

HISTORIC ENVIRONMENT ADVISORY COUNCIL FOR SCOTLAND

RESPONSE TO THE CONSULTATION PAPER "MODERNISING PUBLIC INQUIRIES"

Introduction

HEACS welcomes the consultation paper "Modernising Public Local Inquiries" and endorses the general perception that improvements are needed in the way that the system operates presently. It would, however, not wish to see any reduction in the rigour in which inquiries are conducted, nor in the final direction.

The responses follow the same order and numbers used in the consultation paper. While many of the questions relate specifically to planning inquiries the wider application of the suggested reforms are noted, and the comments set out below reflect more specifically the implications for the historic environment.

Responses to questions

Q1 In order to improve the operation of the public local inquiry process should we be focussing on the time taken to process the appeal or called-in application; the cost, level of certainty about process; and the need to make it easier for the public to be involved, or are there other important matters to be addressed?

A1 Yes, undoubtedly, to the first part of the question; HEACS would endorse also the need to make it easier for the public to be involved

Q2 Should public local inquiries into planning proposals be re-named "planning inquiries"?

A2 Yes, but subject to the proviso set out in clause 12 that similarly appropriate titles should be devised for cases relating primarily to appeals against decisions relating to the historic environment

Q3 Should the right of an appellant or planning authority to a planning appeal inquiry or hearing be further qualified? If so do you have a preference for Option 1, Option 2, or Option 3? Alternatively do you have any other suggestions that might be effective in achieving this objective?

A3 HEACS believes strongly in reducing the adversarial approach to inquiries, and whilst it has no preference for any of the particular options set out it would endorse the principle of a low-level approach initially, through mediation, as suggested in Question 20 and the answer given to it

Q4 Where an appeal is lodged against non-determination, should the planning authority be required to indicate whether they would have granted or refused the application within, say, 2 weeks of the appeal being lodged?

A4 Yes

Q5 Should incomplete appeals be rejected and returned to the applicant?

A5 Yes

Q6 Should the present maximum period for production of the full statement of case be reduced from 8 weeks to 4 weeks from the issue of the relevant notice?

A6 Yes, except possibly for major cases

Q7 Are there other ways of shortening the essential pre-inquiry stages that could be as, or more, effective?

A7 HEACS is not aware of any, but if they emerge out of the consultation responses they should be examined

Q8 Should all parties to a planning inquiry who intend to lead oral evidence be required to register their intention to do so by a specified date; and also to disclose their case in advance on the same structured and consistent basis?

A8 Yes; but subject to the discretion of the reporter only in *exceptional* cases, such as may relate to material changes in legislation or circumstances which may have changed from when the application was determined

Q9 Do you subscribe to the view that the pre-inquiry process set by the Inquiries Procedure Rules does not allow sufficient time for proper preparation?

A9 Generally not; but a distinction may need to be drawn for major cases involving many participants

Q10 Once statements of case have been lodged should the Scottish Ministers give more explicit guidance, even if no pre-inquiry meeting is held, on the essential issues that they wish to see addressed in evidence to the inquiry?

A10 Yes

Q11 Should the Scottish Ministers indicate the material that must be considered by the appellant or applicant and the planning

authority in order to identify areas of agreement and disagreement and be lodged as inquiry documents in order for the planning inquiry to start as programmed?

A11 Yes

Q12 Should the Scottish Ministers set a time limit on sisted appeals, so that these expire if the case is not brought to planning inquiry within 6 months of the date on which processing first stopped?

A12 Yes

Q13 Should the Scottish Ministers exercise their powers to recover their own costs and the costs of others where an appeal party fails to proceed, or an appeal is withdrawn, once the planning inquiry arrangements have been made?

A13 Yes, in the case of major development proposals where commercial gain is a consideration of the outcome of a successful appeal; but not in the case of minor appeals which may be better dealt with under the arrangements defined in clauses 45-47 of the consultation paper

Q14 Should preliminary argument be ruled out at the opening of a planning inquiry?

A14 Yes

Q15 Should time at the planning inquiry be programmed more rigorously in advance by reporters, and parties held to that programme witness by witness?

A15 In general, yes; but the timetable should not be so prescriptive that key evidence that may not have been anticipated is not heard, to the detriment to the course of the inquiry

Q16 Do you consider that it is necessary for the Scottish Ministers explicitly to set a more inquisitorial role for reporters?

A16 Within limits; what is perhaps more relevant is that the reporters are trained or have experience in the particular field of the inquiry, and valuable time is not wasted on matters of clarification, or education even

Q17 Should hearings practice be imported to planning inquiries when it represents the most effective means of determining matters in dispute? Does this enhanced role for the hearings process suggest that statutory procedure rules are required?

A17 HEACS is strongly of the view that the adversarial process adopted at public local inquiries is inappropriate for matters affecting the

historic environment; in response to the second question the process should not be hijacked by the legal profession and so procedural rules would require to be established

Q18 Should the existing Inquiries Procedure Rules be amended to make it clear that the scope to request that a reporter takes account of new material after the planning inquiry has closed is strictly limited to a change in the provisions of the development plan?

A18 In principle, yes

Q19 Do you consider that the hearings format represents a suitable means of examining objections to strategic development plans? If not, what other model do you suggest?

A19 Yes

Q20 Do you agree that the process of development planning would be improved by requiring local authorities to reduce the volume of objections through negotiation and mediation before calling a local plan inquiry; by adopting the hearing format as the norm for all planning inquiries; and by applying other relevant improvements in practice contained in this consultation. Do you have any other suggestions for ways in which the process might be improved?

A20 Yes, definitely, in response to the first question; in response to the second best practice might be adopted by taking roadshows on draft local plans to the affected communities

Q21 Should inquiries into planning appeals and called-in applications be dealt with separately from inquiries that are arranged to hear objections to local plans and from the public examination of objections to strategic and local development plans?

A21 Yes, although residual applications dependent upon the outcome of the inquiry should be dealt with without delay in the aftermath

Q22 We would welcome your views on other options not covered by this paper that could help make public local inquiries less adversarial but allow them to remain just as robust as the means of taking decisions on major planning applications

A22 Changes in the conduct of public local inquiries must be seen in the context of a move towards less formal appeals within the legislation controlling the historic environment, which may reduce the number of cases subject to formal appeal through the range of processes covered in the consultation paper

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