

**Appeal
Changes**

DLP BRIEFING NOTE 1

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Planning Appeals - The New Approach

The Planning Act 2008 received royal assent on 26 November 2008. One of the principal aims of the Act is to improve the speed of the appeals process. Planning Minister, Baroness Andrews, announced in Parliament, on 11 March 2009, changes to the appeals system via a written Ministerial Statement. The changes being implemented were consulted upon in 2007 in the Planning White Paper and its associated document 'Improving the Appeal Process in the Planning System.' This Briefing is intended to provide you with information relating to these changes.

The following changes came into force on 6 April 2009:

- An expedited process for householder appeals which are suitable for written representations. This is to be known as the "Householder Appeals Service".
- The extension of the Costs regime to cover written representation appeals and other planning proceedings dealt with in this way. A revised Circular on costs is in preparation.
- The removal of the 9 week written comment stage for Hearings and Inquiries. Parties will still have the opportunity at the Hearing or Inquiry to make comments.
- Amendments to the Inquiries Rules to require the submission of Statements of Common Ground 6 weeks after the start date of the appeal, rather than 4 weeks before the Inquiry starts.
- New Guidance on the changes and procedures which are to be followed during an appeal.
- Appellants and Local Planning Authorities (LPA) must ensure that their reasons for refusal and grounds of appeal are clear, precise, comprehensive, and that the grounds of appeal relate to the scheme refused at the application stage, without substantial changes that could lead to any party being prejudiced.
- The written consent of the appellant or landowner will no longer be required to correct an error in an Inspector's decision under the "Slip Rule".
- The Planning Inspectorate will be able to use its new power under s.319A of the Town and Country Planning Act 1990 to determine the appeal procedure to be followed for all planning and enforcement cases. However, the appellant will be able to put forward their views on their preferred procedure.

Criteria for determining the procedure (indicative) (planning appeals)

The Planning Inspectorate state that the following criteria will be applied from the 6 April.

i) Written representations

If your appeal meets the following criteria, the most appropriate procedure would be written representations:-

- the grounds of appeal and issues raised can be clearly understood from the appeal documents plus a site inspection; and/or
- the Inspector should not need to test the evidence by questioning or to clarify any other matters; and/or
- an environmental impact assessment (EIA) is either not required or the EIA is not in dispute.

ii) Hearing

If the criteria for written representations are not met because questions need to be asked, for example where any of the following apply:-

- the status of the appellant is at issue, eg Gypsy/Traveller;
- the need for the proposal is at issue eg agricultural worker's dwelling; Gypsy/Traveller site
- the personal circumstances of the appellant are at issue, eg; people with disabilities or other special needs.

The most appropriate procedure would be a hearing, if:-

- there is no need for evidence to be tested by formal cross-examination; and
- the issues are straightforward (and do not require legal or other submissions to be made) and you should be able to present your own case (although you can choose to be represented if you wish); and
- your case and that of the LPA and interested persons is unlikely to take more than one day to be heard.

iii) Inquiry

If the criteria for written representations and hearings are not met because the evidence needs to be tested and/or questions need to be asked, as above, the most appropriate procedure would be a local inquiry if:-

- the issues are complex and likely to need evidence to be given by expert witnesses; and/or
- legal submissions may need to be made or evidence needs to be heard under oath (e.g. where a witness is giving factual evidence about how long the alleged unauthorised use has been taking place); and/or
- the alleged breach or the requirements of the notice are unusual and particularly contentious.

Where proposals are controversial and have generated significant local interest, they may not be suitable for the written representation procedure. The Planning Inspectorate consider that the LPA is in the best position to indicate that a hearing or inquiry may be required in such circumstances. This will be true for both planning and enforcement appeals.

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