

## **Note on the processing of a planning appeal/application following the submission of Inspector's report to the Welsh Government Planning Division.**

### **Action by officials**

1. On receipt of the report parties are notified and given indication of the time-scale for issue of the decision.

The Inspector's report will comprise:-

- A description of the site
- The gist of the cases presented by the parties
- The Inspector's conclusions and recommendations.

2. Where a case has been dealt with by public inquiry/hearing the inspector's report of those proceedings will be accompanied by the documents submitted to him/her by the parties. Where a case has been dealt with by written representations the inspector's report of the site visit and appraisal of the planning issues will be accompanied by the written representations of the parties. All the inquiry documents/written representations will be available for the Minister.

3. In considering an appeal/application we will look at :-

- The Inspector's report
- Relevant documents and plans
- Post inquiry representations

A check will be made to ensure that all documents and papers are in place. The substance of the report will then be considered having regard to the matters set out below and this process will form the basis of our advice and recommendation to the Minister

### Consideration of the Inspector's report

4. The starting point is Section 38(6) of the Planning and Compulsory Purchase Act 2004 which states that if regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise

5. The first step is to identify and correctly interpret relevant development plan policies. Then:-

- if the proposed development accords with the development plan and other material considerations either favour the development or, if unfavourable to the development, are not sufficiently weighty to justify a refusal, then the proposal should be allowed

- if the proposed development is in conflict with the development plan the proposal should be refused unless other material considerations favouring the development indicate otherwise
- if there are no relevant development plan policies the proposal should be determined on its own merits taking account of all material considerations

6. What is a material consideration is a matter of law. Generally it is any matter which is relevant to the application and can be properly regarded as relating to the application and relevant to the use and development of land. The weight to be given to a material consideration is a matter for the decision maker.

Examples of material planning consideration could include:-

visual/landscape impact  
residential amenity  
access  
government policy  
planning history of the site

7. Planning permission may be granted subject to conditions – they are important because their imposition may make it possible to grant planning permission for a development where it would otherwise have to be refused as unacceptable. Thus a good test of whether a condition is necessary will be whether permission would have to be refused if the condition were not imposed. Planning conditions must be:-

- necessary
- relevant to planning
- relevant to the development
- enforceable
- precise
- reasonable

The local planning authority will usually submit a list of conditions to be imposed if planning permission is to be granted. The parties to the proceedings will comment on these and the Inspector will include a recommendation on them in his report.

8. In deciding whether or not to accept the Inspector's conclusions and recommendations the following points are considered:-

- has the Inspector correctly understood national and local policy
- is the Inspector's reasoning acceptable and logical
- are the conditions proposed adequate/proper
- has the Inspector relied on a matter which is not a material consideration.

These matters are essentially legal/technical issues. Officials will advise on the treatment of these matters to ensure that the Minister's decision is made within the appropriate legal framework eg. only taking into account material considerations. Where appropriate any legal/technical planning matters will be dealt with in the decision letter.

9. In addition to the material presented with the Inspector's report new evidence may be submitted following the close of the inquiry. In such instance it will be necessary to consider whether it materially affects the proposed decision and, if so, reference back to the parties seeking their views will be necessary before the decision issues.

10. Officials will also advise the Minister if the Inspector's report includes any statements with which, even if they agree with the Inspector's overall conclusion, it may nevertheless be necessary for the Minister to disassociate herself – eg. on a particular mis-interpretation of planning policy, which, if left uncorrected, could be taken to represent Welsh Government policy.

### **Issues for the Minister**

11. Officials will provide advice, having regard to the matters set out above, on whether the Inspector's recommendation should be accepted or, if not, what options are open to the Minister. However, it is not generally for officials to make recommendations on matters of planning judgement reached by the inspector. The balancing of planning issues – the development plan policies and the other material considerations – is essentially one for the Minister.

12. It should be stressed that a decision to disagree with an inspector's judgement should not be made lightly. Inspectors are appointed to provide advice because of their expertise in planning matters and holding inquiries. Significant weight has therefore to be given to inspectors' reports and their planning judgements and there would need to be exceptionally good reasons to question the weight and relevance that they have attached to the evidence. If the Minister disagrees with an inspector's judgement officials will advise on the options that would be open.

13. Officials' advice will be set out in a Submission to the Minister.

The Submission will consist of:-

- a summary of the main issues of the case, officials' assessment of the Inspector's conclusions and their recommendation and advice on what decision should be taken (and where appropriate what alternative options may be open to the Minister)
- a copy of the Inspector's report
- site maps, plans and photographic evidence
- a list of proposed conditions
- a Statement of Information
- a draft decision letter

14. The decision letter will set out the reasons for the decision and once signed by the Minister, or by an official with the authorisation of the Minister, it will be issued to the parties.

15. It would be unusual for the Welsh Government to issue a Press Notice in respect of decisions about appeals made under Section 78 of the Town and Country Planning Act 1990 or called in applications under Section 77 unless there were particular circumstances necessitating such publicity. This is because a decision is final once it has been made and Welsh Ministers then have no further jurisdiction in the matter unless the decision is overturned in the Courts. It is particularly important that nothing is said that could prejudice the decision in the period (usually six weeks) that a decision may be subject to a legal challenge or, if a challenge is initiated within that period, during the further period before the case is concluded.