

**CHALLENGING THE PROCEDURAL
DECISIONS OF THE PLANNING
INSPECTORATE IN THE HIGH COURT**

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WELCOME TO THE RELEVANT TRIBUNAL



STRUCTURE OF LECTURE



- 1. INTRODUCTION – THE OPTIONS AVAILABLE.**
- 2. THE STATISTICAL PICTURE.**
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- 4. PROCEDURAL CHALLENGES BY WAY OF JUDICIAL REVIEW:**
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**SECTION 1 – INTRODUCTION – THE OPTIONS
AVAILABLE**

SECTION 1 - INTRODUCTION



- THIS LECTURE IS CONCERNED **NOT** WITH SUBSTANTIVE LEGAL CHALLENGES BY WAY OF SECTION 288 OF THE TOWN AND COUNTRY PLANNING ACT WHERE A PARTY IS UNHAPPY WITH THE OUTCOME OF THE APPEAL AND SEEKS TO CHALLENGE THE LEGALITY OF THE DECISION REACHED.
- THIS LECTURE IS CONCERNED WITH PROCEDURAL DECISIONS TAKEN BY PINS THAT RELATE TO THE CONSIDERATION OF THE APPEAL DURING THE PROCESS OF DETERMINATION.
- EFFECTIVELY HOW TO DEAL WITH PROCEDURAL ISSUES THAT ARISE DURING DETERMINATION AND WHAT REMEDIES ARE AVAILABLE.
- EXAMPLES OF THESE DECISIONS ARE:
 - THE DECISION OF THE INSPECTORATE AS TO WHICH METHOD OF DETERMINATION WILL APPLY TO THE APPEAL.
 - THE DECISION DURING AN INQUIRY NOT TO ACCEPT EVIDENCE.
 - THE DECISION TO REFUSE A REQUEST FOR AN ADJOURNMENT.

SECTION 1 - INTRODUCTION



- THE LECTURE IS CONCERNED WITH THE **REMEDIES AVAILABLE** TO PARTIES WHO ARE CONCERNED THAT THE PLANNING INSPECTORATE HAS ACTED UNLAWFULLY DURING ITS JURISDICTION OVER THE APPEAL.
- TO CHALLENGE SUCH DECISIONS THERE WILL **BE 4 DIFFERENT PROCEDURAL OPTIONS AND REMEDIES:**
 - **OPTION 1 – MAKING AN APPLICATION FOR JUDICIAL REVIEW** - CHALLENGING THE DECISION IMMEDIATELY BY WAY OF JUDICIAL REVIEW.
 - **OPTION 2 – AMBIGUITY ABOUT WHETHER TO CHALLENGE BY WAY OF JUDICIAL REVIEW OR WAIT FOR THE FINAL DETERMINATION** - DECISIONS WHICH CAN BE CHALLENGED EITHER BY JUDICIAL REVIEW IMMEDIATELY OR THE PARTY CAN AWAIT THE DECISION AND CHALLENGE BY WAY OF SECTION 288.
 - **OPTION 3 – AWAIT FINAL DECISION AND USE THE STATUTORY CHALLENGE BY WAY OF SECTION 288** - SOLELY BY WAY OF SECTION 288 IE WHERE THE DECISION MAKER HAS NOT TAKEN INTO ACCOUNT THE PROVISIONS OF THE STATEMENT OF COMMON GROUND.
 - **OPTION 4 – COMPLAINT TO THE INSPECTORATE** - TO COMPLAIN TO THE INSPECTORATE

SECTION 1 – OPTION 1 – CHALLENGING PROCEDURAL DECISIONS OF THE INSPECTORATE BY WAY OF JUDICIAL REVIEW



- **BY WAY OF JUDICIAL REVIEW** – THIS LECTURE WILL FOCUS PRINCIPALLY ON THE SCOPE AND AMBIT OF COMMENCING JUDICIAL REVIEW TO CHALLENGE A DECISION OF THE PLANNING INSPECTORATE PRIOR TO THE FINAL DETERMINATION.
- THIS OPTION IS AVAILABLE TO ANY PARTY TO AN APPEAL DURING THE PROCESSING OF AN APPEAL BECAUSE OF **RULE 54.5 OF THE CIVIL PROCEDURE RULES 1998**.
- IF THE ADMINISTRATIVE DECISION IS MADE POST 1 JULY 2013 THEN THE APPLICATION FOR JUDICIAL REVIEW MUST BE MADE **WITHIN 6 WEEKS OF THE DECISION WHICH IS BEING CHALLENGED HAVING BEEN TAKEN**.

SECTION 1 – OPTION 2 – DECISIONS WHICH CAN BE CHALLENGED EITHER WAY



- **OPTION 2 – DECISIONS WHICH MIGHT BE CHALLENGED IMMEDIATELY OR AFTER THE DECISION HAS BEEN REACHED**
 - THERE WILL BE NUMEROUS PROCEDURAL DECISIONS WHICH CAN BE CHALLENGED EITHER BY WAY OF JUDICIAL REVIEW OR AT THE END OF THE PROCESS BY STATUTORY APPEAL.
 - EXAMPLES WOULD BE THE REFUSAL OF AN ADJOURNMENT AT THE START OF THE INQUIRY WHICH
 - COULD BE CHALLENGED BY WAY OF JUDICIAL REVIEW DURING THE APPEAL PROCESS.
 - COULD BE A GROUND OF APPEAL BY WAY OF SECTION 288 IF THE APPEAL IS DISMISSED.
 - ANOTHER EXAMPLE IS THE REFUSAL OF AN INSPECTOR TO ALLOW AN AMENDMENT TO THE PLANNING APPLICATION ON THE BASIS IT DID NOT FIT WITHIN THE AMBIT OF THE RULES SET OUT IN THE **WHEATCROFT** DECISION.

SECTION 1 – OPTION 3 – SOLELY BY WAY OF SECTION 288 OF THE TCPA 1990.



- **OPTION 3 - STATUTORY CHALLENGE BY WAY OF SECTION 288 –**
 - *[SEE LANDMARK WEBSITE WHERE MY LECTURE OF NOVEMBER 2013 DEALING WITH SUCH CHALLENGES CAN BE FOUND]*
 - LEGAL REQUIREMENT THAT THE DECISION MAKER HAS MADE AN ERROR OF LAW OR THERE HAS BEEN A PROCEDURAL FAILURE WHICH HAS MEANT THE PARTY'S INTERESTS HAVE BEEN SUBSTANTIALLY PREJUDICED AS SET OUT WITHIN SECTION 288.
 - PROCEEDINGS NEED TO BE MADE **WITHIN SIX WEEKS** OF THE DATE OF THE DECISION ON THE APPEAL.
 - PROSPECTS OF SUCCESS ARE FUNDAMENTALLY DIFFICULT BECAUSE:
 - NO OPPORTUNITY TO ARGUE THE MERITS OF THE DECISION.
 - TRIBUNAL IS THE HIGH COURT WHO WILL APPLY A HIGH LEVEL OF SCRUTINY.
 - STARTING POINT WILL BE NOT TO GO BEHIND THE DECISION LETTER.
 - REMEDY IS THAT THE APPEAL WILL BE REMITTED FOR A FRESH DETERMINATION BY THE PLANNING INSPECTORATE.
 - USUALLY SAME PROCESS APPLIES.

SECTION 1 – OPTION 4 – TO MAKE A COMPLAINT TO THE INSPECTORATE.



- **OPTION 4 – COMPLAINT TO THE INSPECTORATE:**
 - FUNDAMENTAL PRINCIPLE IS THAT PINS CANNOT CHANGE AN INSPECTORS DECISION [SEE Q.5.1 OF GUIDANCE]
 - THE PINS PROCEDURAL GUIDE SETS OUT THE COMPLAINTS PROCESS AT 5.2
 - OPEN TO MAKE A COMPLAINT AND DEALT WITH BY THE QUALITY ASSURANCE UNIT.
 - REMEDIES AVAILABLE ARE FOR PINS TO REMEDY THE ERROR IN FUTURE CASES BUT NO ABILITY TO AMEND OR ALTER THE DECISION AS A RESULT OF A COMPLAINT.
 - OFFER AN APOLOGY, EXPLANATION AND ACKNOWLEDGEMENT OF RESPONSIBILITY.
 - OFFER OF FINANCIAL COMPENSATION AVAILABLE AS WELL.
 - ALSO ABILITY TO CORRECT CERTAIN TYPES OF ERRORS WITHIN AN APPEAL DECISION UNDER SECTION 56 OF THE PCA 2004 KNOWN AS THE SLIP RULE.

SECTION 2 – THE STATISTICAL PICTURE



SECTION 2 – THE STATISTICAL PICTURE 2013



- **19,466 DECISIONS ISSUED BY THE PLANNING INSPECTORATE IN 2012/13 IN ENGLAND.**
 - **IN TERMS OF COMPLAINTS**
 - 100 JUSTIFIED COMPLAINTS OR QUASHED DECISIONS BY WAY OF SECTION 288.
 - 64 COMPLAINTS UPHELD OUT OF 2280 COMPLAINTS MADE [= **2.81%**]
 - **SECTION 288 CHALLENGES**
 - 36 DECISIONS QUASHED BY WAY OF SECTION 288.
 - **OVERALL PICTURE IS THAT**
 - 0.5% OF CASES ARE QUASHED OR THE PI ACCEPTS A COMPLAINT.
 - SO 35% OF HIGH COURT CHALLENGES END UP SUCCESSFUL.
 - PROPENSITY TO CHALLENGE STANDS AT 1 IN 185 IN PLANNING APPEALS BUT IN 2010/11 PROPENSITY TO CHALLENGE WAS 1 IN 278.

SECTION 3 – THE LATEST PROCEDURAL ADVICE ISSUED BY THE PLANNING INSPECTORATE



SECTION 3 – THE PROCEDURAL ADVICE OF THE PLANNING INSPECTORATE



- THE PLANNING INSPECTORATE TAKE **PROCEDURAL CONTROL OF THE PLANNING APPLICATION** WHEN AN APPEAL IS MADE.
- GENERALLY SUCH AN APPEAL MUST BE MADE WITHIN 6 MONTHS OF THE DATE OF THE DECISION.
- 12 WEEKS IF A HOUSEHOLDER PLANNING APPLICATION.
- LPA LOSE ANY JURISDICTION OVER THE PLANNING APPLICATION.
- THE LEGAL AND PROCEDURAL GUIDANCE THAT DETERMINES HOW THE APPEAL IS DEALT WITH IS DEALT WITH BY:
 - THE STATUTORY PROVISIONS SET OUT IN THE TOWN AND COUNTRY PLANNING ACT.
 - THE RELEVANT REGULATIONS.
 - THE PROCEDURAL GUIDANCE ISSUED BY THE PLANNING INSPECTORATE – **PROCEDURAL GUIDE – PLANNING APPEALS AND CALLED IN PLANNING APPLICATIONS – ENGLAND**
 - ISSUED ON 3 OCTOBER 2013 AND APPLIES TO ALL PLANNING APPEALS.

SECTION 3 – THE PROCEDURAL ADVICE OF THE PLANNING INSPECTORATE



- **RELEVANT REGULATIONS:**
 - **FOR HOUSEHOLDER APPEALS**
 - PART 1 OF THE TCP APPEALS WRITTEN REPRESENTATION PROCEDURE ENGLAND REGULATIONS 2009 (SI 2009/452)
 - **FOR WRITTEN REPRESENTATION APPEALS**
 - PART 2 OF THE WRITTEN REPRESENTATIONS PROCEDURE REGULATIONS 2009 AS ABOVE.
 - **FOR HEARINGS**
 - TCP HEARING PROCEDURE RULES (SI2000/1626) AS AMENDED BY TCP HEARINGS AND INQUIRIES PROCEDURES 9SI2009/455)
 - **FOR PUBLIC INQUIRIES**
 - TCP INQUIRY PROCEDURE REGULATIONS (2000/1624) AND DETERMINATION BY INSPECTORS (SI 2000/1625) AS AMENDED BY TCP HEARINGS AND PROCEDURE RULES (2009/455)

SECTION 3 – THE PROCEDURAL ADVICE OF THE PLANNING INSPECTORATE



- THE PLANNING INSPECTORATE TAKE **PROCEDURAL CONTROL OF THE PLANNING APPLICATION** WHEN AN APPEAL IS MADE.
- LPA LOSE ANY JURISDICTION OVER THE PLANNING APPLICATION.
- THAT APPLICATION AND HOW
- PINS HAVE ISSUED **A PROCEDURAL GUIDE TO PLANNING APPEALS** AND IT WAS RELEASED ON THE 3 OCTOBER 2013. THE PREVIOUS VERSION WAS DATED 28 AUGUST 2013.
- IT CAN BE FOUND ON THE PLANNING PORTAL.
- CONSEQUENCE OF THIS DOCUMENT IS TO REPLACE THE PINS GUIDANCE 01/2009 AND ALL THE GOOD PRACTICE ADVICE NOTES WHICH WERE ALSO PUBLISHED BY PINS.
- IT IS EMPHASISED THAT THE GUIDANCE HAS NO STATUTORY STATUS BUT CLEARLY WILL BE TAKEN INTO ACCOUNT BY BOTH THE DECISION MAKER AND THE HIGH COURT IN ANY PROCEEDINGS.

SECTION 4 – PROCEDURAL CHALLENGES BY WAY OF JUDICIAL REVIEW



SECTION 4 – THE RANGE OF PROCEDURAL CHALLENGES BY WAY OF JUDICIAL REVIEW THAT MIGHT ARISE.



- **PROCEDURAL CHALLENGES MAY BE BROUGHT BECAUSE OF THE FOLLOWING MATTERS:**
 - ISSUE 1 – THE REFUSAL OF THE PLANNING INSPECTORATE TO ACCEPT OR VALIDATE AN APPEAL.
 - ISSUE 2 – THE DECISION OF PINS AS TO HOW THE APPEAL WILL BE DETERMINED.
 - ISSUE 3 – THE DECISION OF PINS TO REFUSE OR ALLOW AN ADJOURNMENT.
 - ISSUE 4 – THE DECISION OF PINS OR AN INSPECTOR TO REFUSE OR ALLOW EVIDENCE.
 - ISSUE 5 – THE DECISION OF PINS OR AN INSPECTOR TO ALLOW OR REFUSE AN AMENDMENT TO THE PLANNING APPLICATION.
 - ISSUE 6 – THE DECISION OF PINS TO REFUSE TO CO-JOIN APPEALS.
 - ISSUE 7 – CHALLENGING THE CHOICE OF INSPECTOR.

SECTION 4 – ISSUE 1 – THE REFUSAL OF PINS TO ACCEPT OR VALIDATE AN APPEAL.



1. FORMAL PROCESS FOR SUBMITTING AN APPEAL IS GOVERNED BY ARTICLE 33 OF TCP DEVELOPMENT MANAGEMENT AND PROCEDURE ORDER 2010/2184
2. OPTIONS ARE TO JUDICIALLY REVIEW THE REFUSAL TO VALIDATE THE APPEAL OR SEEK TO MEET THE CRITICISM OF PINS.
 1. **MEET THE CRITICISM OF PINS**
 1. THIS OCCURED IN THE CASE OF MAJOR RAIL FREIGHT INTERCHANGE AT NORTHAMPTONSHIRE AT DAVENTRY.
 2. REASON OF PINS WAS THAT THE DESCRIPTION OF THE PROJECT ON THE APPLICATION FORM *“MADE IT DIFFICULT FOR PINS TO UNDERSTAND WHAT THE APPLICANT WAS SEEKING CONSENT FOR”*
 3. IN THAT CASE IT WOULD BE RELATIVELY EASY TO REMEDY.
 2. **JUDICIALLY REVIEW DECISION – IF PINS CONTINUE TO VALIDATE THE APPEAL.**

SECTION 4 – ISSUE 2 – THE DECISION OF PINS AS TO HOW THE APPEAL IS TO BE DETERMINED.



- **PLANNING APPEAL CAN BE DETERMINED BY**
 - WRITTEN REPRESENTATIONS.
 - HEARING
 - PUBLIC INQUIRY.
- PINS GUIDANCE GIVES GUIDANCE IN ANNEXE J AS TO THE CRITERIA THAT WILL BE APPLIED IN DETERMINING THE MODE OF DETERMINATION.
- APPELLANT GIVE THE ABILITY TO IDENTIFY WHICH APPEAL PROCEDURE THEY BELIEVE TO BE MOST APPROPRIATE
- THE LPA WILL ALSO BE GIVEN A VIEW.
- PINS WILL DETERMINE *“THE MOST APPROPRIATE APPEAL PROCEDURE IS SELECTED TAKING ACCOUNT OF THE CRITERIA, THE VIEWS OF THE APPELLANT, THE LPA AND ANY APPROPRIATE EXPERT INVOLVEMENT”*
- NO ENTITLEMENT IN LAW TO ONE PROCEDURE – SECTION 319 OF THE TCPA 1990 GIVES THE RIGHT TO THE SECRETARY OF STATE.
- HOWEVER MAY BE A DECISION WHICH IS PERVERSE OR BREACHES THE CRITERIA

SECTION 4 – ISSUE 2 – THE DECISION OF PINS AS TO HOW THE APPEAL IS TO BE DETERMINED.



- **HOWEVER**
- SECTION 319A OF THE TCPA 1990 AS AMENDED BY THE PLANNING ACT 2008 **GIVES THE SECRETARY OF STATE THE POWER** TO DETERMINE THE MODE OF APPEAL WHETHER WRITTEN REPRESENTATIONS, HEARING OR PUBLIC INQUIRY.
- PRIOR TO THAT THERE WAS SINCE 1948-2008 A RIGHT TO A PUBLIC INQUIRY.

SECTION 4 – ISSUE 2 – THE DECISION OF PINS AS TO HOW THE APPEAL IS TO BE DETERMINED.



WILL A JUDICIAL REVIEW BE SUCCESSFUL ON THE BASIS OF THE MODE OF DETERMINATION:

1. IT WAS HELD IN ASHLEY V SOSCLG [2011] JPL 1115 THAT THE SoS WAS ENTITLED TO DETERMINE WHETHER AN APPEAL SHOULD BE DECIDED BY WRITTEN REPRESENTATIONS AFTER HAVING CONSIDERED THE VIEWS OF THE APPELLANT AND THE LPA. THERE WAS NO OVERRIDING PRINCIPLE WHICH REQUIRED A HEARING.

2. THE COURT WILL NOT CONCLUDE THAT A WRITTEN REPRESENTATION APPEAL HAS A LOWER THRESHOLD IN RELATION TO FAIRNESS AND NATURAL JUSTICE THAN AN ALTERNATIVE MODE OF DETERMINATION – JORY V SECRETARY OF STATE FOR TRANSPORT, LOCAL GOVERNMENT AND THE REGIONS [2003] 1 PLR 54.

3. IN WHITMEY V COMMONS COMMISSIONERS [2004] EWHC CIV 95 IN THE CONTEXT OF VILLAGE GREEN LEGISLATION THAT WHERE THERE IS A SERIOUS DISPUTE A REGISTRATION AUTHORITY WILL INVARIABLY NEED TO HOLD A PUBLIC INQUIRY AND FIND THE REQUISITE FACTS, IN ORDER TO OBTAIN THE PROPER ADVICE BEFORE REGISTRATION.

SECTION 4 – ISSUE 2 – THE DECISION OF PINS AS TO HOW THE APPEAL IS TO BE DETERMINED.



WILL A JUDICIAL REVIEW BE SUCCESSFUL ON THE BASIS OF THE MODE OF DETERMINATION:

4. IN MAHAJAN V SOSTLGR AND HOUNSLOW [2002] EWHC 33 DEALT WITH THE QUESTION OF WEIGHT OF EVIDENCE WHEN AN APPEAL IS DETERMINED BY WRITTEN REPRESENTATIONS. IN SUCH A CASE IT WAS INCUMBENT ON THE DECISION MAKER TO DEAL WITH THE EVIDENCE AND THE REASONS FOR WHY THE DECISION MAKER ACCEPTS SOME OF THE EVIDENCE AND NOT OTHER PARTS OF THE EVIDENCE.

IN THAT CASE IT WAS NOT CLEAR FROM THE DECISION LETTER DEALING WITH AN ENFORCEMENT NOTICE APPEAL AS TO WHAT WEIGHT THE INSPECTOR GAVE TO THE APPELLANTS EVIDENCE AND WHY IT WAS REJECTED.

SECTION 4 – ISSUE 2 – THE DECISION OF PINS AS TO HOW THE APPEAL IS TO BE DETERMINED.



ASHLEY V SOSCLG [2012]EWCA 559 IT WAS DECIDED

- COURT OF APPEAL HELD THAT THERE HAD BEEN A BREACH OF NATURAL JUSTICE IN THE WAY IN WHICH THE WRITTEN REPRESENTATIONS PROCEDURE HAD BEEN OPERATED.
- HOUSING DEVELOPMENT REFUSED, DESPITE OFFICER RECOMMENDATION.
- ONE OF THE REASONS OF REFUSAL RELATED TO ADVER IMPACT ON RESIDENTIAL AMENITY ARISING ON EXISTING PROPERTY.
- DEVELOPER SERVED A EXPERT NOISE REPORT AT THE SIX WEEK STAGE AND THE INSPECTOR RELIED ON IT AND THE ABSENCE OF ANY RESPONSE TO IT. RULES FOR WRITTEN REPRESENTATION APPEALS DID NOT ALLOW THIRD PARTIES A RESPONSE AT THIS STAGE.
- LOCAL RESIDENT OBJECTED BECAUSE HE DID NOT KNOW OF ITS EXISTENCE
- COURT OF APPEAL DECIDED THAT THERE HAD BEEN A BREACH OF NATURAL JUSTICE BECAUSE THE RULES DID NOT ALLOW SUCH COMMENT AND THAT PINS SHOULD BE REVIEWED TO PREVENT POTENTIAL UNFAIRNESS IN WRITTEN REPRESENTATION APPEALS.

SECTION 4 – ISSUE 2 – THE DECISION OF PINS AS TO HOW THE APPEAL IS TO BE DETERMINED.



- IN **DCLG V INFORMATION COMMISSIONER AND WR** [2012] UKUT 103 the Upper Tribunal considered the significance of legal professional privilege under the Environmental Information Regulations 2004 (EIR).
- Application for an anemometer mast determined by appeal.
- PINS determined appeal should be decided by written representations. Appellant stated that JR would be commenced challenging that decision. PINS stated that they relied on in house legal advice.
- The Appellant sought disclosure of that legal advice under the EIR 2004.
- PINS sought to resist disclosure relying on Regulation 12(5) which gives an exception of disclosure in the cases where it would affect the course of justice.
- Upper Tribunal agreed that disclosure would have an adverse effect on the course of justice.
- Additionally the Appellants were not required to reveal their legal advice and the factors in favour of disclosure were relatively weak.

SECTION 4 – ISSUE 3 - THE DECISION TO REFUSE AN APPLICATION FOR AN ADJOURNMENT



- AN APPLICATION MAY BE MADE TO POSTPONE THE COMMENCEMENT OF THE INQUIRY ONCE IT HAS BEEN FIXED. OSTREICHER V SOSE [1978] 37 P&CR 9.
- UNDER THE GUIDANCE SUCH AN APPLICATION WILL RARELY BE GRANTED.
- ONCE A DATE HAS BEEN FIXED IT CAN ONLY BE CHALLENGED IN EXCEPTIONAL CIRCUMSTANCES.
- IT IS CHALLENGEABLE BY WAY OF JUDICIAL REVIEW AS IT IS NOT A DECISION WHICH IS DISPOSING OF THE APPEAL AND IT IS NOR A FINAL DECISION AS ANOTHER APPLICATION CAN BE MADE TO THE INSPECTOR AT THE COMMENCEMENT OF THE INQUIRY. – CO-OP RETAIL SERVICES V SOSE [1979] 39 P&CR 428.
- ALSO SEE R V SOSE EX P MISTRAL INVESTMENTS [1984] JPL 516 – DECISION OF THE INSPECTOR OR PINS RELATING TO ADJOURNMENTS HAS TO BE MADE IN ACCORDANCE WITH THE PRINCIPLES OF NATURAL JUSTICE.

SECTION 4 – ISSUE 3 - THE DECISION TO REFUSE AN APPLICATION FOR AN ADJOURNMENT



- IN **R V SOSE AND LB OF CROYDON** [2000] PLCR 171 THE HIGH COURT DISMISSED APPLICATION BY LPA ON THE BASIS THAT THE PREDICAMENT THEY WERE IN WAS SOLELY OF THEIR OWN MAKING.
- THE INSPECTOR IN CONSIDERING THE APPLICATION HAD PROPERLY BALANCED THE PUBLIC INTEREST IN ENSURING THAT DECISIONS WERE MADE IN A TIMELY FASHION WITH THE INTEREST OF THE PARTY SEEKING THE APPLICATION.
- THE TEST APPLICABLE ON ANY SUCH REVIEW WAS WHETHER THE DECISION OF PINS OR THE INSPECTOR HAD BEEN ONE OF FAIRNESS.
- IN **WEST LANCASHIRE DC V SOSE** [COURT OF APPEAL 21 JAN 1999] IT WAS HELD THAT THE INSPECTOR WAS ENTITLED TO REFUSE AN ADJOURNMENT WHEN THE LPA EHO OFFICER WAS ILL BECAUSE THERE WAS NO FACTUAL DISPUTE ARISING FROM HER EVIDENCE, NO ONE WISHED TO CROSS EXAMINE HER AND THE INSPECTOR HAD ACCEPTED THE PROOF OF EVIDENCE AS EVIDENCE IN ANY EVENT.

SECTION 4 – ISSUE 4 - THE REFUSAL TO ALLOW THE PRESENTATION OF EVIDENCE OUT OF TIME



- SIMPLY PUT THE INSPECTOR HAS A DISCRETION RELATING TO THE HEARING OF EVIDENCE WHICH IS PRODUCED OUT OF TIME – I.E. A PROOF OF EVIDENCE WHICH IS PRODUCED AFTER THE REQUIRED TIME LIMITS FOR PRODUCTION.
- VERY RARE FOR INSPECTORS TO REFUSE EVIDENCE BECAUSE OF THE LIKELY LEGAL CONSEQUENCES OF REVIEW OF ANY SUCH DECISION.
- USUAL OUTCOME IS TO ALLOW SUCH EVIDENCE AND THE OTHER PARTIES GIVEN ADEQUATE TIME TO CONSIDER IT.
- ANY SUCH REFUSAL WILL BE SUBJECT HOWEVER TO JUDICIAL REVIEW.
- IN **WAINHOMES** [2013]EWHC 597 AN INSPECTOR REFUSED TO CONSIDER RECENT APPEAL DECISIONS AND THE COURT HELD THAT THE REASON GIVEN BY THE INSPECTOR THAT THE DECISIONS HAD BEEN SUBMITTED TOO LATE WAS NOT SUSTAINABLE. HE SHOULD HAVE CONCLUDED THAT THE MERITS OF CONSIDERING THEM OUTWEIGHTED THOSE FACTORS WHICH JUSTIFIED EXCLUDING THOSE DECISIONS.

SECTION 4 – ISSUE 5 - REFUSAL TO ALLOW THE AMENDMENT OF A PLANNING APPLICATION



- OFTEN THE CASE THAT APPELLANT WISHES TO CARRY OUT AMENDMENTS TO THE APPEAL SCHEME, OFTEN TO MEET A REASON OF REFUAL
- GUIDANCE OF PINS AT 3.1 OF GUIDANCE IS *“IF, EXCEPTIONALLY, THE APPELLANT WISHES TO AMEND THE SCHEME AT THE APPEAL STAGE, WE WILL CONSIDER EACH REQUEST ON ITS MERITS.*
- SEE ANNEXE K AS WELL.
- INSPECTORATE WILL APPLY THE PRINCIPLES SET OUT IN **BERNARD WHEATCROFT LTD V SSE** [1982] JPL 37 WHERE THE HIGH COURT CONSIDERED THAT THE TEST WAS WHETHER THE AMENDMENTS IF ALLOWED WOULD BE SO SUBSTANTIAL AS EFFECTIVELY HAVING DEPRIVED THOSE OF THE OPPORTUNITY OF CONSULTATION.
- THE KEY TEST IS THAT THE INSPECTOR HAS TO CONSIDER WHETHER THE PROPOSED AMENDMENTS WOULD PREJUDICE ANYONE IF ALLOWED.

SECTION 4 – ISSUE 5 - REFUSAL TO ALLOW THE AMENDMENT OF A PLANNING APPLICATION



- IN SEA ESTATES LTD V SOSCLG [2012] JPL 1406 .
 - IT IS OPEN TO AN INSPECTOR TO DECLINE TO DETERMINE ANY MODIFICATION OF A PROPOSED DEVELOPMENT WHICH WAS SUBSTANTIALLY DIFFERENT FROM THAT ORIGINALLY PROPOSED.
 - NO SIGNIFICANT DIFFERENCE BETWEEN THE TESTS OF SUSTANTIAL DIFFERENCE AND MATERIAL ALTERATION.
 - THE INSPECTOR HAD APPLIED THE TESTS IN BERNARD WHEATCROFT LIMITED V SOSE [1982] 43 P&CR 233.

SECTION 4– ISSUE 6 - CHALLENGING THE DECISION NOT TO CO-JOIN APPEALS



- POSITION MIGHT ARISE WHERE A PARTY WISHES TO BE CO-JOINED TO ANOTHER APPEAL WHICH IS BEING DETERMINED BY THE PLANNING INSPECTORATE.
- IF PINS REFUSE THE REQUEST TO CO-JOIN THE APPEAL THEN OF COURSE OPEN TO THE AGGRIEVED PARTY TO JUDICIAL REVIEW THAT DECISION OF PINS TO TRY AND GET THE APPEALS HEARD TOGETHER.

SECTION 4 – ISSUE 7 – CHALLENGING THE CHOICE L OF INSPECTOR. C

- OBVIOUSLY OPEN TO A PARTY TO SEEK TO CHANGE AN INSPECTOR ONCE APPOINTED.
- SOME INSPECTORS HAVE A VERY HIGH REFUSAL RATE.
- BUT NEEDS TO BE A COGENT AND LEGAL REASON.
- OBVIOUSLY VERY HIGH RISK IF INSPECTOR IS NOT RE-ASSIGNED AWAY FROM THE CASE.
- ANY APPLICATION FOR A CHANGE AND IT'S REFUSAL WILL BE SUBJECT TO JUDICIAL REVIEW.

SECTION 5 – THE DECISION NOT TO CALL IN AN APPLICATION



- **R (PERSIMMON HOMES) V SOSCLG – 1 JULY 2007 DECISION OF HIGH COURT**
 - OA FOR OVER 1000 HOMES.
 - SECRETARY OF STATE DECIDED NOT TO CALL IN THE APPLICATION.
 - RIVAL DEVELOPER CLAIMED THAT THE SOS HAD FAILED TO TAKE INTO ACCOUNT MATERIAL CONSIDERATIONS WHEN MAKING THAT DECISION AND THE SECRETARY OF STATE HAD ALSO TAKEN INTO ACCOUNT IMMATERIAL CONSIDERATIONS.
 - THE COURT REJECTED THOSE SUBMISSIONS AND DETERMINED THAT THE SOS HAD ACTED LAWFULLY IN DECIDING NOT TO CALL IN THE APPLICATION.

SECTION 6 – CHALLENGING THE DECISION TO AWARD COSTS



- IT WAS HELD IN **GOLDING V SECRETARY OF STATE FOR COMMUNITIES AND LOCAL GOVERNMENT** [2012] EWHC 1656 THAT THE CLAIMANT HAD WRONGLY ATTEMPTED TO CHALLENGE THE AWARD OF COSTS BY WAY OF SECTION 288.
- THE CORRECT PROCEDURE WAS BY WAY OF JUDICIAL REVIEW.
- SUBSTANTIVE TEST AS TO AWARD COSTS WAS IN THE DISCRETION OF THE INSPECTOR WHO WAS IN THE BEST POSITION TO JUDGE.
- ONLY **VERY RARELY** WOULD IT BE PROPER FOR A COURT TO STRIKE DOWN SUCH AN EXERCISE OF DISCRETION.

SECTION 7 – THE DECISION IN GLEESON



- **GLEESON HOMES V SOSCLG AND PLANNING INSPECTORATE** [2013] EWHC 3166
 - JUDICIAL REVIEW OF THE INSPECTOR'S MISTAKEN ISSUE OF DECISION LETTER ALLOWING APPEAL OF GLEESON HOMES FOR 180 DWELLINGS.
 - WHEN DECISION LETTER ISSUED, THE SECRETARY OF STATE HAD DECIDED TO RECOVER THE APPEAL FOR HIS OWN DETERMINATION AND THAT DECISION HAD BEEN EMAILED TO THE PLANNING INSPECTORATE.
 - RELEVANT OFFICER WAS ON LEAVE AND BY COINCIDENCE THAT AFTERNOON THE INSPECTOR SENT DECISION LETTER TO THE DISPATCH OFFICE FOR IT TO BE RELEASED WHICH IN IGNORANCE OF THE S OF S'S DECISION, IT DULY WAS.
 - NEXT DAY MISTAKE DISCOVERED AND LETTER SENT TO THE PARTIES STATING THAT INSPECTOR'S DECISION HAD BEEN ISSUED IN ERROR AND WAS WITHDRAWN.
 - NEXT DAY PINS ISSUED A FURTHER LETTER PROVIDING THE PARTIES WITH FORMAL NOTIFICATION OF THE RECOVERY DIRECTION AND THE REASON FOR IT

SECTION 7 – THE DECISION IN GLEESON



- **GLEESON HOMES V SOSCLG AND PLANNING INSPECTORATE** [2013] EWHC 3166
 - A RECOVERY DIRECTION DID NOT NEED TO BE SERVED ON THE PARTIES TO TAKE EFFECT.
 - ACCORDINGLY AT THE TIME THE DECISION WAS ISSUED JURISDICTION FOR THE APPEAL HAD SWITCHED TO THE SECRETARY OF STATE AND THEREFORE THE INSPECTOR HAD BEEN DEPRIVED OF THE LEGAL POWER TO MAKE A DECISION WHICH HAD EFFECT. THE SECRETARY OF STATE ALONE HAD THE POWER TO MAKE A DECISION.
 - EVEN IF RECOVERY DIRECTION HAD NOT TAKEN EFFECT THE SECRETARY OF STATE STILL HAD THE POWER TO WITHDRAW THE DECISION.
 - IT WAS RIGHT TO IMPLY INTO THE TCPA 1990 A POWER TO ENABLE THE CORRECTION OF SIMPLE AND OBVIOUS ADMINISTRATIVE ERRORS.

SECTION 8 – SUMMARY AND CONCLUSION

