

10 Ways to Deal with Design in Appeals

Lessons from UDL’s Design at Appeals meeting, 19 March 2007

Thirteen Boroughs, PINs, UDL, TfL and RIBA were represented at the meeting.

1. Circular 22/80, which said design is not important is a ghost now. It is not relevant! PINs are signed up to the design agenda and consider both functional and visual design as important planning issues. They wish to help ensure good quality places are built.
2. Inspectors can not be experts on the very wide variety of issues addressed in appeals. But design is relevant in around 40% of all planning appeals and is more of a generic than specialised issue. As such PINs have, and will continue to, provide design training for inspectors. They also write guidance on design issues and are looking at the way they articulate design arguments, particularly in light of PPS1 policies, and improve consistency in terms of the design language they use.
3. Inspectors make decisions largely on the basis of the arguments put before them. Therefore the quality of the reasons for refusal and the way these are explained during the appeal are very important. Local Authority evidence must be complete, relevant and well informed. To do this they need to ensure they have good design skills and resources in house.
4. It is not enough to quote lots of policies; if the LPA does not explain the reasoning behind their decision they are less likely to be successful on appeal.
5. Inspectors do not have to refer to national policy (like PPS1) but must refer to the Development Plan, (London Plan and LDFs,) within their decisions. They may very well be basing their deliberations on national policies, but may not say this explicitly. So a lack of reference to PPS1 does not mean design is unimportant!
6. PINs use the test, ‘ask is it good enough to approve, not is it bad enough to refuse’. It is worth LPAs doing the same.
7. Detailed design issues such as the internal design of a block of flats, rear elevations in conservation areas etc ARE relevant within planning appeals.
8. Inspectors do not write their decisions with a mind to future negotiations. They are not allowed to steer development in a particular direction.
9. Evidence might include reference to policy, supplementary guidance, whether formally adopted or not, the advice of design panels, and officer statements. LPAs might be worried because their guidance is not formally adopted, or key officers have left. But as long as they explain why their evidence is relevant to the site and the proposal these problems should not matter. Telling a good story, with proper analysis, will influence the inspector so explain, don’t assert.
10. PINs suggest there are 5 steps to making an appeal decision. They start by reflecting on what is distinctive about the place, then ask what is distinctive about the scheme in terms of both function and what it looks like. Then they consider the ‘values’ put before them through national and local policy, and the appellants, third parties and local authorities arguments. From this they can isolate what they need to decide on and make that decision. If they uphold the appeal they then need to consider conditions.