

# Design at appeal

Advice on dealing with design issues within planning appeals



# Introduction

**High quality buildings and spaces are achievable through good planning. Appeals should be seen as a last resort but they are an important part of the planning system and appeal decisions can greatly affect the way future applications are devised, negotiated and decided.**

**National, regional and locally important design objectives should not be compromised by ill-founded perceptions of what will or will not stand up at appeal. It is important that all parties involved in appeals understand how to deal with design issues and give them appropriate attention. The what to do list in this leaflet will help to achieve this. All involved, whether local authority planner, appellant or third party, should apply them wherever possible.**

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# Background

Design is a legitimate and important consideration in planning decisions. Planning policy statement 1 (PPS1) now tells us that 'design which is inappropriate in its context, or which fails to take the opportunities available for improving the character and quality of an area and the way it functions, should not be accepted'. This means that rather than refusing only poor schemes as the old planning policy guidance note 1 (PPG1) instructed, planners should be rejecting everything that fails to meet these new requirements. This raising of the bar in favour of quality will be a key test within planning appeals.

Design is about how places look and work. By Design, the companion guide to PPS1, sets out the core principles of good design. Planning decisions on design issues should refer to these and the physical characteristics of the proposal in terms of how they will, or will not, produce well designed results.

It is interesting to compare PPS1's stance on design with old versions of PPG1 that may still be influencing behaviour, despite no longer being in force. The 1992 version instructed authorities 'not to seek to control the detailed design of buildings unless the sensitive character of the setting for the development justifies it'. The 1988 version of PPG1 was even more stringent, saying: 'Matters of detailed design have long been an unnecessary source of contention and delay in the planning system.' 'Where a refusal of permission is based simply on a preference for a different external appearance, there may be grounds for an award of costs in an inquiry appeal'. Things have moved on and these out of date policies no longer apply.

We have come a long way since then and PPS1 should be seen as a clear endorsement of the relevance of design, explaining, as it does, that: 'Good design is indivisible from good planning.'

The need for good design is clearly set out in national policy and normally included in regional and local policy. Even if design does not feature in an authority's reasons for refusal, other parties might raise it or the inspector may decide to consider the merits of a scheme's design. All parties should be aware of this and set out their own views accordingly.

In CABE's recent survey of local planning authorities, nearly a third of respondents cited a lack of support by the planning inspectorate, and concerns about losing claims for costs, as a major reason for not refusing planning permission on design grounds. This perception about the inspectorate seems to have its roots in old versions of PPG1, and there is no clear evidence to support it. In fact, many appeals turn on design issues and many poorly designed schemes are regularly dismissed at appeal. The planning inspectorate's own figures show that in the six months to 31 January 2005, of the 5,617 appeals that were decided on design issues, only 35 per cent were allowed.

Whatever the reality of appeal decisions the idea that design based refusal will not be upheld does seem to have a very real effect on how authorities deal with design issues.

# Use clear, positive policies

Planning policy statements 1 and 12 (PPS1 and PPS12) clearly state the need for positive design policies based on a good understanding of local characteristics and objectives. Well written and unambiguous policies and guidance are the best way for a local authority to show the design quality it expects. Developers should take these policies into account and formulate their proposals accordingly. If they strongly disagree with a policy they should become involved in the policy making process and not use an appeal on an individual development proposal to raise their objections.

The appeal evidence submitted by the appellant should clearly set out how they have responded to national, regional and local policies. Similarly, reasons for refusal and evidence submitted by the local authority should set out why they consider the scheme does not meet the challenge set down in policies. This will provide a framework for the inspector to consider the appeal.

## Heron Tower, London

The proposed 182m tower was approved following amendments made as a result of the involvement of CABE's design review committee. © Kohn Pedersen Fox Associates International.



**'The purpose of the DETR/ CABE document By Design is to promote higher standards of urban design. I consider that as the building would positively contribute to its immediate setting and the wider skyline it would accord with the thrust of this guidance.'**  
Inspector's decision letter for Heron Tower development, London. Approval recommended to First Secretary of State.



# Use expert design advice

Good quality advice is invaluable to both applicants/appellants and local planning authorities. The right advice, at the right time, can help ensure a proposal is based on a thorough response to its context. This should help make it more acceptable to all, and so avoid the need to go to appeal.

CABE provides a design review service for locally important or strategic schemes but demand constantly exceeds supply. Local authorities and applicants/appellants should not see this as an alternative to having direct access to specialist advice on architecture, urban design and landscape architecture.

There is not enough high quality advice to go around. However, there are a number of ways in which you can access good quality design advice. Local authorities can group together to draw on advisors or set up local design review panels. Applicants should seek out high quality design advice in the shape of consultant architects, urban designers, access consultants, landscape architects, engineers and other relevant professionals.

Where schemes go to appeal, the appellant needs to provide evidence of how this type of expertise has influenced the design of the scheme. The local planning authority's evidence should show how expert advice has influenced the decision to refuse permission.

## Design review

CABE's service offers design advice on strategically important developments, masterplans or design frameworks. © CABE.



**'In considering the harm from design the Secretary of State agrees with the inspector that harm may stem from the design concept overall, in failing to respond positively to the character and merits of a particular site, and from creating an unsatisfactory environment for future residents...that despite the applicant's efforts there is no clear evidence that the overall design has been underpinned by a thoroughgoing analysis of the site...The Secretary of State concludes that allowing this appeal would undermine government policy on securing good design.'**

First Secretary of State's decision letter for proposed residential development on waterfront site, Eccleston Road, Maidstone, Kent.

# Design is more than aesthetics

The idea that design issues are not supported at appeal may be due to confusion over what design is really about. Some people wrongly feel that design just means aesthetics, style and the outward detailing of a building, and this attitude stifles appropriate decision making.

Appearance is part of design but it is defined by PPS1 as much broader. Design is about how places work, fit together, and the quality of life they support. Proposals must show that the development will function well in addition to being attractive and responding to the existing character of the area.

Design is about responding to the existing character, movement patterns, appearance and other attributes of the area. It is about how people will be able to use the development when it is built. At a more detailed level, design addresses matters of massing and bulk, external materials and landscaping, inclusive design and how the orientation of proposed buildings and their relationship to public spaces would provide adequate natural surveillance to help make a safe, secure environment.

## Haymarket, Liverpool

Providing for an active street frontage is one of the core aspects of good design.

© David Millington.



**‘There is very clear guidance to the effect that good urban development works best where it is based on a grid, which allows and encourages movement, activity and connectivity...[the proposal] would produce static townscape at ground floor level, and secondly, the safety of the environment would be compromised.’**

Inspector’s decision letter recommending dismissal to Secretary of State for development at former Everards site in Greenhithe, Kent.

# Explain your case

When a scheme is examined at appeal, written or oral evidence will need to say why it is or is not seen as appropriate. The clarity of the rationale behind a proposed design, and how the need for good design has been taken into account, may be crucial to the decision maker's conclusion.

A design and access statement may have been submitted with the application. This should be written specifically for the application and should explain how an understanding of local physical, social, economic and policy requirements have been applied to the proposal. Statements can be used to demonstrate a rigorous design process, or indeed criticise it, in appeal evidence.

It is important to use easily understandable language; both in reasons for refusal and appeal evidence. Generalised or generic terms such as 'out of keeping' or 'overdevelopment' should be avoided as they are meaningless when not substantiated by site specific information. The design, and why it is appropriate or inappropriate, should be described in as much detail as possible.

## London Bridge

The high quality of design of Renzo Piano's London Bridge Tower, and the resulting regenerating effect on the local area, was the deciding factor in the First Secretary of State's decision to approve. © John McLean.



**'The First Secretary of State considers that for a building of this size to be acceptable, the quality of the design is critical, in line with the government's commitment to the achievement of good design. In this case, like the inspector, he is satisfied that the proposed tower is of the highest architectural quality. Had this not been the case, the Secretary of State might have reached a different decision but he considers that the quality of the design of this particular building is a very strong argument in its favour.'**  
First Secretary of State's decision letter approving London Bridge Tower, London.

Appeals play an important role in the planning system. But there is a lack of confidence in dealing with design issues at this stage, and this is affecting the quality of development. We hope that by producing this short 'how to' guide, we will help all involved when dealing with design at appeal.

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