



The Planning Inspectorate
Yr Arolygiaeth Gynllunio



The Appeal Process:

what is planning and how decisions are made ?

Richard Poppleton

Director of The Planning Inspectorate in Wales



Outline

- What is the Planning Inspectorate?
- What is planning?
- The Development Plan
- Development Management and decision making process:-
 - Material considerations
 - A good decision?
 - Steps in Weighing evidence
 - Topics of regular concern
 - Outcomes
- Proposed reforms
- Cannot discuss individual appeal cases past or present.

The Planning Inspectorate (PINS)

- Created a Government Agency in 1992 following a 100 year history of dispute resolution.
- Values founded in the Franks report 1957.
- All appeals relating to land, buildings and the environment.

PINS

- The Inspectorate is the organisation with a separate section based in Cardiff dealing with Welsh matters.
- The Inspectorate does not determine appeals – that duty is vested in individual planning inspectors (99.5%) or the Minister.

PINS

- PINs doesn't make policy or develop housing projections = WG's role.
- Inspectors use Welsh policy, not English policy (NPPF)
- Not bound by England's Ministers or Secretary of State, other than specific areas
- Court rulings can apply

Inspectors

- In Wales has a cross section and currently comprises 16 inspectors supported by the administration in Cardiff.
- Also make use of inspectors from England to meet demand when needed: Welsh policy.

What is planning?

What are we seeking to do ?

- Before turning to plan-making and decision making, perhaps we should think about what planning is.

Planning?

- Planning is about place-making for the sustained well-being of the communities that we serve; not forgetting that we will be judged not just by the existing stakeholders, but those yet to be born and yet to be involved in the political process.
- It is about doing things in the public interest, not just for today but for future generations.

planning?

- It is about securing and managing development to shape those places, not preventing development.
- We have to know where we want to go: a vision of the future.

planning ?

- What needs to happen to bring about change and what control mechanisms are needed to ensure that.
- On-going monitoring and reviews as the context changes.
- That vision and the means of delivering it through our operating environment is the **development plan.**- analogous to a Business Plan

The Development Plan

- Unitary Development Plan 2008
- Local Development Plan – 2015 ?
 - afforded limited weight until adopted;
 - not same process as UDP

LDPs

- No LPA is an insulated island – like any business plan, external & internal drivers affect its direction and what it should plan.
- LPA needs to decide what its vision is for an area and compare that with any household projections might suggest.

LDPs

- Any deviations from the statistical need to be explained and justified by evidence
- Requires co-operation and collaboration with neighbouring LPAs – housing market areas, travel to work areas, critical mass to justify delivery of infrastructure eg – biomass / waste

LDP

- Policy and allocation decisions can be hard – confront those issues - may attract local objection
- But must consider issues in the public interest, not just for today, but for tomorrow's constituents.

The LDP

- LDP is the Council's corporate vision for its area and those who currently live in it and of those yet to come.
- The LDP **must be owned** by the Council as a whole, not just the planners, and it should inform decisions of other delivery dep'ts and agencies – internally & externally. Investments informed by it.

DP allocations and DM policy

- DP is the sound basis of decisions made by LPA and developers.
- S.78 application decisions not in accord with the DP have to be justified by sound evidence and compelling material considerations that support an alternative decision.

Types of appeal work include:-

- **Written representations** (16 weeks – 74% of cases)
- **Hearing** – (22 weeks – 21% of cases)
- **Inquiry** – (30 weeks – 5% of cases)
- Last 2 types can attract costs applications in Wales; (England in all three types.- proposed reforms would change this)

Site visit protocol

No new evidence taken –

to see features on site and referred to in representations.

no discussion with parties, individually or collectively.

Inspectors discretion whether to go to neighbours' property

not left alone with one side

Site visits

- Accompanied if access to the site needed
 - can't enter private land alone: appellant and LPA
- Access required – appellant there just to open the gate
- Unaccompanied, just the inspector there if visible from highway

Inspectors at appeal

- Appointed by and act on behalf of the Welsh Ministers : standing in the shoes of...
- Adopting the Franks principles :-
 - : gather and weigh evidence
 - : deal only with the evidence submitted or produced at the public event
 - : don't take a fishing expedition to solve problem.
 - : deal with the main controversial issues, not every issue
 - : deal with the appeal proposal only.

The planning decision process?

We have a Plan-led system in which :

- The 'Development Plan' is the starting point
- But it is not a system pre-determined by the Plan
- ***Plans and policies are not to be slavishly followed without thought and local application -***
 - 'Material considerations' always crucial and must be weighed against the Plan: S38(6)
TCPA 1990

Material Considerations

- What are they? - the courts decide
- *“...relevant to the development and use of land in the public interest...”*
[PPW]
- What is not? – not to protect private interests
 - Loss of property value

SPG

- Non-statutory, but a material consideration
- Cannot introduce new policy
- Must be founded upon adopted policy
- Weight afforded depends upon its status and the process towards its adoption
- Based upon sound and analytical evidential base

SPG

- Guidance is guidance – apply to specific circumstances, not a blanket, un-critical approach.

Some examples of material considerations

- Example: Highway safety
 - An increase in traffic is not, of itself, a problem
 - What are the implications of an increase?
- Example: Design
 - Avoid subjectivity
 - What is the character of the area?
 - What would be the harm?
 - Being different is not a sin

Weighing evidence

- What is the evidence to support a view or concern? – evidence not assertions.
- Does evidence justify the refusal or simply expressing a concern? – mitigation/conditions?
- Local knowledge is relevant but is it sufficient? – facts/technical appraisal?

Weighing evidence

- What is the officer advice?
 - Are there grounds for going against that advice?
 - “...**reasonable planning** grounds for taking a decision contrary to such advice” and
 - “...able to produce **relevant evidence** to support the decision in all respects.”
- W/O Circular 23/93: Award of **Costs**:
unreasonable behaviour + wasted expense*

Costs circular 23/93

- Unreasonable? – lack of evidence to support a point of view; unsubstantiated;
- Whether the evidence has a respectable and sufficient evidential basis for the stance taken.

Handling Public Concerns

- Relevant and important –
 - if based on *planning grounds*
- Perceived fears/concerns can be genuine –
 - but may be groundless, with no objective justification
- Sheer volume not enough –
 - does not make a concern into a justified refusal
- Decision maker has to judge weight to give public concern
 - *Can it be objectively justified?*

Topics regular of concern

- Five year housing land supply TAN1/PPW
- Fall-back
- Conditions & S.106
- Section 73 Enforcement
- Outcomes – appeals

5 Year housing land supply

- TAN1/PPW – 5 year's supply of deliverable housing land to be maintained.
- The lack of supply will be given considerable weight provided that development would otherwise comply with national policies.

Fall-back situation

- If harm identified, then have to consider what could occur without planning permission or with an alternative extant permission.
- Lawful Development / abandonment
- Permitted development

Conditions & S106

- Conditions circular 35/95 = 6 tests
 - Necessary to make development acceptable in planning terms; relevant to planning; to the development; enforceable; precise, reasonable.
- S106 – Circular 13/97 = same tests + CIL
Regs 122 tests of necessity, related, in scale and kind.

Enforcement & S.73

- Unlawful to carry out develop't without PP;
- Only become illegal if valid EN not complied with.
- Can seek deemed PP as part of EN or under S.73A(2)(c).
- Dealt with as normal – not punishment.
- EN is discretionary – expedient?

Applications and appeals outcome

- **Applications** – LPAs approve 88.4% in Wales and refuse 11.6% (SCC=84%)
- 28.3% of refusals give rise to appeal

(Mean Averages 2008-2013)

At appeal:

- 36.8% allowed in Wales and permission granted; (SCC = 38.3%)
- 63.2% dismissed in Wales (SCC = 62%)

Future - Proposed reforms

- Standard appeals:-
 - PINs decides type of appeal process
 - Requirement for full statements at submission of appeal
 - No new amendments
 - Swifter timetable

Reforms

- Larger schemes:-
- Decision maker aligned to complexity
- Minister (through PINs) to administer and decide the largest development applications under TCPA (DNS)
- Poorly performing LPAs – option to direct major applications to Minister rather than LPA

Reforms

- National Development Framework – examined / approved by NAW: to inform decisions on applications
- Strategic development Plans – produced by joint boards (?) and examined by PINs (?)
- LDP refinement

Reforms

- Change of culture – better use of shared resources
- Collaboration with stakeholders and neighbouring LPAs
- Improving the quality of the planning service

Thank You

– Questions?