**EXPLANATORY MEMORANDUM TO**

# THE TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND) (AMENDMENT No. 2) ORDER 2013

**2013 No. 2136**

# THE TOWN AND COUNTRY PLANNING (HEARINGS AND INQUIRIES PROCEDURE) (ENGLAND) (AMENDMENT) RULES 2013

**2013 No. 2137**

# THE TOWN AND COUNTRY PLANNING (APPEALS) (WRITTEN REPRESENTATIONS PROCEDURE AND ADVERTISEMENTS) (ENGLAND (AMENDMENT) REGULATIONS 2013

**2013 No. 2114**

# THE PLANNING (LISTED BUILDINGS AND CONSERVATION AREAS) (AMENDMENT No. 2) (ENGLAND) REGULATIONS 2013

**2013 No. 2115**

**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.

This memorandum contains information for the Joint Committee on Statutory Instruments.

## 2. Purpose of the instrument

The purpose of these instruments is to speed up the process for determining appeals relating to applications for planning permission and applications for listed building and conservation area consent. They require appellants to submit their full case up front with the aim of reducing the time taken to determine the appeal. They also introduce statements of common ground in hearings, expand the scope of the truncated written representations procedure and further align the procedure for advertisement and listed buildings appeals with planning appeals.

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

None.

## 4. Legislative Context

4.1 Section 9 of the Justice and Tribunals Act 1992 allows the Lord Chancellor to make Rules for inquiries and hearings held by or on behalf of Ministers. Section 323 of the Town and Country Planning Act 1990 ("the 1990 Act") allows the Secretary of State to prescribe by regulations the procedure for appeals determined under that Act through a written representations procedure rather than by way of an inquiry or hearing.

*Appeal types – planning, adverts, listed buildings and conservation areas*

4.2 Section 78 of the 1990 Act provides for appeals against certain determinations by the local planning authority. It provides for appeals against the determination, or non-determination, of applications for planning permission, or approval of matters related to conditional planning permission or permitted development.

4.3 Section 220 of the 1990 Act provides for Regulations relating to the control of advertisements. Part 3 of the Town and Country Planning (Control of Advertisements) (England) Regulations 2007 (S.I. 2007/783) relates to when express consent is required from the local planning authority. Regulation 17 of, and Parts 3, 4 and 5 of Schedule 4 to those Regulations, relate to appeals. They apply, with modifications, sections 78 and 79 of the 1990 Act. The modified section 78 includes the time limits for making an appeal relating to advertisements, and the documents that must be served with a notice of appeal. The modified sections 78 and 79 also give the appellant and the local planning authority the right to request to be heard by an Inspector before the appeal is determined.

4.4 Section 20 of the Planning (Listed Buildings and Conservation Areas) Act 1990 is similar to section 78 of the 1990 Act ("the Listed Buildings Act"), but relates only to applications for listed buildings consent. It is applied to applications for conservation area consent by section 74 of that Act.

*Making an appeal*

4.5 Article 33(2) of the Town and Country Planning (Development Management Procedure) (England) Order 2010 (S.I. 2010/2184) sets out the time within which an appeal relating to an application for planning permission must be made. Article 33(3) sets out the documents that must accompany an appeal form. Article 33(1)(b) sets out which of those documents must be copied to the local planning authority.

4.6 Regulation 8 of the Planning (Listed Buildings and Conservation Areas) Regulations 1990 (S.I. 1990/1519) gives an applicant 6 months from the date of receipt of the relevant determination to appeal to the Secretary of State. It also sets out the documents that must accompany an appeal form.

*Appeals procedure*

4.7 On receipt of a valid appeal, the Secretary of State can determine the procedure that will be used to determine the appeal under section 319A of the 1990 Act. This could be written representations, a hearing or an inquiry, and this provision applies to all appeals made under section 78 of the 1990 Act. In relation to a listed building or conservation area appeal, the appellant can request that a hearing or inquiry rather than written representations is used to determine their appeal.

4.8 The procedures for determining the appeals referred to above are set out in 4 separate instruments. The procedure for inquiries determined by the Secretary of State is set out in the Town and Country Planning (Inquiries Procedure) (England) Rules 2000 (S.I. 2000/1624). For inquiries determined by appointed inspectors, the procedure is set out in the Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2000 (S.I. 2000/1625).

4.9 The procedure for hearings is in the Town and Country Planning (Hearings Procedure) (England) Rules 2000 (S.I. 2000/1626). Finally, the written representations procedure, for appeals made under section 78 of the 1990 Act, is in the Town and Country Planning (Appeals) (Written Representations Procedure) (England) Regulations 2009 (S.I. 2009/452); Part 1 contains the truncated procedure for householder appeals, and Part 2 contains the procedure for other appeals.

*The minor commercial appeals service*

4.10 Parts A to D of the Schedule to the Town and Country Planning (Use Classes) Order 1987 (S.I. 1987/764) set out which types of development are in the same use class. Planning permission is not required to change the use of a building to another use in the same use class. The truncated written representations procedure referred to in paragraph 4.9 is being expanded to apply to minor development to a building being used for a purpose in Part A.

*The Planning Inspectorate*

4.11 Under paragraph 1(1) of Schedule 6 to the 1990 Act, paragraph 1(1) of Schedule 3 to the Listed Buildings Act, and the Town and Country Planning (Determination of Appeals by Appointed Persons) (Prescribed Classes) Regulations 1997 (S.I. 1997/420), appeals under those Acts can be determined by Inspectors appointed by the Secretary of State.

## 5. Territorial Extent and Application

These instruments extend to England and Wales, and apply to England only.

## 6. European Convention on Human Rights

As the instruments are subject to the negative resolution procedure and do not amend primary legislation, no statement is required.

## 7. Policy background

7.1 An appeal may be made against a decision by a local planning authority to refuse a planning application, or against any conditions imposed with a grant of planning permission or against the failure of a local planning authority to take a decision. The appeal is made to the Secretary of State for Communities and Local Government. The procedure for determining an appeal will depend on the complexity of the planning issues in each case. In the majority of cases, an appeal will be determined by written representations. In circumstances where it is necessary for the Inspector to ask questions about the evidence, a hearing will be held. In the most complex cases, and where it is necessary to test evidence under cross-examination, an inquiry will be held. The Planning Inspectorate administers the planning appeals system on behalf of the Secretary of State.

7.2 In 2012/13 there were 338,800 decisions on planning applications made under section 70 of the Town and Country Planning Act 1990 ("the 1990 Act"). 294,700 (87%) were granted planning permission. In the same year, the Planning Inspectorate determined 14,250 planning appeals, allowing 35%. This means that around 4% of decisions were appealed, and just over 1% of decisions were subsequently allowed at appeal.

7.3 Although more than 80% of appeals were determined within 26 weeks, in 2012/13, some took longer. Any delay in decision-taking holds up growth and imposes costs on parties. A review of the appeals procedures was announced in the autumn statement of 2011 to address timely decision-taking in support of economic growth. A consultation was carried out between November and December 2012 on proposals for how the planning appeals process could be sped up and streamlined, so that earlier decisions can be taken. This legislation puts a number of these proposals into effect.

7.4 Essentially, the changes should mean that existing stages in the process happen sooner. Apart from the introduction of statements of common ground for hearings, and the mandatory provision of all evidence prior to an inquiry, parties are not required to provide additional evidence to what they provide now – but they may have to produce it earlier in the process, while still having the same amount of time to prepare. By front-loading the process, with more information required earlier, the appeals process becomes more transparent and efficient, and decisions can be taken earlier.

7.5 These changes apply to appeals relating to applications for planning permission, and listed building and conservation area consent. The Town and Country Planning (Development Management Procedure) (England) (Amendment No. 2) Order 2013 requires that, when an appeal is made under section 78 of the 1990 Act, against the refusal of planning permission, against

any conditions of a grant of permission or consent or failure to determine an application, the appellant must submit their full statement of case. The Planning (Listed Buildings and Conservation Areas) (Amendment No. 2) (England) Regulations 2013 make these changes in relation to listed building and conservation area appeals. There is a six month period for an appeal to be made, during which this statement can be prepared. The full statement of case will comprise all written material including their appeal statement and any supporting documents. Currently the appellant does not have to submit their full case until six weeks after the start of the appeal process, although best practice and guidance encourages submission of the full case when the appeal is made.

7.6 Local planning authorities will be required to notify interested parties of the appeal, and submit their questionnaires, within one week of the appeal start date, a week earlier than now. This new requirement is in the Town and Country Planning (Hearings and Inquiries Procedure) (England) (Amendment) Rules 2013 and the Town and Country Planning (Appeals) (Written Representations Procedure) (England) (Amendment) Regulations 2013. Earlier submission of the appellant's full case and quicker notification by the local planning authority means that interested parties can still have four weeks in which to comment, but their comments will be due a week earlier than currently. They will also have had the benefit of seeing the appellant's full case before submitting their comments, leading to increased transparency and efficiency. This in turn should enable the appellant and local planning authority to comment on interested parties' representations earlier in the process.

7.7 For inquiries, all parties are currently required to provide a list of the documents they intend to use to support their case to the Secretary of State and each other. Copies of those documents can then be requested as necessary. Under these changes, in the Town and Country Planning (Hearings and Inquiries Procedure) (England) (Amendment) Rules 2013, the appellant, the local planning authority, the Mayor of London, where relevant, and other parties to the inquiry would be required to provide their full statement of case, which would include copies of all the documents. This is to ensure that all parties have sight of each of the main parties' full case, including the supporting evidence.

7.8 A statement of common ground is currently only required in relation to inquiries. These changes amend the process relating to these statements, and introduce them into the hearings procedure. Currently, a statement of common ground is agreed and submitted by the appellant and local planning authority (and, where relevant, the Mayor) within 6 weeks of the appeal start date, which is confirmed by the Planning Inspectorate once they have validated the appeal and determined the procedure. This process is being changed to require a draft statement of common ground to be submitted by the appellant at the time of appeal, if the appellant considers that their appeal should be determined by a hearing or inquiry, through the Town and Country Planning (Development Management Procedure) (England) (Amendment No 2) Order 2013 and the Planning (Listed Buildings and Conservation Areas)

(Amendment No. 2) (England) Regulations 2013. The finalised statement of common ground should be agreed with the local planning authority (and, where relevant, the Mayor of London) by week five, one week earlier than currently for inquiries. This will allow parties to focus on the disputed issues and not waste time and effort on issues of mutual agreement. This change in requirement is contained in the Town and Country Planning (Hearings and Inquiries Procedure) (England) (Amendment) Rules 2013.

7.9 With the evidence from all parties submitted earlier in the process, earlier appeal event dates can be set. These new dates are prescribed in the Town and Country Planning (Hearings and Inquiries Procedure) (England) (Amendment) Rules 2013. Hearings should be started within 10 weeks of the appeal start date (currently 12) and inquiries should be started by week 16 (currently 20).

7.10 Together, these measures should enable earlier appeal decisions to be made and improve transparency in the system, helping to increase the confidence of all parties in the integrity of the appeals process.

7.11 An expedited written representations appeals procedure for householder appeals, known as the Householder Appeals Service, was introduced in 2009 by the Town and Country Planning (Appeals) (Written Representations Procedure) (England) Regulations 2009. The Householder Appeals Service has reduced the time taken to determine less complex, small scale cases, through an expedited process which is largely based on the information submitted at the planning application stage. The Town and Country Planning (Appeals) (Written Representations Procedure) (England) (Amendment) Regulations 2013 expand this expedited procedure to apply it to two types of minor commercial appeals. Firstly, it will now apply to appeals against refusal of express advertisement consent. Secondly, it will apply to appeals against refusal of planning permission for minor ground floor development to certain commercial premises ("minor commercial development"). The list of premises is set out in a Schedule which reproduces Part A of the Schedule to the Town and Country Planning (Use Classes) Order 1987.

7.12 The time allowed to submit advertisement consent appeals will remain at 8 weeks. In relation to minor commercial development appeals the time limit will be 12 weeks, as it currently is in relation to householder appeals. The expedited procedure removes the opportunity for additional comments from interested parties, and for the main parties to comment on each others' representations. Any representations made by interested parties at the application stage will be considered as part of the appeal. As such, it is only appropriate for straightforward cases. Cases which become unsuitable for the expedited process will be transferred to an appropriate, alternative procedure.

7.13 The Town and Country Planning (Appeals) (Written Representations Procedure) (England) (Amendment) Regulations 2013 and the Planning (Listed Buildings and Conservation Areas) (Amendment No. 2) (England) Regulations 2013 increase the alignment of advertisement, listed building and

conservation area consent appeals to Section 78 planning appeals. Appellants will be required to copy the details of their appeal to the local planning authority, which is currently not a statutory obligation. In relation to listed building and conservation area consent appeals, the time to appeal will be aligned – a marginal change from six months from receipt of the decision to six months from the date of the decision. In relation to advertisement appeals, notice of an appeal will now be required to be given on a form obtained from the Secretary of State.

**Consolidation**

7.14 The November 2012 consultation (referred to in paragraph 7.4) referred to our intention to consolidate the Rules and Regulations relating to the planning appeals process. Having prioritised the implementation of improvements to the process described in this memorandum, the Government will continue to consider options for consolidation.

## 8. Consultation outcome

8.1 The consultation document "Technical review of planning appeal procedures" was published on 1 November 2012. It set out a number of proposals to improve the appeals system. The consultation ran for six weeks, until 13 December 2012. 158 responses were received. Of these, 55 were from local planning authorities, 34 from parish / town councils, 18 from planners / consultants, 15 from professional trade associations, 14 from developers and 3 from landowners.

8.2 The proposals to streamline planning appeals were welcomed by the majority of respondents, although some had reservations over the practical implementation of parts of the proposals.

8.3 Of the 144 who commented on the proposal that the appellant should submit their full case on appeal, 85% were in support. However, some thought it may lead to appellants concentrating on an appeal rather than resolving matters with the local planning authority. We consider that six months is ample time to appeal – which should be the option of last resort – and that in putting a case together for appeal, it should clarify to the appellant what the disputed issues are and whether these are resolvable with the local planning authority. 76% supported the reduction in time to one week for the local planning authority to notify interested parties. A minority of local planning authorities thought this was too onerous – but some local planning authorities said they already did this.

8.4 On the proposal for the appellant to submit a draft statement of common ground on appeal, and to introduce statements of common ground for hearings, 89% of the 141 who commented were supportive.

8.5 83% of the 134 who commented on the proposal to start hearings and inquiries sooner were supportive. A minority of respondents were concerned that this was not achievable due to constrained resources in the public sector.

Planning Inspectorate performance will be monitored to evaluate the impact of the changes.

8.6 Of the 127 responses to the proposal for a minor commercial appeals process, 87% were supportive. There was concern about the removal of the opportunity for interested parties to comment, but they would be advised of the potential for this at the planning application stage, and any comments submitted then would be forwarded to the Secretary of State for consideration as part of the appeal. 112 commented on the types of appeal which could be included in the minor commercial appeals process, with 94% supporting inclusion of shop front appeals and 95% advertisement consent appeals.

8.7 There was support for increased alignment of different appeal types to planning appeals, with 94% of the 125 respondents who commented supporting this proposal. 75% of 114 respondents supported increased alignment with the new procedures.

8.8 A full summary of the responses to the consultation and the Government response can be found at the following link.
https://www.gov.uk/government/consultations/technical-review-of-planning-appeal-procedures

## 9. Guidance

Amended guidance on the revised appeals procedures will be available on the Planning Inspectorate's website ahead of this legislation coming into force, at the following link.
http://www.planningportal.gov.uk/planning/appeals/guidance/guidanceontheappealprocess

## 10. Impact

10.1 There is likely to be a positive impact on business, charities and voluntary bodies as appellants, through faster decision-taking for planning appeals, leading to time savings and earlier development or exit, depending on the outcome of the appeal. This benefit is estimated to be £2.7m per annum. The impact on these groups as interested parties is estimated to be cost neutral, although they will benefit from earlier sight of the main parties' evidence.

10.2 There are likely to be additional costs for the Planning Inspectorate, because of the need to meet stricter deadlines, reducing their flexibility. There is an estimated transition cost of £0.4m. Thereafter, the additional costs to the Planning Inspectorate are estimated at £0.1m per annum.

10.3 The Regulatory Policy Committee is currently considering a copy of the validation Impact Assessment. The cleared validation Impact Assessment will be published at https://www.gov.uk/government/publications

## 11. Regulating small business

11.1 The legislation applies to small businesses where they are representing appellants or 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. Overall, the legislation will lead to a benefit to business, including small businesses, despite the new burden of having to produce a statement of common ground for hearings, which account for 11% of cases.

11.3 None of the responses to the consultation requested exemptions for small businesses - the responses recognised the benefits to businesses from speedier decision-taking.

## 12. Monitoring & review

The policy will be reviewed on an ongoing basis by the Department for Communities and Local Government. In addition, the Government has set a performance measure for the Planning Inspectorate that it should decide 80% of inquiries within 22 weeks, 80% of hearings within 14 weeks, 80% of written representations in 14 weeks and 80% of expedited written representations in 8 weeks.

## 13. Contact

If you have any queries regarding the instrument please contact Bethan MacDonald at the Department for Communities and Local Government, Tel: 030344 42802 or email: bethan.macdonald@communities.gsi.gov.uk.