



The Planning Inspectorate

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Julian Smith MP
House of Commons
London
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Your Ref:

SR4744

Our Ref:

Date:

31 December 2013

Dear Mrs Smith,

Wind Turbine Appeal Decisions by Inspector Paul Griffiths

I refer to your letter to the Secretary of State, who has asked me to reply on his behalf as your constituent's concerns relate to the work of the Planning Inspectorate.

The Department for Communities and Local Government published new planning practice guidance on renewable and low carbon energy in July. The new guidance has been published to assist local councils and planning Inspectors in their consideration of local plans and individual planning applications. In October, the Department also changed the appeals 'recovery criteria' to give particular scrutiny to planning appeals involving renewable energy developments and to consider the extent to which the new practice guidance is meeting Government's intentions. A number of appeals were recovered at that time in order to assess the application of the planning practice guidance at national level.

Against that background, I have carefully considered all of the matters raised in Mr. Gerry Smith's letter, but would emphasise from the outset that I cannot comment on the detail of individual judgements that an Inspector has made or criticisms of those judgements. Indeed, Mr. Smith makes an observation in the second paragraph of his letter concerning the autonomy of Inspectors, on which I can be clear. The role of Inspectors at appeal, and what the law requires of them, is to make evidence-based judgements and decisions on behalf of the Secretary of State. In doing so they are required to be (and to be seen to be) fair and impartial. Their Code of Conduct (attached) endorses that requirement and Inspectors may not impose any personal preference. They decide on the basis of the evidence before them, applying professional and impartial judgement in the face of conflicting views and submissions.

In law, each Inspector is a quasi-judicial and independent tribunal, whose decisions must take account of all evidence put to them as well as local and national planning

policy and guidance. Local Plans are generally the starting point in law and decisions must be taken in accordance with such plans unless material considerations indicate otherwise. The Government's policy (including NPPF and the National Policy Statement for Renewable Energy Infrastructure) and the Secretary of State's Guidance and Statements are material considerations, which all planning decision makers must take into account. I have seen no evidence to suggest that Mr. Griffiths' decisions do not adhere to these requirements .

Mr. Smith disagrees with the way in which the Inspector has reached and expressed his judgement on the balance of issues and policy considerations before him. The advantage that Mr. Griffiths has, setting aside his professional experience, is that he has seen and heard all of the relevant evidence and visited each site and its locality (including individual houses considered to be affected by the proposal). Each case differs and he will have reached his judgement on the balance of matters before him. So, for example, to suggest that one Inspector's decision is inconsistent with another's fails to consider the particularities of the cases (for example the local terrain or the orientation of a house), or to acknowledge that each Inspector must explain his or her decision on each occasion; the circumstances of one case are unlikely to be applicable to those of another.

I would suggest that the criticism of "considerable inconsistencies" and "starkly contrasting opinions" between Inspectors must also be seen in this context: local policies, landscapes, local circumstances differ and Inspectors will be presented with widely varying evidence. They must address what they find and are presented with in each case. It is not appropriate to compare their judgements as "contrasting" or "inconsistent" with one another.

With the above in mind, I strongly refute the allegation that an Inspector can "pursue their own agenda" or go "unchecked". To do the former would contradict our adherence to principles of fairness, impartiality and natural justice and would be unlawful. As to whether Inspectors go "unchecked", we have careful quality control measures in place. Currently, each renewable energy appeal decision is read by a senior Inspector before it is issued. Furthermore, Inspectors' decisions can be challenged in the Courts so must meet strict legal requirements insofar as their reasoning and adherence to policy and reasonable judgement are concerned. Whilst it is true that one of the Inspector's windfarm decisions has been quashed, as Mr. Smith says, it is currently in the Appeal Court so may yet be reinstated. Another of his decisions was quashed in the High Court, but was subsequently reinstated by the Court of Appeal. Inspectors' decisions are very rarely successfully challenged in the Courts.

You can be assured that all Inspectors are aware of the Government's policies renewable energy, and of the requirement to take it into account as an important material consideration in reaching their judgements. That policy includes not only the written Ministerial Statements and Guidance, but also the National Planning Policy Framework, Section 10 of which contains policies positively to address climate change, and the National Policy Statement for Renewable Energy Infrastructure (EN-3), which makes reference to the temporary (25 years) nature of many on shore wind farms as an important consideration when assessing impacts (a matter that Mr. Smith mentions).

Mr. Smith considers that the ratio of appeals allowed by Mr. Griffiths is relatively high compared with the ratio to be found across all casework/Inspectors. He concludes that the Inspector is not conducting his impartial role correctly. However, there is no basis for such a finding or accusation and to seek to compare average "ratios" is not helpful.

That figure is, by definition, an amalgam of many Inspectors' decisions, each reached on the merits of each case.

I trust this reply will help you to respond to your constituent.

Yours sincerely
Michael Pitt

Sir Michael Pitt
Chief Executive



Inspectors' Code of Conduct

Introduction

The Planning Inspectorate is an Executive Agency in the Department of Communities and Local Government and the Welsh Assembly Government. It works in England and Wales.

The Inspectorate employs and supports inspectors who assist the Secretary of State for Communities and Local Government, other Secretaries of State, Welsh Ministers, the Mayor of London and local planning authorities in a wide range of casework under planning, housing, environment, highways and related legislation.

An inspector has one of two broad functions:

- Acting as a decision-maker on behalf of a Secretary of State¹ or
- Reporting with recommendations (either alone or as part of a panel) to a Secretary of State who then takes a decision

Inspectors may also give advice² to applicants and others about applying for an order granting development consent or making representations about an application, or a proposed application for such an order or may give advice in connection with the preparation of development plans.

This Code of Conduct sets out the conduct expected of inspectors in connection with the performance of their functions.

General

Inspectors must comply at all times with this Code of Conduct and with the Conflicts of Interest Policy and Acceptance of Gifts, Benefits and Hospitality Policy (or any modification or amendment to either or both of them) in addition to observing the duties and responsibilities established by the Civil Service Code.

This Code of Conduct is based on the seven principles of public life set down by Lord Nolan when Chairman of the Committee on Standards in Public Life and set out in the Appendix. It is also based on the "Franks principles" of openness, fairness and impartiality. Inspectors should maintain the highest standards of propriety in accordance with these principles.

Inspectors should be aware that no code or guidance can set out all of the circumstances in which the impartiality, integrity and high professional

¹ Certain planning appeals may be transferred to inspectors for their decisions in relation, for example, to refusal of listed building consent

² Under s51 of the Planning Act 2008 (as amended)

standard of inspectors may be brought into question. If an inspector has any doubt as to whether their conduct may pose a risk to the Inspectorate's reputation for impartiality, integrity and high professional standards, inspectors should, without delay, seek advice from line managers, who will consult where necessary with the Director of Law and Quality.

Principles of Conduct

Inspectors should make their decisions and recommendations fairly and in the public interest.

- *Inspectors should take decisions and recommendations solely in terms of the public interest and not in order to gain financial or other benefits for themselves, their family or their friends. Decisions and recommendations should be made solely on merit.*

Inspectors should not be fettered with pre-determined views and should not judge cases before they have considered the evidence.

- *Inspectors may hold tentative views on the merits of individual cases but they should be open to persuasion and alternative points of view. Therefore they should not reach their final conclusions on any case until they have considered all the evidence and representations.*

Inspectors should not be influenced by irrelevant considerations or outside influences when making their decisions and recommendations.

- *Inspectors' decisions and recommendations should be based on the relevance and substance of the evidence and arguments put to them by the parties and not by the identity, status or personality of those providing that evidence or argument.*
- *Inspectors should at no time deal privately with one party in the absence of the other parties.*

Inspectors must register any offers of gifts, hospitality and other benefits offered by parties who have an interest in a case in accordance with the Acceptance of Gifts, Benefits and Hospitality Policy

- *Inspectors should be honest. They should never act in a way that could give the impression that they may or have in fact been influenced by gifts, hospitality or other benefits to show favour or disfavour to a particular party.*

Inspectors should treat each person with dignity and respect.

- *Inspectors should behave at all times with courtesy, patience and understanding, whilst at the same time ensuring that cases are conducted efficiently and effectively.*

Inspectors should not discriminate against people because of their race, sex, sexuality, marital status, religion, disability or age.

- *Inspectors should treat everyone the same and consider evidence on its merits regardless of whose evidence it is.*

Inspectors should avoid unnecessary delay in reaching their decisions and recommendations.

- *Inspectors should not be dilatory in completing cases assigned to them and, where not governed by a statutory timetable, should make every reasonable effort to ensure that decisions and recommendations are made as soon as possible after the relevant evidence has been considered.*

Inspectors should be responsible for their decisions and recommendations.

- *Except where functions may lawfully be allocated to other inspectors³, inspectors should not delegate their responsibilities to anyone else. Nor should they allow anyone to usurp their responsibilities.*

³ S76 of the Planning Act 2008 (as amended) allows functions of a Panel appointed to examine an application for a nationally significant infrastructure project to be allocated within the Panel

Appendix

The Seven Principles of Public Life

Selflessness

Holders of public office should act solely in terms of the public interest. They should not do so in order to gain financial or other benefits for themselves, their family or their friends.

Integrity

Holders of public office should not place themselves under any financial or other obligation to outside individuals or organisations that might seek to influence them in the performance of their official duties.

Objectivity

In carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, holders of public office should make choices on merit.

Accountability

Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.

Openness

Holders of public office should be as open as possible about all the decisions and actions that they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands.

Honesty

Holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.

Leadership

Holders of public office should promote and support these principles by leadership and example.