Paul Brown QC
Planning and Environmental Bar Association

Landmark Chambers
180 Fleet Street
London
EC4A 2HG

Inquiries Review Panel
c/o MHCLG
3rd Floor, Fry Building
2 Marsham Street
London SW1P 4DF

25 September 2018

Dear Inquiries Review Panel,

1. The Planning and Environment Bar Association ("PEBA") encloses its Consultation Representation to the Independent Review on Planning Appeal Inquiries ("the Review") on the Word pro forma.

2. We request that this covering letter is considered prior to consideration of the pro forma responses.

3. We begin by explaining PEBA's identity and the unique expertise and experience that the Association's 300+ barrister members have of the inquiry (and hearing) processes, in preface to answering Q1-6.

4. We then provide a structured analysis of the Terms of Reference, which necessarily prefaces our responses to Q7-8 (Overall Evaluation) and Q9-15 (Individual Stage Evaluation). This includes a review of the Statistical data provided by the Review to date, addressing Q10-13 (Stages) and Q15 (Withdrawals)

5. Following that, we set out some of the key legislative provisions and the leading case law in respect of the inquiry process (Q7-8). This leads to an analysis of the specific points at which delay has been identified in the inquiry process (Q11-13), and some remarks on new technology (Q14), as follows:

1. Introduction

1.1 The Planning and Environment Bar Association
1.2 The Terms of Reference
1.3 The Inquiry Process and "Delay"
1.4 Financial and Human Resources, the Rule of Law & Access to Justice

1.5 Housing Delivery
1.6 Methodological Constraints

2. Preliminary Data Analysis

2.1 Inquiry Appeals Received/Withdrawn/Decided
2.2 Housing Inquiry Appeals Decided
2.3 Inquiry vs Hearing Appeal Success Rates
2.4 Inquiry Sitting Days
2.5 Durations: Start to Event to Decision
2.6 Redetermination
2.7 Recovered Appeals Secretary of State Decisions

3. Legal Framework

3.1 Section 319A TCPA 1990
3.2 The Town and Country Planning (Inquiries Procedure) (England) Rules 2000
3.3 Article 6(1) of the European Convention on Human Rights
3.4 Common Law Procedural Fairness

4. Timeline and Delays

4.1 Procedure Disputed
4.2 Missing Documents
4.3 Inquiry Date Conflict between Parties/PINS
4.4 Postponement Requests
4.5 Adjournment Required
4.6 Change in Procedure
4.7 Illness
4.8 Policy/Key Evidence Change
4.9 Balancing Other Casework Commitments
4.10 Recovery for Secretary of State Decision

5. Documents and Evidence

5.1 Statements of Case and State and Statements of Common Ground
5.2 Proofs of Evidence
5.3 Inspector's Identification of Main Issues
5.4 Examination of Witnesses
5.5 Counsel's Opening and Closing Submissions

6. Technological Solutions
6.1 Transcription Technology
6.2 Case Management Technology
6.3 Visual Technolog

1) INTRODUCTION

1.1) The Planning and Environment Law Bar Association

6. The Planning and Environment Bar Association ("PEBA") is the Specialist Bar Association ("SBA") for barristers practising in planning law and related fields.[1] PEBA has in excess of 300 Full Members.

7. PEBA's members are specialist advocates. They appear at (and advise extensively in preparation for) both planning inquiries and hearings under sections 78 and 174 of the Town and Country Planning Act 1990 ("TCPA"). They also appear before the Planning Court and appellate courts in Section 288 and 289 challenges to Inspector/Secretary of State decisions in the above appeals.

8. Many PEBA members also appear and advise in respect of inquiries and hearings in respect of compulsory purchase, infrastructure, and highways law. Although these are not formally in scope within the Review, experience in this context necessarily situates the present response.

9. Clients in such planning appeal inquiry/hearing and statutory review court proceedings include the full range of individuals and organisations involved in the planning appeal process, both private sector and public sector, and third party interests (community groups, statutory consultees, private individuals).

10. A number of PEBA members are currently or have been members of the Attorney-General's Panels of Advocates, carrying out advisory and advocacy work for the Ministry of Housing Communities and Local Government ("MHCLG") and related Departments, including the defence of section 288 and 289 TCPA appeals where Inspectors/Secretary of State are alleged to have erred in law.

11. Individual members may focus their practice within certain areas of planning, and for particular types of client, depending on seniority, expertise and interest. However, the particular nature of planning advocacy and advisory work requires an appreciation of how all participants in the planning appeal access and operate its procedures.

12. PEBA's collective expertise is therefore deep, and its collective experience is broad.

13. PEBA gratefully acknowledges that the Terms of Reference for the Review specifically identify lawyers (represented by PEBA and the Law Society's Planning and Environmental Law Committee) as key stakeholders within the current Call for Evidence.

[1] Including environment, compulsory purchase, highways, housing, rating and other aspects of local government and administrative law. PEBA also has Associate Members (e.g. students and other barristers)

1.2) The Terms of Reference

14. PEBA has carefully considered the published Terms of Reference and how it can best represent the interests of its diverse professional membership and best assist MHCLG.

15. The Terms of Reference identify four sub-headings of inquiry, within an overarching target of: ""*mak[ing] recommendations to significantly reduce the time taken to conclude planning inquiries, while maintaining the quality of decisions*". In particular, the Terms of Reference state that the Review

> "*.. should consider:*
>
> - [1] *the circumstances in which the public inquiry procedure is favoured by appellants and whether a different procedure may be more appropriate*
>
> - [2] *the purpose of the inquiry procedure and whether current practice delivers this purpose*
>
> - [3] *the rules and procedures governing inquiries, the custom and practice during inquiries, and make recommendations for improvements, in particular what it would take to halve current end to end inquiry procedure times*
>
> - [4] *the specific implications for the Planning Inspectorate and appellants of any recommendations to change the inquiries procedure, including implications for other appeal procedures.*"

16. PEBA can assist in each of these aspects, through both written submissions and face-to-face meetings:

> [1] Choice of Procedure: PEBA members are routinely instructed to advise on choice of current appeal procedure, especially in the light of timescales. Through their work, they are aware of the most common reasons why Appellants and Local Planning Authorities request a particular mode of determination in different cases;
>
> [2] Purpose of Inquiry Procedure: PEBA members have particular insight into the legislation and common law principles that underpin the purpose of the inquiry procedure;
>
> [3] Procedure Rules and Practice: PEBA's members advise on and work with the Town and Country (Inquiries Procedure) Rules 2000 and the Planning Appeals Guide, and then have to operate within these as advocates at hearings;

[4] Impacts of Procedural Changes: PEBA has identified various recommendations for changes to the inquiries procedure and would be able to advise on the implications of other identified changes if identified prior to publication of the Review.

17. PEBA understands that the Review will take various forms, which will develop as it proceeds:

    - Call for Evidence (the present documentary exercise)
    - Workshops in London, Bristol, Birmingham and Manchester
    - Potential follow-up meetings

18. PEBA therefore provides the present Covering Letter and Call for Evidence response as the first formal written submission in what we hope will be an ongoing dialogue with the Review team.

1.3) The Inquiry Process and "Delay"

19. PEBA notes that the Independent Review is concerned only with the planning appeal inquiries process, i.e. it has no remit to consider either written representations or the procedure for hearings.

20. Under the heading "*What is the problem*" the Call for Evidence paper explains this by reference to the fact that, in 2017-2018 the inquiry process took on average 44 weeks from the receipt of a complete and valid appeal to a decision being made, and notes that

    "*Of particular concern to the Government is the potential harmful consequences of unnecessary delay in appeal decisions for major housing proposals.*"

21. The process for determining appeals by inquiry has its own, unique aspects which are not shared by other modes of determination. There is merit in considering these unique aspects.

22. However, if the Government's chief concern is delay, PEBA considers it is essential that the determination of appeals is seen in its proper context.

23. In particular, PEBA draws attention to the following five preliminary points:

Defining "Delay" and the Causes of Delay

24. First, of the current 44 week average period referred to in the Call for Evidence, less than a quarter is attributable to mandatory statutory procedures such as the time

limits set for production of statements of case and proofs of evidence. The greater part (by far) of any "delay" in the process is attributable to human factors.

25. As the flow-chart in the Call for Evidence indicates, these can include the conduct of the parties. However, much of the delay is also attributable to resourcing issues within PINS, which have significantly increased the time taken to validate an appeal, and the length of time before an Inspector is available to hold the Inquiry. These problems are not a consequence of the inquiry process, and it would be wrong to assume that they demonstrate a failing in that process.

Comparison to Hearings/Written Representations

26. Second, unsurprisingly, therefore, these problems are not unique to inquiry process: the latest MHCLG figures suggest that written representations appeals are taking 26 weeks to determine, while hearings are taking 37 weeks. The stated goal to reduce the average time taken at an inquiry (44 weeks) by half (i.e. to 22 weeks) would therefore take inquiries below the current time for written representations.

Complexity and Bespoke Timetables

27. Third, to the extent that inquiries are taking longer:

    (a) This should not be surprising, given that – as the Call for Evidence acknowledges – cases deal with at Inquiry tend to be more "complex in terms of their potential impacts and/or controversial".

    (b) This will in many cases be a consequence of the fact that the parties have specifically requested a bespoke timetable. The reasons for this will vary from case to case, but where delay is a consequence of a deliberate choice by the parties, this should not be seen as a failing of the system.

Added Value of Inquiry Process Irrespective of "Delay"

28. Fourth, whilst PEBA is aware that many developers are unhappy with the delays in the determination of appeals generally (by whatever mode) it is of some significance that (in PEBA's experience, at least) in the vast majority of cases it is the developer (rather than the LPA) who specifically asks for their appeal to be determined through the Inquiry process, notwithstanding the fact that they know it will take longer before they receive a decision. In PEBA's view, the only reason that developers voluntarily accept this additional delay is because, they consider there is "added value" in the inquiry process.

Appellants' Success Rates at Inquiry

29. Fifth, in crude terms, the developers' choice in this regard is borne out by the statistics: of the three possible modes of determination, appeals that are heard at inquiry have the highest success rate.

30. PEBA recognises that this is an over-simplification, in as much as the applications which underlie appeals which are determined at inquiry are more likely to have benefitted from full professional advice and input than many of the appeals that are determined by written representation.

31. Nevertheless, the point is important in the light of the government's well-publicised concerns about the need to accelerate the delivery of housing in England. If and so far as that is part of the rationale for this review, it is important that MHCLG understand that, statistically, the inquiry process is delivering a higher proportion of positive decisions (i.e. approvals) which will facilitate the delivery of housing than any other mode of determination: see section 1.5 below.

Summary: Correctly Assessing "Delay"

32. None of these points should be taken as suggesting that there is no merit in reviewing the inquiry process: PEBA recognises that there is room for improvement, and the remainder of this document seeks to address ways in which the existing system could be improved.

33. However, in PEBA's view it is important that the inquiries are not seen as failing, simply because they are taking longer than other modes. If inquiries take longer, it is because they involve more complex cases which require more careful scrutiny. That more careful scrutiny is vital, not only to protect the public interest, but also to secure confidence in the decision-making process.

34. The track-record of developers specifically requesting an inquiry, notwithstanding the additional time this may take, is a clear indication that, far from holding up the delivery of new housing, the inquiry process is facilitating that delivery, where appropriate.

1.4) Financial and Human Resources, the Rule of Law and Access to Justice

35. PEBA as a Specialist Bar Association is affiliated to the Bar Council of England and Wales and its members are bound by the Bar Code of Conduct. This entails a resolute commitment to the twin principles of the Rule of Law and Access to Justice.

36. These two principles are central to the quality of decision-making, which the Review has been instructed to preserve. It is axiomatic that increases in speed and reductions in cost (or resource) are likely to create tension with corresponding improvements in quality.

37. A high quality decision in the planning appeal context must be accurate as to details, comprehensive in its coverage and fair to all parties.

38. It is manifestly in the public interest that all decisions meet these basic administrative standards, even before one considers the question of lawfulness and the risk of legal challenge. If decisions are inaccurate as to details, partial in coverage or procedurally disadvantage one party, this is likely to fundamentally erode public confidence in the appeals system, to impede the planning process and affect the public interest in having the right development in the right locations.

39. Quality is however intertwined with lawfulness. Those decisions that are rushed are likely to lead to substantive and procedural legal error, such as (non-exhaustively):

- Incorrect interpretation of legislation
- Incorrect interpretation of policy
- Failure to take into account material considerations
- Taking into account an immaterial consideration
- Material error of fact

40. The consequent cost of defending legal challenges may be substantial, eliminating any initial time gain. Inspectors are diverted to writing witness statements, the Ministry's officials and lawyers are diverted to defence, successful Appellants are delayed in commencement and Councils face continuing uncertainty.

41. The great strength of the current planning appeal system lies in the quality of the Inspectorate itself, as experienced and trained arbiters of planning disputes, supported by the Inspectorate's staff. However, the current resource constraints upon the Inspectorate are well-documented, notably in the Inspectorate's Board's monthly Minutes[2] and the current challenges in respect of Inspector recruitment, retention and productivity (see for example Board Minutes, 14 June 2018, Section 4.0).

42. Such personnel issues are not unique to the Inspectorate. They are reflected across the judicial system: see for example the Final Report on the Civil Courts Structure Review (July 2016)[3] and the Lord Chief Justice's Annual Report (June 2018)[4] recording the under-staffing of the High Court Bench and the substantial workload facing the Court of Appeal, notwithstanding full staffing up to the maximum cap.

[2] https://www.gov.uk/government/organisations/planning-inspectorate/about/our-governance
[3] https://www.judiciary.uk/wp-content/uploads/2016/07/civil-courts-structure-review-final-report-jul-16-final-1.pdf
[4] https://www.judiciary.uk/wp-content/uploads/2017/09/lcj-report-2017-final.pdf

43. It is a source of immediate concern to PEBA that the Terms of Reference do not explicitly acknowledge that at the root of the documented delays is a simple resourcing issue: the Inspectorate needs more Inspectors to cover the existing caseload, and more supporting staff to assist with all stages from validation to case management up to the point of issuing the decision.

44. The Review should therefore proceed with caution in respect of any suggestion that there are any "quick fixes" beyond the core need to increase current Inspector numbers, and for each individual Inspector to be given adequate time to address their personal caseload.

45. This is a particular factor in any shift from an adversarial to inquisitorial process, as a reduction in the time taken during the "hearing" or "oral" phase, may be substantially offset by additional preparation requirements.

1.5) Housing Delivery

46. The Review is described as focused in part upon s78 appeals/called-in inquiries in respect of major housing applications.

47. The Review should bear in mind three key issues in respect of housing inquiries and current national planning policy and practice guidance:

48. First, inquiries cover the vast majority of new housing units granted permission by the Inspectorate/Secretary of State (as opposed to LPAs) each year. The Inspectorate's own data indicates that in 2016/17, the 3% of all s78 planning appeals determined at inquiries produced 20,000 homes. The figure for hearings/written representation appeals was just 10,000.[5]

49. Second, the role of the public inquiry system as an important "safety valve" is vital. Housing inquiries may be highly controversial within a local community and the ability for a local community to be heard and see a proposal properly scrutinised by an independent decision maker should not be under-estimated. Local communities are usually more accepting of an unfavourable outcome if they consider the process they have witnessed was open, independent and fair.

50. Third, housing evidence is presently undergoing significant change in respect of both the identification of need and the assessment of availability: see the Current NPPF (adopted on 24 July 2018), Chapter 5.

51. On Housing Need, the Current NPPF paragraph 60 ("NPPF 60") requires that need should be calculated according to a standard methodology set out in national practice guidance unless exceptional circumstances justify an alternative approach.

[5] see the paper presented by Christine Thorby to the Joint Planning Law Conference, 15 September 2018

The scope for Proofs of Evidence and examination of witnesses on this issue is therefore likely to be more constrained than under the Archived NPPF model (i.e. from 2012-2018).

52. On Housing Land Availability/Supply: this has often been the single largest component of housing evidence at housing inquiries in the period 2012-2018, with witness and cross-examination working through the LPA's list site by site. However following the recent changes to the NPPF (see paragraph 74) land availability will be established either through the Local Plan or through an Annual Position Statement, which will be produced in accordance with planning practice guidance. The PPG was published on 13 September 2018. If implemented in full during 2019, this will also reduce the need for Proofs of Evidence and lengthy examination of witnesses on this issue,

53. Both of the above changes could lead to significant reductions in average numbers of sitting days on housing inquiries, measurable up to weeks on larger inquiries.

54. To a significant extent, these changes could shift the focus of inquiries from the macro picture to issues of often more localised geographic concern – where the forensic value of cross-examination and detailed closing submissions (including on points of law) will remain essential for both promoters and objectors.

1.6) Present Methodological Constraints

55. It is important at the outset to emphasise certain methodological constraints on the present Response by PEBA, within the six weeks provided.

Statistical Evidence

56. First, PEBA has not sought to provide its own statistical/empirical evidence in respect of member experience at the present time. Given the size and diversity of its membership, the six week period of the present Call for Evidence, this would not have been possible.

Case Studies

57. Second, PEBA has also avoided assembling its own detailed case study or anecdotal approach, similar to that provided by the Review. Case studies of this kind are likely to involve two or more PEBA members (and their respective clients) on either side of

a dispute and as with all litigation, there will be separate views of the causation and impact of procedural steps.

Financial Impacts

58. Third, PEBA has not addressed resource questions: for example, the overall cost of an inquiry procedure to a given Appellant, Local Planning Authority or Rule 6 Party, whether measurable in pure capital terms or human resource. Nor has PEBA sought to address the overall economic impact of delays to projects whilst awaiting a decision at appeal.

59. PEBA is highly aware of these factors, which are often a major factor in advisory work for appeal parties – but the respective industry bodies (e.g. Home Builders Federation, Land Promoters and Developers Federation, Local Government Association) are best placed to report on such matters.

Types of Planning Inquiry

60. Fourth, the Terms of Reference then state that the Review "*should focus on the role of inquiries in major housing applications, with wider application to <u>all</u> inquiries.*"

61. This aspect may benefit from further clarification given the diversity of inquiry procedures. We understand that this covers statutory appeals under s77 and s78 only. In other words, enforcement appeal inquiries are outside scope, as are infrastructure, compulsory purchase and highways inquiries.

Comparable Regimes

62. Fifth, the terms of Reference request that "*If appropriate, it should look at relevant good practice in comparable regimes.*"

63. The identification of a comparable regime to the English[6] system planning appeals is not an easy task.

64. Domestically, in respect of other administrative appeals systems in England and Wales, there are environmental tribunals relating notably to permitting which

[6] We note that the Review does not cover the Appeals system in Wales and all statistics provided are from England only

provide some overlap with the planning appeals system – but the technical focus and level of public participation are of a very different nature given the subject matter.

65. Internationally, in respect of planning/land use-law appeal systems within adjacent jurisdictions (Scotland, Northern Ireland and Republic of Ireland) and more distant jurisdictions (Australia, especially New South Wales, New Zealand), there are comparators to the planning appeals process. PEBA has not undertaken any research of its own in this respect.

66. If the Review does however intend to draw extensively upon practice within either a separate administrative appeals system or a planning/land use law appeal system, we would request that we be notified. PEBA has expertise in respect of the former and access to a number of dual-qualified practitioners in the latter. We are therefore particularly concerned that the Review recognises legal or jurisdictional differences where these arise, such that no false comparisons are drawn.

Additional Data

67. Should additional internal consultation be required to address specific questions, then PEBA would happily discuss this with the Review Team.

2. PRELIMINARY DATA ANALYSIS

68. We have analysed the Planning Appeals Statistics Excel table ("the Excel Table") and the Key Appeal Statistics tables ("the PDF table") provided by the Review team already.

69. We consider that it is helpful to examine the issues raised in the following order, adding some additional tabulation of our own:

    2.1 Inquiry Appeals Received/Withdrawn/Decided
    2.2 Housing Inquiry Appeals Decided
    2.3 Inquiry vs Hearing Appeal Success Rates
    2.4 Inquiry Sitting Days
    2.5 Durations: Start to Event to Decision
    2.6 Redetermination
    2.7 Recovered Appeals Secretary of State Decisions

70. We provide some initial analysis, and comment on potential avenues of statistical research within the datasets available to the Review team.

71. We have referred back to our observations in our responses in the pro forma at Q10-13 and Q14, where applicable.

72. We shall use the following terms, which we trust are self-explanatory

    - Format: "Inquiry Appeals", "Hearing Appeals", "Written Representations"
    - Decision-Taker: "Inspector Inquiry Appeals", "Recovered Inquiry Appeals", "Call-In Inquiry Applications"

2.1 Inquiry Appeals Received/Withdrawn/Decided

2.1.1 Inquiry Appeals Received

73. At the outset, we note that Inquiry Appeals Received form a small percentage of the Inspectorate's overall caseload in absolute percentage terms, 2% for 2017-18, and 3% in the preceding four years.

74. We also note that the total number of Inquiry Appeals has shown a sustained decrease from the start of 2013 to year end 2018, extrapolating for the first Table in the Excel Table, with the addition of the emboldened figures below:

Fiscal Year	Inspector	Recovered	Call – Ins	Total
2013-2014	390	89	19	**498**
2014-2015	397	73	18	**488**
2015-2016	394	52	22	**468**
2016-2017	366	35	17	**418**
2017-2018	307	27	15	**349**
Total	**1854**	**276**	**91**	**2221**

75. In overall terms, this reflects an overall 30% decrease (498 to 349).

76. In terms of identity of the Decision-Maker, the cause appears to be primarily attributable to a marked decrease in Inspector Inquiries from 2016 onward (390 to 307) and successive reductions in Recovered Inquiries (89 to 27) throughout. The figures for Call-Ins have been low overall (no greater than 5% of the total) and have been broadly static.

77. In terms of subject matter, the Review should consider in consultation with the Inspectorate the impact of the reduction of significant categories of appeal within this period:

    (a) Wind turbine inquiries, following Central Government changes of policy;
    (b) Retail inquiries, following significant changes in the out-of-town retail sector
    (c) Commercial office sector, following changes to working patterns and structural changes (e.g. flexible working space)
    (NB this is not an exhaustive list)

78. We do not assume that the simple number of inquiries represents a complete picture of the Inspector resource deployed, but the average number of Inspector days per Inquiry is not declared (including as between Inquiries vs Hearings) so it is impossible to interrogate further).

2.1.2) Inquiries Withdrawn

79. Before addressing the number of Inquiries Decided, it is helpful to isolate the figure of Inquiries Withdrawn, and to make some prefatory methodological observations:

Fiscal Year	*WR*	*IH*	LI	Inspector	Recovered	Call - Ins
2013-2014	*326*	*98*	**86**	68	15	3
2014-2015	*283*	*79*	**70**	55	11	4
2015-2016	*376*	*87*	**109**	88	14	7
2016-2017	*331*	*85*	**150**	141	4	5
2017-2018	*193*	*58*	**111**	101	6	4
Total	***1509***	***407***	**526**	**453**	**50**	**23**

80. The Excel Table Annex records that this figure is derived: "*All Withdrawn data is as recorded at cop 27th June 2018*".

81. It appears that the withdrawals are therefore taken from the date of withdrawal. Whilst methodologically understandable to identify a fixed date – there are some difficulties in matching the data to either/both of Inquiries Received/Decided in generating an estimate of the proportion of total cases that are withdrawn.

82. For present purposes, we note that there is some evident variation in these figures, with a marked increase in 2016-17.

83. We would recommend further analysis of the precise dates of withdrawal – which may assist in identifying whether these can be correlated to either policy events (the publication of statements of national policy) or events in the political sphere (e.g. general elections) both of which anecdotally can affect Appellant decisions to withdraw.

2.1.3) Inquiries Decided

84. As referred to above, there is then a methodological difficulty in correlating the total number of Inquiry Appeals Received and Decided, plus an additional total (for ease of reference below):

Fiscal Year	Inspector	Recovered*	Call - Ins*	Decided Total	(Received Total above)
2013-2014	274	65	11	350	498
2014-2015	230	69	11	310	488
2015-2016	248	52	9	309	468
2016-2017	245	44	10	299	418
2017-2018	266	26	16	308	349
Total	**1263**	**256**	**57**		

85. The Annex records that "*All Decisions data is taken from the Planning Inspectorate Appeals Database, published on the Internet on 16th May 2018*", but "*All Received data is as recorded at cop 27th June 2018*".

86. Whilst it is acknowledged that the Recovered and Call-In figures are awaiting a Secretary of State decision, and that account needs to be taken of Withdrawal figures (as noted above), there are quite significant differences in the Inspector Inquiries Received and Decided figures. It is not clear for example, whether the 2013-14 Decided figure should be regarded as predominantly 2012-13 Received cases, i.e. from data before the start date of the current analytical phase.

87. The distinction is important as most of the other figures appear to be "*Inquiries Decided*" cases, unless where not stated (e.g. Inquiry Sitting Days).

2.2) Housing Inquiry Appeals Decided

88. We note that the Terms of Reference place Housing Inquiry Appeals centre-stage. It is notable that Housing Appeals data is limited to Inquiries only (i.e. not Hearings) and has other data limitations (e.g. no reference to quantum of housing and thus appeal complexity).

89. In the excerpt from the Excel Table below, we have added the Total All Local Inquiries figure, as the other tables in the Excel Table use the real numbers – to assist with comparison:

Fiscal Year	**Housing LI**	**Total All LI Decided**	**Percentage**	***Inspector***	***Recovered***	***Call - Ins***
2013-2014	204	350	58.3%	*171*	*32*	*1*
2014-2015	208	310	67.1%	*168*	*38*	*2*
2015-2016	234	309	75.7%	*191*	*38*	*5*
2016-2017	218	299	72.9%	*184*	*31*	*3*
2017-2018	239	308	77.6%	*209*	*19*	*11*
Total	**1103**	**1576**	70.0%	***923***	***158***	***22***

90. This demonstrates first that the total number of housing inquiries has increased, against the above stated decrease – by around 17% (from 204 to 239).

91. Again, the increase is largely attributable to increases in the Inspector Inquiries, with the figures for both Recovered Inquiries and Call-In Inquiries remaining fairly constant. The percentage figures used in the Housing 'Sheet' of the Excel Table of an increase from 9% to 68% Call-In Inquiries should not conceal that the absolute figures are low.

92. The Housing Inquiries figures use a wide definition of housing, which may prove too general for assessing the number of inquiry days:

> A Housing Appeal is counted as such if the Development Type (as indicated by the appeals case officer) is either "Minor Housing" (1-9 Units) or "Major Housing" (10+ Units)

93. We also note that mixed use schemes have been omitted, but the basis is unclear – "an element of housing" may omit schemes that have a significant housing quantum, e.g. a new settlement with a major employment component:

> "Some appeals which include only an element of housing as part of a mixed use development are not included within these tables"

2.3) Inquiry vs Hearing Appeal Success Rates

PDF Table

94. The PDF Table provides a powerful snapshot of the specific value of the Inquiry procedure to Appellants, for the 5 year period: 2013 to 2018. 57% of Appeals heard at Inquiry before Inspectors are allowed, as compared to 44% of those heard by way of Hearings.

95. The addition of the Recovered Appeals (which formally have the same status as the Appeals) (but not the Call-In Applications, which are formally distinct as Appellants have no option) would lead to only a moderate adjustment of that overall percentage rate:

> 835 [[721 + 114]]/ 1508 [[1263 + 245]] * 100 = 55.37%

Excel Table

96. The Excel Table which provides the underlying data for the above figures reveal that this disparity in success rates between inquiry and hearings has remained constant from 2013 onwards (NB removing the Householder and Written Representation data from the Volume – Decided Sheet):

Fiscal Year	Hearings Allowed	Hearings Dismissed	% Hearings Allowed	% Hearings Dismissed	Inquiries Allowed	Inquiries Dismissed	% Inquiries Allowed	% Inquiries Dismissed
2013-2014	421	489	**46**%	54%	216	133	**62**%	38%
2014-2015	339	421	**45**%	55%	164	146	**53**%	47%
2015-2016	298	378	**44**%	56%	176	131	**57**%	43%
2016-2017	280	405	**41**%	59%	171	127	**57**%	43%
2017-2018	260	311	**46**%	54%	139	157	**47**%	53%
Total	**1598**	**2004**	**44**%	**56**%	**866**	**694**	**56**%	**44**%

97. The difference in percentage point success rate was sustained from 2013-14 to 2016-17, with the figures closing only in 2017-18. This generates an overall average of a 12% difference.

98. Decisions as to format will have been made some months prior to the published data, and the industry responds to prevailing signals and experience. It is therefore sufficient simply to observe that at no point has the hearing process offered a higher rate of success than inquiries.

99. The difference in figure from inquiry to hearing may in part be attributable to other factors, such as the kind of cases that are dealt with by hearing, and the extent to which there has been professional involvement in preparing the underlying application or the appeal. However, without further information, it is impossible to say that this is the whole explanation.

Housing Appeals

100. These statistics do not specifically cover major housing appeals.

101. We renew our concern expressed above that the Housing data covers a wide category of sizes of housing development, and that this would need to be taken account.

102. It may assist the Review to be aware of the recent analysis by Planning Consultancy Lichfields *Refused for Good Reason*[7] *which* has reported similar success statistics in a more focussed sample of s78 appeals.

103. Of 309 appeals totalling 10,000 homes, 50% were allowed – for a total of 6,000 homes.[8] The success rate was 65% for those against officer recommendation.

104. Interrogation of this data is likely to reveal the proportion of these appeals that were inquiries, but given the 50+ threshold, this is likely to be high.

2.4 Inquiry Sitting Days

2.4.1) Total Days

105. The two tables for Inquiry Sitting Days are placed alongside one another – but different categories have been used: by decision-maker type (average number of

[7] https://lichfields.uk/media/4419/refused-for-good-reason-when-councillors-go-against-officer-recommendations.pdf
[8] Chart on page 4

days) and by days (total number of appeals in categories, irrespective of decision-maker).

106. It is helpful to deal with the second table covering the totals first:

(a) 1 Week Inquiries: Sitting Days ≤ 5 days
(b) Multi-Week Inquiries: Sitting Days ≥ 6 days/11 days

Fiscal Year	1 day	2 days	3-5 days	6-10 days	11-20 days	21+ days	Total
2013-2014	23	53	198	58	15	1	348
2014-2015	13	27	154	87	18	3	302
2015-2016	12	17	173	83	18	0	303
2016-2017	23	16	156	87	9	1	292
2017-2018	10	29	148	93	12	1	293
Total	**81**	**142**	**829**	**408**	**72**	**6**	**1538**

1 Week Inquiries: Sitting Days ≤ 5 days

107. A substantial majority of inquiries are completed within 5 sitting days:

Fiscal Year	1-5 days	Total
2013-2014	274	348
2014-2015	194	302
2015-2016	202	303
2016-2017	195	292
2017-2018	187	293
Total	**1052**	**1538**

108. The 3-5 days category is problematic. Inquiries do not sit on Monday, which is allocated as a reading day (save in exceptional circumstances), and therefore 1-week inquiries are traditionally listed as such "4 sitting days". A 5 day inquiry would therefore technically have overrun into a second week. Therefore the appropriate demarcation should perhaps be 3-4 days.

109. A similar principle applies to the category: 6-10 days, which would be better reflected as 6-8 sitting days.

Multi-Week Inquiries: Sitting Days ≥ 6 days/11 days

110. The category of multi-week inquiries lasting in excess of 1 week of 5 sitting days would also benefit from greater sub-division. We have provided some additional figures below:

Fiscal Year	6+ days	Total
2013-2014	74	348
2014-2015	108	302
2015-2016	101	303
2016-2017	97	292
2017-2018	106	293
Total	**486**	**1538**

Fiscal Year	11+ days	Total
2013-2014	16	348
2014-2015	21	302
2015-2016	18	303
2016-2017	10	292
2017-2018	13	293
Total	**78**	**1538**

111. This suggests that the total number of multi-week inquiries approaches a third of overall inquiries, but that the number of "long" inquiries, i.e. those approaching 3 weeks is approximately only 5%.

112. The tables do not go further and calculate the resulting number of days spent within different types/durations of inquiry, i.e. the number of Inspector days which are directed towards longer-form Inquiries. This is plainly more revealing statistic on the total level of inquiry activity.

113. Indeed, we would strongly recommend that the Review considers total Inspector days, including separate designation of preparation days and of writing-up days as the primary unit for analysis. We note that this appears to be the unit applied by the Inspectorate in conducting internal planning, as discussed in the Inspectorate Board's Minutes.

2.4.2) Decision-Maker and Averages

114. The average table's use of averages demonstrates that the overall average for Inspector Inquiry days sits within the 5 day range, the addition of the Secretary of State Recovered and Call-In decisions pushes this just over 5 days:

Fiscal Year	LI	Inspector	Recovered	Call - Ins
2013-2014	**4.4**	3.7	5.8	12.7
2014-2015	**5.3**	4.4	8.0	7.9
2015-2016	**5.2**	4.7	7.3	5.1
2016-2017	**4.9**	4.5	7.2	5.6
2017-2018	**5.1**	4.6	8.9	6.9

115. The Averages table further demonstrates that the Recovered Inquiry Appeals have seen an increase up to almost 9 sitting days, i.e. a 2+ week inquiry, but with a near halving in Call-In Applications.

116. It is respectfully suggested that the Averages table shows too much variation to provide the necessary detailed analysis.

117. The above figures demonstrate that care needs to be taken in examining sitting day durations and that critically the Review needs to look beyond the simple numbers to the actual content of what is being discussed, in particular, why certain subject matter has historically increased sitting days.

118. At the same time, this must take into account that changes to that subject matter, notably in the context of housing land supply, may lead to changes in the future.

2.5) Durations

119. Three tables have been provided to address overall durations. It is helpful to read them together, noting the increase from 2013-14 and the differences between the Inspector decisions and the Recovered Appeal Inquiries.

120. Call-In Applications demonstrate considerable variation over time, which is likely to be skewed significantly by individual appeals.

1. Average Start to Event Times (Weeks)

Fiscal Year	Inspector	Recovered	Call - Ins	All Inquiries
2013-2014	17.7	19.3	45.9	**18.9**
2014-2015	22.2	23.6	26.6	**22.7**
2015-2016	24.8	34.9	39.6	**26.9**
2016-2017	32.5	35.9	37.4	**33.2**
2017-2018	28.9	36.8	26.8	**29.4**

2. Average Event to Decision Times (*submission of report to Secretary of State) (Weeks)

Fiscal Year	Inspector	Recovered*	Call - Ins*	All Inquiries
2013-2014	10.2	16.6	20.9	**11.6**
2014-2015	11.1	23.1	15.1	**14.1**
2015-2016	14.7	24.7	11.3	**16.3**
2016-2017	10.5	15.9	15.0	**11.5**
2017-2018	10.9	22.7	21.4	**12.5**

3. Average Valid to Decision Times (*submission of report to Secretary of State) (Weeks)

Fiscal Year	Inspector	Recovered*	Call - Ins*	All Inquiries
2013-2014	34.1	39.8	65.5	**36.1**
2014-2015	40.1	51.7	42.4	**42.7**
2015-2016	46.7	66.5	50.3	**50.1**
2016-2017	45.5	52.3	49.6	**46.6**
2017-2018	43.1	60.1	50.2	**44.9**

2.5.1) Validation to Event

121. We note that the average increase in duration from validation to event (inquiry start date) has increased by over 10 weeks from 2013 to 2018 (with higher figures for 2016-17).

122. The figure is higher for Recovered Inquiries compared to Inspector Inquiries: 36.8 against 28.9.

123. Whether this is due to inherent complexity of Recovered appeals or due to the complexity in listing such cases, due to their being longer and having more parties, is a matter than may bear further analysis.

2.5.2) Event to Decision

124. The average duration of event to decision for Inspector Inquiries has remained within the same range (save for the increase in 2015-16): 10.2 weeks to 10.9 weeks. This would suggest that there is no inherent delay in the production time for Inspector's reports – and the Review needs to proceed with caution in assessing whether this phase can be compressed.

125. The picture is more complex for Recovered Appeals, which take more than double the Inspector Inquiries time: 22.9 weeks vs 10.9 weeks (up from 16.6 vs 10.2 in 2013-14).

126. The first step which the Review may wish to take is to extrapolate how much of this is due to increased numbers of sitting days over multiple weeks (including any planned spreading of those weeks/adjournment between individual weeks) given that "Event to decision times are measured from the date the Inquiry initially started sitting not the last sitting date."

127. Thereafter the Review should scrutinise how far the increase is related to Inspector's other commitments. In short, are Inspectors provided with sufficient time following such an inquiry to compose their Reports, or are they sent too quickly back to other inquiry caseload.

128. As part of this process, the Review should also examine whether additional evidence is submitted in the interim, requiring a reference back to the parties.

129. That said, caution should be applied in drawing too much from the data on Recovered Appeals, as the overall impact is to increase the average by just under 2 weeks: 44.9 vs 42.1 weeks.

2.6) Redeterminations

130. We note that the above figures for Durations do not include redeterminations. To do so would lead to significant skewing of the averages.

131. The redetermination figures are relatively low as a proportion of the whole, but the figures are stark: almost 3 years for the most recent year, i.e. an appeal validated as long as April 2015, not determined until March 2018.

Fiscal Year	Inspector	Recovered	Total
2013-2014	76.2	171.4	114.3
2014-2015	122.6	125.6	123.0
2015-2016	140.5	80.9	127.8
2016-2017	154.4	97.1	129.8
2017-2018	146.7	158.8	151.9

132. This does not however include analysis of (a) High Court listings and judgment dates; and (b) Court of Appeal listings and judgment dates.

133. The latter figure is likely very important in explaining delay. The number of section 288 challenges which reach the Court of Appeal remains significant, notwithstanding reservations expressed by that Court.

134. In that context, the key figure is not between validation and final decision, but between the date of the quashing order or a decision by the Secretary of State as to format of redetermination. It is this figure which more accurately maps onto the Start to Event, Event to Decision typology used above.

2.7) Recovered Appeal Decision Times

135. Finally, we note that the Review has expressly excluded the time duration for the Secretary of State to determine Appeals following the submission of the Inspector Report.

136. In practice, this remains very significant for those within the sector, due to (a) the length of the times taken, easily comparable to the delays listed above; (b) the need for refer-back processes following completion of the inquiry itself.

3) LEGAL FRAMEWORK

137. The Terms of Reference seek to identify the purpose of the inquiry procedure. That question can be best answered in part through a legal lens.

138. The fundamental purpose should be to ensure the lawful discharge of the Secretary of State's appellate function and call-in power under the Planning Acts (notably sections 77, 78 and 174 TCPA).

139. Whatever goals the Secretary of State may wish to achieve through the review must be consistent with, and not seek either to frustrate or pre-determine the underlying statutory provisions. Considerable care should be taken in identifying those elements which would require fresh Parliamentary authority through primary and secondary legislation.

140. We highlight the following:

3.1 Section 319A TCPA 1990
3.2 The Town and Country Planning (Inquiries Procedure) (England) Rules 2000
3.3 Article 6(1) of the European Convention on Human Rights
3.4 Common Law Procedural Fairness

3.1) Section 319A of the Town and Country Planning Act 1990

141. Section 319A of the Town and Country Planning Act 1990 ("TCPA") was added by section 196(1) of the Planning Act 2008. It covers the choice of appeal format in England.[9]

142. As section 319A is central to the present exercise, it should be considered in full:

> *(1) The Secretary of State must make a determination as to the procedure by which proceedings to which this section applies are to be considered.*
>
> *(2) A determination under subsection (1) must provide for the proceedings to be considered in whichever of the following ways appears to the Secretary of State to be most appropriate –*
>
> > *(a) at a local inquiry;*
> >
> > *(b) at a hearing;*
> >
> > *(c) on the basis of representations in writing.*

[9] Section 319B covers appeals in Wales, and is in similar terms but falls outside the scope of the current Review.

(3) The Secretary of State must make a determination under subsection (1) in respect of proceedings to which this section applies before the end of the prescribed period.

(4) A determination under subsection (1) may be varied by a subsequent determination under that subsection at any time before the proceedings are determined.

(5) The Secretary of State must notify the appellant or applicant (as the case may be) and the local planning authority of any determination made under subsection (1).

(6) The Secretary of State must publish the criteria that are to be applied in making determinations under subsection (1).

(7) This section applies to –

(za) an application made to the Secretary of State under section 62A;

(a) an application referred to the Secretary of State under section 77 instead of being dealt with by a local planning authority in England;

(b) an appeal under section 78 against a decision of a local planning authority in England;

(ba) an appeal under section 106BC (appeals in relation to applications for modification or discharge of affordable housing requirements);

(c) an appeal under section 174 against an enforcement notice issued by a local planning authority in England;

(d) an appeal under section 195 against a decision of a local planning authority in England; and

(e) an appeal under section 208 against a notice under section 207(1) issued by a local planning authority in England.

(8) But this section does not apply to proceedings if they are referred to a Planning Inquiry Commission under section 101; and on proceedings being so referred, any determination made in relation to the proceedings under subsection (1) of this section ceases to have effect.

(9) The Secretary of State may by order amend subsection (7) to –

(a) add proceedings to, or remove proceedings from, the list of proceedings to which this section applies, or

(b) otherwise modify the descriptions of proceedings to which this section applies.

(10) An order under subsection (9) may –

(a) contain incidental, supplementary, consequential, transitional and transitory provision and savings;

(b) amend, repeal or revoke any provision made by or under this Act or by or under any other Act.

143. Sections 321 to 322 provide some additional procedural provisions (e.g. costs) but do not further explain in detail the operation of section 319A.[10]

Analysis of Section 319A

144. Section 319A(1) and (2) confer upon the Secretary of State a broad discretion to choose the format of the appeal. However, that discretion is still subject to important limitations – consistent with the importance of the appeal process to those affected.

145. First, Section 319A(6) ensures that the criteria for any decision under (1) and (2) are made public, are thus clear and to be applied consistently. The statutory terms "local inquiry" and "hearing" envisage distinct forms of process, with Appellants in the most complex forms of case being afforded a specific set of procedural rights.

146. It is instructive to consider the guidance that was published shortly after the coming into force of Section 319A: PINS 01/2009 Annexe C:

> *Criteria for determining the procedure for planning appeals*
>
> *Hearing*
>
> *If the criteria for written representations are not met because questions need to be asked, for example where any of the following apply:*
>
> > *the status of the appellant is at issue, eg Gypsy/Traveller;*
> >
> > *the need for the proposal is at issue eg agricultural worker's dwelling; Gypsy/Traveller site*
> >
> > *the personal circumstances of the appellant are at issue, eg; people with disabilities or other special needs;*
>
> *the most appropriate procedure would be a hearing if:*
>
> > *1. there is no need for evidence to be tested by formal cross-examination; and*

[10] For completeness, it should be noted that there is an overarching power to hold a local inquiry (but not a hearing) under section 320: "*(1) The Secretary of State or the Welsh Ministers may cause a local inquiry to be held for the purposes of the exercise of any of his or their functions under any of the provisions of this Act.*" This may be relevant where it is intended to carry out separate procedures, e.g. for determining housing land supply matters under the new procedures known as "Annual Position Statements" (Current NPPF paragraph 74 and Glossary page 65, thereby moving a common form of evidence to a separate inquiry process, conducted on an annual basis.

2. the issues are straightforward (and do not require legal or other submissions to be made) and you should be able to present your own case (although you can choose to be represented if you wish); and

3. your case and that of the LPA and interested persons is unlikely to take more than one day to be heard.

Inquiry

If the criteria for written representations and hearings are not met because the evidence needs to be tested and/or questions need to be asked, as above, the most appropriate procedure would be a local inquiry if:

1. the issues are complex and likely to need evidence to be given by expert witnesses; and/or

2. you are likely to need to be represented by an advocate, such as a lawyer or other professional expert because material facts and/or matters of expert opinion are in dispute and formal cross-examination of witnesses is required; and/or

3. legal submissions may need to be made.

NOTE: Where proposals are controversial and have generated significant local interest, they may not be suitable for the written representation procedure. We consider that the LPA is in the best position to indicate that a hearing or inquiry may be required in such circumstances.

147. There was therefore a clear understanding on the part of the Secretary of State in formulating section 319A, that the inquiry process was necessary both to enable a specific format of questioning (cross-examination cf. Inspector-led) and specific type of submissions (legal submissions cf. general submissions where "the issues are straightforward").

148. Over time, the Annexe C guidance was altered, culminating in the present Annexe K. We have not traced each change (indeed it would be difficult to do so given the way in which previous PINS Guides have been archived), but the fundamental structure is clearly discernible in the present Annexe K.

149. Section 319A and the Inspectorate's Procedural Guide have recently been considered by the High Court in *North Norfolk DC v SSHCLG* [2018] EWHC 2076 (Admin), [21], a case involving an allegation that the Secretary of State should have re-opened an inquiry following a quashing order:

21 [Counsel for both parties] *were prepared to agree that the criteria in the Guidance were more than just factors to which regard had to be had by PINS when considering how to exercise the discretionary powers as to which of the modes of re-*

determination would apply. The criteria were published pursuant to a statutory duty in s319A(6) . The Rules provide the options which the Secretary of State has, and between which he may choose "as he thinks fit". The legal effect of the Guidance was that the decision had to accord with the criteria, unless PINS decided that circumstances warranted a departure from them, for which it should provide a reasoned explanation. Indeed, the emboldened introduction to Annexe K treats the criteria perhaps as more constraining than the law would otherwise require.

3.2) Town and Country Planning (Inquiries Procedure) (England) Rules 2000

150. The Town and Country Planning (Inquiries Procedure) (England) Rules 2000 ("the Inquiries Rules") and the Town and Country Planning (Hearings Procedure) Rules 2000 (the Hearings Rules") were implemented pursuant to the overarching power under the Tribunals and Inquiries Act 1992:

> *(1) The Lord Chancellor [...] may make rules regulating the procedure to be followed in connection with statutory inquiries held by or on behalf of Ministers; and different provision may be made by any such rules in relation to different classes of such inquiries.*

151. The Rules do not themselves govern the choice under section 319A(2) nor the content of the Guidance issued under 319A(6).

152. Nevertheless, they contain a significant number of procedural provisions which, short of amendment can be said further to identify the purpose of and the intended operation of the inquiry procedure, as identified by Parliament.

153. First, the Rules mandate that parties are made aware of the format (notified for the purpose of s319A(3) and (5)) that will be used at the earliest possible stage, such that all parties are able to prepare accordingly:

- Rule 3A of both the Inquiries and Hearings Rules mandate that notification of the inquiry procedure should take place as soon as possible following the determination under section 319A;

- Rule 11(3) of the Hearings Rules provides that allowing cross-examination requires consideration of the need to formally close the hearing currently underway and list as an inquiry;

- Rule 8 of the Hearings Rules provides a specific opportunity for an appellant or other party to seek a determination that the inquiries procedure may be inappropriate, and the response to this must be reasoned.

154. Second, the Rules envisage that inquiries take place within a predictable timeframe, thus affording parties certainty and promoting rapid determination such that neither Appellants nor Local Planning Authorities are prejudiced by significant delay:

- Rule 8 of the Inquiries Rules confers extensive timetable-setting powers upon Inspectors.

- Rule 10(1) of the Inquiries Rules makes clear that the target time for the commencement of an inquiry is between 4 and 22 weeks from the start date.

- Rule 7(1) and (2) of the Hearings Rules, by contrast, provide a target time of between 4 and 10 weeks from the start date.

155. Third, the Rules make clear that the Inquiry procedure should be overall "Inspector-led" in respect of identification of the substantive main issues and key procedural decisions, irrespective of whether the inquiry or the hearing procedure is used:

- Rule 11(3) of the Inquiries Rules is the only provision that refers to a right to representation by an "*other person*", there is no express provision for Counsel or legal representatives – although this is plainly implicit;

- Rule 9(2) of the Hearings Rules is in identical form to Rule 11(3) of the Inquiries Rules.

- Rule 15 of the Inquiries Rules confers extensive discretionary powers upon the Inspector:

> "*(2) At the start of the inquiry the inspector shall identify what are, in his opinion, the main issues to be considered at the inquiry and any matters on which he requires further explanation from the persons entitled or permitted to appear.*"
>
> *…*
>
> *(5) A person entitled to appear at an inquiry shall be entitled to call evidence and the applicant, the local planning authority and any statutory party shall be entitled to cross-examine persons giving evidence, but, subject to the foregoing and paragraphs (6) and [(9), the calling of evidence and the cross-examination of persons giving evidence shall otherwise be at the discretion of the inspector.*
>
> *(6) The inspector may refuse to permit the–*
>
> *(a) giving or production of evidence;*
>
> *(b) cross-examination of persons giving evidence; or*
>
> *(c) presentation of any other matter,*
>
> *which he considers to be irrelevant or repetitious; but where he refuses to permit the giving of oral evidence, the person wishing to give the evidence may submit to him any evidence or other matter in writing before the close of the inquiry."*

- Rules 11(2)-(7) of the Hearings Rules are in very similar format to the provisions above:

> *(2) A hearing shall take the form of a discussion led by the inspector and cross-examination shall not be permitted unless the inspector considers that cross-examination is required to ensure a thorough examination of the main issues.*
>
> *(3) Where the inspector considers that cross-examination is required under paragraph (2) he shall consider, after consulting the appellant and the local planning authority, whether the hearing should be closed and an inquiry held instead.*
>
> *(4) At the start of the hearing the inspector shall identify what are, in his opinion, the main issues to be considered at the hearing and any matters on which he requires further explanation from any person entitled or permitted to appear.*
>
> *(5) Nothing in paragraph (4) shall preclude any person entitled or permitted to appear from referring to issues which they consider relevant to the consideration of the appeal but which were not issues identified by the inspector pursuant to that paragraph.*
>
> *(6) A person entitled to appear at a hearing shall be entitled to call evidence but, subject to the foregoing and paragraphs (7) and (8), the calling of evidence shall otherwise be at the inspector's discretion.*
>
> *(7) The inspector may refuse to permit the–*
>
> > *(a) giving or production of evidence; or*
> >
> > *(b) presentation of any other matter,*
>
> *which he considers to be irrelevant or repetitious; but where he refuses to permit the giving of oral evidence, the person wishing to give the evidence may submit to him any evidence or other matter in writing before the close of the hearing.*

156. In the light of the above, it is respectfully submitted that the Review should examine closely the scope of an Inspector's power under Rule 15(2) and 15(6) of the Inquiries Rules, including in the preparation for hearings.

157. The Review will also need to consider carefully the additional preparatory burden and procedural obligations placed upon the Inspector by the Hearings Rules 11(2) and (3) – we consider these further below.

158. In summary, section 319A, read alongside the Inquiries and Hearings Rules overall emphasises the specific value of the inquiry procedure, as contrasted with the hearings procedure.

3.3) Article 6(1) of the European Convention on Human Rights

159. The choice of inquiry or hearing takes place within the specific context of Article 6(1) of the European Convention on Human Rights and the common law principles established in relation to a fair hearing.

160. Article 6(1) ECHR (implemented in UK law via section 1 and Schedule 1 of the Human Rights Act 1998) provides:

> *1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interest of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.*

161. The choice of inquiry procedure is likely to engage closely with Article 1, Protocol 1 in almost all cases where there is a proprietary interest:

> *Article 1*
>
> *Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.*
>
> *The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.*

162. Article 8 where there is a specific domestic interest – the primary such cases being gypsy and traveller cases:

> *Article 8*
>
> *1. Everyone has the right to respect for his private and family life, his home and his correspondence.*
>
> *2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.*

163. Both Article 1, Protocol 1 and Article 8 ECHR fall outside the present scope of the discussion.

164. The planning appeal procedure was the subject of extensive consideration by the House of Lords in *R(Alconbury Developments) v Secretary of State for the Environment, Transport and the Regions* [2003] 2 AC 295, in which the Appellants challenged the compatibility of the appeals procedure with Article 6(1) ECHR on the basis of a lack of independence by the Secretary of State where determining appeals in which (a) his own national planning policy and (b) where another Secretary of State/Government Department's interests were engaged.

165. The House of Lords considered the operation of the system in the specific context of the Inquiries Rules 2000: see the lead judgment by Lord Slynn: [13]-[16].

166. The House of Lords described the inquiry procedure in this context:

> *24 There is really no complaint about the inquiry conducted by an inspector or about the safeguards laid down for evidence to be called and challenged and for representations and objections to be heard. It is not suggested that the inspector himself is not independent and impartial even though he is a member of, e g, the Planning Inspectorate in the case of planning appeals. The essential complaint is that when a decision is taken, not by such an inspector but by the Secretary of State or one of the Ministers of State or an Under-Secretary on behalf of the Secretary of State there is such an interest in the decision that the person concerned cannot be regarded as an independent and impartial tribunal. The Secretary of State or his department, it is said, lays down policy and directs what he or the department considers to be the most efficient and effective use of land in what he sees to be the public interest. They issue guidance and framework directions which local authorities, inspectors and officials operating the planning system must follow. All of these are bound to affect the mind of the Secretary of State when he takes decisions on called in applications or on appeals which he recovers, it is alleged. Moreover it is said that in the case of Alconbury there is a particular factor in that the land in question is owned by another government department, the Ministry of Defence.*

167. The confidence in the Inspector's independence and the efficacy of the safeguards, was an important theme throughout the rest of the judgement of the Court, see [46]:

> "*46 On the basis of these decisions it is in my view relevant as a starting point to have regard to such procedural safeguards as do exist in the decision-making process of the Secretary of State even if in the end, because he is applying his policy to which these controls do not apply, he cannot be seen as an impartial and independent tribunal. The fact that an inquiry by an inspector is ordered is important. This gives the applicant and objectors the chance to put forward their views, to call and cross-examine witnesses. The inspector as an experienced professional makes a report, in which he finds the facts and in which he makes his recommendations. He has of*

course to take account of the policy which has been adopted in, e g, the development plan but he provides an important filter before the Secretary of State takes his decision and it is significant that in some 95% of the type of cases with which the House is concerned the Secretary of State accepts his recommendation."

168. It was therefore integral to the Court's judgment that the inquiry was conducted conferring parties the right to cross-examination and independent legal submission.

3.4) Common Law Procedural Fairness

169. Beyond Article 6(1) ECHR, there is a longer-standing body of common law procedural rights, which have been established through judgments of the High Court and appellate courts.

- (a) The Right to an Oral Hearing
- (b) The Right to Legal Representation at such a hearing
- (c) The Right to Cross-Examination at such a hearing

170. At present the scope of these rights in the different procedures is relatively clear.

171. As to (a), there is no suggestion within the Terms of Reference that the Secretary of State seeks to curtail the right to an oral hearing (i.e. submissions in person before an Inspector), in favour of significant re-allocation of both hearing and inquiries to the written representations procedure. This would be a far-reaching step, and would indeed go well beyond the Terms of Reference.

172. As to (b), there is equally no suggestion within the Terms of Reference that the Secretary of State wishes to dictate the identity of the representative at the hearing. This would give rise to significant constitutional and Article 6(1) ECHR issues and is therefore rightly not contemplated.

173. The central issue for present purposes is Issue (c) and the preservation of the right to cross-examination in the formulation and application of any guidance to be issued under section 319A as to format of appeal: hearing or inquiry.

174. In considering this duty, the Review should consider two key cases on procedural fairness, which anchor much of the case law on this issue:

- *Bushell v Secretary of State for the Environment* [1981] AC 75
- *Dyason v Secretary of State for the Environment* (1998) 75 P. & C.R. 506

Bushell

175. In *Bushell v Secretary of State for the Environment* [1981] AC 75, a challenge was brought to a decision at inquiry which followed a ruling by an Inspector restricting cross-examination on a specific issue.

176. Lord Diplock observed in the lead judgment:

> "*Proceedings at a local inquiry at which many parties wish to make representations without incurring the expense of legal representation and cannot attend the inquiry throughout its length ought to be as informal as is consistent with achieving those objectives. To 'over-judicialise' the inquiry by insisting on observance of the procedures of a court of justice which professional lawyers alone are competent to operate effectively in the interests of their clients would not be fair. It would, in my view, be quite fallacious to suppose that at an inquiry of this kind the only fair way of ascertaining matters of fact and expert opinion is by the oral testimony of witnesses who are subjected to cross-examination on behalf of parties who disagree with what they have said. Such procedure is peculiar to litigation conducted in courts that follow the common law system of procedure, it plays no part in the procedure of courts of justice under legal systems based upon the civil law, including the majority of our fellow member states of the European Community; even in our own Admiralty Court it is not availed of for the purpose of ascertaining expert opinion on questions of navigation - the judge acquires information about this by private inquiry from assessors who are not subject to cross-examination by the parties. So refusal by an inspector to allow a party to cross-examine orally at a local inquiry a person who has made statements of facts or has expressed expert opinions is not unfair per se.*
>
> *Whether fairness requires an inspector to permit a person who has made statements on matters of fact or opinion, whether expert or otherwise, to be cross-examined by a party to the inquiry who wishes to dispute a particular statement must depend on all the circumstances. In the instant case, the question arises in connection with expert opinion upon a technical matter. Here the relevant circumstances in considering whether fairness requires that cross-examination should be allowed include the nature of the topic upon which the opinion is expressed, the qualifications of the maker of the statement to deal with that topic, the forensic competence of the proposed cross-examiner, and, most important, the inspector's own views as to whether the likelihood that cross-examination will enable him to make a report which will be more useful to the minister in reaching his decision than it otherwise would be is sufficient to justify any expense and inconvenience to other parties to the inquiry which would be caused by any resulting prolongation of it.*

177. The Diplock factors of (a) nature of issue/subject matter; (b) identify of witness; (c) identity of cross-examiner and (d) relevance to main issues, remain vital to the correct exercise of any decision under the Hearings and Inquiries Rules (notably Rule 11(3) as to change of format). By consequence, they therefore strongly affect the formulation of guidance under section 319A(1) and (2).

178. It should be noted that the courts have also recognised that cross-examination plays a specific role in allowing parties an opportunity to put own case – i.e. the hallmark of procedural fairness. This requires a decision-maker to exercise care in making rulings as to relevance during the course of a hearing, lest there be disproportionate impact on a party's ability to put its case or any appearance of predetermination.

179. Lord Edmund Davies observed this in a dissenting judgment in *Bushell*:

> "*Pausing there, I conclude that the grounds hitherto considered for refusing cross-examination are unacceptable. But is it the case that, in an inquiry such as that with which this House is presently concerned, some special rule prevails which renders regular a procedure which in other circumstances would undoubtedly have been condemned as irregular? The general law may, I think, be summarised in this way: (a) In holding an administrative inquiry (such as that presently being considered), the inspector was performing quasi-judicial duties. (b) He must therefore discharge them in accordance with the rules of natural justice. (c) Natural justice requires that objectors (no less than departmental representatives) be allowed to cross-examine witnesses called for the other side on all relevant matters, be they matters of fact or matters of expert opinion. (d) In the exercise of jurisdiction outside the field of criminal law, the only restrictions on cross-examination are those general and well-defined exclusionary rules which govern the admissibility of relevant evidence (as to which reference may conveniently be had to Cross on Evidence , 5th ed. (1979), p. 17); beyond those restrictions there is no discretion on the civil side to exclude cross-examination on relevant matters.*
>
> *There is ample authority for the view that, as Professor H. W. R. Wade Q.C. puts it (Administrative Law , 4th ed. (1977), p. 418): "...it is once again quite clear that the principles of natural justice apply to administrative acts generally." and there is a massive body of accepted decisions establishing that natural justice requires that a party be given an opportunity of challenging by cross-examination witnesses called by another party on relevant issues; see, for example, Marriott v. Minister of Health (1935) 52 T.L.R. 63 , per Swift J., at p. 67 - compulsory purchase orders inquiry; Errington v. Minister of Health [1935] 1 K.B. 249 , per Maugham L.J., at p. 272 - clearance order; Reg. v. Deputy Industrial Injuries Commissioner, Ex parte Moore [1965] 1 Q.B. 465 , per Diplock L.J., at pp. 488A, 490E-G; and Wednesbury Corporation v. Ministry of Housing and Local Government (No. 2) [1966] 2 Q.B. 275 , per Diplock L.J., at pp. 302G-303A - local government inquiry.*"

180. *Bushell* has been considered on a number of subsequent occasions.

181. It is important to note, however, that such cases have always examined contexts in which cross-examination was permitted generally and limited specifically – see for example *Johnson Brothers v SSCLG* [2009] EWHC 580 (Admin), [29]-[30].

Dyason

182. The specific challenges that arise where cross-examination is prevented are considered in the principal authority of *Dyason v Secretary of State for the Environment* (1998) 75 P. & C.R. 506, 512:

> *"… It is clear that, at a hearing, there is no be no formal cross-examination and that a hearing is the suitable procedure where 'there is no likelihood that formal cross-examination will be needed to test the opposing cases'. The intention is to make the procedure 'less daunting for unrepresented parties'. It is intended to 'eliminate or reduce the formalities of the tradition local inquiry'.*
>
> *Planning permission having been refused, conflicting propositions and evidence will often be placed before an Inspector on appeal. Whatever procedure is followed, the strength of a case can only be determined upon an understanding of that case and by testing it with reference to propositions in the opposing case. At a public local inquiry the Inspector, in performing that task, usually has the benefit of cross-examination on behalf of the other party. If cross-examination disappears, the need to examine propositions in that way does not disappear with it. Further, the statutory right to be heard is nullified unless, in some way, the strength of what one party says is not only listened to by the Tribunal but is assessed for its own worth and in relation to opposing contentions*
> …
>
> *There is a danger, upon the procedure now followed by the Secretary of State of observing the right to be heard by holding a "hearing", that the need for such consideration is forgotten. The danger is that the "more relaxed" atmosphere could lead not to a "full and fair" hearing but to a less than thorough examination of the issues. A relaxed hearing is not necessarily a fair hearing. The hearing must not become so relaxed that the rigorous examination essential to the determination of difficult questions may be diluted. The absence of an accusatorial procedure places an inquisitorial burden upon an Inspector.*"

183. *Dyason* remains highly significant and is regularly cited by litigants in section 288 challenges, where it is alleged that an Inspector has failed during a hearing (or inquiry) to accord a party a chance to address him/her on a main issue.

184. In *Kings Lynn and West Norfolk BC v Secretary of State for Communities and Local Government* [2015] EWHC 2464 (Admin), an LPA provided a substantial number of documents to an Inspector on the day of the hearing, without legal representatives present for either party. It was then alleged that the Inspector should have adjourned the hearing to consider these documents (although this was not requested by the LPA):

> *49 The point is this. At the hearing the Inspector is in charge, and the purpose of the hearing is for the Inspector to test and explore the evidence with the assistance of the*

parties and by means of a structured discussion of the issues. This is the substance of his inquisitorial role identified in the case of Dyason. It is of course open to the parties if they feel disadvantaged, or that an event has occurred in the procedure which renders it unfair, to ask for an adjournment or for some other suitable relief from the Inspector. But at all times it is for the Inspector to be on top of matters and ultimately if he cannot discharge his inquisitorial duty because of late material, then he must adjourn or regulate the procedure accordingly. There is a sense in which that analysis of the approach and involvement of the Inspector at the hearing is an answer to the claimant's complaint. They may well feel (and others might agree) that it would have been prudent for the Inspector to take a little time to read the material which he had only just received and to give consideration to whether or not the agenda or the questions he wish to explore needed to be adjusted, but ultimately that was a matter for his judgment. He clearly considered that he could explore the issues and get what he needed from the debate without doing so.

50 There is a risk in not taking time to assimilate the material and that risk is obvious. It may be that on mature reflection the material may not have been properly or fully understood which may lead to proceedings needing to be reopened. Worse still, it may lead to erroneous decisions or decisions that are based on a misconception about the evidence. However, those risks did not materialize in this case. I am not prepared to accept that the absence of reasoning which I have set out above is evidence of that failure or evidence of an unfair procedure and a failure to properly discharge the inquisitorial burden. Those failures are rather simply the failure to provide fuller explanation of conclusions in relation to issues which there is no doubt the Inspector fully understood. Thus there was no unfairness in the procedure nor did the Inspector fail to discharge his inquisitorial role in undertaking the hearing adopting the procedure which he did.

185. The consequence of *Dyason* is that Inspectors must both undertake a greater level of preparation prior to the hearing to ascertain the specific content of the questions that can be asked. Moreover, they must deal with significant procedural issues, occasionally without the benefit of assistance from advocates for the parties.

4. TIMELINE AND DELAYS

186. The Review's Appeal Timeline identifies at least ten categories of issues which give rise to delay within the four stages identified in the left-hand column (three stages following the Start date).

187. We provide summary analysis in the respective boxes within the Word pro forma: Q10-13. It is however helpful first to isolate the following steps:

Receipt of Appeal to Valid Appeal
4.1 Procedure Disputed

Validation to Start Date
4.2 Missing Documents

Start Date to Event
4.3 Inquiry Date Conflict between Parties/PINS
4.4 Postponement Requests
4.5 Adjournment Required
4.6 Change in Procedure

Public Inquiry
4.7 Illness
4.8 Policy/Key Evidence Change
4.9 Balancing Other Casework Commitments
4.10 Recovery for Secretary of State Decision

RECEIPT OF APPEAL TO VALID APPEAL

4.1) Procedure Disputed

188. The frequency of disputes as to procedure is dependent upon clarity in the wording of Annexe K.

189. PEBA members are instructed in inquiries and hearings, but more infrequently in respect of written representations. The focus of this consultation response is therefore on the distinction between the choice of inquiry as against a hearing – as set out in Annexe K: pages 69 and 70.

190. With that distinction in mind, two preliminary points arise.

191. First, PEBA considers that the enforcement context and the specific criteria rarely give rise to significant issues: the requirement in respect of the need to give evidence on oath and the "unusual or particularly contentious" ensure that appropriate cases are identified for inquiry.

192. Second, the test of "level of local interest" is broad, apparently dependent upon a threshold of "substantial" and the identification by the local planning authority of the numbers likely to attend.

193. PEBA does not consider that this distinction is inappropriate in itself, but it is respectfully submitted that it is logically secondary to the primary question set out below: whether the procedure should be inquisitorial or adversarial. This should be reflected in the structure of the criteria following any update to Annexe K.

194. PEBA considers that the primary issue therefore relates to the interpretation and application of the following criteria:

> Inquiry:
> Inquiry Criterion 1 (bullet-point 1): "There is a clearly explained need for the evidence to be tested through formal questioning by an advocate"
>
> Inquiry Criterion 2 (bullet-point 2): "The issues are complex" [Footnote 18: "For example where large amounts of highly technical data are likely to be provided in evidence."]
>
> Hearing:
> Hearing Criterion 1 (bullet-point 3) : "There is no need for evidence to be tested through formal questioning by an advocate or given on oath"
>
> Hearing Criterion 2 (bullet-point 5): "It can reasonably be expected that the parties will be able to present their own cases (supported by professional witnesses if required) without the need for an advocate to represent them"

195. The "Note" below suggests that Hearing Criterion 2 has a further sub-component:

> "Note - It is considered that the prospect of legal submissions being made is not, on its own, a reason why a case would need to be conducted by inquiry. Where a party considers that legal submissions will be required (and are considered to be complex such as to warrant being made orally), the Inspectorate requires that the matters on which submissions will be made are fully explained – including why they may require an inquiry - at the outset of the appeal or otherwise at the earliest opportunity."

196. On this basis, Inquiry Criterion 2 could be expressed thus:

> Inquiry Criterion 2b: "There is a need for legal submissions to be presented orally by an advocate within an inquiry format"

197. This would more closely reflect the original Annex C wording.

198. In the Case Study example, amended guidance could have prevented the initial designation as a hearing, the need for challenge by the Appellant and in particular the challenge by the LPA.

VALIDATION TO START DATE

4.2) Missing Documents

199. A case of missing documents is almost always due to Appellant error in submission, but may be in part attributable to a lack of clarity in the Procedural Guide.

200. Paragraph J.2.3 (page 62) is not an exhaustive list:

- *must contain all available evidence;*
- *must be accompanied by all documents (including for example data, analysis or copies of legal cases) maps and plans and any relevant extracts to which the statement refers. If any case law is cited it should include the full report reference;*

201. Indeed, it is arguable that J.2.3 could be very substantially expanded upon for specific forms of evidence. This is addressed in the next Chapters under Statements of Case and Statements of Common Ground.

202. The Case Study example provided is quite an unusual one, in that the error lay jointly between the Appellant in failing to submit the DAS and the LPA in proceeding to validate in the absence of the DAS.

203. It is respectfully submitted that identical cases of errors at the application stage are likely to be comparatively rare, and in any event the 2.7 week average delay time does not represent the most significant element of the delay.

START DATE TO EVENT

4.3) Inquiry Date Conflict between Parties and/or PINS

204. It is vital that the Review conducts a forensic analysis on this point, as to whether "delays" arise due to party request or are instead are embedded within the initial date offered by the Inspectorate.

205. Inquiries are particularly complex to list, due not only to Counsel availability but the need for the presence of key witnesses.

206. Members of the Planning Bar are subject to the Code of Conduct which requires prioritisation of an existing client's interests and restricts withdrawal from an existing instruction save in specified circumstances.

207. It is acknowledged that busy practitioners may on occasion have limited windows within diaries for the requisite time required.

208. Similar issues will also apply to busy expert witnesses.

209. PEBA would, however, caution against a starting assumption that the Planning Bar is routinely rejecting early dates in the listing process. In practice, PEBA's experience (as relayed through clerks and instructing consultants/solicitors) is that the dates offered are often some months hence in any event.

210. This has generated a cyclical or knock-on effect, such that the average planning barrister's diary has increasingly over time begun to operate at long range with bookings a number of months into the future.

211. The first Case Study provided does not specify the overall waiting time but appears to record a 2 month delay: from July to September. The example given had an unusually high number of parties and was to run over 5 weeks (20 sitting days) – the diary conflict in question does not appear inordinate in the circumstances.

212. The second Case Study again does not specify the final start of the inquiry date, so analysis is difficult. Equally the reasons for the diary conflict are not explained.

213. It is respectfully submitted that additional information should be provided to the Review: with a particular emphasis on the Inspectorate's own provision.

4.4) Postponement Requests: Twin-Tracking, Holiday Requests, Illness and New Evidence

214. The Inspectorate's Procedural Guide on postponements is robust:

> *2.2.1 Our usual practice is to resist postponements and adjournments in view of the delay and disruption this causes. Appellants should therefore not make their appeal until they are ready to proceed to the decision. We will not put cases into abeyance unless there are exceptional reasons.*
>
> *2.2.2 We may decide to link appeals that relate to the same site in order to minimise the use of resources for all parties. We will make decisions to link on a case by case basis.*

215. This heading covers a number of issues and comprehensive analysis would need to sub-divide matters that are foreseeable and others which are not.

216. Twin-tracking: Twin-tracking is one of the more foreseeable aspects of the inquiry process. It arises with sufficient frequency that bespoke guidance could be fashioned to ensure that Appellants make clear at the submission of a first Appeal whether they were awaiting decision on an initial scheme. Care needs to be taken in defining in such circumstances when the start time for such an appeal should be calculated.

217. No case study is mentioned for this example, and it would be helpful if this could be provided by the Inspectorate for appropriate analysis.

218. Moreover, twin-tracking performs a very important role in saving time and resources in those schemes where it can lead to the elimination of all or part of the grounds for objection. It is therefore crucial that guidance is produced that provides a permissive approach to this, rather than any wording which would disincentivise it.

219. Holidays: The inclusion of this item is unclear, as it would invariably not meet the 2.2.1 test of "exceptional reasons".

220. PEBA are aware that holiday requests are occasionally made by members of the public, including those appearing as Rule 6 parties, to postpone on account of pre-booked holiday. However notwithstanding the identity of the parties, a postponement should not normally be granted.

221. Again no case study is provided.

222. Illness: Cases of illness to key witnesses or Counsel cannot be foreseen and are not a factor that can be modelled substantially to reduce overall delay. Indeed, the Review might wish to specify that the problem of illness is not the requirement to vacate, but the consequential delays in finding another date when inquiry availability is already limited.

223. Unavailable Inquiry Venue: The first Case Study of a venue becoming unavailable appears confined to its specific facts and not foreseeable.

224. Unavailable Witness: The second Case Study provided is equally unforeseeable, although departures from Local Government are an increasing reality in the sector. In the instant case, the delay of 3 months appears to have been inevitable.

4.5) Adjournment Required, for example for Inadequate Environmental Statement

225. A need for adjournment resulting from the specific named inadequate environmental statement can only be avoided by substantially frontloading the checking process.

226. An Inspector is subject to the overarching requirements of the Town and Country Planning (Environmental Impact Assessment) Regulations 2017 and accordingly must exercise the power under Regulation 25 as and when any inadequacy is identified:

> *(1) If a relevant planning authority, the Secretary of State or an inspector is dealing with an application or appeal, as the case may be, in relation to which the applicant or appellant has submitted an environmental statement, and are of the opinion that, in order to satisfy the requirements of regulation 18(2) and (3), it is necessary for the*

statement to be supplemented with additional information which is directly relevant to reaching a reasoned conclusion on the likely significant effects of the development described in the application in order to be an environmental statement, the relevant planning authority, Secretary of State or inspector as the case may be must notify the applicant or appellant in writing accordingly, and the applicant or appellant must provide that additional information; and such information provided by the applicant or appellant is referred to in these Regulations as "further information".

227. Air Quality Delay: The first Case Study identifies this as an issue that required post-inquiry submissions. The delay of a month, in one matter affecting numerous cases does not appear disproportionate in light of the stated complexity of the issue.

228. Section 106 Delay: This aspect of the first Case Study is of more general application and merits scrutiny by the Review. Although s106 agreements should be provided in agreed format well in advance of the event (no later than Procedural Guide paragraph N.2.4 (page 76), the Inquiry should be aware that this requires the LPA to verify the draft and provide all obligations. The Review should therefore consult with the Inspectorate in respect of the extent of observance of Paragraph N.2.4 and the frequency of requests for Inspectors to accept receipt of the completed section 106 obligation following the close of the inquiry.

229. However, while this is an area which would merit clearer guidelines and potentially costs sanctions through the PPG to underscore the prioritisation of timely progress of appeals, in PEBA's experience delays in the finalisation of section 106 obligations rarely increase the delay in determination of an appeal. The overall timescales involved are generally limited (14-28 days), and (since Inspectors will rarely agree to this course of action unless they already have an advanced draft of what the final agreement should be, and agreement of the parties as to the changes that are required) Inspectors are normally able to commence writing their decisions in anticipation that they will receive a finalised s. 106 in a form which is substantially the same as a draft they will already have.

230. Additional Witnesses: The second Case Study is an extension of the diary conflict issue identified above, and the same observations apply.

231. Inspector Illness: the third Case Study is an example of the unforeseeable nature of illness, identified above, and again the same observations apply.

4.6) Change in Procedure

232. The Case Study provided appears to be a bespoke application of the section 319A power.

233. It is difficult to envisage how such delays could be avoided, short of an overhaul of the process for analysis of housing land supply.

PUBLIC INQUIRY

4.7) Illness

234. We have addressed the issue of illness twice above and the same issues apply.

4.8) Policy/Key Evidence Change (including new/relevant case law/decision)

235. Policy Change: Policy Change, even at the national level is not usually a basis for delay before the inquiry has commenced, as recent experience with the Current NPPF (published 24 July 2018) has demonstrated. However, the time taken to reach a decision may increase if this happens during or after an inquiry has closed. Time needs to be given to each side to comment on this and then to comment on the comments. The key issue is to distinguish the point at which the new matter arises.

236. New Case Law/Decision: The same principle applies to new case law or a new Secretary of State decision. In many cases, submissions on case law are deferred to closing submissions in any event. If the matter is capable of being addressed through written submissions, then this can normally be scheduled within a short period of time.

237. New Evidence: New evidence on housing land supply is a separate matter – such evidence has a dynamic character, responding to annual updates. Again short of substantial reform to the housing land supply calculation process, such delays are likely to recur. It is now well-established that particular care should be taken in respect of cases in the same LPA covering pivotal issues relating to the datedness of policies: *Cumberlege v SSCLG and DLA Delivery* [2018] EWCA Civ 1305 and *Fox Strategic Land v SSCLG* [2012] EWCA Civ 1198.

4.9) Balancing Other Casework Commitments

238. The case study provided describes an 11 week delay attributable to three separate factors: "other casework commitments, annual leave and special arrangements intended to provide additional capacity for inquiry delivery"

239. The Review will need to consider specifically what the acceptable level of other casework commitments amounts to.

4.10) Recovery for SoS decision/Political sensitivities

240. Recovery: Recovery delays are correctly identified as a serious issue. The first Case Study describes a panoply of bespoke issues, notably the quashing of the Neighbourhood Plan, and therefore could be said to turn on its own facts.

241. Council Elections: Council elections and purdah are foreseeable issues and inquiries will have to be programmed accordingly.

Summary

242. Having considered the Case Studies provided, many of which record delay from unforeseeable or extreme circumstances, the three key phases of delay need careful scrutiny:

(1) Receipt to Start: 7.4 weeks
(2) Start to Event: 28.7 weeks
(3) Event to Decision: 10.9 weeks

243. As set out in our responses at Q10 to Q13, PEBA's summary position is that:

(1) Receipt to Start: The Inspectorate should consider the use of standardised templates, which would ensure quicker and easier verification by Inspectorate staff – but more importantly would guide Appellants in the "significant number of cases" listed above, to avoid missing information (see Section 5.1 below);

(2) Start to Event: PEBA considers that the primary cause of delay between start to event is due to the dates offered by the Inspectorate (i.e. Inspector availability) rather than Counsel/witness availability. PEBA acknowledges that listing delays can on occasion be generated by Counsel availability.

However Counsel, consistent with their practice before the courts, make best endeavours to be available on the inquiry dates provided or refer cases to their colleagues. It is not considered that Counsel availability is a primary cause of delay. The same applies to expert witness availability, a matter that other professional institutes (such as RTPI) are best placed to cover.

There is a clear need for documentary preparation and agreement of core issues between start date and the event, i.e. the opening of the inquiry (hence the 4 week minimum in Rule 10(1)). However, the above denoted average of 29.4 weeks (or 7 months) significantly exceeds the statutory guideline (the above stated 7.4 weeks) and in PEBA's view vastly exceeds that necessary to carry out the required documentary preparation. There is scope for much of this process to be frontloaded, see Sections 5.1 to 5.3 of the Covering Letter.

Indeed, the extent of current delays also has significant knock-on effects on the documentary process, in disincentivising early agreement of the Statement of Common Ground, in generating further need for updating of evidence and increasing the risk of adjournment (e.g. to take account of departure of LPA key staff members). In summary, existing delays tend of promote a culture of deferral in the inquiry preparation process, especially amongst hard-pressed, under-resourced Local Planning Authorities. This is rendered all the more acute by the perception that the Inspector will not begin to read the evidence until the Monday before the Inquiry starts. We have set out in Sections 5.1 to 5.3 of our Covering Letter how the Review should consider more prescriptive guidance and earlier Inspector active case management to address and reverse this culture of deferral.

(3) Event to Decision: PEBA does not consider that Inspectors should be placed under any pressure to issue decisions rapidly. It is however concerned that the delays adverted to by the review arise not due to the speed with which an Inspector considers the material before them and the competing submissions but due to the extent of the workload which Inspectors face – i.e. the competing cases.

244. As to Recovered decisions, further scrutiny is required as to why such cases have a much longer overall phase, including the extent to which this is attributable to longer inquiry durations (with adjournments) where the event date is measured from the opening of the inquiry. Scrutiny should also be applied to the post-inquiry submission process.

245. It is notable that the Case Studies provide little specific analysis of the procedure at the inquiry itself, and notably how reductions can be applied to the total number of sitting days required.

246. Recent anecdotal evidence has recorded longer delays from receipt to start: 18 weeks for informal hearings. The currency of the above figures needs to be analysed.

247. The steps to make significant in-roads into Phases 1, 2 and 3 will depend upon the application of additional resources, and shaping of procedural rules for different types of documentation – we address these below.

5. DOCUMENTS AND EVIDENCE

248. It is respectfully submitted that the Review should undertake a rigorous analysis of the respective documentary phases of the inquiry process, before it proceeds to any changes to the oral format of such processes.

249. PEBA considers that changes to the documentary process, especially changes to the assessment of housing land supply in accordance with national policy, could lead to opportunities for reduction of sitting days, with knock-on benefits to listing and overall inquiry durations.

5.1) Statements of Case and Statements of Common Ground

250. Statements of Case, submitted initially by Appellants and then by Local Planning Authorities and any further Rule 6 Parties are essential documents in identifying the main issues within a case and evidence to be called and accordingly the duration of any inquiry.

251. Statements of Common Ground, produced initially in draft form by Appellants and then negotiated through the course of the Appeal, are then essential documents in confirming those main issues.

252. Administrative and preparatory problems arise where Statements of Case submitted by either the Appellant or the Local Planning Authority are too limited in respect of either main issues and/or evidence. If Statements of Case are too limited, this requires regular correspondence to seek clarification of key components of the evidence base, either under the Freedom of Information Act 2000 (in respect of LPAs) or through the general PPG Appeals provisions referring to costs sanctions for failure to share information.

253. At present, the Procedural Guide in respect of Statements of Case is worded in an open fashion: see paragraph J.2.3 for Appellants and J.3.2 for LPAs respectively.

254. It is presently difficult to secure the intervention of the Inspectorate in respect of a deficient Statement of Case, substantially prior to the exchange of Proofs of Evidence. However, that is in large part because the Procedural Guide does not itself specify when Inspectors can intervene. The award of costs is an end-stage or retrospective process, as costs must be applied for at the inquiry itself.

255. The Inspectorate's own Procedural Guide could benefit from careful re-drafting to strike better the balance between certainty and flexibility.

256. Delays with the agreement of Statements of Common Ground are also commonplace, including well beyond the date of submission of Proofs of Evidence, until the eve of the inquiry or indeed not agreed at all.

257. The guidance in respect of Statements of Common Ground is also very short: see Annexe T, pages 104-105. The name suggests that the purpose of the document is to identify what the parties have agreed, when (in our Member's experience) it is often equally valuable to identify what is not agreed (together with a summary of the parties' differing positions on that issue).

258. The current guidance also steers parties towards a single Statement of Common Ground, which can itself be a problem if 90% of the content is agreed but there is one area where it is not. There is scope for individual SoCGs on different topics, but there is no specific provision at the moment in the Procedural Guide. The Review should examine the Procedural Guide and consider, in consultation with the Inspectorate and stakeholders, scope for redrafting and reform.

259. PEBA also considers that there is scope to explore a more detailed form of Statements of Case and Statements of Common Ground, for both parties, within cases falling within a specific category: including those with Housing Land Supply considerations under the current NPPF.

260. Beyond the current Application Form requirements (e.g. description of development, number of units) and the Appeal Form requirements (e.g. date of decision, reasons for refusal), s78 housing appeals give rise to sufficient commonality of issues that detailed pro formas could be provided to ensure the precise identification of the evidence on common issues, which could then be fed into standard form Statements of Common Ground.

261. For Planning Policy specific issues precise formats could be used to cover commonly arising categories of issue:

    (a) Core Development Plan provisions cited in Reason for Refusal (with excerpts);

    (b) Core National Planning Policy provisions, cited in Reasons for Refusal or otherwise engaged;

    (c) Housing Land Supply documentation, including any forthcoming publication of new documents, any parallel appeals;

    (d) Timeframe for publication of any emerging Development Plan documentation, including Development Plan Documents and Neighbourhood Plans;

262. Pro formas for Statements of Common Ground (as Appendices to the main SoCG) could be designed in the following areas, in consultation with the bracketed professional institutes who have members who represent all parties in the appeal process:

(i) Planning Policy (RTPI)

(ii) Housing Land Supply (Requirement and Supply – NB subject to change under Revised NPPF) (RTPI/RICS)

(iii) Landscape (Landscape Institute)

(iv) Heritage (incl Listed Buildings/Conservation/Archaeology) (Institute of Historic Building Conservation (IHBC), Chartered Institute for Archaeologists (CIfA)

(v) Architectural Design (in so far as not addressed in (i), (iii), (iv) (RIBA)

(vi) Transport & Highways (including Locational Sustainabilty) (Chartered Institute of Highways and Transportation (CIHT);

(vii) Ecology (Chartered Institute of Ecology and Environmental Management (CIEEM);

(viii) Hydrology/Flooding (Chartered Institute of Water and Environmental Management (CIWEM)

(ix) Noise (Institute of Acoustics (IoA)

(x) Air Quality (Institute of Air Quality Management (IAQM))

(xi) Economic/Socio-Economic Benefits (Affordable Housing/Education)

(xii) Viability (RICS);

263. The above list is not exhaustive, with additional Sector-Specific Areas: Employment Need, Retail Need, including where housing is being proposed to replace an allocation. Specialist Technical Fields: Contamination, Construction.

5.2) Proofs of Evidence

264. It is widely acknowledged that Proofs of Evidence have expanded over time, driven by technological changes and appending large amounts of documentation and through increasing complexity of subject matter. It is possible that this is increasing the total time spent on such issues at inquiry including Inspector preparation and time spent in cross-examination.

265. At the root of the issue is however the lack of clarity which may arise in a party's case, for example in promoting more extensive cross-examination by Appellant Counsel of a LPA's witness, or in encouraging broader cross-examination by LPA's Counsel of an Appellant's witness.

266. The Procedural Guide is presently quite limited on the issue of length and coverage. The institution of Statements of Common Ground on the above model would go some way towards reducing coverage of non-contentious matters in Proofs of Evidence.

267. Positive guidance could also be issued as to the extent to which proofs can simply identify the relevant provisions, and need not quote or paraphrase guidance or development plan policies.

268. The inquiry should examine a substantial frontloading of the evidence base, adjusting current provisions, but with one eye upon civil litigation, notably judicial review. The following suggestion is one such model:

    a. First, submission of Proofs should be submitted earlier in the inquiry process, up to 8 weeks before an inquiry commences (Event date – 56 calendar days).

    b. Second, Statement of Common and Uncommon Ground would follow 2 weeks later (Event date – 42 days).

    c. Third, the Inspector's Main Issues could be issued 2 weeks after that (Event date – 28 days).

    d. Rebuttal evidence should be permitted 1 week later (Event date – 21 days).

269. This is simply a first sketch and PEBA would be very keen to discuss specifics in the roundtable discussions.

5.3) Inspector's Identification of Main Issues: Format and Timing

Format

270. The Inspectorate's current practice in the majority of cases, where a pre-inquiry meeting is not held, is to announce the Main Issues at the opening of the inquiry orally, without documentary record (e.g. in a printed document)

271. A small proportion of Inspectors print the Main Issues in a pre-inquiry note and circulate this to parties electronically beforehand, for example the Friday afternoon or Monday morning prior to a Tuesday inquiry start.

272. The above process is hugely helpful to participants, especially Counsel in drafting Opening Submissions and advising their teams on inquiry procedure, e.g. order of witnesses.

273. The "oral announcement" approach however requires hurried verbatim notation of the terms of the main issue by Counsel and their teams. It impedes effective preparation and may cause prolongation of evidence.

274. It appears, although the Review will need to clarify, that the "oral announcement" approach arises because Inspector's preparation day is often scheduled on the Monday of the inquiry week. In short, Inspectors who are due to hear evidence are only provided with the evidence upon which a judgment can be made on main issues at the very last available moment.

275. If the Inspectorate's position is that Main Issues cannot be identified until after the Inspector has completed a reading day, then provision should still be made for electronic notification of the Main Issues through the Inspectorate staff during the course of the inquiry.

276. This would ensure that parties during longer appeals have a clear target which can situate the coverage of all evidence, and focus closing submissions.

Timing

277. The Review should however carefully examine whether the underlying philosophy of the above approach, which delays preparation until the last available moment, is consistent with effective case management.

278. This touches upon a wider issue, related to delays due to deficient Environmental Statements and late changes in the decisions on the appropriate mode of Inquiry. Many issues can only be picked up by the Inspector who will be deciding the case, in which case it would be helpful if Inspectors had much earlier sight of the papers. The Review should explore the extent to which appeals can be allocated to an Inspector (who can then be responsible for all procedural decisions associated with that case) at an earlier stage.

279. The Review should explore how the use of detailed Statements of Case and Statements of Common Ground, produced to mandatory specifications, should enable Inspectors to make a preliminary ruling as to main issues early in the process – potentially prior to the publication of Proofs of Evidence.

280. This process would match the permission process in judicial review in which Judges of the Planning Court/Administrative Court make preliminary rulings on the grounds of a challenge and make procedural orders as to the exchange of evidence.

5.4) Examination of Witnesses

281. The single greatest factor in inquiry sitting day duration is the number of witnesses and the length of their examination (in chief, cross and re-examination).

282. At present Counsel/advocates provide time estimates for cross-examination very shortly after receipt of Proofs of Evidence, and therefore prior to the agreement of Statements of Common Ground. It is an acknowledged source of frustration that Counsel's estimates are exceeded, although this may occur due to both the direction of the questions and the nature of the answers given – late evidence, changes of position, failure to answer the question all add to the time necessary for effective cross-examination.

283. This has a significant knock-on effect in leading to adjournment, with the difficulties in diary listing set out above.

284. PEBA considers that it would difficult to establish any standardised approach to examination, given the diversity of evidence and amongst inquiries. As set out above the length of an individual cross-examination, for example, is dependent upon both the direction of an advocate's questions and the nature of the answer given.

285. It would therefore be difficult to pre-ordain set time limits: e.g. that no cross-examination on a given issue could last no longer than 3 hours. Whilst this might focus questioning, it would also affect witness behaviour and lead to situations of "running down the clock".

286. It is however possible that a protocol on examination of witnesses could be explored in consultation with the Inspectorate – to explore the use of time estimates, and procedures in circumstances where these are exceeded.

287. PEBA would recommend two key steps:

288. First, the implementation of the above steps: clearer guidance on Statements of Common Ground and earlier identification of Main Issues would improve time estimates and focus witnesses' answers in evidence.

289. Second, on certain bespoke issues such as Housing Land Supply or Landscape, the Review should explore with the Inspectorate a protocol for roundtable discussions to fit within an existing inquiry format: whereby the Inquiry is converted to a Hearing format for portion of the sitting time, without losing its inquiry status – i.e. a reversal of Rule 11(3) of the Inquiries Rules.

5.5) Counsel Opening and Closing Submissions

290. Counsel now routinely provide written opening submissions. Time estimates vary, but rarely exceed 10 minutes in the majority of cases. There is little scope for time saving in this field.

291. The established practice remains to read closing submissions orally, from a typed script provided to the Inspector.. It is not uncommon to schedule a whole day for written closing.

292. PEBA would therefore welcome review of the circumstances in which parties could make closing submissions in writing to establish a protocol.

6. TECHNOLOGICAL SOLUTIONS

6.1 Transcription Technology

293. LiveNote and automatic speech recognition technology are presently under development to generate records of evidence. Decision-makers and participants are able to see answers in real time, and to examine transcripts accordingly during the day and during the course of an inquiry.

294. The Review should examine whether the use of this technology would assist Inspectors in keeping a record of proceedings, thus assisting in their own report writing, including reducing delays.;

295. It may also reduce the requirement for detailed closing submissions from all parties.

296. It is recognised that inquiries take place in town halls and other public venues where there may be limited fixed audio infrastructure, but there may be scope for the Inspectorate to invest in its own portable microphone technology.

6.2) Case Management Technology

297. It is noted that Inspectors are increasingly adopting a paperless approach, although this is rarely notified to parties beforehand. This is notwithstanding that parties have sent physical copies of evidence to the Inspectorate.

298. This creates delays in identifying documents, and concerningly can result in a mismatch with the printed documentation. In turn, this poses a clear risk of legal error.

299. A paperless approach can only work effectively where participants are themselves viewing the same page as the Inspector.

300. The issue is not without difficulty given the varied places inquiries are held or the importance of permitting third parties access to be able to engage with this. Interruption to on line resources or other IT issues can cause significant delay.

301. The Review should nevertheless consider advances in online document management practiced in the criminal courts and in the UK Supreme Court.

302. If Inspectors are to move to paperless system, then it would greatly assist if the documents were contained in a "single document" format, i.e. continuous PDF or equivalent – rather than in individuals files, requiring individual retrieval.

303. The Supreme Court currently operates electronic filing in accordance with a detailed Practice Direction 14[11] with electronic bundles guidelines.[12]

304. Again, PEBA would be happy to discuss the specifics of this, ideally alongside solicitor and planning professionals.

6.3) Visual Technology

305. Inquiries often cover a great deal of pictographic evidence: plans, maps, landscape photographs and illustrations, data charts and modelling.

306. Members of the public attending inquiries frequently request that illustrations and plans are provided on projectors.

307. Inquiry venues are rarely equipped to enable this, and assembly of such processes gives rise to delays.

308. In the landscape and architectural/design fields, there is scope for agreement of a protocol for the provision of agreed illustrations visible by members of the public.

[11] https://www.supremecourt.uk/procedures/practice-direction-14.html
[12] https://www.supremecourt.uk/procedures/electronic-bundle-guidelines.html and https://www.supremecourt.uk/docs/electronic_bundle_sample.pdf

CONCLUSIONS

309. The Review intends to "*examine the end-to-end process*".

310. We trust that the analysis above provides sufficient coverage of all stages from the submission of the appeal to the publication of an Inspector's report.

311. In concluding, we wish to emphasise certain key issues which situate our response.

Adequately Resourcing Justice

312. We repeat again that if the Review seeks to "*make recommendations to significantly reduce the time taken to conclude planning inquiries, while maintaining the quality of decisions*", then it needs to grapple with the fundamental principle that the quality of decision-making can only be maintained where sufficient time is allocated to the decision-maker – i.e. the individual Inspector, supported as necessary by the Inspectorate's staff.

313. It is inherent that if the shortage is attributable to staffing, then the Review should proceed with caution in identifying that there is either a separate procedural fix (e.g. an overall reduction in inquiries) or a technical fix (e.g. an application of artificial intelligence (AI) checking mechanisms capable of overcoming that central human resource issue.

314. The adjudicative function, assisted by case management staff, calls for a greater level of human interaction than many administrative processes – as it engages with the central constitutional principle of the right to a fair hearing before an independent tribunal.

Success Rates

315. From a developer's perspective, the higher success rate at inquiry is often considered justification for choosing the inquiry procedure, and will require detailed analysis through the Review process.

316. PEBA does not suggest that this is the only relevant consideration: self-evidently, the views of all parties in the appeal process are relevant. It is however telling that developers – the parties most directly affected by delay – are opting for inquiries, even though they know this will take longer. This reveals a great deal about the extent to which they consider that there is "added value" in the Inquiries procedure.

317. Any significant step to remove the right of access to the inquiry procedure would require careful consideration to those within the development industry, i.e. who are the initiating "customer" in access to this public service.

The Importance of the Public Participation and "Open Justice"

318. It is also fundamental to recognise that inquiries are important opportunities for public involvement in the planning process.

319. A dismissal of an Appeal following a s78 Inquiry may have equal value for Local Planning Authorities and objectors, where they have been allowed to put their questions in a manner that could not necessarily have been procured through a hearing process.

320. Annexe K of the current Appeals Guide recognises that cases with substantial local interest are likely to be appropriate for the inquiry procedure, subject to the position adopted local authority.

321. PEBA's experience is that inquiries are often very well-attended by local people from the community in the vicinity of the development. Hearings are subject to lower rates of attendance. The exact data will be available in PINS records of attendance sheets.

322. Inspectors at inquiries routinely allow members of the public a designated slot in which to make brief public submissions, in accordance with their powers under Rule 11 of the Inquiries Rules.

323. Although the same powers are formally available to Inspectors a hearings under Rule 9, constraints of time may often curtail the practice.

324. The level of public participation and observation of the inquiry procedure provides a very important practical function in allowing members of the public to understand the complexity of the issues at play in controversial schemes. It may often allow Appellants to address specific concerns raised by such individuals. Parties may adapt site visits, adapt planning conditions or provide minor scheme adjustments to address such public concerns. All of this is possible in large part due to according the additional time through the inquiry process.

Costs

325. PEBA is aware that considerations of cost to parties will be a primary consideration in some responses.

326. PEBA recognises that there is likely to be a fundamental division here between private sector Appellants requesting an inquiry and public sector Local Planning Authorities requested a hearing. The latter choice is driven in many cases by concerns as to human resource and costs, including legal and other professional fees.

327. PEBA is strictly neutral on the question of local authority funding – however we emphasise that while local authority funding undoubtedly affects local authority

preferences on mode of inquiry, preferences based simply on a lack of resources say nothing about the value or importance of the inquiry process.

Legal Soundness

328. The inquiry process allows a level of scrutiny of detailed issues that may assist in reducing the scope for legal challenge by way of statutory review.

329. Precise calculation is difficult in this context. There are more s288 challenges to inquiry decisions as a proportion of the whole, likely attributable to the ongoing involvement of Counsel in inquiry cases and the value of the interests at stake.

330. Section 288 challenges have arisen where one of the pleaded grounds relates to procedural issues that might not have arisen had the issues been considered at a hearing. Such procedural grounds are often pleaded alongside a challenge to the adequacy of the reasons provide by the inspector on the principal controversial issues. Even if the challenge is dismissed, this will still give rise to substantial delay, including in implementing the lawful permission: se the observations below in respect of Procedural Fairness.

Delay

331. In concluding, we re-emphasise that discussions of "delay" in the delivery of an adjudicative function are now very common across courts and tribunals.

332. There are no straightforward answers, and very few which avoid questions as to the resource which Government is willing to devote to the important issues at stake.

333. The Review above all needs to take a rounded approach to the needs of all stakeholders, and especially the needs of Inspectors, Appellant parties, Local Planning Authority parties and their respective non-legal advisers. PEBA's members represent each of those interests at various stages throughout the inquiry and s288 litigation process and accordingly we recognise that no one element can be prioritised.

334. We look forward to discussing this with you throughout the course of the Review.

Yours faithfully

Paul Brown

Vice-Chairman, PEBA