

Vauxhall Bridge in London. There had earlier been an inquiry conducted by a planning inspector which had concluded that planning permission for the building should be refused...

Before he made his decision rejecting the inspector's recommendation the Minister had been provided with advice from his officials in the form of two submissions, one dated 8 December 2004 and the other 28 February 2005. The issue to be determined on this Appeal is whether the advice to the Minister, contained in those submissions, including any opinions of the officials expressed in them, should have been made available to the Appellant in response to a request under Regulation 5(1) of the Environmental Information Regulations 2004 ("EIR")...²

The successful appeal might mean that such information is always provided at least in major cases. That might possibly increase the political cost to a Secretary of State of rejecting departmental advice as well as an inspector's recommendation. However, the Secretary of State is entitled to take the decision herself.

A PQ in October 2006 gave some statistics for decisions that were called in or (in the case of appeals) recovered by the Secretary of State. Taking the period of four financial years from 2002 to 2006 as a whole, 1326 decisions were taken by the Secretary of State personally, compared to 72,040 by the planning inspectorate. In 114 occasions, the Secretary of State went against the Inspector's recommendations.³ Another PQ revealed that by May 2007, the Secretary of State had overturned the recommendations of an inspector on a further seven occasions since 1 November 2006.⁴

People often ask whether the Secretary of State can call in a planning application after the local planning authority has approved it. He cannot do so. A different procedure applies, by means of which the Secretary of State can revoke planning permission, but that happens only rarely. Once planning permission has been granted, then any revocation of the permission leaves the applicant able to claim compensation. Revocation is covered in a separate note: When can planning permission be revoked? (SN/SC/905).

2 The criteria for calling in applications

The power to call in planning applications is granted to the Secretary of State under section 77 of the *Town & Country Planning Act 1990*. The power is very general, as stated in the opening sub-section.

77 (1) The Secretary of State may give directions requiring applications for planning permission, or for the approval of any local planning authority required under a development order, to be referred to him instead of being dealt with by local planning authorities.

A PQ in June 1999 was answered with a statement of Government policy.

Mr. Bill Michie: To ask the Secretary of State for the Environment, Transport and the Regions if he will make a statement about his policy on calling in planning applications under section 77 of the Town and Country Planning Act 1990.

² Tribunals Service Environmental Tribunal, *Appeal Number EA/2006/0043*, 1 June 2007

³ HC Deb 24 October 2006 c1804W

⁴ HC Deb 9 May 2007 c206W

Mr. Caborn: My right hon. Friend's general approach, like that of previous Secretaries of State, is not to interfere with the jurisdiction of local planning authorities unless it is necessary to do so. Parliament has entrusted them with responsibility for day-to-day planning control in their areas. It is right that, in general, they should be free to carry out their duties responsibly, with the minimum of interference.

There will be occasions, however, when my right hon. Friend may consider it necessary to call in the planning application to determine himself, instead of leaving the decision to the local planning authority.

His policy is to be very selective about calling in planning applications. He will, in general, only take this step if planning issues of more than local importance are involved. Such cases may include, for example, those which, in his opinion:

- may conflict with national policies on important matters;
- could have significant effects beyond their immediate locality;
- give rise to substantial regional or national controversy;
- raise significant architectural and urban design issues; or
- may involve the interests of national security or of foreign Governments

However, each case will continue to be considered on its individual merits.⁵

There was a brief update in December 2005:

Baroness Andrews: The Office of the Deputy Prime Minister's policy is to be very selective about calling in planning applications and only do so where issues of more than local importance are involved. In deciding to call these applications in a view about their merits has not been taken. An inspector will hold a local inquiry into the applications and make a report and recommendations taking into account, among other things, the sustainability of the proposed development.⁶

However, that is not a legal obligation. In *R. v. Secretary of State for the Environment, ex p. Newprop* [1983] J.P.L. 386, the court accepted that the Secretary of State had not fettered his discretion either in adopting such a general policy or in applying it in that case.⁷ Indeed, the Planning Encyclopedia notes that even consultation is not necessary, let alone binding on decisions to call in applications.

3 Notification

In cases where the local planning authority is minded to grant planning permission, it is obliged to notify the Secretary of State (i.e. the Government Office for the Region) of certain categories of proposed development so as to give him the option of calling in the application, if the application does not accord with one or more of the provisions of the development plan in force in the area in which the application site is situated. The categories are:

- (a) development which consists of or includes the provision of –
 - (i) more than 150 houses or flats; or
 - (ii) more than 5,000 square metres of gross retail, leisure, office or mixed commercial floor space;

⁵ HC Deb 16 June 1999 c 138W

⁶ HL Deb 12 December 2005 c142WA

⁷ Quoted in the Sweet & Maxwell Encyclopedia of Planning Law and Practice, P 77.04