

PLANNING & DEVELOPMENT BULLETIN

PLANNING AND COMPULSORY PURCHASE BILL – UPDATE

As recently reported on our website (Editorials 18 December 2002) the Planning and Compulsory Purchase Bill is now before the House of Commons. The Bill seeks to put into effect many of the proposed changes set out in the Planning Green Paper ("Planning: Delivering a Fundamental Change") published in December 2001.

The Bill had its first reading on 4 December 2002, and the second reading took place shortly before Christmas. It is now (early February) at committee stage.

One of the many proposals contained in the Bill is that a new section be added to the Town & Country Planning Act 1990 providing for Statements of Development Principles (SDP) to be issued. If enacted, this provision will allow any person to apply to a Local Planning Authority (LPA) for a SDP in relation to a proposed development in the LPA's area. The LPA will then consider the development plan and all other material considerations and must issue a SDP indicating whether it agrees or disagrees with the proposals. The SPD will then form a material consideration in the

consideration of any planning application submitted in respect of the land within a certain period. Where the LPA has issued a SDP within the preceding 2 years stating that it disagrees with the principle of all or part of a similar development, then the LPA may withhold a SDP.

Where the LPA issues a favourable SDP, then it cannot grant outline planning permission for similar development for a certain period of time (3 years from issue of the SDP, or such other period as he LPA direct). The existence of a SDP will therefore "lock out" outline applications for similar schemes during the relevant period.

The Government's intention is that the new procedures for SDPs will, in due course, supersede the outline applications procedure.

It remains to be seen what level of information will be required to allow an LPA to properly consider a request for a SDP. This may be particularly relevant in respect of assessing the need for Environmental Impact Assessments, an issue that has recently been raised in respect to outline applications (see our web-site News Centre – Editorials - 3 February 2003).

INDEPENDENCE OF INSPECTORS REINFORCED

The ability of an Inspector to determine an appeal on its particular facts was reinforced in the recent case of **Grantchester Retail Parks plc v Secretary of State for Transport, Local Government and The Regions**.

Planning permission was granted for a retail park, subject to a section 106 agreement restricting the amount of floor space that could be used for the sale of electrical goods. The claimant twice applied to the LPA to modify the section 106 agreement so as to enable it to use more floor space for retailing electrical goods. The LPA refused both applications. Appeals had also been dismissed.

The appellant challenged the Inspector's decisions in the High Court, arguing that the Inspector had failed to have regard to a relevant decision by another inspector on a different appeal, and that his conclusion that to allow the applications would result in harm to the existing town centre was contrary to expert evidence.

The Court dismissed the claim and upheld

the Inspector's decisions. It held that it would be an onerous duty and an intolerable burden to require an inspector to look at all other inspectors' decisions. It also held that an inspector was entitled to reach a conclusion different to that of expert witnesses.

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INDEPENDENCE OF INSPECTORS REINFORCED



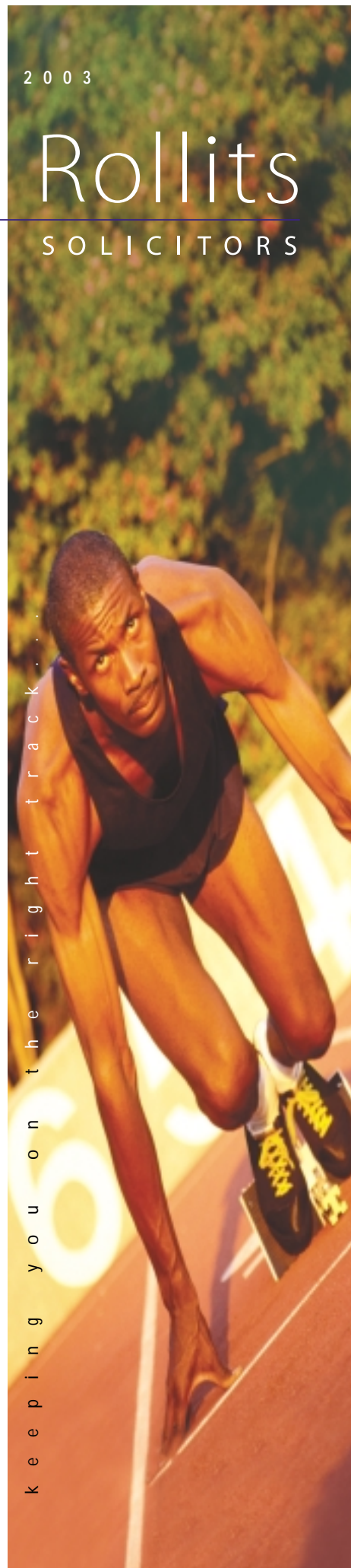
NEW CIRCULAR ON ENFORCEMENT

APPEALS PROCEDURES



FURTHER PROGRESS ON

CPO REFORM



keeping you on the right track...

NEW CIRCULAR ON ENFORCEMENT APPEALS PROCEDURES

As we reported on our website in January, the Office of the Deputy Prime Minister has recently published a new Circular, Circular 02/2002, entitled "Enforcement Appeals Procedures". The Circular accompanies new Enforcement Notices and Appeals Regulations that came into force last December and explains the new procedures for enforcement appeals (including appeals against listed building and conservation area enforcement notices) and lawful development certificate appeals. It applies to appeals made on or after 23 December 2002.

Key points to note from the Circular are as follows:-

When taking enforcement action, LPA's should specify all the development plan policies relevant to their decision. Appellants can then be more specific when preparing submissions on the planning merits of their case.

Deadlines must be met. Save in extraordinary circumstances, late submissions will be disregarded.

If neither the appellant nor the LPA wish to be heard, the appeal will proceed by way of written representations. If either or both of the parties wish to be heard, the Secretary of State will decide whether a hearing or an Inquiry is appropriate, having regard to the parties' views. Where possible, hearings will be used in preference to inquiries.

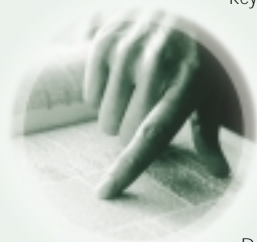
If an Inquiry is held, the main parties should hold pre-Inquiry discussions and endeavour to agree a statement of common ground (as is the case in relation to planning appeals).

Inspectors will establish Inquiry timetables, which must be adhered to. Inspectors will also exercise tight control over advocacy and cross-examination.

Unreasonable behaviour by the appellant or LPA may lead to costs awards. This will apply whether the appeal is disposed of by written representations, informal hearing, or Inquiry.

Annexes 2, 3 and 4 to the Circular contain details of the various appeal stages and time limits for the alternative appeals procedures.

The aim of the new procedures is to increase the efficiency of enforcement appeals by reducing the time taken to reach a decision and the costs of doing so.



FURTHER PROGRESS ON CPO REFORM

On 18 November 2002, the Law Commission completed its Consultative Report entitled "Towards a Compulsory Purchase Code: (2) Procedure" ("the Procedure Report"). The Procedure Report continues the work already carried out by the Commission and set out in its first CPO Consultative Report, "Towards a Compulsory Purchase Code: (1) Compensation", completed on 24 June.

This Procedure Report contains the Commission's proposals for simplifying, consolidating and codifying the law in relation to compulsory purchase, by reviewing the current standard procedural steps and making recommendations on how these may be changed and improved. Dissatisfaction with the current system has been well publicised, with many complaining that the process is too slow, too complicated, too stressful and unfair. The whole process involved in the making, confirmation, and implementation of a CPO and resolution of the compensation often takes many years.

Some of the main proposals in the 200 page Procedure Report are as follows: -

The procedure for challenging the validity of a CPO should apply only to the decision whether or not to confirm, and not to any earlier stage in the process (such as the making of an order in respect of which judicial review would remain available). The court should also have power to quash the decision on confirmation alone, rather than having to quash the whole of an order and make the acquiring authority start all over again, for example, because of some minor technical point;

The life of a CPO should be reduced. It should cease to have effect if it is not implemented within 18 months from its operative date;

New procedures should be introduced for the vesting of land where owners are untraced, or unable or unwilling to transfer the relevant land;

Statutory time limits should apply for making references to the Lands Tribunal;

Certain stages of the CPO procedure should be registered as local land charges (the making of an order, and the service of a notice to treat or a preliminary vesting declaration notice); and

There should be a limited right to compensation in relation to abortive orders (i.e. orders which are either withdrawn or not confirmed).

Following a review of any responses (closing date 18 February 2003), the Commission intends to publish a Final Report setting out its firm recommendations to the Government by the middle of this year.

INFORMATION

If you have any queries on any planning & development matters please contact:

**Steve Hawkins at Hull on 01482 323239
or Jocelyn Denton at York on 01904 625790**

This bulletin is for the use of clients and will be supplied to others on request. It is for general guidance only. It provides useful information in a concise form.

Action should not be taken without obtaining specific advice.

We hope you have found this bulletin useful. If, however, you do not wish to receive further mailings from us, please write to

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The law is stated as at 1 March 2003

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