

Opposing Appeals by Hearings



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Topics

- Procedure;
- The theory of how a hearing should go;
- The reality;
- Practical tips

Procedure – sources of law/guidance

- Set out in the Procedural Guide on Planning Appeals – Annexe E in particular.
- Town and Country Planning (Hearings Procedure) (England) Rules 2000 (as amended).
- Business and Planning Act 2020 – combined procedure. Roundtable sessions (akin to a hearing) at Inquiries. But also now hearings can have a written representations element.

Key stages – see Appendix E.1 of Procedural Guide

1. Receipt of appeal documents. PINS sets start date.
2. 1 week from start date: Send completed questionnaire and supporting documents.
Write to interested people about the appeal.
3. 5 weeks from start date: Send full Statement of Case and agreed SOCG.
4. PINs then consider whether a “combined procedure” would be appropriate – opportunity to make representations.
5. Confirmation of hearing date: normally within 10 weeks of start date.

The theory of how a hearing should go

- “The hearing is an inquisitorial process led by the Inspector who identifies the issues for discussion based on the evidence received and any representations made”: PINS Procedural Guide – para. E.1.1.

- Previous advice under Circular 05/00 - Annex 2:

3. Under the hearings procedure, the Inspector leads a discussion about the issues, thereby saving the parties time and money. Everyone, including interested third parties, should be given a fair hearing. The Inspector obtains all the information necessary for his decision, but in a more relaxed and less formal atmosphere than at a local inquiry. A hearing is suitable where the development is small-scale; there is little or no third party interest; complex legal, technical or policy issues are unlikely to arise; and there is no likelihood that formal cross-examination will be needed to test the opposing cases. An important element of the hearings procedure is that the Inspector must be fully appraised of the relevant issues and arguments before the hearing opens so that he can properly lead the discussion.

- Dyason v The Secretary of State for the Environment [1998] JPL 778:

“There is a danger upon the procedure now followed by the Secretary of State of observing the right to be heard by holding a ‘hearing’ ...could lead not to a “full and fair” hearing but to a less than thorough examination of the issues. A relaxed hearing is not necessarily a fair hearing. The hearing must not become so relaxed that the rigorous examination essential to the determination of difficult questions may be diluted. The absence of an accusatorial procedure places an inquisitorial burden upon an inspector.”

The reality

Agenda for roundtable session – Heritage

1. Effect of the proposal on the Conservation Area
2. Effect of the proposal on nearby Listed Buildings
3. AOB

Not always, but often:

- Vague agendas for discussion – e.g. “*Is the development located in a sustainable location*”
- “Consecutive speeches” approach to discussion

Practical tips

- Arrive early!
- Importance of the Statement of Common Ground
- Ask questions
- Focus on where you can add value over your SOC/Proof
- Be prepared for all eventualities

Thank you for listening

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