

# Design and planning appeals

Can planning inspectors be relied upon to uphold refusals of permission where design is regarded locally as unacceptable? Ben Linscott says yes!

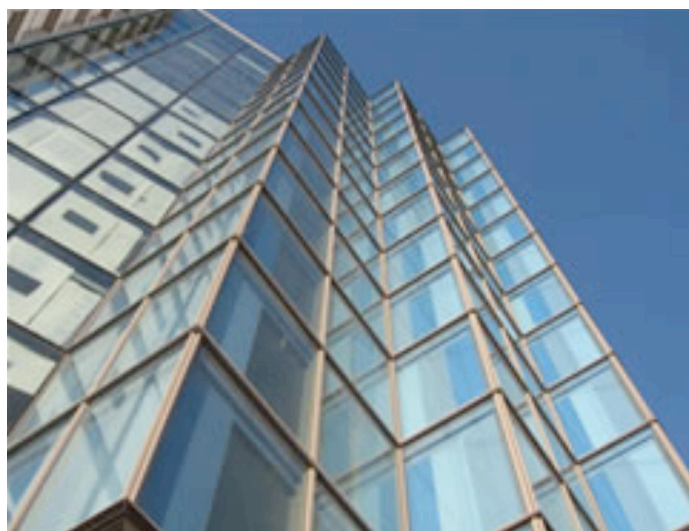


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A continuing theme of meetings between the Planning Inspectorate's professional managers and Local Planning Authorities (LPAs) over recent months has been the latter's concern that Planning Inspectors cannot be relied upon to uphold refusals of planning permission where design is regarded locally as unacceptable. This article sets out to put that misapprehension to rest and to explain the role, background and training of Inspectors. It also demonstrates that Inspectors do not make design or any other policy and that they act without bias, recognising the influence that their decisions and recommendations can have on the planning system.

We are well aware that the design agenda is increasingly important to Local Authorities and that Design Champions, Design Review and general awareness of Government policy and aspirations to lift the quality of design are increasingly common. Those aspirations are equally recognised by the development industry which increasingly seeks to rise to them.

From the beginning, it is crucial to acknowledge that, whilst design policy is not "owned" by or originated in the Inspectorate, it is strongly supported by the organisation, and its Inspectors as professionals, as a key tenet of the planning and sustainable communities initiative, itself a cornerstone of Government policy. That policy is expressed at many levels and in many PPGs and PPSs in England and in Government-supported or sponsored organisations' publications. In Wales design in its widest sense is seen by Welsh Ministers as key to its objective of delivering sustainable development<sup>1</sup>. The recent Assembly Government consultation document on the planning response to climate change<sup>2</sup> proposed a new broader



definition of design to ensure the design process ensures development contributes to tackling the causes of climate change. Inevitably, therefore, given its central place in national policies, Inspectors are bound to place great weight on design quality when reaching their decisions or making recommendations at appeal (or call-in).

## The make up of the organisation

The Inspectorate employs or engages in the order of 320 Inspectors, the majority of whom are town planners, though there is also a significant number of architects and urban designers. Our appeals casework is very varied, and in a number of case-types, highly specialist. Accordingly we must ensure that we have a broad cross section of professionals capable of conducting it. Equally, refusals of planning permission are rarely issued on the basis of a single reason, so we need to ensure that Inspectors are all suitably competent and confident across a broad spectrum of the most common issues raised at appeal. Unsurprisingly design is one such issue, estimated to arise at some level in approximately 40 per cent of

appeals.

## The role of the Inspector

Working within the Franks principles of openness, fairness and impartiality, Inspectors are called upon to judge the cases put to them by (generally) two opposing proponents. The skill set required by Inspectors is founded primarily upon the ability to understand and to assess the parties' opposing views and evidence, quickly and accurately without pre-determination or prejudice. From that he or she will apply the judgement skills for which they have been appointed as Inspectors.

The Inspector needs to be well-informed in order to reach a balanced, soundly-based appeal decision or recommendation with reasoned judgement. This means that the quality of the evidence is vital. It is often suggested that, because design is to some extent subjective, Inspectors' decisions tend to reflect personal opinions or preferences. It is a fact that Inspectors are required to give clear and reasonable grounds for their decisions, taking account of the submitted evidence, and it is by the quality and reasoning in their

*Ben Linscott will be joining a discussion on the place of design in planning at the next LP&DF on 10th December at Design for London (see Diary)*

decisions that they must be judged. Whilst case law clearly establishes that an Inspector is not required to be an expert in the context of individual appeals, the Inspectorate always undertakes an evaluation of the specialisms required against the complexity of the case. This means that, for example, where a central issue is design, the appointed Inspector will have design experience at a level appropriate to the complexity and nature of the case.

Because we recognise that many cases will involve design to a greater or lesser extent the Inspectorate has worked with CABE<sup>3</sup>, the Design Commission for Wales and the Urban Design Group over the last year or so to enhance design training to all Inspectors. It has also advised Authorities that they can be confident that design is taken very seriously by Inspectors. Moreover, we are working continually to elevate all Inspectors' understanding of design issues, so that they can apply appropriate and fully informed judgement consistently where design arises as an issue, at whatever level.

We are also working with a school of architecture and planning to devise and deliver a further design package, or toolkit, to all Inspectors. This aims to ensure that, not only are principles of design in the widest possible sense understood, but that Inspectors are kept up to date with the developing legislative and best practice guidance emerging on the subject.

It should be clear therefore that the Inspectorate is aiming to ensure that Inspectors are fully conversant with and equipped to deal with the ever growing design agenda as expressed in national policies in both England and Wales.

#### The role of the appeal participant

There is a role and duty for LPAs

and appellants to ensure that the Inspector is properly informed so as to be able to carry out his or her defined role effectively. That role is to ensure that, regardless of the procedure, (inquiry, hearing or written representations) the submitted evidence is complete, reasoned and expert, (or at very least well-informed).

Responding to some LPAs' concerns that design is not being taken seriously at appeal, we have examined many cases. In some instances this has been in association with the Authorities concerned looking at the documentation submitted at appeal, as well as, in a couple of instances, the built-out scheme. It seems that there are some lessons to be learnt, as in many cases, the LPA statements were produced by non-expert officers and/or lacked reasoning. Inspectors report that Authorities often rely upon unsubstantiated assertions and recital of broad design policy, rather than practical contextual and scheme assessment and design appraisal (albeit that that then needs to be considered against the policy.)

Moreover, whilst reflecting, respecting or drawing from established context may be critical in sensitive areas, recognition must be had to the facts that

(i) there are established built-up areas which lack identifiable character and  
(ii) new building techniques and materials, together with environmental considerations demand a different form of building design and arrangement. Many Authorities fail to go beyond asserting that the design differs from its established setting<sup>4</sup>.

In response to increasingly complex and demanding environmental and other challenges, designers are necessarily promoting

unfamiliar forms and layouts, breaking away from traditional and conventional formats. Where novel and well-conceived schemes come forward, decision makers, (whether at local level or as Inspectors), must demonstrably reach judgements, with reasons, which go beyond simply stating that a proposal fails to reflect the established character of the area.

Where an "incomplete", unconvincing or poorly argued case is made by the LPA and is opposed by a well made case by the appellant it is not difficult to see where the balance might lie. That is of course not to say that Inspectors will acquiesce to poor design simply because the Appellant has presented its case better than the Council. It is the substance of the case that matters. Therefore, if the design is thought by the Inspector to be poor, with the importance of the national guidance on achieving high quality design in his or her mind, he/she is likely to raise the matter. The expectation should be that authorities and appellants will address the issue in advance.

Consistency amongst Inspectors on the application of design policies and judgement is another common area of concern for authorities. Each case is judged on its merits and the decision has to be grounded on the evidence submitted with that case. Moreover, it is highly unlikely that any one scheme (and its circumstances) would be directly comparable with any other. Where consistency can be expected is in the standard of appreciation of parties' proposals and cases, leading to consistency in the quality of reasoning in Inspectors' judgement and reasoning. Inspectors have been generally very well regarded on such matters and it is our intention to ensure that this is maintained in the increasingly high profile design

agenda.

On the one hand, Authorities can expect to be supported at appeal where they have demonstrably conducted a full and informed assessment of a proposal and have reached a judgement which can be supported by sound evidence. On the other hand, Appellants deserve to obtain approval for schemes which have been the subject of careful and reasoned analysis of their setting and context, prompting a well conceived and readily (and reasonably) explained design response.

Local Authorities which stand up for good design based on sound and clearly articulated visions and policies in their LDFs and determine their applications according to those principles (and subject to balancing other issues) may reasonably expect to be supported at appeal. Equally, Authorities which fail to adopt such an approach and are faced by well conceived, designed and explained schemes cannot expect to be in that position at appeal.

1, *Planning Policy Wales 2002 & Technical Advice Note 12*

2, *Planning for Climate Change December 2006*

3, CABE pamphlet, *Design at Appeal*, <http://www.cabe.org.uk/AssetLibrary/8034.pdf>

4, *It is to be hoped that Design and Access Statements in England will bring a sense of discipline to this process, calling upon the designer to justify the scheme in its context and demanding of the decision making authority a properly constructed and reasoned response. In Wales the separate Design Statements that the Assembly Government proposes to introduce will impose equal discipline.*