010

CONFIDENTIAL

16pm yet

B/F Friday with HS comments

CCBG

SECRETARY OF STATE FOR THE ENVIRONMENT

2 MARSHAM STREET
LONDON SW1P 3EB
01-212 3434

My ref:

Your ref:

The Rt Hon The Viscount Whitelaw CH MC
Lord President of the Council
Privy Council Office
Whitehall
LONDON
SW1

2 December 1986

Dear Viscount

GOVERNMENT RESPONSE TO THE FIFTH REPORT FROM THE ENVIRONMENT COMMITTEE, SESSION 1985-86:
PLANNING: APPEALS, CALL-IN AND MAJOR INQUIRIES

On 17 September the Select Committee on the Environment published a report on 'Planning: Appeals, Call-in and Major Inquiries', and we must now respond.

The obligation presents a useful opportunity for us to set out in a coherent way the very substantial amount of work which we have been doing, by legislative means and administrative action, to speed up the handling of planning cases - both the important proposals which need major inquiries and run-of-the-mill planning appeals. I propose to use the occasion to publish the Action Plan which I have drawn up following a detailed management review of the handling of appeals requiring an inquiry; and to publish a consultation paper on the revision of the rules governing procedures at planning inquiries. The latter paper would be supported by a draft revision of the relevant rules, and would make public the measures which we agreed at H Committee on 2 October 1985 and 19 May 1986 to speed up major inquiries.

This package would constitute, in my view, a more than adequate response to the Select Committee and merits publication in the form of a Command Paper, to which would be attached the consultation paper, draft rules, draft code of practice on preparing for major inquiries, and the Action Plan inquiries appeals procedures.

Officials in the Departments principally interested in these matters have seen an earlier draft of the papers, and the present drafts take into account a number of points which they have made. In particular, paragraph 16 of the consultation paper and the related draft rule 16(3) take account, at the request of Peter Walker's officials, of the imminent need to take a decision on the Sizewell case following receipt of Sir Frank Layfield's report.

I am bound to say that rule 16(3) as drafted will be strongly criticised as not having full regard to recent case law on how decision-makers should treat new matters which are relevant but which were not ventilated at the inquiry. However, we need ourselves to do more detailed legal work on this question and, despite the risk of criticism, I am content to go out to

consultation on the basis of a text which is no more than a tidying-up of the existing rule on this point.

Expressly the draft rules would apply only to certain types of cases being inquired into under the Town and Country Planning Act 1971. The rules however are made by the Lord Chancellor under the Tribunals and Inquiries Act 1971, and the consultation paper explains that the revised rules are a consultation draft which the Lord Chancellor has agreed that the Department may publish. It also explains that the principles underlying the draft revision will in due course be applied to other sets of inquiry rules which are the policy responsibility of other Departments, but that there may be differences to suit the particular requirements of the types of case to which they would apply.

I should be grateful to know whether colleagues are content for the publication of these papers in the form of a Command paper responding to the Select Committee. The formal convention is that responses to Select Committee reports should be made within 2 months. I have told Sir Hugh Rossi that he should not expect a reply before December. If it were possible, I should like to publish the paper on 16 December. Being a Command paper, it would need formal approval at Cabinet on 11 December. If colleagues can only reply within the usual 10 day period, I should have to accept that publication would have to be deferred until Parliament returns after the Recess. But I should very much prefer publication by 16 December, and I should therefore be grateful if colleagues could indicate whether they are content by Monday 8 December.

I should also be grateful to know whether the Lord Chancellor, Peter Walker and John Moore wish to be associated with Nicholas Edwards, Malcolm Rifkind and myself in formal presentation of the paper for Parliament.

I am sending copies of this letter and enclosures to the Prime Minister, the other members of H Committee, the Lord Chancellor, Paul Channon, Peter Walker, the Chief Whip and Sir Robert Armstrong.

NICHOLAS RIDLEY

Draft of 27 November 1986

Planning:

Appeals, Call-In and Major Inquiries

The Government's Response to the
Fifth Report from
Environment Committee,
Session 1985-86.

Presented to Parliament by
/the Lord Chancellor/
the Secretary of State for the Environment,
the Secretary of State for Scotland,
the Secretary of State for Wales,
/the Secretary of State for Energy/,
and
/the Secretary of State for Transport/

Cmnd. 0000

PLANNING: APPEALS, CALL-IN AND MAJOR PUBLIC INQUIRIES

'The Government's Response to the Fifth Report from the Environment Committee, Session 1985-86'.

1. The Government welcomes the Fifth Report from the Environment Committee, Session 1985-86, on Planning: Appeals, Call-in and Major Public Inquiries.

2. The memorandum below gives the Government's detailed response to the report.*

3. The Government's broad objectives in the reform of the planning system were set out in the White Papers "Lifting the Burden" published in July 1985, and "Building Businesses .... Not Barriers" published in May 1986. In those White Papers, the Government acknowledged that the town and country planning system has served the country well, and emphasised that it has no intention of abolishing it. The aim of the planning system is to secure economy, efficiency and amenity in the development and use of land. The system must work efficiently and effectively, and strike the right balance between the needs of development and the interests of conservation.

4. The Government believes that it is holding that balance, though it must be recognised that the decision on a particular development proposal, whether on application or an appeal, will always disappoint either the developer or the objectors.

5. The Environment Committee's Fifth Report, Session 1985-86, concentrated on issues which relate to the statutory responsibilities of the Secretary of State for the Environment in development control: for deciding planning appeals; considering whether particular planning applications should be referred to him

---

* Although the Committee invited the Scottish Office to submit memoranda on the planning system in Scotland its recommendations relate only to England and Wales. The underlying principles of the planning system in Scotland are the same as in England and Wales, and the policy initiatives for England and Wales described below will in general be reached by initiatives in Scotland appropriate to Scottish circumstances.

for decision; and (with the Lord Chancellor and the other Secretaries of State concerned) for the statutory and administrative arrangements for major public inquiries under the planning and other Acts.

6. The Government's policy is to simplify the planning system and improve its efficiency. It fully accepts that it should put its own house in order as a key element in that process. The Committee's report records the initiatives which the Government is taking towards that objective - in the Housing and Planning Act 1986, through changes to secondary legislation, and in other ways. As the Committee's report rightly says, "much detailed and serious work is underway in the Department to try and tackle the problems of delay and we regard the many initiatives which are in hand as well worthwhile". The Government is grateful that many of its efforts on the subject have the support of the Committee. As the memorandum below shows, the Government already had in hand further action on a considerable number of points raised by the Committee in its report.

PART I: PLANNING APPEALS

1. The Government's principal objective with respect to the planning appeals system is to achieve a sharp reduction of the time taken in normal circumstances to reach a decision in all types of appeal, but without reducing the quality of decision. This was made clear to the Committee in the Department of the Environment's written and oral evidence. The Government notes that the Committee does not disagree with the view that speed of decision should not take precedence over the quality of decision or justice being seen to be done; and that the Committee accepts that it is difficult to strike the right balance between speed and equity. The Government is convinced however that many improvements in efficiency can be made without risk to the quality of decision.

2. Many improvements in policy and procedures have been made in recent years in order to achieve the Government's objective. As a result of detailed reviews, intensive efforts have been made in the last three years to identify changes in legislation, guidance and administrative practice with this end in view. This programme of work is not yet completed and a considerable number of changes are only now in the process of implementation. This response refers to much of the work in hand. It will inevitably be a little while before the full effects of the programme of work will be seen in improved performance, although some improvements in decision times are already perceptible.

3. In this context it should be noted that present performance on many types of appeal is significantly better than a decade ago, despite an increase in the number of appeals from about 11,500 then to more than 18,000 this year. In particular the median time for appeals decided by Inspectors on the basis of written representations and a site visit was 19 weeks in the first three quarters of 1986 compared with 24 weeks in 1976. The equivalent figures for Secretary of State inquiry cases were 46 weeks in the first three quarters of this year compared with 55 weeks in 1976.

(a) Numbers of appeals and reductions in the base

4. In order to ensure that available resources are concentrated on deciding cases which are reasonably the subject of an appeal, action continues to be taken to ensure that appeals are not made needlessly. The Government has made a considerable number of amendments to the Town and Country Planning General Development Order (GDO), chiefly in 1981 and 1986, which have had the effect of reducing the number of planning applications and consequently the number of appeals. Its work on revision of the Use Classes Order (UCO) has also been designed to remove unnecessary control, with similar consequences. The Government acknowledges that its recent proposals will have a less marked effect than might have resulted from the recommendations of the sub-group of the Property Advisory Group in 1985. That simply illustrates however the fact that the Government does not intend to pursue speed of processing in the planning system whatever the costs for the local environment.

5. Prompt information, of adequate quality for the purpose, on the performance of the planning system as a whole, and of the handling of appeals in particular, is essential if the system is to be managed properly and accurate adaptations to it are to be made. The Department of the Environment already has, and publishes as necessary, a wide range of relevant statistical data. As part of the follow-up to the recent management reviews of the handling of appeals, it is redesigning the computer system used to record progress with appeals cases. The Relevant Cases Records database has also been introduced and, following initial problems with hardware and software, it is now fully operational. It provides details of relevant decided cases in the vicinity of an appeal site.

6. As the Committee notes in its report, the Department publishes quarterly statistics showing the number of appeals decided; these are broken down into the categories of written representations, public local inquiry or informal hearing, and indicate for each the number and proportion of appeals allowed. The Chief Planning Inspector's annual report provides additional, more detailed, information.

7. The Government is monitoring carefully for policy and management purposes both the increase in the number of appeals overall and the proportions of different types of appeals allowed. It is easy to make a simple causal link between increases in the proportions of appeals allowed and the increase in the number of appeals overall.

Recommendation 1 We recommend that the Department should undertake and publish a full analysis of the reasons for:

i. the overall increase in the number of planning appeals being made;
ii. the steady increase in the number of appeals being allowed;
iii. the variable outcome of an appeal depending on the appeals procedure used. (paragraph 21)

But the relationships and possible causal connections are complex. Behind the aggregate statistics are the many individual decisions taken by a large body of Inspectors, or by the Secretary of State, in the light of the material planning considerations in each particular case.

8. The Department's analysis to date suggests that one important factor in the increase in the number of appeals since 1984 has been the increase in the rate at which local planning authorities are refusing planning applications - from a national rate of 12.4% in 1983 to 14.4% in 1985.

9. A number of factors have contributed to the increase in the proportion of appeals allowed in recent years. Insofar as increased rates of refusal of planning applications by local planning authorities reflect changes of policy on the part of those authorities, an increase in appeals allowed is to be expected. Circular 14/85 may also have been influential in that appeals decided for some months after it was issued will have related to decisions reached by local planning authorities before the circular was issued. Moreover, six-tenths of decisions by authorities are upheld on appeal: this reflects the continuing need stressed in Circular 14/85 'to preserve our heritage, to improve the quality of the environment, to protect the green belts, and to conserve good agricultural land,' as well as to encourage employment and economic growth.

10. Multivariate analysis of variations in approval rates for different types of appeal - in particular those proceeding by inquiry as against those dealt with by written representations - indicates that only in

respect of one or two types of appeal are the variations statistically significant. In comparing approval rates for inquiries with those for written representations it should be remembered too that nearly 90% of 'minor residential development' appeals (appeals relating to the proposed construction of between 1 and 10 dwellings) went by the written representations procedure - representing 48% of all written representations appeals. Compared with other categories of appeal, these minor residential developments have a relatively low appeal success rate. In 1985, for example, only 28% of minor residential appeals were allowed - the lowest success rate by a wide statistical margin. Moreover it is possible that those who take appeals to public inquiry feel that they have a stronger case than those opting for written representations. Despite appearances to the contrary, it by no means follows therefore that the chances of success in the individual case are in fact greater if an inquiry is sought.

11. The Government agrees with the Committee that it is important that the development control activities of local planning authorities should take place against the background of clear expressions of national policy by the Government. Circular 14/85 is a prime example of the Government's systematic efforts in the present decade to provide such clear advice - in that case about a basic principle underlying the planning system which practitioners seemed in danger of forgetting. It was however only one of a series including Circulars 22/80 (Development Control Policy and Practice), 22/83 (Planning Gain), 14/84 (Green Belts), 15/84 (Land for Housing),

Recommendation 18 We recommend that where Government policy on controversial planning matters remain unclear, the Secretary of State should take steps to spell out the criteria likely to influence his consideration of such matters on appeal. (paragraph 85)

16/84 (Industrial Development), 1/85 (The use of conditions in planning permissions), and 2/86 (Development by Small Businesses). In addition, there have been Circulars on narrower topics such as Opencast Coal Mining (3/84), Planning Control over Oil and Gas Operations (2/85), controls over hazardous development (9/84) and enforcement (26 & 38/81). Guidance is also supplemented when necessary in White Papers and Parliamentary statements. Major retail development, which the Committee believes to be a subject on which clear policy advice is lacking, is a case in point, where an existing Development Control Policy Note was supplemented by a Parliamentary written answer on 5 July 1985. It will continue to be the Department's practice to issue such guidance wherever appropriate.

12. The Government recognizes that its policy advice is not always as easily accessible to local planning authorities and developers as it could be, especially where it appears in a number of circulars. The annex to Circular 2/86 on small businesses is an example of efforts to bring together in a single place passages relevant to planning and small businesses. The Government will seek to repeat this process from time to time on other subjects as necessary and it will consider improving the form in which such compendia are presented. It also intends to publish in due course an index of extant planning circulars and other policy guidance.

13. It must be recognized however that where the local planning authority does not agree with the Government's clearly-expressed policy, that very clarity may occasion appeals rather than prevent them, despite the increased use of costs as a sanction.

14. The Government agrees that it is important that the appeal process should not be used unless it is absolutely necessary: it is an instrument of last resort. Developers are advised to consult planning authorities about their applications before they are made and to discuss the proposal further with the authority if a refusal has been received. In Department of the Environment Circular 18/86, (Welsh Office 54/86) published on / / December the Department has encouraged local authorities to discuss reasons for refusal with potential appellants at an early stage in the process.

15. The Government agrees with the Committee that local authorities should aim to disclose <u>from the outset</u> all relevant grounds for refusal or the imposition of conditions. This advice was stressed in DoE Circular 2/86 (Development by Small Businesses"), which stated, "it is important that, where permission must be refused, clear and relevant reasons are given: care in explaining the decision can save much frustration and a futile appeal." This advice is to be given statutory force in the forthcoming consolidation of the GDO, in which it is intended to give greater precision to the requirement that reasons be given for refusals of planning permission or the imposition of conditions.

<u>Recommendation 20</u> We recommend that every notice issued by a local authority refusing planning permission should, coupled with notice of the applicant's right of appeal, carry a standard offer of further discussion with the local authority and should also offer to provide more detailed written reasons for refusal in the event of their being notified that the applicant is considering an appeal. This supplementary note of refusal should be issued within 14 days of such notification from the applicant. The supplementary note of refusal should list all grounds for refusal including objections by other statutory authorities. These grounds for refusal should be supported by extracts from relevant policy documents such as the local plan or Development Control Policy Notes, and full copy of any report on the application considered in Committee by planning authority members. (Paragraph 91)

16. As a matter of good practice the reasons given in the authority's notice of determination should be clear and precise. They should therefore form a perfectly adequate basis for the appellant to state his grounds of appeal. In most cases the statement of reasons should (with the other relevant documentation, in particular the planning officer's report to his committee) be all that is required to present the authority's case. A supplementary note, as proposed by the Committee would be likely to undermine the Government's efforts encourage the giving of adequate reasons in all cases.

17. The Department has specifically encouraged applicants and local planning authorities to seek to resolve their differences through negotiation wherever possible (for example in Circular 31/81 "Planning and Enforcement Appeals" and Circular 2/86 "Development by Small Businesses"). The point is reinforced in DOE Circular 18/86 on written representation appeals. The draft circular on the award of costs (see paragraph 47) already envisages that in certain circumstances failure to negotiate will be grounds for an award of costs and unreasonable behaviour of this kind will normally come to light during the appeal process. However, in appealing the developer is exercising a statutory right and it is questionable whether the onus should be on him to demonstrate that it is reasonable. The Department will strengthen the advice on negotiation in its next revision of 'Planning Appeals - A Guide'.

Recommendation 19 We recommend that the parties to an appeal be required to indicate on the DoE's appeal questionnaire what steps have been taken prior to appeal to resolve their differences. Failure to negotiate in appropriate cases should be taken into account as one element in considering whether the conduct of a party has been so unreasonable as to justify an award of costs to the other part. (Paragraph 88)

18. As the Committee has noted, the Department has already considered and decided against a reduction of the present period of 6 months allowed for the applicant to make any appeal to the Secretary of State. There is clear evidence that appeals lodged towards the end of the 6 months' period are least likely to be withdrawn, while those made soon after the refusal are the most likely to be withdrawn. A reduction of the period is therefore likely to result in more appeals and more withdrawals, not less. The Government accordingly prefers to give every encouragement to consultation and negotiation between local planning authorities and potential appellants and would therefore be reluctant to take any action which might result in a greater number of appeals which would subsequently be withdrawn.

Recommendation 22 We recommend that the period in which an appeal may be lodged should be 3 months. which shall be extended to 6 months where the applicant has first sought discussions and negotiations with the local planning authority within the first 3 month period. (paragraph 93)

19. The Government agrees that it is helpful to the effective operation of the development control system that as much information as possible on the Secretary of State's approach to appeal decisions in particular types of case should be available to local planning authorities and developers. From time to time the Secretary of State makes press releases on cases which he considers of particular significance. Copies of decision letters can be obtained from the Inspectorate. Reports of significant planning appeal decisions are given in various publications. Earlier this year a new quarterly periodical was introduced by a well-known legal publishing house, in addition to those which already included such material. These publications are clearly of value to potential appellants and to local authorities, drawing as they do on the texts of the decision letters

Recommendation 21 We recommend that the Department should take steps to make information from its computerised Relevant Case Records system more generally available to local authorities, appellants and their advisers. (Paragraph 92)

concerned. The Department sends to the various publications copies of decisions which it regards as significant.

20. The Department accepts that the appeals data held by the Planning Inspectorate should in principle be more widely available. However, because of the limited nature of the data at present held in the Relevant Case Record System, it would be of little help to appellants or local planning authorities in its present form for the purpose which the Committee has in mind. The possibility of linking the Relevant Case Record System to an electronically stored library of decision letters is under consideration. This would produce a data base that could usefully be made available to the parties to an appeal. Progress towards such a system will depend on the availability of resources.

(b) Procedural change and informality

21. In recognition of the importance of reducing delays in deciding appeals, the Government has conducted detailed management reviews during the last two years of all aspects of the procedures for handling planning appeals. The Government agrees with the Committee that there is no single fundamental change which will overcome the problem of delay: there is no escape from a programme of detailed incremental change. This must be implemented with accuracy, care and at a measured pace: wholesale change to a staff-intensive clerical system would be likely to result in a serious worsening of performance until the changes had been absorbed.

22. Following the efficiency scrutiny of cases decided by written representations procedure, an Action Plan was published in May 1986. The Government notes that the Committee find these proposals satisfactory. Some changes have already been implemented earlier this year - notably an arrangement for the direct copying by appellants of their appeal forms to the local planning authority, and a reduction in the degree of checking of Inspectors' work in order to allow decisions to be issued more promptly after the inquiry or site visit. Many of the procedural changes in hand or to be implemented, together with other aspects of good practice in written representations cases, are set out in DOE circular 18/86 on written representations procedures. The circular also introduces two important changes in practice in inquiry appeals.

23. Other changes in inquiry procedures are dealt with in a further Action Plan, based on the review of the inquiry appeal procedures. The Action Plan and report of the review are published today. The summary of the Action Plan is at Appendix I. A further circular will be issued, after consultation in the usual way, on those aspects of the changes in respect of which the cooperation of local planning authorities and appellants is required.

Resources

24. The Government accepts that, concomitant with changes in procedures, more resources are needed if a marked acceleration in decision-making is to be achieved, particularly in view of the increased rate

Recommendation 11 The Department should recruit sufficient full and part-time Inspectors to ensure that it meets its target for a median handling time of 11 weeks by the end of 1988 for written representation appeals. (Paragraph 66)

at which appeals have been submitted since the management reviews were undertaken. The Department has recently engaged 19 contract Inspectors, and further salaried Inspectors are being recruited by open competition. It is estimated that around 25 salaried Inspectors will need to be recruited during 1987 to maintain the established complement. The volume of appeals is constantly monitored, and sufficient full and part time Inspectors will be recruited to achieve the proposed accelerations of median times set out in the Action Plans.

Arranging the Inquiry

25. The Government recognises that the delays which occur in fixing dates for public inquiries are a major cause for concern. The constraint is not so much the Inspectorate's manpower but rather the inability of the parties to the appeal to agree to a mutually convenient date. Problems in this respect have increased in recent years. DOE Circular (18/86) on procedures for written representations appeals included proposals to curtail the time allowed for negotiation about inquiry dates, and to reduce the number of opportunities for the parties to refuse dates. These proposals are a measure of the importance which the Government attaches to the need to reduce the interval between the lodging of an appeal and the opening of the inquiry; and of the Government's willingness to oblige the parties to be ready for inquiries at much earlier dates than in the

Recommendation 12 We recommend that:

i. The DoE should immediately recruit enough full-time Inspectors to ensure that it will meet its target of arranging 90% of inquiries within 16 weeks of appeal by late 1987;

ii. The DoE should take a far firmer stance with local authorities and appellants on offering possible inquiry dates. Where an inquiry cannot be fixed by mutual agreement to take place within 16 weeks of an appeal being lodged, the Department should specify a date on an unnegotiable basis as soon as possible thereafter;

recent past. The Department is also taking steps to encourage better co-operation by parties in settling an early inquiry date; and the Inspectorate is to press those local planning authorities whose appeals caseload is not being matched by adequate resources to make arrangements which allow inquiries to be held within a reasonable time.

26. In the Action Plan on inquiry appeals, the Department accepts the need for a facility to collect statistics on performance of planning authorities and to monitor change. It will collect these figures, and consider publication if the measures now in hand fail to enable the Department to achieve the target times in the Action Plan.

iii. The DoE should publish details to show which local authorities regularly fail to arrange for an inquiry to take place within 16 weeks of the lodging of an appeal. (Paragraph 69)

Inquiry procedures

27. Parallel with its reviews of administrative procedures for handling appeals, the Government has been reviewing the Town and Country Planning Inquiries Procedure Rules 1974, first with particular emphasis on their bearing on major planning inquiries, and subsequently with respect to the generality of inquiry cases. Lord Elton referred to certain proposed changes in his evidence to the Committee on 12 March 1986. The Government is publishing today a consultation paper setting out its proposals for amendment of the Rules for applications called in under s.35 of the 1971 Act and appeals under s.36 recovered for the Secretary of State's decision. The text is reproduced at Appendix II.

28. It is intended that the rules for other types of planning case and for projects approved under other statutes should be amended, so far as would be appropriate in each case, in a similar manner. With regard to inquiries into major road proposals, any amendments to the procedures will take account of the unusual position of the Secretary of State for Transport as both promoter of the scheme and, jointly with the Secretary of State for the Environment, the deciding authority. This means that the Inspector in highway inquiries would take on some of the administrative functions attributed to the Secretary of State in the proposals for planning inquiries to ensure that the Inquiry is run quite independently. The very large number of individuals immediately concerned in some highway inquiries may also mean that some of the following proposals will be impractical and will therefore not be adopted in all cases.

29. The main changes proposed are as follows:-

i) provisions to ensure earlier and fuller exchange of pre-inquiry statements by reference to final dates established early in the life of the appeal. There would be a new power to require statements from third parties.

ii) there would be alternative and more detailed procedures for <u>major</u> inquiries. The Secretary of State would be required to provide a statement of the matters which he considers relevant to the decision. The main parties would, within specified periods, have to serve outline statements prior to, and detailed statements after, one or more pre-inquiry meetings.

iii) unless the Secretary of State specifies a later date, it is intended that once the Department has fully implemented the measures contained in the Action Plan at Appendix I, the inquiry would open within 18 weeks of the formal notification to the parties of the intention to proceed by way of inquiry, or within 8 weeks of the (last) pre-inquiry meeting for major cases.

iv) third parties who have been required to serve a pre-inquiry statement, and have done so, would be given a right to appear at the inquiry (draft rule 11).

v) the appointment of an assessor would have to be announced and where the assessor makes a written report after the inquiry, this would have to be appended to the Inspector's report.

vi) the Inspector's powers to regulate the conduct of proceedings at the inquiry would be made explicit (see paragraph 33 below).

vii) post-inquiry procedures would be amended so that the Secretary of State would be required to consult with those that appeared at the inquiry where he is minded to disagree with the Inspector's recommendation in the light of new evidence.

viii) prescribed procedures would have to be followed where a decision reached following an inquiry is quashed by the Courts.

30. For those cases which are of such significance that the Department will provide the Inspector with the support of a secretariat, the Rules will be supplemented by the Code of Practice on Preparing for Major Planning Inquiries in England and Wales. Parts of the Code may also be applied in other cases at the initiative of the Planning Inspectorate and with the agreement of the parties. The Code deals with administrative aspects of the pre-inquiry process. While the Code has already been subject to consultation in draft its detailed provisions are affected by certain of the proposed amendments to the Rules. A revised draft is annexed to the consultation paper. Among the administrative measures set out in the draft Code, but not covered by proposed changes in the statutory rules, are the following:-

i) interested persons who wish to participate in the inquiry would be asked to complete a standard registration form, giving particulars of their interest.

ii) an inquiry secretariat would prepare, from the forms, a register of participants in 3 parts, with details of (a) major participants (b) those who have indicated they with to give oral evidence without otherwise playing a major part and (c) those who wish to submit written representations without taking part in the oral proceedings. Copies of the register will be made available.

iii) major participants would be asked to include, in their outline statements submitted before the pre-inquiry meeting, an estimate of how long presentation of their case is likely to take, information about the witnesses they are likely to call and those whom they would wish to cross-examine.

iv) the Inspector would seek to identify from the statements made by the parties those facts which appear to be capable of agreement between the main parties. A statement of generally agreed facts and relevant matters still in dispute would be deposited and circulated.

v) the matters to be considered at the pre-inquiry meeting would be clarified in the Code. The secretariat would send a note of conclusions reached at the meeting to major participants.

vi) before or during the inquiry, the Inspector might arrange for informal meetings to be held to see whether agreed statements of facts can be prepared on particular issues.

31. Whether or not the special provisions relating to major inquiries in the Rules and Code are applied, the revised rules would enable the Inspector if he considered it necessary to cause a pre-inquiry meetings, in order to identify the main issues likely to arise at the inquiry, and to provide an opportunity for agreement to be reached on factual issues before the inquiry opens. The pre-inquiry meeting would also enable the Inspector to settle a programme for the inquiry and to deal with procedural and administrative arrangements.

32. The Government agrees that firm, demanding timetables are needed for all inquiry cases, to run from a clear point early in the life of the appeal or call in. The proposals in the consultation paper are intended to provide a reasonable balance between the need for minimum delay and the need for the parties to have adequate time to prepare their cases. One of the main objectives of the proposals in the consultation paper is to ensure that in the case of major inquiries the main parties at least provide an outline statement of case before any pre-inquiry meeting is held, and that a full statement of case is provided four weeks after the last pre-inquiry meeting.

33. The Government's intention is that the wide-ranging powers which an Inspector already has to regulate the conduct of the proceedings should be stated more explicitly in the Rules. These include powers for the Inspector to refuse to hear evidence or to permit the continuance of cross-examination that he considers irrelevant or repetitious, and to require a person behaving in a disruptive manner to leave the inquiry. It is proposed to give the Inspector a new power to require that a summary of a proof of evidence shall be prepared, and that only this summary shall be read out.

34. Post-inquiry evidence is already taken into account only when it is material to the decision, and it is intended that the amended Rules should more clearly reflect this.

Recommendation 14 We recommend that a statutory inquiry timetable should be adopted to run from the date the appeal was first lodged. Third parties excepted, unreasonable failure to comply with the timetable should provide the basis for an award of costs to the other party. Any such timetable should include:

i. a local authority statement of case and a full statement of the factual background to be submitted within 28 days of the appeal being lodged;
ii. a statement of case from all appellants to be lodged within 14 days of receipt of the local authority statement;
iii. an exchange of all written proofs of evidence no later than two weeks before the inquiry is scheduled to open. This should enable the Inspector to direct that proofs should be taken as read at the hearing.

Unless there are strong reasons to the contrary the Inspectorate should require other documents to be circulated. These include documents to be submitted by section 29 parties and other parties entitled to appear at the inquiry, a statement of facts agreed between the main parties and an agenda drawn up by the Inspector to indicate the main issues for consideration at the inquiry. (paragraph 73)

Recommendation 13 We are convinced that the inspectors need new powers to enable them to exert more influence over inquiry proceedings prior to the actual hearing (paragraph 70)

Recommendation 15 We recommend that inspectors should be given an explicit power to reject all new evidence after the close of a public inquiry unless in their judgement the circumstances are exceptional and the evidence is capable of materially affecting the outcome. (paragraph 74)

35. The Department's Action Plan of May 1986 announced that a median time of 7 working days for the stage of the process after the close of the inquiry or site visit would be achieved by reducing levels of monitoring of work of Inspectors before decisions are issued; and by issuing Inspectors with suitable word processors. A pilot project on the use of word processors will be starting early in December 1986.

Recommendation 16 We see no reason why the decision stage for transferred public inquiry cases should not reduce to a median of 1 or 2 weeks in due course. (paragraph 76)

36. The proportion of cases recovered for decision by the Secretary of State now stands at only 4-5% of the total. As noted by the Committee, regulations came into force on 1 May 1986 which will have the effect of transferring to Inspectors some 200 appeals per annum, mainly minor cases linked with listed building consent appeals. The Department has been reviewing the criteria for recovering cases. /The Government has adopted revised criteria which will reduce the number of cases recovered by a further 100 or so a year. Details of the revised criteria are as follows:

1. Residential development of 150 or more houses.

2. Proposals for development of major importance having more than local significance.

3. Proposals giving rise to significant public controversy.

4. Proposals which raise important or novel issues of development control.

Recommendation 17 We recommend that the Secretary of State should recover for his own decision only those appeal cases causing substantial public or Parliamentary controversy or involving a novel policy issue or of such significance that they are subject tro the Department's pre-inquiry code for major inquiries. (paragraph 79)

5. Retail developments over 100,000 square feet.

6. Proposals for significant development in the Green Belt.

7. Major proposals involving the winning and working of minerals.

8. Proposals which raise significant legal difficulties.

9. Proposals against which another Government Department has raised major objections.

10. Cases which can only be decided in conjunction with a case over which Inspectors have no jurisdiction (so-called 'linked' cases).

It is expected that the new criteria will result in the recovery of about 400-450 cases a year, against the background of appeals totalling nearly 20,000 a year. It is reasonable that Ministers and senior officials should be closely concerned with an adequate number of cases each year, not only because of the importance of the cases themselves, but in order to retain knowledge of how the system is working as a whole./

37. There is some evidence of considerable misunderstanding of the decision-making process once the Inspector has reported in a recovered case. The decision falls to Ministers or officials rather than the Inspector. Legally, they must address their minds to the case in a proper manner. At the very least a decision letter must be

prepared, and if the case is going to Ministers a submission will also be necessary. It is therefore essential for the officials concerned to have a sufficiently detailed knowledge of the case for these purposes. The Government is however continuing its management effort to simplify the process and to cut the work after the Inspector's report is received to the minimum required to assist Ministers to reach a decision and to satisfy the legal requirements of a decision letter. A new management target has now been set so as to ensure that, in 80% of cases, letters are issued within 8 weeks of receipt of the Inspector's report. From time to time the most difficult cases may inevitably require longer, of course.

Informality

38. The expansion of the Inquiries Procedure Rules to deal in greater detail with the pre-inquiry stages and to make explicit the Inspector's powers to control the inquiry is essential if reports on cases going to inquiry are to be provided more promptly. The Government would be concerned however if the revised rules, and the power in the Housing and Planning Bill to make rules in respect of other types of case were to be interpreted as a move in the direction of legal formality in the appeals process. The Inspectorate does not seek to promote formality in any type of case. The Government agrees with the Committee that, even where representations are being fully tested in cross-examination, the aim of all concerned should be to use an approach and methods which establish the relevant information collaboratively, in an open and

Recommendation 23 We recommend that the Inquiries Procedure Rules should be amended so as to encourage inspectors to take a more active part in inquiries without the risk of their decisions being quashed for breach of the rules of natural justice. (Paragraph 95)

relaxed manner. Once again, this is as much a matter for the parties and their representatives as for the Inspectorate. Rule changes which enable the Inspector to take a more active part in the proceedings would not necessarily solve the problem where one or other or both the parties are determined to formalize the proceedings and to seek temporary tactical advantages.

39. The Government is not convinced that it would be wise to promote accompanied site visits in written representations cases in the way recommended by the Committee. It is fundamental to the written representations procedure that all the evidence and arguments on which the parties rely are set out in written statements. If this is done, there is no need for further oral representation - the Inspector inspects the site and its surroundings simply so that he can assess the weight to be given to the issues raised.

Recommendation 24 We recommend that the appellant, local authority and any directly affected third party should be invited to accompany the Inspector on a site visit made in connection with written representation appeals.

40. If discussion of the merits of the case were permitted during site visits, the Inspector would be obliged to take notes of the submissions, often in very difficult conditions. There would be a need for procedural rules to set limits to the extent to which oral submissions could be made; otherwise, there would be the possibility that some parties would save what they regard as their best arguments for the site visit. Site visits would become in the nature of informal hearings.

41. Experience has shown that to arrange an accompanied site visit at a time acceptable to the principal parties can take 2 weeks longer than an unaccompanied site visit. There are often many interested persons who might wish to attend. Local authorities would need to send a representative of sufficient seniority to deal competently with any submissions made; 40% of site visits take place without the need to arrange prior appointments. They can be allocated immediately to Inspectors to give them a full load of work at any time. The result of all this would be the need for greater resources and costs in handling the cases concerned.

42. Advance notification of decision is already given in appropriate cases decided by informal hearing. In those cases, and in cases decided by local inquiry, the Inspector has heard all the relevant evidence by the end of the proceedings. In written representation cases the site visit often takes place before all the documentation is complete. In these circumstances if an AND were to be issued at the site visit, the decision would run the risk of challenge as being contrary to the principles of natural justice. For this reason, following an experiment in the issue of ANDs in written representation cases, the Department decided not to adopt the practice generally. The Government's intention is that in written representations cases a decision letter should be issued in a median time of 7 working days after the site visit. Prompt decision after the site visit makes advance notification of decision unnecessary.

Recommendation 25 We recommend that the power to issue an Advance Notice of Decision should be extended to the written representation and informal hearing procedures. (Paragraph 98)

43. The scrutinies of written representations and inquiry procedures both endorsed the present practice of not leaving the parties the final choice as to whether a case proceeds by way of informal hearing. The Act gives the parties the right to be heard or to dispense with the right to be heard; it does not allow the parties to prescribe the type of hearing. To deal with cases by informal hearing when they can satisfactorily be decided by means of written representations would increase the costs of the Department and of planning authorities and could delay decisions in the cases concerned: on average, Inspectors can decide 3 written representations cases for every 2 cases decided by informal hearing. The Government therefore believes that the procedure should remain that where one or other of the parties elects for a hearing, the Department will advise the parties if it considers that the case is suitable for an informal hearing.

Recommendation 26 We recommend that an appellant should be able to opt for an informal hearing appeal. (Paragraph 100)

44. The Government agrees with the Committee that the procedure for the most straightforward appeals should be simplified further. This can best be achieved, in the Department's view, by keeping the documentation to a reasonable minimum. With that in mind, DOE Circular 18/86 on written representations appeals encourages local planning authoritnes to submit full statements of case only where necessary, and suggests that on receipt of an appeal the authority should:-

Recommendation 27 We recommend that the Department should introduce on an experimental basis a simple procedure for appeals by householders in connection with developments to their own properties and should report the results of the experiment to Parliament. The Department should consider offering this kind of simple appeal for other kinds of development. (Paragraph 104)

(a) advise interested parties;

(b) complete a simple questionnaire and submit this to the Planning Inspectorate together with copies of any relevant correspondence with statutory agencies and interested persons, the planning officer's report to committee, any relevant committee minute and extracts from the relevant plans or policies on which their decision relied; and

(c) consider whether any further statement of case is needed.

Provided that the local planning authority do not make any statement at this stage, there should be no need for any written response by the appellant, and the case can be decided by an Inspector within about 3 or 4 weeks of receipt of the questionnaire. As with the approach recommended by the Committee, success in achieving faster decisions would depend on both parties resisting the temptation to make further written representations.

45. The Government cannot accept the Committee's "site meeting" proposal, for the reasons set out in the response to recommendation 24 (paragraphs 39-41).

Costs

46. It is already the Secretary of State's policy that full use should be made of the power to award costs both to improve the speed and efficiency of the appeal process, and also as a sanction against unreasonable refusals of planning permission or frivolous appeals. Recently there has been a marked

increase in the number of awards, from 310 determinations and 58 awards in the whole of 1984 to 436 determinations and 134 awards in the first ten months of 1986. The measures in the Housing and Planning Bill, to which the Committee refer with approval, are intended to widen the scope of the costs regime, and to help it to operate more efficiently. The Secretary of State shares the Committee's view that it would not be appropriate to move to a system in which costs simply follow the event, not least because this would undermine the effectiveness of an award of costs as a sanction against unreasonable conduct.

47. A draft of a revised departmental circular giving detailed guidance on circumstances in which costs are likely to be awarded, and on the related procedures, was sent to the local authority associations and other interested bodies on 6 August 1986. It is intended to publish the final version shortly.

48. The policy set out in the draft circular is closely in line with the Committee's specific recommendations relating to costs. It is made clear that costs may be awarded against a planning authority in cases where planning permission has been refused unreasonably, including cases where an application has been refused although there are no reasonable planning objections to the proposal. Similarly, costs may be awarded against an appellant who is pursuing an appeal which has no likelihood of success. One example is the case cited by the Committee where the appellant is or should be aware that the Secretary of State has recently refused planning permission in

Recommendation 2 We recommend that there should be a presumption that costs will be awarded against an unsuccessful appellant on a second or subsequent appeal for similar development on broadly the same site except where the Secretary of State is satisfied that, due to changes in policy or in the character of the development proposed, the behaviour of other parties to the appeal, or other relevant circumstances, an award should not be made. (Paragraph 53)

Recommendation 3 We recommend that costs be awarded against local planning authorities where an appeal is upheld against a refusal and the Secretary of State is satisfied that such refusal was made for reasons other than sustainable planning grounds. (Paragraph 54)

respect of the same site and development, and the circumstances have not changed in the meantime. The draft circular also indicates that awards of costs in favour of or against third parties will be made only very exceptionally, and explains the circumstances in which a partial award of costs may be made. Costs may already be awarded for a failure to comply with procedural requirements (such as timetables) relating to the handling of an appeal where this has caused one or other of the parties to incur unnecessary expenditure.

Recommendation 4 We recommend that costs should be the primary method of reinforcing the statutory timetable for inquiry appeals recommended by us in paragraph 73. (Paragraph 55)

Recommendation 5 We recommend that the Secretary of State should be prepared to award costs where at an inquiry no substantial evidence is brought by one of the parties to counter any material factual statement contained in the statement by the other party which has not been previously agreed. (Paragraph 56)

Recommendation 6 We also recommend that clear power should be taken for the Secretary of State to make a partial award of costs to introduce an element of flexibility in cases where there has been default on both sides and where the default of one party was not the sole cause of delay or of inconvenience to the other. (Paragraph 57)

Recommendation 7 We recommend that the Secretary of State should consider the feasibility of a scale of costs/penalties to be laid down (subject to periodic indexation) for breaches of various procedural requirements. (Paragraph 58)

Recommendation 8 Third parties should neither receive costs, nor be liable to pay the costs of other parties. (Paragraph 59)

Recommendation 9 We recommend that the Secretary of State should undertake a thorough revision of his criteria and procedures on the award of costs, and should publish a new comprehensive circular giving detailed guidance as to the types of case where he would anticipate that costs would be awarded. (Paragraph 60)

49. The underlying principle of the costs regime is that a party to a planning inquiry who is guilty of unreasonable, vexatious or frivolous conduct should reimburse any expenditure which another party has been forced to incur unnecessarily as a result. The Committee's proposal relating to a fixed scale of costs/penalties for a breach of procedural requirements would move away from the principle of reimbursement to a form of quasi-criminal sanction. This would require amending legislation, and the Government does not consider that this would be an appropriate way of enforcing procedural requirements in planning appeals. The proposal that compensation should be payable for all consequential losses, and not simply to reimburse unnecessary expenditure, which would also require legislation, would amount to a new cause of action against local authorities for the unreasonable exercise of their planning powers. Local authorities are already liable in damages for the negligent exercise of their functions, and the Government is not persuaded that it would be right to go beyond the existing legal position simply in relation to one specific local authority function.

Recommendation 10 We recommend that a successful appellant should have the right to apply to the Lands Tribunal for an assessment of the compensation payable by the local planning authority in respect of all losses flowing directly from the action of the local planning authority in, without any planning justification, refusing a grant of planning permission, imposing a planning condition or failing to determine an application within the prescribed time. In any such proceedings, the decision letter of the Secretary of State or his Inspector should be conclusive as to the facts found therein, but either side should be permitted at the discretion of the Tribunal to adduce further facts which were not before the Inspector or the Secretary of State. (Paragraph 63)

II. CALL-IN

50. The Secretary of State's discretion under section 35 of the 1971 Act to require that a planning application, or class of application, be referred to him for decision is broadly drawn. Insofar as decisions whether applications should be referred to the Secretary of State are taken on a case-by-case basis, each decision must be made in the light of the circumstances of the particular case and the Secretary of State must not fetter his discretion by the

Recommendation 28 We recommend that the Department adopt fresh and more wide-reaching criteria for call-in as outlined in paragraph 128 and that there should be closer monitoring of the process (Paragraph 123)

Recommendation 30 We recommend that the Development Plans Directions, which require that certain kinds of planning application should be referred to the Secretary of State, should be widened so as to require the notification to the Secretary of State of all planning applications which the local planning authority does not propose to refuse, and which relate to development:

rigid application of any particular policy towards such cases. His general approach is however not to interfere with the jurisdiction of the local planning authority unless it is necessary to do so and to require reference to him only where matters of more than local importance are raised by the application. In consequence, it is to be expected that directions to refer applications to him will be relatively rare. The Government recognizes the importance of consistency between its various decisions to direct reference of applications to the Secretary of State and will continue to monitor carefully its decisions to ensure that cases which merit call-in are referred to him. It is proposed the Department's Regional Offices will take the decisions on the basis of the following guidance: call-in should be considered in cases:

(i) which arouse substantial regional or national controversy;

(ii) which give rise to, or are likely to give rise to substantial political interest;

(iii) which would represent major development of a type which is unfamiliar in this country, and which may therefore raise new policy issues;

(iv) which raise sensitive environmental issues, such as substantial incursions into Green Belts, Areas of Outstanding Natural Beauty or Sites of Special Scientific Interest;

i. which in their opinion constitutes a significant departure from the structure plan for the area or from any policy or general proposal of an approved local plan which conforms with the structure plan;

ii. which in their opinion would harm an interst of acknowledged importance, by reason of its scale and/or its location in an area of enfironmental significance;

iii. which in their opinion, or in the opinion of an adjoining local planning authority (outside London and the metropolitan areas) would cause demonstrable harm to the statutory planning policies of an adjoining local planning authority;

iv. which involves a site in which the local planning authority own an interest and propose to dispose of an interest in it to allow the development to be undertaken by another; or where the applicant has agreed, if permission is granted to provide some financial or other non-planning advantage going beyond the criteria of DoE Circular 22/83 (Planning Gain);

v. where there is an unresolved objection from another local authority, water authority, Government department, the Countryside Commission, the Health and Safety Executive or the Nature Conservancy Council.

The Secretary of State should review the adequacy of the background documentation currently required under the Development Plans Directions with a view to allowing local planning authorities to comply readily and efficiently with these requirements. (Paragraph 128)

Recommendation 31 We also recommend that the Secretary of State should be come subject to a statutory duty to consider all notifications made to him under these provisions and to notify the local planning authority within 14 days whether he proposes to call-in the application; moreover he should monitor the consistency of call-in decisions as between the Department's regional offices. (Paragraph 129)

(v) which involve proposals which would, because of their scale or character, have effects beyond the immediate locality (eg major expansion of a small town; very large retail/leisure development; new road works which would have wide effects): in general, intervention in these types of cases should be limited to developments which would affect or conflict with policies of a kind which are, or are likely to be, included in a Structure Plan;

(vi) where the effect of the proposals would be to nullify, wholly or partially, a provision in the development plan inserted by means of a recent modification made by the Secretary of State;

(vii) where granting permission would conflict with a recent decision by the Secretary of State on a similar proposal, either on appeal or as a result of a previous call-in;

(viii) where the local planning authority might be thought to be biased by having a financial interest in the decision (for example if the authority had entered into an agreement, which implied payment of substantial damages if they had not

used their best endeavours to obtain consent; or where there is a range of similar applications and the authority have a financial interest in one of them and when only one is likely to be approved);

(ix) where the extent of opposition, and the grounds of objection, are such that there is judged to be a widespread belief that the local planning authority may not be able to reach an objective decision on the application.

(x) where the proposal affects national security;

(xi) where the proposed development is near a Royal Palace or residence;

(xii) where, following consultation, a Government Department expresses sustained opposition to the grant of planning permission.

51. The Government does not however consider that it is necessary or desirable to expand in the manner proposed by the Committee the categories of case which local planning authorities are required to notify to the Secretary of State. Under the Committee's proposals a very large number of applications would have to be notified, decisions in all the cases concerned would be likely to be delayed, and there would be an implication that in a considerable number of cases the decision ought to be taken by

the Secretary of State. Parliament has charged local authorities with the responsibility for development control, along with many other important administrative decisions. They are democratically-elected bodies accountable to their electorates for their decisions. In the view of the Government, it would imply an unnecessary degree of central control for the decision in a considerable number of planning applications to be taken by the Secretary of State rather than by the local authority. The Secretary of State should intervene only when there are compelling reasons why the local authority ought not to be entrusted with the decision. The present arrangements for notification seem to the Government to work satisfactorily, particularly as it is open to any individual or body to make representations to the Secretary of State for the call-in of any application. There is no reason why these decisions cannot be made promptly in most cases, and, where necessary, the Department is normally able to obtain from the local authority without difficulty any additional information required to enable the decision on call-in to be made.

52. Unlike developers, third parties have not had any rights removed by the modern system of development control. Rather, where the citizen is concerned about development proposed by an occupier of land, he now has the right to make representations to a democratically-elected local authority charged with determining the planning application. The Government therefore shares the Committee's view that it would not be appropriate to give third parties rights to appeal to the Secretary of State against the grant of planning permission.

Recommendation 32 We recommend that there should be a separate right of third parties to require the Secretary of State to call-in an application, whether or not it has been notified to him under the proceeding requirements where the local authority does not propose to refuse the application and where the application is one within Category (ii) paragraph 128, or relates to a site in which the local authority owns an interest or where the applicant has agreed, if permission is granted, to provide some financial and other non-planning advantage going beyond the criteria of DoE Circular 22/83 (Planning Gain). (Paragraph 130)

The Government considers that it would be equally inappropriate t give any rights for third parties to require the Secretary of State to call-in certain categories of application. It is already open to third parties not only to make representations to the local planning authority, but also to make representations to the Secretary of State that the decision ought to be taken by him (whether in respect of an application under Part III of the 1971 Act or a proposal under the Town and Country Planning General Regulations 1976), so that the Secretary of State can decide whether in all the circumstances the decision ought to be taken by him rather than the local planning authority. It must be for the Secretary of State's judgement as to whether a particular application raises issues of such significance as to warrant his taking the case out of the hands of the local authority to which Parliament has entrusted day-to-day decisions on development control matters. In doing so he would in any event take into account as necessary the considerations referred to in the Committee's recommendation.

53. The Government notes the Committee's view that in the vast majority of cases the procedure in the 1976 General Regulations under which local planning authorities deem themselves to have permission from the Secretary of State for their own development, or development on land owned by them, raises few problems and is uncontroversial. The Department has however already instituted a review of the working of these regulations.

Recommendation 29 We recommend that the Department conducts a thorough going review of the adequacy of the procedures by which local authorities grant themselves planning permission and of the Town and Country Planning General Regulations 1976 and the safeguards contained in them. (Paragraph 127)

PART III MAJOR PUBLIC INQUIRIES

54. Over the last 20 years, both local residents and pressure groups claiming to represent the general public have increasingly demanded the right to express a view on the policy assumptions underlying a major development proposal, particularly in the public sector, as well as on the local effects of the proposal. This has been particularly true of road proposals, where objectors have sought to question the need for the road, and to put forward alternative public transport solutions to the traffic problem which the proposal is intended to solve. It has also been true of proposals from the energy industries, where questions have been raised about what ought to be the relative contributions of coal, nuclear power, alternative technologies and energy saving measures in meeting future energy needs. This phenomenon is not limited to the United Kingdom; in certain other countries, objectors have resorted to direct action against projects. We must do everything possible to prevent this from becoming the normal form of protest against a major and controversial project. The Government considers therefore that adequate provision must be made for this kind of public debate to take place, in one forum or another.

55. The Government does not believe that the problem of lengthy inquiries can be solved simply by better compensation arrangements. Such arrangements might reduce the number of objections from local residents but better compensation offers nothing to those whose primary concern is with national policy issues such as the safety of nuclear power, the need for energy saving, the encouragement of public transport.

Recommendation 33 We recommend that the Department of the Environment undertake a cost-benefit analysis of paying realistic compensation to those financially disadvantaged by the consequences of proposals which are the subject of major inquiries as against the costs to the national economy of such inquiries. (Paragraph 167)

56. The Government recognizes the importance of giving the greatest possible degree of precision to the policy background against which the decision on a particular project should be made. As the Committee point out, there is a number of ways apart from public inquiries, in which this can be done, with the participation of the public as necessary. They range from Royal Commissions to departmental consultation and from investigations by Parliamentary Select Committees to debates on Government White Papers. The method chosen needs to be appropriate to the particular case, and Ministers will continue to decide case-by-case the best instrument for the purpose. The terms of reference for the site-specific inquiry itself need to be decided against the policy background which is relevant to the case. They should be as precise as possible and should build upon relevant matters which have already been settled publicly by an appropriate process. It should be noted that the consultation paper on amendments to the Inquiries Procedure Rules referred to in paragraph 27 above includes a proposal to strengthen existing requirements relating to the provision of a statement of the issues which seem to the appropriate Minister to be likely to be relevant to his decision on the particular case. In preparing such statements, Ministers will continue to consider how far it is appropriate for national policy issues to be brought within the scope of the particular inquiry, and how far he should seek to limit the inquiry to site specific issues. There may well be cases in which a major public inquiry is a

Recommendation 34 We conclude that:

i. Wherever possible, national policy should be clearly determined and laid down by government prior to a planning inquiry on a major development which should take place within the context of such policy;

ii. As far as is practical, the questioning of national policy determined elsewhere should not be allowed to impinge upon public inquiries, which should be concerned with site specific issues and with whether a particular site fits within the national policy;

iii. Where national policy considerations are unavoidable in respect of a major development and government needs a public inquiry to determine that policy, it should:

   a. in a development proposal which involves a number of alternative or successive sites, seek the assistance of a Planning Inquiry Commission, for which statutory provision exists, before using site specific public inquiries;
   b. in remaining cases, use a unitary major public inquiry, modified by the use of the DoE's new Code of Practice. (Paragraph 181)

perfectly reasonable instrument for inquiring into the policy background as well as the suitability of the particular site or sites. In others, limited terms of reference will be perfectly reasonable, in view of earlier public debate and decision.

57. In their report, the Committee discuss the merits of a two stage process, with a first stage devoted to policy issues and the second to site specific issues. The Government notes that the Committee have recognised the difficulty of distinguishing between the two kinds of issues in most cases, and the Government agrees with their conclusion that a split into two stages would normally offer little in terms of greater speed, efficiency and thoroughness.

58. The Committee urge the use of the Planning Inquiry Commission procedure in cases where there are a number of alternative or successive sites to be considered. Primary legislation would in any case be needed to adapt the instrument for the purposes suggested by the Committee, but, that aside, the difficulty that the Government sees is that, even in such cases, it is virtually impossible to distinguish between site specific issues, which need to be considered at an ordinary public local inquiry, and issues of general policy, which can be investigated by means of the first stage of a Planning Inquiry Commission. A person who lives near a proposed nuclear power station is likely to be as much concerned with policy issues, such as the safety of the installation, as with the effect that the building will have on local views or the desirability of retaining the proposed site in its present state for conservation reasons. If all those living

near all the alternative or successive sites are given an opportunity to explain their views at the first stage inquiry, it is difficult to see what will have been gained. If not it seems unreasonable to prevent a local resident from raising matters which are of immediate concern to him at the ordinary second stage public inquiry, simply on the ground that they have already been settled through a procedure in which that resident did not have the opportunity to take part. So while a two-stage process may be a suitable means of clarifying the policy background at the first stage, it should not in the Government's view, be assumed that it will save time overall.

59. For these reasons, the Government considers that normally it should continue to use the single-stage public inquiry. In cases where a number of alternative proposals are under consideration at the same time, a single inquiry can sometimes be held to avoid the need for the same issues to be gone over at several inquiries. The statement of issues referred to in paragraph 56 above will indicate which issues the appropriate Minister regards as relevant to his decision and it is then for the Inspector to decide at what point he should exercise his power to exclude evidence on other issues on the grounds of irrelevance. The measures referred to in paragraph 29 above, are specifically designed to improve the speed and efficiency of the whole process; but the Government believe that they will be of particular help in major cases. The Government's conclusion on a two-stage process does not however rule out the possibility of experiment with a two-stage process where it might be suitable, for example, for public discussion of the route of a major new road link.

60. For a number of years, Inspectors have been encouraged to take a more active part in the proceedings, to ensure that all relevant issues are covered, that irrelevant evidence or cross-examination is curbed, and that the proceedings are conducted in an efficient and effective manner which avoids time wasting. One of the objectives of the proposed amendments to the Inquiries Procedure Rules is to strengthen this approach. For major schemes of the type under discussion in this part of the Committee's report, it would be surprising if the distinguished independent people who are appointed as Inspectors felt much inhibition about adopting the form of inquiry which they believe is most conducive to discharging their task.

61. The Government is not convinced that it is necessary in the general case to appoint inspector's counsel for this purpose, and the effect of such an appointment may in fact be to make the proceedings longer. Nevertheless, the Government has not ruled out the possibility of making further appointments of this kind in appropriate cases.

62. It is already open to Inspectors to indicate that they would like to hear evidence on a particular matter, and this may lead one or more of the parties to have research carried out. It is also open to the Inspector to ask Government Departments to have research carried out to assist him. However it should be remembered that, in all but the lengthiest inquiries, there is insufficient time between the appointment of the Inspector and the inquiry to allow research to be carried out in any great depth.

Recommendation 35 We recommend that, as a general rule, inspectors at major public inquiries should use a more inquisitorial approach than has been used in the past. This may involve the appointment of inspector's counsel in some cases. (Paragraph 186)

Funds for Third Parties

63. The Committee put forward two arguments in support of their recommendation that financial assistance should be given to "those who help the Government to decide policy at major public inquiries". The first is that it would be a quid pro quo for the additional burdens placed on objectors by the use of the pre-inquiry procedures set out in the proposed amendments to the Inquiries Procedure Rules and the Code of Practice. The Government accepts that there will be costs for third parties in meeting the requirements of these procedures, but the benefits to be gained from them in terms of the efficient handling of business will reduce the length of inquiries, and this will result in cost savings for objectors as much as for other parties. The Government believes that the savings will outweigh the cost of meeting the requirements. The second argument is that funding will assist coordination between groups making similar submissions, but no evidence has been produced in support of this view. It might equally be argued that the lack of public funding encourages groups making similar submissions to combine, because they cannot afford to do otherwise.

64. Most objectors participate in public inquiries to defend their own interests. This is a perfectly proper activity, but there is no reason why it should be financed out of public funds. As the Committee recognise, there is no obvious way of identifying objectors who are appearing out of purely altruistic motives in the public interest to "help to decide policy". It would be no easier for the Government to

Recommendation 36 We recommend that the Government should devise a scheme whereby it gives financial assistance to those who help it to decide policy at major public inquiries and not expect them to bear the costs of submitting evidence themselves; with the particular purpose of securing adherence to timetables and assisting coordination between groups making similar submissions. (Paragraph 193)

Recommendation 37 We recommend that, in the immediate term, a scheme should be incorporated into the Code of Practice, for all cases where issues of national policy fall within the remit of the inquiry, for the Secretary of State to make funding available to third parties on an ex gratia basis in accordance with recommendations made to him by the inquiry inspector, and for the inspector to have express power to commission research, to be carried out by participants, individually or collaboratively, or by others. (Paragraph 194)

take these invidious decisions than for a body of trustees whose potential problems are recognized by the Committee. Different parties at the inquiry are likely to have very different ideas about what evidence is helpful and what evidence is not, and if the Government were to fund some objectors but not others on this basis, it could well be taken to imply that the Government had decided what its attitude was going to be to particular lines of argument before the inquiry had even started. If the task were passed to the Inspector, he in turn would be open to accusations of bias, in saying that one objector was worthy of financial assistance and, by implication, that another objector was not worthy of assistance, because his evidence seemed unlikely to be "helpful".

65. It remains the Government's view that the funding of third parties would do nothing to improve the efficiency of public inquiries, and would be more likely to make major inquiries last even longer. While it is recognised that some objectors regard the present inquiry system as unfair, because of lack of funding, the Government has concluded that any funding scheme would be open to similar complaints, because it favoured one objector against another, and implied that the Government had decided before the inquiry opened what evidence was or was not likely to be helpful. It should also be remembered that the local planning authority, and other publicly funded bodies such as the Health and Safety Executive, already appear at inquiries to represent the general public interest.

Appendix I

ACTION FOLLOWING A REVIEW OF INQUIRIES PLANNING APPEALS

1. This paper gives details of the action the Department is taking, in the light of a recent management review to revise procedures for handling planning appeals decided after an inquiry or informal hearing. It is in two parts: a summary (A) and a schedule (B) listing the individual recommendations and actions proposed. The report of the management review is published as an Appendix.

PART A : SUMMARY

INTRODUCTION

2. The objective of Ministers is to achieve a major improvement in the times taken to reach decisions on planning appeals, without reducing the quality of decision-making.

3. In Spring 1985 they commissioned an efficiency scrutiny of the 85% of planning appeals decided following an exchange of written representations and a site visit by a Planning Inspector. The report of that scrutiny was published in May 1986 together with an action plan*. A circular (/86) has already been issued giving details of steps already taken or to be taken to implement the proposals in the action plan. Many of those steps will speed the handling of all appeals, not just those decided on the basis of written representations.

4. In order to identify additional improvements, a further management review carried out in the autumn of 1985 looked in detail at the handling of the 15% of appeals requiring a hearing before an Inspector.

5. The report (see Appendix) identifies a substantial potential for speedier decisions in all types of planning appeal where a hearing is necessary. In particular it identifies ways of reducing the median handling times for inquiries appeals transferred to Inspectors for decision (12.5% of all appeals decided in 1985) from 30 weeks at the time of the review to 17 weeks.

6. Ministers have accepted all the main recommendations of the report.

7. But, as in the case of written representations appeals, the achievement of faster times depends not only on action by the Department but also on the energetic co-operation of the parties taking part in the inquiry process.

* Footnote. Speeding Planning Appeals : ISBN 0 11 7518581

MAIN STEPS TO ACHIEVING FASTER PROCESSING TIMES

8. The review indicated 3 important ways of achieving faster handling times:

1. streamlining the procedural stages;

2. revising the Inquiries Procedure Rules to require earlier and more comprehensive exchanges of statements between the parties, to reduce the duration of inquiries, and to advance any negotiations between the parties, possibly leading to a withdrawal of the appeal, to take place well before the hearing;

3. securing a radical change in the attitudes of the parties.

Only in the first and second of these matters does the ~~initiative~~ immediate responsibility lie with ~~Ministers~~ the Department, though it will seek to do all that it can to encourage a helpful approach by the parties.

9. The following measures have already been implemented by the Department, or are in the process of implementation following the scrutiny of written representation appeals procedures:-

(i) Reorganisation permitting acceleration of the despatch of decision letters. This has already been implemented.

(ii) Time savings in the early stages of processing the appeal by requiring appellants to copy appeals direct to the local authority instead of providing a duplicate for the Inspectorate to forward. This will enable the local authority's work on the appeal to begin about 2 weeks earlier. Appellants are already encouraged to send copies direct and the practice will become mandatory following an amendment proposed to the General Development Order early in the Parliamentary Session 1986/87.

(iii) Encouraging improved communication between authorities and appellants through clearer and more detailed notices of the authority's decision on the planning application and better statements of the grounds of appeal. Earlier exchanges of case may also demonstrate to the parties the scope for a negotiated agreement without proceeding with the appeal. Guidance will be issued by the Department early in 1987.

(iv) Setting a target timetable (starting from the date the appeal is submitted) for each appeal covering the key stages in the process and

communicating this to appellants and those intending to appeal. This will be implemented gradually during 1987.

(v) Improving the Inspectorate's performance in preparing decision letters and reports by investment in word processors. This will speed decisions by 8 working days. A trial involving some 25 Inspectors is due to start in December 1986. If successful, machines will be issued to most Inspectors during 1987.

10. The following additional changes proposed in the report on inquiry appeals should result in substantial further time savings in the processing of such appeals:

(vi) Arranging inquiry dates much more promptly by rigorous target setting and reducing the scope for negotiation over dates. In future each party will be permitted only one, instead of the present two refusals, before the power in the Inquiry Procedure Rules to fix the date, time and place of the inquiry will be exercised; this change is being implemented in circular /86. And the setting of a target timetable for each appeal should allow a saving of 4 weeks between the fixing of an inquiry date and the start of the inquiry by the end of 1987 and greater savings in informal hearing appeals.

(vii) Amending the Inquiries Procedures Rules to require the early disclosure of the parties' cases. The intention is to link timing of events in the process to the lodging of the appeal rather than the inquiry date, to encourage earlier negotiations and reduce the number of inquiries postponed or cancelled at the last minute. The proposed changes to the Rules are the subject of a separate consultation paper being issued today. The aim is to amend the Rules later in the Parliamentary Session 1986/87.

(viii) Ensuring informal hearings are offered wherever possible. The criteria will be revised and applied from November 1986.

(iv) Encouraging parties who, for some good reason, do not want an early hearing to put appeals into abeyance. This will be implemented when targets are introduced to ensure that Inspectorate resources are no longer wasted on non-urgent cases.

RESOURCES

11. The Department is demonstrating its commitment to implementing the recommendations within its direct control, by deploying additional resources - staff and financial. These will provide for the increased workload, and for the surge of cases through the system as handling times are reduced, and for the shortfall identified in the review of inspectors for inquiry appeals.

(i) Inspectors

12. The intention is to recruit sufficient inspectors to replace those retiring and to ensure that resources are sufficient throughout 1987 to deal with the number of appeals anticipated (19,000). Since the end of 1985 20 part time consultant Inspectors have been recruited. They are now dealing with many written representations appeals, releasing resources elsewhere for inquiry cases.

13. In addition about 20 Inspectors have been recruited on a contract basis for period of between 3 and 5 years. The first group began training at the end of August 1986. These Inspectors will be paid a daily fee plus a retainer to ensure their availability whenever required by the Inspectorate and will deal with both the inquiry and written representation appeals. An open competition is in hand for the recruitment of salaried Inspectors with successful candidates joining in March and June 1987.

(ii) Administrative staff

14. The increased number of appeals received in 1986 was not in the earlier stages matched by an increase in administrative staff. A backlog of appeals has built up. Implementation of some of the key reorganisation proposals accepted in the Written Representation Action Plan in May 1986 has also inevitably resulted in some teething problems. As a result the steady improvement in median handling times for written representation appeals achieved in the last months of 1985 has not been maintained and some further deterioration in inquiry times has also occurred. The Department increased the number of administrative staff to deal with the higher number of appeals, and a work measurement study has been undertaken so that appropriate staff levels can be assessed. Until a balance between staff and workload is achieved and the backlog substantially reduced, the improved handling times which should result from the implementation of a number of measures in the written representations scrutiny cannot be delivered.

(iii) Financial resources

15. Implementation of this plan will also require an increased financial commitment - principally in the investment in information technology - to facilitate the comprehensive target setting scheme in which workable deadlines are set both for the Inspectorate and the parties. A feasibility study will be commissioned to evaluate the costs and benefits of the administrative computing proposals recommended in the written representations and inquiry reports.

TIMETABLE FOR IMPLEMENTATION

16. The review suggested a programme for staged improvements in handling times for inquiries and informal hearings. Mainly as a result of the increase in workload since the review was undertaken, it will not now be possible to achieve the median times targeted for 1986 and the first half of 1987. Moreover as the Inquiries Procedure Rules will not be revised until the 1986/87 Session the benefit to be gained from earlier submission of pre-inquiry statements will be delayed. The revised timetable below takes account of these factors, but still offers signficant improvements.

PERFORMANCE AND PROJECTED PERFORMANCE

	Median	75%	90%
Mid 85	30		
1st quarter '86	32		
4th quarter '86	32		
Reorganisation of reception and despatch of decision letters Direct copying (voluntary) Additional staff for increased caseload Additional flexibility in allocation			
1st quarter '87	30		
2nd quarter '87	28	38	50
as above plus word processing trial			
3rd quarter '87	25	32	44
GDO Tighter targetting of acknowledging/allocation plus wider introduction of word processing: changes in Inquiries Procedure Rules			
4th quarter '87	23	28	38
1st quarter '88			
as above	21	26	34
1988			
3rd quarter	19	22	28
Further reduction in waiting time for inquiry as a result of changes in Inquiries Procedure Rules. Completion of provision of word processing equipment			
1989			
3rd quarter	17	20	26
Assumes co-operation of parties and availability of IT for improved targetting by PINSA			

Organisation of the Summary of Recommendations

17. In Section A we have picked out a number of proposals from the report that offer the greatest contribution to the acceleration in decision times that Ministers seek. Responsibility for implementing many of these recommendations does not rest entirely with the Department. In an attempt to clarify the contributions we seek from the parties to appeals we have organised the detailed response to the recommendations in Section B as below:-

A What is required of the Inspectorate

1. Changes to organisation and introduction of targetting

2. Increasing Inspector availability/flexibility

3. Implementation of I.T. Strategy

4. Improving/extending existing statistics data base

B. What is required of the parties

1. At initial stages of appeal

2. Increasing local planning authorityinquiry capacity

3. Preparing for the inquiry

4. Good practice at inquiries

C. Proposals Recommendations for informal hearings

D. Publication of advice/guidance

E. Existing practice endorsed

F. No action proposed at present

DRAFT

Appendix II

Town & Country Planning (Inquiry Procedure) Rules 1974

Proposals for Revision

1. In a wide variety of cases, decisions on whether or not proposals for the development of land may proceed are taken only after a public local inquiry has been held and a report has been submitted to the appropriate Secretary of State by the person appointed to hold the inquiry. In other cases, the decision is taken by the person holding the inquiry. The procedures for such inquiries are governed by rules made by statutory instrument. They are made under s.11 of the Tribunals and Inquiries Act 1971 by the Lord Chancellor on the advice of the relevant Secretary of State.

2. The response to the Fifth Report of the House of Commons Environment Committee, Session 1985-86, on Planning: Appeals, Call-In and Major Inquiries (Cmnd. 0000) indicates that the Government has been reviewing the various provisions of the Town and Country Planning (Inquiries Procedure) Rules 1974 (the 1974 Rules), and is now proposing to amend them. At Annex 1 to this Consultation Paper is a draft revision of the 1974 Rules, prepared by the Department of the Environment and embodying the proposed amendments. The Lord Chancellor's Department have consented to the invitation of public comment on the changes proposed.

3. The revised rules would apply only to inquiries held in pursuit of appeals under s.36 of the Town and Country Planning Act 1971 which are decided by the Secretary of State rather than by Inspectors appointed by him; to applications referred to the Secretary of State under s.35 of that Act; and to applications or appeals decided by the Secretary of State under the Act in respect of listed building consent and tree preservation orders. Similar revisions, with such modifications as are desirable for each type of case, would be made to the rules governing the conduct of public local inquiries held for other purposes under the Town and Country Planning Act 1971.

4. In respect of the several other sets of rules made under s.11 of the Tribunals and Inquiries Act 1971 - for example, inquiries held under the Electricity Act 1957 and the Highways Act 1980 - the Government's intention is that in due course they should be amended, so far as would be appropriate in each case, in a manner similar to that now proposed for the Town & Country Planning (Inquiries Procedure) Rules.

5. Many of the amendments proposed reflect the widespread concern, which is shared by many of those involved in major inquiries, about the length and cost of those proceedings. They also take account of changes in inquiry practice and the law since 1974. The Government's main objective in bringing forward these proposals is that inquiries should be as efficient and effective as possible, while not impairing in any way the fairness and impartiality of the proceedings, or the ability of the participants to make representations which are relevant to the decision. Many of the proposals will also facilitate the general run of inquiries, the great majority of which are concluded within a few days. These improvements will help to improve not only the inquiry process itself but also the overall time taken to process planning appeals.

Pre Inquiry Procedures

6. The use of the period before the inquiry opens can make a crucial contribution to the speed and effectiveness of the inquiry proceedings themselves. The purpose of the inquiry is to enable the Inspector to provide the Secretary of State with the information and advice that he needs in order to reach a good decision.

7. Early exchange of information before the inquiry will help the Inspector to plan and programme the inquiry, and to identify and resolve problems. It will enable him to identify in advance the principal points on which the inquiry should concentrate, thus avoiding needless discussion of matters which are not relevant. If the parties know as much as possible about each other's case at an early stage, this will also help them to concentrate on the matters which are really in dispute, and other issues can be either resolved before the inquiry opens or avoided entirely. That will result in savings for the parties. It follows that in the public inquiry there should be no place for surprise tactics.

8. The 1974 rules already contain provisions which are based on these principles. However, they have been found to be inadequate, and it is necessary to strengthen them in a number of respects. The main changes which are now being proposed are:

(i) Final dates by which documents must be exchanged. This 'timetabling' is designed to enable the inquiry to open within a specified period of the Secretary of State's notification to the parties that he proposes to consider the case by means of an inquiry. The final dates for exchange of documents in the revised rules are fixed forward by reference to the date of this notification ("the relevant date"), and not backward from the date of the inquiry, as in the 1974 rules. The effect is to provide from the beginning predetermined dates by which action has to be taken. At present there may be no clear timetable until the inquiry date has been fixed, possibly some time after the application or appeal has been received.

The draft Rules specify the period within which the inquiry will normally be held. The period will be fixed by reference to the performance which must be achieved in at least 90% of cases if decisions are to be made as speedily as Ministers wish. On the basis of the recommendations in the Review of the Handling of Inquiries Planning Appeals (para 11.5) Ministers have accepted that in the longer term in 9 out of 10 cases the inquiry should open within 18 weeks of the submission of the appeal. They have recognised, however, that that level of performance is not immediately achievable. On the assumption that it will be possible to bring a revised version of the Rules into effect during the present Session, it is proposed that the Rules should initially specify a period of 22 weeks. That figure will need to be reduced subsequently in order to achieve the performance to which the Department is committed in the Action Plan on the Handling of Inquiries Planning Appeals.

It should be noted that 22 weeks is the period during which the inquiry will normally be expected to start: it is not to be understood as the normal period from the Secretary of State's notification to the start of the inquiry. In many cases it will be possible and necessary for the inquiry to start well before the 22 week period is up. New arrangements for fixing inquiry dates were set out in Circular /86.

(ii) A requirement on the appellant or applicant as well as on the local planning authority to give a written statement of the submissions which he proposes to put forward at the inquiry. At present, the appellant or applicant does not have to serve such a statement unless he is specifically required to do so by the Secretary of State.

(iii) A power for the Secretary of State to require parties other than the applicant and the local planning authority (third parties) who have notified him that they wish to appear at the inquiry to give a written statement of the submissions which they propose to put forward. Third parties play a much greater role in the more important inquiries than they did in 1974, and in many cases it will be reasonable to expect the same kind of pre-inquiry material from them as from the applicant and the planning authority. Third parties who meet these requirements will be entitled to appear at the inquiry as of right, and not simply at the discretion of the Inspector.

(iv) Specific provisions relating to pre-inquiry meetings. These meetings provide an opportunity for the Inspector to identify clearly the main issues with which the inquiry is likely to be concerned, the position of at least the main parties on those issues, and the need for additional evidence on any of these matters. In turn, this information will enable the Inspector to lay down a programme for the inquiry, and to make the necessary procedural arrangements to ensure that the proceedings will run smoothly, speedily and efficiently. Pre-inquiry meetings have already been

held at a number of inquiries, but this has been on an informal basis. In the Government's view the time has come to increase the use of such meetings in appropriate cases and therefore it is desirable that the Rules should make specific provision for them.

(v) An express power for the Inspector to lay down a timetable for the regulation of the order of proceedings at the inquiry.

Major Inquiries

9. It is proposed to include in the Rules separate provisions relating to pre-inquiry procedures in major cases. These are set out in Rule 5 of the draft. In cases in which this Rule is applied, a pre-inquiry meeting called by the Secretary of State will always be held. The parties to the inquiry will be required to serve an outline statement of the submissions which they propose to put forward at the inquiry before the pre-inquiry meeting, and a full statement after the pre inquiry meeting or meetings.

10. In addition, in these cases, the Secretary of State will issue a statement of the matters which appear to him to be likely to be relevant to his consideration of the application or appeal. (In the 1974 Rules, such a statement is required only in cases where the Secretary of State has called-in an application for his own decision.) This statement will have a key role in delineating the expected scope of the inquiry, an important topic on which the Government has set out its views in paragraphs [ ] - [ ] of its response to the Select Committee. It will however remain open to the Inspector to hear matters which go beyond the terms of the Secretary of State's statement if the Inspector considers that those matters are relevant to the decision.

Code of Practice on Preparing for Major Planning Inquiries

11. However, there are limitations on what can appropriately be done by means of statutory procedure rules. It is proposed, therefore, to issue a Code of Practice, as a non-statutory form of guidance, on the pre-inquiry stages of major inquiries. A copy of the latest draft of the Code is attached as Annex 2 to this Consultation Paper and comments are invited on this as well as on the draft revisions to the Rules. It is intended that the Code will be made available to parties proposing to appear at major inquiries. It incorporates not only the proposals contained in the draft rule /5/ but also a number of administrative measures which, when combined, should help to make the inquiry process, at all stages, more efficient and more effective. Although the intention is to apply the full provisions of the Code only to those major cases to which draft rule 5 has been applied, elements of it might usefully be applied to other cases, where appropriate. The initiative would lie with the Planning Inspectorate to make proposals to the main parties in cases in which the Inspectorate considers that partial use would facilitate the consideration of the case.

Procedure at the Inquiry

12. Rule 14 of the revised draft includes a number of new specific provisions relating to the Inspector's powers to regulate the conduct of the proceedings. Inspectors have these powers implicitly already. But the express provisions will strengthen the Inspector's position.

13. It is proposed to make specific provision for the Inspector to refuse to hear evidence which is irrelevant or repetitious, and to require any person behaving in a disruptive manner to leave the inquiry.

14. Rule 13 of the revised draft includes provisions on the advance submission to the Insdpector of written statements containing the evidence it is proposed to give at the inquiry. Inter alia, he would be able to direct a summary to be prepared: the reading out in full of lengthy previously prepared statements often wastes much time, and the provisions of Rule 13 are intended to speed up the proceedings without prejudicing the rights of the person giving evidence or the right of parties to cross-examine on the evidence given.

15. There are two other proposals which relate to procedure at the inquiry. The first, which has already been referred to in para 7 (iii) above, is that certain third parties will be entitled to appear at the inquiry as of right, and not simply at the discretion of the Inspector. The second (which will be of particular value for the run-of-the-mill inquiry) relates to the order in which parties are heard. The 1974 Rules provide that the appellant or applicant shall begin and have the right of final reply. The Government considers that the Inspector should have discretion to decide who should begin, although the appellant or applicant should keep the right of final reply. Despite the proposal to increase the use of pre-inquiry procedures, they will not be necessary for many inquiries and it is often the case that the appellant's opening submission covers many more matters than necessary, because he does not know what points the planning authority or other objectors will make.

Procedure After the Inquiry

16. There are two main proposals relating to procedure after the inquiry. First, the requirement relating to the treatment of new evidence has been recast. The proposed new rule 16 would require the Secretary of State to go back to the parties before taking into consideration any relevant matter which was not raised at the inquiry, and which would be likely to cause him to reach a decision different from that recommended by the Inspector. This represents a clarification of the existing rule 12(1). During the consultation period, the Department will however be giving the point further consideration in the light of relevant Court judgments since 1974. Secondly, there is a proposed new rule (rule 18) which relates to the procedure to be followed when the Secretary of State's original decision has been quashed in the High Court.

17. There are two other proposals relating to post-inquiry procedure which should be mentioned:-

(a) it is proposed to delete the requirement for the Inspector to produce separate "findings of fact", the definition of which can in practice be somewhat elusive. The Inspector would, however, still be required to report fully on all the information which he considers relevant to the decision and to include conclusions and recommendations (or his reasons for not making any recommendations);

(b) in both the proposed new rules 16 and 18, the decision whether or not to re-open the inquiry would be at the discretion of the Secretary of State.

Other Matters

18. Finally, attention is drawn to four other proposals:

(i) it is proposed that, instead of the present definition of section 29 parties (i.e. those parties who by virtue of their position under s.29 of the Town and Country Planning Act 1971 have under the 1974 Rules a right to appear at the inquiry), there should be a new category of "relevant owners". "Relevant owners" would be those with an interest in the land from whom representations have been received within the time prescribed. This is already effectively the position for planning appeals. But for called-in applications, section 29 parties also include those who have responded within 21 days to a notice about "bad neighbour" development given under section 26 of the 1971 Act. Under the proposed new Rules third parties from whom the Secretary of State requires a pre-inquiry statement and who meet the requirements will be entitled to appear at the inquiry; and any reference back after the inquiry under the new rule 16 would be to all those who appeared at the inquiry. In consequence, it seems unnecessary to continue the special status in called-in cases of those who have responded within 21 days to a notice given under s.26 of the 1971 Act.

(ii) There is a proposed new rule (rule 9) relating to the appointment of assessors, and the proposed rule 16(2) would place Inspectors under an obligation to append to their reports any written report prepared by an assessor.

(iii) No change is proposed in the present rule which says that a representative of a government department should not be required to answer questions directed to the merits of government policy. But the Inspector will not be required to disallow such a question, if the witness is prepared to answer it.

(iv) It is proposed to allow accompanied site visits to take place during the inquiry, as well as after its close.

Comments

19. Comments on the proposals in this paper should be sent to Mr G M Keane, Room C13/09, Department of the Environment, 2 Marsham St, London SW1P 3EB by 15 February 1987.

20. The Department would be grateful if those responding would indicate:

(a) whether they propose to publish their comments or make them available to the press, and

(b) whether they agree that the Department may place copies in the libraries of both Houses of Parliament and in the Departmental library.

If those commenting are content that the Department should take the latter action, it would be helpful if 4 copies of the comments could be provided.

21. If comments are not to be published or placed in the Libraries, they will be treated in confidence by the Department; they may however be referred to in any information as to the overall number of comments received.

Department of the Environment
[ ] November 1986

ANNEX 1

DRAFT CF
26.11.96

S T A T U T O R Y I N S T R U M E N T S

The Town and Country Planning (Inquiries Procedure) Rules

Citation and Commencement

Interpretation

2. In these Rules, unless the context otherwise requires, references to sections and Schedules are references to sections of, and Schedule to, the Town and Country Planning Act 1971(a) and-

"applicant", in the case of an appeal, means the appellant;

"appointed person" means a person appointed by the Secretary of State to hold an inquiry or to hold a re-opened inquiry;

"assessor" means a person appointed by the Secretary of State to sit with an appointed person at an inquiry to advise the appointed person on such matters arising at the inquiry as the Secretary of State may specify;

"the Commission" means the Historic Buildings and Monuments Commission for England;

"conservation area" means an area designated under section 277;

"development order" has the meaning assigned to it by section 24;

"inquiry" means a local inquiry to which these Rules apply;

(a) 1971 c.73.

"the land" means the land (including trees and buildings) to which an inquiry relates;

"listed building" has the meaning assigned to it by section 54(9);

"listed building consent" means consent required by section 55(2) in respect of works for the demolition, extension or alteration of a listed building and includes the consent required by that sub-section, as applied by section 277A(a) for works for the demolition of a building in a conservation area;

"local authority" has the meaning assigned to it by section 290(1);

"local planning authority" means -

(i) in relation to a referred application, the local planning authority, or any local authority or committee acting pursuant to section 101 of the Local Government Act 1972(b), who would otherwise have dealt with the application; and

(ii) in relation to an appeal, the local planning authority, or any such local authority or committee, who took the decision against which the appeal is brought;

(a) Section 277A was inserted by the Town and Country Amenities Act 1974 (c.32), S.1 and amended by the Local Government, Planning and Land Act 1980 (c. 65), Sched. 15, para 26(2) and Sched. 34, Part X.

(b) 1972 c.70.

"National Park Committee" has the meaning assigned to it by paragraph 5 of Schedule 17 to the Local Government Act 1972;

"outline statement of case" means a written statement of the principal submissions which a person proposes to put forward at an inquiry;

"pre-inquiry meeting" means a meeting held to consider what may be done before an inquiry with a view to securing that the proceedings at the inquiry are conducted efficiently and expeditiously;

"referred application" means an application referred to the Secretary of State under section 35 (a), or that section as applied by a tree preservation order, or under paragraph 4 of Schedule 11(b);

"relevant date" means the date of the Secretary of State's written notice to the applicant and the local planning authority of his intention to cause an inquiry to be held, and "relevant notice" means that notice;

["relevant owner" means -

(a) a person whose representations the Secretary of State is required by the application of section 29(3) or by regulations under paragraph 2 of Schedule 11 to take into account in determining the referred application or appeal to which an inquiry relates; and

---

(a) Section 35 was amended by the Town and Country (Minerals) Act 1981 (c.36), s.34 and Sched. 1, para. 2.

(b) relevant amendments to Schedule 11 were made by the Local Government Planning and Land Act 1980, Sched. 15, para. 25 and Sched. 34, Part X and by the Local Government Act 1985 (c.51), s.6 and Sched. 2 para. 1(17) and s.102 and Sched. 17.

(b) in the case of an appeal, a person whose representations the local planning authority were required by section 29(3) to take into account in determining the application to which the appeal relates;]

["section 29 party", in relation to an application or appeal for the purpose of which an inquiry is held, means

(a) a person whose representations in relation to the application or, as the case may be, appeal are required to be taken into account by the Secretary of State in its determination in accordance with section 29(2) or (3) as applied by section 35(4) or with section 29(3), as applied by section 36(5) or with regulations made under paragraph 2 of Schedule 11 as the case may be; or

(b) a person whose representations in relation to an application in respect of which an appeal is brought were required to be taken into account by the local planning authority in accordance with section 29(3) or those regulations;]

"statement of case" means a written statement which contains full particulars of the submissions which a person proposes to put forward at an inquiry and a list of any documents (including maps and plans) which that person intends to refer to, or put in evidence, at the inquiry;

"tree preservation order" means an order under section 60,

Application of Rules

3.- (1) Subject to paragraph (2) these Rules apply to any local inquiry caused by the Secretary of State to be held before determining -

(a) an application for planning permission referred to him under section 35 or an appeal to him under section 36(a) or under section 36 as applied by section 37(b);

(b) an application for consent referred to him under a tree preservation order or an appeal to him under such an order but subject to the following modifications -

(i) rule 4 shall not apply and the references in these Rules to a [section 29 party] [relevant owner] shall be omitted;

(ii) references to development shall be construed as references to the cutting down, topping or lopping of trees;

(iii) references to permission shall be construed as references to consent;

(a) Section 36 was amended by the Local Government, Planning and Land Act 1980 Sched. 15, para 4(2) and by the Town and Country Planning (Minerals) Act 1981, s.34 and Sched. 1, para 3.
(b) Section 37 was amended by the Local Government, Planning and Land Act 1980 Sched. 15, para 4(3).

(c) an application referred to him or an appeal to him under Part I of Schedule 11 (including an application or appeal under that part of that Schedule as applied by section 277A) but subject to the following modifications -

(i) reference to development shall be construed as references to works for the demolition, alteration or extension of a listed building or to works for the demolition of a building in a conservation area, as the case may be;

(ii) references to permission shall be construed as references to listed building consent.

(2) Where these Rules apply in relation to an application or appeal which otherwise fell to be disposed of in accordance with -

(a) rules made under section 11 of the Tribunals and Inquiries Act 1971, as applied by paragraph 7 of Schedule 9; or

(b) regulations made under section 282B (a);

any step taken or thing done under those rules or, as the case may be, regulations which could have been done under any corresponding provision of these Rules shall have effect as if it had been taken or done under that corresponding provision.

Preliminary information to be supplied by local planning authority

4. - (1) The local planning authority shall, on receipt of a notice from the Secretary of State of his intention to cause an inquiry to be held ("relevant notice"), forthwith inform him and the applicant in writing of the name and address of any person

---

(a) section 282B was inserted by the Housing and Planning Act 1986 (c.), Schedule 11, para.10.

who is a [section 29 party] [relevant owner] by virtue of representations made to them; and the Secretary of State shall as soon as practicable thereafter inform the applicant and the local planning authority of the name and address of any person who is a [section 29 party] [relevant owner] by virtue of representations made to him.

(2) This paragraph applies where -

(a) the Secretary of State or any local authority has given to the local planning authority a direction restricting the grant of permission for the development for which application was made or a direction as to how an application for planning permission is to be determined; or

(b) in a case relating to listed building consent, the Commission has given a direction to the local planning authority pursuant to paragraph 6(2)(b) of Schedule 11 as to how the application is to be determined; or

(c) any government department or local authority has expressed in writing to the local planning authority the view that the application should not be granted either wholly or in part, or should be granted only subject to conditions, or, in the case of an application for consent under a tree preservation order, should be granted together with a direction requiring replanting; or

(d) any authority or person consulted in pursuance of a development order have made representations to the local planning authority about the development for which application was made.

(3) Where paragraph (2) applies, the local planning authority shall forthwith after the relevant date inform the person or body concerned of the inquiry and, unless they have

already done so, that person or body shall give the local planning authority a written statement of the reasons for making the direction, expressing the view or making the representation, as the case may be.

Procedure where Secretary of State causes pre-inquiry meeting to be held

5. - (1) The Secretary of State may cause a pre-inquiry meeting to be held if it appears to him desirable and where he does so the following provisions apply.

(2) The Secretary of State shall serve with the relevant notice a notification of his intention to cause a pre-inquiry meeting to be held and a statement of the matters which appear to him to be likely to be relevant to his consideration of the application or appeal in question; and where a government department has expressed in writing to the Secretary of State a view which is mentioned in rule 4(2)(c), the Secretary of State shall set this out in his statement and shall supply a copy of the statement to the government department concerned.

(3) The local planning authority shall cause to be published in a newspaper circulating in the locality in which the land is situated and in the London Gazette such notice of the Secretary of State's intention to cause a pre-inquiry meeting to be held and of the statement served in accordance with paragraph (2) as the Secretary of State may specify.

(4) The local planning authority and the applicant shall, not later than eight weeks after the relevant date, each serve on the other and on the Secretary of State an outline statement of case.

(5) Where rule 4(2) applies, the local planning authority shall -

(a) include in their outline statement of case the terms of -

(i) any direction given together with any statement of reasons for the direction provided in accordance with rule 4(3); and

(ii) any view expressed or representation made on which they intend to rely in their submissions at the inquiry; and

(b) within the period mentioned in paragraph (4), supply a copy of their statement to the person or body concerned.

(6) The Secretary of State may in writing require any person who has notified him of a wish to appear at an inquiry to serve, within four weeks of being so required, an outline statement of case on him, the applicant and the local planning authority.

(7) The date fixed by the Secretary of State for the holding of a pre-inquiry meeting shall be not later than 16 weeks after the relevant date or such later date as he may specify.

(8) The Secretary of State shall give written notice of a pre-inquiry meeting to the local planning authority, the applicant and any other person whose presence at the meeting seems to him to be desirable and he may require the local planning authority to take, in relation to notification of the meeting, one or more of the steps which he may under rule 10, require them to take in relation to notification of the inquiry.

(9) The appointed person shall preside at a pre-inquiry meeting and shall determine the matters to be discussed and the procedure to be followed, and he may require any person present at a meeting who, in his opinion, is behaving in a manner which is disrupting the business of the meeting to leave the meeting and may refuse to permit that person to return or to attend any further meeting, or may permit him to return or attend only on such conditions as the appointed person may specify.

(10) The appointed person may hold further pre-inquiry meetings and shall arrange for such notice of those meetings to be given as appears to him to be necessary; and paragraph (9) shall apply to any such meeting.

Service of statements of case etc.

6. - (1) The local planning authority shall, not later than -

(a) six weeks after the relevant date, or

(b) where rule 5 applies, four weeks after the pre-inquiry meeting or, where further such meetings are held, after the last such meeting,

serve a statement of case on the Secretary of State, the applicant and any [section 29 party] [relevant owner].

(2) Where rule 4(2) applies, the local planning authority shall, unless they have already done so in an outline statement of case, include in their statement of case the matters mentioned in rule 5(5) and shall supply a copy of it to the person or body concerned.

(3) The applicant shall, not later than -

(a) in the case of a referred application, six weeks after the relevant date, or

(b) in the case of an appeal, nine weeks after that date, or

(c) in any case where rule 5 applies, the period mentioned in paragraph 1(b) of this rule,

serve a statement of case on the Secretary of State, the local planning authority and any [section 29 party] [relevant owner].

(4) The Secretary of State may in writing require -

(a) any person (other than the applicant and the local planning authority) entitled to appear at an inquiry who has notified him of an intention to do so, or

(b) any other person who has notified him of a wish to appear at an inquiry

to serve a statement of case, within four weeks of being so required, on the applicant, the local planning authority, the Secretary of State and any [section 29 party] [relevant owner] or (where a person so required is a [section 29 party] [relevant owner]) on all other such [parties] [owners].

(5) The Secretary of State shall supply any person from whom he requires a statement of case in accordance with paragraph (4) with a copy of the local planning authority's and the applicant's statement of case and shall inform that person of the name and address of every person on whom his statement of case is required to be served.

(6) The Secretary of State may require any person who has served a statement of case in accordance with this rule to provide such further information about the matters contained in the statement as he may specify.

(7) Any person (other than the local planning authority) shall serve on the local planning authority with his statement of case a copy of any document referred to in it.

(8) Unless he has already done so in accordance with rule 5(2), the Secretary of State, in the case of a referred application, shall, and, in the case of an appeal, may, not later than twelve weeks from the relevant date, serve a written statement of the matters referred to in that paragraph on the applicant, the local planning authority and any person from whom he has required a statement of case.

(9) The local planning authority shall afford to any person who so requests a reasonable opportunity to inspect and, where practicable, take copies of any statement or document which, or a copy of which, has been served by or on them in accordance with any of the preceding paragraphs of this rule and shall include in the statement served in accordance with paragraph (1) notice of the times and place at which that opportunity will be afforded.

(10) The Secretary of State may specify a later period for the service of a statement of case in place of any period prescribed for such service by this rule.

Appointed person's power to hold pre-inquiry meetings

7. An appointed person may hold a pre-inquiry meeting where he considers it desirable and shall arrange for written notice of it to be given to the applicant, the local planning authority and any other person whose presence at the meeting appears to him to be desirable; and rule 5(9) and (10) shall apply to a pre-inquiry meeting held in accordance with this rule.

Inquiry time-table

8. An appointed person may at any time after his appointment propose a time-table for the regulation of the order of proceedings at, or at any part of, an inquiry and may at any time vary the time-table.

Notification of appointment of assessor

9. Where the Secretary of State appoints an assessor to sit at an inquiry, he shall notify every person entitled to appear at the inquiry of the name of the assessor and of the matters on which he is to advise the appointed person.

Date and notification of inquiry

10. - (1) Unless the Secretary of State specifies a later date, the date fixed by him for the holding of an inquiry shall be not later than -

(a) in a case where rule 5 applies, 8 weeks after the date of the pre-inquiry meeting or, where further such meetings are held, of the last such meeting; or

(b) in any other case, [22 weeks reducing later to 18 weeks] after the relevant date.

(2) Unless the Secretary of State agrees a lesser period of notice with the applicant and the local planning authority, he shall give not less than 42 days written notice of the date time and place fixed by him for the holding of an inquiry to every person entitled to appear at the inquiry.

(3) The Secretary of State may vary the date, time or place for the holding of an inquiry; and paragraph (2) shall apply to a variation of a date as it applies to the date referred to in that paragraph and the Secretary of State shall give such notice of a variation of time or place as appears to him to be reasonable.

(4) The Secretary of State may require the local planning authority to take one or more of the following steps -

(a) to publish in one or more newspaper circulating in the locality in which the land is situated such notices of an inquiry as he may direct;

(b) to serve notice of an inquiry in such form and on such persons or classes of persons as he may specify;

(c) to post such notices of an inquiry as he may direct in a conspicuous place near to the land.

(5) Where the land is under the control of the applicant he shall, if so required by the Secretary of State, affix firmly to some object on the land, in such manner as to be readily visible to and legible by the public, such notice of an inquiry as the Secretary of State may specify and he shall not remove the notice, or cause or permit it to be removed, for such period before the inquiry as the Secretary of State may specify.

Appearances at inquiry

11. - (1) The persons entitled to appear at an inquiry are -

(a) the applicant;

(b) the local planning authority;

(c) any of the following bodies if the land is situated in their area and they are not the local planning authority -

(i) a county or district council (including the council of the Isles of Scilly);

(ii) a National Park Committee;

(iii) a joint planning board constituted under section 1(2) or a joint planning board or special planning board reconstituted under Part I of Schedule 17 to the Local Government Act 1972;

(d) where the land is in an area designated as the site of a new town, the development corporation of the new town;

(e) a [section 29 Party] [relevant owner];

(f) the council of the parish or community in which the land is situated, if that council made representations to the local planning authority in respect of the application in pursuance of a provision of a development order;

(g) where the application was required to be notified to the Commission under paragraph 6 of Schedule 11 (listed building consent in Greater London), the Commission;

(h) any other person who has served a statement of case in accordance with rule 6(4) or who has served an outline statement of case in accordance with rule 5(6).

(2) Any other person may appear at an inquiry at the discretion of the appointed person.

(3) A local authority may appear by any officer appointed for the purpose by them or by counsel or solicitor; and any other person may appear on his own behalf or be represented by counsel, solicitor or any other person.

(4) The appointed person may allow one or more persons to appear for the benefit of some or all of any persons having a similar interest in the matter under inquiry.

Representatives of government departments and other authorities at inquiry

12. - (1) Where -

(a) the Secretary of State, the Commission or any local authority have given a direction such as is described in rule 4(2)(a) or (b); or

(b) any government department or local authority has expressed a view such as is described in rule 4(2)(c) and the local planning authority have included the terms of the

expression of view in a statement served in accordance with rule 5(4) or 6(1); or

(c) any government department has expressed a view such as is mentioned in rule 4(2)(c) and the Secretary of State has included the terms of the expression of view in a statement served in accordance with rule 5(2) or rule 6(8);

the applicant may, not later than 14 days before the date of an inquiry, apply in writing to the Secretary of State for a representative of his department or of the Commission or of the government department or local authority concerned, as the case may be, to be made available at the inquiry.

(2) Where an application is made in accordance with paragraph (1), the Secretary of State shall make a representative of his department available to attend the inquiry or, as the case may be, transmit the application to the Commission or the government department or local authority concerned, who shall make a representative available to attend the inquiry.

(3) A person attending an inquiry as a representative in pursuance of this rule shall (except where he is a representative of a government department attending an inquiry into a referred application) be called as a witness by the local planning authority, and shall state the reasons for the direction or expression of view in question and shall give evidence and be subject to cross-examination to the same extent as any other witness.

(4) Nothing in paragraph (3) shall require a representative of a government department to answer any question which in the opinion of the appointed person is directed to the merits of government policy.

Statements of evidence

13. - (1) A person intending to appear at an inquiry who proposes to give, or to call another person to give, evidence at

the inquiry by reading a written statement of that evidence shall send a copy of the statement to the appointed person not later than -

(a) where the appointed person has proposed a time-table in accordance with rule 8, three weeks before the date on which the person is due to give evidence according to the time-table; or

(b) in any other case, three weeks before the date fixed for the inquiry

and shall, if so required by the appointed person, submit to him within such period as he may specify, a written summary of the evidence contained in the statement.

(2) Where the appointed person has required the submission of a summary of a person's statement of evidence in accordance with paragraph (1), that person shall not give evidence at an inquiry by reading a written statement of his evidence which is otherwise than in accordance with the summary, unless permitted to do so by the appointed person.

Procedure at inquiry

14. - (1) Except as otherwise provided in these Rules, the appointed person shall determine the procedure at an inquiry.

(2) The persons appearing at an inquiry shall be heard in such order as the appointed person may determine but the applicant shall have the right of final reply.

(3) A person entitled to appear at an inquiry shall be entitled to call evidence and the applicant, the local planning authority and a [section 29 party] [relevant owner] shall be entitled to cross-examine persons giving evidence, but, subject to the foregoing and paragraph (4), the calling of evidence and the cross-examination of persons giving evidence shall otherwise be at the appointed person's discretion.

(4) The appointed person may refuse to permit the giving or production of evidence, the continuance of cross-examination of persons giving evidence, or the presentation of any other matter, which he considers to be irrelevant or repetitious or contrary to the public interest; and where he so refuses to permit the giving of oral evidence, the person giving the evidence may submit any remaining evidence in writing.

(5) Where a person gives evidence at an inquiry by reading a summary of his evidence in accordance with rule 13(2) the statement of evidence referred to in rule 13(1) may be tendered in evidence, and the person whose evidence the statement contains may be cross-examined on it to the same extent as if it had been evidence given orally.

(6) Documents tendered in evidence may be inspected by any person appearing at an inquiry and facilities shall, if the appointed person so directs, be afforded to that person to take or obtain copies of those documents.

(7) The appointed person may require any person appearing or present at an inquiry who, in his opinion, is behaving in a manner which is disrupting the business of the inquiry to leave the inquiry and may refuse to permit that person to return, or may permit him to return only on such conditions as he may specify; but any such person may submit any evidence or other matter in writing to the appointed person.

(8) The appointed person may allow any person to alter or add to the submissions or list of documents contained in any statement served under rule 6 so far as may be necessary for considering any of the matters under inquiry; but he shall (if necessary by adjourning the inquiry) give every other person entitled to appear at the inquiry an adequate opportunity of considering any such fresh submission or document; and the appointed person may make in his report a recommendation as to the payment of any additional costs occasioned by any such adjournment.

(9) The appointed person may proceed with an inquiry in the absence of any person entitled to appear at it.

(10) The appointed person may take into account any written representations or statements received by him before an inquiry from any person provided he discloses them at the inquiry.

(11) The appointed person may from time to time adjourn an inquiry and, if the date, time and place of the adjourned inquiry are announced at the inquiry before the adjournment, no further notice shall be required.

Site Inspections

15. - (1) The appointed person may make an unaccompanied inspection of the land before or during an inquiry without giving notice of his intention to the persons entitled to appear at the inquiry.

(2) The appointed person may, during an inquiry or after its close, inspect the land in the company of the applicant, the local planning authority and any [section 29 party] [relevant owner]; and he shall make such an inspection if so requested by the applicant or the local planning authority before or during an inquiry.

(3) In all cases where the appointed person intends to make an inspection of the kind referred to in paragraph (2) he shall announce during the inquiry the date and time at which he proposes to make it.

(4) The appointed person shall not be bound to defer an inspection of the kind referred to in paragraph (2) where any person mentioned in that paragraph is not present at the time appointed.

Procedure after inquiry

16. - (1) After the close of an inquiry, the appointed person shall make a report in writing to the Secretary of State which shall include the appointed person's conclusions and his recommendations, if any, or his reasons for not making any recommendations.

(2) Where an assessor has been appointed, he may, after the close of the inquiry, make a report in writing to the appointed person in respect of the matters on which he was appointed to advise. Where an assessor makes such a report, the appointed person shall append it to his own report and shall state in his own report the extent to which he agrees or disagrees in whole or in part, with the assessor's report: and, where he disagrees with the assessor, his reasons for that disagreement.

(3) Where the Secretary of State takes into consideration any matter not raised at an inquiry which disposes him to disagree with a recommendation of the appointed person, he shall not reach a decision without first -

(a) notifying the persons who appeared at the inquiry of the matter in question; and

(b) affording to them an opportunity of making written representations to him with respect to it within 21 days of the date of the notification; and

(c) affording to the applicant, the local planning authority and any [section 29 party] [relevant owner] an opportunity of asking within that period for the re-opening of the inquiry.

(4) The Secretary of State may, as he thinks fit, cause an inquiry to be re-opened to afford an opportunity for persons to be heard on such matters relating to an application or appeal as he may specify; and where an inquiry is re-opened -

(a) the Secretary of State shall send to the persons who appeared at the inquiry a written statement of the matters which appear to him to be likely to be relevant to his further consideration of the application or appeal; and

(b) paragraphs (2) to (5) of rule 10 shall apply as if the references to an inquiry were references to a re-opened inquiry and with the substitution in paragraph (2) of that rule of "28" for "42".

Notification of decision

17. - (1) The Secretary of State shall notify his decision on an application or appeal, and his reasons for it, in writing to the applicant, the local planning authority, any [[section 29 party] [relevant owner]] and any other person who has appeared at the inquiry; and such notification shall be accompanied by a copy of the appointed person's report.

(2) In this rule "report" includes any assessor's report appended to the appointed person's report but does not include any other documents or any photographs or plan so appended; but any person entitled to receive a copy of the report may apply to the Secretary of State in writing within six weeks of receiving the report for an opportunity of inspecting any such documents, photographs or plans and the Secretary of State shall afford him that opportunity.

Procedure following quashing of decision

18. - (1) Where a decision of the Secretary of State on an application or appeal in respect of which an inquiry has been held is quashed in proceedings before any court, the Secretary of State -

(a) shall send to the persons who appeared at the inquiry a written statement of the matters which appear to him to be relevant to his further consideration of the application or appeal; and

(b) shall afford to those persons the opportunity, within 21 days of the date of the notification, of making written representations to him in respect of those matters or of asking for the re-opening of the inquiry; and

(c) may, as he thinks fit, cause the inquiry to be re-opened in respect of those matters.

Service of notices by post

19. Notices or documents required or authorised to be served or sent under any of the provisions of these Rules may be sent by post.

Revocation of previous Rules

ANNEX 2

PREPARING FOR MAJOR PLANNING INQUIRIES IN ENGLAND AND WALES

A CODE OF PRACTICE

1. This code of practice relates to procedures leading up to major inquiries held under the Planning Acts in England and Wales. It is based on experience gained at a number of past inquiries, and takes as its legal basis the provisions of the [recently promulgated] inquiries procedure rules insofar as they apply to inquiries where the Secretary of State has decided to apply the alternative pre-inquiry procedures appropriate to a major inquiry. At the same time, the code also includes administrative arrangements which are not set out formally in the Rules but which are intended to be helpful to all participants during the pre-inquiry stages of a major planning case. Because of procedural differences, the code will not be applied to inquiries in Scotland, nor to inquiries into an Order proposed by a Minister (though elements of the code could usefully be applied to such Orders where relevant - as they could be to inquiries into major proposals held under other legislation).

2. The code is intended for application in cases where the development proposal is of major public interest because of its national or regional implications, or the extent or complexity of the environmental, safety, technical or scientific issues involved, and where for these reasons there are a number of third parties involved as well as the applicant and the local planning authority.

3. Experience suggests that some of these third parties are likely to wish to be represented formally at the inquiry, and to play a major part in the proceedings, for example by calling witnesses and by the cross-examination of witnesses called by other parties, particularly the promoters of the scheme. Other third parties may simply wish to have the opportunity to express their concern about the scheme, without playing a major part in the remainder of the inquiry.

4. The code seeks to help the Inspector and the parties prepare for the inquiry by:

a) identifying in advance those who intend to participate in the inquiry and the extent to which they wish to do so, making them known to one another, and enabling them to dispose of their time and resources to best advantage;

b) getting advance presentation of information and views to help participants to concentrate their inquiry statements on the key issues;

c) where possible, getting certain facts generally agreed between the parties; and

d) enabling the inquiry arrangements and procedures to be properly planned for the benefit of all concerned.

FIRST STEPS

5. It will be for the Department to decide whether or not the special rule provisions relating to major inquiries and the code should be applied to any particular inquiry. This decision will be taken as soon as possible after the calling in of the application under the provisions of Section 35 of the Town and Country Planning Act 1971 or the submission of the planning appeal to the Secretary of State. It is likely to be applied only to the few very big inquiries, and when it is applied, a separate inquiry secretariat will be set up.

6. Once a decision has been taken to apply the code, the applicant and local planning authority will be notified and sent a copy of the code, together with a written statement of the matters which appear to the Secretary of State to be likely to be relevant to his consideration of the application or appeal.(this statement may be supplemented at a later stage if necessary).

7. The local planning authority will, in addition, be sent a standard registration form for use by interested parties who wish to participate in the inquiry. This form will request the following information:

a) the name, address and telephone number of the person or organisation registering;

b) the name, address and telephone number of any agent, or, in the case of an organisation, of the contact person;

c) whether or not the person or organisation registering has an interest in any property that will be affected by the proposal;

d) whether or not the person or organisation registering is likely to want to be represented formally and to play a major part in the inquiry, eg, by calling witnesses and/or cross-examining other parties and their witnesses;

e) if not, whether or not the person or organisation registering will wish to give oral evidence at the inquiry or will wish only to submit representations in writing.

8. The Department will notify the local planning authority of those persons or organisations who are known to it at that stage to have a right to appear at the inquiry or to have an interest in the proposal. The local planning authority will be asked:

a) to send a copy of the code, the Secretary of State's statement of relevant issues and the standard registration form to all those interested persons notified to them by the Department; to any [relevant owners] [section 29 parties]; and to any other persons or organisations known to them to have an interest in the proposal;

b) to publish, in the local press and the London Gazette, the formal notification of the application of the code; the application of the special rule provisions relating to major inquiries; the Secretary of State's statement of relevant issues; and a request that anyone interested in participating in the inquiry should obtain from the local authority a copy of the code and the registration form.

9. The registration forms will include the address of the inquiry secretariat or other nominated person to whom they should be returned, and the date by which this should be done. This will normally be within 21 days of the publication of the formal notification in the local press.

10. The inquiry secretariat will liaise with the local planning authority to ensure that the authority has sufficient copies of the code, the registration form and the statement of relevant issues to distribute as necessary.

REGISTER OF PARTICIPANTS

11. The inquiry secretariat will prepare a register of participants from the information contained in the registration forms. The register will be in 3 parts. Part 1 will contain details of all those who have indicated that they wish to play a major part in the proceedings (referred to subsequently as "major participants"). Part 2 will contain details of those who have indicated that they wish to give oral evidence without playing a major part in the remainder of the proceedings. Part 3 will contain details of those who wish to submit representations in writing without taking part in the inquiry itself. A copy of the register will be sent to the applicant, the local planning authority and other major participants, and arrangements will also be made for copies to be available for public inspection. Additions or deletions or transfers between one part of the register and another can be made at any time, and these will be notified in the same way.

12. The Inspector will normally allow all those included in Part 1 of the register to appear at the inquiry, regardless of their legal entitlement to do so. Those included in Part 2 of the register will also normally be allowed to appear, provided that their evidence is relevant, and does not merely duplicate evidence already given by others. Those not included in Part 1 or Part 2 of the Register with no legal entitlement to appear at the inquiry will be allowed so to appear at the discretion of the Inspector.

13. It is the major participants who are likely to derive most benefit from formal pre-inquiry procedures. They will be sent a copy of the code, and will be expected to comply with its provisions on such matters as the pre-inquiry exchange of documents, and, provided that they do so, they will in turn receive copies of documents circulated by other participants, which are relevant to their interests. They will also receive individual notification of arrangements for pre-inquiry meetings.

14. While other participants will be much less affected by the provisions of the code, its use is not intended in any way to diminish their opportunity to make representations or the importance of their contribution to the inquiry proceedings. The information obtained will help the Inspector to plan the inquiry in the most effective manner, and to prepare a timetable for it, and this will be to the benefit of everyone. The register will also enable all those with an interest in the inquiry to discover who is taking part, and this will provide an opportunity for those with similar points of view to get together and to consider combining their representations.

PRELIMINARY NOTIFICATION OF THE INQUIRY ARRANGEMENTS

15. As soon as possible after the publication of the formal notification of the application of the code in the local press, the Department will notify the applicant, the local planning authority and all those who are known to have a right to appear at the inquiry and who wish to do so of:

a) the name of the Inspector appointed to hold the inquiry;

b) the name of any assessors (where required, and if known at this stage);

c) the arrangements for the first pre-inquiry meeting;

d) the target date for the commencement of the inquiry.

The local planning authority will be asked to publish this information in the local press, and it will also be sent to other major participants as they register.

OUTLINE STATEMENT OF CASE

16. In accordance with the provisions of Rule 5 of the statutory rules, the inquiry secretariat will ask the local planning authority and the applicant tc provide, not later than 8 weeks after the Secretary of State's notification that an inquiry is to be held, a written outline statement of case. Other major participants may also be asked to serve such a statement. If so they will be required by the inquiries rules to provide it whtin 4 weeks of being asked to do so. These statements should contain the general lines of the case which they intend to put forward and explain its relationship to the matters identified by the Secretary of State as likely to be relevant. They should include an estimate of how long the presentatin of the case is likely to take; information about witnesses likely to be called and an indication of which other witnesses the participant would like to cross-examine; and a list of any special studies which have been taken into account or are being prepared. Major participants will normally be sent a copy of statements relevant to their interests unless the statements are very lengthy or the number of participants included is too great to allow this to be done. In any event, arrangements will be made for copies of all statements to be available for public inspection. In addition, all participants remain free to submit other written statements to the Inspector at any time: such statements will be made available for public inspection and circulated as appropriate.

17. The outline statements of case have two functions. First, they provide advance warning of arguments which the various participants are proposing to deploy at the inquiry. It should be possible to identify from these statements the issues that are likely to feature most prominently at the inquiry. Secondly, the outline statements of case provide the information that the Inspector requires to structure and programme the inquiry. In the light of what is said in them the Inspector may wish to invite participants who appear to hold the same or similar views to consider collaborating to present a single case at the inquiry. The preliminary statements will also help the Inspector to see whether there are any relevant issues which are in danger of not

being properly covered at the inquiry, and to consider how to remedy any deficiencies, for example by inviting persons who have expert knowledge of the matter concerned to take part in the inquiry.

18. The Inspector will seek to identify from the statements those areas where facts appear to be capable of agreement between the main parties, such as descriptions of the proposal, the site and surroundings, or facts and methodologies relating to environmental effects. He will do this as soon as possible after the receipt of the outline statements. A statement of generally agreed facts and matters still in dispute which are relevant to the inquiry will then be deposited and circulated in the same way as the written statements. When participants agree to work together to prepare an agreed statement of facts (see paragraph 20d below), the statement will be circulated as soon as possible after agreement has been reached.

THE PRE-INQUIRY AND PROGRAMME MEETING

19. The purpose of the pre-inquiry meeting is to help the Inspector and the participants to prepare for the inquiry proper, and so enable the proceedings to be conducted as efficiently and speedily as possible. It will be a public meeting and more than one meeting may be held where the Inspector considers this to be desirable.

20. The matters to be considered at the pre-inquiry meeting will include:

a) any necessary clarification of the Departmental statement of relevant matters;

b) identification of any material required by the Inspector and not already covered by statements, and consideration of how this is to be provided, including the progress of any special studies being undertaken, and the need for additional participants;

c) responses to any invitation from the Inspector to participants to consider collaboration;

d) arrangements for preparation of generally agreed statements of facts including arrangements for any informal meetings that may be required to assist in preparing such statements;

e) a review of the timetable for the work to be done before the inquiry opens, including the submission of any further statements;

f) the role of any assessors.

21. Procedural matters will also be considered at the pre-inquiry meetings and a separate meeting (the programme meeting) may be held for this purpose. The matters to be considered will include:

a) details of the venue and propsoed dates and times of sittings including any provision for evening sessions or for sessions away from the main venue;

b) programming the inquiry including the order of appearances, and whether a topic by topic programme is to be adopted;

c) accommodation and facilities at the inquiry (eg, copying transcripts, telephones, public address system, and facilities for the media);

d) secretariat arrangements;

e) procedural matters including consideration of the form of opening and closing statements, the need for and use of daily summaries, and whether proofs of evidence (or parts of them) can be taken as read;

f) arrangements for the submission, circulation and inspection of documents, including the listing of documents already submitted;

g) agreement on the units of measurement, nomenclature, acronyms, etc, to be used at the inquiry.

22. The secretariat will send a note of conclusions reached at any pre-inquiry meeting to major participants, and arrangements will be made for copies to be made available for public inspection. In addition the applicant, the local planning authority, any [relevant owners] [section 29 parties] and all participants who have registered will be given notice in writing of the date, time and place for the holding of the inquiry.

INFORMAL MEETINGS

23. Either before or during the inquiry the Inspector may wish to arrange for informal meetings to be held to see whether agreed statements of facts can be prepared on particular issues (eg, statistical methodology) to help participants with similar views to consider the possibility of collaboration, or for similar purposes. The Inspector will indicate the purpose of such meetings, and designate a chairman who will normally be either the Inspector himself or one of his assessors. In the case of technical evidence, the chairman should aim to produce a report which will identify matters which are agreed, the matters in dispute, and the factors or assumptions which have led to the differences of view. Wherever possible copies of the report will be sent to major participants who have an interest in the issue concerned two weeks before evidence on that issue is due to be given.

WRITTEN STATEMENT OF CASE

24. The applicant and local planning authority will, and other major participants may, be required to provide a written statement containing full particulars of the submissions which they propose to put forward, together with a list of any documents (including maps and plans) which they intend to refer to, or put in evidence, at the inquiry. If such a statement is required, it will need to be provided not later than four weeks after the last pre-inquiry meeting.

STATEMENTS OF EVIDENCE

25. If a participant at the inquiry proposes to give, or call upon a witness to give, evidence at the inquiry by reading a written statement of that evidence, he will be required by the statutory rules to provide the Inspector with a copy of the statement of evidence not later than three weeks before the opening of the inquiry - or, where the Inspector has proposed a timetable for regulation of the order of proceedings at the inquiry, not later than three weeks before the date when the participant is due to give evidence. The Inspector may ask the participant to prepare a summary of that statement and to read the summary, rather than the full statement, as evidence. The full statement may be tendered in evidence where the person who served it so wishes and the person reading the summary may be cross-examined on the contents of the full statement.

INTRODUCTION OF NEW EVIDENCE

26. If a participant giving oral evidence at the inquiry introduces into his submissions any matters not covered by his pre-inquiry statements, the Inspector may agree to a request from another participant to adjourn the inquiry to allow time for the consideration of the additional material. He may also agree to such a request where failure to provide a statement by the required date has prejudiced presentation of another participant's case. The Inspector may consider making a recommendation for an award of costs against a person who unreasonably causes such an adjournment.

CONCLUSION

27. The purpose of the code is to enable the Inspector to structure the inquiry in such a way as to ensure that the proceedings run smoothly, speedily and efficiently, and to help participants to concentrate on the real issues that have to be resolved. This is in the interests of all parties to the inquiry.

Local Govt. Planning PTS