EXPLANATORY MEMORANDUM TO THE

TOWN AND COUNTRY PLANNING (GENERAL DEVELOPMENT PROCEDURE) (ENGLAND) (AMENDMENT) ORDER 2004

2004 No. 3340

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 This Order amends the Town and Country Planning (General Development Procedure) Order 1995 (S.I.1995/419) 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 6 to 8 of the Town and Country Planning (General Development Procedure) (England) (Amendment) Order 2003 (S.I. 2003/2047) 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 78 of the Town and Country Planning Act 1990 provides applicants with a right of appeal against planning decisions of the local planning authority and a right of appeal against the failure to determine an application. Section 78(3) provides that any appeal must be made within such time as may be prescribed by development order (defined in section 336(1)). Article 23 of the Town and Country Planning (General Development Procedure) Order 1995 makes provisions for appeals under section 78 and prescribes the appeal period for the purposes of section 78(3). Article 25 makes provision for registers of applications - article 25(11) cross-refers to the time limit for appeal in article 23. Part 2 of Schedule 1 to the 1995 Order sets out the notification that must be sent to applicants when a local planning authority refuses planning permission or grants it subject to conditions. It also cross-refers 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 planning application was to be appealed. Following full external consultation, which proved evenly divided on the proposal, the change was made, in relation to planning decisions by the Town and Country Planning (General Development Procedure)(England) (Amendment) Order 2003 (SI 2003/ 2047) 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; appeal receipts should have gone back to about 1600 per month following the initial increase, but are instead at the 2000 per month level. 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 listed building decisions by S.I. 2004/ 3341.

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.

PDCD
Eland House, 4/J1
Bressenden Place
London
SW1E 5DU
Tel: 020 7944 3936 or e-mail: julian.wheeler@odpm.gsi.gov.uk