

Call in and Recovered Appeals 2018-19

A Controversial Year!

Russell Harris QC

Callow Youth



Future SCJ



Carnwarth's Three Comments.

- Third. Remember that Planning is a Legislative System: Complete and Whole. Whenever you are describing part of it (even to the House of Lords) describe where it sits in that whole!

Planning Inspectorate's Appeal Inquiry

1-4 May 9-11 May
10 am

Really Imp

Council Chamber
County Hall

Call in and
recovered
Appeals: Where
do they sit in
the system?



**Need for
planning
permission: a
satisfying piece
of parliamentary
drafting.**

- Operational Development or Material Change of Use needs Planning Permission.
- S 55 defines development. S 57 requires pp for development.

The Local Planning Authority



- The Vast Majority of Planning Applications are determined by the Local Planning Authority. S 70.
- Determinations should be in accordance with the local Development plan unless material considerations indicate otherwise. S 38 (6) PCA 2004

The Call-in Power



- The Secretary of State may give directions requiring applications for planning permission, or for the approval of any local planning authority required under a development order, to be referred to him instead of being dealt with by local planning authorities. S 77

The Power to Delay and Consider

- The Secretary of State may give directions restricting the grant of permission by a local planning authority, either indefinitely or during such a period as may be specified in the directions, in respect of any development or in respect of development of any class so specified. (Reg 31 (DMP) Order 2015)

Criteria for Call-in. “Caborn plus”



- may conflict with national policies on important matters;
- [may have significant long-term impact on economic growth and meeting housing needs across a wider area than a single local authority];
- could have significant effects beyond their immediate locality;
- give rise to substantial cross-boundary or national controversy;
- raise significant architectural and urban design issues; or
- may involve the interests of national security or of foreign Governments.
- However each case will continue to be considered on its individual merits.

The limits of the Power

Can be
exercised at
any time after
application

Cannot be
Exercised
After Grant of
Permission by
the LPA

The Recovered Appeal Power

- A recovered inquiry is basically a planning appeal (against a LPA's decision) which the Secretary of State has decide to determine himself, rather than allowing a planning inspector to take the final decision, as is the normal process. (s 79 TCPA)

Criteria for recovery Include

- proposals for development of major importance having more than local significance;
- proposals giving rise to substantial regional or national controversy;
- proposals which raise important or novel issues of development control, and/or legal difficulties;
- proposals against which another Government department has raised major objections or has a major interest;
- proposals of major significance for the delivery of the Government's climate change programme and energy policies;
- proposals for residential development of over 150 units or on sites of over 5 hectares.
- Fracking appeals added in 2016

When Can a recovery take place?

Recovery of an appeal can occur at any stage of the appeal process, even following an inquiry being held, but it cannot be done after the Inspector has issued their decision.

A Pause to Consider the purpose of Call in and Recovery

A recognition that some decisions are of more than local importance.

A recognition that decisions, though quasi judicial have a political element.

A need to ensure consistency of decision-making is consistent over more than one administrative area.

2018-19 A controversial year.

There have been relatively few actual call-in decisions issued and rather more recovered decisions. But the use of both jurisdictions has been controversial and we know already will keep the Courts busy

- Requirement to give or not to give reasons for /against call-in and its consequences.
- The fall-out between Strategic Planning in London and Central Government and its call-in consequences.
- Trends discernable in decisions issued.

Save, Reasons and the Paddington Cube 2018



- Government had on 3 occasions in Parliament formally recognized the need to give reasons for and against call-in “for transparency”.
- Unaccountably, civil servants disregarded this policy in relation to schemes **not called in** without notice in 2014.
- Court of Appeal held they could not unilaterally do that: the policy unless withdrawn ought to be followed (even if it had fallen into abeyance since 2014).

The reasoning policy... Withdrawn March 2019



- "from today, I will not give reasons for **calling in or declining to call in** planning applications. The call-in policy set out in the statement of 26 October 2012 remains in place".
- Ironically... in the two weeks leading up to the announcement JB issued three call-in decisions without reasons.

The new no reasons policy considered



- Legally: the call-in jurisdiction is v wide.. And choice of “forum” found by the CofA by itself not requiring of reasons. So probably not unlawful.
- **But**, practically, a call-in can kill a project by delay. Why have stated criteria to call-in and then refuse to say how they have been used!?
- The use of call-in and recovery jurisdiction has increased recently (especially in marginal constituencies). A need for transparency and trust? “How Sajid Javid has ignored inspectors' advice in Tory seats”, Planning, 13 October 2017.

Lessons for those advising on call-in risk in 2019



- Call-ins tend to increase in times of political instability.
- Absence of need to give reasons likely to embolden Ministers further.
- Especially in London where there has been a breakdown in relationships with the Mayor (see below).

The breakdown of co-operation in London 2019

- Historically, the working relationships between Mayor and GoL and then Department have been good.
- Reflected in the absence of “interference” in strategic planning under successive Mayors.
- That all changed this year.



Government v Mayor

- Several High Profile disagreements have led to a toxic relationship.
- The worse I have seen in over 15 years involvement in London Governance.
- This has led to significant numbers of call-ins and holding directions in London.

Progress of the London Plan



- NPPF and the footnote issue.
- Open Correspondence indicating huge dissatisfaction with LP approach and hinting at need to intervene.

“London Forum” Redevelopment Dispute: Ongoing



- In Mid-litigation: so need to be careful and brief.
- Mayor recovered and resolved to grant pp for contraversial redevelopment.
- Gov allege “an agreement” not to grant without consulting Department who might be minded to call-in. Mayor denies any such.
- Mayor formally grants pp- S 106 issued removing ability to call-in altogether

The Aftermath: the Kit Malthouse letter!



- A very strongly worded letter from Government in which Minister accuses the Mayoral staff of duplicity and in effect threatens to place a holding direction on all strategic applications in the Capital where there is relevant objection.
- Now a very significant proportion of the capital's housing applications are being held up by such directions and by potential call-ins

A Pattern or trends?

- Clear Pattern of large housing schemes involving tall building schemes being refused contrary to Inspector's recommendation.
- Most in marginal seats
- Some Close to the Department have hinted that the relevant ministers "not fans" of tall buildings

Tall Buildings: overtuning Inspectors



- Russell Way Purley.

The risks of an overturn explained



- Sainsbury, Whitechapel 2019.
- Chiswick Curve Chiswick 2019.

Conclusion