

Planning hearings and inquiries during COVID-19: alternatives to hearings in person?



David Elvin QC (Chair)

**Hearings and inquiries:
Northern Ireland and the
Planning Appeals Commission (PAC)**

PAC (1)

- 18 March 2020 “Coronavirus (COVID-19) PACWAC approach”
 - “... as far as possible we will try and continue to keep casework moving. We are however live to the exceptional situation that we are currently facing and may have to act quickly to changing circumstances in ways which do not align with our normal procedures.... ”
 - Conversion of appeals to written reps and cancellation of accompanied site visits and warnings about difficulties with hearings/inquiries
- 19 March list of appeals now to be written reps
- 24 March office closes
 - “PACWAC is very aware of the important public service that we provide but in dealing with this unprecedented situation in line with government advice our office will be closed effective from 9am on 24 March 2020.
 - All arrangements for submission of evidence and proceedings are suspended. Once our offices are open we will be in contact to make alternative arrangements.”

PAC (2)

- 3 April similar office closure position though
 - “During this time we are preparing advice and guidance on how we take the work of the Commission forward in this unprecedented situation.
 - We will continue to upload decisions to our website and issue them electronically where we hold email contact details.”
- 1 May reopening of office on 11 May (mornings only and reduced capacity)
- Guidance 1 May 2020 “**PACWAC COVID-19 Temporary Response Measures (Version 1)**
 - No hearings or inquiries where WR not suitable
 - “will be looking at the possibility of using alternative technologies pending an easing of restrictions. This presents a number of challenges which we will have to work through. A separate protocol for hearings to be conducted using alternative technologies will be produced as necessary.”
- No protocol published

PAC (3)

- Decisions continue to be issued, and reports submitted, dealing with hearings prior to lockdown and written representations cases.
- 2 June 2020
 - “Our initial focus has been on dealing with new appeals and correspondence submitted during the office closure as well as other essential administrative matters. We are now in a position to move to the next phase of our recovery plan and as of Monday 1 June we will be writing to parties to set out revised arrangements for the submission of evidence on cases that are before us.
 - We continue with our efforts to provide an alternative to hearings in person pending an easing of government restrictions. In the interim we will be requesting evidence from parties in cases where an informal hearing has been requested in order that we can move forward at the earliest opportunity once a solution is in place.”
- Still no protocol on alternatives to hearings in person
- See also Chief Planner’s Update 6 (1 May 2020)

**Hearings and inquiries:
England and Wales and the
Planning Inspectorate (PINS)**

Timeline

- 12.3.20: PINS initial guidance
- 13.3.20: Written Ministerial Statement HCWS159, guidance on enforcement
- 18.3.20: All inquiries, hearings, and accompanies site visits postponed
- 20.3.20 & 23.3.20: Submissions from the Planning bar
- 23.3.20: Planning Update Newsletter from outgoing Chief Planner Steve Quartermain
- 24.3.20: All site visits suspended
- 01.04.20: PINS press release. PINS to begin exploring virtual methods of holding inquiries, hearings etc. Sets up working group. Will look for pilot cases. General principles -
 - Public confidence must be upheld
 - Events must not be downgraded
 - Recommendations and decisions must be fair and robust

Timeline (2)

- 16.4.20: PINS press release
 - Virtual working practices being progressed “behind the scenes”
 - First digital pilot to be held in May
 - Trialling “virtual site visits”
- 28.4.20: PINS press release:
 - 1,625 decisions issued since lockdown
 - Site visits, hearings and inquiries postponed until mid-May
 - First digital hearing on 11.5.20
 - Digital site visit trial involving 13 inspectors
 - Five local advisory visits to help LPAs progress local plans
 - Targets (following trials)
 - 3 months – roll out good practice
 - 6 months – develop capability to conduct fully digital and hybrid events

Latest developments

- 13.05.2020: Changes to “restart the housing market”
 - Written Ministerial Statement (HCWS235)
 - PINS Guidance
 - MHCLG Guidance
 - Government stops publishing average timescales
- 3 month/6 month timeline for move to digital events accelerated. Aim to progress cases with oral examination of complex issues, high levels of public interest, or where legislation requires
- Site visits to recommence where essential, but 60 cases in “no site visit” pilot
- Jenrick in House of Commons: all hearings to be digital “within weeks”

Ministerial Statement 13.5.20 (HCWS235)

- **Move to digital -**

Local planning authorities and the Planning Inspectorate drive the planning process forward and should ensure that it continues to operate effectively to support economic recovery. Moving to digital events and processes will be critical. This means adapting to working virtually, including virtual hearings and events (such as using video-conferencing and/or telephone) and making documents available for inspection online. The Government expects everyone involved in the planning process to engage proactively...

The Government recognises that the method by which hearings and events are conducted is a matter for the Inspectorate, operating in accordance with their legal obligations, and it expects these arrangements to be made as the default method of operation in the vast majority of cases ...

The Government expects opportunities for virtual hearings and processes to be maximised. It will draw from current and emerging practice to inform policy and process in the longer term.

- **Site visits -** to be safe and employ social distancing

Ministerial Statement (cont.)

- **Virtual Events -**

The Government fully supports the Planning Inspectorate's programme for moving to digital inquiries, hearings, meetings and other events. [...]

The Government expects Inspectors and Examining Authorities to take decisions about whether and how virtual events should proceed and to consider the practical measures needed to ensure fair participation.

The Courts have led in demonstrating the successful use of technology to continue their work. Recognising that the use of technology to support virtual planning events may be challenging, the Government expects that appropriate measures are put in place by the Inspectorate to test the technology and ensure that it enables fair participation. It also expects the Inspectorate to identify those more exceptional circumstances where a virtual event may not be appropriate, making decisions about how to proceed based on the facts of each particular case.

- **Digital inspection of documents** - *“should be the default position across all planning regimes, and it is actively exploring all options to achieve this”* including considering options to ensure access is available to all

Other actions: local authority meetings

- Legislation to allow remote local authority meetings, provision of information on websites, and provide remote substitutes to constitute being “open to the public”
- In England & Wales -
 - Local Authorities and Police and Crime Panels (Coronavirus) (Flexibility of Local Authority and Police and Crime Panel Meetings) (England and Wales) Regulations 2020 (SI 2020/392)
 - Local Authorities (Coronavirus) (Meetings) (Wales) Regulations 2020 (SI 2020/442)
- In Northern Ireland
 - Local Government (Coronavirus) (Flexibility of District Council Meetings) Regulations (Northern Ireland) 2020/74

Other actions: use of electronic communications

- England & Wales -
 - Town and Country Planning (Development Management Procedure, Listed Buildings and Environmental Impact Assessment) (England) (Coronavirus) (Amendment) Regulations 2020 (SI 2020/505)
 - Planning Applications (Temporary Modifications and Disapplication) (Wales) (Coronavirus) Order 2020 (SI 2020/514)
 - The Traffic Orders Procedure (Coronavirus) (Amendment) (England) Regulations 2020 (SI 2020/536)
- Northern Ireland (following Minister's announcement on 27.4.20) -
 - pre-application consultation requirements are temporarily relaxed by the Planning (Development Management) (Temporary Modifications) (Coronavirus) Regulations (Northern Ireland) 2020/72. See also DfI Emergency PAAC Guidance (May 2020)
 - EIA already allows for electronic communications Planning EIA Regs 2017 regs. 2(5)-(10), 44(11) and 46. Need to be careful whether other EIA regimes allow the same. Roads Order 1993?

PINS update 28 May

- 28.05.20: further update from PINS
 - 2,500 cases decided since lockdown
 - Site visits to continue where safe. 600 programmed in May.
 - 20 decisions issued in “no site visit” pilot.
 - 10 Virtual hearings in June, “vast majority” of postponed hearings to commence in July
 - 8 Virtual inquiries in June, remainder to be arranged “at the earliest opportunity”
 - Four NSIPs progressed to final stages, 15 virtual hearings in June
 - One local plan via telephone conference in June, one conducted virtually in July
- In light of this and timeline outlined on 13.5.20, expect wider use of virtual events and reduction in site visits in July and shortly thereafter.

PINS 28 May

- *“Having explored the matter our current position is that physical events cannot be undertaken safely for both our staff and for participants. For the foreseeable future, therefore, we will not be arranging face-to-face inquiries or hearings. Wherever reasonable to do so we will seek to rearrange for site visits rather than events.*
- *The first fully virtual hearing took place on Monday 11 May as a pilot. Building on this successful trial we have started to make arrangements for at least 10 hearings to be held virtually in June. We are also working on re-arranging the vast majority of all postponed planning hearings in June to take place as soon as possible in the following months.*
- *On planning inquiries we have been and are holding numerous case conferences with a view for around 10 of these to turn into virtually held inquiries in June. We are expecting the remaining ones to be re-arranged at the earliest opportunity.”*
- On PINS’ April 2020 statistics determinations down c 200-400 but unclear what the current position is since the period covered the beginning of lockdown and Easter

Permanent change?

- Clear from this response that slow pace of progress and the adjournment of many hearings and inquiries is to allow PINS to develop a standard procedure for cases across all types of casework in future, and not merely to deal with the current crisis. It does appear to have meant that there have been significant postponements of hearings and inquiries and plan examinations not simply to find a means to deal with lockdown but for a permanent change:

*We are learning from each event **with the aim of making virtual events our standard option for the majority of events in future.** This approach covers all hearings and inquiries for our different types of casework (including planning appeals, national infrastructure, local plans) that are currently held face to face.*

- Not yet clear whether the extended timescale originally mentioned is likely to be speeded up and by how much in light of the Minister's Statement

Court hearings of planning cases

Court hearings

- Northern Ireland
 - Generally only urgent JRs progressed
 - Administrative reviews of JRs in w/c 27.4 and 04.5, aim to gradually increase key non-contentious business
 - Interim Practice Direction on Remote Hearings issued 29.5.20
- England & Wales
 - Issue of guidance by 31.3.20 - remote hearings default position
 - Planning Court (and Admin Court) urgent business continues, non-urgent business progressing but with slight delays – remote hearings
 - Holgate J as lead judge of the Planning Court has issued guidance via professional channels (e.g. PEBA) on best practice, including using “core” bundles, and only “essential” bundles and authorities, and abandoning meritless points
 - LCJ has said courts system will not go back to pre-COVID ways

Thank you for listening

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