

Planning Appeal Inquiries Review – call for evidence questionnaire

Thank you for responding to the call for evidence. All comments are welcome. It would particularly help us undertake our analysis and capture your views correctly if you could fill in the online survey at <https://www.surveymonkey.co.uk/r/RV5CTV8>. If you are not able to complete the online survey, please complete this questionnaire. The list of questions is not exhaustive. The final question provides an opportunity to add any additional comments or suggestions on the planning appeal inquiries process. Please feel free to skip any questions you do not wish to answer.

If you are unable to respond online, please complete this questionnaire and email to InquiriesReview@communities.gsi.gov.uk or post to the Inquiries Review Team, c/o MHCLG, 3rd Floor, Fry Building, 2 Marsham Street, London SW1P 4DF.

This call for evidence document and process have been planned to adhere to the Consultation Principles issued by the Cabinet Office. Information provided in response to this call for evidence, including personal data, may be published or disclosed in accordance with the access to information regimes. The Ministry of Housing, Communities and Local Government will process your personal data in accordance with the law and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties. Further information is included at Annex A and a full privacy notice is included at Annex B.

The call for evidence closes on 18 September 2018. Individual responses will not be acknowledged unless specifically requested.

Thank you for your interest and for taking the time to respond.

Inquiries Review Team
July 2018

About you

Q1. Contact details

Name	Joe O'Donnell
Organisation (if applicable)	The Heritage Alliance
Role in organisation (if applicable)	Policy and Communications
Address	5-11 Lavington St, London
Post code	SE1 0NZ
Email address	Policy@theheritagealliance.org.uk

Q2. Is this an organisational or personal response?

Organisational	Personal
X	

Q3. Who are you?

Developer	
Planning Consultant	
Lawyer	
Local planning authority	
Community group	
Non-governmental organisation	X
Statutory consultee	
Private individual	
Construction company	
Professional organisation	
Planning Inspector	
Other (please specify)	

Q4. What role have you had at an inquiry in the last five years?

Please select the one or more boxes that best describe your usual role(s) at an inquiry over the last five years

Role in inquiries	Expert witness / or given evidence in person at inquiry	Legal representative	Submitted written representations/ evidence	Observer
Appellant				
Local planning authority				

Rule 6 party ¹				
Community group / non-governmental organisation				
Statutory consultee				
Private individual				
Other	X		X	X

If “other” please add description here: ...[We represent the views of our heritage sector members who will have taken various roles in planning inquiries.....](#)

Q5. How many inquiries have you been involved in?

Number of inquiries involved in	0	1-2	3-5	6-10	More than 10
Please select					

¹ A rule 6 party is any person (apart from the appellant and local planning authority), who has notified the Secretary of State (Planning Inspectorate) of an intention or wish to appear at an inquiry

VIEWS ON THE OVERALL PLANNING APPEAL INQUIRIES PROCESS

Q6. What do you value most about the planning appeal inquiries process compared to written representations or hearings?

	Important	Quite important	Neutral	Not very important	Unimportant
Ability for all parties to meet face to face			x		
Ability to present evidence orally	x				
Ability to cross examine witnesses	x				
More time to prepare all the evidence			x		
Ability for detailed consideration of potential impacts of a development	x				
Ability to consider complex issues	x				
Ability of local community to be heard	x				
Other factor(s) - please specify _____					

Q7. What aspects of the current inquiry process work well?

The current time period to enable third parties to submit a response should not be cut as part of the inquiry's aim of halving current end to end procedure times. However, more to be done to address the inequality of arms between parties. For example, could third parties receive notification immediately, so they can start preparing. Could this be done electronically?

Q8. What aspects of the current inquiry process don't work well?

NB in the next section of the questionnaire we look at each stage in the process in turn, so if your concern is about process then it may be easier to make the point below.

Third parties' inability to appeal planning decisions is increasingly problematic.

The decreasing amount of heritage expertise in LPA's increases the risks of decision being made in relation to applications dealing with heritage assets which do not comply with national and local heritage protection policies.

Despite this, no appeal is possible by third parties wanting to prevent harm to heritage assets. Judicial review is possible but this is an expensive and difficult process for communities or small organisations to deal with.

To avoid the system being clogged, perhaps a third party right of appeal could be extended to amenity societies. Alternatively, appeals for all could be subject to a validity review and vetting similar to how cases are dealt with in the judicial review or employment tribunal system.

Many LPAs' difficult financial situation may add to pressure to permit applications in order to avoid the cost of fighting applicants' potential appeals. Given that there is no corresponding right to appeal for third parties which LPAs will want to avoid this is a perverse incentive to allow applications even where heritage will be harmed to avoid the cost risk of an appeal.

The ability to predict when a decision will be called in by the Secretary of State also seems to be diminishing.

For example, the Manchester St Michaels development which would see a 39 storey tower looming over the Grade I listed Manchester Town Hall and conservation area. The plans were objected to by SAVE, The Victorian Society and Manchester Civic Society among others with Historic England having concerns about the 'cumulative harm caused to highly graded listed buildings'. This clearly seems to meet 4/5 the tests laid out in a written answer of when the Secretary of State may call in an application

<https://publications.parliament.uk/pa/cm201213/cmhansrd/cm121026/wmstext/121026m0001.htm#12102628000003>:

- may conflict with national policies on important matters;
- could have significant effects beyond their immediate locality;
- give rise to substantial regional or national controversy;
- raise significant architectural and urban design issues;

However, despite clearly falling within the above, the Secretary of State declined to call in the application. This was also the case with the Paddington cube plan.

So great is the local feeling in Manchester that the Civic Society started a fundraising campaign to bring a judicial review of the decision which the High Court denied permission to proceed and ordered £5,000 costs against the civic society. This highlights how difficult it is for communities facing harmful development to challenge it.

Members have also reported that their rare and well reasoned requests for a call in by the Secretary of State now more rarely result in action being taken.

There is also a concern that lack of detailed reasons for why the Secretary of State will not call in an application failing to take action making it difficult to understand why no actions is taken.

It would be useful for any guidance which planning inspectors receive to be public.

Some in the sector are concerned that written representations are not given as much weight as those who are able to attend an inquiry and be cross examined. This favours the appellant who are more likely to be financially able to attend.

Q9. In your experience, are the right appeals subject to an inquiry, rather than written representations or hearings?

NB the criteria the Planning Inspectorate take into account for determining the appeal procedure are set out in Annex K of the Planning Appeals Procedural Guide (<https://www.gov.uk/government/publications/planning-appeals-procedural-guide>)

Yes	No

Comments

IMPROVING EACH STAGE IN THE PROCESS

Q10. Receipt to valid. On receipt of an appeal, the Planning Inspectorate undertake a check to ensure that all the relevant documents have been submitted. Many appeals are complete on submission and thus the process of checking is completed within a day. However, in a significant number of cases, some information is missing on receipt. In these cases, the Planning Inspectorate will contact the appellant to request the missing material.

The time taken for all inquiry appeals from receipt to being valid was an average of 4.5 weeks in 2017-18. **Could the receipt to valid stage be improved?**

	Yes – a lot	Yes, but not much	No
Tick as appropriate			

If yes, please explain how it could be improved

Q11. **Valid to start date.** This stage includes the Planning Inspectorate confirming whether the inquiry process is the appropriate appeal procedure to use (following consultation with the local planning authority), setting up the file, and preparing the “start letter” which explains how the inquiry process will proceed. The issue date of the start letter is important in terms of the overall programme of the appeal.

This stage took an average of 2.7 weeks in 2017-18. **Could the valid to start stage be improved?**

	Yes – a lot	Yes, but not much	No
Tick as appropriate			

If yes, please explain how it could be improved

Q12. **Start to event.** This stage covers the period from the start date to the first date of the inquiry event. It includes the agreeing and setting of the inquiry event dates, the pre-inquiry meeting when one is held, and the submission of different forms of evidence by all parties. This stage took an average of 29.4 weeks in 2017-18. **Could the start to event stage be improved?**

	Yes – a lot	Yes, but not much	No
Tick as appropriate			x

If yes, please explain how it could be improved

Perhaps a stricter approach could be taken to delays caused by the applicant. There is a perception that there is a greater leniency for applicants failing to supply documents on time when compared to third parties. Such leniency can make it hard to prepare a response to an appeal.

Q13. **Event to decision/submission of report.** This stage covers the period from the first date of the inquiry event to the decision being sent out, or in the case of a called in planning application, or an appeal that has been “recovered” for decision by the Secretary of State, this stage ends with the submission of the Inspector’s report to the Ministry of Housing, Communities and Local Government.

This stage was an average of 10.9 weeks in 2017-18 for Inspector decisions. The average time period for the submission of reports for called in applications and recovered appeals was 21.4 weeks and 22.7 weeks respectively. **Could the event to decision/submission of report stage be improved?**

	Yes – a lot	Yes, but not much	No
Tick as appropriate			

If yes, please explain how it could be improved

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WIDER PROCESS AND OTHER ISSUES

Q14. **Do you have any suggestions on how better use could be made of new technology, including artificial intelligence, to enable more efficient handling of inquiries at each stage?** (eg in relation to sharing of evidence or electronic working at inquiries). It would also be helpful if you could highlight any issues/risks to be avoided as well as good examples from elsewhere.

Community, local and national groups can be disadvantaged having to be involved in planning inquiries during the day time. Applicants tend to be pursuing an appeal as part of their jobs and therefore have no problem attending such events. Making greater use of remote appearances could help address this imbalance.

Q15. A substantial proportion of appeals that would be heard at an inquiry are withdrawn, typically before the inquiry starts. **What are your views on this matter and what, if any, steps would you suggest to limit the number of withdrawn inquiries?**

Discouraging appeals from being withdrawn during the process may mean that weak cases unnecessarily progress to inquiry. Weak appeals should not be lodged in the first place.

Q16. **Please give us any further suggestions, no matter how innovative, on how the planning appeal inquiries process may be improved.**

As above on extending the right to appeal to third parties, greater clarifications of when the Secretary of State will call in cases, requiring the Secretary of State to give reasons for not calling in decisions.

Q17. **Please give us any additional comments on the planning appeal inquiries process which you would like the Review to consider.**

The review is too focused on reducing the time that the appeals process takes. The key focus should be on improving the quality of decision making and analysing the inherent unfairness of a system which only allows one party to appeal.

If reducing the time of the process overall may impact on the quality of decision making the Government should not proceed. A full impact assessment of any changes on the quality of decision making should and the ability of third parties to engage with the process be carried out.

Thank you for your response

Annex A

About this call for evidence

This call for evidence document and call for evidence process have been planned to adhere to the Consultation Principles issued by the Cabinet Office.

Representative groups are asked to give a summary of the people and organisations they represent, and where relevant who else they have consulted in reaching their conclusions when they respond.

Information provided in response to this call for evidence, including personal data, may be published or disclosed in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 2018 (DPA), the EU General Data Protection Regulation, and the Environmental Information Regulations 2004).

If you want the information that you provide to be treated as confidential, please be aware that, as a public authority, the Department is bound by the Freedom of Information Act and may therefore be obliged to disclose all or some of the information you provide. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.

The Ministry of Housing, Communities and Local Government will process your personal data in accordance with the law and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties. A full privacy notice is included at Annex B.

Individual responses will not be acknowledged unless specifically requested.

Your opinions are valuable to us. Thank you for taking the time to read this document and respond.

Are you satisfied that this call for evidence has followed the Consultation Principles? If not or you have any other observations about how we can improve the process please contact us via the [complaints procedure](#).

Annex B

Personal data

The following is to explain your rights and give you the information you are entitled to under the Data Protection Act 2018.

Note that this section only refers to your personal data (your name address and anything that could be used to identify you personally) not the content of your response to the call for evidence.

1. The identity of the data controller and contact details of our Data Protection Officer

The Ministry of Housing, Communities and Local Government (MHCLG) is the data controller. The Data Protection Officer can be contacted at dataprotection@communities.gsi.gov.uk

2. Why we are collecting your personal data

Your personal data is being collected as an essential part of the call for evidence process, so that we can contact you regarding your response and for statistical purposes. We may also use it to contact you about related matters.

3. Our legal basis for processing your personal data

The Data Protection Act 2018 states that, as a government department, MHCLG may process personal data as necessary for the effective performance of a task carried out in the public interest. i.e. a call for evidence.

4. With whom we will be sharing your personal data

We will share your data with the Planning Inspectorate, who are working with us as part of the Inquiries Review Team.

5. For how long we will keep your personal data, or criteria used to determine the retention period.

Your personal data will be held for two years from the closure of the call for evidence.

6. Your rights, e.g. access, rectification, erasure

The data we are collecting is your personal data, and you have considerable say over what happens to it. You have the right:

- a. to see what data we have about you
- b. to ask us to stop using your data, but keep it on record
- c. to ask to have all or some of your data deleted or corrected
- d. to lodge a complaint with the independent Information Commissioner (ICO) if you think we are not handling your data fairly or in accordance with the law. You can contact the ICO at <https://ico.org.uk/>, or telephone 0303 123 1113.

7. The Data you provide on SurveyMonkey will be stored by SurveyMonkey on their servers in the United States. We will also transfer any data you provide to us by email or hard copy to SurveyMonkey, so that all the data collected through the call for evidence is located in the same place and can be more

easily analysed. MHCLG has taken all necessary precautions to ensure that your rights in terms of data protection will not be compromised by this.

8. Your personal data will not be used for any automated decision making.

9. Your personal data will be stored in a secure government IT system. While the call for evidence is open some of the data may be copied over from SurveyMonkey to our internal secure government IT system. After the closure of the time period of the call for evidence, all the data may be copied over to our internal, secure, government IT system.