

**THE INSTITUTION OF ENVIRONMENTAL SCIENCES****MODERNISING PLANNING****The Recovery of Costs of Public Local Inquiries held into Planning Matters****A Response by the Institution of Environmental Sciences - September 1998****1. Principles**

It is a fundamental principle that the settlement of disputes is without cost. This applies in many different aspects of civil law such as divorce, immigration, employment tribunals, contract law and so forth. Access to impartial judgement, the ability to present one's case and to test that of other parties should be uninhibited.

The Consultation Paper claims that the 8% of inquiry cases accounts for one third of the Planning Inspectorate's costs and that this relatively small number of cases is having a disproportionate effect on the whole appeals system. It is unclear why this presents such a problem. In any control system, a minority of cases takes up far greater than average time/resources - this is called the normal distribution. The Maxwell Fraud trial is a good example in civil litigation.

Public inquiries are inevitably longer and more complex than other forms of appeal. This is essentially why there are separate appeal procedures.

Why have planning public inquiries been singled out? There are public inquiries in the fields of highways, waste management licensing, water abstraction and so forth but no costs are suggested for these.

**2. Details**

There are a number of potential problems associated with the ideas set out in the Consultation Paper.

- costs are likely to be a major barrier for 'small' appellants, e.g. householders, voluntary groups, small businesses etc.;
- it is possible to argue that Planning Committees will take decisions with a view of the likelihood of an applicant bearing appeal costs, if a refusal is contemplated;
- local authorities are to be exempt from the charges but will this apply to local authorities own development proposals which are 'called in';

- potentially there could be incentives for third party objectors to spin out inquiries resulting in greater costs for appellants;
- it is highly questionable that applicants can “reasonably foresee the possibility of call-in when applying for planning permission. If this were the case then appellants would appeal anyway after 8 weeks on the grounds of non-determination. It is very unclear when an application raises issues of regional or national significance. As an example, a number of large scale waste management facilities have been called-in not because they represent departures from the development plan but because of complex technical/pollution control concerns or widespread public opposition. The appellant has had no control over the form of such an appeal and therefore should not be charged.

### 3. Concluding Points

- If charging is to be introduced, it must be equal and fair to both parties. In civil litigation costs follow the result, i.e. the ‘losing’ party pays the costs of the ‘winning’ party. This would certainly improve the overall service offered by the Inspectorate in a fair and consistent manner.
- If charging is to be introduced the Planning Inspectorate ought to enter into some sort of contract with the appellant over an inquiry time and decision time. There should be no more cases of appellants waiting for a year or more for their inquiry.
- Other options could be considered, e.g. penalties for frivolous written representation appeals.
- For the sake of fairness, there needs to be a mechanism to prevent frivolous refusals which lead to public inquiries, not just charges on the appellant.
- There is a grave danger of exorbitant costs applying to infrastructure projects of national importance due to the length of time such inquiries can take.
- The Paper is misleading on costs. Paragraph 8 suggests inquiry costs might be £350/day and indicates this may rise. Tucked away in the annex (paragraph 13) is the suggestion that costs may rise to £520/day.

The annex is further misleading in claiming a two-day public inquiry would cost £1,040. Paragraph 9 states that “the entire administrative costs” are to be recovered. It is well known that a two-day inquiry may involve up to four days of preparation/reporting time. Thus the cost could be £3,000 rather than £1,000.