EXPLANATORY MEMORANDUM TO

THE TOWN AND COUNTRY PLANNING (APPEALS) (WRITTEN REPRESENTATIONS PROCEDURE) (ENGLAND) REGULATIONS 2009
2009 No. 452
and the

THE TOWN AND COUNTRY PLANNING (GENERAL DEVELOPMENT PROCEDURE) (AMENDMENT) (ENGLAND) ORDER 2009
2009 No. 453

1. This explanatory memorandum has been prepared by the Department for Communities and Local Government and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 The Town and Country Planning (General Development Procedure) (Amendment) (England) Order 2009 ("the GDPO Amendment Order") makes amendments to the current Town and Country Planning (General Development Procedure) Order 1995 (SI 1995/419) ("the GDPO") . A minor amendment is made to the definition of playing pitch for the purposes of consultation requirements before the grant of planning permission under article 10 of the GDPO. The GDPO Amendment Order introduces a reduced time limit and different documentary requirements for householder appeals and makes some minor changes to the notices set out in the Schedules to the GDPO which must be served where an application or appeal is made. The changes to the notices highlight the reduced time limit for appeal and draw attention to the new procedures set out in the Town and Country Planning (Appeals) (Written Representations Procedure) (England) Regulation 2009 ("the Written Representations Regulations").

2.2 The Written Representations Regulations set out the procedures to be followed where an appeal is to be determined on the basis of representations in writing. Expedited procedures, which will only apply to suitable householder appeals, are introduced by Part 1 while Part 2 reproduce the procedures currently set out in the Town and Country Planning (Appeals) (Written Representations Procedure) (England) Regulations 2000 (SI 2000/1628) ("the 2000 Written Representation Regulations"). These procedures in Part 2 will apply to non-householder appeals or householder appeals which the Secretary of State considers should not proceed under the expedited procedures.

2.3 The instruments define "householder appeal" and "householder application" for these purposes at articles 5(b) and 3 respectively of the GDPO Amendment Order and at regulation 2(1) of the Written Representations Regulations.

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

3.1 None

4. Legislative Context

4.1 Part 3 of the Town and Country Planning Act 1990 ("the 1990 Act") makes provision for the control of development of land and in particular requires planning permission for development. Planning permission may be granted on application or by general or local development order. The GDPO sets out the procedure for applying for planning permission and under section 78 of the 1990 Act there is a right to appeal against planning decisions and failure to take such decisions.

4.2 Article 23 of the GDPO currently prescribes the time limits and the documents which must accompany the notice of appeal where an appeal is made under section 78 of the 1990 Act.

4.3 The 2000 Written Representation Regulations set out the procedure to be followed where an appeal under section 78 of the 1990 Act is being dealt with on the basis of representations in writing.

4.4 The amendments made by the GDPO Amendment Order and the Written Representations Regulations make provision for appeals under section 78 of the 1990 Act which fall within the definition of householder appeal. In particular the amendments to article 23 of the GDPO reduce the time limit within which householder appeals may be brought and the documents which must accompany the notice of appeal. The Written Representation Regulations make provision for an expedited procedure where a householder appeal is to be dealt with on the basis of representations in writing.

4.5 Article 10 of the GDPO imposes consultation requirements on a local planning authority before they grant planning permission. Under paragraph (z) of the table development which -

(a) is likely to prejudice the use, or lead to the loss of use, of land being used as a playing field; or

(b) is on land which has been used as a playing field at any time in the 5 years before the making of the relevant application and

(i) which remains undeveloped; or

(ii) allocated for use as a playing field in a development plan or in proposals for such a plan or its alteration or replacement; or

(iii) involves the replacement of the grass surface of a playing pitch on a playing field with an artificial, man-made or composite surface,

a local planning authority in England must consult the Sports Council for England before granting planning permission. The current definition of playing pitch for the purposes of article 10, means a delineated area which, together with any run off area, is of 0.4 hectares or more and is used for specified purposes. The GDPO Amendment Order amends the consultation requirements by reducing the threshold for consultation from 0.4 hectares or more to 0.2 hectares or more.

5. Territorial Extent and Application

5.1 These instruments apply to England only.

6. European Convention on Human Rights

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 The Planning Inspectorate is the agency responsible for administering the appeals system on behalf of the Secretary of State for Communities and Local Government. In England, the number of planning appeals has risen sharply from around 14,000 in 1997-98 to over 22,000 in 2007-08. Due to the current economic climate we expect around 18,000 appeals in 2009/10 – around 15% lower than the Inspectorate is currently receiving, but still significantly more than a decade ago.

7.2 Around 6000 appeals are made each year against refusals of applications for householder development. Householder development is development of an existing dwellinghouse, or development within the curtilage of such a dwellinghouse for any purpose incidental to the enjoyment of the dwellinghouse, but does not include a change of use or a change to the

number of dwellings in a building. The definition of a dwellinghouse does not include a flat for these purposes. Most householder appeals proceed via the written representations method. They rarely raise matters of policy and are usually straightforward. However, these householder appeals are subject to the same rules, timescales and procedures as larger and potentially more controversial schemes. This "one size fits all" approach is disproportionate in its impact on appellants and all those involved in the appeals process. A more bespoke, simplified process for householder appeals will benefit appellants by speeding up their appeals. In particular it should be possible to process these cases more quickly without a reduction in the quality of the decision. Accordingly, the aim is to determine those householder appeals that proceed via the expedited procedures that we are introducing within eight weeks.

7.3 The proposal to expedite householder appeals which proceed via the written representations method involves amendment of the time limits for appeal which are set out in the GDPO and the written representations procedures which are currently set down in the 2000 Written Representations Procedure Regulations. **For all householder appeals, the new period for lodging an appeal will be 12 weeks, a reduction from the existing 6 month appeal period.** For householder appeals that proceed on the basis of representations in writing, the new expedited procedures as set out in Part 1 of the Written Representations Regulations, will be followed. This procedure omits the stage at which the appellant and local planning authority respond to each others representations. Part 1 of the Regulations also omits the stage for comments by interested parties on the appeal, although comments made by them at the application stage will be taken into account.

7.4 Where a determination has been made under section 319A of the1990 Act that a householder appeal will proceed on the basis of representations in writing it is expected that most householder appeals will proceed through the expedited procedure. However, there may be circumstances where issues arise as the appeal progresses which require further information to be sought from the parties or other interested persons. In such instances the appeal will be transferred out of the expedited procedure and will either follow part 2 of the Written Representations Regulations or, after a further determination under section 319A of the 1990 Act, the rules governing the hearings or inquiry appeal procedure. This flexibility will ensure that all relevant material considerations are taken into account.

7.5 This new approach to householder appeals has been trialled on a voluntary basis in a number of local authorities over the past year, albeit with some limitations imposed by the legislation in force at the time. To date, the overwhelming majority of appeals dealt with under this procedure have been determined within 12 weeks. The Government is confident that the new legislation to enable the introduction of the expedited procedures and the economies of scale from operating the new system across England makes the 8 week decision target a realistic one.

7.6 Finally, the amendment to the definition of a playing pitch in Article 10 of the GDPO will allow the Sports Council for England to offer views on a greater number of planning applications, thus ensuring that local planning authorities take account of the Council's views before making a planning decision which could potentially involve the loss of playing pitches. This proposal was announced in July 2002 as a further measure to protect playing fields alongside the publication of Planning Policy Guidance 17: Planning for Open space, Sport and Recreation.

Consolidation

7.7 There is currently no intention to consolidate the Town and Country Planning (General Development Procedure) Order 1995.

8. Consultation outcome

8.1 The consultation document "Improving the Appeal Process in the Planning System – Making it proportionate, customer focused, efficient and well resourced", published in May 2007, set out a number of proposals to improve the appeals system. One of these proposals was to expedite the way in which householder appeals which proceed via the written representations method are dealt with. The consultation paper was published alongside the Planning White Paper "Planning for a Sustainable Future" which resulted in the Planning Act 2008. The consultation period ran for three months and a total of 291 responses were received to the Improving the Appeal Process consultation. Of these responses 47% were from Government bodies, 19% were from business, 16% from environment and community groups, 13% from professionals and academics and 4% were from the general public.

8.2 The proposal to expedite, or "fast track" householder appeals was regarded positively by 83% of respondents with 12 % of respondents viewing the proposal negatively and 5% expressing neutral views on the proposal. The greatest percentage of negative responses came from business and professional/academic respondents and one of the main areas of concern expressed both by those that viewed the proposal negatively and by some government organisations that viewed it positively was about the impact of the reduced time limit in which to appeal. The consultation document proposed an eight week time limit for lodging householder appeals, and concerns were raised that this reduction in the appeal time limit (from six months) would be too great and not allow applicants time to pursue negotiations with the local authority which may avoid the need to proceed to appeal. There was a fear that this would lead to an increase in the number of appeals and difficulties for the Planning Inspectorate in processing this increased volume. The Government therefore announced in its response to consultation replies, published in November 2007, that it would pursue this proposal but would take a phased approach to the reduction in the appeal time limit for householder appeals. The time limit being introduced is therefore 12 weeks. A full summary of responses and the Government response can be accessed via the following links:
http://www.communities.gov.uk/publications/planningandbuilding/improvingappealssummary
http://www.communities.gov.uk/publications/planningandbuilding/improvingappealresponse

9. Guidance

9.1 Amended guidance on the procedures for handling appeals on the basis of representations in writing has been produced which will be available on the Planning Inspectorate's website. This replaces DETR Circular 05/2000 "Planning Appeals: Procedures (Including Inquiries into Called-In Planning Applications)".

10. Impact

10.1 There will be a positive impact on the public, business, charities or voluntary bodies in their role as appellants through faster decision-making for planning appeals regarding householder development, leading to time savings - the average time for a householder appeal to be decided (from when it is lodged) will decrease from approximately 17 weeks to eight weeks. Costs for these parties may arise from the removal of the opportunity for third parties to comment again on a proposal at the appeal stage.

10.2 The impact on the public sector is administrative savings for local authorities which have not been monetised and monetised savings to the Planning Inspectorate which we estimate at approximately £235,000 per year beginning in 2010/11 (see attached Impact

Assessment). There will be some initial familiarisation costs for staff in local authorities and the Planning Inspectorate.

10.3 An Impact Assessment is attached to this memorandum.

10.4 In relation to the amendment to the GDPO described at paragraph 4.5, no impact assessment has been completed as the costs arising from this change fall solely to the public sector and are estimated to be approximately £13,000 annually. This is below £5million per annum, above which an impact assessment is required.

11. Regulating small business

11.1 The legislation applies to small businesses where they are representing appellants in a householder appeal or where they are acting as appellants themselves, but it is considered that there is no greater impact on small businesses employing up to 20 people than on other businesses.

11.2 The approach taken is therefore to apply the legislation equally to small businesses as to other appellants. The legislation lifts burdens on appellants in that it removes several stages from the current written representation process thus requiring less information to be provided by the appellant. The process established by the legislation should deliver quicker decision for appellants and where permission is granted as a result of the appeal process will enable any development work on the ground to start earlier than if the appeal was processed to current timetables.

11.3 The decision on whether or not to take specific action to assist small business is taken as a result of consideration of the consultation responses and the evidence outlined in the accompanying impact assessments which suggests that the expedited procedure will deliver benefits for all appellants including small businesses. The Small Business Service and Federation of Small Businesses were consulted on this proposal and did not express any views specific to this proposal.

12. Monitoring & review

12.1 The policy will be reviewed on an ongoing basis by Communities and Local Government. In addition, the Government has set a target that, in the financial year 2009/10, 80% of fast tracked appeals will be decided within eight weeks and success against this target will be monitored on an annual basis.

13. Contact

Katie Jones at the Department for Communities and Local Government Tel: 0207 944 6530 or email: Katie.jones@communities.gsi.gov.uk can answer any queries regarding these instruments.

Summary: Intervention & Options

Department /Agency:	Title:	
Department for Communities and Local Government	**Impact Assessment of introducing an expedited process for the determination of householder appeals**	
Stage: Final	**Version:** 2	**Date:** March 2009
Related Publications: "Improving the Appeal Process in the Planning System - Making it proportionate, customer focused, efficient and well resourced"(May 2007)		

Available to view or download at:

http://www.communities.gov.uk/documents/planningandbuilding/pdf/improvingappealconsultation.pdf

Contact for enquiries: Katie Jones **Telephone:** 020 7944 6530

What is the problem under consideration? Why is government intervention necessary?

Around 6000 appeals are made each year to the Secretary of State (in practice, to the Planning Inspectorate) in relation to householder applications. This works out at around 31% of the total number of planning appeals determined annually. Most appeals relating to householder applications proceed via the written representations method and are the least complex cases, rarely raising matters of policy. However, they are subject to the same rules, timescales and procedures as larger and potentially more controversial schemes. This "one size fits all" approach is disproportionate and reduces the efficiency of the appeal system overall. A simplified process for householder appeals would introduce a more proportionate approach and speed up the appeals system to the benefit of all users.

What are the policy objectives and the intended effects?

The policy objective is to improve proportionality and speed in the processing of householder appeals. This will mean that householders will get appeal decisions quicker. It will also mean that Inspector resource will be freed up so that they can deal with other appeals more readily, which in turn means quicker decisions, thus benefiting all users of the appeal system.

What policy options have been considered? Please justify any preferred option.

Option A: Introduce an expedited process for the determination of householder appeals (to be known as the "Householder Appeals Service")

Option B: The status quo - continue to deal with householder appeals in the same way as all other appeals.

Option A is the preferred option as it would introduce more proportionality into the appeals system, which in turn would improve speed, leading to faster decisions and more efficient use of resources.

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects? There will be ongoing review of the policy impacts.

Ministerial Sign-off For final stage Impact Assessments:

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible Minister:

Kay Andrews.....Date: 4th March 2009

Summary: Analysis & Evidence

Policy Option: A	Description: Impact Assessment of introducing an expedited process for the determination of householder appeals

COSTS

ANNUAL COSTS

One-off (Transition)	Yrs
£ 4,000	
Average Annual Cost (excluding one-off)	
£	

Description and scale of **key monetised costs** by 'main affected groups'

There will be familiarisation costs for the Planning Inspectorate and LPAs. The training costs for Planning Inspectorate staff have been monetised. These represent a one-off familiarisation cost of approximately £4,000.

Total Cost (PV) **£ 4000**

Other **key non-monetised costs** by 'main affected groups' Third parties would not be given an opportunity to comment again at the appeal stage. However, any representations they made at the application stage would be taken into account at the appeal stage.

BENEFITS

ANNUAL BENEFITS

One-off	Yrs
£	
Average Annual Benefit (excluding one-off)	
£ 235,000	

Description and scale of **key monetised benefits** by 'main affected groups'

Planning Inspectorate: We calculate that, from 2010/11 the Planning Inspectorate could make annual savings of £10,000 for administrative staff and £225,000 for inspectors based on current average salaries.

Total Benefit (PV) **£ 1,730,000**

Other **key non-monetised benefits** by 'main affected groups' Time savings for appellants: The average time for a householder appeal to be decided (from when it is lodged) will decrease from approximately 18 weeks to approximately 8 weeks.

Key Assumptions/Sensitivities/Risks There are no anticipated savings in the first year (2009/10) due to the bulge of householder appeals (around 1200) that results from the reduction in the appeal period from 6 months to 12 weeks. Anticipated number of householder appeals (excluding those failing to be determined by the LPA) is 5750 per annum.

Price Base Year2009	Time Period Years 10	**Net Benefit Range** (NPV) £	**NET BENEFIT** (NPV Best estimate) £ 1,726,000

What is the geographic coverage of the policy/option?			England	
On what date will the policy be implemented?			April 2009	
Which organisation(s) will enforce the policy?			Planning Inspectorate	
What is the total annual cost of enforcement for these organisations?			£	
Does enforcement comply with Hampton principles?			Yes	
Will implementation go beyond minimum EU requirements?			N/A	
What is the value of the proposed offsetting measure per year?			£	
What is the value of changes in greenhouse gas emissions?			£	
Will the proposal have a significant impact on competition?			No	
Annual cost (£-£) per organisation (excluding one-off)	Micro	Small	Medium	Large
Are any of these organisations exempt?	No	No	N/A	N/A

Impact on Admin Burdens Baseline (2005 Prices) (Increase - Decrease)

Increase of £ Decrease of £ **Net Impact** £

Key: **Annual costs and benefits: Constant Prices** **(Net) Present Value**

This Impact Assessment relates to the proposal to introduce an expedited process for the determination of householder appeals.

For the purposes of this Impact Assessment, the cost benefit analysis adopts the following format:

- Context
- Sectors and groups affected
- Policy options considered and preferred option.
- Costs and benefits of each option

The status quo is used as a benchmark to enable analysis of the costs and benefits of the proposal.

Context

Under the Town and Country Planning Act 1990 (as amended), an applicant has a right of appeal to the Secretary of State against a local authority's decision on a planning application (or failure to take one). The Planning Inspectorate is the agency responsible for administering the appeal system on behalf of the Secretary of State.

In 2007-08 the Planning Inspectorate dealt with over 22,000 planning appeals in England. This represents a significant increase from around 14,000 in 1997-98. Due to the current economic climate we anticipate around 18,000 appeals in 2009/10 – around 15% lower than the inspectorate is currently receiving, but still significantly more than a decade ago. It is too early to forecast more accurately appeal numbers beyond 2009/10 and so we assume there will be around 18,000 planning appeals annually in future years.

Around 6000 appeals are made each year to the Secretary of State (in practice, to the Planning Inspectorate) in relation to householder applications. A householder application is an application which seeks planning permission for development to, or within the curtilage of a dwelling house (e.g. extensions, alterations, garages, swimming pools, walls, fences, vehicular accesses, porches and satellite dishes).

The current appeals system does not distinguish between different types and scales of development in terms of procedure. Therefore all appeals dealt with by written representations, whether for a small house extension or a large office building, follow a similar process. Most appeals relating to householder applications proceed via the written method. They are generally the least complex cases and rarely raise matters of policy, yet they are subject to the same rules, timescales and procedures as larger and potentially more controversial schemes. We consider that this "one size fits all" approach is disproportionate in its impact on appellants and all those involved in the appeal process. A more bespoke, simplified process would benefit householders by speeding up their appeals.

Background to the preferred option

The proposal to expedite or "fast track" the processing of householder appeals which proceed via written representations was consulted on in the Consultation Document *"Improving the Appeal Process in the Planning System – Making it proportionate, customer focused, efficient and well resourced"*[1], published in May 2007. A total of 291 responses were received to the appeals consultation overall, with 204 responses to the question "Do you agree with the proposal to fast track householder and tree preservation order appeals?". The proposal to fast track householder appeals was regarded positively by 83% of respondents who answered that question.

[1] www.communities.gov.uk/documents/planningandbuilding/pdf/improvingappealconsultation.pdf

The proposal was altered slightly in response to concerns expressed in consultation replies. The Consultation Document proposed an eight week time limit for appealing against decisions on householder applications. Some respondents raised concern that this reduction in the appeal time limit (from six months) would be too great and not allow applicants sufficient time to pursue negotiations with the local authority, which may circumvent the need to proceed to appeal. The Government therefore announced in its response to consultation replies, published in November 2007, that it would pursue this proposal but would adopt a phased approach to the reduction in the time limit to appeal against decisions on householder applications, reducing the time limit from six months to 12 weeks on commencement of the secondary legislation, with a view to working towards an appeal period of eight weeks at a later date.

Given the strong support for the proposal in response to the consultation, it was decided that the Planning Inspectorate would prepare for the legal introduction of the proposal by implementing a pilot scheme known as the "Householder Appeal Service". This commenced in January 2008. So far, 76 local authorities have signed up on a voluntary basis. To date, 96% of appeals dealt with under this procedure have been determined within 12 weeks (It is not possible for inspectors to determine a large number of cases within eight weeks without changes required in secondary legislation following the Planning Bill*)*. This compares to an average of 18 weeks to determine a householder appeal under the non-expedited route

Policy options

Option A: Introduce an expedited process for the determination of householder appeals

Under this option, an expedited process would be used for the determination of householder appeals which proceed via written representations. For householder appeals, there will be a shorter period of twelve weeks from the date of the local authority's decision within which to submit an appeal. For householder appeals deemed suitable for written representations, the expedited procedure would apply. The appellant and the local planning authority would be required to submit all appeal documentation at the beginning of the appeal process. Importantly, the local authority will be required to forward to the Planning Inspectorate copies of all pertinent documents contained on the local authority's case file, including any third party representations. Third parties would already have been advised by the local authority at neighbour notification that any representations made at the application stage would be forwarded to the Secretary of State for consideration in the event that the application proceeded to appeal. There will be no six or nine week stage for the submission of representations, although the Secretary of State (or her inspectors) will have the discretion to request further information. A compressed timetable would be applied so that the inspector would determine the appeal, with a site visit, within a tighter target of eight weeks.

While it is expected that the majority of householder applications which proceed to appeal would be suitable for the expedited appeal process, there are a small number of cases which would not be suitable and therefore would need to be excluded, for example, applications which had not been determined by the local planning authority (as there would be no case file to forward to the inspectorate).

Option B: The status quo

The Planning Inspectorate would continue to deal with householder appeals in the same way as all other appeals. Householders could continue to submit appeals up to six months after the initial planning decision is made and then have to wait on average for 18 weeks for a decision.

Preferred option

Option A is the preferred option. Option A would meet the objective of introducing more proportionality into the appeal system, so that resources are better distributed and efficiency increased. This should result in quicker decisions, which will benefit all users of the system.

Sectors and groups affected

- Appellants (including business, voluntary sectors, charities and the public)
- Local authorities
- Planning Inspectorate
- Third parties (including business, voluntary sectors, charities and the public)

Costs and benefits

Option A

Benefits

- Cost savings for the Planning Inspectorate: We estimate a saving to the Planning Inspectorate on administrative duties for householder appeals of approximately £235,000 a year. The estimate is based on the following assumptions:
    - There are 5750 householder appeals a year (excluding those failing to be determined by the local planning authority);
    - Cases are dealt with by both administrative staff and inspectors at the Planning Inspectorate. Inspectors (Higher Planning Inspector (HPI) grade) currently spend about an hour on each case. As a full time Inspector is assumed to work 1291 hours a year, this leads to annual savings equivalent to 4.5 inspectors. The hour saving is based on the reduction in preparation time for these cases which has been determined through the current pilot exercise. This saving can only be realised when the Planning Inspectorate introduce new programmes of work for inspectors, which is planned for 2010/11, and when local authorities fully adopt the system.
    - Administrative staff spend approximately 10 minutes on each case. This leads to savings equivalent to 0.5 FTE administrative staff.
    - Savings for Planning Inspectorate staff are calculated using current average salary information as shown in the table below.

Table 1 Annual average salary details for Planning Inspectorate staff

Grade	Average annual current salary[2]
Inspector (HPI)	£50,514
Administrative Officer	£ 20,879

[2] Includes ERNIC and full superannuation costs

- Time savings for appellants: The average time for a householder appeal to be decided (from its "starting date", i.e. when an appeal is lodged) will decrease from approximately 18 weeks[3] to eight weeks.
- Administrative savings for local authorities: Local authorities would no longer need to prepare a separate appeals statement on householder appeals and could rely on the report prepared for the application decision. In practice, however, this saving is likely to be counter-balanced by the need for the application report to be sufficiently detailed.
- Quicker decisions should give more certainty to everyone involved.

Costs

- Opportunity for third party comments: Third parties would not be given the opportunity to comment again at the appeal stage. Any representations they made at the application stage would be taken into account at the appeal stage. Nevertheless, the Secretary of State is required, for the sake of natural justice, to take into account any material information that comes before her.
- Familiarisation costs for LAs, Planning Inspectorate or appellants: there will be one-off costs stemming from the new procedures. Estimates of those one-off costs to Planning Inspectorate have been calculated as the opportunity costs of staff undertaking training based on the number of days which will be needed for training in the new procedures and the grade of the staff receiving training.

Table 2: Training Costs for Planning Inspectorate based on Planning Inspectorate estimates of salary, staff needing training and time spent not working

Training	Grade	Number of staff	Time	Cost
Training for chart staff	EO/AO	1 EO, 16 AO	EO – 1 day, AO – 0.5 days	£880
Training for procedure staff	EO	20 EO	1 day	£2480
Drop-in training	EO/AO/AA	8 EO, 27 AO, 30 AA	1 hour	£665
			TOTAL COSTS	£4025

- Appellants and LPAs lose the opportunity to submit representations later in process – but this is mitigated by being able to submit all information in the early stages of an appeal.

Option B

Benefits

- Familiarity: appellants and public sector workers would not need to learn a new set of procedures.

Costs

[3] Average time taken to decide written representations cases calculated by Planning Inspectorate (January 2009) (Range 8 – 45 weeks)

- There are no additional costs with this option, but a resource intensive and disproportionate system would continue, and appellants would continue to experience delay.

Conclusion

The benefits of option A outweigh the costs and make it the preferred option. Twelve weeks should be sufficient time within which to have pursued negotiations with an authority to overcome differences on a refused application and subsequently submit an appeal if still necessary. The reduced time period between the planning application and appeal that will result from the shortening of the appeal period from six months to 12 weeks will reduce the likelihood of any changes, thus reducing the need for parties to the appeal, including third parties, to add further comments. In addition we are taking steps, through legislation, to ensure that third parties will be properly informed about how their representations will be handled and taken into account at appeal stage. Furthermore the Secretary of State (or her inspectors) will have the discretion to request further information. We believe that householder appeals will be determined quicker via the Householder Appeal Service, to the benefit of all those involved in the appeal process.

Specific Impact Tests

Small Firms Impact Test

The new expedited procedures will apply to householder development only. Small businesses often serve as agents for householder planning applications - i.e. preparing and submitting the planning application documentation, negotiating with council officers to ensure a successful outcome, etc. Some of these small businesses are firms of architects / draftspersons, while others are building companies who secure planning permissions for householders and construct the development on their behalf (e.g. conservatories, loft conversions). In the event that a householder application proceeded to appeal and the expedited procedure were used, small firms who act as agents on householder planning applications would benefit from quicker decisions, and potentially faster work for them on the ground.

The Small Business Service and Federation of Small Businesses were consulted on this proposal as part of the wider consultation on the Planning White Paper. They did not express any views specific to this proposal.

Competition Assessment

The competition filter was applied to this proposal. Many householder appellants use agents to represent them in the planning process, as noted above. However, this proposal would not affect the market structure, penalise new firms or place restrictions on the services or products that firms provide, and thus would not have any restrictive effects on competition.

Environmental Impact

There are no environmental effects expected from this proposal.

Race, disability and gender equality impacts

We have considered these possible effects and carried out the required screening assessment. We do not consider that there would be disproportionate impacts to different groups from this proposal in terms of race, disability or gender equality.

The Planning Inspectorate has started to monitor appellants' race, age, gender and disabilities through a confidential, voluntary questionnaire. This information will be used to inform policies, including this one, as they are taken forward. The Planning Inspectorate will also monitor the effectiveness and impact of implementing this proposal, including any complaints made by those who feel aggrieved by this process.

Rural, health and other social effects

We have considered these possible effects. We do not consider that there would be disproportionate impacts to different groups from this proposal in terms of rural, health or other social effects.

While, under Option A, third parties would not have the opportunity to submit representations at appeal stage, any representations they made at the application stage would be forwarded by the Local Planning Authority to the Planning Inspectorate to be considered at appeal stage also.

Human Rights

Since this proposal does not prevent people from exercising their right to appeal against a planning application decision, nor does it prevent people from putting forward their views (albeit that third party comments have to be made at the planning application stage), we do not consider that this proposal would have ECHR/Human Rights implications.

Other impact tests

We have considered other impact tests – legal aid, sustainable development and carbon assessment. We consider that there would be no demonstrable impact arising from this proposal in these areas.

Other risks

We believe that we have adequately mitigated potential risks that have been identified with the proposal.

When we consulted on the proposal in the consultation document "*Improving the Appeal Process in the Planning System – Making it proportionate, customer focused, efficient and well resourced"*, published in May 2007, an eight week time limit was proposed for householder appeals. Concerns were raised by several respondents that this reduction in the appeal time limit (from six months) would be too great in that it would not allow applicants sufficient time to pursue negotiations with the local authority and therefore potentially avoid the need to proceed to appeal. There was concern that the short appeal time period of eight weeks could lead to an upsurge in appeal numbers. The Government therefore announced in its response to consultation replies, published in November 2007, that it would pursue this proposal but would adopt a phased approach to the reduction in the appeal time limit for householder case, reducing the appeal period from six months to 12 weeks, with a view to working towards an appeal period of eight weeks at a later date. This should give parties the opportunity to negotiate with the local authority and reapply for planning permission using their "free go". If they remain unsuccessful, there should still remain enough time for an appeal to be submitted within the 12 week appeal time limit.

Enforcement, sanctions and monitoring

Applicants will be made aware of the time limit within which to proceed to appeal - and in particular that in many cases a shorter time period of 12 weeks may apply. Any appeals not made within the given time period may not be accepted by the Planning Inspectorate.

The Government has set a target that, in the financial year 2009/10, 80% of fast tracked appeals will be decided within eight weeks. The Planning Inspectorate will monitor the Householder Appeals Service against this target, as well as monitoring the number of appeals determined via this service. Any appeals which start off as a householder appeal to be dealt with by written representations but which are deemed inappropriate for determination via the Householder Appeals Service will be determined via the standard written representations method instead. The Planning Inspectorate will monitor the number and type of cases deemed which fall into this category.

In cases determined via the Householder Appeal Service, just as now, there would be a right of challenge to the High Court by any person aggrieved by the decision.

Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.

Type of testing undertaken	***Results in Evidence Base?***	***Results annexed?***
Competition Assessment	Yes	No
Small Firms Impact Test	Yes	No
Legal Aid	Yes	No
Sustainable Development	Yes	No
Carbon Assessment	Yes	No
Other Environment	Yes	No
Health Impact Assessment	Yes	No
Race Equality	Yes	Yes
Disability Equality	Yes	Yes
Gender Equality	Yes	No
Human Rights	Yes	No
Rural Proofing	Yes	No

Annexes

Appendix A2

EQUALITY IMPACT ASSESSMENT

Part 1: SCREENING

1	Name of Policy	This is:
		☐x New policy
	Resourcing the Introducing an expedited process for the determination of householder appeals – the "Householder Appeal Service" appeals service – introducing a fee for appeals	☐ A change to existing policy
		☐ Existing policy
		☐ A pilot or programme

2 Screening undertaken by:

Director or Divisional Manager	Michelle Banks
Policy Writer/Lead	Katie Jones
Other people involved in the screening	Alison Edwards Siobhan Fox

3 Brief description of policy, including aims, objectives and projected outcomes

The policy objective is to improve proportionality and speed in the processing of householder appeals. This will mean that householders will get appeal decisions quicker. It will also mean that inspector resource will be freed up so that they can deal with other appeals more readily, which in turn means quicker decisions, thus benefiting all users of the appeal system.

To achieve this objective we will introduce an expedited process for the determination of householder appeals which proceed via written representations. This will be known as the "Householder Appeal Service". For householder appeals there will be a shorter appeal period of twelve weeks. For those householder appeals deemed suitable for written representations, the expedited procedure will apply. The appellant and local planning authority will be required to submit all of the appeal documentation at the beginning of the appeal process. Importantly, the local planning authority will be required to forward to the Planning Inspectorate copies of all pertinent documents contained on the local authority's case file, including third party representations. Third parties will already have been advised by the local authority at neighbour notification that any representations made at the application stage would be forwarded to the Secretary of State for consideration in the event that the application proceeded to appeal. A compressed timetable will be applied so that the inspector would determine the appeal, with a site visit, within a tighter target of eight weeks.

4 Relevance to Equality and Diversity Duties

Does the policy have relevance to the department's:

☐ **Race Equality Scheme?**
☐ **Disability Equality Scheme?**
☐ **Gender Equality Action Plan?**
☐ **Other (departmental or national) equality priorities?**

Think about the policy from the perspectives of different groups in society. Will the policy affect any group(s) differently to others? Will it differentially affect:

☐ **Black, Asian or other ethnic minority and/or cultural groups?**
☐ **Disabled People?**
☐ **Women *or* men *or* transgender people?**
☐ **Lesbians, gay men and/or bisexual people?**
☐ **Different religious communities/groups?**
☐ **Older people *or* children & young people?**
Any other groups?

Are any of these groups likely to have different needs?

In the consultation responses, concerns were raised about the expedited process applying to Gypsy/Traveller cases as only a small number of legal firms are prepared to take on their cases which would make it more difficult for such groups to lodge an appeal within the shortened appeal period. However, a householder planning application is an application which seeks planning permission for development to, or within the curtilage of a dwelling house (e.g. extensions, alterations, garages, swimming pools, walls, fences, vehicular accesses, porches and satellite dishes). Thus Gypsy and Traveller cases are unlikely to fall within the ambit of "householder application" and thus would not be subject to the shortened appeal period or the expedited procedure for determination. If a Gypsy or Traveller was submitting a planning application in relation to a dwelling house (as opposed to a caravan or similar), then they would be unlikely to need a specialist Gypsy/Traveller planning lawyer to help them on their case so the issue about getting legal representation from a limited group of legal firms would not exist.

Furthermore, appeals that raise extraordinary issues relating to the status of the appellant, for example relating to agricultural workers, Gypsies/Travellers or another specific needs group, or relating to the need for/availability of accommodation for such groups, will be unsuitable for determination via the written representations method. The Householder Appeal Service would only apply to householder appeals determined via written representations.

5 Evidence Base for Screening

List the evidence sources used to make the screening assessment (i.e. the *known evidence*)
We have held meetings with key stakeholder groups (Gypsy and Traveller Taskforce, Inclusive Environmental Group, Race Equality Advisory Group,

gender equality professionals, planning professionals, developers, etc). This proposal was included in the consultation document "Improving the appeals process in the Planning System – Making it proportionate, customer focused, efficient and well resourced" (May 2007) and copies of this document were sent to an even wider range of stakeholder groups than those with which meetings were held.

Consider whether there are any significant gaps in the known evidence base and list here your recommendations for how those gaps will be filled.

We do not know the propensity of BME groups, different age groups, religious groups or people of different disabilities to appeal compared to other social groups. The Planning Inspectorate has recently begun to collect data on the ethnicity, age, and gender of appellants, using data provided by the appellants voluntarily. We will use this to monitor both the propensity to appeal, the appeal type (i.e. whether it is a householder appeal, etc) and the appeal outcome by such groups. The Planning Inspectorate will also monitor the effectiveness and impact of implementing this proposal, including any complaints made by those who feel aggrieved by this process.

6 Remembering the requirements of the equality duties:

- **Elimination of Discrimination and Harassment**
- **Tackling Disadvantage and promoting Equality of Opportunity**
- **Promoting Good Relations between different racial groups**
- **Promoting positive attitudes towards disabled people**
- **Increasing the participation of disabled people and other under-represented groups in civic and community life**

and the general equality and human rights principles for good policy-making:

- *Will there be/has there been consultation with all interested parties?* Yes
- *Are proposed actions necessary and proportionate to the desired outcomes?* Yes
- *Where appropriate, will there be scope for prompt, independent reviews and appeals against decisions arising from the proposed policy?* Yes
- *Does the proposed policy have the ability to be tailored to fit different individual circumstances?* Yes. It is recognised that some cases will not be appropriate for determination via the Householder Appeal Service.
- *Where appropriate, can the policy exceed the minimum legal equality and human rights requirements, rather than merely complying with them*? N/A

From the known evidence and strategic thinking, what are the key risks (adverse impacts) and opportunities (positive impacts & opportunities to promote equality) this policy might present?

	Risks	Opportunities
Race	Appeals for householder	We do not know the

	development will need to be submitted more quickly. However, twelve weeks should be sufficient time to negotiate with the local planning authority and subsequently submit an appeal if still necessary.	propensity of BME groups, different age groups, religious groups or people of different disabilities to appeal compared to other social groups. However, householder appeals will be determined quicker via the Householder Appeal Service, to the benefit of all those involved in the appeal process.
Disability	Appeals for householder development such as alterations to enable people to cope with a disability in the home will need to be submitted more quickly. However, twelve weeks should be sufficient time to negotiate with the local planning authority and subsequently submit an appeal if still necessary.	As householder appeals will be determined quicker via the Householder Appeal Service, applications for alternations to enable people to cope with a disability in the home will be determined quicker, to the benefit of those involved in the appeal process.
Gender		
Sexual Orientation		
Age		
Religion/Belief		
Human Rights	Third parties would not be given the opportunity to comment again on an application at appeal stage. Any representations made at the application stage would be taken into account at the appeal stage.	All the information provided to the local planning authority at the application stage would be submitted at the beginning of an appeal, including representations by third parties, thus resulting in time savings for all parties to the appeal.

7 Proportionality
Describe the scale and likelihood of these risks and opportunities:

Twelve weeks should be sufficient time to negotiate a failed or undetermined application with the local planning authority and subsequently submit an appeal if still necessary. With regard to third party comments, the reduced time period between the planning application and appeal that will result from the shortening of the appeal period from six months to 12 weeks will reduce the likelihood of any changes, thus reducing the need for parties to the appeal, including third parties, to add further comments. In addition we are taking steps, through legislation, to ensure that third parties will be properly informed about how their representations will be handled and taken into

account at appeal stage. Furthermore the Secretary of State (or her inspectors) will have the discretion to request further information. We believe that householder appeals will be determined quicker via the Householder Appeal Service, to the benefit of all those involved in the appeal process.

8 Decision

Set out the rationale for deciding whether or not to proceed to full impact assessment (refer to guidance notes)

We believe that this policy is unlikely to have adverse impacts on specific groups of people and that there will be sufficient safeguards in place around this policy to mitigate any negative impacts on specific sectors of society, not least the ability to deem that certain appeals are not suitable for determination via the Householder Appeal Service.

The Planning Inspectorate will continue to monitor the characteristics of appellants and this data will be taken into account during our ongoing monitoring and review of this policy.