

**PLANNING INQUIRIES: PROCEDURE AND PREPARATION**

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**A. PRELIMINARIES**

1. These notes:

- are intended to provide a framework, a platform for comment and discussion, rather than the basis for a lecture;
- do not contain an exhaustive statement of inquiry procedure but refer to key elements of it<sup>1</sup>;
- are necessarily a personal reflection of their author's experience and views with which other practitioners (including members of these chambers) may not whole-heartedly agree.

2. Economy is a key feature of current inquiry practice and an attempt has been made to keep these notes reasonably short. These abbreviations have been used:

App.	Applicant or Appellant (on call-in or at appeal)
LPA	Local Planning Authority
O/S	Outline Statement
PIM	Pre Inquiry Meeting
PINS	The Planning Inspectorate
POE	Proof of Evidence
RR	Reason for Refusal

<sup>1</sup> There is no substitute for reading the Rules or DETR Circular 05/00. The PINS website ([www.planning-inspectorate.gov.uk](http://www.planning-inspectorate.gov.uk)) is a further helpful source of assistance.

The Rules	The Town and Country Planning (Inquiries Procedure)(England) Rules 2000 SI 1624
S/C	Statement of Case or Rule 6 Statement
S/D	Start Date
SOCG	Statement of Common Ground
SOS	Secretary of State

References in square brackets are to the Rules.

## **B. PRE-INQUIRY: PROCEDURE**

3. The Rules implement an overhaul of inquiry procedure. They provide a framework within which it is sought to maximise pre-inquiry disclosure and agreement and to secure the efficient use of inquiry time. But no two cases are the same and it is important to emphasise the inspector's discretion to make such procedural directions as he considers appropriate both before and at the inquiry.
4. Commencing from the S/D (when PINS notify the App. and LPA that he has received the documentation necessary to entertain the case), a series of stages can be identified:

### **Stage 1 (within 2 weeks of the S/D)**

5. The LPA provides to PINS a completed questionnaire giving them the essential background to the case and PINS elicit the views of any statutory party who has made representations to the LPA [4].

### **Stage 2 (within 16 weeks of the S/D)**

6. A PIM will be held if necessary if the inquiry is expected to last less than 8 days or unless unnecessary if it is expected to last 8 days or more [5]. It follows that Stage 2 is optional. Notification of a PIM will trigger provision by the App. and LPA of an O/S. There is a discretion to hold further PIMs as appropriate – whether a PIM has been triggered by Rule 5 or not [7].
7. The O/S procedure has 2 functions: to provide advance warning of the participants' arguments and to provide the information required by the inspector to structure and programme the

inquiry. To these ends, an O/S should contain: the general lines of the case (identifying how they relate to matters identified by the SOS as those upon which he would particularly wish to be informed), a time estimate, a list of likely witnesses and an indication of those to be cross-examined, and a list of special studies taken into account or being prepared<sup>2</sup>.

8. A PIM is public and procedural. It is held by the inspector due to conduct the inquiry to enable him to make procedural directions ahead of the inquiry. The inspector will provide an agenda identifying the issues he wishes to consider. Each party should attend the PIM having considered what directions they would wish to see made and its ability to comply with the directions it can anticipate. Directions commonly made concern (for example)<sup>3</sup>:
  - i. service by Third Parties of S/Cs and disclosure of their POEs;
  - ii. core or inquiry documents;
  - iii. document and proof labelling and numbering;
  - iv. the discussion and agreement of material;
  - v. arrangements for disclosure of evidence generally (when? how? how many copies?);
  - vi. the 'batting order';
  - vii. time estimates and a timetable.

The PIM should be followed by a written note of the inspector's directions. The inspector's note should include a timetable [8] (these have become a prominent feature of all inquiries regardless of length).

### **Stage 3 (within 6 weeks of S/D or 4 weeks of PIM)**

9. The LPA is to provide its S/C to PINS for onward transmission and the App. is to reciprocate 2 weeks later [6]. These are full statements of the case that each party intends to promote at inquiry, accompanied by a list of any document to which they intend to refer or put in evidence.

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<sup>2</sup> See Circ. 05/00 Annex 4 paras. 18-20.

<sup>3</sup> See Circ. 05/00 Annex 4 paras. 21-24.

The inspector may require further information if he considers that that provided is inadequate. The App. and LPA may comment on each other's S/C within 9 weeks of the S/D.

10. The S/C is an important staging post. It should be 'full' (to avoid the risk of an adjournment) without commitment to specifics that the party responsible for it is not confident of being able to maintain at inquiry (to avoid what may be damaging reversals at a later date). The document list is sometimes the most important part of the statement. It should be complete but – bearing in mind the potential requirement to provide copies (whole documents or extracts) – not indiscriminate. It must be established that the team has access to copies of each of the listed documents. The right to comment on another party's S/C is rarely exercised.

#### **Stage 4 (not less than 4 weeks before the inquiry)**

11. Notice of the date, time and place of the inquiry is to be given to all entitled to appear and a series of detailed publicity requirements are to be complied with [10].

#### **Stage 5 (4 weeks before the inquiry)**

12. POEs should be with PINS 4 weeks before the inquiry. PINS should distribute them to other parties [13]. A SOCG between the App. and LPA is to be sent to PINS [14]. Each POE is to be accompanied by a summary unless it contains <1500 words<sup>4</sup>.
13. The substance and format of POEs and summaries are considered below. The importance of summaries should not be underestimated; they may be all that the inspector has been able to read before the inquiry. SOCGs commonly – but need not - take the form of statements of those (less-contentious) elements of the App.'s POEs accepted by the LPA.
14. The demands of proof preparation commonly mean that summaries and SOCGs emerge after the formal delivery of proofs. Where this happens it should always be appreciated that a - more or less significant - risk is being run of problems at the outset of the inquiry. The likelihood of problems is increased by PIN's persistent refusal to accept (and therefore forward to inspectors) material submitted after the date for submission provided by the Regulations. The principal parties can mitigate these problems by mutual exchange.

### **C. PRE-INQUIRY: PREPARATION OF THE EVIDENCE**

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<sup>4</sup> NB this note contains around 3,750 words.

14. Decisions should have been made at an early stage about the evidence that needs to be produced or held in reserve and the team of witnesses that should be brought together to present it. The advocate is responsible for ensuring that the POEs brought together are adequate in terms of their scope, clear and consistent (internally and one with another). The earlier he is able to participate in decisions about the evidence, the better. He should certainly be involved before the S/C is submitted and maybe – depending on the weight of the subject matter - before the appeal has been submitted.
15. A series of consultations, conferences and meetings of experts should be arranged at appropriate intervals (eg pre PIM, pre S/C, post S/C, post receipt of the other side's POEs) to enable preparation of the case to be advanced. A firm grip needs to be retained on the practicalities: who is doing what, by when, with whom, and how many copies are they producing?
16. In the light of both parties' obligations pursuant to the Rules, it is sensible – assuming that time permits – to consider what areas of evidence might be agreed in one or more SOCG between the App. and the LPA (eg Site Description, Planning History, list of relevant policies or policy documents, population, traffic flows, noise levels, levels of expenditure etc). Agreement on issues will enable evidence to be prepared on a common basis and reduce the volume of evidence to be produced.
17. In similar vein, a list of core documentation may be agreed. This should enable a common referencing system to be adopted and reduce the volume of appendices. All documents of any kind should be identifiable by a discrete reference in the top right hand corner attributed to it before its submission to the inquiry.
18. POEs should be clearly structured and presented. They should<sup>5</sup>:
  - i. be clear and complete;
  - ii. start with an index, a personal introduction and a statement of the scope of the evidence given (it should identify the RR(s) to which it relates, it should - if the SOS has issued a statement of issues about which he wishes to be informed - identify the issue(s) to which it relates, and - if it is intended to respond to specific objections - it should identify them);
  - iii. end with a clear conclusions section;

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<sup>5</sup> See Better Presentation of Evidence in Chief Guidance on [www.planning-inspectorate.gov.uk](http://www.planning-inspectorate.gov.uk)

- iv. be printed in double spacing with an adequate (note-taking) margin (check whether the inspector prefers double- or single-sided printing);
- v. be paginated and contain numbered paragraphs and clear cross-references (inc. page & paragraph numbers) to appendices or other documents;
- vi. be no longer than necessary, avoiding repetition and verbosity;
- vii. be prepared having regard to likely lines of cross-examination; and
- viii. avoid unnecessary recitation of material (eg policy or technical matter) with which the inspector should sensibly be taken to be familiar or that is to be made available to him in other forms (whether in appendices or core documents).

19. POEs should be accompanied by a bundle of appendices. This should be kept to a minimum and contain no more than those materials necessary to a proper understanding of the POE. Documents or extracts already included within the list of core or inquiry documents should not be duplicated. The appendices should:

- i. start with an index;
- ii. be separately bound and separated from each other by dividers;
- iii. be at A4 size or foldable to A4;
- iv. be paginated;
- v. (in the case of extracts) be accompanied by an indication of the identity and date of the source with titles and headings placing the extract within the source; and
- vi. be highlighted or sidelined to identify the particular point to which the inspector's attention is being drawn.

20. It may be that plans or maps should be reduced and incorporated within an A3 size brochure – provided it is flexible enough to be folded to A4. It may also be preferred to put together a composite bundle to which more than one witness refers.

21. Tables, plans, photos, glossaries, conclusions, summaries, supplementaries/rebuttals, electronic copies and discarded material each merit particular comment:

- i. Tables are a helpful way of communicating data. Their format and content needs to be considered for accuracy and clarity. It is important to decide on their location; all in the appendices with summaries or the more significant tables copied into the text is a convenient format;
- ii. The true scale should be shown on each plan or it should be marked 'not to scale';
- iii. Photos should be individually numbered, the date and time on which they were taken identified, the focal length of the lens stated and an OS plan produced showing the viewpoints from which each was taken;
- iv. The need for clarity (inquiries are public) may require a glossary of technical expressions;
- v. The conclusions section should not introduce new material. 'Summary and Conclusions' sections are routinely used to satisfy the requirement to provide a summary. But bear in mind that it is important to establish that the text has in fact done both jobs;
- vi. Each summary proof should be a faithful reflection in short form of the main POE (same sequence, headings and corresponding text);
- vii. Although the rules are silent about Supplementary or Rebuttal POEs, they are a key feature of many inquiries. Each party will upon exchange consider the other's POEs and it may be decided that points raised by the other side are most effectively dealt with by the submission of evidence in response rather than cross-examination. If so, a Supplementary or Rebuttal POE will be necessary addressing the points at issue. This should be focussed (with specific cross-reference – but without detailed rehearsal or repetition - to the evidence being rebutted). The temptation to re-state evidence already given should be resisted. It will furthermore be necessary to give reasonable notice of any further evidence to the other side (what is reasonable in this context depending on all the circumstances);
- viii. In addition to hard copies, the inspector may require electronic versions of POEs and other documents to be submitted in a format that he is likely to specify; and

- ix. The final POEs will contain the evidence that it is thought appropriate to parade. There will inevitably be discarded material. A system for its storage should be set up – just in case.

#### **D. AT THE INQUIRY**

22. The inquiry will commence with a formal opening. The inspector will (not necessarily in this order):

- i. identify himself and confirm the subject-matter before him;
- ii. take the names of all those (starting with the App. and the LPA) who wish to speak at the inquiry and note their witnesses (best done by submission of written appearances);
- iii. confirm the status of the application and drawings before him;
- iv. take time estimates and discuss timetabling;
- v. verify that the principal parties have received each other's POEs satisfactorily and may ask for spares to be distributed to third parties;
- vi. investigate the existence of a SOCG (if not submitted with the POEs);
- vii. usually confirm that he has made an informal visit to the site and viewed it from a public vantage point but will make a formal accompanied site visit during or following the inquiry; and
- viii. identify what he considers to be the principal issues and invite any comment on them [15] (immediate comment is unlikely).

23. The single most substantial change introduced by the Rules is the requirement that – subject to the inspector's determination otherwise – the LPA should lead its evidence first. This is that it should focus the inquiry on the harm claimed to be caused by the proposed development. The App., however, retains the right of final reply [15].

24. Important points to bear in mind throughout the inquiry include:

- i. the advocate has a duty to the Tribunal and may not mislead it<sup>6</sup>;
- ii. the inspector is seeking to take a note of proceedings and everything you do should be sensitive to that fact;
- iii. the Rules provide the inspector with the power to curtail the hearing of evidence, cross-examination or any other matter that he considers irrelevant or repetitious. No experienced advocate would consciously be either; and
- iv. the recently introduced practice whereby advocates remain seated when 'questioning or otherwise conversing' with any witness<sup>7</sup>.

### Opening Statement

25. What is required is a brief outline only of the case to be put, preferably in writing.

### Evidence in Chief

26. The witness reads the summary alone though the main POE is to be treated as tendered in evidence and it is towards the main POE that cross-examination should be directed (but look for differences of emphasis or substance between them).

27. It is common to ask a witness to comment on specific points arising after he has read his summary. In the LPAs case, this may arise – for example – from the inspector's identification of the main issues or a simple factual error in the App.'s evidence. There is more scope for this to occur with the App.'s witnesses since points may have arisen during the LPA's case in respect of which it may be helpful for the inspector to have a note of the witness's comment.

### Cross-Examination

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<sup>6</sup> For a fuller summary of the role and duties of an advocate see the article by Alice Robinson published as Good Practice Guide No.19 in the Planning Inspectorate Journal (No. 25) (Summer 2002) on [www.planning-inspectorate.gov.uk](http://www.planning-inspectorate.gov.uk).

<sup>7</sup> See The Conduct of Inquiries on [www.planning-inspectorate.gov.uk](http://www.planning-inspectorate.gov.uk).

28. Cross-examination is first and foremost a process of probing the witness's own POE. There is no magic formula or blueprint<sup>8</sup>. There should be limited scope for dispute about matters of fact at a public inquiry where debate is likely to focus on differences of opinion between experts. It is necessary in this context to take a balanced view of what can realistically be achieved.

29. Cross-examination should have been thoroughly planned and prepared in advance. It should concentrate on identifying the main issues for the inspector and examining what the witness will agree that would tend to assist their determination favourably to the advocate's client. The likely lines of questioning need to be garnered from/discussed with your own expert and structured into a logical sequence of closed questions to which the answers are known. Traipsing page by page through the witness's POE is unattractive and not a serious option.

30. Questions should be:

- i. necessary;
- ii. focussed or targeted and direct;
- iii. structured in a manner that suits the advocate;
- iv. clear, precise and persistent; and
- v. courteous.

31. In terms of subject matter, it may be that questions should be put on the basis (for example) that:

- i. the issues - neutrally put - can be identified and agreed for the inspector;
- ii. it is apparent that the witness has overlooked some relevant material (ie been selective);
- iii. he has not provided evidence to support an opinion expressed;
- iv. he has misunderstood the material relied upon;

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<sup>8</sup> For a fuller discussion of the benefits and purpose of cross-examination see the article by Lionel Read QC at (1997) JPEL 24.

- v. points unhelpful to his case and implicit in the POE can be brought out and their significance be agreed;
- vi. adoption of an alternative, credible factual assumption would be agreed to point to a different conclusion; or
- vii. the POE betrays a lack of balance or objectivity.

32. Witnesses should have a clear appreciation of the areas of their evidence that are likely to attract the cross-examiner's attention and how they intend to respond in problem areas. POEs are commonly marked up with useful cross-references. Under cross-examination itself, witnesses should:

- i. go into Purdah (see below) once evidence in chief has been completed;
- ii. listen to each question put;
- iii. make sure that they understand the question and ask for it to be repeated or clarified if they do not;
- iv. answer it honestly and fairly, calmly and courteously;
- v. offer to provide later or in writing an answer unknown or forgotten in the heat of the moment;
- vi. decline to answer questions beyond their field of expertise;
- vii. address answers to the inspector, for whose benefit the evidence is given.

The evidence is the witness's and to ensure that it is (and is seen) not to be contaminated by contributions from members of his team, a witness should not speak to other team members (ie should go into Purdah) once under cross-examination until the process of giving evidence has been completed.

### **Re-Examination**

33. Re-examination is the process by which an advocate – by asking questions that do not suggest what the answer to them should be, ie do not lead – may seek to give his own witness the

opportunity to repair some damage done in cross-examination. It is a testing exercise for advocate and witness and is generally best approached on a 'do minimum' basis.

### **Inspector's Questions**

34. It is vitally important to note carefully the terms of the questions that may matter most – the inspector's. They may give important clues about what the inspector considers to be important or his current thinking on some area of the case.

### **Objectors**

35. Cross-examination of lay objectors will infrequently assist the inspector in his task of reaching a recommendation or decision and is generally to be resisted. Exceptions that sometimes arise are: where a factual error has been made, questions about the nature and extent of the membership of an amenity society and its consideration of an application, and questions about how a petition has been collected or its terms or how letters of objection have been elicited (the unfortunate canvassing letter).

### **Conditions, Obligations and the Site Visit**

36. The LPA should provide with its evidence a schedule of the conditions that it would wish to see imposed on any consent. These should have been discussed by the App. and LPA together by that point in the inquiry when the inspector seeks both principal parties' views on them in terms both of their substance and form<sup>9</sup>.
37. There is much to be said for starting the inquiry with an advanced draft of any Obligation so that points arising may be taken on board. The inspector should receive any completed Planning Obligation – whether unilateral or an agreement – before the close of the inquiry. It is frequently the case that some formalities are outstanding, in which case the inspector will set a timetable for its submission to PINS.
38. Whether immediately prior to or following closing submissions the inspector will finalise arrangements for an accompanied visit of the appeal site/premises. He will want to know who is going from each side, to decide where/when they should meet and how they will get to the site/premises. It is sensible to keep numbers to a minimum.

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<sup>9</sup> The inspector will be concerned to probe compliance with Circular 11/95.

### **Legal and Closing Submissions**

39. Any Legal Submissions should be put in writing and copies of relevant cases should be produced.
40. The Rules require written closing submissions in cases lasting 8 days or more [15]. But the practice is to submit submissions in writing wherever practicable.
41. Closing submissions should:
- i. be clearly structured;
  - ii. address each of the issues arising and bring together for the inspector references to those important parts of the evidence may assist him to determine the issues arising favourably;
  - iii. deal with those parts of the evidence that may not have gone so well; and
  - iv. consider the points raised in the inspector's questions.
42. It may be that the inspector will require that – or that he may be assisted if – the closing submissions amount to or include a statement of your client's case in the light of the evidence heard at the inquiry which may be reproduced in his report or decision. Whether this is so or not, it follows from the points made above that – though it may be possible to form a provisional view on format – the contents of really helpful Closing Submissions cannot be settled far in advance.

### **Costs**

43. Any applications for costs should be made – preferably, again, in writing - following the conclusion of Closing Submissions.

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