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EMAIL ONLY

Dear Sir/Madam,

Re: Independent review of planning appeal inquiries: call for evidence

Gladman write to offer some brief comments to assist the inquiry with evidence gathering in regard its review of the planning appeal inquiry system. The subject is clearly a complex one. However, as a land promoter who in the past 2 years has gained planning consent for over 5,200 homes using the appeal system, the majority by way of inquiry, we believe we have insight into and first-hand experience of the process. We hope this will be beneficial in understanding the way in which the planning appeal system, and in particular public inquiries are vital to delivering a continuous supply of planning consents to facilitate the delivery of housing in England.

The current system is by no means perfect, but an applicant's right to have an appeal heard, and complex issues aired and tested is a vital legal right. Gladman have therefore responded to the questions from the starting point that public inquiries are an intrinsic and necessary part of the planning appeal process and should fundamentally remain the key arena for resolving complex appeal cases. This is not to say that there are not improvements that can be made to the process and through this representation we identify some key areas in which we think these improvements could be made, without the need for substantial additional capital resource being invested into the system.

Indeed, Gladman do not consider that the legislative structure itself (the principle of using inquiries) is responsible for the delay. In 2009, when Gladman changed the business to focus more on residential led development we knew that, should we need to use the appeal route to challenge the decision of a local authority, we could have the inquiry and subsequent decision issued within 4-5 months. This meant a better informed decision on the prospects of success could be taken, as the circumstances relevant to a case would be unlikely to change. The timescales now encountered discourage investment in planning applications (a costly endeavour), lead to an inefficient planning system, and allow local authorities to 'game' the system (on the basis they expect their case to materially improve before any appeal is determined) due to the current average timescales experienced from submission of an appeal to a decision being issued.

That said, it is clear to Gladman that PINS is under resourced and over stretched compared to its workloads. The difficulties with attracting experienced Inspectors is widely reported and symptomatic of the issues being felt across the development industry in employing experienced planners. Whilst it is not therefore just about additional financial resource, prolonged investment in PINS through the recruitment and retention of seasoned Inspectors will be vital to the system operating as efficiently as possible. The current haemorrhaging of Inspectors to work as independent Neighbourhood Planning Examiners is a major problem to be addressed.

Q.7 What aspects of the current inquiry process work well?

The inquiry process is a vital part of the planning appeal system. It allows complex issues that underpin the delivery of thousands of homes and millions of square feet of job creating employment space to be discussed and examined in detail. Full exploration of complex issues can be undertaken and the appellant, the Local Authority and local people have the right for their cases to be heard and a decision arrived at by an independent and impartial adjudicator. This is not to say the process is perfect but the fundamental principle of the use of an inquiry to consider the complex issues associated with large scale planning applications is one that is wholeheartedly supported by Gladman. Both hearings and the written representations procedure do not allow for the issues to be explored in the detail required for a reasoned professional judgement to be arrived at.

Complex written evidence is the subject of cross examination and rigorous testing at inquiries. At a number of inquiries which Gladman have been involved with, this testing has resulted in a concession by the witness which is material to their overall conclusions. Without cross examination these concessions would not be realised and the ultimate decision of the Inspector would be based on flawed evidence. By way of example Gladman submitted an appeal at Land of Midenhall Road, Fordham, Cambridgeshire (APP/V0510/17/3186785) and amongst the issues for the inquiry to tackle was that of noise. Upon cross examination, the Council's witness conceded that the issues related to noise could be mitigated. In paragraph 2 of the inspector's decision notice it states:

> *"During cross-examination the Council's witness conceded that the noise from the adjoining R. Palmer & Sons Ltd (RPS) and the LOC1 sites could be mitigated either on the appeal site through design methods and/or the strict application of existing planning conditions imposed on those sites. As such, the Council conceded at the Inquiry that it was no longer pursuing their second and third reasons for refusal in respect of noise."*

The right to appeal by an appellant is a fundamental right, the right to have that appeal heard in a reasonable and professional manner which allows full discussion of the evidence is a fundamental right. The principle therefore of the use of inquiries to determine complex applications is sound.

Q.8 What aspects of the current inquiry process don't work well?

The current process is overly lengthy, plagued by delay and frankly mismanaged. While Gladman have highlighted above that there are issues in the system with resourcing, we believe there are opportunities through better management and consideration of process for these issues to be alleviated and positive change brought about. It is our experience that early engagement from PINS and subsequent case management is lacking in the majority of cases.

One of the key frustrations that developers have with the current planning inquiry process is the time taken from start to finish to issue a decision. Partially this is down to the availability of Inspectors and resources, but largely it is do with the processes followed and the management of cases by PINS. We will discuss in response to the questions below how this criticism of the system manifests in the various stages of the appeal process. Gladman consider that as a broad overarching point PINS need to take a much firmer stand point on a whole range of case management points. These include, setting dates for inquiries, controlling the scope of issues considered, ensuring that inquiries proceed in a timely manner and ensuring inquiries are not unreasonably delayed by overly repetitive delivery of evidence and/or meandering cross examination from barristers. Inquires do not currently make the most of the time available to them, but with strong and firm leadership from PINS there is no reason why inquiries need to close and reopen (except in exceptional circumstances), and why significantly more evidence cannot be heard in shorter periods of time than currently.

There also remains an issue of consistency in decision making and too often the inquiry process does not appear joined up. Whilst of course an Inspector must make a decision based on the evidence in front of them, in many instances there may be opportunities to reduce inquiry time by not repeating evidence on non-site specific issues e.g. housing land supply, particularly where such issues have been thoroughly examined at other recent inquiries. In some authorities where the de facto approach, for political reasons, is to refuse an application and fight an appeal there are many instances where the same issues with regard housing land supply, housing requirement etc... are heard over and over again.

Q.10 Receipt to validation what can be improved?

Gladman believe that this part of the process should be more transparent. Whilst there will clearly be a considerable amount of processing involved with planning appeals, it seems unusual for this stage of the process to take up so much time. It may be that the time taken is reasonable given the level of work to be done and the resource available to do it, but Gladman believe the process would benefit from being more open and transparent as to the elements of validation that occupy so much time. In this regard when these issues are more readily apparent appellants may be able to present information more constructively or work alongside PINS to improve the process.

One potential beneficial change would be an online list of submitted but not validated appeals in reference number order. This would save PINS time of people ringing up inquiring on progress and provide clarity to appellants.

Q.12 Start to event what can be improved?

This is a key area of concern for Gladman. Currently, due to the considerable demands placed on Inspectors, the average time taken to get from an inquiry start date to an inquiry event is 30 weeks. Gladman considers this can be resolved by either more proactive case work management by PINS officers, or earlier involvement and engagement in the inquiry process by senior Inspectors. The benefits of each are considered in more detail below:

Proactive Casework Management

Under current processes and during the lead in to an inquiry, the primary contact for a main party or member of the public will be the PINS case officer. In Gladman's experience we have found there is variation between officers in how they will engage with the process. Some will read all appeal documentation, absorb themselves in the issues and be able to make informed decisions on matters that may assist in the smooth running of the inquiry. Others will follow procedure, but will take less of an interest in matters relevant to the inquiry, which can have knock on consequences, if for example it results to an appeal being considered through an unsuitable procedure.

If, in consultation with senior Inspectors, case officers were empowered to engage more in the process it may assist in reducing the volume of evidence heard at an inquiry, particular if parties find they can agree on matters in dispute. Casework officers could for example, be responsible for setting up an initial telecon meeting between the main parties to discuss statements of common ground, the scope of evidence, matters in dispute, timings of evidence or other issues relevant to the inquiry. Once preliminary matters were agreed the officer would be responsible for reporting these back to the senior Inspector who could then take a view on how the inquiry proceed and the matters which needed detailed consideration and testing by way of cross examination.

If matters were unclear, or if the Inspector required clarification on any points then further meetings or telecons could take place between the parties. However, the primary aim of this stage would be to front load the inquiry as far as possible so that time during the event was used most efficiently. The obvious parallel to

this is the Case Management system now utilised by the Courts wherein casework management conferences have become part of the court procedure and involve the judge and parties lawyers connected to a case.

Engagement by Senior Inspectors

An alternative to proactive case work management would be for Inspectors to become involved in the inquiry process at a much earlier stage:

1. Pre-inquiry Meetings – These are currently not used and their scope and role could be increased, as a way for setting realistic but firm deadlines for the production of evidence and Statements of Common Ground. These meetings should also be used by the Inspector to narrow down the evidence that is required to be presented at the inquiry. Some issues may be able to be dealt with simply by a written exchange of evidence, or via Statements of Common Ground. This will allow actual inquiry time to be spent on discussing the issues which require the rigor of an inquiry in order to be fully explored. Both the appellant and the Local Authority as well as any Rule 6 parties would have the opportunity at the meeting to discuss the scope of evidence they wish to provide and how it is to be presented to the Inspector.

   The Pre-inquiry meetings should focus on the reasons for refusal of the decision issued by the Council, how these issues can be narrowed down prior to the inquiry and what the best means of hearing evidence on the remaining issues should be. When planning permission has been refused, Article 35(b) of the Town and Country Planning (Development Management Procedure) Order 2015 provides a clear legislative requirement for local planning authorities to state "clearly and precisely" their full reasons for refusal, specifying "all policies and proposals in the development plan" relevant to the decision. There is therefore no basis for the appeal process to be used as a way for the Council, PINS or Rule 6 parties to diverge away from or consider reasons for refusal outside of those listed in the Council's decision notice.

2. Telephone Conferences - An alternative to pre-inquiry meetings, or a sensible extension of this process, may be the use of telecons between Inspectors the LPA and the appellant. If such telecons were factored into the process they may help inquires run more smoothly and avoid the need for significant volumes of work. For example it may be possible to remove the statement of case part of the process, reduce the scope of evidence required by allowing the Inspector to set out exactly what they want or simply ensure that communication is open between all parties on the delivery of important correspondence such as Statements of Common Ground, which should be required to be submitted by PINS.

3. Follow up - Following either a pre-inquiry meeting or telecon, PINS should issue firm guidance to all parties on the timings for the inquiry, which should clearly set out the time allocated to hear evidence. It should be made clear that any deviation from the timings outlined for each party to present the evidence the Inspector wishes to hear will only be allowed in exceptional circumstances. Following this regime, and requiring parties to adhere strictly to the reasons for refusal set out in a decision notice would create a more focused event where only the core issues in disagreement between the parties would be explored.

Other Suggestions

Planning conditions and Section 106s should as much as is possible be frontloaded and decided upon in the lead up to an inquiry, with discussions taking place through pre inquiry meetings, telecons or case workers as required. There is no reason that these issues could not be considered and decided prior to an inquiry taking place saving time during and potentially after an inquiry has been heard, and allowing for a speedy decision to

be issued. If PINS were to adopt a schedule of 'Model Conditions' this would help to significantly reduce the amount of time spent debating the detailed wording of suggested conditions.

The imposition of dates by PINS is a further option to reduce inquiry time. Whilst it is understood why PINS try to work with parties to agree a preferable date for all, at present the delay in the system is seemingly largely to do with the availability of Inspectors. There is no reason why the availability of LPAs or appellants should be restricted by the availability of witnesses or barristers. Gladman would therefore welcome a system where PINS impose dates on parties.

Q.13 Event to decision what can be improved?

As with the previous stage this is an area where we believe significant improvements can be made. The average time taken to issue a decision post an inquiry being heard ranges from 11 weeks to 23 weeks. Gladman acknowledge that the timing of decisions made by the Secretary of State is to some degree beyond the control of PINS, therefore these comments are focused on reducing the 11 week period for PINS issued decisions. Nevertheless the suggestions below will also help ensure that PINS recommendations are made to the Secretary of State in a more expedited manner:

1) PINS should ensure that Inspectors have dedicated diarised time immediately post the closing of the inquiry to complete the writing of their report. This period would allow decisions to be issued quickly, ensure that reports are written whilst evidence is still fresh in the mind and that subsequently inquiries do not need to be reopened due to a potential future change in circumstance. It is these long running delays in issuing decisions, particularly following a change of circumstances post closing of an inquiry that can be particularly frustrating for appellants. Already the length of time required to hold inquiries means that often material changes have occurred to the planning context since the decision was originally issued by the local authority.

2) Allowing a defined period of time for an Inspector to write his report would also mean that a defined and clear process for PINS internal workings on releasing the report post the Inspector writing should also be set. We see no reason why in most cases, a report could not be written, checked internally by PINS and issued within two weeks of the inquiry concluding, if defined time periods are diarised up front. As this would be in the diary from the start of the appeal process, it would remove the need for PINS to update the bespoke programmes with the decision deadline following the close of the inquiry.

3) As referenced in response to earlier questions we believe that in order to maximise inquiry time and to ensure that evidence is heard as efficiently as possible Inspectors need to be strict with all participants about what evidence they wish to hear. Inspectors should also be firm with those giving evidence in order that time is not wasted on repetition or meandering cross examination of witnesses when more direct questioning could more quickly explore the differences of opinions between parties with regard particular subjects.

4) Rules on submission and acceptance of late evidence should be strictly controlled. Rules on the preparation and submission of evidence, and subsequent giving of oral evidence must be the same for all parties be they the appellant, the Council or Rule 6 parities including the third sector or members of the public. Significant amount of inquiry time is taken up with the last minute submission of 'new' evidence, or the repetition by numerous parties of the same points. In some cases representations from third parties are accepted after the close of the inquiry. This is despite full publication of the inquiry and third parties being afforded a number of opportunities to engage with the process.

Q.14 Use of new technology

As we have outlined above through the reconsideration of a number of processes Gladman believe there is considerable potential for additional capacity within PINS to deal with inquiries and reduce wait times. Similarly the use of new technology could improve time scales for dealing with inquiries, use of online resources for setting dates (surveys etc.), a focus on electronic material only being submitted and used, a requirement for any venue for an inquiry having Wi-Fi access would all help speed up the process of holding inquiries and allow evidence to be heard and considered more quickly.

Furthermore if it was ensured that all appeal information was uploaded to a website, for example one operated by PINs or the LPA then the information could be made easily available to third parties. This would ensure that the system is as transparent as possible and would allow third parties to have a full understanding of the cases being put and to tailor their representations accordingly. This would hopefully help PINS take a stronger stance on repetition of points already covered by the main parties and help reduce the amount of days required for inquiries.

Q.15 The withdrawal of inquiries, should there be a limit to the number of withdrawals?

In short no. There are generally clear reasons why an appellant or local planning authority would seek to withdraw from an appeal. The main reasons are considered to be:

1) A change in circumstances relating to a crucial matter at the heart of the appeal, due often to the significant time delay between the refusal of an application and the date of the inquiry event or a lengthy delay post event before a decision is issued. Such a change of circumstance can mean that the best way to avoid unnecessary expenditure for all parties is for the appeal to be withdrawn. Clearly if the inquiry process was revised following the proposals outlined by Gladman in this letter this category would likely reduce.

2) That through the continuing work of the appellant and local authority progress has been made which overcomes the previous reasons for refusal and a subsequent second application has been/or will be positively determined. It is entirely normal practice for continued working behind the scenes as an inquiry progresses for work to be done to resolve reasons for refusal.

3) The existing costs regime is sufficient to discourage abuse.

Therefore we believe the changes advocated in this response will have a significant impact in reducing the number of withdrawals from inquiries if adopted. There is no need therefore to limit the number of withdrawals by an applicant.

Q.16 Further suggestions

One option which may enable further funding to be put into the inquiry process could be the introduction of a fee for planning appeals. This could be based on either a fee to be paid; a sliding scale by the appellant, related to the scale of application in question, or perhaps more beneficially a ‘loser pays’ system for inquiries which relates to any fee paid to PINS to hear the inquiry. Consideration would need to be given as to what a realistic fee to be paid was, but such a system may discourage needless appeals, and/or have a positive impact on the problem of local authority officer decision being overturned through the appeals process and the subsequent burden placed on the appeal system. Ring-fencing of ‘loser pays’ monies to PINS may also assist in alleviating any resourcing issues experienced within the Inspectorate.

A second option, which may aid the level and scope of inquiries is to consider ways in which to better integrate into the appeal system a revised planning application that may address previous reasons for refusal. In some circumstances Gladman will appeal a refusal and at the same time submit a second go application, which seeks to resolve as many of the issues addressed in the refused scheme as possible. If any of the issues in the second application are resolved it should be possible to introduce these elements into any appeal scheme for the consideration of the Inspector. Such an approach would allow for significant time savings by again further reducing the scope of evidence which needs to be heard and cross examined during the inquiry.

A final, more radical option, would be to create Inspector capacity by stripping out the number of minor, householder appeals determined by PINS through the introduction of a local review mechanism. Under this system, where a Council had resolved to refuse planning permission then, prior to the decision notice being issued, an applicant could request this was reviewed by the neighbouring authority. Review panels could comprise of both elected members and officers and applicants would be expected to pay a review fee. The purpose of the panel would be to consider the officer's assessment and recommended reasons for refusal (including in relation to committee overturns). If a panel disagreed with the recommendation, this would trigger a requirement for the application to be re-assessed wherein the review panel's comments would become a material consideration. Gladman appreciates this may go beyond scope of the Inquiry Review but would welcome the opportunity to discuss this option further with relevant policy leads within the Ministry.

Q.17 Additional comments

As a leading land promoter Gladman believe that the inquiry system is a vital way of solving complex differences of opinion in a professional way in relation to the delivery of development. It must not be forgotten that a very considerable amount of housing land has come forward through the appeal process in the last 5 years. This land is vital to meeting the housing needs of many authorities and is a key means of depoliticising the planning system, allowing balanced and unbiased professional judgements to be made. A recent Lichfields report[1] demonstrated that when considering appeals on schemes of over 50 units, where the officer has recommended approval but the application was refused by members, 65% of schemes were allowed on appeal, this falls to 25% when it is an appeal based on an officer recommendation to refuse. In 2017 alone this accounted for 6,000 homes granted planning consent through the appeal system.

It is our conclusion therefore that there are means and ways to improve what is currently an imperfect system but that the underlying principle of using inquiries for deciding major planning applications is sound. Gladman would be happy to discuss any element of this representation further if it would help MHCLG form a clearer picture of the current inquiry system.

Yours faithfully

Mathieu Evans
Gladman Developments

[1] Refused for good reason? – Lichfields August 2018