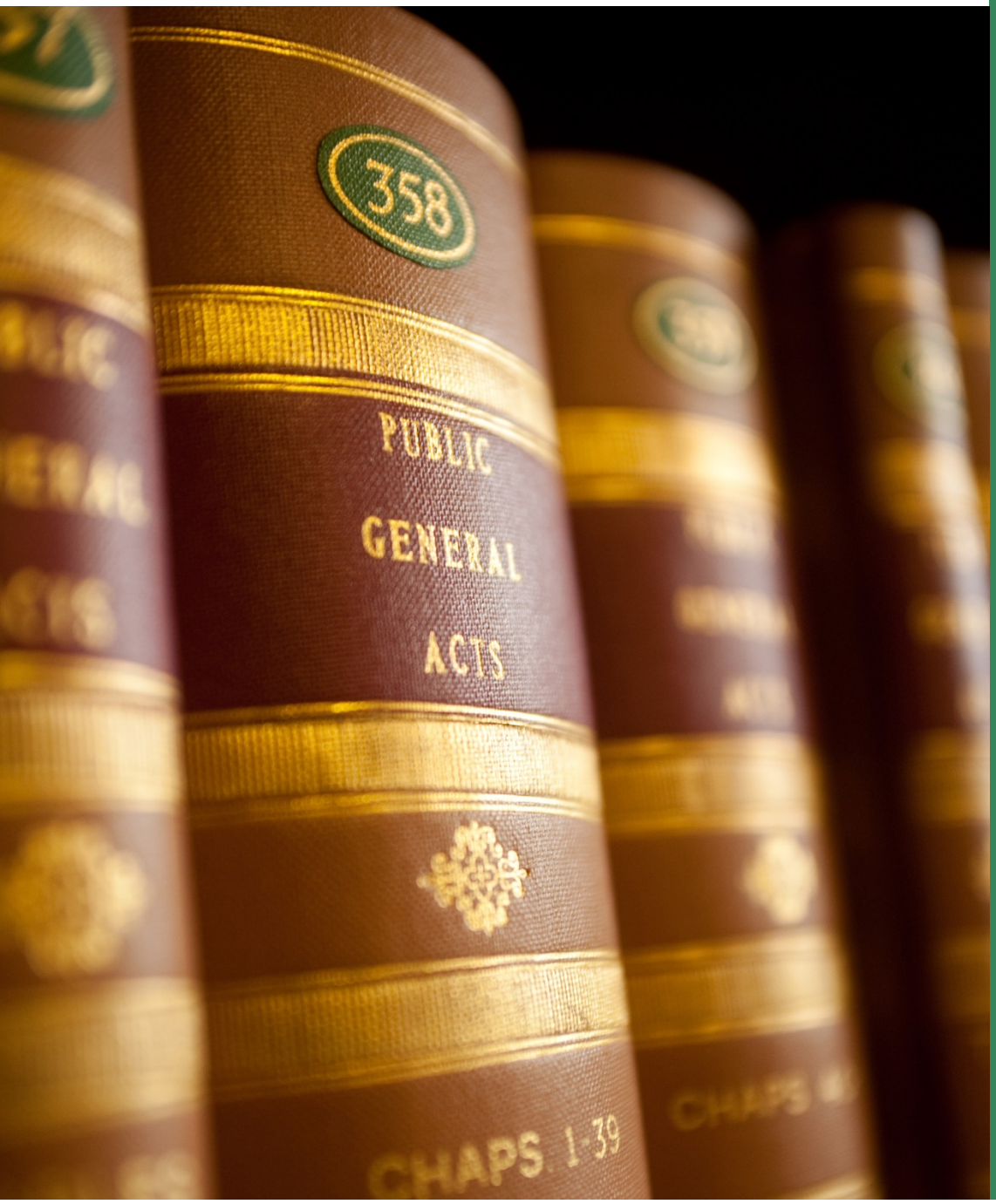
HOUSE OF COMMONS LIBRARY

BRIEFING PAPER

Number 00930, 23 September 2015

Calling-in planning applications

By Louise Smith



Inside:

Contents

Summary

"Calling-in" of a planning application refers to the power of the Secretary of State to take the decision making power on a particular planning application out of the hands of the local planning authority for his own determination. This can be done at any time during the planning application process, up to the point at which the local planning authority actually makes the decision.

If a planning application is called-in, there will be a public inquiry chaired by a planning inspector, or lawyer, who will make a recommendation to the Secretary of State. The Secretary of State can choose to reject these recommendations if he wishes and will genuinely take the final decision.

The power to call-in planning applications is very general and the Secretary of State can call-in an application for any reason. In practice, very few applications are called-in every year. They normally relate to planning applications which raise issues of national significance.

Anyone can ask for a planning application to be called-in. In certain circumstances, local planning authorities must notify the Secretary of State of particular types of planning application. Applicants should give clear reasons why they think that the application should be called-in, including why it is of more than local importance. For further information see the Planning Inspectorate Procedural Guide: Called-in planning applications – England.

An MP can make representations to have an application called-in, but they have to be open ones. Ministers and the Secretary of State in taking the decision must follow DCLG Guidance on Planning Propriety Issues.

The Secretary of State also has a similar power to "recover" a planning appeal which has been submitted to the planning inspectorate. A "recovered inquiry" is basically a planning appeal (against a local authority's decision) which the Secretary of State can decide to determine himself, rather than allowing a planning inspector to take the final decision, as is the normal process.

The previous Government expanded the list of circumstances as to when an appeal may be considered for recovery to include gypsy and traveller development in the green belt, renewable energy development, unconventional oil and gas development and appeals relating to areas covered by neighbourhood plans. Following a recent legal challenge the Government has "de-recovered" a number of the appeals relating to gypsy and traveller development in the green belt after some aspects of this policy were found by the High Court to breach provisions in the Equality Act 2010 and the European Convention of Human Rights. The current Government has renewed the recovery criterion in relation to neighbourhood plan areas and has announced that it would consider recovering appeals in relation to exploring and developing shale gas.

This note sets out all these issues in more detail. It applies to England only.

1. The call-in process

A planning application can be called-in at any time up to the granting of planning permission. In practice, it is normal for a local planning authority to complete the preliminary work, and reach the point where it is minded to grant planning permission. It then notifies the Secretary of State, who can decide whether to call-in the application to determine it himself.

The power for the Secretary of State to "call-in" a planning application for his own determination is set out in section 77 of the *Town and Country Planning Act 1990*, particularly sub-section (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.

The Secretary of State can "call-in" a planning application for his own determination.

In addition, it is possible for the Secretary of State to delay the grant of planning permission until he has decided whether or not to call-in an application, by what is sometimes called a holding direction. This power is set out in section 31 of the Town and Country Planning (Development Management Procedure) (England) Order 2015 (SI 595):

> (1) The Secretary of State may give directions restricting the grant of permission by a local planning authority, either indefinitely or during such a period as may be specified in the directions, in respect of any development or in respect of development of any class so specified.

If a planning application is called-in, there will be a public inquiry chaired by a planning inspector, or lawyer, who will make a recommendation to the Secretary of State, who genuinely takes the final decision. The procedure is laid down in the Town and Country Planning (Inquiries Procedure) Rules 2000 (SI 1624). For further information about this procedure see the Planning Inspectorate Procedural Guide: Called-in planning applications – England, 7 July 2014. The Secretary of State will publish the recommendations of the inspector, along with his reasons for agreeing or disagreeing.

The law and procedure for the Secretary of State to determine nationally significant infrastructure proposals is different, and is covered in another note Planning for Nationally Significant Infrastructure Projects (CBP06881).

People often ask whether the Secretary of State can call-in a planning application after the local planning authority has officially approved it. He cannot do so. Note that there is sometimes a difference between the planning authority determining to approve an application and the actual approval being issued officially.

Call-in can happen at any time up until the local planning authority formally issues its decision on the application.

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: Revocation of planning permission (SN/SC/905).

2. The call-in criteria

The power to call-in planning applications under section 77 of the *Town & Country Planning Act 1990* is very general in scope. In practice, however, it is Government policy only to call-in a very small number of planning applications every year.

In October 2010 the previous coalition Government stated its policy on calling-in:

> **Robert Neill**: Localising decision making and planning is central to the Government's policy. Ministers have made it clear that they will exercise the power to call in only very sparingly where matters of significant national interest and policy are concerned.[1]

The Government then reaffirmed its policy in May 2012:

> **Chris Heaton-Harris:** What criteria he uses when calling in or recovering planning applications; and if he will make a statement:
>
> **The Minister of State, Department for Communities and Local Government (Greg Clark):** The Government believe that planning decisions should be taken in, and by, local communities, and so use their call-in powers sparingly. Essentially, the powers are used when matters are of national significance.[2]

There is no legal obligation for the Secretary of State to use the call-in powers. 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.[3] Indeed, the Planning Encyclopaedia notes that even consultation is not necessary, let alone binding on decisions to call-in applications.

Any type of application can be called-in.

A list of instances when the secretary of state might decide to use call-in powers are sometimes known as the "Caborn principles" because they were first announced by the then Planning Minister, Richard Caborn, in response to a PQ on 16 June 1999 (those in square brackets were added later):[4]

In practice, only a small number of applications are called in every year. A list is given setting out when call-in is most likely to happen.

> Such cases may include, for example, those which in his opinion:
>
> - may conflict with national policies on important matters;
> - [may have significant long-term impact on economic growth and meeting housing needs across a wider area than a single local authority];
> - could have significant effects beyond their immediate locality;
> - give rise to substantial cross-boundary or national controversy;
> - raise significant architectural and urban design issues; or

1 HC Deb 21 October 2010 c1122
2 HC Deb 30 April 2012 c1234
3 Quoted in the Sweet & Maxwell Encyclopedia of Planning Law and Practice, P 77.04
4 HC Deb 16 June 1999 c138w

- may involve the interests of national security or of foreign Governments.

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

These criterion of calling in applications which "may have significant long-term impact on economic growth and meeting housing needs across a wider area than a single local authority" was added on 26 October 2012.[5]

In an August 2015 policy statement the Government said that it would "actively consider calling in shale applications. Each case will be considered on its individual merits in line with his policy. Priority will be given to any called-in planning applications."[6]

The Department for Communities and Local Government's website publishes all of the recent call-in and recovered appeal cases determined by the Secretary of State.

2.1 Requirements to consult the Secretary of State on certain applications

It used to be the case that the Secretary of State had to be notified of all "departure applications", that is planning applications which are not consistent with policies in the local development plan for a particular area. Following proposals in the 2006 Barker Review of Land Use Planning Final Report,[7] the Labour Government changed this situation in 2009 to narrow the situation in which the Secretary of State had to be notified.

The Secretary of State must be notified before granting planning permission for certain types of development.

The Town and Country Planning (Consultation) (England) Direction 2009 sets out when local planning authorities in England are required to consult the Secretary of State before granting planning permission for certain types of development. This is basically for certain green belt development, development outside town centres, World Heritage site development, playing field development or flood risk area development. Originally guidance on this Direction was set out in DCLG Circular 02/2009: The Town and Country Planning (Consultation) (England) Direction 2009, 30 March 2009. This circular has now been cancelled and replaced with guidance on the Government's online National Planning Policy Guidance on Determining a planning application.

5 HC Deb 26 October 2012 c72WS
6 Shale gas and oil policy statement by DECC and DCLG, 13 August 2015
7 Kate Barker, Barker Review of Land Use Planning Final report - Recommendations, 6 December 2006

3. Numbers of applications called-in

In a written question answered on 19 March 2015 the Planning Minister set out that very few planning applications are called in each year - an average of only 8 cases in each of the last five years.[8]

A PQ from October 2012 set out the number of planning cases called-in for decision by the Secretary of State since 2007-08:[9]

> **Hilary Benn:** To ask the Secretary of State for Communities and Local Government how many times he has exercised his reserve power under the Planning Act 1990 to call in particular groups of applications and refer them to the Planning Inspectorate for decision. [123480]
>
> **Nick Boles:** The following table shows the number of planning cases called-in for decision by the Secretary of State annually since the 2010 General Election.

	Number of planning cases called in
2010-11	12
2011-12	6
2012-13(1)	3
Total	21
(1) From 1 April 2012 to 16 October 2012.	

> For comparison, the number of cases called in the preceding three years are:

	Number of planning cases called in
2007-08	29
2008-09	(1)37
2009-10	19
Total	85
(1) The Stansted airport G1 proposals are counted as one case, although included 38 separate applications.	

8 Planning Permission: Written question – 227592, answered 19 March 2015
9 HC Deb 18 Oct 2012 c375W

4. Reasons for not calling-in

A policy change was announced on 12 December 2001 to indicate that the Government would now give reasons for a decision not to call in a planning application, although this was not a legal requirement:

> **Lord Williams of Elvel** asked Her Majesty's Government:
>
> Whether they will give reasons for not calling in planning applications.
>
> **Lord Falconer of Thoroton:** As part of our fundamental review of the planning system, we have decided that as from today we will give reasons for our decision not to call in planning applications. This decision, which forms part of the raft of measures in our planning Green Paper published today, is in the interests of transparency, good administration and best practice. The courts have established that there is no legal obligation to provide reasons for not calling in an application.
>
> It should be borne in mind that the issue before him for decision is not whether the application should be granted planning permission but whether or not he should call it in for his own determination. The Secretary of State's policy on calling in planning applications--which is to be very selective--is set out in the written reply by my right honourable friend, the then Minister for Planning, (Richard Caborn) to a Parliamentary Question on 16 June 1999 [Official Report, Commons; col. 138] in another place. That approach is not to interfere with the jurisdiction of local planning authorities unless it is necessary to do so. Local planning authorities are normally best placed to make decisions relating to their areas and it is right that, in general, they should be free to carry out their duties responsibly, with the minimum of interference.[10]

[10] HL Deb 12 December 2001 c220WA

5. Representations to planning ministers

DCLG publishes *Guidance on Planning Propriety Issues.*[11] This document explains how Ministers need to behave to conform to the Ministerial Code. The term "Planning Ministers" covers the Secretary of State and other DCLG Ministers involved in planning decisions.

Some of the general principles are important:

> 4. Planning ministers are under a duty to behave fairly ("quasi-judicially") in the decision-making procedure. They should therefore act and be seen to act fairly and even-handedly. For example, to demonstrate even-handedness all evidence which is material to any decision which has been the subject of a planning inquiry, and which the decision-maker ultimately takes into account, must be made available to all parties with an interest in the decision. Privately made representations should not be entertained unless other parties have been given the chance to consider them and comment. This part of the requirement to act fairly is also reflected in the statutory rules for inquiries, which require the Secretary of State to give the parties a further opportunity to make representations if, after the close of an inquiry, the Secretary of State differs from the inspector about any relevant matter of fact or proposes to take into account any new evidence or new matter of fact. A challenge will succeed if a court is satisfied that Planning Ministers have acted procedurally unfairly – for example by giving a developer an opportunity to put forward his case which has not been granted to other interested parties.
>
> 5. Planning Ministers should also bring an unbiased, properly directed and independent mind to consideration of the matter before them. This does not mean that Planning Ministers are not entitled to have and express opinions about general planning issues, or planning cases. But they must approach and must be seen to approach matters before them with an open mind.
>
> 6. There is a clear parallel with Section 25 in the Localism Act 2011, which confirms that a Councillor should not be held to have a closed mind just because they have previously indicated a view on a matter relevant to a decision.

In addition, there is a passage specifically related to call-ins:

> Representations on call-in decisions and appeals
>
> 11. Although planning cases decided directly by the Secretary of State are a tiny proportion of the number of planning applications and appeals handled each year, they are naturally high profile and interested parties, including MPs and pressure groups, will want to make representations. Those seeking to make representations to Planning Ministers in relation to whether an application should be called-in should be directed to the relevant planning casework official in the Planning Directorate of DCLG. Ministers' decisions should have regard to the published call-in policy. Those seeking to make representations in relation to the actual determination of called-in applications and recovered appeals should be advised to write to:

[11] DCLG, Guidance on planning propriety Issues, 2012

- the Planning Inspector, if the inquiry has not been completed; or
- the relevant official in the Planning Casework Division if the inquiry has concluded.

Where representations are made by whatever means, including letters, telephone and email, whether direct to a Planning Minister or to the relevant official, it should be made clear that they can only be taken into account if they can also be made available to all interested parties for comment.

6. How to apply for call-in

Anyone can write to request that a planning application is called-in. It does not need to be an MP.

Anyone can ask for a planning application to be called-in. Applications for a planning application to be called-in should be directed to:

National Planning Casework Unit

5 St Philips Place

Colmore Row

Birmingham

B3 2PW

Tel: 0303 444 8050

Email: npcu@communities.gsi.gov.uk

Applicants should give clear reasons why they think that the application should be called-in, including why it is of more than local importance. For further information see the Planning Inspectorate Procedural Guide: Called-in planning applications – England.

7. Recovered appeals

While the power to "call-in" a planning application exists before the local planning authority (LPA) takes the planning decision, the Secretary of State also has a similar power to "recover" a planning appeal which has been submitted to the planning inspectorate following refusal by the LPA. A "recovered inquiry" is basically a planning appeal (against a local authority's decision) which the Secretary of State can decide to determine himself, rather than allowing a planning inspector to take the final decision, as is the normal process. The law stems from section 79 of the *Town and Country Planning Act 1990*.

"Recovery" by the Secretary of State take place at the appeal stage, after an application has been refused by a local planning authority.

As with called-in applications, a Planning Inspector will write a report for the Secretary of State, which will make a recommendation on how the appeal should be determined. The Secretary of State will then take the final decision on the appeal.

When an appeal is recovered the final decision is taken by the Secretary of State, instead of a planning inspector.

Recovery of an appeal can occur at any stage of the appeal process, even following an inquiry being held, but it cannot be done after the Inspector has issued their decision.

The Secretary of State has wide discretion about when to recover an appeal. It is usually either because the development is of strategic importance or has significant implications for national policy or raises novel issues. In a written statement on 30 June 2008, the Secretary of State set out the circumstances in which the Secretary of State would consider recovering appeals:

Although an appeal can be recovered for any reason, a list is provided which sets out when the Secretary of State would normally consider recovery.

- proposals for development of major importance having more than local significance;
- proposals giving rise to substantial regional or national controversy;
- proposals which raise important or novel issues of development control, and/or legal difficulties;
- proposals against which another Government department has raised major objections or has a major interest;
- proposals of major significance for the delivery of the Government's climate change programme and energy policies;
- proposals for residential development of over 150 units or on sites of over 5 hectares, which would significantly impact on the Government's objective to secure a better balance between housing demand and supply and create high quality, sustainable, mixed and inclusive communities;
- proposals which involve any main town centre use or uses where that use or uses comprise(s) over 9,000m² gross floorspace (either as a single proposal or as part of or in combination with other current proposals) and which are proposed on a site in an edge-of- centre or out-of-centre

location that is not in accordance with an up-to-date development plan document[12];

- proposals for significant development in the Green Belt;
- major proposals involving the winning and working of minerals;
- proposals which would have an adverse impact on the outstanding universal value, integrity, authenticity and significance of a World Heritage Site;
- there may on occasion be other cases which merit recovery because of the particular circumstances.[13]

7.1 Recent additions to recovery criteria

Travellers sites/ unauthorised development in the green belt

On 1 July 2013 the Secretary of State announced that he would temporarily expand these criteria, for six months, to include appeals relating to traveller sites in the green belt:

> The Secretary of State wishes to give particular scrutiny to traveller site appeals in the green belt, so that he can consider the extent to which "Planning Policy for Traveller Sites" is meeting this Government's clear policy intentions. To this end he is hereby revising the appeals recovery criteria issued on 30 June 2008 and will consider for recovery appeals involving traveller sites in the green belt.
>
> For the avoidance of doubt, this does not mean that all such appeals will be recovered, but that the Secretary of State will likely recover a number of appeals in order to test the relevant policies at national level. The Secretary of State will apply this criteria for a period of six months, after which it will be reviewed.[14]

It was confirmed in a written ministerial statement to Parliament on 17 January 2014 that the Secretary of State would continue to consider recovery of appeals involving traveller sites in the green belt.[15]

The recent recovery of appeals relating to traveller sites in the green belt has been challenged in the High Court.

The Secretary of State's decision to recover appeals relating to traveller sites in the green belt was challenged in the High Court in the case of Moore and Coates v SSCLG [2015] EWHC 44 (Admin) on 21 January 2015. Following the judgement by Mr Justice Gilbart, which found that certain aspects of this policy were contrary to provisions in the Equality Act 2010 and the European Convention of Human Rights, the Government decided to "de-recover" a number of outstanding appeals:

> This Government continues to attach great importance to safeguarding the Green Belt. It will address concerns about the harm caused when there is unauthorised development of land in advance of obtaining planning permission and there is no opportunity to appropriately limit or mitigate the harm that has already taken place. For these reasons, the Secretary of State for

12 This wording differs slightly from the Ministerial Statement as PPS6 was cancelled on 29 December 2009 and replaced by PPS4. However PPS4 was replaced by the National Planning Policy Framework on 27 March 2012.
13 HC Deb 30 June 2008 c44WS
14 HC Deb 1 July 2013 c24WS
15 HC Deb 17 Jan 2014 c35WS

> Communities and Local Government will introduce a new planning and recovery policy for the Green Belt early in the new Parliament to strength protection against unauthorised development. This new policy will apply to all development within the Green Belt. In the meantime he has also decided to de-recover those cases of appeals for Traveller development in the Green Belt on which a substantive decision has not been reached. These will be remitted back to the Planning Inspectorate and, where appropriate, we will re-assess them in light of the new recovery policy.[16]

In a 31 August 2015 letter to Chief Planning Officers in England, the Government set out its intention to have the Planning Inspectorate monitor appeals involving unauthorised development in the green belt. It also said that the Secretary of State would recover a "proportion of relevant appeals in the green belt:

> …the Planning Inspectorate will monitor all appeal decisions involving unauthorised development in the Green Belt to enable the government to assess the implementation of this policy.
>
> In addition we will consider the recovery of a proportion of relevant appeals in the Green Belt for the Secretary of State's decision to enable him to illustrate how he would like his policy to apply in practice. Such appeals will be considered for recovery under the criterion set out in 2008: "There may on occasion be other cases which merit recovery because of the particular circumstances."
>
> After six months we will review the situation to see whether it is delivering our objective of protecting land from intentional unauthorised development.[17]

Renewable energy development

On 10 October 2013 the Secretary of State announced that he would temporarily expand the criteria, for six months, to include recovering appeals for renewable energy development:

> I want to give particular scrutiny to planning appeals involving renewable energy developments so that I can consider the extent to which the new practice guidance is meeting the Government's intentions. To this end, I am hereby revising the appeals recovery criteria and will consider for recovery appeals for renewable energy developments. This new criterion is added to the recovery policy issued on 30 June 2008 and will be applied for a period of six months from today after which it will be reviewed.
>
> For the avoidance of doubt, this does not mean that all renewable energy appeals will be recovered, but that planning Ministers are likely to recover a number of appeals in order to assess the application of the planning practice guidance at national level.[18]

The new Conservative Government has not yet confirmed if it will continue to recover appeals relating to renewable energy development.

On 9 April 2014 the Secretary of State announced that he would continue to consider for recovery appeals for renewable energy developments for a further 12 months.[19] The new Government has not yet said whether it plans to renew this criteria.

---

16 Travellers: Caravan Sites: Written question - HL5936 23 March 2015
17 Letter from Government to Chief Planning Officers in England, *Green Belt protection and intentional unauthorised development*, 31 August 2015
18 HC Deb 10 Oct 2013 c 31WS
19 HC Deb 9 Apr 2014 c12-13WS

Use of neighbourhood plans and housing

On 10 July 2014 the Secretary of State announced that he would like to "consider the extent to which the Government's intentions are being achieved on the ground", in relation to the neighbourhood planning regime introduced under the *Localism Act 2011*. For a period of 12 months the recovery criteria was now been amended to include:

> proposals for residential development of over 10 units in areas where a qualifying body has submitted a neighbourhood plan proposal to the local planning authority: or where a neighbourhood plan has been made.[20]

On 9 July 2015 a further written ministerial statement extended this period for another six months.[21]

Unconventional oil and gas

On 28 July 2014 the Government announced that it would publish new planning practice guidance on its approach to planning for unconventional hydrocarbons (such as shale gas) in National Parks, the Broads, Areas of Outstanding Natural Beauty and World Heritage Sites. For a 12 month period the recovery criteria has been amended to include development concerning unconventional hydrocarbons in these areas.[22]

On 13 August 2015 a Government policy statement on shale gas and oil announced that for a period of two years the recovery criteria would be expanded to include appeals for exploring and developing shale gas:

> Appeals against any refusals of planning permission for exploring and developing shale gas, or against non-determination, will be treated as a priority for urgent resolution. The Secretary of State for Communities and Local Government may also want to give particular scrutiny to these appeals. To this end he will revise the recovery criteria and will consider for recovery appeals for exploring and developing shale gas. This new criterion will be added to the recovery policy issued on 30 June 2008 and will be applied for a period of two years after which it will be reviewed.[23]

This criterion was formally added to the recovery criteria on 16 September 2015 in a written statement to Parliament:

> I may want to give particular scrutiny to planning appeals for exploring and developing shale gas. I am therefore revising the criteria for consideration of the recovery of planning appeals to include the additional criterion: proposals for exploring and developing shale gas. The new criterion is added to the recovery policy of 30 June 2008, Official Report, column 43WS, and will be applied for a period of two years from today, after which it will be reviewed. I am also making a consequential change to planning guidance to reflect this.[24]

---

20 HC Deb 10 July 2014 c25WS
21 9 July 2015 HCWS90
22 HC Deb 28 July 2014 cWS141-2
23 Shale gas and oil policy statement by DECC and DCLG, 13 August 2015
24 HC Deb 16 Sep 2015 c32WS

BRIEFING PAPER
Number 00930, 23 September 2015