

Welcome to Landmark Chambers' 'Virtual Inquiries: a guide' webinar

The recording may be accessed [here](#).

Your speakers today are...



James Maurici QC (Chair)



Sasha White QC

Topic:
What is the current
position of the
Planning
Inspectorate to
virtual appeals?



Richard Moules

Topic:
The case
management
conference and
preparation for
virtual appeals



Anjoli Foster

Topic:
Preparation of
evidence for virtual
inquiries

WHAT IS THE CURRENT POSITION OF THE PLANNING INSPECTORATE TO VIRTUAL APPEALS?



SASHA WHITE Q.C.

INTRODUCTION [1]

- THREE CURRENT LAWFUL WAYS OF DETERMINING A PLANNING APPEAL UNDER SECTION 78 OF THE TCPA 1990:
 - WRITTEN REPRESENTATIONS.
 - HEARINGS.
 - PUBLIC INQUIRIES.
- VAST MAJORITY DETERMINED BY WRITTEN REPRESENTATIONS. [91%]
- THEN HEARINGS [7%]
- THEN PUBLIC INQUIRIES [2%]
- BUT NOW NEW MODE OF DETERMINATION – VIRTUAL APPEAL USING VIDEO AND TELEPHONE TECHNOLOGY TO DETERMINE AN APPEAL UNDER THE TCPA 1990.

INTRODUCTION [2]

- COVID 19 HAS HAD MANY EFFECTS BUT IN TERMS OF VIRTUAL APPEALS THERE HAS BEEN A COMPLETE TRANSFORMATION IN THE APPROACH OF PINS.
- REMEMBER UNTIL MARCH 2020 **NO VIRTUAL EVENT** HAD BEEN HELD BY PINS.
- NOW IN JUNE 2020 THERE IS A SCHOOL OF THOUGHT THAT VIRTUAL APPEALS WILL BE THE NORM IRRESPECTIVE OF WHETHER COVID IS A FACTOR OR NOT IN THE LONGER TERM.
- FOUR SCENARIOS:
 - OPTION 1 – NO VIRTUAL TECHNOLOGY USED IN THE APPEAL PROCESS.
 - OPTION 2 – ONLY VIRTUAL TECHNOLOGY USED IN THE APPEAL PROCESS.
 - OPTION 3 – PARTIAL HYBRID APPROACH – PARTIAL VIRTUAL TECHNOLOGY ON SAME MODE OF DETERMINATION [I.E. HEARING OR INQUIRY]
 - OPTION 4 – COMPLETE HYBRID APPROACH – PARTIAL VIRTUAL TECHNOLOGY AND DIFFERENT MODE OF DETERMINATION ON THE SAME APPEAL [PARTIAL HEARING/PARTIAL INQUIRY/ PARTIAL VIRTUAL HEARING/PARTIAL INQUIRY [SEE THE PLANNING BILL]

THE CHRONOLOGY OF COVID 19 ON PINS

- **10 MARCH 2020** – COMMENCEMENT OF PUBLIC INQUIRY AT WOKINGHAM – INSPECTOR RELATES TO THE PARTIES – NO POSITION TAKEN BY PINS ON COVID 19 CURRENTLY.
- **1 APRIL 2020** – PINS POSTPONE ALL HEARINGS, SITE VISITS AND INQUIRIES. ANNOUNCE THAT THEY ARE INVESTIGATING WAYS TO MITIGATE THIS THROUGH THE USE OF TECHNOLOGY.
- **5 MAY 2020** – PINS REMOVE STATISTICS RELATING TO THE AVERAGE TIMESCALES FOR THE DETERMINATION OF INQUIRIES.
- **11 MAY 2020** – FIRST HEARING DONE AS A PILOT BY PINS.
- **13 MAY 2020** – FURTHER PINS UPDATE ON APPEALS ANNOUNCING THE RECOMMENCEMENT OF SITE VISITS.
- **28 MAY 2020** – FURTHER PINS UPDATE ON APPEALS.
- **26 JUNE 2020** – FURTHER PINS UPDATE ON APPEALS

WHAT HAS HAPPENED IN THE LOCKDOWN?

- OVER 3500 DECISIONS ISSUED.
- UNDER NORMAL CIRCUMSTANCES PINS WOULD HAVE EXPECTED TO HAVE ISSUED 5600 IN THAT PERIOD.
- WRITTEN REPRESENTATIONS VAST MAJORITY OF APPEALS DETERMINED AND ON A PILOT BASIS WITHOUT VISITING THE SITE.
- AROUND 60 APPEALS BEING PROGRESSED AS PILOTS USING PHOTOGRAPHS OR VIDEO EVIDENCE TO DETERMINE THE APPEAL.
- 13 LOCAL PLAN LETTERS PUBLISHED.
- 600 SITE VISITS IN MAY.
- 15 HEARINGS TAKEN PLACE IN JUNE.
- PLANNING INQUIRIES ARE BEING CONCLUDED BY WRITTEN REPRESENTATIONS HAVING STARTED AS PUBLIC INQUIRIES [WOKINGHAM – GLADMAN INQUIRY]
- 10 PLANNING INQUIRIES VIRTUALLY HELD IN JUNE
 - INCLUDING 6 DAY PUBLIC INQUIRY RELATING TO HOUSING IN CHORLEY, LANCASHIRE.
- SOUTH OXFORDSHIRE EIP HELD AS WELL BY TELEPHONE.
- 15 HEARINGS FOR NATIONAL INFRASTRUCTURE PROJECTS IN JUNE AS WELL.

THE CURRENT POSITION IN PRACTICE

- PINS WILL NOT BE ARRANGING FACE TO FACE HEARINGS OR INQUIRIES “FOR THE FORESEEABLE FUTURE”.
- CURRENT PRACTICE APPEARS TO BE:
 - PROGRAMMING OF INQUIRIES WITH FLEXIBILITY TO DETERMINE HOW THEY WILL BE DETERMINED IN FUTURE.
 - PROGRAMMING OF HEARINGS WITH FLEXIBILITY TO DETERMINE HOW THEY WILL BE DETERMINED IN FUTURE.
- UNQUESTIONABLY THE POSITION WILL CHANGE AGAIN!
- WHAT IS NOW HAPPENING IS THAT PINS ARE ASKING APPELLANTS AND LOCAL PLANNING AUTHORITIES ABOUT THEIR VIEWS ON HOLDING VIRTUAL APPEALS.
- WORTH CONSIDERING THE ARGUMENTS BOTH WAYS

THE FUTURE

- NEXT 2-3 MONTHS LIKELIHOOD IS THAT MANY MORE VIRTUAL APPEALS AND EIPS WILL TAKE PLACE.
- NO QUESTION THAT PINS SERIOUSLY CONSIDERING VIRTUAL INQUIRIES PERMANANTLY.
- UNLIKELY TO BECOME THE NORM OR ONLY MEANS OF DETERMINATION DUE TO PROBLEMS WITH FULL PARTICIPATION FROM THIRD PARTIES.
- INSPECTORS FAVOUR PHYSICAL PRESENCE.
- ADDITIONALLY LOOKING AT ZOOM UNQUESTIONABLY CAUSES EXHAUSTION AND IS MUCH MORE PHYSICALLY DEMANDING.

THE PROS AND CONS OF VIRTUAL APPEALS

- UNQUESTIONABLY CHOOSING A VIRTUAL EVENT WILL RESULT CURRENTLY IN QUICKER DETERMINATIONS.
- A VIRTUAL EVENT IS A VOYAGE OF DISCOVERY FOR ALL.
- NOT NECESSARILY QUICKER IN TERMS OF TIMESCALE OF PROCEEDINGS BECAUSE OF THE MORE RESTRICTED HOURS.
- A VIRTUAL EVENT WILL DEPEND HUGELY ON THE INSPECTOR HOLDING THE APPEAL.
- A VIRTUAL EVENT WILL BE LESS PERSONAL AND REQUIRE A DIFFERENT FORM OF COMMUNICATION AND PRACTICE.
- A VIRTUAL EVENT WILL CHANGE HOW THIRD PARTIES PARTICIPATE IN THE APPEAL.
- A VIRTUAL EVENT WILL REQUIRE SERIOUS THOUGHT AND PREPARATION AS ANJOLI AND RICHARD WILL NOW SET OUT!

Preparation of evidence for virtual inquiries



Anjoli Foster

Overview

- Virtual inquiries – shorter, more focussed sessions and no direct physical interaction with the Inspector and other parties
- What does this mean for the preparation of evidence?
- Proofs of Evidence and Appendices
- Core Documents
- Preparation for giving oral evidence during the inquiry
- Proper preparation from the outset is key!

Proofs of Evidence and Appendices: overview

- Written Proofs of Evidence your qualifications, expertise and your judgment on the matters in issue – to be submitted to the Inspector and exchanged with the other parties 4 weeks before the start of the inquiry
- There has not been any formal guidance or directions from PINS yet about the preparation of Proofs of Evidence for virtual inquiries
- Of the inquiries that have proceeded virtually so far, evidence has submitted and exchanged before it was agreed that the inquiry would be heard virtually
- But this will inevitably come – for inquiries that I am instructed on we have been asked for views on proceeding virtually where our evidence has not been exchanged yet

Proofs of Evidence and Appendices: good practice

- As Richard will explain, the nature of virtual inquiries is that sitting times are much shorter and the evidence is much more focussed – it is more difficult to concentrate over a screen for long periods
- This should be reflected in the Proofs of Evidence
- Shorter and more concise, rather than long-winded
- Focussing on the key issues
- Not replicating the Statement of Common Ground
- Not simply copying large swathes of planning policy, but rather extract the relevant part of the policy and explain how it applies to your case
- Advisory word limit currently – will Inspectors start to strictly enforce a word limit?

Proofs of Evidence and Appendices: good practice

- In terms of presentation and referencing in Proofs, it is imperative to make things as easy and seamless as possible for the reader – no better way to annoy a decision-maker than to have documents in a mess!
- When making references to other documents do not simply copy a link to the internet – even though electronic, Inspectors will still not browse the internet – still need to attach all relevant documents in Appendices
- Use hyperlinks or electronic bookmarks within the Proof which can take the reader directly to the relevant page of the Appendices
- Ensure Proofs and Appendices are immaculately presented and check that all text, photos or plans appear properly sized and orientated on screen – even more important with virtual inquiries as you cannot simply hand up a document to the Inspector

Proofs of Evidence and Appendices: good practice

- Summary Proofs of Evidence – a separate document, or at the start or end of the main Proof of Evidence
- Examination in Chief – often depends on the style of the witness and the advocate – sometimes read out the Summary Proof or the main Proof, sometimes cover certain topics – and can be very long
- However, because of shorter timescales in virtual inquiries, long and extensive Examination in Chief likely less appropriate
- Likely that reading from the Summary Proof (expanding where appropriate) will become more regular – helps to keep the evidence succinct and, given the lack of physical interaction, makes it easier for the Inspector to follow along
- Useful to bear in mind when writing the Summary Proof of Evidence

Core Documents

- Core Documents will contain all the relevant documents for the inquiry
- Same points apply about these being well presented and easy to navigate – very useful to have a hyperlinked index so you can move straight to the relevant document
- Important lesson from the virtual inquiries so far...
- Have an electronic library of all the Core Documents (accessible on the Council's website) which can be updated regularly throughout the inquiry if new documents are introduced
- Cooperation between the parties is vital on this – in everyone's interest

Preparation for giving oral evidence at the inquiry

- Practical matters: can you be in a different location or a different room from the rest of your team whilst giving evidence? Wifi? No light directly behind you? Noise?
- “Virtual style”: lack of physical interaction means it is much more difficult to engage – useful to do a practice run with the video technology with a colleague to see how you come across on screen, e.g. eye contact, not moving around too much – little things can make a difference
- More info on this see joint blog post: www.davidlock.com/living-in-a-virtual-inquiry-world-top-tips/

The case management conference and preparation for virtual appeals



Richard Moules

Case management conference introduction

- New stage of the inquiry process introduced following the Rosewell Review
- Guidance in Section F.10 of PINS Procedural Guidance
- F.10.2 *“Amongst other things this will set out what the Inspector considers the main issues are likely to be and any other matters that may need to be addressed. Also the note will set out how the Inspector thinks that the evidence can best be addressed in order to conduct the inquiry in the most efficient and effective manner.”*

Virtual case management 10 top tips

- Be proactive and discuss procedural issues with other parties beforehand
- Identify all of the issues, including those raised by 3rd parties
- Be prepared to discuss the appropriate form of evidence for each issue
- Think about realistic time estimates & timetable & witness availability
- Ensure document preparation and management is dealt with satisfactorily

Virtual case management 10 top tips cont'd

- Make sure key members of the team are on the call and can communicate with each other during it
- Consider pencilling in a second CMC after exchange of evidence
- The Scott Schedule is a key document, so make sure dates for preparation are realistic
- Start thinking about the site visit route, access requirements and involve 3rd parties
- Encourage the Inspector to be active rather than passive at the virtual Inquiry

The virtual appeal: the technology

- MS Teams is PINs uniform choice of technology
- No need for Microsoft Office 365 -you can use the web app
- Telephone number is also available for audio only
- PINs technology support was available –will this continue as standard?
- Practice using Teams beforehand and learn to share screens
- Learn keyboard shortcuts (Ctrl+shift+M = mute; Ctrl+shift+O = camera on/off)

The virtual inquiry –the documents

- It is really important to have an electronic document library online and to update it regularly throughout the inquiry
- The electronic core documents should be easy to navigate quickly e.g. use bookmarks or a hyperlinked index
- Check the size and orientation of the pages in the electronic documents (e.g. if you need to share your screen you don't want to have to enlarge and rotate an image)
- Will the Inspector require hardcopies e.g. of large plans? Check at the CMC

The virtual appeal: involvement of 3rd parties

- For the first 2 virtual inquiries, Parish Councils were given Rule 6 status
- Parish Councils were invited to join the CMC
- Parish Councils were invited to question Appellant's witnesses
- Public session scheduled after openings for other members of the public too
- Document sharing on screen essential so public can follow inquiry

The virtual appeal: practical arrangements for the team

- Significantly easier if the team are in the same room, but still perfectly manageable when dispersed
- WhatsApp -the 'virtual yellow post-it note'?
- Schedule separate video calls in breaks and after close of inquiry
- Ensure all witnesses understand the rules about not communicating during their evidence and not using notes/scripts

The basic format of the virtual inquiry

- Just the same as for an in person inquiry in most respects
- Formal dress & usual formalities of address
- Only speakers have their cameras and microphones on
- 3 x 1.5 hr sessions per day (approx. 9:30am start & 3:30pm finish)
- Monday sittings

The virtual inquiry: the giving of evidence

- Inspectors are asking for lists of documents to be referred during each witnesses' evidence so they can open the relevant files on their PC in advance
- It is harder to see whether a witness/the Inspector has located the correct page reference, so check and do not rush
- The technology means interrupting/talking over someone is difficult, so watch for visual cues e.g. raised hand

The virtual inquiry: the giving of evidence cont'd

- Beware witnesses who are too relaxed sat at home giving evidence without the pressure of a public forum
- The virtual platform gives witnesses more 'space' to talk, so avoid waffle and make answers short, precise and relevant
- Be courteous –getting cross at a computer screen will be seriously counterproductive
- It is more tiring, so ask for breaks if you need them

The giving of evidence cont'd

- Will there be a need for guidance on how witnesses behave during breaks?
At one virtual inquiry the witnesses remained on camera during breaks (save for comfort breaks) to confirm the absence of contact with other team members
- The Commercial Court's practice where dishonesty is alleged against a witness is to have the witness attended by a trainee from the other side's solicitor to ensure good conduct

Roundtables

- PINs appears to be cancelling roundtable sessions that had been fixed at CMCs in Feb/March
- At the first virtual inquiry the Inspector did in the end hold a roundtable on 5YHLS and it proved effective
- It is much harder to hold a free flowing discussion virtually and it relies on a clear agenda, a proactive Inspector and self-discipline from the participants not to speak out of turn

My own experience

- 7 day inquiry with 11 witnesses dealing with heritage, landscape, planning, transport & 5YHLS (recorded for PINs internal training purposes)
- Very few technical glitches
- Concluded on time and all participants said it had been a fair and effective process
- Hopefully we proved to PINs that the roundtable format can operate virtually
- The evidence was fully tested and it felt like a ‘proper’ inquiry

Concluding thoughts

- It works!
- Co-operation between parties is vital to keep the show on the road
- Opportunities for public participation are potentially greater & cheaper
- The shorter hearing days call for very focused written evidence and even more focused oral evidence and cross-examination. Proper preparation from the very beginning is imperative.

Q&A

We will now answer as many questions as possible.

Please feel free to continue sending any questions you may have via the Q&A section which can be found along the top or bottom of your screen.

Thank you for listening

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