CONSULTATION RESPONSE

IMPROVING THE APPEAL PROCESS IN THE PLANNING SYSTEM **17 August 2007**

Making it proportionate, customer focussed, efficient and well resourced

1. HBF is a keen supporter of the principle of a democratically accountable planning system, within which, there must be a right of appeal.

2. However, we believe that the consultation paper does not recognise the importance of the appeal process as a vital control within the planning system, instead concentrating on the issues that affect the Planning Inspectorate (PINS) as a business unit. We concede, of course, that the former is of little use if the latter is not addressed. However, the focus of the consultation should be about the role of appeals in the process rather than the mechanics.

3. The fact that the number of appeals is increasing should be of wider concern than merely how PINS deals with this increased workload. The reasons behind the increase in appeals should be thoroughly examined in order that the causes, rather than the symptoms of the issue can be adequately addressed. HBF has frequently suggested that the increase is due, in part, to refusal rates increasing solely to allow LPAs to meet their performance targets of making decisions in 8 or 13 weeks. In a partnership approach (such as under the proposed planning performance agreement process) it is surely time to review these performance targets, the knock on effect of which may be to reduce the upward trend in appeal submissions.

4. One further issue that is addressed in the HBF response to the Planning White Paper but is reiterated here for completeness is the current situation whereby the appeal addresses all of the planning issues associated with the application regardless of whether or not there is any disagreement between the authority and the applicant. HBF believes that appeals should be limited merely to the unagreed issues between the parties and should not reconsider points of agreement. By only examining those issues in dispute considerable time would be saved, leading to greater efficiency of time.

5. Such an approach appears to be given some support in this consultation especially with regard to the proposals for statements of common ground. It would also assist in focussing appeals into the areas of actual disagreement rather than is often the case under the present system, whereby local authorities introduce any number of reasons for refusal in decisions since they are aware of needing only to win on one ground to have an appeal dismissed.

6. The removal of these spurious issues would assist in simplifying appeals resulting in efficiency gains of the order of many of the other suggestions in the consultation paper.

7. HBF has addressed each of the proposals set out in the consultation paper below.

Fast tracked householder and TPO appeals

8. In theory, the shortened timescale proposed for householder and TPO applications is welcomed. Indeed, the proposals to simplify and extend the permitted development rights for householders may have the added bonus of reducing the number of appeals of such types of development.

9. We would not, however, wish to see the time period for submitting an appeal on other types of application reduced to 8 weeks. We also raise the concern that the number of appeals may increase as a result of this change as many applicants may feel rushed into making an appeal without the necessary reflection on the merits of so doing. Evidence of this phenomenon was quite clear the last time the appeal period was reduced from 6 months to 3 months for all appeals. The action increased appeal numbers so dramatically that the longer time period had to be reintroduced.

Local Member Review Bodies

10. Although currently proposed for only minor appeals that have been determined under delegated powers by officers this proposal is whole heatedly rejected by the HBF.

11. The majority of LPAs already have, through their standing orders, the safeguard of allowing elected members to recover an application to be determined by the planning committee and, in extreme cases, referred to full Council. The proposal for a local member review body is, therefore, unnecessary, duplicitous and would add no value to the planning process.

12. The strength of the PINS service is its independence from the local authority, a position that could not be replicated by any proposed review body.

Determining the appeal method

13. The current, non-statutory procedures already allow the Inspectorate to encourage applicants to agree to the most appropriate procedure for their appeal. Indeed, the evidence presented in paragraph 1.19 suggests that PINS have been very successful in doing just this.

14. However, the fundamental principle of the appeals process is the right to an appropriate hearing. If the appellant insists on a particular procedure then they ought to be entitled to such a hearing.

15. PINS should continue to publish their assessment criteria in order to provide guidance to appellants on the most appropriate method of appeal but should not be allowed to specify the appeal method.

16. The assessment criteria set out in Annex A appears to suggest that any application that requires an environmental impact assessment would need to be heard at a public inquiry. This is not the case, especially if the EIA was not the

issue of disagreement between the parties and the issue was a simple issue that could be determined by written representations.

Nature and content of appeal documents

17. The HBF supports the proposal to provide appellants with better guidance as to the type of evidence that will assist inspectors in reaching decisions. We also support the concept of including a short summary of statements. However, arbitrary word limits, such as that suggested of 500 words, are unlikely to be appropriate for all cases, particularly for complex appeals on a number of grounds. It would, therefore, be better to require a summary of all of the key issues addressed with, perhaps, a 200 word limit on each ground.

18. We are also not convinced that prescription of the nature of material to be produced at appeal would be able to cover all possible cases, particularly since we have not seen such a list of issues. We would, therefore, require further consultation on what would actually be prescribed if we are to support this proposal in its entirety.

Submission of evidence

19. The HBF does not support the proposals for direct exchange of statements since this too would be open to abuse by parties with statements being sent late or not at all, being “lost in the post” or simply “going missing”. The role of PINS in policing the submission and exchange of statements and evidence is critical to supporting the proposed changes to the costs regime, particularly if fixed rate fines are introduced for late submissions. Presumably, such fines would need to be administrated by PINS rather than the appellant of the LPA and thus evidence of late submission would need to be provided. This would be exceptionally difficult for either party to produce and is potentially open to abuse.

Introducing new material at appeal

20. The HBF supports the proposal to determine appeals on the evidence that was before the LPA when it made its decision. It is clearly unfair to expect an application to comply with new policies and requirements introduced subsequently to the time when the application was determined. Similarly, if the available information was adequate for the LPA to determine the application it follows that it should also be adequate for PINS to determine the appeal.

21. However, this would also have to refer to evidence from the Secretary of State such as new policy statements since it would have been impossible for an appellant to have complied with government policy that was not applicable to their application when determined.

22. However, it should be acceptable for appellants (or LPAs) to introduce material that addresses the reasons for refusal of the appeal. Similarly minor amendments and any proposed conditions should also continue to be allowed to be produced by any relevant party.

Fixing inquiry and hearing dates

23. The issues discussed under this heading demonstrate the difference between the Inspectorate as a business unit and the role of the appeals process in the planning system as used by applicants.

24. HBF does not see the practices described in paragraphs 2.16 and 2.17 as abuse of the appeals process, merely as a tool in the whole planning process. However, we do agree with the sentiments of paragraph 2.18 that there should be proactive management of cases with greater engagement between the parties.

25. We do not, therefore, support the proposal of the Inspectorate imposing dates on appellants. Indeed, the offer of available and agreed dates between the parties should be respected by the Inspectorate regardless of the timescale suggested. The performance targets for PINS could be amended to reflect this agreement between parties.

26. The joining of similar appeals is also frequently used by applicants as a tool to test alternative proposals for development. Without such joining and joint consideration of alternative proposals the Inspectorate will face multiple appeals for similar proposals, leading to additional work since each new appeal will have to re-establish the policy context and agreed ground for every appeal which will not, presumably, be handled by the same inspector as previous, similar, cases. It would not, therefore, result in a better management of PINS resources as suggested in paragraph 2.21.

Statements of common ground

27. HBF agrees that statements of common ground are useful documents and should be prepared as early in the appeals process as possible in order to focus the examination of those issues which lie at the heart of the disagreement between the parties.

28. The proposed 6-week timetable is welcomed and should be strengthened by the proposal to require summaries of cases as supported earlier.

Comments at the 9 week stage

29. HBF supports the removal of the 9-week comment stage.

Correction of errors in appeal decisions

30. HBF offers no resistance to the proposal to simplify the procedure for the correction of errors in appeal decisions, subject to this being within the High Court challenge period as proposed.

Award of Costs

31. HBF would support the updating of the Costs Circular and would be keen to be involved in discussions as to what this should contain. Similarly we believe that the costs regime should be extended to the written representations method of appeal as this would have the added advantage of reducing the number of

inquiries which were sought merely to allow the consideration of costs applications.

32. The application of fixed penalties for failing to meet deadlines, although welcomed, is not considered to the most effective sanction against tardy behaviour. A more appropriate sanction would be to disallow late representations, relying on previously submitted evidence for determination.

33. However, the burden of proof for abuse is not always as clear cut as might appear to be the case and the apparently simple process of imposing fixed fee fines may lead to a whole new appeals process where a party disagrees with the Inspectorate's imposition of a fine. Without such an appeals procedure the imposition of fines would, itself, be inequitable.

Reducing the time limit for planning appeals when the same development is the subject of an enforcement notice

34. HBF has no comment on this proposal.

Enforcement and lawful development certificate appeals

35. HBF has no comment on this proposal.

Resourcing the appeals service

36. HBF believes that the appeals service should remain a publicly funded agency. There is no evidence to suggest that there is a proliferation of appeals merely because there is no fee payable. The appeals process is a vital tool in ensuring that local planning authorities take account of all material considerations when making decisions and do not make perverse decisions. PINS is, therefore, a service that maintains public probity and accountability and as such it should be funded entirely from public resources. The planning application itself attracts a significant fee and it should remain the right of the applicant to have available to them the process of reviewing how that decision has been made.

37. However, if a fee were to be introduced, either an administrative fee or a proportionate fee, HBF suggests that this should be paid by the errant party. If an applicant has been forced to make an appeal through no fault of their own ie: due to perverse action by the LPA) they should not be financially penalised for doing so. Similarly, if the LPA is found to have acted correctly against an applicant the cost of the appeal should be borne by the appellant. In effect, this "loser pays" approach towards an appeal fee could be similarly extended to the costs regime as well.

38. The levying of a proportionate fee would, in many cases, be inappropriate since there may be many agreed issues of common ground, possibly leaving the consideration of the appeal to only a simple matter of discrepancy between the parties. This may, therefore, perversely encourage LPAs to be less willing to agree statements of common ground since this would reduce the fee payable by the appellant.

39. Thus, if fees are to be payable, they should be a flat rate fee or proportional to the issues to be addressed by the appeal rather than the application as a whole.

40. The fact that paragraph 3.9 recognises that the introduction of a fee may result in deterring householders from proceeding to appeal is an interesting admission of this possible outcome and should not be lightly dismissed whether this is in connection with householder applications or any other type of applicant. The ability to pay should not be a consideration of progressing to an appeal. Similarly, the ability to pay should not be a consideration of the level of fee, whether that is in accordance with householders or commercial developers.

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