EXPLANATORY MEMORANDUM TO THE

PLANNING (LISTED BUILDINGS AND CONSERVATION AREAS) (AMENDMENT) (No.2) (ENGLAND) REGULATIONS 2004

2004 No. 3341

1. This explanatory memorandum has been prepared by the Office of the Deputy Prime Minister and is laid before Parliament by Command of Her Majesty.

2. Description

2.1 These Regulations amend the Planning (Listed Buildings and Conservation Areas) Regulations 1990 (S.I. 1990/1519) by extending the period of appeal to the Secretary of State against a planning decision of a local planning authorities or a failure to make such a decision. The existing appeal period of 3 months is extended to 6 months - reversing the effect of articles 5 and 5 of the Planning (Listed Buildings and Conservation Areas) (England) (Amendment) Regulations 2003 (S.I. 2003/2048) which reduced the appeal period from 6 months to 3 months.

3. Matters of special interest to the Joint Committee on Statutory Instruments *or* the Select Committee on Statutory Instruments

3.1 None.

4. Legislative Background

4.1 Section 20 of the Planning (Listed Buildings and Conservation Areas) Act 1990 provides applicants with a right of appeal against decisions of the local planning authority on applications for listed building or conservation area consent and a right of appeal against the failure to determine an application. Section 21(1) provides that any appeal must be made within such period as may be prescribed (defined in section 91(1)). Regulation 8(1) of the Planning (Listed Buildings and Conservation Areas) Regulations 1990 makes provisions for appeals under section 20 and prescribes the appeal period for the purposes of section 21(1). Parts I, II and III of Schedule 1 sets out the various notifications that must be sent to applicants. They all cross-refer to the time limit for appeal.

5. Extent

This instrument applies in relation to England only.

6. European Convention on Human Rights

Not applicable

7. Policy background

7.1 The Planning Green Paper of December 2001 proposed that the period to appeal against planning application decisions (including listed building and conservation area consents) be reduced from 6 to 3 months. It was intended to give local planning authorities, local communities and third parties greater certainty about whether or not a listed building application was to be appealed. Following full external consultation, which proved evenly divided on the proposal, the change was made, in relation to listed building appeals, by the Planning (Listed Buildings and Conservation Areas) (England) (Amendment) Regulations 2003 (SI 2003/2048) and was effective from 5 September 2003.

7.2 The Planning Inspectorate (PINS) has come under intense pressure from the rapidly increasing volume of appeals. The policy change has been a contributory factor to the increase in appeals received. It has resulted in a change in behaviour. There is a strong perception that the reduction in the appeal period has led to applicants submitting an appeal without first making any attempt to negotiate an amended application with the local planning authority and that this may have contributed to the rise in appeal numbers. Local planning authority resources are often stretched with the availability of professional planning skills limited. This makes it difficult for discussions with developers to take place even where there is good will. A PINS customer focus group has identified widespread dissatisfaction at the lack of time in which to negotiate before the time to appeal expires. There is a strong lobby from the planning community and from developers alike that the period in which to appeal should be restored to 6 months in order to allow longer to negotiate following a refusal.

7.3 In the light of these concerns, the Government has decided that it would be in the best interests of the planning system to revert the period in which to appeal to six months. This will allow both local planning authorities and appellants a longer period to negotiate alternative solutions and should thus avoid the need for an appeal in a significant number of cases. It should also result in a reduction in the number of appeals received by the Planning Inspectorate.

7.4 A similar change is being made in relation to appeals against other planning decisions by S.I. 2004/ 3340 .

8. Impact

8.1 A Regulatory Impact Assessment is attached to this memorandum.

8.2 No one in the public sector should be adversely affected as the measure is extending the time period for making an appeal. There should be no additional costs to business, large or small, associated with this proposal.

9. Contact

Julian Wheeler at the ODPM can answer any queries regarding the instrument.

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