



## SCOTTISH EXECUTIVE

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Our ref: PGB/4/51

4 July 2003

Dear Consultee

### **MODERNISING PUBLIC LOCAL INQUIRIES PUBLIC CONSULTATION**

I enclose a consultation paper on the above subject and invite your comments on the questions raised. The paper looks at the scope for modernising the planning inquiry process and at opportunities for better practice. A short guide to the consultation paper is also enclosed.

Some responses to an earlier consultation, *Getting Involved in Planning*, indicated that there was scope for making the public local inquiry process more user friendly. Through this consultation paper, we now wish to invite views on options for improving the experience of inquiry participants. The paper seeks to increase certainty about the operation of the inquiry process while ensuring that it remains impartial, fair and transparent.

#### **Responding to this consultation paper**

We are inviting written responses to this consultation paper by **28 November 2003**.

**Please send your response to:**

[modernising.plis@scotland.gsi.gov.uk](mailto:modernising.plis@scotland.gsi.gov.uk) or Richard West  
Modernising Public Local Inquiries  
Scottish Executive Development Department  
Area 2-H33  
Victoria Quay  
Leith  
Edinburgh  
EH6 6QQ

If you have any queries contact **Richard West** on **0131 244 7060**.

We would be grateful if you could clearly indicate in your response the numbers of the specific questions, or parts of the consultation paper, to which you are responding. This will aid our analysis of the responses received.

I also enclose a note about the Executive's consultation processes which includes a *Respondee Information Form*. This form allows you to indicate how you wish your consultation response to be handled. Please return your completed form along with your response to the consultation.

### **Access to consultation responses**

We will make all responses available to the public in the Scottish Executive Library 21 days after the closing date of the consultation unless confidentiality is requested. In addition, we will later publish an analysis of responses on the Scottish Executive website. All responses not marked confidential will be checked for any potentially defamatory material before being logged in the library or placed on the website.

All responses will be acknowledged.

Yours faithfully

A handwritten signature in black ink that reads "Maureen McGinn". The signature is written in a cursive style with a clear, legible font.

MAUREEN MCGINN

## RESPONDEE INFORMATION FORM

Please complete the details below and attach it with your response. This will help ensure we handle your response appropriately:

Name:

Postal Address:

Title of consultation: **Modernising Public Local Inquiries**

1. Are you responding as:

an individual   
on behalf of a group or organisation

2. Do you agree to your response being made public (in SE library and/or on SE website)?

Yes   
No

Where confidentiality is not requested, we will publish your full response including your name (and address, where provided).

*If you do not wish for these personal details to be published, please tick this box:*

Are you content for the Scottish Executive Development Department to contact you again in the future for consultation or research purposes?

Yes   
No

Signed:

Organisation:

Date:



## **The Scottish Executive Consultation Process**

Consultation is an essential and important aspect of Scottish Executive working methods. Given the wide-ranging areas of work of the Scottish Executive, there are many varied types of consultation. However, in general Scottish Executive consultation exercises aim to provide opportunities for all those who wish to express their opinions on a proposed area of work to do so in ways which will inform and enhance that work.

While details of particular circumstances described in a response to a consultation exercise may usefully inform the policy process, consultation exercises cannot address individual concerns and comments, which should be directed to the relevant public body. Consultation exercises may involve seeking views in a number of different ways, such as public meetings, focus groups or questionnaire exercises.

Typically, Scottish Executive consultations involve a written paper inviting answers to specific questions or more general views about the material presented. Written papers are distributed to organisations and individuals with an interest in the area of consultation, and they are also placed on the Scottish Executive web site<sup>1</sup> enabling a wider audience to access the paper and submit their responses. Copies of all the responses received to consultation exercises (except those where the individual or organisation requested confidentiality) are placed in the Scottish Executive library at Saughton House, Edinburgh (K Spur, Saughton House, Broomhouse Drive, Edinburgh, EH11 3XD, telephone 0131 244 4552).

The views and suggestions detailed in consultation responses are analysed and used as part of the decision making process. Depending on the nature of the consultation exercise the responses received may:

- indicate the need for policy development or review
- inform the development of a particular policy
- help decisions to be made between alternative policy proposals
- be used to finalise legislation before it is implemented

If you have any comments about how this consultation exercise has been conducted, please send them to:

Andy Kinnaird  
Scottish Executive Development Department  
Planning Division  
Victoria Quay  
Leith  
Edinburgh  
EH6 6QQ

E-mail: [Andy.Kinnaird@scotland.gsi.gov.uk](mailto:Andy.Kinnaird@scotland.gsi.gov.uk)

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<sup>1</sup> [www.scotland.gov.uk](http://www.scotland.gov.uk)



SCOTTISH EXECUTIVE  
Development Department

# **Modernising Public Local Inquiries: A Consultation Paper**

June 2003



SCOTTISH EXECUTIVE  
Development Department

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# **Modernising Public Local Inquiries: A Consultation Paper**

June 2003

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## Invitation to inform and comment

The Scottish Executive commenced a review of the arrangements for enabling people to become involved in planning issues with the publication of *Getting Involved in Planning* in November 2001. That consultation invited participants to share with us their experience and views on how people in Scotland can be more effectively involved in the planning system. It asked the question "How can we make appeal inquiries more accessible and less intimidating?" This consultation directly follows from the responses to that question. We are seeking your views on a wide range of questions contained in this paper and it is our intention to consult widely. Comments on the specific proposals set out in the paper, or general comments about the operation of the public local inquiry process can be made before 28 November 2003:

- **In writing to**                    **Richard West**  
   **Modernising Public Local Inquiries**  
   **Scottish Executive Development Department**  
   **Area 2-H33**  
   **Victoria Quay**  
   **Leith**  
   **Edinburgh**  
   **EH6 6QQ**
- **By e-mail to**                    **[modernising.plis@scotland.gsi.gov.uk](mailto:modernising.plis@scotland.gsi.gov.uk)**

It would be helpful if, in responding, comments could be cross-referenced to the question numbers in the paper. A full list of the questions is contained at the end of the paper, and each question is highlighted in the appropriate section of the text. If you would like your responses to be treated as confidential, please indicate this clearly, as all responses will otherwise be available for scrutiny at the Scottish Executive's library. Responses from those who reply in confidence will only be included in numerical totals. Their names and the content of their response will not appear in the list of respondents or in any published analysis.

The review will consider all responses, alongside views gathered during other consultation opportunities. The review should be completed and a digest of consultation responses prepared, together with an analysis of their content, during 2004. Further copies of the paper, and the Guide to the Consultation, which is a shorter easy-read, are available from Richard West at the address given above and also from the planning web pages **[www.scotland.gov.uk/planning](http://www.scotland.gov.uk/planning)** or at **[www.scotland.gov.uk/planning\\_appeals/seiru](http://www.scotland.gov.uk/planning_appeals/seiru)**, the Inquiry Reporters Unit web pages.

## Introduction

1. This paper forms part of the Executive's proposals for modernising the planning system for the 21<sup>st</sup> Century. The Executive has already consulted on the modernisation of development planning in the *Review of Strategic Planning* and on public participation in the planning system in *Getting Involved in Planning*. The Scottish Ministers have since published their conclusions in the White Paper *Your place, your plan*. The White Paper recognises that there are some calls for the introduction to the planning system of a right of third party appeal. This is a complex matter with potentially wide ranging implications, but which remains a topical question. Ministers have indicated that it is their intention to carry out a full consultation to examine the issues and options thoroughly. That consultation will take place in parallel with this separate exercise on modernising public local inquiries. The proposals in this paper are intended to lead to improvements in practice that may be worth making regardless of which parties have a right of appeal. Should work on the consultation paper concerning widening the right of appeal raise issues that impact on the public local inquiry system, the issues will be dealt with in that consultation.

2. *Getting Involved in Planning* touched on a number of issues relevant to the work of the Scottish Executive Inquiry Reporters Unit. It indicated that many people found the formalities of public local inquiries daunting and one of the questions posed by the consultation was "How can we make appeal inquiries more accessible and less intimidating?" We now wish to consider the changes that are needed to the public local inquiry system which has for several decades provided the means of reaching decisions on planning appeals and on some planning proposals in a fair and transparent way whilst affording an opportunity to be heard to all of those with an interest in the proposal. The process has been reviewed in the past, with major improvements in both procedure and practice introduced in 1997 and 1998.

## Building on the strengths of what we do now

3. Our overall aims are:

- to ensure that the strengths of the present system are maintained whilst enabling planning decisions to be made quickly so that the Scottish economy is not disadvantaged in a time of rapid change;
- to allow those interested in a development proposal to make their views known and have them taken into account, without being intimidated by the process.

4. The challenge in improving the existing system is to secure the second aim, without prejudicing the first. Both are critical to the achievement of Ministers' objectives for social justice in the planning system.

5. Our discussions with stakeholders suggest that all parties wish to see a system for handling planning appeals and called-in applications that is characterised by certainty over the process and that remains manifestly impartial, fair, and transparent. The Scottish Ministers are committed to safeguarding the rights enshrined in the European Convention for Human Rights. This modernisation recognises the fact that the planning system, by its very nature, seeks to respect the rights of the individual whilst also acting in the interests of the wider community. It is these principles that will remain central to the process of decision making by public local inquiry.

6. This consultation represents the starting point in another of the key elements in modernising planning. It sets out to address weaknesses that are perceived in the present system and to suggest improvements that the Scottish Ministers wish to secure as part of the process of continuous modernisation and review. We wish to reduce the time that it takes to reach decisions and to control the costs. We want to make it easier for the public to be involved and to reduce the intimidating effect that the involvement of lawyers and other professional advisers may have, although greater informality must not be allowed to result in either a lack of clarity of thought or a reduction in certainty. These are the qualities that are central to the resolution of difficult and complex planning issues. Thus, and perhaps most importantly, we want to reduce the level of uncertainty about the process, which may well have started before the appeal was lodged and can continue after the decision is made. All users of the system can suffer in this way whether as businesses, communities, individual members of the public, planning authorities, or other organisations. The proposals that follow are intended to deliver improvements in respect of each of these important considerations. Some may require changes in either primary or secondary legislation whilst others could be secured through changes in policy or practice.

Question 1	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?
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## Wider application of these proposals

7. This paper is directed at the public local inquiry process that is used to consider planning appeals and called-in planning applications. It is also relevant to the inquiries procedure used in considering objections to compulsory purchase and other orders. Many of the proposals have a wider application to the process of considering objections made to local plans as part of the development plan

prepared by the planning authority, which is mentioned later in this paper, and an association with cases being considered by an exchange of written submissions. Further consideration will be given to the modernisation of these arrangements. The principles contained in this consultation will also be applied, by agreement, to the public local inquiries held in the small number of non-planning cases such as applications for consents under the Electricity Act 1989. Although the proposals have wider application, for the sake of brevity this paper usually refers only to planning appeal cases.

8. Each of the improvements considered in this paper would apply both to those appeals and called-in applications determined by the Scottish Ministers and to those determined by reporters acting under delegated powers. In the paper the expression "the Scottish Ministers" is used, even though the actions might be taken by the reporter to whom the case has been delegated or by the Minister in cases where jurisdiction has been recalled. Around 1,200 appeal and other cases are handled in the course of a year. Typically in recent years up to 9% have been the subject of a public local inquiry and up to 5% have been determined after a hearing.

### Our objectives

9. We want to improve the experience of the public when involved in the consideration of a planning proposal at a public local inquiry whether as an appellant, supporter, or objector. This will require change in the culture of the inquiry itself; the actions of reporters; and the rights and obligations of the parties involved. Inevitably, it requires parties to inquiries to be prepared to engage co-operatively in reaching the best planning solution. This consultation is an important step towards encouraging external participation and engagement in re-designing and modernising the delivery of this important service. We consider that the propositions that follow have the potential to reduce inquiry costs and provide better control over expenditure. A Regulatory Impact Assessment has not therefore been prepared because there should be no adverse impact as the consequence of these suggested improvements for business, charities, the voluntary sector or the public.

### Keeping the best and improving the rest

10. Because there is much that remains effective within the present system we consider that it is essential that this review introduces change only where it is needed and where there is a clear advantage for the public interest. The core principles of openness, fairness, and impartiality established by the Franks Committee in its 1957 Report "Administrative Tribunals and Inquiries" remain central to public local inquiries and continue to guide reporters in the conduct of cases. In this modernisation we are seeking to:

- strive for greater certainty about timescales, procedures and parties' responsibilities at every stage of the process;
- achieve better consistency of approach across parties' legal entitlements;
- create a system focused on the public interest and that is less susceptible to abuse;
- process cases more quickly;
- seek more focused evidence and submissions from all parties; and
- produce shorter, more focused, decisions and reports to the Scottish Ministers.

## The public local inquiry as a process

11. The Planning Acts<sup>1</sup> and existing ministerial policy<sup>2</sup> envisage that public local inquiries will be used to determine the planning merits of planning appeals and called-in planning applications. Section 25 of the Act<sup>3</sup> requires the decision in all such cases to be made in accordance with the development plan unless material considerations indicate otherwise. The existing inquiry process is intended to be a transparent examination of the planning merits - against that statutory requirement - of the development proposed in the application for planning permission that has been called-in or is the subject of the appeal.

12. Recent experience suggests some misunderstanding about the purpose of a public local inquiry and a belief, perhaps based on the title, that it is the opportunity for any one interested party or group to determine the outcome simply by virtue of their public involvement, irrespective of the provisions of the development plan or the weight of the evidence for and against the proposal. A public local inquiry is the means by which a reporter appointed by the Scottish Ministers obtains, through oral and written evidence, the information that is necessary to enable a decision on whether planning permission should be granted or refused. This misunderstanding over the purpose of the process might be addressed by re-branding the public local inquiry as a planning inquiry and reinforcing the statutory and policy background against which planning determinations must be made. In the same way an inquiry held under the Electricity Act could be referred to in future as an energy inquiry and this principle could apply to inquiries dealing with ancient monuments and other proposals.

Question 2	Should public local inquiries into planning proposals be re-named "planning inquiries"?
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## The right to appeal

13. The planning system in this country is intended to operate in the public interest in order to guide change and development to the most appropriate location whilst ensuring that environmental standards for all are maintained and enhanced. The right of applicants to appeal against decisions taken by planning authorities, whether to refuse planning permission, or to grant that permission subject to conditions that are not accepted, is an important provision; as is the right to appeal where the planning authority fails to take a decision within a reasonable time. We propose no alteration in these fundamental and basic rights.

14. Planning is inextricably linked with change. Many development proposals evolve during their consideration by planning authorities, perhaps as the result of constructive debate, even though planning permission is ultimately refused. Given that it is our intention to increase the certainty with which the appeal system operates we do not consider that there should be scope for altering proposals during their consideration by the Scottish Ministers. For that reason, it is the proposal that was considered by the planning authority and for which permission was refused, or granted subject to conditions, that must be considered in the appeal. Only matters that would not require both re-

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<sup>1</sup> References to "the Planning Acts" mean: The Town and Country Planning (Scotland) Act 1997; the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997; the Planning (Hazardous Substances) (Scotland) Act 1997; and the Planning (Consequential Provisions) (Scotland) Act 1997.

<sup>2</sup> SODD Circular 17/1998 Planning and Compulsory Purchase Order Inquiries and Hearings: Procedures and Good Practice.

<sup>3</sup> References to "Section 25 of the Act" are to Section 25 of the Town and Country Planning (Scotland) Act 1997.

notification and fresh consultation might be subject to alteration while the appeal is being considered. This does not amount to a change in either rights or obligations, but in some recent cases the decision making process has been complicated by parties' insistence that they wish a different proposal to be considered. We therefore intend to reinforce the principle that only the development considered by the planning authority may be reviewed on appeal.

### The right to a planning inquiry in an appeal

15. The present statutory arrangements allow either the planning authority or the appellants to request an opportunity to be heard concerning the appeal<sup>4</sup>. There is no statutory requirement that there need be any special circumstances for this request to be met. This process is used both for very small scale developments where some may see no objective need for an oral means of taking evidence and also for major development proposals that are critically important for the environment, the economy, or both. In such cases the decision could not realistically be made without a public hearing of the merits and demerits of the proposal.

16. We consider that there is good reason for the right to a planning inquiry to be qualified so that this process is reserved for those cases where the subject matter requires oral evidence. This objective might be achieved in one of several ways including:

- Option 1: Irrespective of whether the planning authority or appellant request to be heard concerning an appeal, the Scottish Ministers could decide, based on indicative criteria, whether a planning inquiry would be held, or whether the appeal would be decided following a hearing, or by an exchange of written submissions; or
- Option 2: Where a planning inquiry is requested by the appellant or planning authority, the Scottish Ministers could decide, based on the circumstances of the particular case, whether a planning inquiry is necessary and, if so, determine the issues to be considered by means of oral evidence, with the balance of the matters in dispute being considered by a hearing or an exchange of written submissions; or
- Option 3: The appellants and planning authority could be required to make representations in support of a request for a planning inquiry. If not accepted, the case would be considered either by an exchange of written submissions or a hearing.

17. Consultees may recall that we raised the first option a number of years ago and subsequently decided against implementing it. In view of the passage of time, we consider that there is merit in inviting views again on this proposition, as well as on the other options.

18. These options are a development of the existing policy<sup>5</sup> that allows the Scottish Ministers to determine whether parties' right to be heard should be met by a local inquiry or a hearing. The objective is to reserve the planning inquiry process for those cases where oral examination is required to resolve complex and important arguments. The criteria used to determine whether a planning inquiry should be held would relate not only to the complexity of those arguments but could also involve considerations such as whether the development plan is up-to-date, the scale of the project, the

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<sup>4</sup> Section 48(2) of the Act read with Article 23(5)(e) of the Town and Country Planning (General Development Procedure) (Scotland) Order 1992.

<sup>5</sup> SODD Circular 17/1998 Planning and Compulsory Purchase Order Inquiries and Hearings: Procedures and Good Practice.

number and the nature of the issues raised in public objections and whether or not the local authority had a financial or other interest in the development.

19. In the case of a called-in planning application, both the applicant and the planning authority have the same right to be heard. Normally, only those applications that raise issues of national importance would be called-in for determination by the Scottish Ministers. We do not propose to alter the existing policy, which provides parties with the opportunity to present their case on a called-in application at an inquiry or hearing.

Question 3	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 other suggestions that might be effective in achieving this objective?
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## Improvements that could be made before a planning appeal inquiry starts

20. Paragraphs 21 to 37 and questions 4 to 13 apply specifically to improvements that could be made to the procedures before a planning inquiry starts.

### The decision of the planning authority and grounds of appeal

21. It is essential that planning decisions are made within the framework set by the Planning Acts. The decision must also take account of the material considerations, both for and against, put forward by parties, including the planning authority, the developer and those who live in the community or who have an interest in the development. Ministers require the evidence to be tested properly so that they are able to take decisions with the confidence that these will prove to be robust, being informed by a sound assessment of relevant facts. That requirement should remain a cornerstone of the planning inquiry system.

22. At present, parties are required by the Inquiries Procedure Rules<sup>6</sup> and the Scottish Ministers policy for the application of these rules<sup>7</sup> to disclose their entire case in advance in a structured consistent way. There is no reason for this to change because these provisions increase certainty and, used properly, have the potential to narrow the range of matters in dispute and that need to be examined in public. However, we believe that there is merit in all of the material that the planning inquiry has to consider being presented in a more focused and structured fashion directly related to the development plan and relevant material considerations, as envisaged by section 25 of the Act<sup>8</sup>. This approach should encompass the planning authority's reasons, where planning permission has been refused; the appellant's grounds of appeal; other parties' evidence; and written submissions. We therefore intend to require all parties to structure their evidence and submissions in the context set by section 25 of the Act.

23. Most planning appeals arise from the decision of a planning authority to refuse planning permission. In these cases the present policy requires their reasons for refusing permission to be complete, clear and precise, thus indicating all of their objections to the proposal. In some instances planning authorities only introduce new and important additional reasons for opposing a development when an appeal is lodged. It is possible that these would have better informed the decision to proceed with the appeal had the prospective appellant known these earlier. This practice is also inconsistent with the requirement for full prior disclosure<sup>9</sup>. We therefore consider that there is good reason to require the planning authority's case at a planning inquiry to be restricted to:

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<sup>6</sup> References to the Inquiries Procedure Rules are to The Town and Country Planning (Inquiries Procedure) (Scotland) Rules 1997, as amended; and The Town and Country Planning Appeals (Determination by Appointed Person) (Inquiries Procedure) (Scotland) Rules 1997, also as amended.

<sup>7</sup> SODD Circular 17/1998 Planning and Compulsory Purchase Order Inquiries and Hearings: Procedures and Good Practice.

<sup>8</sup> This is the approach envisaged in Scottish Planning Policy (SPP) 1: The Planning System which is based on a decision of the House of Lords in 1998: *City of Edinburgh Council v the Secretary of State for Scotland* 1998 SLT 120.

<sup>9</sup> SODD Circular 17/1998 Planning and Compulsory Purchase Order Inquiries and Hearings: Procedures and Good Practice.

- their reasons for refusing planning permission, taking account of the up-to-date development plan position and;
- their view on those material considerations disclosed by other parties, such as statutory consultees (e.g. the Scottish Environment Protection Agency), supporters and objectors, which have a bearing on their reasons for turning down the proposal.

24. Where the appeal concerns the failure of the planning authority to reach a decision there may be a dearth of information available to the appellant and local residents about the position that the council is likely to adopt. Clearly this would add to the uncertainty until the council's position is disclosed. In such cases we consider that the planning authority should be required to indicate whether they would have granted or refused planning permission had an appeal not been lodged. In such cases they could be required to indicate what the outcome would have been, together with their reasons, within say 2 weeks of the appeal being made. If no such assessment is provided, their role in the planning inquiry would be restricted to explaining the provisions of the development plan relevant to the development under appeal and no more.

Question 4      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?

25. Similarly, where planning permission has been refused or granted subject to conditions that the applicant considers to be unacceptable, the present policy requires that full grounds of appeal are lodged at the outset, including all of the relevant documents. Grounds of appeal are required to indicate all of the reasons for disagreeing with the planning authority's decision. It is already necessary for the case for the appellant to be comprehensive from the start. As this information is available to other participants before the inquiry, we consider that the appellant's case at a planning inquiry should be restricted to:

- their reasons for disagreeing with the refusal of planning permission, or the grant of a permission subject to unacceptable conditions, taking account of the up-to-date development plan position and;
- their view on those material considerations disclosed by other parties, such as consultees, supporters and objectors, that have a bearing on their reasons for wishing to set aside the council's decision.

This policy would not be applied in appeals against non-determination where augmentation of the grounds would have to await the procedure referred to in paragraph 24.

### Incomplete appeals

26. The present system requires "relevant notice" of a public local inquiry to be given to all of those who have expressed an interest once the appeal, or called-in application, is properly documented. Attention has been drawn to the delays that occur between submission of the appeal and the issue of relevant notice. That delay has resulted from a number of reasons with the most common being that the appeal is not complete and thus cannot be processed. In major cases this delay adds to uncertainty for the community. Appellants currently have the statutory right to complete the documentation of an appeal within 6 months of the planning authority's decision, although the White Paper *Your place, your plan* indicates that this period is to be shortened to 3 months. Should

incomplete appeals remain an issue, we propose that all incomplete<sup>10</sup> appeals (except householder development) would be returned to the appellant within 2 weeks of receipt. No appeal can be considered to be valid until all of the necessary information has been submitted.

Question 5      Should incomplete appeals be rejected and returned to the appellant?

### Reducing the time taken to process the appeal and the adversarial context

27.      The measures referred to in paragraphs 21-26 have the potential to increase certainty and to streamline and improve the process with benefits for both the business community and the public. We consider that these also have the potential to build on the Scottish Ministers' objectives for social justice in the planning system by reducing the adversarial context of the planning inquiry. The measures should ensure that the matters under examination are focused, well known, have been disclosed as required in advance, and that parties have had the appropriate opportunity to consider them. These changes could also be used to allow the planning inquiry to be held sooner, because reinforcement of the requirement for comprehensive reasons from the planning authority and grounds from the appellant could allow a shorter maximum period to be substituted for the present 8 weeks allowed in the Inquiries Procedure Rules for the production of the full statement of case.

Question 6      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 relevant notice?

28.      The maximum period currently allowed for the circulation of parties' statements of case is the longest single component of the existing pre-inquiry procedure. Other periods are correspondingly shorter and thus less susceptible to reduction, but there may still be scope to streamline the procedure with no loss of rigour.

Question 7      Are there other ways of shortening the essential pre-inquiry stages that could be as, or more, effective?

### Notice of an intention to take part in a planning inquiry

29.      The Inquiries Procedure Rules allow the possibility that a party may attend the inquiry, and seek to take part without giving any prior notice. The rules define the parties with a right to appear; other appearances are at the discretion of the reporter. Uncertainty is increased when evidence is allowed from those who have not given advance notice of their case and other parties may be disadvantaged. The arrangements for all public local inquiries are advertised in the local press not less than 4 weeks before the inquiry is due to start. We propose that this advertisement should be placed earlier, probably shortly after the circulation of statements of case. This would have the effect that the inquiry arrangements would have to be agreed earlier than happens now. Those wishing to take part in the planning inquiry by leading oral evidence would be required to indicate this within a fixed date of the advertisement appearing. In order to have that right, these parties would be subject to the same

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<sup>10</sup> Article 23(5) of the Town and Country Planning (General Development Procedure) (Scotland) Order 1992 defines the material to be submitted with notice of an appeal.

requirements for prior disclosure as all other inquiry parties, extending to the documents on which they propose to rely and their evidence. The right to take part in the inquiry and to ask questions would be restricted to those who had given prior notice.

Question 8	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?
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30. The following paragraphs apply to inquiries of all types, including planning appeals and those held to consider called-in applications.

31. The Inquiry Reporters Unit faces difficulties in making arrangements for public inquiries that suit all of the parties, particularly regarding the date on which the planning inquiry is expected to start. Representations have been made that the present Inquiries Procedure Rules allow insufficient time for parties to prepare. Those representing the prospective developer routinely argue in major cases that a later date should be substituted to meet the requirements of their team. This introduces delay to the system and runs counter to Ministers' objective of speeding up the decision making process in planning and increasing certainty, particularly for those communities living close to the site of major development proposals. We need to establish whether that view is held widely and whether the reasons are sound.

Question 9	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? If so, why?
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### Guidance to the parties to a planning inquiry

32. The Scottish Ministers and all reporters approach every case with an open mind, but in many instances the issues to be determined in an appeal or called-in application are clearly set by the development plan provisions that apply to the land and the physical relationship between the development site, the land uses on neighbouring land, the infrastructure of the wider area and its character. In an appeal the considerations to be reviewed against the decision taken by the council are therefore clear to the planning authority and to most appellants. Similarly, the reasons are given where an application for planning permission is called-in by the Scottish Ministers.

33. The reporter allocated to a case that is proceeding by planning inquiry often decides that a pre-inquiry meeting should be held in order to assist all of the parties. Discussion at such a meeting centres on the nature and range of the evidence to be led, participation, the programme for pre-inquiry exchanges and the planning inquiry itself. The meeting allows the opportunity to explain to un-represented members of the public the scope for their involvement and also for those with similar concerns to group together to assist with their participation. Where pre-inquiry meetings are held the reporter takes the opportunity to identify and discuss with the parties the potential scope for narrowing the range of issues that are in dispute, the matters that might be agreed, the subject areas where he or she requires evidence to be led and the matters that must be considered by the inquiry. Even where no pre-inquiry meeting is held, those who live in the community and who have had little or no previous involvement with the planning system might be assisted by a clear and early assessment of the issues that are bound to be considered when determining whether, or not, to grant planning permission against

the framework set by the Act<sup>11</sup>. The issue is whether that information should be made available for every case proceeding by planning inquiry.

Question 10 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 addressed in evidence to the inquiry?

34. The existing policy envisages that parties should take a constructive approach to the preparation of agreed statements covering uncontested facts such as the description of the site, the surroundings and the development; the relevant provisions of the development plan; and the responses of statutory consultees. Agreed statements should be produced as inquiry documents so that their benefit is available in drafting precognitions. If produced on a standard word processing template this material could be adopted by the reporter and edited as necessary to become part of the decision letter or report. This would have the effect of reducing the reporting time.

35. In complex cases reporters frequently indicate in advance of the inquiry the factual material that they need to know about such as the demand for housing land within the relevant market area and the supply that is effective; the planning history where this is particularly complex; or detailed information concerning flood risk and previous flood events. In order to reduce the range of the issues in dispute, reporters may ask for this material to be agreed wherever possible. That request is not made lightly because their intention is to concentrate the inquiry on the matters that need to be examined in public. However, when some of this material cannot be agreed the parties routinely abandon the exercise even though they could have pursued the alternative of an agreed statement that set out where they agreed, and their reasons for those areas where they could not agree. Considerable time can then be taken up at the planning inquiry agreeing facts. As requests to make voluntary arrangements have frequently not produced the desired result, a more formal approach may be needed to ensure that the advantage of wider agreement and prior disclosure is not lost. This could mean that the planning inquiry could not start if the planning authority and the appellant failed to produce and agree material requested by the reporter, or indicate their position if no agreement is possible.

Question 11 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?

### Sisted appeals

36. The practice of lodging an appeal and using the prospect of a public local inquiry as a negotiating tactic in continuing discussions with the planning authority is a mis-use of the planning appeal system. It leads some parties to request that further processing of the case is suspended, or "sisted", in the hope that the planning authority may grant planning permission for an amended scheme and thus avoid the need for the appeal and the inquiry. This process can avoid abortive work, but only where no such tactic is involved and the delay occasioned by a "sist" is short with adequate notice given to other parties. However, some appellants have attempted to maintain appeals in sist for long periods, adding to the uncertainty faced by neighbouring households and businesses. There is

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<sup>11</sup> Section 25 of the Town and Country Planning (Scotland) Act 1997 read with the decision of the House of Lords in 1998: *City of Edinburgh Council v the Secretary of State for Scotland* 1998 SLT 120.

presently no means of turning away an appeal that is not progressed. We propose that, once sisted, an appeal would expire after 6 months, and thus be treated as withdrawn, unless the planning inquiry commenced before the end of that period. There would be no scope for further extensions.

Question 12	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?
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### Recovery of abortive costs

37. In other cases, arrangements are made for a public local inquiry that has been requested by either of the main parties, only to be faced with withdrawal of the appeal at a very late stage - either because it is seen from the evidence to be led by others that there is no reasonable prospect of success, or because an amended proposal has been approved by the planning authority. No matter what the cause there is inconvenience and potentially significant cost to all of the parties involved whilst the Scottish Ministers incur very significant administrative costs and progress with other cases is delayed. The provisions at section 265(9) of the Act have only been used to make orders for the recovery of parties' costs as the consequence of unreasonable behaviour by an inquiry party. These have not been used by Ministers to recover their own costs for abortive work, but the powers could be exercised whenever these circumstances occur.

Question 13	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?
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## Improvements that could be made once the planning inquiry has started

### Planning inquiries that are delayed by argument about procedure

38. We have become concerned by the extent to which those instructed by planning authorities and appellants or applicants consider it appropriate to delay the start of a planning inquiry by preliminary discussion when this could and, more importantly should, have been dealt with some time earlier and without the need for all the parties to be present. This has the effect of delaying the start of the inquiry. On occasion, motions are made where no advance notice has been given to the reporter, even though other parties have been forewarned. This wastes time at the planning inquiry, and wastes the time of those members of the public who wish to take part in the process, but who are denied that possibility until the business of the inquiry is started.

39. The Inquiries Procedure Rules set the procedure, and the public local inquiry is arranged to consider the planning merits of an appeal or planning application that has been called-in. Procedural issues that arise before the inquiry should be dealt with, in consultation with the Unit, before the planning inquiry opens. Again, a more formal approach may be needed to deal with this unfortunate practice. This could be achieved by making it clear, as a matter of policy, that no preliminary argument about procedure would be allowed and that parties should proceed straight to the presentation of their case. They would be expected to resolve their disputes before the planning inquiry, or elsewhere, so that the inquiry proceeds as advertised to hear the evidence concerning the proposal.

Question 14 Should preliminary argument be ruled out at the opening of a planning inquiry?

### Programming the evidence

40. The experience of the Planning Inspectorate in England and Wales has demonstrated that it is possible to programme planning inquiry time relatively rigorously and to expect parties to conform to the estimates that they have made. Reporters have experimented with such arrangements, but there must be scope to introduce programming on a more consistent basis subject to the expectation that the estimates would be scrutinised and might be adjusted where these are thought to be unrealistic. The objective of such a change would again be to reduce the time that is spent at the planning inquiry to the minimum consistent with a proper examination of the evidence and parties' submissions. Parties appearing early in the inquiry would not be allowed to encroach on the programmed time allocated to those appearing later. This would have benefits for all, including business interests and the public.

Question 15 Should time at the planning inquiry be programmed more rigorously in advance by reporters, and parties held to that programme witness by witness?

### Delay due to the unavailability of key individuals

41. The expectation is that once a public local inquiry starts it should continue day by day until it is concluded. Unfortunately the main parties on occasion agree to the inquiry date and do not disclose until later that key personnel are unavailable. Requests are then made for programme adjustments and adjournments in order to accommodate their needs. This is particularly unhelpful to members of the public. We propose to reinforce the existing policy to remove any doubt that a planning inquiry is

normally expected to continue day by day, as programmed and without interruption, until concluded. This would apply even where parties overrun an agreed programme. There would normally be no scope to inconvenience others by accommodating the diary commitments of inquiry parties.

## The adversarial approach

42. The Inquiries Procedure Rules, and the Scottish Ministers policy contained in the associated SODD Circular 17/1998 make the right to cross-examine witnesses a fundamental element in public local inquiry proceedings. The purpose of cross-examination is to test the robustness of evidence and to assist the reporter in making a decision or in coming to a recommendation. It is not intended that questioning should intimidate a witness, although it is clear that some fear this possibility, whilst others do not. Experience shows that the fact of preparation for cross-examination generally improves the quality of the evidence presented by a witness and thus its usefulness to the decision-maker. Reporters are trained and expected to intervene where questioning has resulted in unnecessary confrontation with a member of the public; there have been very few such incidents in recent years. On the other hand, professionals are expected to be able to withstand searching questioning to examine the robustness of the statements that they have made.

43. The Rules do not preclude an inquisitorial approach by a reporter although there has been some resistance to this at inquiries held in recent years. However, if a more inquisitorial role is set, and cross-examination is correspondingly reduced there could be an impact on the resourcing of the Inquiry Reporters Unit because of the increased time that reporters would have to spend preparing and the reduction in other output. A balance therefore has to be struck, with appropriate training given to parties and reporters, so as to ensure that all of those who wish to participate in the planning inquiry process feel able to do so without fear of intimidation, even though there is little evidence of this occurring.

Question 16	Do you consider that it is necessary for the Scottish Ministers explicitly to set a more inquisitorial role for reporters?
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44. Experience shows that reporters may be reluctant to interrupt where, during cross-examination, the questioner is using the questions to gain a better understanding of the evidence that has been presented by a witness - even though that is not the purpose of cross-examination because all parties are expected to have prepared properly and in advance. Unfortunately, where one party is given that latitude, all tend to expect it as a right. The existing rules provide all of the powers that are necessary to allow reporters to take a more assertive approach. The Scottish Ministers will therefore expect reporters to be more interventionist in managing the process of cross-examination to ensure that this assists the identification of the critical issues in the case so as to determine the appeal or formulate a recommendation.

## Reducing the adversarial context - hearings

45. The hearings process is particularly effective in dealing with straightforward cases involving a small number of parties. The Code of Practice for Hearings<sup>12</sup> provides the opportunity for the Scottish Ministers to decide that some cases should be considered by a hearing instead of the public local inquiry that was requested. Hearings involve a significantly less adversarial approach in the way that

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<sup>12</sup> Appendix F of SODD Circular 17/1998.

the evidence is tested and validated and use of this procedure in a larger number of cases would assist in reducing the adversarial context.

46. Another option, with the same effect of reducing the adversarial context, but within a potentially wider range of cases, would be to import hearings practice to replace some of the formal inquiry procedure in appropriate cases. In dealing with an appeal on this hybrid model the inquiry and the hearing could be split into two components and considered consecutively. The formal inquiry process would be applied to that part of the evidence that required an adversarial approach to test its validity. The balance of less contentious but still important material would be considered within the framework of a hearing. For this component of the process the reporter would issue an agenda in advance and all of the dialogue would be limited to the items listed. The hearing itself would take the form of a structured discussion led by the reporter, who would outline the essence of parties' cases that had been disclosed in advance in writing and ask them to confirm the accuracy of this summary. Witnesses would not formally lead any evidence, although the reporter would discuss with the parties the main areas of dispute relevant to determining the planning merits, thus dispensing with cross-examination. We consider that this approach might be an effective means of engaging the public by addressing the fear of intimidation.

47. The use of the hearings format in place of the more formal public local inquiry procedure could have significantly wider application than occurs within the present elective arrangements, but it would not necessarily be appropriate in all planning appeal or call-in casework. We consider that there is some scope for a change of this sort. However, in contrast to the situation in England and Wales, there are no statutory rules applying to the hearings process in Scotland where it is governed by a Code of Practice. The use of hearings in a wider range of cases than at present might suggest that statutory rules are required, we seek the views of consultees on this proposition.

Question 17	Should hearings practice be imported to planning inquiries when it represents the most effective means of determining the matters in dispute? Does this enhanced role for the hearings process suggest that statutory procedure rules are required?
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## Improvements in procedure after the planning inquiry has closed

### New evidence after the inquiry

48. The Inquiries Procedure Rules and the Scottish Ministers' policy establish the principle, which we consider should remain a cornerstone of the system, that parties should disclose their cases in full and in advance. This means that all must aim to complete the presentation of their evidence at the inquiry without the addition of new material. This allows everyone to prepare certain in the knowledge of the case that other parties are putting forward. The practical effect is that reporters are able to rule out evidence that appears at the inquiry without prior notice being given. The Courts have supported such a decision<sup>13</sup>. However, some parties have attempted to use the provisions in the Inquiries Procedure Rules after the public local inquiry has closed to introduce evidence concerning new material considerations of which no prior notice has been given. This has the effect of delaying the determination and runs counter to the objective of increasing certainty in the operation of the system, particularly as the present statutory arrangements can require the inquiry to be re-opened to consider the material despite the failure to disclose in advance.

49. We propose that, once a planning inquiry has closed and before the appeal or application is determined, only a change in the provisions of the statutory development plan should lead to the reporter being required to seek the written views of parties on the implications of the new development plan provisions for their case. It would be for the discretion of the Scottish Ministers and the reporter to determine, after considering those written views, whether there is a need for the planning inquiry to be re-opened. This improvement would be consistent with the incorporation of the plan-led system into Scottish planning law.

Question 18      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?

### Proposals for major infrastructure projects in Scotland

50. Unlike England and Wales there have been relatively few public local inquiries held in Scotland in recent years concerning proposals that might be classed as major infrastructure projects. Here most schemes of this type have concerned either national roads or energy developments. In contrast to England there are no Inquiries Procedure Rules (except where a compulsory purchase order is involved) for an energy or other such project involving the development of major items of infrastructure. Instead the rules relating to planning inquiries are normally applied by agreement and analogy. Experience has shown that since the major improvements in practice and procedure consequent on the introduction of the current procedure rules in 1997 and 1998, no such case has involved an inquiry lasting longer than 4 weeks. In all but one instance, the report of the inquiry was submitted to the Scottish Ministers within 1-3 months of the inquiry closing.

51. Certain major transport infrastructure projects have to be progressed outwith the scope of the town and country planning system. Light railways must, under the Light Railways Acts 1896 and 1912,

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<sup>13</sup> *CALA Management v the Scottish Ministers and Aberdeen City Council, July 2001, Lord Coulsfield.*

be progressed by means of a Parliamentary Order. Heavy railways must, under the Railway Acts, be progressed by means of private legislation. This would cover the railway, including the footprint of any stations, though the station buildings themselves would be subject to the normal planning process. New trunk road schemes also do not fall under the control of the planning process, but depend on the promotion of statutory orders under the Roads (Scotland) Act 1984. Measures proposed under the Transport (Scotland) Act 2001 might also be subject to a formal inquiry in order to consider and report on representations, whilst objections to Traffic Regulation Orders are considered by the hearing process.

52. We believe that, in the absence of dedicated procedure rules, there is good reason to continue to apply the rules relating to planning inquiries to these other sorts of cases by analogy and with the agreement of the parties. On that basis a number of the policy measures contained in this consultation paper would have potential benefits if applied, for example, to an inquiry concerned with a component of major transport infrastructure or an electricity generator. We consider that the principles underlying the issues raised in questions 8; 10; 11; 13; 14; 15; 16; 17 and 18 should have this wider application. In this context the objective of the Scottish Ministers would be to ensure that:

- the inquiry process remains a robust means of gathering the necessary information;
- there is greater certainty for those involved and more reassurance about the role expected of them;
- that decisions are taken more quickly, but just as transparently; and
- that the inquiry is as accessible as possible to the communities affected.

### Consideration by the Scottish Executive after the inquiry

53. The public local inquiry is a part of a larger decision-making process. Accordingly, in order to realise the objective of a faster overall process, attention will also be given to decision processes within the Executive once the report of an inquiry into a planning, energy or other such case is received. Our objective is to ensure that recent improvements in case processing times by reporters are matched by the process of Ministerial consideration and decision.

### The public examination of objections to strategic development plans

54. In announcing their conclusions on the Review of Strategic Planning, Ministers have indicated that a public examination of the objections to structure plans is to be mandatory. They have also suggested that this process should be less formal and intimidatory than a public local inquiry is sometimes perceived to be, and could take the form of an exchange of views presided over by a reporter.

55. This new initiative gives the opportunity to consider afresh the best arrangements to allow a sensible dialogue about objections to strategic land use policy and proposals. We consider that the hearings format referred to in paragraphs 45-47 of this paper potentially represents a good model for the examination of the issues in a manner that could allow wide participation without the risk of becoming a litigious contest. However, we are open to suggestions on the procedure that others consider would be most appropriate, bearing in mind that we do not consider that the examination of the merits of planning appeals or called-in planning applications should normally be considered in parallel with the examination of objections to a strategic development plan.

Question 19 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?

## Local plan inquiries

56. Under present arrangements those who object to the provisions of a local plan have a statutory right to request a local inquiry or hearing. There is no proposal for an alteration in that basic statutory right. However, local plan inquiries now routinely last for many months - during the last 2 years each of 7 local plan inquiries lasted for some 4-7 weeks and a further 4 lasted between 10 and 22 weeks. This is in distinct contrast to recent inquiries into planning appeals and called-in applications where the use of inquiry time has been successfully brought under control by improvements in both practice and procedure. Reasons for the length of local plan inquiries include the large number of objections that must be dealt with, and the increasingly frequent adoption of an adversarial inquiry format to hear them.

57. Many contemporary local plan inquiries are far removed from the intention of a relatively informal exchange between the interested parties concerning the future use and allocation of land that is in the best interests of a local community. The public finds it particularly difficult to engage in the process, even though reporters are sympathetic to their needs concerning timing and information. Moreover, the current expectations of planning authorities for a succession of local plan inquiries (which are likely to prove both long and costly) far exceed the capacity of the inquiry system to deliver. These also have the potential to lead to serious delay in the determination of other important appeal and call-in cases.

58. The need to accelerate plan making and approval was recognised in the outcome of the Review of Strategic Planning. The Executive is working with South Lanarkshire and Highland Councils on pilot projects to inform our thinking and intends to engage with other stakeholders to ensure that the process of development planning is streamlined and modernised. In addition, the consultation on Getting Involved in Planning and the subsequent White Paper *Your place, your plan* include a number of measures intended to improve public involvement in development planning and make local plan adoption faster and more user-friendly. We propose 3 changes related to the process of the local plan inquiry now.

- Firstly, we think that there is more that planning authorities could do to explain and negotiate with potential objectors before the inquiry is called, rather than leaving the resolution of problems to the reporter. Planning authorities must work harder to reduce the number of objections that reach inquiry, through mediation and negotiation leading to agreed changes to the plan before the inquiry is requested. The planning authority could be required to demonstrate the measures that have been taken to reduce objections at the opening of the local plan inquiry. Fewer objections would enable shorter inquiries and allow the oral process to be concentrated on issues that are critical to the delivery of the development strategy.
- Secondly, there should be a presumption that procedure at the inquiry would take the form of a hearing unless a specific case is made, and agreed with the reporter before the inquiry, that formal examination and cross-examination is necessary to deal with the subject matter of a particular objection.
- Thirdly, we propose to apply the principles of the improvements in practice contained in this consultation by agreement with parties in order to secure a better process as soon as possible.

The scope for this would vary depending on the local plan and the subject matter of the objections. We consider that there is good reason to apply the underlying principles of the issues raised in questions 8; 10; 11; 13; 14; 15; 16; and 18 to improve the consideration of objections concerning the future use and allocation of land. This should allow decisions to be taken quickly and in a transparent way more readily accessible to local communities than at present.

59. The Code of Practice for Local Plan Inquiries<sup>14</sup> sets out the procedure that parties are expected to follow and is consistent with the principles contained in the Inquiries Procedure Rules. In the short term, we propose to update that Code simply to reflect developments in practice that have taken place since it was issued. In the slightly longer term, the implementation of the conclusions of the Review of Strategic Planning will lead to the introduction of local development plans. These are to continue to be subject to a process involving an independent examination of objections.

Question 20	Do you agree that the process of development planning would be improved by requiring planning 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 local plan 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?
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## Planning appeals, call-ins and local plan inquiries

60. A number of planning authorities and appellants have requested in recent years that appeals against the refusal of planning permission, or against their failure to determine planning applications, should be considered alongside related objections to a local plan. The level of information differs considerably between that required to assess the planning merits of a planning application as opposed to the appropriateness of land use allocations or policies. Experience shows that local plan inquiries that are expanded in this way have taken longer to process and have become extremely complex. This has discouraged and inhibited public participation and reduced certainty by diverting attention from the pattern of land use in the best interests of the community. For that reason we consider that development plan inquiries, whether involving a local plan under current legislation or the examination of objections to a strategic or local development plan following implementation of the Review of Strategic Planning, should not be linked to the consideration of the merits of planning appeals or called-in planning applications.

Question 21	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?
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<sup>14</sup> SODD Circular 32/1996 Code of Practice for Local Plan Inquiries.

## Conclusions

61. We do not envisage any one proposal that could have the effect of streamlining public local inquiries or making them less adversarial at a single sweep. Instead a number of improvements are suggested. Most are directed at introducing this change, particularly where the subject matter of the case justifies a less formal approach. However, we would be interested to hear the views of consultees and their suggestions on other changes that could have this outcome.

Question 22	We would welcome views on other options not covered by this paper that could help to make public local inquiries less adversarial but allow them to remain just as robust as the means of taking decisions on major planning proposals.
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62. We believe that there is scope to make a number of modernising improvements to both the procedure and practice of the public local inquiry process when it is used to determine the merits of planning appeals, called-in planning applications and other major development proposals connected with the delivery of transport or other infrastructure. Some of the changes that we suggest are potentially more far reaching than others and we do not underestimate the difficulty in introducing proposals in a manner that achieves both the desired outcome and is fair. To that end we look to all users of the system to adopt a disciplined and constructive approach. However, we believe that it is essential that adjustments are made to ensure that the planning system continues to meet the needs of society in Scotland in the 21<sup>st</sup> century.

63. A reduction in the adversarial content of planning inquiries could result from many of these suggestions. Realisation of this objective requires all parties to be prepared to strike a new balance recognising the rights and obligations of individuals, appellants and planning authorities, and to ensure that each is able to make the case that they consider to be appropriate, whether in writing, or orally. In practical terms, parties have to be prepared to renew their commitment so that the planning inquiry system continues to deliver in the interests of Scotland and all of its people.

## Summary of main suggestions

- In the case of planning appeals, public local inquiries now called "planning inquiries"
- Qualification of the right of an appellant or planning authority to a planning appeal inquiry or hearing
- Early notification of the planning authority's views in appeals against non-determination
- Rejection of appeals that remain incomplete
- Reduction in the time for pre-inquiry processes
- Advance notice and disclosure of their case from everyone wishing to take part in a planning inquiry
- More explicit guidance on the essential issues to be considered by a planning inquiry
- Identification of areas of agreement and disagreement
- Planning appeals treated as withdrawn when not brought to inquiry
- Recovery of costs for abortive work
- Promotion of non-adversarial hearings for the benefit of communities and residents
- Limitations on the scope to consider new material after a planning inquiry has closed
- Hearings to consider objections to development plans
- Mediation before development plan inquiries
- A clear distinction between the development plan inquiry and inquiries held to consider planning appeals and called-in applications

## List of questions

- Question 1 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?
- Question 2 Should public local inquiries into planning proposals be re-named "planning inquiries"?
- Question 3 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 other suggestions that might be effective in achieving this objective?
- Question 4 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?
- Question 5 Should incomplete appeals be rejected and returned to the appellant?
- Question 6 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 relevant notice?
- Question 7 Are there other ways of shortening the essential pre-inquiry stages that could be as, or more, effective?
- Question 8 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?
- Question 9 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? If so, why?
- Question 10 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 addressed in evidence to the inquiry?
- Question 11 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?
- Question 12 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?

- Question 13 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?
- Question 14 Should preliminary argument be ruled out at the opening of a planning inquiry?
- Question 15 Should time at the planning inquiry be programmed more rigorously in advance by reporters, and parties held to that programme witness by witness?
- Question 16 Do you consider that it is necessary for the Scottish Ministers explicitly to set a more inquisitorial role for reporters?
- Question 17 Should hearings practice be imported to planning inquiries when it represents the most effective means of determining the matters in dispute? Does this enhanced role for the hearings process suggest that statutory procedure rules are required?
- Question 18 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?
- Question 19 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?
- Question 20 Do you agree that the process of development planning would be improved by requiring planning 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 local plan 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?
- Question 21 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?
- Question 22 We would welcome views on other options not covered by this paper that could help to make public local inquiries less adversarial but allow them to remain just as robust as the means of taking decisions on major planning proposals.

## References

The Town and Country Planning (Scotland) Act 1997

The Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997

The Planning (Hazardous Substances) (Scotland) Act 1997

The Planning (Consequential Provisions) (Scotland) Act 1997

The Town and Country Planning (General Development Procedure) (Scotland) Order 1992

The Town and Country Planning (Inquiries Procedure) (Scotland) Rules 1997, as amended

The Town and Country Planning Appeals (Determination by Appointed Person) (Inquiries Procedure) (Scotland) Rules 1997, also as amended

SODD Circular 17/1998 Planning and Compulsory Purchase Order Inquiries and Hearings: Procedures and Good Practice

*City of Edinburgh Council v the Secretary of State for Scotland 1998 SLT 120*

*CALA Management v the Scottish Ministers and Aberdeen City Council, July 2001, Lord Coulsfield*

SODD Circular 32/1996 Code of Practice for Local Plan Inquiries

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