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BRIEFING PAPER

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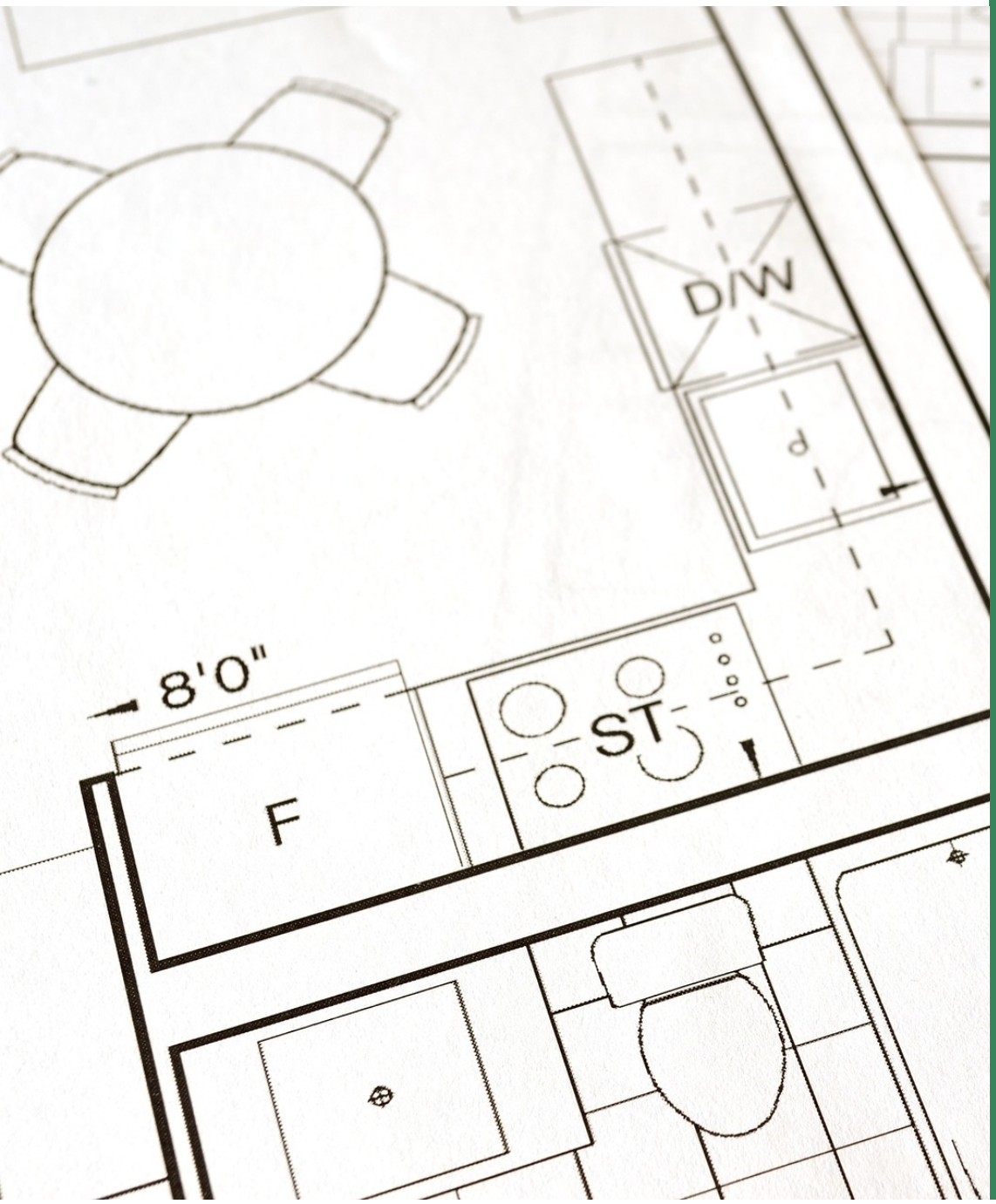
Planning appeals in England

By Gabrielle Garton Grimwood



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Summary

This briefing from the House of Commons Library provides information about planning appeals, chiefly

- who can appeal
- what can be appealed
- the Secretary of State's powers to "recover" appeals and
- other routes for people dissatisfied with planning decisions.

It applies to England only.

Who can and cannot appeal?

There is no third-party right of appeal in planning law. If the local planning authority (LPA) rejects a planning application, then it is only the disappointed applicant who has the right of appeal. Neighbours and others who are concerned about permission granted for local developments do not have a right of appeal.

What can be appealed?

Most planning applications are determined in the first instance by the LPA. If the LPA refuses the application or fails to determine it within a certain time limit, then an appeal is possible.

Appeals are made to the Secretary of State and in practice are determined by a Planning Inspector. Depending on the scale and complexity of the planning application, there are a number of procedures that may be used to determine the appeal. More detailed information about the appeals process is in the Planning Inspectorate's *Procedural Guide: Planning appeals – England.*

Planning Inspectors have powers to award costs against the person appealing and the LPA if they believe that either side has behaved unreasonably and caused unnecessary or wasted expense in the process.

Secretary of State power to "recover" appeals for own determination

Although in practice appeals are normally heard by a Planning Inspector, the Secretary of State has powers to "recover" an appeal for his own determination.

Planning Court challenges to planning decisions

The decisions of LPAs can be challenged in the Planning Court by judicial review, under part 54 of the Civil Procedure Rules. There is a strict six-week time limit for applying for judicial review. The challenge cannot be on the planning merits of the case, but instead would be about the lawfulness of the way in which the decision was made.

The Planning Inspector or Secretary of State's appeal determination is challengeable in the High Court by way of a statutory review.

Review of planning inquiries

Bridget Rosewell CBE chaired an independent review, launched in July 2018 and aimed at halving the time taken to determine planning inquiries (not the generality of appeals). Its

call for evidence set out the problems – particularly, the "potential harmful consequences of unnecessary delays" for major housing developments – that the inquiry sought to address. (Local planning authorities made decisions on around 431,000 applications in 2017/18, of which 12% (53,000) were not granted. Provisional statistics for 2017/18 indicate that there were 13,362 appeals received and 10,608 appeals decided in 2017/18 with around one-third of appeals decided being allowed: 3,375 appeals (32%) in 2017/18).

The report was submitted to the Secretary of State in December 2018 and published in February 2019. The review did not recommend "wholesale changes", as those might be "counterproductive", but set out recommendations grouped under themes of earlier engagement by all parties, greater certainty about timescales and harnessing technology to improve efficient and transparency. These reforms would (the executive summary said) reduce overall times from receipt to decisions for cases decided by the Inspector to between 24 and 26 weeks, from a current average of 47 weeks.

In the accompanying press release, the Housing Secretary, James Brokenshire, argued that speeding up inquiries could ensure the delivery of homes to meet the Government's target of 300,000 new homes a year by the mid-2020s. (The Government's most recent figures show a total of 165,610 permanent dwellings completed in England in 2017/18 – an 8% increase on the previous year and the highest figure observed since 2007/08).

Complaints to the Ombudsman service

If someone has concerns about the way in which the LPA took a decision on a planning application then a complaint may also be possible to the Local Government and Social Care Ombudsman, who cannot look at the merits of the decision but can rule on whether the correct process was used. Similarly, if someone has concerns about the way in which a planning appeal decision was taken, it may be possible to bring a complaint to the Parliamentary and Health Services Ombudsman, provided no other legal remedy is available. In both cases, the local authority's and Planning Inspectorate's own internal complaints handling services should be used first before taking a case to the appropriate Ombudsman.

Further reading

- The Secretary of State's powers to call-in planning applications are discussed in the Commons Library briefing *Calling-in a planning application* (SN 00930, 31 January 2019)
- Other Commons Library briefings on various aspects of planning are available on the topic page for housing and planning
- For information about planning appeals in Wales, see National Assembly for Wales Research Service, *The Planning Series : 6 – Appeals*, May 2011
- For information about planning appeals in Scotland, see Scottish Parliament, *Planning (Scotland) Bill: How the planning system currently works*, 8 January 2018

1. Who can and cannot appeal?

If the local planning authority (LPA) rejects a planning application, then it is only the disappointed applicant who has the right of appeal. Someone who has had an enforcement notice or discontinuance notice served on them may appeal against the issue of this notice.

There is no route of appeal for neighbours or other third parties who are aggrieved that planning permission has been granted. In September 2013, the former coalition Government confirmed that it would not consider introducing a right for third party appeal in the planning system:

> We consider that it would not be appropriate to introduce a right of appeal against the grant of planning permission for third parties. The planning system is centred on community involvement. It gives statutory rights for communities to become involved in the preparation of the Local Plan for the area, and to make representations on individual planning applications, and on planning appeals. Objections to planning applications are considered by the local planning authority or on appeal by an Inspector, on behalf of the Secretary of State. All views are taken into account in reaching a final decision to allow or reject an application.[1]

[1] Department for Communities and Local Government, *Technical Review of Planning Appeal Procedures: Consultation: Summary of Responses*, September 2013: page 11

2. What can be appealed?

Most planning applications are determined, in the first instance, by the LPA. When refusing an application, the LPA should consider carefully whether it has a sufficiently strong case, capable of being argued at appeal, based on the material before it.[2]

The right to appeal stems from section 78 of the *Town and Country Planning Act 1990* (the 1990 Act).

An appeal can be made on the grounds that the LPA has:

- refused the application for planning permission
- taken longer than the statutory time period of eight weeks to decide the application (or 13 weeks for a larger development)
- granted the permission, but subject to unreasonable conditions, or
- refused to approve the details of a scheme which has already been given outline permission, or approved the details of such a scheme subject to unreasonable conditions.[3]

On appeal, a Planning Inspector will hear the appeal in the name of the Secretary of State.

The *Town and Country Planning (Determination of Appeals by Appointed Persons) (Prescribed Classes) Regulations 1997* transferred jurisdiction from the Secretary of State to Planning Inspectors in respect of all appeals.[4]

2 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. One card on the Help Hub sets out some FAQs about planning in England. A link from that card goes to the page 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.

3 Ministry of Housing, Communities and Local Government (MHCLG), *Guidance: Appeals*, 3 March 2014

4 SI 1997/420

3. Process and procedure

3.1 Time limits for making an appeal

There are different time limits for making an appeal depending on the type of appeal and the circumstances:

- For householder planning applications and minor commercial development, an appeal must be received within 12 weeks from the date on the decision notice.
- For advertisement consent applications, an appeal must be received within 8 weeks from the date on the decision notice.
- For other planning applications, including listed building consent or conservation area consent applications, the time limit is six months from the date of the decision notice.

For more information, see section 2.4 of the Planning Inspectorate's *Procedural Guide: Planning appeals – England*, 19 March 2019

3.2 Appeal procedure

A planning appeal may take one of several forms. There may be

- a public inquiry
- a more informal meeting/hearing or
- written representations.

This is to allow the procedure to cover the full range of planning applications, from enormous capital projects to kitchen extensions. The procedure is laid down in:

- *The Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2000* as amended by *The Town and Country Planning (Hearings and Inquiries Procedures) (England) (Amendment) Rules 2009*[5]
- *Town and Country Planning (Hearings Procedure) (England) Rules 2000* as amended by *The Town and Country Planning (Hearings and Inquiries Procedures) (England) (Amendment) Rules 2009*[6]
- *Town and Country Planning (Appeals) (Written Representations Procedure) (England) Regulations 2009*[7]

The Planning Inspector will determine the procedure to be used for each appeal. The Planning Inspectorate's procedural guide to planning appeals in England gives much more in-depth information about what happens under each type of procedure.[8]

3.3 Taking part in an appeal

Interested parties may be able to get involved in a planning inquiry, to make known their views for or against a planning application. Further

5 SI 2000/1625 and SI 2009/455
6 SI 2000/1626 and SI 2009/455
7 SI 2009/452
8 Planning Inspectorate, *Procedural Guide: Planning appeals – England*, 19 March 2019

information about how to get involved is set out in a guide from the Planning Inspectorate.[9]

3.4 Costs

The appeal is mainly a matter between the LPA and the applicant. The LPA has an incentive to justify its decision to reject the original application. Indeed, if the Planning Inspector considers that the LPA acted unreasonably – for example ignoring relevant Government planning guidance – then they can award costs against the LPA.

At the planning appeal, the costs regime imposes financial consequences on those parties who have behaved unreasonably and caused unnecessary or wasted expense in the process. A party may be ordered to meet the costs of another party, wholly or in part, on specific application by the aggrieved party.

Further information about awards of costs, when they can be made and how they can be sought is set out in the online Planning Practice Guidance on Appeals.[10]

3.5 Planning appeal statistics

Local planning authorities made decisions on around 431,000 applications in 2017/18, of which 88% (379,000) were granted and 12% (53,000) were not.[11]

The Planning Inspectorate's statistical reports provide information about numbers of appeals on rejected applications received, average time taken to decide appeals and numbers of appeals allowed and overturned.

The chart below shows trends in the number of section 78 planning appeals received, decided and allowed by the Planning Inspectorate in each year since 2010/11.[12] Provisional statistics for 2017/18 indicate that there were 13,362 appeals received, up from 11,788 in 2016/17. There were 10,608 appeals decided in 2017/18 (compared with 11,445 in 2016/17). In each year, around one-third of appeals decided were allowed: 3,375 appeals (32%) in 2017/18.

The provisional statistics imply that the gap between the number of appeals received and the number decided grew larger between 2016/17 and 2017/18. Future statistical releases will establish whether this trend continues.

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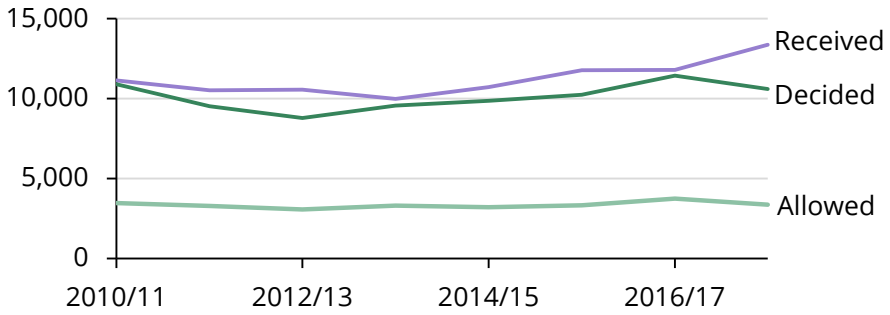
9 Planning Inspectorate, *Guide to Rule 6 for interested parties involved in an inquiry – planning appeals and called-in applications – England*, April 2016

10 MHCLG, *Guidance: appeals*, 3 March 2014

11 MHCLG, *District matter planning authorities tables*, Table P120

12 Section 78 of the *Town and Country Planning Act 1990* confers a right to appeal against planning decisions and failure to take such decisions.

PLANNING APPEALS (s78) RECEIVED AND DECIDED
England, 2010/11 to 2017/18



Source: Planning Inspectorate, Planning Inspectorate Statistics Tables 2.1 and 2.4

Notes: Figures for 2017/18 are provisional. 'Allowed' includes split decisions.

The majority of section 78 appeals decided by the Planning Inspectorate are on developments involving housing (as opposed to offices or manufacturing, for example). In 2017/18, 60% of appeals decided involved housing, up from 51% in 2010/11.

The table below shows the number of appeals decided on major developments (those with ten or more dwellings) and minor developments, as well as the total number of dwellings allowed as part of these decisions. Appeals were more likely to be allowed for major developments than minor ones.

PLANNING APPEALS (s78) ON HOUSING DECIDED AND ALLOWED
England, 2010/11 to 2017/18

	Major developments			Minor developments			
	Decided	% allowed	Number of dwellings allowed	Decided	% allowed	Number of dwellings allowed	**Total dwellings allowed**
2010/11	637	37%	29,276	4,889	24%	2,660	**31,936**
2011/12	495	45%	27,726	4,227	27%	2,631	**30,357**
2012/13	421	48%	31,987	4,307	28%	3,080	**35,067**
2013/14	530	52%	33,770	4,663	27%	2,833	**36,603**
2014/15	627	48%	41,858	4,718	25%	2,625	**44,483**
2015/16	849	44%	54,799	4,808	25%	2,736	**57,535**
2016/17	912	38%	56,496	5,756	26%	3,214	**59,710**
2017/18	801	41%	29,668	5,613	26%	959	**30,627**

Source: Planning Inspectorate, Planning Inspectorate Statistics Table 2.5

Notes: Figures for 2017/18 are provisional. 'Allowed' includes split decisions.

4. Review of planning inquiries

One element of the revised approach to planning which the then Housing Secretary, Sajid Javid, announced in his speech to the planning conference in March 2018 was "ensuring that swift and fair decisions are made at appeal".[13] A review aimed at halving the time taken to determine planning inquiries (not the generality of appeals) would, he said, be announced shortly:

> This review will have one objective: to determine what it would take to halve the time for an inquiry on housing supply to be determined…
>
> …ensuring swift and fair decisions are made.[14]

4.1 What is the current procedure for planning inquiries?

Section 319A of the *Town and Country Planning Act 1990* gives the Secretary of State (in practice the Planning Inspectorate) the duty to determine the procedure for dealing with various appeals. This section was inserted into the 1990 Act by the *Planning Act 2008*.

As noted earlier, there are (in general) three main procedures that the Planning Inspectorate can use to determine a planning appeal: holding a local inquiry, holding a hearing (a round table discussion led by the Inspector) and representations in writing.

A procedural guide to planning appeals from the Planning Inspectorate explains that the inquiry process follows the Inquiries Procedure Rules (which usually entail a 16-week target) but bespoke timetables may be agreed. These timetables should not (the guide goes on) be manipulated for tactical advantage:

> H.1.1 The inquiry process is governed by the Inquiries Procedure Rules which set out the fixed points at which action must be taken and/or documents must be sent to/received by us.
>
> H.1.2 However, for appeals expected to sit for 3 days or more this approach is not necessarily the best way to deal with a case. Therefore using the flexibility provided in the Rules we are able to manage these appeals on a bespoke timetable.
>
> H.1.3 Currently, we do this for appeals under section 78. It is our decision whether an appeal follows a bespoke timetable.
>
> (…)
>
> H.2.3 Parties must work constructively to identify mutually acceptable dates within the timetable and must not try to gain a "tactical advantage". This requires close liaison and co-operation at all stages. Parties should be confident that they can keep to the timetable.
>
> (…)

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13 MHCLG, *Sajid Javid's speech at the National Planning Policy Framework conference*, 5 March 2018

14 As above

> H.2.7 Inquiry dates agreed as part of a bespoke timetable may not always meet the 16 weeks target (22 weeks for recovered appeals) as given in the Inquiries Procedure Rules. However, if it is suggested that it should be later, the proposed date should be as close as possible to 16 weeks (or 22 weeks), or clear reasons should be given if the agreed date is much later.[15]

4.2 Independent review of planning appeal inquiries

The independent review was chaired by Bridget Rosewell CBE (Commissioner at the National Infrastructure Commission and non-executive chair of the Driver and Vehicle Standards Agency). Its call for evidence set out the problems – particularly, the "potential harmful consequences of unnecessary delays" for major housing developments – that the inquiry sought to address:

> Given the importance of the schemes, both for the appellants and local communities, and the length of time and complexity involved in the current planning appeal inquiry process, the Government has commissioned an independent review, led by Bridget Rosewell. The Review will examine how the current process is working from end to end and to identify what improvements can be made, in particular, how to speed up the process without harming the quality of decisions.
>
> Of particular concern to the Government is the potential harmful consequences of unnecessary delays in appeal decisions for major housing proposals and the review will focus on such schemes. However, as the process is the same for all types of development, the review presents an opportunity to look at the planning appeal inquiries process holistically and to consider improvements to the process to ensure that it meets the purpose it was designed for.[16]

The final report was submitted to the Secretary of State in December 2018 and published in February 2019. Its executive summary summed up the review's conclusions about the scope and need for reform:

> 14. On the other hand, there is a widespread recognition that the current timescales for determination are excessive and that the substantial opportunities for improved transparency and efficiency, available through the use of technology, have not been exploited.
>
> 15. A range of factors underpin the current problems and delays, principally:
>
> - out-dated administrative processes and poor information technology, which unnecessarily delay the submission and validation of appeals and harm the efficiency and transparency of the process at every subsequent stage
> - a back-loaded process, which has been further reinforced by the delays in setting up inquiries. As a result, parties are more reluctant to agree matters early because new matters may emerge before the inquiry is held

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15 Planning Inspectorate, *Procedural Guide: planning appeals -England*, 19 March 2019: Annex H

16 MHCLG, *Independent review of planning appeal inquiries: call for evidence*, July 2018. Mrs Rosewell's biography is on the gov.uk website.

- a flexible approach to timescales and evidence borne out of delays in other parts of the process, a genuine desire to be fair to parties, all underpinned by a fear of judicial review, which further lengthens the process
- the restricted availability of suitable inspectors to conduct the inquiries

16. These factors have led to, what one stakeholder termed, a 'culture of deferral' pervading the process, which has been exacerbated by changes in national policy and guidance, court judgements and resource pressures in many local planning authorities.[17]

The review did not, though, recommend "wholesale changes", as those might be "counterproductive". The executive summary set out what the recommendations would entail:

Earlier engagement by all parties

24. To deliver earlier engagement we propose:

- identification of the inspector who will conduct the inquiry at the outset of the process (Recommendation 4)
- initial pre-inquiry engagement between the inspector and the parties involved10, no later than week 7 after the start letter11 (Recommendation 8)
- case management directions, issued by the inspector to the parties about the final stages of preparation and setting out how evidence will be examined at the inquiry (Recommendations 8 & 9) within 8 weeks of the start letter

Greater certainty about timescales

25. To deliver greater certainty we propose:

- the Planning Inspectorate leading on the identification of the date for the inquiry (Recommendation 5)
- challenging targets for each key stage of the process and the overall length of the process (Recommendations 4, 5 & 21)
- a stronger focus on the timely submission of inquiry documents by parties backed up by sanctions (Recommendation 11) which better addresses the requirements set out in procedural guidance (Recommendations 2 & 7)

Harnessing technology to improve efficiency and transparency

26. To improve efficiency and effectiveness we propose:

- the introduction of a new online Planning Appeal portal (the new portal) for the submission of inquiry appeals by December 2019, with pilot testing to start in May 2019 (Recommendation 1)
- that all documents for an appeal are published on the new portal at the earliest opportunity following their submission (Recommendation 10)

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17 Bridget Rosewell OBE, *Independent Review of Planning Appeal Inquiries: Executive Summary*, December 2018

- that the Planning Inspectorate identify further ways to use technology to improve the efficiency and transparency of the inquiry event (Recommendation 13) and the efficiency of the post-inquiry process (Recommendation 17)[18]

These reforms would (the executive summary said) reduce overall times from receipt to decisions for cases decided by the Inspector to between 24 and 26 weeks, from a current average time of 47 weeks:

> 30. If the improvements we recommend are taken forward, the overall timescale from receipt to decision of an appeal should be between 24 and 26 weeks for inspector-decided cases. This range makes some allowance for inquiries that sit longer than 11 days and we recommend that these timescales are adopted as targets for this type of appeal (Recommendation 21).
>
> 31. We also recommend that an initial target of 30 weeks is adopted for the submission of inspectors' reports on Secretary of State cases, although this timescale should be reduced once new technology is in place to enable faster writing up of evidence by inspectors. The Planning Inspectorate should regularly report on its performance in meeting these timescales and what steps it is taking to expedite any cases that take longer.
>
> 32. The recommended timescales for inspector decided cases marginally exceed the current Planning Inspectorate key performance target of 22 weeks for non-bespoke planning appeal inquiries from start letter to decision12. But the 22 week target, which ignores the additional time between receipt and start letter is very rarely met. In practice, a 24-26 week timescale will represent a near halving of the 47 weeks average timescale (receipt to decision) achieved for inspector decided cases in 2017/18 and the 52 week estimated timescale (valid to decision) currently quoted by the Inspectorate. A simple comparison of existing and recommended timescales for inspector decided inquiry appeals is set out in Table 1 below.[19]

In the accompanying press release, the Housing Secretary, James Brokenshire, argued that speeding up inquiries could ensure the delivery of homes to meet the Government's target of 300,000 new homes a year by the mid-2020s.[20] (The Government's most recent figures show a total of 165,610 permanent dwellings completed in England in 2017/18 – an 8% increase on the previous year and the highest figure observed since 2007/08).[21]

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18 Bridget Rosewell OBE, *Independent Review of Planning Appeal Inquiries: Executive Summary*, December 2018

19 As above

20 MHCLG, *Press release: Planning appeal decisions could be cut by 5 months*, 12 February 2019

21 MHCLG, Housing Live Table 209

5. Appeals recovered by the Secretary of State

Although most appeals are dealt with by the Planning Inspectorate, the Secretary of State retains powers to "recover" a planning appeal which has been submitted to the Inspectorate.

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 1990 Act.

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. 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.

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

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

As with called-in planning 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.

Annexe A of the Planning Inspectorate's *Procedural guide: planning appeals – England* contains further information about what happens when an appeal is recovered.[22] 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.

5.1 When can an appeal be recovered?

A Written Statement in June 2008 set out the circumstances in which the Secretary of State would consider recovering appeals.[23] The online Planning Practice Guidance on appeals now sets out the 2008 criteria, with more recent additions:

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

> **When might an appeal be recovered?**
>
> Recovery can occur at any stage of the appeal, even after the site visit, a hearing or an inquiry has taken place. In recovered cases, a report will be passed to the Secretary of State to make the final decision, taking into account the Inspector's recommendation. Guidance on propriety in Ministerial decision taking on planning matters has been published separately.
>
> The Secretary of State will consider recovery in line with the criteria below, set out in a Parliamentary Statement on 30 June 2008. There may be other cases which merit recovery because of the particular circumstances:
>
> - Proposals for development of major importance having more than local significance.

[22] 19 March 2019
[23] HC Deb 30 June 2008 c44WS

- 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 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 9,000 square metres 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.
- 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.
- Proposals involving traveller sites in the Green Belt, as set out in a statement to Parliament on 17 January 2014.
- Proposals for residential development of over 25 units in areas where a qualifying body has submitted a neighbourhood plan proposal to the local planning authority, but where the relevant plan has not been made, as set out in a statement to Parliament on 7 July 2016.
- Proposals for exploring and developing shale gas, as set out in a statement to Parliament on 16 September 2015.

A recovered appeal will be determined via written representations, a hearing or an inquiry in the same way as other planning appeals. Where an appeal case has been recovered, the Inspector will not make the decision but instead will write a report and include a recommendation to the Secretary of State who will make the decision.

Paragraph: 005 Reference ID: 16-005-20160713

Revision date: 13 07 2016[24]

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

[24] MHCLG, *Guidance: Appeals*, 3 March 2014

5.2 Other additions to recovery criteria

Traveller 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.[25]

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)

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.[26]

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 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.[27]

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.

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25 HC Deb 1 July 2013 c24WS
26 HC Deb 17 Jan 2014 c35WS
27 HL5936, 23 March 2015

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.[28]

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 likely to recover a number of appeals in order to assess the application of the planning practice guidance at national level.[29]

In April 2014, the Secretary of State announced that he would continue to consider for recovery appeals for renewable energy developments for a further 12 months.[30] 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.[31]

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

29 HC Deb 10 Oct 2013 c 31WS

30 HC Deb 9 Apr 2014 cc12-13WS

31 HC Deb 10 July 2014 c25WS

In July 2015, a further Written Ministerial Statement extended this period for another six months.[32] This was followed by another Written Ministerial Statement in January 2016 which extended the period for a further six months.[33]

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). [34]

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

> 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. [35]

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.[36]

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.[37]

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)

32 HCWS90, 9 July 2015
33 HCWS457, 11 January 2016
34 HCWS74, 7 July 2016
35 HCWS346, 12 December 2016
36 HC Deb 28 July 2014 cWS141-2
37 Shale gas and oil policy statement by DECC and DCLG, 13 August 2015

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.[38]

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 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.[39]

5.3 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

38 HC Deb 16 Sep 2015 c32WS
39 HCWS690,17 May 2018

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

6. Planning Court challenges to planning decisions

The Planning Court, established in the High Court under a separate list under the supervision of a specialist judge, deals with all judicial reviews and statutory challenges involving planning matters in accordance with Civil Procedure Rule 54.21 and Practice Direction 54E. These include appeals and applications relating to enforcement decisions, planning permission, compulsory purchase orders and highways and other rights of way. Planning Court challenges cannot be about the merits of the planning application or appeal decision itself; rather, they must be about the lawfulness of the way in which the decision was taken.

6.1 Judicial review of the LPA's decision

The decisions of LPAs can be challenged in the Planning Court by judicial review, under part 54 of the Civil Procedure Rules. There is a strict six-week time limit for applying for judicial review. The challenge cannot be on the planning merits of the case.

One possible type of challenge is to argue that the LPA did not take into account representations or material considerations. However, the LPA is obviously not obliged to accept the arguments in representations; provided that it can show that it took account of them, even if it then decided to grant the permission to which the representations objected, the decision cannot be challenged.

An article in 2000 in the specialist publication *Planning* noted that planning consent was often challenged, but it was relatively rare for a decision to be overruled. It then gave an idea of what might happen at judicial review:

> A challenge can only succeed if there is some proven irregularity in the way the local planning authority determined the application in question. Officer reports to planning committees will be put under the microscope to try to find grounds for challenge. Perhaps the officer has failed to mention a material consideration, or placed too much emphasis on something of questionable relevance. Elected members may be accused of bias. Committee chairs and clerks may be challenged on the way they have allowed a meeting to be conducted or a vote to be taken. Judicial review challenges have to be brought promptly if they are to be entertained by the court.[40]

Any application for judicial review is likely to be expensive and professional legal advice should first be sought. Judicial review tends to be a more suitable option for companies involved in extensive development, who wish to establish a legal point that may help in future applications, than for private objectors.

To bring a claim for judicial review, the claimant must have a "sufficient interest" (that is, the decision must directly affect the claimant). If the

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[40] C Ward, "When permissions may be overturned", *Planning*, 7 July 2000: page 13

interest is more general, the court has discretion about whether to hear the claim.

If a judicial review is successful, one of the remedies is that the decision can be quashed and so the decision will have to be taken again, correcting any procedural irregularity identified by the Court. In remaking the decision, the same decision may be reached again, or a different decision may be made.

6.2 Challenging the Planning Inspector's appeal decision

Section 284 of the 1990 Act states that the decision of the Secretary of State (normally in practice the Planning Inspector) on an appeal against refusal of planning permission by an LPA, amongst other decisions and orders, cannot be challenged in Court other than in the way provided in that Part of the Act. Section 288 then lays down the grounds for challenge. The relevant part 1(b) provides that:

> If any person—
>
> …
>
> (b) is aggrieved by any action on the part of the Secretary of State to which this section applies and wishes to question the validity of that action on the grounds—
>
> (i) that the action is not within the powers of this Act, or
>
> (ii) that any of the relevant requirements have not been complied with in relation to that action,
>
> he may make an application to the High Court under this section.

As this right stems from legislation, the challenge is properly called a "statutory review" rather than a "judicial review", although the terms are often used interchangeably. There is a strict six-week time limit for making such an application.

An article in 2000 by a lawyer in the then Lord Chancellor's Department described the types of case that commonly arise:

> 1. Failure to take into account a material consideration
>
> Most commonly, a claimant will argue that the Inspector failed to take into account some guidance or development plan policy, previous decision or other significant factual element...
>
> 2. Taking into account an irrelevant consideration
>
> 3. Reasons challenge
>
> While an Inspector is under a general duty to give reasons, the court has held that this duty only applies in relation to principal, important, controversial issues. In addition, the claimant must show that he has been "substantially prejudiced" by the Inspector's failure to give reasons…
>
> 4. Irrationality
>
> The claimant may argue that the Inspector's decision is so unreasonable or perverse that no reasonable or rational planning inspector could have reached the same conclusion…
>
> 5. Breach of the rules of natural justice

> Each of the parties to a planning appeal has the right to a fair hearing by an impartial decision-maker. As in the case of reason challenges, a claimant must show he has suffered substantial prejudice to succeed with a natural justice challenge…[41]

The Sweet & Maxwell *Planning Encyclopaedia cites* a ruling illustrating how an inspector's report is viewed:

> In *South Somerset District Council v. Secretary of State for the Environment* [1993] 1 P.L.R. 80 the Court of Appeal reasserted the limited role of the courts in reviewing planning decisions, and overturned a decision by Sir Frank Layfield Q.C. (sitting as a deputy judge of the High Court), who had struck down the planning inspector's decision on the grounds of failure to have regard to certain policies contained in the existing and draft development plans. Hoffmann L.J. (with whom Russell and Purchas L.JJ. agreed) stressed that:
>
> The inspector is not writing an examination paper on current and draft development plans. The letter must be read in good faith and references to policies must be taken in the context of the general thrust of the inspector's reasoning. A reference to a policy does not necessarily mean that it played a significant part in the reasoning: it may have been mentioned only because it was urged on the inspector by one of the representatives of the parties and he wanted to make it clear that he had not overlooked it. Sometimes his statement of the policy may be elliptical but this does not necessarily show misunderstanding. One must look at what the inspector thought the important planning issues were and decide whether it appears from the way he dealt with them that he must have misunderstood a relevant policy or proposed alteration to policy.[42]

In other words, the High Court will not readily overturn the decision of a Planning Inspector.

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41 Cathryn Scott, "High Court Planning Appeals", *Planning Inspectorate Journal*, Summer 2000: page 22

42 P 288.10

7. Complaints to the Ombudsman service

If someone believes that the LPA did something wrong in the way it went about deciding a planning application, they may be able to bring a complaint to the Local Government and Social Care Ombudsman (LGSCO).

Similarly, if someone believes the Planning Inspector did something wrong in the way they went about deciding a planning appeal, they may be able to bring a complaint to the Parliamentary and Health Services Ombudsman (PHSO).

Neither Ombudsman has the legal power to change a planning decision once made.

7.1 The Local Government and Social Care Ombudsman

The Council's own complaints procedures must have been used and exhausted before the LGSCO will consider looking at the case.

The LGSCO can only consider matters of maladministration and process and cannot consider the planning merits of the case. It does not have the power to overturn the decision. If the LGSCO does find that the LPA is at fault, then various remedies may be possible:

- If such harmful effects were caused by the council's fault, we may recommend steps to reduce them.
- If the development is not yet built or completed, it may be possible to agree minor changes to the scheme such as alterations to the opening of windows or doors or the provision of obscure glazing or an acoustic screen. This may not be possible, in which case we may ask a council to make you a payment to cover the cost of new planting or screening on your property.
- In exceptional cases, where it is not possible to reduce the impact of the building on your home, we may ask the council to pay you compensation for loss of value to your property. We may also ask for compensation for your time, trouble or expense in pursuing your complaint.
- Where we find fault with the council's procedures we will often recommend that the council introduces changes so that the same problem does not occur again in the future.[43]

Further information, including how to contact the LGSCO, is set out in their factsheet *Your neighbour's planning application* (July 2016)

[43] Local Government and Social Care Ombudsman, *Your neighbour's planning application*, July 2016

7.2 The Parliamentary and Health Service Ombudsman

Likewise, complaints should be made to the Planning Inspectorate (using the process outlined on the webpage on its complaints procedure) before being brought to the PHSO.

Under section 5(2) of the *Parliamentary Commissioner Act 1967*, the PHSO will not take on a case where another legal remedy is available (where, for example, there is the option of a High Court challenge).

More information about making a complaint to the PHSO is available from the PHSO website. A report from PHSO in October 2012 offered examples of Planning Inspectorate cases they had dealt with.[44]

[44] PHSO, *A false economy: Investigations into how people are recompensed for government mistakes.*, October 2012

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