



## INSTITUTE OF HISTORIC BUILDING CONSERVATION

Appeals Responses  
Planning System Improvement Division – Branch C  
Department for Communities and Local Government  
Zone 3/J3, Eland House  
Bressenden Place  
London  
SW1E 5DU

16 August 2007

Dear Sir/Madam

### **IMPROVING THE APPEAL PROCESS IN THE PLANNING SYSTEM**

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.

The Institute welcomes the opportunity to comment.

The Institute welcomes the Government's desire to improve the planning appeal process but has reservations about some of the initiatives proposed.

#### **Q1: Do you agree with the proposal to fast track householder and tree preservation order appeals?**

The Institute supports this proposal with reservations.

- It is important that proposals involving heritage assets are adequately addressed with the application of relevant expertise. The Institute would not wish to see the fast track approach used in cases where there were parallel listed building appeals or where heritage assets were involved.
- A recent attempt to reduce the period for appeals from 6 to 3 months failed because it left insufficient time for alternative proposals to be formulated. Reducing the appeal period as suggested would be likely to have the same effect, with more appeals being submitted.

#### **Q2: Do you agree with the proposal to require local authorities to establish Local Member Review Bodies for the determination of minor appeals?**

The Institute objects to this proposal. It would not be accepted by the public as independent. Appeal to the high court and the Local Government Ombudsman would not be seen as adequate as neither body has the power to interfere with the judgement of the decision maker if reasonably exercised.

#### **Q3: Do you agree with allowing the Planning Inspectorate, on behalf of the Secretary of State, to determine the appeal method for each case by applying Ministerially approved and published indicative criteria?**

The Institute is not in favour of this proposal. The important issue is public confidence in the appeal system. It is important to remember that many members of the public are unused to the presentation of cogent written material and require prompting and dialogue to effectively express their views. The Government's campaign to involve "hard-to-reach groups" is a facet

of this. No matter how detailed and well-managed the system, there would be cases in which the decision to deny an oral hearing would appear arbitrary to the public. The Institute believes that the appeal method should continue to be chosen by the appellant. Achieving a greater proportion of written method appeals should be a matter for advice and guidance (including criteria) as at present.

**Q4: Do you agree with the package of proposals detailed in Chapter Two to improve the customer focus and efficiency of the appeals process?**

The Institute agrees with the principle of improving the quality of evidence at inquiries and hearings but **objects** to this being prescriptive. The use of templates for evidence is particularly interesting as it will aid structured thinking on the part of witnesses. The problem with prescription in relation to the content or length of statements and proofs is that it applies arbitrary limits which may not, in the end, aid clarity of argument. The current written proof and summary method appears to us to be satisfactory.

The Institute supports the proposal for summaries to be submitted in advance of hearings although it could be made clear that these could consist of an expanded statement of case.

The Institute supports the proposal for cross-copying of evidence.

The Institute agrees in principle with the proposal to consider amendments to schemes in appeals. However, this should not be applied so strictly as to rule out sensible amendments which arise during the appeal process.

The Institute agrees with the proposal for fixing dates for hearings and inquiries.

The Institute agrees with the proposal for earlier preparation of Statements of Common Ground. This should not rule out the addition of common ground to the statement which emerges as the appeal process progresses.

The Institute has reservations about the removal of the 9 week comment stage. This can be useful for the understanding of the opposing case, particularly where specialist expertise has been drafted in to deal with specific issues. If one party wants to comment on the other's case it should be allowed to do so. A formal timetable for this is, perhaps, unnecessary.

It is in nobody's interests to have appeal decisions involving errors of any sort. The Institute supports the proposal that Inspectors have the power to do this.

**Q5: Do you agree with the changes proposed for the award of costs?**

The Institute supports the rationalisation and clarification of the costs process. Its extension to the written procedure (along with appeal fees) might reduce the incidence of appeals which are seen in some quarters as a cost-free second go at seeking planning permission. The advice might usefully contain case studies.

**Q6: Do you agree that the time limit for appealing against a planning decision should be reduced where there is an enforcement notice relating to the same development, so that in the event both are appealed, to allow the appeals to be linked?**

The Institute agrees that this is a sensible proposal.

**Q7: Do you agree with the changes proposed for enforcement and lawful development certificate appeals?**

The Institute supports these proposals.

**Q8: Do you agree with the proposal to charge a fee for appeals?**

The Institute is not convinced that either of the options for fees is well-founded. The amount expected to be generated by the flat fee is of little consequence given the cost of the appeal process as a whole. This might be more appropriate for householder and small-scale appeals. A fee of 20% of the planning application fee is unlikely to have much effect the numbers of larger appeals, but might deter some appellants with a good case altogether. The Institute suggests that, if a fee system is introduced, it could be used to influence choice of appeal

method (i.e. be cheaper for written appeals) and might be part returnable in the event of success to discourage appeals with low chances of success.

As with applications for listed building consent, fees should not be charged for listed building appeals.

**Q9: What are the likely effects of any of the changes on you, or the group or business or local authority you represent? Do you think there will be unintended consequences?**

The Institute is concerned that the main thrust of the proposals will appear to the public as reductions in rights for appellants and transparency of process. The integrity of the appeal system is crucial for continued public support of the planning system as a whole. The Institute remains to be convinced that the proposals as a whole are a step in the right direction.

No mention is made in the consultation of listed building appeals. It is assumed that the changes to the system proposed will, in due course, also apply to them.

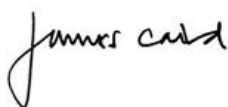
Listed building appeals require specialist inspectors and participants by the principal parties. It is essential that any changes to the appeal system as a whole recognise the need for this.

**Q10: Do you have any comment on the outcomes predicted in the partial RIAs (attached at Annex C), in particular the costs and benefits?**

The Institute is concerned that many of the proposed changes appear to be driven primarily by the perceived need to reduce the cost of the Planning Inspectorate. Many of the issues could be resolved if PINS were adequately resourced.

We would be grateful if these comments could be taken into account.

Yours faithfully



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