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Calling-in planning applications (England)

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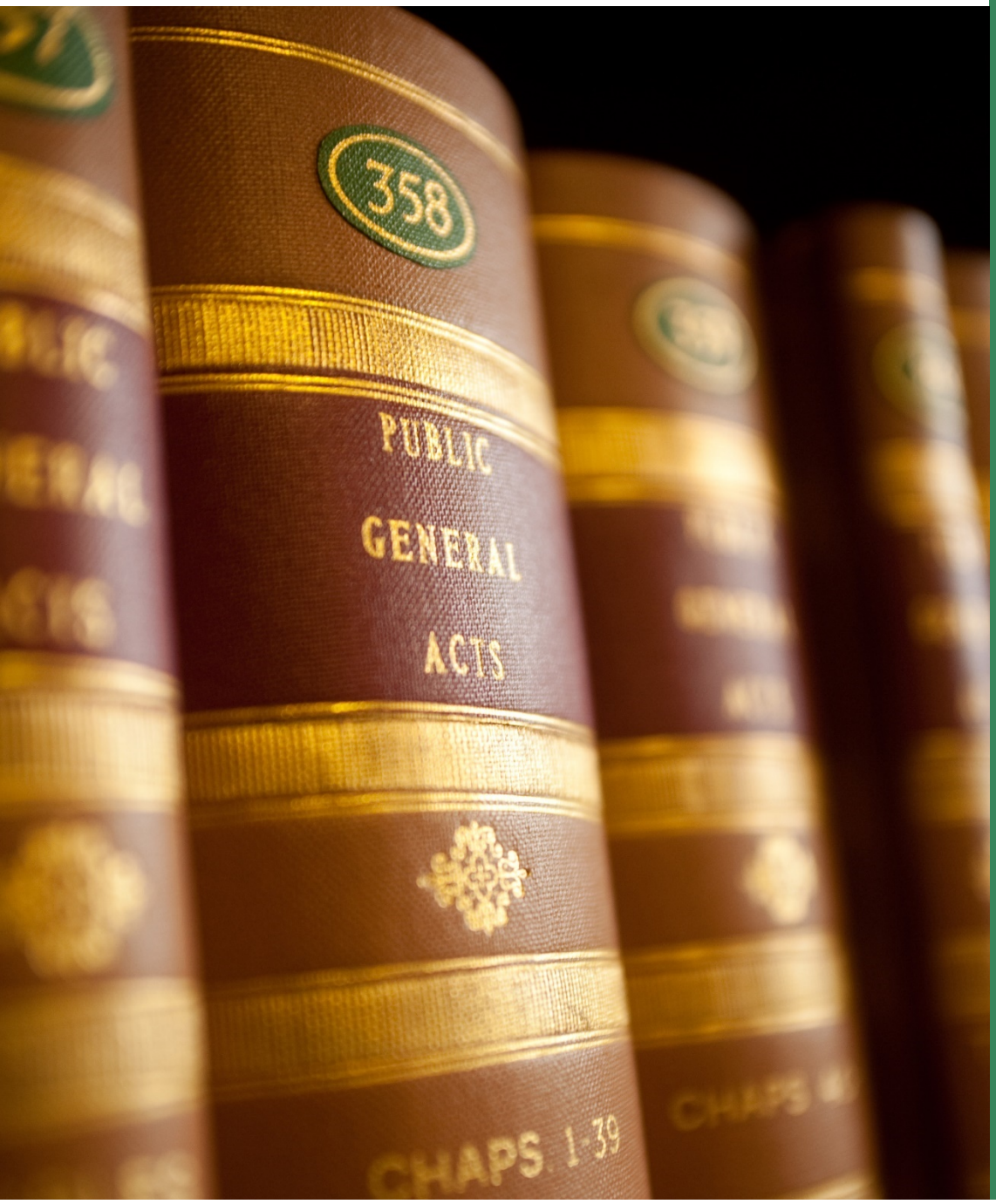

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Summary

The Secretary of State has powers to "call-in" planning applications and "recover" appeals. This briefing – which applies only to England - examines those powers.

Calling-in planning applications

The Secretary of State has the power to take the decision-making power on a planning application out of the hands of the local planning authority (LPA) by calling it in for his own determination. This can be done at any time during the planning application process, up to the point at which the LPA makes the decision.

The power to call-in planning applications is very general and the Secretary of State can call-in an application for any reason. In practice, very few applications are called-in every year. They normally relate to planning applications raising issues of national significance.

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. The Secretary of State can reject these recommendations if he wishes and will genuinely take the final decision. In taking the decision, Ministers and the Secretary of State must follow the former Department for Communities and Local Government's Guidance on Planning Propriety Issues.

Who can request calling-in?

Anyone can ask for a planning application to be called-in. Applicants should give clear reasons why they think that the application should be called-in, including why it is of more than local importance.

The request does not have to come from an MP. An MP can make representations to have an application called-in, but they must be open ones.

In certain circumstances, LPAs must notify the Secretary of State of particular types of planning application. For further information see the Planning Inspectorate's *Procedural Guide: Called-in planning applications – England*.

Recovering appeals

The Secretary of State also has a similar power to recover a planning appeal which has been submitted to the Planning Inspectorate. A recovered inquiry is basically a planning appeal (against a LPA's decision) which the Secretary of State can decide to determine himself, rather than allowing a planning inspector to take the final decision, as is the normal process.

For more information about the planning system in the other UK countries, see the Commons Library briefing, *Comparison of the planning systems in the four UK countries: 2016 update*.

Other Commons Library briefings on various matters to do with planning are available on the topic page for housing and planning.

1. The call-in process

A planning application can be called-in at any time up to the granting of planning permission. In practice, it is normal for a local planning authority (LPA) to complete the preliminary work and reach the point where it is minded to grant planning permission. It then notifies the Secretary of State, who can decide whether to call-in the application to determine it himself.[1]

The Secretary of State can "call-in" a planning application for his own determination.

The power for the Secretary of State to "call-in" a planning application for his own determination is set out in section 77 of the *Town and Country Planning Act 1990*, particularly sub-section (1):

> The Secretary of State may give directions requiring applications for planning permission, or for the approval of any local planning authority required under a development order, to be referred to him instead of being dealt with by local planning authorities.

In addition, the Secretary of State can delay the grant of planning permission until he has decided whether to call-in an application, by what is sometimes called a holding direction. This power is set out in section 31 of the *Town and Country Planning (Development Management Procedure) (England) Order 2015*:

> (1) The Secretary of State may give directions restricting the grant of permission by a local planning authority, either indefinitely or during such a period as may be specified in the directions, in respect of any development or in respect of development of any class so specified.[2]

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*.[3] The Secretary of State will publish the recommendations of the inspector, along with his reasons for agreeing or disagreeing.

The law and procedure for the Secretary of State to determine Nationally Significant Infrastructure proposals is different, and is covered in another Commons Library briefing, *Planning for Nationally Significant Infrastructure Projects*.[4]

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1 For Members and their staff, the Commons Library Help Hub offers short guides to many of the issues that most often arise in constituents' casework. There's a guide to using the Help Hub and the Commons Library. (The Help Hub is accessed via Office 365, for which a parliamentary email and password are needed - for any problems accessing the site please contact the Library on 020 7219 3666). One card on the Help Hub sets out some FAQs about planning in England. A link from that card goes to the card on influencing the planning process. This covers (amongst other things) making representations at a planning appeal, requesting call-in by the Secretary of State and the role of the MP.

2 SI 2015/595

3 SI 2000/1624. For further information about this procedure, see the Planning Inspectorate's *Procedural Guide: Called-in planning applications – England*, 23 March 2016.

4 CBP06881, 17 July 2017

1.1 When can a planning application be called-in?

People often ask whether the Secretary of State can call-in a planning application after the LPA has officially approved it. He cannot. (Note that there is sometimes a difference between the LPA determining to approve an application and the actual approval being issued officially).

Call-in can happen at any time up until the LPA formally issues its decision on the application.

1.2 Revocation of planning permission

A different procedure applies, by means of which the Secretary of State can revoke planning permission, but that happens only rarely. Once planning permission has been granted, then any revocation of the permission leaves the applicant able to claim compensation.

Revocation is covered in a separate Commons Library briefing, *Revocation of planning permission*.[5]

[5] SN 00905, 4 July 2016

2. The call-in criteria

The power to call-in planning applications under section 77 of the *Town & Country Planning Act 1990* is very general in scope.

In practice, however, it is (and has been for some time) Government policy only to call-in a very small number of planning applications every year and so the Secretary of State uses his powers sparingly.[6]

There is no legal obligation for the Secretary of State to use his call-in powers. In *R. v. Secretary of State for the Environment, ex p. Newprop* [1983] J.P.L. 386, the court accepted that the Secretary of State had not fettered his discretion either in adopting such a general policy or in applying it in that case.[7] Indeed, the Planning Encyclopaedia notes that even consultation is not necessary, let alone binding on decisions to call-in applications.[8]

Any type of application can be called-in.

In practice, only a few applications are called-in every year. A list is given setting out when call-in is most likely to happen.

The list of instances when the Secretary of State might decide to use call-in powers is sometimes known as the "Caborn principles" because they were first announced by the then Planning Minister, Richard Caborn, in response to a PQ in June 1999 (those in square brackets were added later):

> Such cases may include, for example, those which in his opinion:
>
> - may conflict with national policies on important matters;
> - [may have significant long-term impact on economic growth and meeting housing needs across a wider area than a single local authority];
> - could have significant effects beyond their immediate locality;
> - give rise to substantial cross-boundary or national controversy;
> - raise significant architectural and urban design issues; or
> - may involve the interests of national security or of foreign Governments.
>
> However each case will continue to be considered on its individual merits.[9]

MHCLG publishes online the recent call-in and recovered appeal cases determined by the Secretary of State.

The criterion of calling-in applications which "may have significant long-term impact on economic growth and meeting housing needs across a wider area than a single local authority" was added in October 2012.[10]

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6 In October 2010, the then coalition Government stated its policy on calling-in, saying that Ministers would use their call-in powers "only very sparingly where matters of significant national interest and policy are concerned" (HC Deb 21 October 2010 c1122). This position was reaffirmed in April 2012 (HC Deb 30 April 2012 c1234).

7 Quoted in the Sweet & Maxwell *Encyclopedia of Planning Law and Practice*, P 77.04

8 As above

9 HC Deb 16 June 1999 c138w

10 HC Deb 26 October 2012 c72WS

2.1 Reasons for not calling-in

A policy change was announced on 12 December 2001, indicating that the Government would now give reasons for a decision not to call-in a planning application, although this was not a legal requirement:

> As part of our fundamental review of the planning system, we have decided that as from today we will give reasons for our decision not to call in planning applications. This decision, which forms part of the raft of measures in our planning Green Paper published today, is in the interests of transparency, good administration and best practice. The courts have established that there is no legal obligation to provide reasons for not calling in an application.
>
> It should be borne in mind that the issue before him for decision is not whether the application should be granted planning permission but whether or not he should call it in for his own determination. The Secretary of State's policy on calling in planning applications--which is to be very selective--is set out in the written reply by my right honourable friend, the then Minister for Planning, (Richard Caborn) to a Parliamentary Question on 16 June 1999 [Official Report, Commons; col. 138] in another place. That approach is not to interfere with the jurisdiction of local planning authorities unless it is necessary to do so. Local planning authorities are normally best placed to make decisions relating to their areas and it is right that, in general, they should be free to carry out their duties responsibly, with the minimum of interference.[11]

In a court case in November 2017, though, it was found that the practice of giving reasons for not calling-in a planning application had ceased some time previously. The judgment drew attention to a witness statement from a policy official at the Department for Communities and Local Government (DCLG), [12] which said that the practice of giving reasons had ended in 2014,[13] and observed that established practice was now not to give reasons:

> 33. However, by the date of the Claimant's application to the Defendant in December 2016 and the Defendant's decision in March 2017, there was no longer an established practice that reasons would be given for a decision not to call in an application. On the contrary, the established practice was that reasons would not be given. (…)[14]

2.2 Calling-in oil and gas applications

In an August 2015 policy statement, the former Conservative Government said that it would "actively consider calling-in shale applications. Each case will be considered on its individual merits in line with this policy. Priority will be given to any called-in planning applications."[15]

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11 HL Deb 12 December 2001 c220WA

12 In January 2018, the DCLG changed its name to the Ministry of Housing, Communities and Local Government (MHCLG).

13 Save Britain's Heritage, R (on the application of) v Westminster City Council & Anor [2017] EWHC 3059 (Admin): paragraph 25

14 As above: paragraph 33

15 Shale gas and oil policy statement by DECC and DCLG, 13 August 2015

In a Written Ministerial Statement in September 2015, the then Secretary of State said that he would consider calling-in oil and gas applications which stemmed from any LPA identified as underperforming:

> Where a local planning authority is identified as underperforming in respect of planning applications for oil and gas, it will remain as such for a period of one year. For this one year period, for any such application validated by the relevant authority, I will actively consider exercising the power under section 77 of the Town and Country Planning Act 1990 to call-in the application for my determination. In considering whether to call-in any such application, I will have regard to my current policy for the use of my call-in powers.
>
> We will review the scheme in the final quarter of 2019, after an initial period of three years following the first identification of any underperforming local planning authorities.[16]

He also clarified what was meant by *underperforming* in the context of onshore oil and gas:

> We are announcing today details of the scheme to identify local planning authority underperformance specifically in respect of their determination of planning applications for onshore oil and gas, including for exploring and developing shale gas. It is separate to the statutory regime provided by section 62A of the Town and Country Planning Act 1990 for the designation of underperforming local planning authorities. This new non-statutory scheme will operate in the following way:
>
> A table setting out local planning authority performance on speed of decision making specifically on onshore oil and gas applications will be added to DCLG's quarterly planning application statistical release from the next scheduled release on 22 September 2015 onwards. Data in the table will be subject to the same adjustments as detailed in 'Improving planning performance Criteria for designation', as amended from time to time (the criteria document) for the tables on speed of decision making for major development.
>
> The measure of speed of decision making and the assessment period will be the same as those set out for major development in the criteria document. The same threshold will also apply for the identification of local planning authority underperformance in respect of its oil and gas applications as for the designation of underperformance in respect of major development, currently 50% or fewer applications being made within the statutory determination period or such extended period as has been agreed in writing by the applicant. The same limited exemption will be applied, namely, that local planning authorities will not be liable to identification as underperforming in respect of oil and gas applications if they decided no more than two during the assessment period.
>
> We will identify any underperforming local planning authorities in respect of oil and gas applications annually, in the final quarter of each calendar year. Prior to the decision to identify a local planning authority as underperforming, it will be given an opportunity to set out any exceptional circumstances, with supporting evidence, which it considers make its identification

[16] HCWS201, 16 September 2016

> unreasonable. These circumstances will be judged against the tests set out in the criteria document. We will undertake the first identifications of any underperforming local planning authorities in the final quarter of 2016. [17]

2.3 Requirements to consult the Secretary of State on certain applications

It used to be the case that the Secretary of State had to be notified of all "departure applications", that is planning applications which are not consistent with policies in the local development plan for a particular area. Following proposals in the 2006 Barker Review of Land Use Planning Final Report, the Labour Government in 2009 narrowed the situations in which the Secretary of State had to be notified.[18]

The Secretary of State must be notified before the LPA grants planning permission for certain types of development.

The *Town and Country Planning (Consultation) (England) Direction 2009* sets out when LPAs in England are required to consult the Secretary of State before granting planning permission for certain types of development. This is basically for certain Green Belt development, development outside town centres, World Heritage site development, playing field development or flood risk area development. Originally guidance on this Direction was set out in a DCLG circular.[19] This circular has since been replaced with guidance in the Government's online Planning Practice Guidance on determining a planning application.[20]

17 HCWS201, 16 September 2016.
18 Kate Barker, *Barker Review of Land Use Planning Final report - Recommendations*, 6 December 2006
19 DCLG Circular 02/2009: The Town and Country Planning (Consultation) (England) Direction 2009, 30 March 2009
20 MHCLG, *Guidance: determining a planning application*, 6 March 2014, updated 28 July 2017

3. How to apply for call-in

Anyone can ask for a planning application to be called-in. The request does not have to be made by an MP or other elected official.

Anyone can write to request that a planning application is called-in. It does not need to be an MP.

Applications for a planning application to be called-in should be directed to:

National Planning Casework Unit

5 St Philips Place

Colmore Row

Birmingham

B3 2PW

Tel: 0303 444 8050

Email: npcu@communities.gsi.gov.uk

Applicants should give clear reasons why they think that the application should be called-in, including why it is of more than local importance. For further information see the Planning Inspectorate's *Procedural Guide: Called-in planning applications – England*.[21]

Interested parties may be able to get involved in a planning inquiry, to make known their views for or against a planning application. Further information about how to get involved is set out in another guide from the Planning Inspectorate.[22]

21 Planning Inspectorate, *Procedural Guide: Called-in planning applications – England*, 23 March 2016

22 Planning Inspectorate, *Guide to Rule 6 for interested parties involved in an inquiry – planning appeals and called-in applications – England*, April 2016

4. How are the Secretary of State's powers being used?

4.1 Numbers of applications called-in

The Planning Inspectorate publishes statistics on planning applications called-in since 2010/11. The table below shows the number of applications received by the Planning Inspectorate, the number withdrawn, and the number of reports submitted.[23]

CALLED-IN PLANNING APPLICATIONS
England

	Received	Withdrawn	Reports submitted
2010/11	15	42	16
2011/12	7	0	10
2012/13	8	3	5
2013/14	19	5	11
2014/15	18	5	12
2015/16	22	7	8
2016/17	17	5	10
2017/18	13	7	15

Notes: Figures for 2017/18 are provisional.

Source: Planning Inspectorate, Planning Inspectorate Statistics, Table 1.4

[23] The Planning Inspectorate has defined these terms as follows:

Received: The received date is the date the called-In application is received within [the Planning Inspectorate]. This is not always the date the Secretary of State called-In the application, but when not, is very soon after. … The count for the period is the date received within [the Inspectorate].
Withdrawn: The applicant has decided not to continue with the application and has withdrawn it. The withdrawal can happen at any stage during the process. The count for the period is driven by the date of withdrawal.
Report Submitted: As the Secretary of State makes the final decision on the application, [Inspectorate] involvement stops when the recommendation made by the Inspector is sent (i.e. submitted) to the Secretary of State's office. The count for the period is therefore driven by the date submitted. (personal communication, 21 January 2019)

4.2 How often does the Secretary of State override the planning inspector's recommendation?

One issue that has attracted some controversy is the extent to which the Secretary of State uses his powers to override planning inspectors' recommendations.

A collection on gov.uk contains Ministerial decision letters on called-in applications, recovered planning appeals and major infrastructure projects.

A PQ response in May 2018 set out the number and proportion of decisions on called-in planning applications which had not followed the advice of the planning inspector.[24] The table below summarises the data provided.

DECISIONS ON CALLED-IN PLANNING APPLICATIONS
England

		Cases not in line with Inspector's decision	
	Cases decided	Number	*Proportion of decisions*
2010	19	6	*32%*
2011	6	1	*17%*
2012	6	1	*17%*
2013	3	0	*0%*
2014	8	0	*0%*
2015	8	2	*25%*
2016	16	4	*25%*
2017	7	1	*14%*

Source: PQ 143135, 17 May 2018

An article in the specialist publication *Planning* in October 2017 reported that recent research evidence suggested that the then Secretary of State, Sajid Javid, had been using his powers in called-in applications and recovered appeals disproportionately in Conservative seats: this (industry commentators suggested) might be a function of political geography.[25]

24 PQ 143135, 17 May 2018

25 "How Sajid Javid has ignored inspectors' advice in Tory seats", *Planning*, 13 October 2017. The Commons Library subscribes to *Planning* magazine, so to obtain a copy of this article Members and their staff may ring the Library on 020 7219 3666.

5. Representations to Planning Ministers

In 2012, DCLG published *Guidance on Planning Propriety Issues,* explaining how Ministers should behave, to conform to the Ministerial Code. The term "Planning Ministers" covers the Secretary of State and other MHCLG Ministers involved in planning decisions.

Some of the general principles are important:

> 4. Planning ministers are under a duty to behave fairly ("quasi-judicially") in the decision-making procedure. They should therefore act and be seen to act fairly and even-handedly. For example, to demonstrate even-handedness all evidence which is material to any decision which has been the subject of a planning inquiry, and which the decision-maker ultimately takes into account, must be made available to all parties with an interest in the decision. Privately made representations should not be entertained unless other parties have been given the chance to consider them and comment. This part of the requirement to act fairly is also reflected in the statutory rules for inquiries, which require the Secretary of State to give the parties a further opportunity to make representations if, after the close of an inquiry, the Secretary of State differs from the inspector about any relevant matter of fact or proposes to take into account any new evidence or new matter of fact. A challenge will succeed if a court is satisfied that Planning Ministers have acted procedurally unfairly – for example by giving a developer an opportunity to put forward his case which has not been granted to other interested parties.
>
> 5. Planning Ministers should also bring an unbiased, properly directed and independent mind to consideration of the matter before them. This does not mean that Planning Ministers are not entitled to have and express opinions about general planning issues, or planning cases. But they must approach and must be seen to approach matters before them with an open mind.
>
> 6. There is a clear parallel with Section 25 in the Localism Act 2011, which confirms that a Councillor should not be held to have a closed mind just because they have previously indicated a view on a matter relevant to a decision. [26]

In addition, there is a passage specifically about call-ins:

> **Representations on call-in decisions and appeals**
>
> 11. Although planning cases decided directly by the Secretary of State are a tiny proportion of the number of planning applications and appeals handled each year, they are naturally high profile and interested parties, including MPs and pressure groups, will want to make representations. Those seeking to make representations to Planning Ministers in relation to whether an application should be called-in should be directed to the relevant planning casework official in the Planning Directorate of DCLG. Ministers' decisions should have regard to the published call-in policy. Those seeking to make representations in relation to the actual determination of called-in applications and recovered appeals should be advised to write to:

[26] DCLG, *Guidance on planning propriety Issues*, 2012

- the Planning Inspector, if the inquiry has not been completed; or
- the relevant official in the Planning Casework Division if the inquiry has concluded.

Where representations are made by whatever means, including letters, telephone and email, whether direct to a Planning Minister or to the relevant official, it should be made clear that they can only be taken into account if they can also be made available to all interested parties for comment.[27]

[27] DCLG, *Guidance on planning propriety Issues*, 2012

6. Recovered appeals

"Recovery" by the Secretary of State takes place at the appeal stage, after an application has been refused by the LPA.

While the power to call-in a planning application exists before the LPA takes the planning decision, the Secretary of State also has a similar power to recover a planning appeal which has been submitted to the Planning Inspectorate following refusal by the LPA. A recovered inquiry is basically a planning appeal (against the LPA's decision) which the Secretary of State can decide to determine himself, rather than allowing a planning inspector to take the final decision, as is the normal process. The law stems from section 79 of the *Town and Country Planning Act 1990*.

As with called-in applications, a Planning Inspector will write a report for the Secretary of State, which will make a recommendation on how the appeal should be determined. The Secretary of State will then take the final decision on the appeal.

Recovery of an appeal can occur at any stage of the appeal process, even following an inquiry being held, but it cannot be done after the Inspector has issued their decision.

When an appeal is recovered, the final decision is taken by the Secretary of State, instead of a planning inspector.

Annexe A of the Planning Inspectorate's procedural guide to planning appeals in England contains more information about what happens when an appeal is recovered.[28] Annexe G provides information about the procedure for an appeal which has been recovered and is proceeding by an inquiry, along with a table giving a rough indication of the timetable and process.

The Secretary of State has wide discretion about when to recover an appeal. It is usually either because the development is of strategic importance or has significant implications for national policy or raises novel issues. In a written statement in June 2008, the Planning Minister at the time set out the circumstances in which the Secretary of State would consider recovering appeals:

Although an appeal can be recovered for any reason, in June 2008 DCLG published a list of the circumstances in which the Secretary of State would normally consider recovery.

- proposals for development of major importance having more than local significance;
- proposals giving rise to substantial regional or national controversy;
- proposals which raise important or novel issues of development control, and/or legal difficulties;
- proposals against which another Government department has raised major objections or has a major interest;
- proposals of major significance for the delivery of the Government's climate change programme and energy policies;
- proposals for residential development of over 150 units or on sites of over 5 hectares, which would significantly impact on the Government's objective to secure a better

[28] Planning Inspectorate, *Procedural Guide: Planning appeals – England*, 16 January 2019

balance between housing demand and supply and create high quality, sustainable, mixed and inclusive communities;

- proposals which involve any main town centre use or uses where that use or uses comprise(s) over 9,000m² gross floorspace (either as a single proposal or as part of or in combination with other current proposals) and which are proposed on a site in an edge-of- centre or out-of-centre location that is not in accordance with an up-to-date development plan document;[29]
- proposals for significant development in the Green Belt;
- major proposals involving the winning and working of minerals;
- proposals which would have an adverse impact on the outstanding universal value, integrity, authenticity and significance of a World Heritage Site;
- there may on occasion be other cases which merit recovery because of the particular circumstances.[30]

6.1 Other additions to the recovery criteria

Travellers sites - unauthorised development in the Green Belt

In July 2013, the then Secretary of State announced that he would temporarily expand these criteria, for six months, to include appeals relating to traveller sites in the Green Belt:

> The Secretary of State wishes to give particular scrutiny to traveller site appeals in the green belt, so that he can consider the extent to which "Planning Policy for Traveller Sites" is meeting this Government's clear policy intentions. To this end he is hereby revising the appeals recovery criteria issued on 30 June 2008 and will consider for recovery appeals involving traveller sites in the green belt.
>
> For the avoidance of doubt, this does not mean that all such appeals will be recovered, but that the Secretary of State will likely recover a number of appeals in order to test the relevant policies at national level. The Secretary of State will apply this criteria for a period of six months, after which it will be reviewed.[31]

It was confirmed in a Written Ministerial Statement in January 2014 that the Secretary of State would continue to consider recovery of appeals involving traveller sites in the Green Belt.[32]

The Secretary of State's decision to recover appeals relating to traveller sites in the Green Belt was challenged in the High Court in the case of Moore and Coates v SSCLG [2015] EWHC 44 (Admin) in January 2015. Following the judgement by Mr Justice Gilbart, which found that certain aspects of this policy were contrary to provisions in the *Equality Act*

The recovery of appeals relating to traveller sites in the Green Belt was challenged in the High Court; the case is discussed at more length in the Commons Library briefing *Green Belt* (CBP 00934, 4 January 2019)

29 This wording differs slightly from the Ministerial Statement as PPS6 was cancelled on 29 December 2009 and replaced by PPS4. PPS4 was later replaced by the National Planning Policy Framework on 27 March 2012.
30 HC Deb 30 June 2008 c44WS
31 HC Deb 1 July 2013 c24WS
32 HC Deb 17 Jan 2014 c35WS

2010 and the European Convention of Human Rights, the Government decided to "de-recover" a number of outstanding appeals:

> This Government continues to attach great importance to safeguarding the Green Belt. It will address concerns about the harm caused when there is unauthorised development of land in advance of obtaining planning permission and there is no opportunity to appropriately limit or mitigate the harm that has already taken place. For these reasons, the Secretary of State for Communities and Local Government will introduce a new planning and recovery policy for the Green Belt early in the new Parliament to strength protection against unauthorised development. This new policy will apply to all development within the Green Belt. In the meantime he has also decided to de-recover those cases of appeals for Traveller development in the Green Belt on which a substantive decision has not been reached. These will be remitted back to the Planning Inspectorate and, where appropriate, we will re-assess them in light of the new recovery policy.[33]

In an August 2015 letter to Chief Planning Officers in England, the Government set out its intention to have the Planning Inspectorate monitor appeals involving unauthorised development in the Green Belt. It also said that the Secretary of State would recover a "proportion of relevant appeals in the Green Belt":

> …the Planning Inspectorate will monitor all appeal decisions involving unauthorised development in the Green Belt to enable the government to assess the implementation of this policy.
>
> In addition we will consider the recovery of a proportion of relevant appeals in the Green Belt for the Secretary of State's decision to enable him to illustrate how he would like his policy to apply in practice. Such appeals will be considered for recovery under the criterion set out in 2008: "There may on occasion be other cases which merit recovery because of the particular circumstances."
>
> After six months we will review the situation to see whether it is delivering our objective of protecting land from intentional unauthorised development.[34]

Renewable energy development

In October 2013, the then Secretary of State announced that he would temporarily expand the criteria, for six months, to include recovering appeals for renewable energy development:

> I want to give particular scrutiny to planning appeals involving renewable energy developments so that I can consider the extent to which the new practice guidance is meeting the Government's intentions. To this end, I am hereby revising the appeals recovery criteria and will consider for recovery appeals for renewable energy developments. This new criterion is added to the recovery policy issued on 30 June 2008 and will be applied for a period of six months from today after which it will be reviewed.
>
> For the avoidance of doubt, this does not mean that all renewable energy appeals will be recovered, but that planning Ministers are

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33 HL5936, 23 March 2015

34 Letter from DCLG to Chief Planning Officers in England, *Green Belt protection and intentional unauthorised development*, 31 August 2015

> likely to recover a number of appeals in order to assess the application of the planning practice guidance at national level.[35]

In April 2014, the then Secretary of State announced that he would continue to consider for recovery appeals for renewable energy developments for a further 12 months.[36] Since this period expired the Government has not announced any plans to renew this criterion.

Use of neighbourhood plans and housing

In July 2014, the then Secretary of State announced that he would like to "consider the extent to which the Government's intentions are being achieved on the ground", in relation to the neighbourhood planning regime introduced under the *Localism Act 2011*. For a period of 12 months the recovery criteria were amended to include:

> proposals for residential development of over 10 units in areas where a qualifying body has submitted a neighbourhood plan proposal to the local planning authority: or where a neighbourhood plan has been made.[37]

In July 2015, a further Written Ministerial Statement extended this period for another six months.[38] This was followed by another Written Ministerial Statement in January 2016 which extended the period for a further six months.[39]

In July 2016 the Government extended the period for another six months, but limited the criterion to residential development of more than 25 units:

> I am now extending that period for a further 6 months from today but, in the light of the experience which has now accrued on neighbourhood planning, I intend to limit the criteria to include proposals for residential development of more than 25 units in areas where a qualifying body has submitted a neighbourhood plan to the local authority but the relevant plan has not yet been made. This change to the criteria would not however preclude Ministers from exercising their discretion to recover any other appeal which fell outside these parameters if they considered it appropriate under any of the criteria set out in the Written Ministerial Statement made by Mr. Parmjit Dhanda on Monday, 30 June 2008 (Hansard col 41WS).[40]

The criterion was then renewed again for a further six months, in a Written Ministerial Statement in December 2016:

> In order to allow time for the Neighbourhood Planning Bill to complete its passage through Parliament, and in the light of other potential policy changes currently under consideration, I am now extending that period for a further 6 months from today.[41]

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35 HC Deb 10 Oct 2013 c 31WS
36 HC Deb 9 Apr 2014 c12-13WS
37 HC Deb 10 July 2014 c25WS
38 HCWS90, 9 July 2015
39 HCWS457, 11 January 2016
40 HCWS74, 7 July 2016
41 HCWS346, 12 December 2016

Unconventional oil and gas

In July 2014, the then Government announced that it would publish new planning practice guidance on its approach to planning for unconventional hydrocarbons (such as shale gas) in National Parks, the Broads, Areas of Outstanding Natural Beauty and World Heritage Sites. For a 12-month period the recovery criteria were amended to include development concerning unconventional hydrocarbons in these areas.[42]

The Commons Library briefing on shale gas and fracking offers a broader discussion of planning as it relates to unconventional oil and gas (CBP 06073, 6 November 2018)

In August 2015, a Government policy statement on shale gas and oil announced that for a period of two years the recovery criteria would be expanded to include appeals for exploring and developing shale gas:

> Appeals against any refusals of planning permission for exploring and developing shale gas, or against non-determination, will be treated as a priority for urgent resolution. The Secretary of State for Communities and Local Government may also want to give particular scrutiny to these appeals. To this end he will revise the recovery criteria and will consider for recovery appeals for exploring and developing shale gas. This new criterion will be added to the recovery policy issued on 30 June 2008 and will be applied for a period of two years after which it will be reviewed.[43]

This criterion was formally added to the recovery criteria in September 2015 in a written statement to Parliament:

> I may want to give particular scrutiny to planning appeals for exploring and developing shale gas. I am therefore revising the criteria for consideration of the recovery of planning appeals to include the additional criterion: proposals for exploring and developing shale gas. The new criterion is added to the recovery policy of 30 June 2008, Official Report, column 43WS, and will be applied for a period of two years from today, after which it will be reviewed. I am also making a consequential change to planning guidance to reflect this.[44]

More recently, the Secretary of State for Business, Energy and Industrial Strategy, Greg Clark, summed up the Government's commitments on the appeals process and calling-in of shale gas planning applications in a Written Ministerial Statement in May 2018:

- we will continue to treat appeals against any refusal of planning permission for exploring and developing shale gas, or against any non-determination as a priority for urgent determination by the Planning Inspectorate, making additional resources available where necessary.
- under the Written Ministerial Statement in 2015 the criteria for recovering planning appeals were amended to include proposals for exploring and developing shale gas. This was applied for a two-year period subject to further review. The Secretary of State for Housing, Communities and Local Government has conducted a review and remains committed to scrutinising appeals for these proposals. We are therefore announcing that the criteria for considering the recovery of planning appeals are continued for a further two years. The new criterion is added to the

42 HC Deb 28 July 2014 cWS141-2
43 Shale gas and oil policy statement by DECC and DCLG, 13 August 2015
44 HC Deb 16 Sep 2015 c32WS

recovery policy of 30 June 2008, Official Report, column 43WS.

- the Secretary of State for Housing, Communities and Local Government will actively consider calling in shale applications particularly where statutory deadlines have been exceeded. Each case will be considered on its facts in line with his policy. Priority timeframes for urgent determination will be given to any called-in applications.
- the Government continues to commit to identifying underperforming local planning authorities that repeatedly fail to determine oil and gas applications within statutory timeframes. When any future applications are made to underperforming authorities, the Secretary of State will consider whether he should determine the application instead.[45]

More general information and background on these powers is available in the Commons Library briefing on planning appeals.[46]

6.2 Useful addresses

Recovered appeals are dealt with in the first instance by the Planning Inspectorate. Cases subsequently pass to the National Planning Casework Unit, based in Birmingham. Contact details are:

The Planning Inspectorate

Room 3/05 Kite Wing

Temple Quay House

2 The Square

Temple Quay

Bristol

BS1 6PN

✆ 0117 372 6372

Email: enquiries@planning-inspectorate.gsi.gov.uk

National Planning Casework Unit

5 St Philips Place

Colmore Row

Birmingham

B3 2PW

✆ 0303 444 8050

Email: npcu@communities.gsi.gov.uk

45 HCWS690.17 May 2018
46 SN 06790, 19 August 2015

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