



Guidance on Planning Propriety Issues



Guidance on Planning Propriety Issues

Department for Communities and Local Government
Eland House
Bressenden Place
London
SW1E 5DU
Telephone: 020 7944 4400
Website: www.communities.gov.uk

© Crown Copyright, 2008

Copyright in the typographical arrangement rests with the Crown.

This publication, excluding logos, may be reproduced free of charge in any format or medium for research, private study or for internal circulation within an organisation. This is subject to it being reproduced accurately and not used in a misleading context. The material must be acknowledged as Crown copyright and the title of the publication specified.

Any other use of the contents of this publication would require a copyright licence. Please apply for a Click-Use Licence for core material at www.opsi.gov.uk/click-use/system/online/pLogin.asp, or by writing to the Office of Public Sector Information, Information Policy Team, Kew, Richmond, Surrey TW9 4DU

e-mail: licensing@opsi.gov.uk

If you require this publication in an alternative format please email alternativeformats@communities.gsi.gov.uk

Communities and Local Government Publications
PO Box 236
Wetherby
West Yorkshire
LS23 7NB
Tel: 08701 226 236
Fax: 08701 226 237
Textphone: 08701 207 405
Email: communities@capita.co.uk
Online via the Communities and Local Government website: www.communities.gov.uk

October 2008

Product Code: 08COMM05563

ISBN: 978 1 4098 0573 1

Guidance on Planning Propriety Issues

1. This note deals with the propriety issues that can arise in connection with the Secretary of State exercising decision-making functions under the Town and Country Planning Acts, principally in individual planning cases, and with respect to Regional Spatial Strategies and Local Development Documents. **The objective is to ensure that decisions are properly taken and to avoid, as far as possible, the risk of successful legal challenge of decisions.** The note provides advice for Ministers in the Communities and Local Government charged with making those decisions, considers the position of Ministers in other Departments, and that of Parliamentary Private Secretaries, Ministerial Special Advisers and officials.

The Ministerial Code

2. The Ministerial Code, issued by the Cabinet Office on behalf of the Prime Minister in July 2007, sets out a number of principles which must be observed in relation to the general requirement that Ministers undertake their official duties in a way that upholds the highest standards of propriety. Of particular importance in relation to the handling of planning casework is that Ministers **“must ensure that no conflict arises, or appears to arise, between their public duties and their private interests”**. They must also **“keep separate their role as Minister and constituency Member”**.

The Secretary of State and other Planning Ministers in Communities and Local Government

3. The Secretary of State has overall responsibility for decisions taken under the Planning Acts. Decisions are taken by both her and on her behalf by other Ministers in the Department; but the normal convention is that formal decision letters for planning casework particularly will refer to the Secretary of State, not a Minister by name. The allocation of planning responsibilities is designed to avoid any Minister having responsibility for the Regional Spatial Strategy or planning casework in the region where he or she has a home, or a constituency. In the rest of this note the term “Planning Ministers” refers collectively to the Secretary of State and other Ministers in the Department exercising planning decision making responsibilities on her behalf.

Planning Decisions by Ministers

4. If a local planning authority grants a planning permission subject to conditions, or refuses to grant permission, or fails to make its decision within a prescribed period, then the applicant may appeal to the Secretary of State. The great majority of appeals are determined on behalf of the Secretary of State by

Inspectors in the Planning Inspectorate. However, a small number of appeal decisions, relating to the most significant developments, are “recovered” for decision by Planning Ministers. The Secretary of State’s published policy on the recovery of planning appeals is set out in the statement presented to the House of Commons by the Parliamentary Under Secretary of State, Parmjit Dhanda on 30 June 2008 (see **Annex A: Revisions to Recovery Criteria for Planning Appeals**).

5. The Secretary of State also has the power to “call-in” planning applications for her own determination rather than by the local authority, for example if they conflict with national policies. The decision on whether to do so is made having regard to published policy, which is set out in the House of Commons written answer to Bill Michie MP dated 16 June 1999 by the then Minister of State for the Regions, Regeneration and Planning (Richard Caborn) (See **Annex B: Called-in Planning Applications – Government Policy Statement**).
6. The criteria for both recovery of appeals and call-in of planning applications are reviewed regularly to ensure only the most significant or controversial proposals in terms of national planning policy are determined by Planning Ministers.
7. The decision of Planning Ministers on whether to grant planning permission following an appeal or the call-in of an application is informed by the report of an Inspector who usually holds a public inquiry into the proposal. Such decisions are “quasi-judicial”, which means they are similar in nature to decisions taken in a judicial process. Characteristics of such a process are the impartiality of the decision-maker, an obligation to hear both sides and to act fairly. However, these decisions are nevertheless administrative and so challengeable in the Courts.
8. Care is also needed in relation to actions and decisions taken by Planning Ministers in the context of the preparation of Regional Spatial Strategies and Local Development Documents. The procedures are set out in *Planning Policy Statement 11: Regional Spatial Strategies* (PPS11) and *Planning Policy Statement 12: Local Spatial Planning* (PPS12), and are explained below.

General Principles

9. In taking quasi-judicial decisions under the Planning Acts a Planning Minister should:
 - (i) act, and be seen to act, fairly and even-handedly, by bringing an unbiased, properly directed and independent mind to consideration of the matter; and
 - (ii) not take into account privately- made representations. In order to demonstrate even-handedness, and in the interests of natural justice, all evidence which is material to any decision which has been the subject of a planning inquiry, and which the decision- taker ultimately takes into account, must be made available to all parties with an interest in the decision.
10. It follows that a Planning Minister should take no part in a planning decision in which he or she has, or might be perceived to have, a private or constituency

interest. That includes decisions in respect of planning matters with which he or she has previously been associated, as an MP or in a private capacity. Nor should the Planning Minister do anything calculated to influence such a decision.

11. A Planning Minister is required to declare any personal interest in a planning case, for example relevant land or property ownership or shares in an interested company. Decisions in those cases will be taken by another Planning Minister, as appropriate. The Permanent Secretary should be informed of any potential conflicts of interest.
12. A Planning Minister should not discuss a planning case with any interested party to a decision. This advice applies, in particular, to decisions on recovered planning appeals and called-in planning applications (see paragraphs 13 to 19 below). Ministers should decline requests for meetings from MPs, delegations of local people, parties to an appeal or a called-in application, pressure groups or any other party who wish to make representations about a particular planning matter. The same principle applies to other forms of contact with interested parties, including telephone calls. Advice on requests for meetings to discuss Regional Spatial Strategies and Local Development Documents is contained in paragraphs 20-28 below.

Recovered planning appeals and called-in planning applications

13. Representations from MPs, pressure groups or other interested parties are often made to attempt to persuade Planning Ministers either for or against the call-in of a planning application, rather than leaving the decision to the local planning authority. Whilst such representations may be taken into account quite properly in the decision on whether or not to call-in the application, Planning Ministers should not discuss the case with these parties before the decision is taken.
14. If a planning application has been called in, or an appeal has been made, the case is formally before the Secretary of State for decision. Although planning cases decided directly by the Secretary of State are a tiny proportion of the number of planning applications and appeals handled each year, they are naturally high profile and interested parties will want to make representations. Those seeking to make representations to a Planning Minister on recovered appeals or called-in cases should be advised to write to the Planning Inspector, if the inquiry has not been completed, or to the relevant official in the Planning Central Casework Division in the Planning Directorate of Communities and Local Government if the inquiry has concluded. Where representations are made by whatever means, including letters, telephone and email, whether direct to a Planning Minister or to the relevant official, it should be made clear that they can only be taken into account if they can be made available also to all interested parties for comment.
15. The question sometimes arises of how far it is appropriate for Planning Ministers to discuss cases with Ministerial colleagues. Subject to certain statutory exceptions, decisions in planning cases are for Planning Ministers alone, taking into account material planning considerations. Although matters relating to the

application of Government policy should be addressed during the public inquiry, it may nevertheless be appropriate for Planning Ministers to seek and receive advice on matters of policy, which are relevant to the decision, to enable an informed judgment to be made. However, for the reasons set out in para 9(ii) this is limited to Government policy that is already in the public domain. If, in the course of such discussion, new issues emerge which are relevant to the case but have not previously been exposed, then these would be made available to interested parties for comment.

16. In undertaking their wider Ministerial duties (eg in relation to regeneration or housing policy), Planning Ministers may be involved in meetings where development projects are described, and they will occasionally visit the site of a proposed development. There is a risk that such involvement of a Planning Minister may lead to a subsequent legal challenge if the project becomes the subject of a planning decision falling to the Secretary of State. A challenge may be successful if it can be shown, for example, that a Planning Minister responsible for handling a particular case has pre-judged the case, has not approached it, or has not been seen to have approached it, with an open mind, or has acted procedurally unfairly. For example, this could be by giving a developer an opportunity to put forward his case which has not been granted to other interested parties.
17. The degree of risk of successful challenge may differ depending on the stage a project has reached:
 - (i) it is at its lowest when the project is at a formative stage, well before any application for planning permission has been made. However, when such meetings or visits are being set up care needs to be taken to make clear the capacity in which the Planning Minister is involved. A Planning Minister should avoid expressing views on the planning aspects of the proposal which might be seen to prejudice the determination of any subsequent planning decision, should it come before the Secretary of State;
 - (ii) once a planning application has been made to the local planning authority and is under consideration within the planning system, the case moves closer to the point where Planning Ministers could potentially become involved in deciding whether or not to call the case in, or in determining an appeal. Planning Ministers should avoid actions which might be seen to prejudice the determination of any subsequent planning decision. They are therefore advised to decline requests for visits and for meetings with interested parties if the object is to discuss a current planning application. If such meetings do occur, the Planning Minister should make it clear that he/she will be unable to discuss the particular planning application, which, at that stage, is entirely a matter for the local planning authority concerned;
 - (iii) where a planning application has been called in or there is an appeal and is under the jurisdiction of the Secretary of State, Planning Ministers are much more exposed to the risk of legal challenge if they agree to meet interested parties. Planning Ministers are therefore strongly advised to decline requests

for visits involving meetings with interested parties at this stage. Where a meeting is unavoidable (for example where the planning proposal forms part of a wider agenda of topics for discussion), a Planning Minister should not discuss the particular planning case, and explain why not to those concerned.

18. In exercise of their policy functions, Communities and Local Government Ministers without planning responsibilities may have legitimate reasons for showing an interest in development projects. (For constituency interests see paragraph 29 below). In visiting proposed projects, or in discussing the application of national policy to those projects, they should take care to make clear that they will have no role in the planning decision-making process, and that they are unable to discuss the planning aspects of the proposal with Planning Ministers within the Department. (For representations on policy see paragraph 15 above).
19. Some major projects require decisions from Ministers in other Government Departments as well as Communities and Local Government. The advice in this guidance applies therefore where joint decisions are needed (whether under the Planning Acts, or other consent regimes) with Ministers in other Government Departments. However, in these cases it is appropriate for the Ministers concerned with joint determinations, and for officials dealing with those decisions, to be able to discuss their handling with each other. In such cases, a proper record of such discussions and outcomes must be made.

Regional Spatial Strategies and Local Development Documents

Regional Spatial Strategies

20. Handling Regional Spatial Strategies (RSS) poses different propriety issues for Planning Ministers. RSSs reflect wider Government policy in a region rather than decisions on cases which are more likely to directly affect the rights of an individual property owner. As explained in paragraph 3, responsibility for handling each RSS (the Spatial Development Strategy in London) within Communities and Local Government is allocated to a Planning Minister who has no constituency or other obvious direct connection with the region concerned.
21. The freedom the responsible Planning Minister has to discuss the RSS with other parties depends on the stage reached in the process. The Government Office (GO) in each region is responsible for handling the RSS during its various stages and coordinating input from different Departments and advising the Planning Minister at stages in which he or she has a formal role.
22. The first stage is the preparation of the draft RSS and consultation upon it carried out by the RPB. The Planning Minister might well be asked for meetings with regional interests, local authorities, other Ministers or MPs at this stage, and there is no impediment to doing so, provided a note is made to be available for public disclosure if needed.

23. Following the consultation, the RPB amends the draft RSS as appropriate and submits it to the Secretary of State. A Panel will be appointed to hold an Examination in Public. The GO will invariably be invited to submit statements and participate in discussion at the EiP on behalf of Government as a whole and the responsible Planning Minister will normally approve the GO submissions together with Ministers from other Government Departments as appropriate. If the Planning Minister has meetings or discussions with any interested parties outside Government at this stage, a note should be prepared for the public disclosure if needed.
24. Once the report of the Panel is submitted to the Secretary of State, the third stage is for the Planning Minister to agree proposed changes to the draft RSS in the light of the Panel's recommendations prior to publication. During this stage, the Planning Minister will need to discuss the scope of proposed changes with other Communities and Local Government Ministers, Ministers from other Government Departments, agencies and specialist advisory bodies. However, the Planning Minister should only enter into discussions with any other external interested parties at this stage in order to obtain factual information, and if such a meeting should take place a formal note should be made for public disclosure if needed. This is to avoid the challenge that the scope of proposed changes has been influenced by private discussions. If new relevant material is tabled which has led to a particular decision in making the proposed changes, then this must be published as part of the statement of reasons to justify them.
25. The fourth stage involves public consultation on the Secretary of State's proposed changes to the RSS. If the Planning Minister holds discussions or meetings with interested parties during this stage, especially to obtain further information, a note should be made for public disclosure if needed. If, in the course of such discussions, new issues emerge which are significant and relevant to the final decision but which have not previously been exposed, there would be a need to make these available to interested parties for comment in a further consultation round.
26. Once this consultation has closed, the last stage is the decision upon the final version of the RSS by the Planning Minister, or by the Secretary of State on his/her advice, and in consultation with other Ministers within Communities and Local Government and other Government Departments, their agencies and specialist advisory bodies as appropriate. This stage may also require consideration of specific issues by the appropriate Cabinet Committee to provide collective Government advice to the decision-making Minister. No meetings between the Planning Minister and external interested parties should take place at this stage. This is to avoid new material being made available which might then require a further consultation round. The final RSS will then be published as the Secretary of State's plan.

Local Development Schemes and Local Development Documents

27. Local planning authorities are responsible for preparing a Local Development Scheme (LDS), setting out the timetable for their preparation of Local

Development Documents (LDDs), collectively termed the Local Development Framework (LDF). The Secretary of State has formal powers to intervene as regards both the content and timing of the LDS and of any LDD. The responsible Planning Minister should decline requests for meetings from MPs, the local planning authority, delegations of local people, pressure groups or any other party who wish to make representations about the content or handling of a particular LDD.

28. In exercising formal intervention powers, the Planning Minister may need to obtain information from the local planning authority or other interested parties. This will be the case in particular in the following circumstances:
- (a) where the Secretary of State is considering matters relevant to a decision on whether to make a direction to amend a LDS or a minerals and waste development scheme, there may be a need to discuss these matters with the local planning authority or other interested parties to ascertain whether it will be necessary to make a direction, and the content of such a direction; and
 - (b) the Secretary of State may similarly need to obtain further information before she uses her powers to direct a modification or withdrawal of a LDD or in any of the other circumstances provided for in the *Planning and Compulsory Purchase Act 2004*.

In practice, such information will normally be obtained by officials in the GO, but if a meeting with the Planning Minister does occur, a note should be kept of any such discussion for public disclosure if needed.

Communities and Local Government Ministers' constituency interest in planning cases

29. In their role as Members of Parliament with constituency interests, Planning Ministers may wish to express their opinions on regional or local plans and planning applications, to a Regional Assembly, local planning authority, an Inspector or another Planning Minister as appropriate. Specific advice on this is contained in the Ministerial Code (para 6.6; see also the final sentence of this paragraph). Planning Ministers are not precluded from making representations on matters affecting their constituents' interests. But they must make clear that they are acting as their constituents' representative and expressly not as a Planning Minister, and that they will not take part in any subsequent decision on the matter. In dealing with relevant local planning authorities on planning matters in their constituencies, Planning Ministers should not do anything to influence the decision, and they should take particular care not to give any impression of wielding Ministerial influence. They are quite free to make representations therefore, so long as these are made openly and on the basis that they will be made available to all interested parties for comment. The Permanent Secretary should be advised of any such interest.

Regional Ministers

30. Each region has a minister appointed to act as advocate and promoter of specific regional interests. They have no special role in the decision-making process for planning matters, and subject to whatever other ministerial responsibilities each one might hold, are free to express views on regional/local planning matters and planning applications at the appropriate stage, and within the normal constraints of the Ministerial Code. Regional ministers may also wish to make representations in a constituency capacity where the requirements of paragraph 29 above will apply.

Other Government Departments and Agencies

31. Whilst planning decisions are for Planning Ministers, the advice of other Government Departments through ministers and officials, and their agencies is sought where appropriate, as explained above. For the purpose of this guidance, all relevant agencies and advisory bodies (most frequently the Highways Agency, Environment Agency, Natural England, CABI and English Heritage) are regarded as part of the sponsor Department, and are therefore encouraged to operate within this guidance as it applies to other Government Departments.

Parliamentary Private Secretaries

32. Parliamentary Private Secretaries to Ministers (planning and non-planning) in Communities and Local Government are not to be involved in making planning decisions, or in the consideration of planning cases. Section 3 of the Ministerial Code makes clear that "Parliamentary Private Secretaries are not members of the Government. However, they must ensure that no conflict arises, or appears to arise, between their role as a Parliamentary Private Secretary, and their private interests." The Code goes on to state that Parliamentary Private Secretaries, particularly those in departments with planning responsibilities, should take special care when making representations to Ministers about planning issues. In particular, they should not discuss planning cases with interested parties or imply that they have any influence over planning decisions. In representing their constituency interests they should abide by the advice in paragraph 29 above and sections 3 and 6 of the Ministerial Code. The Ministerial Code also requires that permanent secretaries be advised of any such interests.

Special Advisers

33. The advice of special advisers is treated in the same way as an official giving internal advice to Ministers. This applies to political advisers and to any specialist advice (for example on design matters) provided to Planning Ministers. However, planning decisions must be made solely on the basis of valid planning matters, and not by reference to political or presentational considerations.
34. Occasionally, special advisers whether in Communities and Local Government or other Departments are approached (for example by letter or telephone call) by

parties to a planning case. Any such approach should be referred to the appropriate official in the Planning Central Casework Division for action. A special advisor so approached must not give the impression that any particular advice will be decisive when decisions are taken. Where a special adviser has a private interest in a planning matter he or she must play no part in its consideration by the Department, though they are free to make representations in the usual way. They must also advise the Permanent Secretary of any such interest.

Officials

35. The activities of officials, including officials in the Government Offices in handling planning casework and in providing advice to Planning Ministers are governed by the Civil Service Code and the relevant Staff Handbook. But in addition, this guidance does cover the role of officials at all appropriate stages in taking planning decisions.

Human Rights

36. It should also be noted that Article 6 of the *European Convention on Human Rights* (which is incorporated into UK law by the *Human Rights Act 1998*) includes the right to a fair hearing. In the context of propriety guidance, the requirements arising from this right are the requirements of natural justice set out above. Article 6, and the 1998 Act, reinforce the obligation to act, and to be seen to act, fairly and even-handedly.

Annex A: Revisions to Planning Appeal Recovery Criteria

Statement presented to the House by the Parliamentary Under Secretary of State, Parmjit Dhandra on 30 June 2008.

“The majority of planning appeals in England are decided by Inspectors, but a small percentage is decided by the Secretary of State for Communities and Local Government, usually because the development is large and/or controversial. Around 27,000 appeals are made each year: in 2007, 110 appeals were determined by the Secretary of State. This statement sets out the Secretary of State’s policy on recovering planning appeals. It replaces the previous policy on which appeals are recovered for the Secretary of State’s determination (which was set out in a House of Commons Hansard Written Answer for 24 July 2006). These changes are being made following the review of the 2006 criteria promised in the White Paper, *Planning for a Sustainable Future*. They introduce 2 new criteria, one of which relates to climate change and energy and the other relates to World Heritage Sites.

In future the Secretary of State will consider recovery of appeals involving:

- Proposals for development of major importance having more than local significance.
- Proposals giving rise to substantial regional or national controversy.
- Proposals which raise important or novel issues of development control, and/or legal difficulties.
- Proposals against which another Government department has raised major objections or has a major interest.
- Proposals of major significance for the delivery of the Government’s climate change programme and energy policies.
- Any proposal 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 (as set out in paragraph 1.8 of *Planning Policy Statement 6: Planning for Town Centres* (PPS6) where that use or uses comprise(s) over 9,000m² gross floorspace (either as a single proposal or as part of or in combination with other current proposals) and which are proposed on a site in an edge-of-centre or out-of-centre location (as described in Table 2 of PPS6) that is not in accordance

with an up-to-date development plan document prepared in accordance with the policy in PPS6.

- Proposals for significant development in the Green Belt.
- Major proposals involving the winning and working of minerals.
- Proposals which would have an adverse impact on the outstanding universal value, integrity, authenticity and significance of a World Heritage Site.
- There may on occasion be other cases which merit recovery because of the particular circumstances.”

Annex B: Called-in Planning Applications – Government Policy Statement

Written answer presented to the House by Minister of State for the Regions, Regeneration and Planning, Richard Caborn on 16 June 1999.

“My right hon. Friend’s general approach, like that of previous Secretaries of State, is not to interfere with the jurisdiction of local planning authorities unless it is necessary to do so. Parliament has entrusted them with responsibility for day-to-day planning control in their areas. It is right that, in general, they should be free to carry out their duties responsibly, with the minimum of interference.

There will be occasions, however, when my right hon. Friend may consider it necessary to call in the planning application to determine himself, instead of leaving the decision to the local planning authority.

His policy is to be very selective about calling in planning applications. He will, in general, only take this step if planning issues of more than local importance are involved. Such cases may include, for example, those which, in his opinion:

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

However, each case will continue to be considered on its individual merits.”

ISBN: 978 1 4098 0573 1

ISBN 978-1-4098-0573-1



9 78 1409 80573 1 >