



SIX PUMP COURT

PLANNING UPDATE, APRIL 2009: HOUSEHOLDER APPEALS

(Note by William Upton and Adaku Oragwu, barristers)

This is a fairly-extraordinary change to the planning appeal system, which will require a lot of careful preparation if it is going to work. The changes start with the application process – and need to be included in any neighbour notification by the local planning authority.

The aim is to determine those householder appeals that proceed via the expedited appeal procedures within 8 weeks. That is the Ministers' declared wish. However, one wishes that they had not – the successful pilot project that the Planning Inspectorate ran managed to include third party representations and to deliver decisions within 12 weeks. These new rules cut out 3rd party rights altogether.

So, how do they get within the 8 weeks ?

Householder Applications and Appeals

Article 23 of the GDPO 1995 (as amended by the 2009 Order), and Part 1 of the new Written Representation rules (S.I. 2009 No.452) introduce the provisions in England for **“householder applications”** and **“householder appeals”**.

The new method of appeal process is imposed from Monday 6th April 2009 on all those appeals which relate to dwelling houses – referred to as “householder appeals” - and it does not apply to flats.¹

This has required changes to be made to the application process. Any application for development of an existing dwelling house, or within its curtilage,² must be made on a “householder application” form, and use a different ownership form. The Council will also send out a different notification form to the neighbours.³

¹ The 2009 Regs state that a “dwellinghouse” does not include a building containing one or more flats, or a flat contained within such a building (reg.2(1)).

² Article 3 of the 2009 Order introduces the new term into article 1(2) of the GDPO 1995. Note that a “householder application” does not include (i) an application for change of use, or (ii) an application to change the number of dwellings in a building.

³ The notification form must now include the words: “As this is a householder application, in the event of an appeal against a refusal of planning permission, which is to be dealt with on the basis of representations in writing, any representations made about this application will be sent to the Secretary of State, and there will be no further opportunity to comment at appeal stage.”

If the local planning authority refuses the application, the Householder Appeal service will apply.⁴ If they fail to determine the application, or grant conditional permission, and the householder wishes to appeal against this, the normal appeal rules will apply.

The Householder Appeal process is then an expedited form of the written representations process:

- (i) The time-limit for making a householder appeal is only 12 weeks from the date of the decision, and not the normal 6 months.
- (ii) The regs have reduced the number of documents which are required to be forwarded with the appeal form (which, under the new provisions, must be completed for an appeal to be made) to the Secretary of State.⁵
- (iii) The notice of appeal and the documents accompanying it shall comprise the appellant's representations in relation to the appeal. (reg.7(1)). There is no scope for amendments to be submitted.
- (iv) The Inspector will then send notice of the appeal both to the appellant and to the local planning authority. The local planning authority then has 5 days to respond to the appeal by submitting an appeal questionnaire along with any supporting documents (reg.5). This therefore comprises the local planning authority's representations in relation to the appeal. It is intended that this will normally be submitted electronically.
- (v) This procedure omits the stage at which the appellant and local planning authority respond to each others representations.
- (vi) Third parties are excluded from the appeal, and must rely on their initial representations to the LPA. They are invited to withdraw any representations, but that is all (reg.6).
- (vii) The Inspector will visit the site alone, with the appellant present in some cases only to provide access to the site.
- (viii) The Planning Inspectorate will publish the appeal decision on the Planning Portal website, but it will not send them a copy of the appeal decision to third parties. It expects the LPA to provide any third parties who have specifically requested one with a copy.

There is a default mechanism whereby the Secretary of State can decide that the appeal system should revert to a normal appeal (reg.9). 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 (under reg.8). 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 the new section 319A of the 1990 Act) the rules governing the hearings or inquiry appeal procedure.

So, if you don't want to be subject to the expedited procedure – as an appellant, a Council or a third party – shout!

⁴ Article 5(b) of the 2009 Order adds the specific definition of "householder appeal" for these purposes, by inserting a new paragraph (7) into article 23 of the GDPO 1995: that it means an appeal in relation to any householder application "except an appeal against the grant of any planning permission, consent, agreement or approval which is granted subject to conditions."

⁵ (i) a copy of the application which was sent to the local planning authority which has occasioned the appeal; (ii) any other plans, documents or drawings relating to the application which were not sent to the authority, except any plans, documents or drawings relating to amendments to the application proposed after the authority have made their determination; (iii) the notice of the decision or determination.