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Making Heritage Work

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13 December 2012	Tel (01584) 876141
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Dear Ms Darby	
TECHNICAL REVIEW OF PLANNING APPEAL PROCEDURES	

The Institute of Historic Building Conservation (IHBC) is the professional body of the United Kingdom representing conservation specialists and historic environment practitioners in the public and private sectors. The Institute exists to establish the highest standards of conservation practice, to support the effective protection and enhancement of the historic environment, and to promote heritage-led regeneration and access to the historic environment for all.

Thank you for inviting us to participate in this consultation. We set our responses to the Consultation questions below.

Yours sincerely

James Caird
Consultant Consultations Co-ordinator

TECHNICAL REVIEW OF PLANNING APPEAL PROCEDURES

RESPONSE BY THE INSTITUTE OF HISTORIC BUILDING CONSERVATION

Q1: Do you agree with the proposed changes to the appeal procedure?

No, we have reservations about this. While there appears to be a prospect that there will be streamlining of effort for both appellants and LPAs, we think this also has drawbacks:

- ◆ We do not think the procedure would accelerate the implementation of developments, which is an objective of the proposals, to any significant extent. The amount of work for the appellant will remain largely the same but would have to be done earlier in the process. This would have the effect of moving the start date of the appeal closer to the decision date rather than moving the decision date closer to the refusal of planning permission as envisaged by the proposal.
- ◆ In our experience many developers, following a refusal of planning permission, try to negotiate a successful alternative proposal with the LPA, in line with Government advice to do so. If the appeal process were to be front-loaded for the appellant as proposed it would bring forward within the 6-month appeal period the time at which negotiation would have to be abandoned in favour of an appeal. We think this would result in more appeals being lodged.
- ◆ We note that the only proposed arrangement for the submission of further material will be proofs of evidence in Inquiry cases. No proposal is made for Hearing cases. As the appellant does not know what the appeal method will be at the time of the appeal, we infer that appellants would have to prepare all cases to Hearing standard at the appeal stage. We think this inappropriate and would advise that further Hearing statements be allowable supplementary submissions.
- ◆ We are concerned about the resources available to LPAs to respond to appeals, particularly in complex cases. Many LPAs have reduced their staffing levels in recent years in response to financial pressures, and, as the proposals would, in practice, give the appellant more flexibility of work programming and the LPA less, we think that the balance between the private and public interests may be adversely affected.
- ◆ This last aspect also applies to PINS who we believe are short of specialist heritage Inspectors. We would not wish to see an increase of heritage-related appeals being dealt with by non-specialists.

Q2: Do you agree with the proposed approach to agreeing a Statement of Common Ground up front, and that a Statement should be required for hearings?

Yes. We support this. We think it will induce more appellants to consider the LPA's position earlier in the process and thus not incur the cost of back-tracking or further justifying their position at a later period in the process.

Q3: Do you agree with the proposed approach to shortening the time before the appeal event?

Yes. It would be hoped that it would induce appellants to programme the whole process in advance including their submission and the likely date of an Inquiry or Hearing. We suggest that the proposal is extended to include the requirement to submit a statement as to the availability of their participants in a predetermined period set by the appeal process, its target time and proposed submission date (e.g. in weeks 10-12 for an Inquiry case).

Q4: Do you agree with proposals for the development of a Commercial Appeals Service?

Yes, up to a point. The sorts of applications to which this might typically apply will include works and advertisements involving listed buildings. Commonly these sorts of proposals are poorly prepared at application stage and proper assessment will be required by PINS at the appeal assessment stage as to whether the relevant issues can be properly dealt with by this process on the basis of the original submission.

Q5: What type of less complex non-householder written representations appeals would benefit from inclusion in a commercial appeals service?

Advertisement consent

Change of shop front

Change of use

Minor development less than 500m². We think 1000m² is too large a project to be safely dealt with in this way

Minor development less than 200m² in a conservation area. We think a much lower limit should apply because of the potential sensitivity of conservation areas.

We think that the process should not be used where a statutory consultee has objected or where there are significant numbers of representations.

Q6: Do you agree with the proposed approach to align other appeal processes?

Yes. But we are unsure why a single generic appeal process for all appeals under the Planning Acts is not being proposed. We appreciate that this would need a proxy terminology for the various terms used in the current separate processes, but this would greatly simplify understanding of the system for appellants, LPAs and third parties alike.

Q7: Do you have a view on whether proposals A-C should be applied more broadly to other types of appeals, in particular enforcement, and whether the further comments stage at week 9 should be removed from Enforcement hearings and inquiries?

Yes. See our answer to Q6. This would imply the alignment of the process for Enforcement Appeals.

Q8: Do you agree with the proposed approach to reviewing and simplifying guidance?

Yes. This would be made easier if the processes themselves were to be unified.

Q9: Do you agree with the proposed revisions to the determination criteria?

Yes.

Q10: Do you agree with the proposal to extend the offer of a bespoke procedure to inquiries lasting 3 or more days?

Yes.

Continues/...

Q11: Do you have any other proposals to further improve the appeals system?

Yes. The consultation refers to, but does not propose itself, a change to the law to allow Inspectors to make awards of costs independently of any application for them. We support this. In our experience both appellants and LPAs are often reluctant to apply for costs for fear of appearing too aggressive or confrontational before the Inspector even though the circumstances may strongly merit an application. We think that the possibility of independently awarded costs would do a lot to promote better discipline in the appeal process.

Impact Assessment

We have no comments on this.

IHBC 13/12/12