

Planning Appeal Inquiries Review – call for evidence questionnaire

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

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

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

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

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

Inquiries Review Team
July 2018

About you

Q1. Contact details

Name	Beth Harries
Organisation (if applicable)	Historic England
Role in organisation (if applicable)	Solicitor
Address	Historic England 4th Floor, Cannon Bridge House, 25 Dowgate Hill, London
Post code	EC4R 2YA
Email address	Legalteam@HistoricEngland.org.uk

Q2. Is this an organisational or personal response?

Organisational	Personal
✓	

Q3. Who are you?

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

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

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

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

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

If “other” please add description here:

Q5. How many inquiries have you been involved in?

Number of inquiries involved in	0	1-2	3-5	6-10	More than 10
Please select					X (over last 5 years)

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

VIEWS ON THE OVERALL PLANNING APPEAL INQUIRIES PROCESS

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

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

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

The ability to ensure that the cases put by the parties to the inquiry (and the complex issues raised) are fully examined so that an informed decision can be made. There can be detailed focus on key points of determination which are not necessarily possible if the matter is dealt with through hearings/written representations. It is a more structured process (e.g. time is allocated for third parties and cross-examination). There are also strictly enforced elements of the process (e.g. there is a formal timetable for the exchange of witness proofs). However within this formality is the ability for the Inspector to have an informal roundtable discussion on draft conditions and section 106 agreements. The early submission of a statement of case works well, as it makes parties consider carefully about the case - provided of course that this is compliant with the requirements for a full statement of what their case is.

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

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

Sometimes an inquiry cannot be held promptly, so there is delay in dealing with the

issues raised. Although recognising that sometimes there are good reasons for information to be submitted late, there ought to be a clear steer from the Inspector as to whether this information ought to be submitted late. More rigour in timetabling could assist this, together with ability to engage with the Inspector early on in the process. Pre-inquiry meetings are particularly useful in this regard, but the Inspector will need to ensure that rulings are given on matters such as submission of information, or changes permitted to the scheme during the course of the inquiry process. It is often helpful to have a procedural steer from the Inspector before the start of the inquiry, and sticking to a programme avoids overindulgence where points are unwarranted, and the answer by the Inspector on these points can have significant implications for how the evidence is settled and exchanged.

Ensuring that all the relevant documentation submitted to the inquiry is accessible to all parties is sometimes problematic. The main problems arise from the poor handling of the volume of material and of the presentation of plans and drawings at the inquiry itself. This could be addressed by technology - having the ability to project plans and extracts onto a big screen in the inquiry room so everyone can work off the same material. However practice is variable and ensuring the availability of inquiry documents in an accessible format to all parties and observers is fundamental.

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

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

Yes	No
X	

Comments

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IMPROVING EACH STAGE IN THE PROCESS

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

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

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

If yes, please explain how it could be improved

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

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

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

If yes, please explain how it could be improved

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

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

If yes, please explain how it could be improved

Once the appeal has a start date, this should then mean that matters move swiftly forward. However this is not always the case as there may be issues around
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availability of witnesses; scope for resolving the issues/narrowing the issues to be taken to appeal; or difficulties in getting an inspector on hand. There may be an advantage to having an early pre-inquiry meeting so that the Inspector is aware of the possibilities of addressing these issues so that the inquiry can proceed smoothly. In the court, all the parties (including the court) meet to discuss acceptability of dates and this is to ensure that the key witnesses and those involved in the case are available on the same date. This avoids extensive correspondence and cancellation of offered dates. The availability of suitable inspectors with the requisite experience or specialist expertise is also key.

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

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

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

If yes, please explain how it could be improved

Generally the dates are reasonable, but clarity as to when a decision is likely is helpful.

WIDER PROCESS AND OTHER ISSUES

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

The difficulty that is usually faced is that of different technologies being used by the parties to the inquiry: exchanging evidence can be difficult either because the volume of information cannot be transmitted, or because, due to the nature of the evidence, it cannot be printed out (e.g. large A0 size document). Also, PINS have certain limitations on the way they are able to receive the evidence. There may also be issues about access to technology at the venues for the inquiries – so access to online documents (e.g. PPG) may not always be possible. The public may also be disadvantaged if documents are only available online. There are also difficulties in producing multiple copies of documents or in uploading documents with large files (especially drawings). Third parties/members of the public who wish to engage in the proceedings may be disadvantaged as a result. If there are alternative/ innovative forms of technology being proposed there need to be some common rules to govern fair use. This also links back to discussions on having pre-inquiry meetings so that forms of evidence (as well as their availability) could be agreed beforehand.

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

There may be genuine reasons for withdrawal and it is better not to proceed with an inquiry if the matter can be resolved without inquiry. Sometimes this demonstrates the effectiveness of the process in that alternative schemes to the appeal scheme are being discussed and the matter can be resolved without the need for public expenditure of holding an inquiry. However if there is scope for withdrawal then there should be clear, early deadlines so that the system is not “played”.

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

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

The role of statutory consultees in an inquiry is an important one and should continue where appropriate. From our experience as the Government's statutory adviser on the historic environment, we consider that the testing of the proposal against the Government's planning policy in relation to heritage in an inquiry format ensures that all interested parties are given the opportunity to examine the issues and that the issues are properly addressed leading to informed decisions being made. Having given our advice during the application process, it may be appropriate for us to engage with the inquiry process to ensure that the advice given – and the approach taken by the parties – is one which complies with the NPPF and legislative requirements.

Thank you for your response

Annex A

About this call for evidence

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

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

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

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

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

Individual responses will not be acknowledged unless specifically requested.

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

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

Annex B

Personal data

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

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

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

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

2. Why we are collecting your personal data

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

3. Our legal basis for processing your personal data

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

4. With whom we will be sharing your personal data

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

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

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

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

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

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

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

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

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

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