (receipt to decision) timescales for inquiry appeals decided by Inspectors of 24 weeks for 90% of decisions and up to 26 weeks for the remaining 10% of the decisions. These targets are underpinned by the targets for start letters (Recommendation 4) and the start of the inquiry (Recommendation 5). The indicative timescales for inquiries based on these targets are shown in table 9.1 below.

Table 9. 1. Existing and recommended inquiry stage lengths (weeks)

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

9.10 With Secretary of State cases (called-in applications and recovered appeals) we recognise that they do take longer to write up (typically twice the time). We therefore recommend that there is a maximum 30-week target for the submission of inspectors' reports to the Secretary of State. This target should be reduced once new technology is in place to enable faster writing up of evidence by inspectors (Recommendation 17(b)).

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.

Reforming data collection and performance measurement

9.11 Throughout this review, we have made many requests for data from the Planning Inspectorate. Those responding to our requests in the organisation could not have been more helpful and we are grateful for all their support and input during the process.

9.12 However, it became apparent that there are some important gaps and weaknesses in the data that is currently collected and analysed by the Planning Inspectorate. These short-comings not only hampered the work of the Review,

but more importantly, may impact adversely on the management and operation of the organisation.

9.13 The points of concern we have identified include:

- a lack of consistency in the data collection practices within the inspectorate
- incomplete or inaccurate information on some individual appeals, including the timing of their processing, in particular, re-determined cases
- limited information on staff resources, analysis of work force changes, productivity and performance management
- limited information collection on important procedural issues, such as award of costs and withdrawn appeals

9.14 To illustrate the current difficulties: on awards of costs, the Planning Inspectorate relies on inspectors to self-report, when a cost award is considered, but does not validate this dataset. On the issue of withdrawn appeals, the Inspectorate does not record the reasons for the withdrawal, yet around a quarter of inquiry appeals are withdrawn before decision ⁵⁷.

9.15 As a result of these difficulties, we commissioned the additional deep dive analysis of every inquiry appeal case handled in 2017//18. However, this indepth investigation resulted in further questions being raised about the data. For example, analysis of the timescales gave different results to those published as part of the Call for Evidence, which also used data from the Inspectorate. And the deep dive revealed an under recording of the number of housing units that were proposed in inquiry appeal schemes. The cluster analysis of the deep dive (**Annex F**) excluded 50 cases because of data inconsistencies. It concluded that quality assurance processes should be improved to correct such anomalies.

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

9.17 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 clear and common understanding, with MHCLG, about what information is needed, in what format and at what frequency.

9.18 The Planning Inspectorate also 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 deep dive analysis.

⁵⁷ 111 appeals were withdrawn in the year 2017-18, around one quarter of total cases. Taken from the deep dive

9.19 Although it strays beyond inquiry appeals, we believe there would be merit in using the forth-coming opportunity to provide more comprehensive and accurate information as a springboard for a full review of the information that is collected and reported on all aspects of the Planning Inspectorate's performance.

9.20 In the field of inquiry appeals, as set out in our earlier recommendations, information should be regularly collected and reported on 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. These indicators should replace the current key performance indicators for bespoke and non-bespoke inquiry appeals reported in the Inspectorate's Annual Report and Accounts⁵⁸.

Recommendation 22

- (a) The Planning Inspectorate should use the 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.**

⁵⁸ 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.

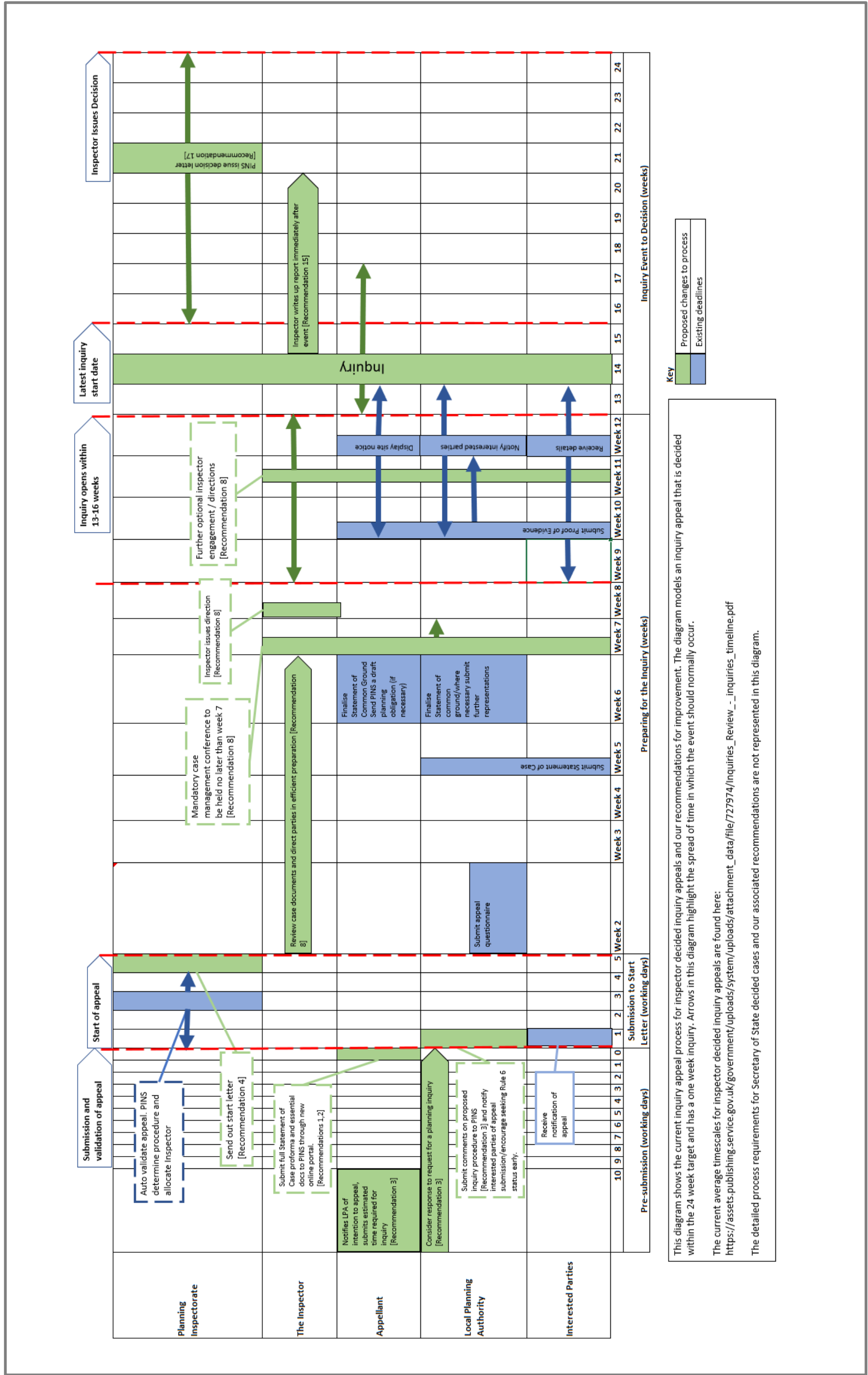


Figure 6. Existing and recommended appeal inquiry timetable