

Annex - Case Studies which provide illustrations of when delays in the process can occur

The following are actual (although anonymous) examples of inquiries where various difficulties were encountered, at different stages of the process. All of these examples have taken place in the last 3 years.

1. Procedure Disputed/Validity Challenged

An appeal was received in November. The appellant requested an inquiry. The local planning authority's views were sought, they suggested written representations or a hearing would suffice. The Inspectorate decided to follow the hearing procedure but the appellant argued strongly against this, and asked for re-consideration at the highest level within the Inspectorate on the grounds that evidence would need to be tested by cross examination. The case was referred to the Inspectorate's Planning Group Manager in the following January, who agreed that an inquiry was necessary. In February the local planning authority then asked the Inspectorate to review their decision and either change procedure or provide detailed justification for the need for an inquiry. The local planning authority disagreed with the appellant on the complexity of the issues involved and the need for cross examination. The appeal was reviewed again by the Planning Group Manager who maintained and justified the need for an inquiry. The disagreement over procedure and on-going correspondence meant that the start of the appeal was delayed until mid-March, 4 months after the submission of the appeal.

2. Missing Documents

An appeal was received in mid March. During the validation checks, missing documents were identified and requested from the appellant which were subsequently submitted in late April. On completing the validation checks it became clear that the local planning authority had accepted the application as valid incorrectly as the appellant had failed to provide a Design and Access Statement (DAS) at application stage. To correct this the Inspectorate requested the DAS in early May giving the appellant until the 6 month appeal deadline to submit it. The DAS was submitted on late May – causing a delay in the process of around 2 months.

3. Inquiry date conflict between the parties and/or the Inspectorate

An appeal (recovered for decision by the Secretary of State) for a major development in a Green Belt location had attracted significant opposition, and there were six parties in addition to the appellant and local planning

authority who were intending to give evidence. After much discussion among them, the parties proposed an inquiry date for September, with an anticipated duration of 20 days. The Inspectorate offered the opportunity to bring that date forward to July, given the scheme's strategic significance, but the parties declined as they had organised their advocates, witnesses, etc, for September.

An appeal was received in February and the Inspectorate invited the two parties (ie the appellant and the local planning authority), as part of the normal initial stages of the bespoke process, to agree an inquiry date between them, giving them two weeks to do so. The parties repeatedly requested more time to negotiate, and after six weeks they requested an inquiry date which the Inspectorate could not accommodate. The Inspectorate had to therefore decline their date, and instead offered an inquiry two months earlier. Both parties declined, and so the inquiry had to be arranged for a later date.

4. Postponement requests due to twin-tracking, holidays / illness of key people, new evidence, etc

An inquiry was arranged to commence at the beginning of March and was scheduled to sit for 8 days. However, on the day before the inquiry was due to start the local planning authority contacted the Inspectorate to say that due to a major incident at the venue the inquiry could not proceed because the venue had had to be closed until further notice, and no suitable alternative venues could be provided with such short notice. The inquiry had to be re-arranged to commence at the end of June, a delay of 3 months.

An inquiry for a major development was arranged to commence at the end of June. However, shortly before the inquiry was due to commence, the local planning authority's key planning witness unexpectedly resigned, which would have left the local planning authority unable to present their case. It was therefore decided to postpone the inquiry under the principle of "equality of arms". The inquiry was re-arranged to open in the autumn.

5. Adjournment required if, for example, Environmental Statement inadequate, further info needed, etc

An inquiry for a major development opened at the end of January as arranged; it was scheduled to sit for 4 days. However, due to very recent information concerning air pollution – an issue that was affecting a number of cases – the Inspector had to allow further evidence to be submitted by the developer. Also, the s106 Agreement had not been finalised by the time of the inquiry. A timetable was set for the submission

of further information, and the completed s106. These were received and the inquiry closed at the end of February – a delay of a month.

An inquiry was arranged to open at the beginning of October– it was scheduled to sit for 8 days. As the case progressed, and after a Pre-Inquiry Meeting, it became clear that the number of anticipated witnesses from the parties could not be accommodated within the arranged programme, so a further 4 sitting days had to be scheduled. But because the advocates were not able to add these days on to the planned inquiry timetable, the inquiry had to be adjourned to late November for the additional 4 sitting days.

An inquiry into a number of linked appeals involving major development was arranged to open in December, and was scheduled to sit for 4 days. Despite earlier assurances from the parties that the duration was adequate, the inquiry could not be completed within the 4 days, and so 2 further days were scheduled for the following February. However, shortly before the inquiry was due to resume the Inspector was taken ill and so the inquiry had to be postponed. When the Inspector recovered, the inquiry was arranged to resume in April, the earliest all parties, including the Inspector, were available.

6. Change in procedure

An appeal for major development was received in October and the appellant indicated that they wished the appeal to be heard under the written representations procedure. In April the next year, after being appointed to the appeal, the Inspector exercised the discretion afforded to them under s319A of the Town and Country Planning Act 1990 and decided that an inquiry should be held, due to the need to test evidence on housing land supply. An inquiry was then arranged for September.

7. Illness

An inquiry was arranged to commence late March and was scheduled to sit for 4 days. However, in the week before the inquiry was due to open the Inspectorate was informed that the appellant's agent was too ill to give evidence. The Inspectorate considered (office staff and the Inspector) whether there was scope to open the inquiry to hear "routine" matters. However, in the interests of fairness to all persons it was decided that the inquiry should be postponed, and the parties then agreed a new date for the inquiry to commence in October.

See also last example under 5 above.

8. Policy/key evidence change (including new relevant case law/decision)

An inquiry sat for 8 days in January. At the inquiry the local planning authority conceded that they did not have a 5 year Housing Land Supply (HLS). The inquiry closed and an expected decision date in April (bespoke target) was set. In late February the Parish Council wrote to the Inspectorate to bring to the Inspectorate's attention that the local planning authority were claiming a 5 year HLS on another appeal for which the inquiry was due to open in March. The Inspectorate sought comments from the parties but given the change in material circumstances the Inspectorate decided the inquiry would have to reopen to consider this new information. A resumption date in July (for 2 more sitting days) was set. This date had to take into account the availability of the Inspector (who had other casework commitments) and parties.

An local planning authority published updated Housing Land Supply figures at the end of April. At that time there were a number of separate appeals for which the inquiries had concluded and on which the Inspectors were writing their respective decisions/report (one of the cases was recovered). As this new information was a material consideration the Inspectors on the other appeals each had to decide how to handle it (with the Inspectorate needing to be seen to be acting consistently). Reference back exercises to the parties were undertaken on each of the cases which resulted in the Inspectors' appeal decisions being delayed by up to 2 months.

9. Balancing other casework commitments

An inquiry opened mid- December as arranged and it sat for the scheduled 4 days. Due to other casework commitments, annual leave and special arrangements intended to provide additional capacity for inquiry delivery the decision was submitted for issue 11 weeks after the inquiry closed.

10. Recovery for SoS decision/Political sensitivities

An inquiry for major development took place over three days in August. A number of surrounding neighbourhood plans that were approaching referendum and the decision was taken in September (ie after the inquiry had taken place) to recover the appeal before the Inspector's decision was issued. Due to recovery, and the neighbourhood plan (NP) subsequently being made after successful referendum, the Inspector decided that they

needed to re-open the inquiry so that the changed position of the NP, together with the local planning authority's up to date housing land supply, could be considered. Arrangements were duly made for the inquiry to re-open at the end of May the following year, the earliest the Inspector was available due to other pre-arranged commitments. However, in the meantime, the developer had launched a judicial review of the local planning authority's decision to put the NP forward for referendum. This litigation was successful and the High Court quashed the NP, which led the appellant to seek de-recovery of the appeal, given that there was no longer a NP for the area. The Secretary of State agreed that there was no longer any need for the appeal to be determined by him and it was therefore de-recovered in March (6 months after the initial decision to recover). In turn the parties requested that the Inspector determine the appeal after an exchange of further written information on housing land supply. He agreed and the appeal was determined in May, some 40 weeks after the inquiry had taken place.

An inquiry took place in February and, in accordance with the Inspectorate's bespoke arrangements, a date was announced by when the Inspector's decision would be issued (late April). However, the local planning authority in whose area the appeal site was located was one of those where local elections were due to take place on May. In accordance with standard Civil Service practice Inspectors are advised to that politically sensitive decisions should not be issued in the pre-election period of sensitivity (in this case mid April to 3 May inclusive). The parties were informed of the delay and the decision was issued in early May.