The City of London Law Society

4 College Hill
London EC4R 2RB

Tel +44 (0)20 7329 2173
Fax +44 (0)20 7329 2190
DX 98936 – Cheapside 2

mail@citysolicitors.org.uk

www.citysolicitors.org.uk

Maria Darby
Review of planning appeal procedures - Consultation
Planning - Development Management Division
Department for Communities & Local Government
Zone 1/J3, Eland House
Bressenden Place
London SW1E 5DU

13th December 2012

Dear Ms Darby

Re: **Technical review of planning appeal procedures - Consultation Response**

Please accept this letter as a formal response on behalf of the City of London Law Society Planning and Environmental Law Committee to the above consultation launched on 1 November 2012.

The City of London Law Society ("CLLS") represents approximately 15,000 City lawyers through individual and corporate membership including some of the largest international law firms in the world. These law firms advise a variety of clients from multinational companies and financial institutions to Government departments, often in relation to complex, multi-jurisdictional legal issues. The CLLS responds to a variety of consultations on issues of importance to its members through its 19 specialist committees.

Generally, we welcome the Government's efforts to make the process faster and more transparent. The comments in this letter are focussed on what we believe are the key issues concerning the proposals set out in the consultation paper.

Q1: Do you agree with the proposed changes to the appeal procedure?

The proposed changes to the procedure will do less to shorten the period between the reason for the appeal arising and an appeal decision being made than has been predicted in the consultation paper. For most commercially significant projects, the

appellant will want to resolve the matter and commence work on the development as soon as possible. The appellant will usually not want to wait until the six-month appeal period has nearly expired before submitting an appeal and instead an appeal will be submitted soon after the reason for appeal arises. The key change will simply be a front-loading of the process whereby appellants will be required to do greater preparation at the pre-appeal stage to draft a full appeal statement and Statement of Common Ground. It is unclear, in practice, how much time overall will be saved by this shift in focus to the pre-appeal stage.

Any delay in submitting an appeal during the six-month period referred to in paragraph 22 of the consultation paper is often because the parties are attempting to work with the local authority to develop an acceptable alternative scheme. The current proposals will limit the ability of parties to avoid an appeal in this way by requiring them to do more work up front to prepare for an appeal rather than working with the local authority on developing alternatives. There is a risk, therefore, that the proposals will lead to an increase in the number of appeals being brought forward.

A requirement to prepare documents at an early stage does not sit comfortably with the removal of the opportunity for parties to introduce evidence at the statement stage, other than as part of proofs of evidence in an inquiry. This disadvantages parties who are required to use the hearing process and could result in the Planning Inspectorate refusing to accept important evidence that, through no fault of the appellant, only becomes known after the appeal has been submitted. This is a particular concern given that the full appeal statement will need to be submitted before engagement has properly begun on the Statements of Common Ground. Additionally, it does not allow the appellant the opportunity to deal with new issues that arise in comments submitted by other parties. There must be a procedure put in place for additional evidence to be submitted when new issues arise.

Q.2: Do you agree with the proposed approach to agreeing a Statement of Common Ground up front, and that a Statement should be required for hearings?

Steps to encourage early progress on Statements of Common Ground are welcomed, provided this does not result in a reduction in the quality of these documents. It would also be beneficial for there to be guidance to emphasise the role that Statements of "Uncommon" Ground can play in bringing issues to the attention of the Inspector in cases where agreement cannot be reached on certain issues.

The consultation paper refers to Statements of Common Ground being agreed with the local planning authority. However, it is often also useful for such statements to be agreed with other key parties, such as English Heritage and the Environment Agency. It would be useful for there to be clarification on whether the new procedures will apply to all Statements of Common Ground or just those with the local planning authority.

Q3: Do you agree with the proposed approach to shortening the time before the appeal event?

The proposal to shorten the time before the appeal event is sensible in principle. However, the consultation paper notes that the deadlines of 16 weeks for inquiries and 10 weeks for hearings will not be abided by where this is "*impracticable*". To ensure certainty for all parties involved in the process, clarity needs to be provided on what this

means and examples given of the circumstances that could justify an extension of the relevant time period.

The consultation paper acknowledges that success will be dependent on appeal parties fully engaging with the process, keeping to the timetable and submitting information in a timely manner. It would therefore be helpful for parties to understand from the outset what the penalties will be for failure to comply at each stage. It should be noted that success will also be dependent on Planning Inspector availability. Any proposal to shorten the deadlines will impose a greater burden on the Planning Inspectorate and the Government must ensure that sufficient resourcing is in place to allow the changes to work in practice.

Paragraph 38 of the consultation paper explains the proposal to require parties to state on the appeal forms the number of witnesses they intend to call and the length of time they will need to give their evidence. In practice, this will be very difficult for appellants to do at such an early stage. This will be in advance of the Statements of Common Ground having been agreed (and proofs of evidence having been submitted for inquiries) and therefore before the appellant will know what issues remain outstanding as being contentious between the parties. The speed at which an appeal progresses often depends on the involvement of third parties, which is outside the appellant's control. For inquiries, the timetable will be heavily dependent on the amount and length of any cross-examination, which again is outside of the appellant's control.

Q.11 Do you have any other proposals to further improve the appeals system?

Paragraph 9 of the consultation paper explains that the Government intends to extend the powers of Planning Inspectors to recover the Secretary of State's costs for all types of appeal procedures where a party has been "*wholly unreasonable*" to incentivise good behaviour throughout the planning process. Whilst this is a sensible measure, further guidance is required on what would amount to wholly unreasonable behaviour. The procedure for obtaining an award of costs is already very strictly controlled and restricted. Any proposals to amend the criteria for costs should be clearly set out in guidance.

Guidance on the submission of proofs of evidence must be retained. It is important to set out the details that proofs of evidence should cover and the requirements for the submission of appendices, summaries and rebuttal evidence.

Finally, it is not clear whether or not the proposals will apply to call-ins and this should be clarified.

Please feel free to contact me using the contact details above should you require clarification on any of the points raised in this letter.

Yours sincerely

Rupert Jones
Chairman of the CLLS Planning & Environmental Law Committee
On behalf of the City of London Law Society