

EXPLANATORY MEMORANDUM TO
THE TOWN AND COUNTRY PLANNING (DETERMINATION OF APPEALS BY
APPOINTED PERSONS) (PRESCRIBED CLASSES) (AMENDMENT) (ENGLAND)
REGULATIONS 2006

2006 No. 2227

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. Description

2.1 These Regulations amend the Town and Country Planning (Determination of Appeals by Appointed Persons) (Prescribed Classes) Regulations 1997 to give Appointed Persons (Planning Inspectors) the power to determine listed building consent appeals and listed building enforcement notice appeals in respect of Grade I and Grade II* listed buildings.

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 These Regulations amend the Town and Country Planning (Determination of Appeals by Appointed Persons) (Prescribed Classes) Regulations 1997 by extending the classes of appeal which Planning Inspectors may determine on the Secretary of State's behalf. Specifically, they transfer to Planning Inspectors, the jurisdiction to determine listed building consent appeals and listed building enforcement notice appeals in respect of Grade I and Grade II* listed buildings.

5. Extent

5.1 This instrument applies to England.

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 Under the Town and Country Planning (Determination of Appeals by Appointed Persons) (Prescribed Classes) Regulations 1997 Planning Inspectors do not have the power to determine listed building consent and listed building enforcement notice appeals concerned with Grade I and II* listed buildings. Such appeals must currently be determined by the Secretary of State. Planning Inspectors can, however, determine listed building consent and listed building enforcement notice appeals in respect of Grade II (unstarred) listed buildings. Buildings are listed to protect the best of the country's architectural heritage and the grading reflects the relative architectural or historic interest. Buildings are listed Grade I as being of exceptional interest, and Grade II* as being particularly important buildings of more than special interest. Buildings are listed Grade II (unstarred) when they are of special interest warranting every effort to preserve them.

7.2 The objective of these Regulations is to transfer jurisdiction to determine listed building consent and listed building enforcement notice appeals in respect of Grade I and II* listed buildings in England from the Secretary of State to Planning Inspectors. The Secretary of State will, however, retain the power to consider whether the circumstances of any particular case warrant recovery of an appeal for her own determination. Such circumstances might for example be if the case is linked to a much larger planning application which is being recovered and cannot be considered on its own, or where the proposals raise significant heritage policy matters. Which appeals are to be recovered by the Secretary of State will be decided on a case by case basis.

7.3 This change will help to speed up one area of the planning system by giving Planning Inspectors powers to determine these appeals on the Secretary of State's behalf. It will give greater certainty to local authorities, developers and owners of listed buildings about timing of decisions, but without putting at risk buildings which are an important part of our national heritage.

7.4 Many appeals involving Grade I or Grade II* listed buildings relate to relatively small scale proposals, but they make up a significant proportion of all planning appeals that must be decided by the Secretary of State. For these types of cases, the Secretary of State rarely disagrees with the recommendations of the Planning Inspector, who will have particular knowledge of the case and specialist architectural expertise relevant to listed buildings. Annually the Secretary of State determines around 30-50 of these listed building consent and listed building enforcement notice appeals.

7.5 Following an internal review of planning casework by the former Office of the Deputy Prime Minister in 2004 a three month public consultation was undertaken on Listed Buildings Casework and 36 responses were received. The proposed changes in relation to these Regulations were welcomed by the majority of respondents of which most were planning related bodies (39%) and local planning authorities (33%), with some responses from other government departments (the Planning Inspectorate and Ministry of Defence), public individuals, and private sector bodies (eg the Country Land and Business Association). English Heritage, the Government's statutory adviser on the historic environment, broadly welcomed the proposals. In the main, respondents considered that the specialist Planning Inspectors assigned to produce reports for the Secretary of State on listed building appeals have the requisite expertise

to determine the majority of such cases themselves, particularly as the Secretary of State very rarely disagrees with the recommendations contained within their report. Analysis of the consultation responses is provided in the attached Regulatory Impact Assessment.

7.6 These Regulations do not raise any issues of political or legal importance.

8. Impact

8.1 A Regulatory Impact Assessment is attached to this memorandum at Annex A.

8.2 The impact on the public sector is to speed up this area of the planning system and to give greater certainty in the decision making process for these appeals. It is expected that the time taken on the administration and decision making process for these appeals will be reduced by up to eight weeks.

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Full Regulatory Impact Assessment (RIA)

Title of Proposal

Town and Country Planning, England

Amendments to the Town and Country Planning (Determination of Appeals by Appointed Persons) (Prescribed Classes) Regulations 1997 (SI 420/1997)

Purpose and Intended Effect of Measure

Objective

To simplify the process by which listed building consent and listed building enforcement notice appeals concerning Grade I and Grade II* listed buildings are determined and thus reduce the times in which decisions are made.

Simplification of the process should reduce the period of time in which decisions relating to listed building consent and listed building enforcement notice appeals concerning Grade I and Grade II* listed buildings are made, by transferring jurisdiction to determine these appeals to appointed persons (or Planning Inspectors), while reserving the Secretary of State's power to recover jurisdiction in any particular case.

Background

In 2004 the former Office of the Deputy Prime Minister (ODPM)¹ commissioned an internal review of the handling of planning casework. This made specific recommendations concerning appeals involving Grade I and Grade II* listed buildings.

Buildings are listed when placed on statutory lists of buildings of ‘special architectural or historic interest’ by the Secretary of State for Culture, Media and Sport on advice from English Heritage. Buildings are listed Grade I as being of exceptional interest, and Grade II* as being particularly important buildings of more than special interest. Buildings are listed Grade II (unstarred) when they are of special interest.

Should anyone wish to undertake works for the demolition of a listed building, or for its alteration or extension in any manner which would affect its character as a building of special architectural or historic interest, approval for these must be gained in the form of Listed Building Consent. Generally speaking, under the Planning (Listed Buildings and Conservation Areas) Act 1990, an application for Listed Building Consent is made to the appropriate Local Planning Authority. If the authority fails to determine the application within a specified time, refuses the application, or grants consent subject to conditions, the applicant may appeal to the Secretary of State against that decision.

If works to a listed building are undertaken without the required consent the Local Planning Authority may serve an enforcement notice. Again, there is a right of appeal to the Secretary of State against the decision.

At present, listed building consent and listed building enforcement notice appeals in connection with Grade I and Grade II* buildings are known as ‘non-transferable’ appeals as jurisdiction to determine them has not been transferred by the Secretary of State to Planning Inspectors. Under the terms of the Town and Country Planning (Determination of Appeals by Appointed Persons) (Prescribed Classes) Regulations 1997, these categories of appeal are reserved for determination by the Secretary of State.

Thus, at present, Grade I and Grade II* listed building consent and enforcement notice appeals come to the Secretary of State for determination, while those relating to Grade II (unstarred) buildings are generally determined by Planning Inspectors. The Inspectors appointed to hear these cases have particular expertise in the field.

When hearing a non-transferable appeal, the Inspector produces a report and recommendations on the works for consideration by the Secretary of State. It is rare for the Secretary of State to disagree with the recommendations of her Inspector, who will have particular knowledge of the case and expertise relevant to listed buildings. Requiring ministerial consideration and determination of these appeals delays the final decision.

Rationale for government intervention

Listed building consent and enforcement notice appeals for works that are often of minor scale or significance are subject to a lengthy administrative process before final decisions are made. These cases could be determined by Inspectors on the Secretary of State’s behalf and the process could be simplified accordingly. This would remove the need for the Secretary of State’s consideration of the report and recommendation made by the Planning Inspector.

¹ The Department for Communities and Local Government (DCLG) was created on 5 May 2006.

Planning Inspectors have the requisite expertise to determine the majority of these cases and in most cases the Secretary of State agrees with the Planning Inspector's recommendation.

Consultation

Within government

The former Office of the Deputy Prime Minister (ODPM)¹; Department of Culture, Media and Sport (DCMS); the Planning Inspectorate; Government Offices for the English Regions; and English Heritage.

Public consultation

The partial Regulatory Impact Assessment was published as part of the public consultation between 1 March and 24 May 2006. 36 responses were received to the consultation. The proposed changes were welcomed by the majority of respondents, of which most were planning related bodies (39%) and local planning authorities (33%), with some responses from other government departments (the Planning Inspectorate and Ministry of Defence), public individuals, and private sector bodies (eg the Country Land and Business Association).

English Heritage, the Government's statutory adviser on the historic environment, has broadly welcomed the proposals. In the main, respondents considered that the specialist Planning Inspectors assigned to listed building appeals have the requisite expertise to determine the majority of such cases themselves, particularly as the Secretary of State very rarely disagrees with their recommendations. The consultation led to no changes in policy and we continue to support option B.

Options

Two options have been identified, and these are considered in more detail below:

Option A – Do nothing

Option B – Amend the Regulations to enable Inspectors to decide the majority of Grade I and II* listed building consent and enforcement notice appeals, with the Secretary of State reserving the ability to recover jurisdiction in particular cases

During development of policy options, a third option, that of amending the Regulations so that no listed building appeals ever come before the Secretary of State for decision, was considered but discounted, as it might put at risk buildings which are important to our national heritage.

Listed buildings are an important part of our national heritage and we consider this option to be undesirable because there may be circumstances which indicate that the listed building appeal should be recovered by the Secretary of State for her own determination. Such circumstances could include those coming under one of the criteria outlined below in the Parliamentary Under Secretary of State's written statement of 24 July 2006. We consider that decisions on recovery should continue to be made on a case by case basis, preserving the Secretary of State's discretion to recover cases in line with policy considerations to ensure consistency.

Option A – Do nothing

The Regulations would remain the same and all listed building consent and enforcement notice appeals concerning Grade I and Grade II* listed buildings would be determined by the Secretary of State, irrespective of the scale and significance of the works proposed. Inspectors would continue to make recommendations to the Secretary of State on these appeals, but as they would remain non-transferable, would not be able to decide them.

*Option B – Amend the Regulations to enable Inspectors to decide the majority of Grade I and Grade II * listed building consent and enforcement notice appeals, with the Secretary of State reserving the ability to recover jurisdiction in particular cases.*

The removal of listed building consent and enforcement notice appeals concerning Grade I and Grade II* listed buildings from the category of non-transferable appeals would enable Inspectors to determine the majority of these directly, with the Secretary of State maintaining the power to recover an appeal when she considers it appropriate.

Under Schedule 3, paragraph 3(1) of the Planning (Listed Buildings and Conservation Area) Act 1990 the Secretary of State may recover for her own determination any appeal which would otherwise fall to be determined by an appointed person. The current criteria for recovery of appeals are set out in the DCLG's Parliamentary Under Secretary of State's parliamentary written statement of 24 July 2006:

1. 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.
2. Proposals for development of major importance having more than local significance.
3. Proposals giving rise to substantial regional or national controversy.
4. Proposals which raise important or novel issues of development control, and/or legal difficulties.
5. Proposals which involve any main town centre use or uses (as set out in paragraph 1.8 of PPS6) where that use or uses comprise (s) over 9,000 sqm 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 PPS6²) that is not in accordance with an up-to-date development plan document prepared in accordance with the policy in PPS6.
6. Proposals for significant development in the Green Belt.
7. Major proposals involving the winning and working of minerals.
8. Proposals against which another Government department has raised major objections or has a major interest.
9. Cases which can only be decided in conjunction with a case over which Inspectors have no jurisdiction (so-called "linked cases").
10. There may on occasion be other cases which merit recovery because of the particular circumstances.

Costs and Benefits

Sectors and groups affected

Owners of listed buildings
Developers
Local Planning Authorities
English Heritage

² Table 2 in Planning Policy Statement 6: *Planning for Town Centres* (PPS6) defines types of location.

We have checked with policy officials at DCLG and these options do not have any racial, health or rural fairness impacts. During the public consultation we received no evidence to the contrary. We have also carried out an equality impact assessment screening and no impacts on equality groups were identified.

Breakdown of costs and benefits

Option A – Do nothing

The existing process and its associated costs in terms of time and resources would remain the same, with Grade I and Grade II* listed building consent and enforcement notice appeals remaining in the ‘non-transferable’ category. Planning Inspectors would remain unable to decide these, with all such appeals coming before the Secretary of State for decision. Inspectors would remain able to decide Grade II (unstarred) listed building consent and enforcement notice appeals.

*Option B – Amend the Regulations to enable Inspectors to decide the majority of Grade I and Grade II * listed building consent and enforcement notice appeals, with the Secretary of State reserving the ability to recover jurisdiction*

The main benefits of transferring jurisdiction to Inspectors would be in terms of time and resource savings, as the administrative and decision making processes would be shortened, thus speeding up the planning system for these cases. Applicants would be notified of the decision on the case up to 8 weeks sooner than at present. Since DCLG would no longer be involved in considering these cases there will be some administrative budget savings for the Department. Annually the Secretary of State currently determines around 30-50 listed building consent and listed building enforcement notice appeals.

There may be some limited additional administrative costs to the Planning Inspectorate in their issuing of decisions on these appeals, but DCLG would retain the costs associated with issuing decisions on the more significant appeals recovered for determination by the Secretary of State. These administrative costs would include the printing and postage of decision letters and reports.

There are no environmental or social costs or benefits associated with Options A or B.

Small Firms’ Impact Test (SFIT)

The proposed changes will not have an impact on one particular business sector or group.

Competition Assessment

In line with Cabinet Office guidance a competition filter test was carried out in autumn 2005 and this demonstrated that the proposals will have very little effect on competition. None of the options will influence competition, being restricted to legislative changes affecting public sector bodies. This is a simplification measure that will speed up the determination of listed building consent and listed building enforcement notice appeals by streamlining the process. This will speed up this area of the planning system and will give greater certainty to local authorities, developers and owners of listed buildings about timescales for decisions.

Enforcement, Sanctions and Monitoring

No new or specific 'enforcement' is necessary here. Recourse would be through the courts. We have considered all views and options after consultation, and will monitor the changes.

Implementation and delivery plan

The Town and Country Planning (Determination of Appeals by Appointed Persons) (Prescribed Classes) Regulations 1997 will be amended, so that as of the commencement date, jurisdiction to determine listed building consent and listed building enforcement appeals concerning Grade I and Grade II* listed buildings is transferred to Inspectors. The Secretary of State will reserve the power to recover jurisdiction in any particular cases. The Regulations will not apply to appeals for which notice of appeal was given before these Regulations come into force on 1 October 2006.

Post Implementation Review

We will annually monitor the number of listed building consent and enforcement notice appeals being determined by the Secretary of State in conjunction with the Planning Inspectorate to ensure that the Regulations are simplifying the process for these appeals and reducing the time taken to determine them.

Summary and Recommendation

When the partial RIA was produced, option B was recommended because it would simplify and speed up the process for determining decisions relating to listed building consent and listed building enforcement notice appeals for Grade I and Grade II* listed buildings, whilst reserving the Secretary of State's reserve power to recover jurisdiction in any particular case. In the light of the consultation we continue to support option B.

Declaration and Publication

I have read the regulatory impact assessment and I am satisfied that the benefits justify the costs.

Signed:...*Kay Andrews*.....

Date:.....14th August 2006.....

Baroness Andrews
Parliamentary Under Secretary of State
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