

EBC response to appellant's choice of appeal procedure ref. LDC/23/95111

The appellant has completed section G3 of the submitted appeal form requesting that the appeal be dealt with through a Public Inquiry (PI).

The appellant has set out their justification for the PI procedure. It is noted that the appellant's chief reason for a PI is that the submitted evidence in the form of 7 signed statutory declarations should be tested through formal examination in chief and through cross examination under oath.

The LPA considers the appeal can be dealt with through either an appeal hearing or written representations and sets out its justification below.

The appeal relates to a Certificate of Lawfulness of Existing Development. Under section 6.2 of the Government's Procedural Guide: Planning Appeals – England, the government sets out a set of criteria helping inform the most appropriate appeal procedure to suit the lodged appeal.

It is noted that the Planning Inspectorate makes the final decision in relation to the appeal procedure but at para 6.2.3 they will consider the views of the appellant and the LPA.

The section goes through each appeal procedure providing advice on the type of appeals that are likely to be considered appropriate for those particular cases. In relation to PIs there are 5 criteria to consider in reaching a decision on the most appropriate appeal procedure.

The LPA have provided a response to each of the criteria:

An inquiry would be appropriate if:

- there is a clearly explained need for the evidence to be tested through formal questioning by an advocate (This does not preclude an appellant representing themselves as an advocate) **The LPA considers that the appellant has not provided a clearly explained need for the evidence to be tested through formal questioning by an advocate. In the appellant's submission they have compared the appeal to an enforcement appeal and assumed similar formal testing by an advocate would be required. The LPA considers the Inspector should be able to test the evidence through questioning the relevant parties to clarify matters. The assessment of an LDC is based upon a balance of probability, taking into consideration the evidence before the decision maker.**
- the issues are complex (for example where large amounts of highly technical data are likely to be provided in evidence) **The issues are not complex and do not require large amounts of technical data to be provided. The issues relate to the use of the land over time which can be adequately examined through written and photographic evidence.**
- the appeal has generated substantial local interest to warrant an inquiry as opposed to dealing with the case by a hearing (where the proposal has generated significant local interest a hearing or inquiry may need to be considered. In such circumstances the local planning authority should indicate which procedure it considers would be most appropriate taking account of the number of people likely to attend and participate at the event. We will take that advice into account in reaching the decision as to the appropriate procedure) **The application was not contentious with no public comments submitted. It is therefore unlikely any**

members of the public would attend the appeal meeting and it would not be in the public interest to hold a public appeal meeting on these grounds alone.

- in an enforcement appeal, evidence needs to be given on oath (for example where witnesses are giving factual evidence about how long the alleged unauthorised use has been taking place) As stated above this is not an enforcement appeal. Reasonable questioning from the Planning Inspector of the relevant parties should be sufficient to clarify matters and establish a conclusion.
- in an enforcement appeal, the alleged breach, or the requirements of the notice, are unusual and particularly contentious. The appeal does not relate to an unusual or particularly contentious development. The appeal relates to the assessment of land use over time and is straight forward in terms of assessment.

Based upon the above explanation the LPA respectfully requests that the appeal is determined through the appeal hearing procedure or written representations in accordance with Gov advice.