Planning Appeals: Procedure

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This note covers the procedure for planning appeals and is complemented by *Planning Appeals: Policy* (SN/SC/1031)

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A. The normal procedure

Planning applications are almost invariably determined by a local planning authority (LPA). If the application is rejected, then the disappointed applicant has the right of appeal to a planning inspector who will hear the appeal in the name of the Secretary of State. There may be a public inquiry, a more informal meeting or written representations. After all, the procedure has to cover enormous capital projects as well as kitchen extensions. The appeal is mainly a matter between the LPA and the applicant. The LPA has an incentive to justify its decision to reject the original application. Indeed, if the planning inspector considers that the LPA acted unreasonably – for example ignoring relevant Government planning guidance – then he can award costs against the LPA. Therefore those who opposed the original application can be confident that the LPA will take note of their arguments in the appeal.

The procedure for appeals heard by a planning inspector is laid down in one of three statutory instruments:

(a) The *Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) Rules 2000* (SI 1625):
http://www.legislation.hmso.gov.uk/si/si2000/20001625.htm
or
(b) The *Town and Country Planning (Appeals) (Written Representations Procedure) (England) Regulations 2000* (SI 1628)
http://www.legislation.hmso.gov.uk/si/si2000/20001628.htm
or
(c) The *Town and Country Planning (Hearings Procedure) (England) (Rules) 2000* (SI 1626)
http://www.legislation.hmso.gov.uk/si/si2000/20001626.htm

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Under s.78 of the *Town and Country Planning Act 1990* a disappointed applicant has the right to appeal to the Secretary of State. By the *Town and Country Planning (Determination of Appeals by Appointed Persons) (Prescribed Classes) Regulations 1997* (SI 420) jurisdiction is now transferred to planning inspectors in respect of all appeals, except for some relating to statutory undertakers.

B. Appeals recovered by the Secretary of State

Despite this general transfer of jurisdiction, the Secretary of State retains the power under schedule 6 paragraph 3 of the *Town and Country Planning Act 1990*, to direct that an appeal should be determined by him instead. Such an appeal will be determined by the ODPM, following an inquiry chaired by a planning inspector or lawyer who will make a recommendation. In those cases, the procedure is laid down in the *Town and Country Planning (Inquiries Procedure) (England) Rules 2000* (SI 1624) http://www.legislation.hmso.gov.uk/si/si2000/20001624.htm

The criteria adopted by the Government in 1986 for recovering jurisdiction were published in *Planning: call-in and Major public Inquiries*, (Cm 43):

1. Residential development of 150 or more houses.
2. Proposals for development of major importance having more than local significance.
3. Proposals giving rise to significant public controversy.
4. Proposals which raise important or novel issues of development control.
5. Retail development over 100,000 square feet.
6. Proposals for significant development in the Green Belt.
7. Major proposals involving the winning and working of minerals.
8. Proposals which raise significant legal difficulties.
9. Proposals against which another Government department has raised major objections.
10. Cases which can only be decided in conjunction with a case over which Inspectors have no jurisdiction.

According to the *Planning Encyclopedia* around one in six recovered appeals are seen by Ministers. In 1986 the Department of the Environment estimated that around 400-450 appeals would be recovered a year, out of a total of 20,000 appeals, and listed the following criteria by which appeals were selected for submission to Ministers:

1. The decision branch proposes to go against the inspector's recommendation on the planning merits.
2. Significant development in the green belt;
3. The proposed decision is to refuse permission for a development involving more than 150 dwellings, or covering more than six hectares.
4. Where it appears there is considerable political interest because of representations received from a Member of Parliament.

5 Sensitive or major appeals.[1]

Planning applications should be determined in accordance with the local plan, "unless material considerations indicate otherwise" (s.54A *Town and Country Planning Act 1990*). That is often the starting point for an appeal. Thus, if the local plan has zoned some land for, say, industrial use, then an individual application for industrial use can only be rejected if some material consideration indicates that it should be rejected. If the LPA does not follow that rule, but rejects an application for industrial use on the grounds that it does not want industry there, then the decision will be overturned on appeal and costs awarded against the LPA. The issue is more complicated if the local plan is out of date, but the replacement only exists in a draft that has not yet completed all its necessary stages before approval.

Of course appeals may depend upon what is, or is not, a material consideration. That is decided by the courts, but it must be a planning matter. Government guidance – mainly in Planning Policy Guidance Notes - is certainly a material consideration. Even draft Government guidance may be a material consideration in some circumstances. On the other hand, local views do not count as a material consideration. Thus, a planning application for a mobile phone mast cannot be rejected on the grounds that local people do not want a mobile phone mast in the area, if the application conforms to Government guidance. Otherwise, the rejection of the application will be overturned on appeal.

If the original application is approved, or if the application is approved by the planning inspector on appeal, there is no further right of administrative appeal. The only possibility of overturning the decision comes via judicial review. In the case of a decision by the Secretary of State (in other words, in practice by the planning inspector) there is a special requirement that judicial review can only be heard if it starts within six weeks of the original determination of the application.

Judicial review is not normally a suitable option for challenging a planning decision. The court would not consider the planning merits of the case, but rather would consider whether the decision was arrived at in the correct way. The process is potentially very expensive, since it involves the High Court. In any case, even a successful outcome would not necessarily result in the original planning permission being rescinded. The Court might decide in some cases that the decision had not been properly taken, but that the matter should be referred back to the LPA to take account of some other factor not originally considered. Many judicial reviews of planning decisions are started by commercial organisations like supermarkets who often make planning applications themselves and wish to establish a point of law that may be of importance to them later on.

Many people consider the absence of third party rights of appeal to be unfair, particularly in cases where there is considerable public feeling against an application and local people are pleased with a rejection by the LPA, which is then overturned on appeal. However, the

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[1] Sweet & Maxwell Encyclopedia of Planning Law and Practice, p79.09-10

Government has resisted the idea of allowing third party rights of appeal, partly on the grounds that it would mean extensive delays for major projects.

C. Planning applications called in by the Secretary of State

The second main procedure for planning applications comes when a planning application is called in by the Secretary of state to determine it himself. This is considered in more detail in another standard note (SN/SC/930). If a planning application is called in, there will be a public inquiry chaired by a planning inspector, or lawyer, who will make a recommendation to the Secretary of State, who genuinely takes the final decision. The procedure is laid down in the Town and Country Planning (Inquiries Procedure) Rules 2000 (SI 1624) http://www.legislation.hmso.gov.uk/si/si2000/20001624.htm

For major infrastructure projects, however, there is a streamlined version of the 2000 rules – The Town and Country Planning (Major Infrastructure Project Inquiries Procedure) (England) Rules 2002 (SI 1223) http://www.opsi.gov.uk/si/si2002/20021223.htm. There is also a Government Circular, *Planning inquiries for Major Infrastructure Projects: Procedures,* (DLTR Circular 02/2002), containing the statutory instrument – http://www.odpm.gov.uk/stellent/groups/odpm_planning/documents/page/odpm_plan_606795.pdf

The *Planning and Compulsory Purchase Act 2004* s.44 will allow a procedure whereby two or more inspectors are appointed to hear evidence at the same time. In some cases, that might speed up the process by allowing issues – perhaps principle and details of the project – to be considered separately at the same time.

There is no administrative appeal against the determination of a planning application by the Secretary of State after he has called it in. It is occasionally possible to challenge such a decision by judicial review, however.