

Local planning appeals - a very bad idea

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RIBA Journal, May 2008.

Your planning application for a bold and contemporary, but elegant and carefully considered, kitchen extension to a family home outside Borchester has been turned down, under delegated powers. The planning officer has explained to you that while that kind of thing may be fine in Hampstead, her councillors have made it clear that Borseshire is still a very long way from embracing modernism. Never mind, you tell your long-suffering clients – we are entitled to appeal to the national Planning Inspectorate (PINS), where we will be assured of a fair hearing, free of backwoods prejudices.

Not for long, I'm afraid. A clause in the Planning Bill now passing through Parliament will establish a system by which planning appeals against delegated decisions¹ made by planning officers will no longer be to PINS but to 'local member review bodies' – that is, a panel of councillors.

From the Government's point of view, this has a number of benefits. It unclogs the overloaded national appeals system², and it can be said to be consistent with the Government's policy aim (seldom realised by the present administration with its micro-managing tendencies) of taking decisions at a local level where possible, giving additional powers to councillors - who are more used to seeing them taken away (as the Bill does elsewhere – see below).

¹ The Bill also provides that categories for delegated decisions must be defined by each local authority, so it appears that more (or fewer) applications could be dealt with this way than at present, as each local authority sees fit.

² Householder applications, for example, account for about a third of the 22,000 planning appeals each year at present.

This may explain why the measure was supported by the Local Government Association, which represents councillors.

The RIBA, the RTPI and most other consultees, however, objected strongly to this proposal when it was set out in the White Paper which preceded the Bill. Put simply, the proposed system flies in the face of natural justice. To most people (such as householder applicants) 'the Council' is an undifferentiated entity, which will now become both judge and jury in these cases - the original decision and the appeal decision could well arrive on the same headed paper.

The only further recourse, beyond the local member review body, will be to the High Court. This will not be a 'planning appeal', but a review of the legality of the decision. We can expect the courts to become clogged up rapidly with cases brought by the wealthy who want to build swimming pools under Mayfair mansions - but judicial review is unlikely to be a practical option for the majority. As ever, the devil will be in the detail. The working out of the system will depend on detailed provisions to be made under the new Act by the Government and by local authorities.

One particular cause of concern is that planning decisions made by councillors at present are made on the basis of professional advice from their officers. What will be the source of advice when they review their officers' decisions? This question highlights just how flawed the proposal is.

The Planning Bill's 'big idea', the Infrastructure Planning Commission, is a move to sideline the forces of nimbyism in relation to large-scale development. At the other end of the scale, the local member review body system seems likely to prove a nimbyist charter. The RIBA, with others, will continue to press its objections to this part of the Bill as it progresses through Parliament.

...and the good news

There is some good news in the Bill, though. The RIBA has lobbied the Government about the highly inflexible attitude of some local authorities to applications for minor amendments to existing planning consents. Such authorities had argued that an obscure piece of case law (the 'Sage' case) obliged them to take this approach, where previously things had been dealt with more pragmatically. The problem is solved in the Bill with a specific provision entitling local authorities to allow non-material changes. While this is likely to be helpful to architects in practice, it may also have the unwelcome consequence of making it easier to 'dumb down', and harder for architects to use the planning system to defend their designs against the depredations of the less enlightened sort of client.

What happened next...

..nearly everyone thought this was a bad idea, and it appears to have been abandoned by the Government