

Circular 05/00: Planning appeals procedures (including inquiries into called-in planning applications)

On 5th May 2006 the responsibilities of the Office of the Deputy Prime Minister (ODPM) transferred to the Department for Communities and Local Government.

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Summary

This Circular explains the new procedures for handling planning appeals in England, from 1 August 2000. The new procedures implement the Government's commitment to streamline the appeal process and speed up planning decisions, whilst safeguarding public participation and the fairness, openness and quality of decision-making.

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Planning Appeals: Procedures (including inquiries into Called-In Planning Applications) **(See [endnote1](#))**

Introduction

The main body of the Circular follows with 5 Annexes

1. This Circular explains the new procedures for handling planning appeals in England, which are being introduced with effect from **1 August 2000**. These procedures apply to appeals received on or after that date, certain applications called-in after that date and, with the exception of those cases dealt with under the hearings procedure, all planning appeal cases which have been returned to the Secretary of State after that date for redetermination. This Circular replaces the previous advice in DOE Circular 15/96 in relation to such appeals. Appeals received before that date will continue to be processed through to a conclusion on the basis of the previous procedures and guidance ([see paragraph 35 of the main body of the Circular](#)).
2. The new procedures implement the Government's commitment to streamline the appeal process and speed up planning decisions, whilst safeguarding public participation and the fairness, openness and quality of decision-making. They take forward the proposals for improving planning appeal procedures, as part of the Modernising Planning agenda.
3. The Government is determined to improve the service offered to business, householders and other users of the appeal system. In addition to streamlining the procedures themselves tough targets are set for the Planning Inspectorate to deliver steady improvements in the speed with which they handle appeals. It is clear, however, that improving service to the benefit of all concerned is not just the responsibility of the Planning Inspectorate. All parties to the appeals process have a responsibility to meet the deadlines set and to cooperate with the Inspectorate in agreeing dates offered for hearings and inquiries. Comments or representations received after the due dates will normally be disregarded.
4. The Department will monitor how the new procedures are working, and review their effectiveness, after the first 12 months of operation. If necessary, further measures will be brought forward to ensure compliance with procedures in the light of that experience.

The appeal process

5. The appeal process remains firmly grounded in the principles of fairness, thoroughness and consistency. At the same time, it has become increasingly clear that without impairing either the quality of decision or the parties' ability to present their case fully and fairly, it is possible for all involved to assist in speeding up the process. The best use of resources means that matters should be handled as efficiently as possible. That requires a disciplined, and constructive approach. **It is essential that as well as reading those Annexes explaining the procedural Rules applicable in individual appeal cases all the parties read the main body of this Circular. The following advice is intended to be a guide, and it is not definitive. An authoritative statement of the law can only be made by the Courts.**

6. This Circular highlights the main ways in which all three procedures - written representations, hearings, and inquiries - are operated under the procedural Rules for determining planning appeals under section 78 of the Town and Country Planning Act 1990. In addition, these procedures concern called-in planning applications, and appeals in respect of listed buildings consent and conservation areas, but not tree preservation order appeals. However, the Written Representations Regulations do not apply to appeals in respect of listed buildings consent and conservation areas, and the Inquiries Procedure Rules also apply to call-ins as well as appeals. The guidance in this Circular will also be relevant to other forms of planning and non-planning casework where these procedures are applied.

7. All three appeal procedures - written representations, hearings and inquiries - have been amended. The revisions ensure that all the elements of fair, open, and impartial decision-making, integral to the quality of the planning appeals process, are retained, and the role of public participation is safeguarded. At the same time, the procedures have been clarified to make them more user-friendly, and strengthened, so ensuring that all parties co-operate fully in complying with the Rules. The Hearings procedure now has a statutory basis in common with the other forms of procedure. The new statutory procedure is different in many respects from that previously set out in the Code of Practice (Annex 2 to DOE Circular 15/96).

8. Annexes 1 to 3 of this Circular provide guidance on the latest procedural Rules governing the three procedures for handling planning appeals. Where the Circular and Annexes refer to appellants, applicants, Inspectors or assessors as "he", this also means "she". The Code of Practice on preparing for Major Planning Inquiries (Annex 4) is as in Annex 4 of Circular 15/96 except for minor updating to reflect the new Rules. Annex 5 of Circular 15/96 has been subsumed in Annex 3 of this Circular. Annex 5 of this Circular contains the Government's statement on called-in planning applications.

Key Points

9. For all appeals, co-operation by all parties will help progress a case; minimising paperwork at all stages will also assist. Clearly all the relevant issues should be dealt with fully. Nevertheless, written representations should be as brief and succinct as possible, and avoid duplication of arguments or supporting information. Failure to comply with the deadlines in the Rules will, except in extraordinary circumstances, also result in a party's representations (which may be a statement of case or proofs of evidence) not being taken into account (see paragraph 14 of the main body of the circular). For consistency in approach all parties should submit documents direct to the Secretary of State. Then, in accordance with the Regulations the Secretary of State will forward them as prescribed to the relevant parties. In this way it is intended that the movement of documents should not be held up by any one party but that the required material should be forthcoming within given deadlines. The change is being made for the benefit of all the parties.

10. Hearings will be used rather than inquiries in all suitable cases. The choice of the hearings procedure will be determined by the Secretary of State following consultation with the principal parties.

11. To ensure that **inquiries** last no longer than necessary, it is essential for the parties to prepare effectively early on and focus on the critical issues in advance. Irrelevant or inessential detail or repetition should be excluded from parties' evidence. The main parties should also

engage in pre-inquiry discussions for the purpose of reaching agreement on relevant facts in the form of a statement of common ground (see Annex 3 (ii)). Such discussions will identify areas of agreement on which evidence need not be submitted and those issues which remain in dispute. The more widespread use of pre-inquiry meetings, whether between the parties or, in appropriate cases, chaired by an Inspector, will also assist this process.

12. Under the procedural Rules Inspectors have discretion in conducting inquiries. Whilst observing the Rules of natural justice at all times, they will, in the interests of all the parties, exercise tight control over advocacy and cross-examination. In particular, Inspectors will exclude repetitious or irrelevant evidence, ensure that opening statements are succinct and do not delay presentation and examination of the main evidence, and curtail excessive or aggressive cross-examination. Inspectors will use their powers to establish a timetable for inquiry proceedings that should be adhered to by all the parties.

13. The introduction of the new procedures will put in place a regime of discipline for all the parties involved in the appeal process. Under the previous arrangements, there had been a tendency for a "cross-examination by post" to take place with parties trying to get the last word. This was unfair to those who followed the Rules and supplied their representations within the set times. To achieve greater fairness and to seek to prevent the parties from gaining advantage over one another, the new procedures will require simultaneous submission of evidence and strict adherence to timescales. The time limits placed on the various stages of the appeal processes are designed to allow sufficient time for parties to prepare their cases.

14. [Paragraph 3](#) made clear that representations received after the due dates will normally be disregarded. It is the parties' responsibility to ensure that the Secretary of State **receives** representations within the deadlines. Although each case will be considered on its particular facts, late representations will only be considered in extraordinary circumstances. Examples of extraordinary circumstances include where representations are delayed because of a postal strike, or by the ill-health of an appellant, or to give a third party more time where the local planning authority is late in notifying them of the appeal, or where there has been a last minute change in circumstances which the Inspector ought to know about.

Annexes

15. The list of Annexes is as follows:

- | | |
|----------------|--|
| Annex 1 | Written Representations: The Town and Country Planning (Appeals) (Written Representations Procedure) (England) Regulations 2000 (SI 2000 No 1628). (i) Format of written statement |
| Annex 2 | Hearings: The Town and Country Planning (Hearings Procedure) (England) Rules 2000 (SI 2000 No 1626) (i) Hearings procedure: guidance derived from the former Code of Practice for hearings (ii) Format of hearing statement |
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(Determination by Inspectors) (Inquiries Procedure)
(England) Rules 2000 (SI 2000 No 1625).

(i) **Written evidence at public inquiries**

(ii) **Statement of common ground**

Annex 4 Preparing for **major planning inquiries** in England - A
Code of Practice

Annex 5 **Called-in planning applications** - Government policy
statement.

Pre-Appeal Considerations

16. Communication and co-operation between parties is good practice at any stage in the planning process. Discussions between the applicant and the local planning authority can be particularly beneficial in resolving differences, not only prior to the decision but in many cases before the application has been made. Where an appeal is made both parties should consider whether informal discussion would be useful. This could provide an opportunity to explore further each proposal, thereby assisting all parties to save time and effort. Local planning authorities can assist this process by actively encouraging dialogue with applicants and within their own organisation. However, in the interests of natural justice, local planning authorities should consider offering objectors the opportunity to attend any such meetings with the applicant.

17. Thus, before a disappointed applicant for planning permission lodges an appeal, there should be an opportunity for discussion with the local planning authority. This might enable the applicant to submit a revised proposal rather than making an appeal. In this way difficulties can be more effectively, quickly and cheaply resolved. **Appeals should only be made when all else has failed.**

18. Potential appellants should be aware that it is for the Inspector or the Secretary of State to review the planning arguments and to reach a decision in accordance with planning policy and the merits of the proposal. They should carefully assess the merits of their case and the prospects of success objectively, together with the costs they are likely to incur, and the time needed to pursue an appeal. Careful study of the policy background, principally in development plans, Planning Policy Guidance notes and Departmental circulars, is essential. Clearly stated policies, endorsed through the development plan system, that are relevant to the case will not be set aside lightly.

Reasons for Refusal

19. Where an appeal is against refusal of planning permission or the imposition of conditions, all the relevant reasons given by the local planning authority in the decision notice should be complete, clear and precise, to inform discussions between the parties. The aim should be to explain to the appellant the background to the decision and to amplify the local planning authority's objections to the proposed development as fully as possible. **Article 22 of The Town and Country Planning (General Development Procedure) Order 1995 (SI No 419) has been amended** to require a local planning authority, when refusing planning permission or granting permission subject to conditions, to specify all policies and proposals in the development plan which are relevant to the decision. More precise reasons for refusal from the local planning authorities linked to development plan policies will help appellants to focus their

grounds of appeal more specifically. In addition, for appeals against non-determination, local planning authorities are asked to provide the Secretary of State with details, copied simultaneously to the appellant, of the relevant development plan policies within 2 weeks of the starting date ([see endnote 2](#)) of the appeal.

Submitting an appeal

20. Appeals must be received by the Planning Inspectorate on behalf of the Secretary of State within **six months** of the date of the local planning authority's decision notice or the expiry of the decision period. **It is important that the appeal form is completed accurately, including the full grounds of appeal, and is accompanied by all the relevant documents. Appeals will not normally be accepted unless all the relevant documents are received by the Secretary of State within the six month period. Late appeals will only be accepted in extraordinary circumstances** ([see paragraph 14 of the main body of the Circular](#)).

21. Where planning permission has been refused, the grounds of appeal should contain a clear explanation of why the appellant disagrees with each of the local planning authority's reasons for not granting permission, and not merely state that the reasons are not accepted. The Secretary of State may refuse to accept a notice of appeal from an applicant if the required documents specified in Article 23 of the Town and Country Planning (General Development Procedure) Order 1995 as amended by the Town and Country Planning (General Development Procedure) Order 2000 (SI 2000 No 1627) are not served on him within the time limit specified. A checklist for appellants as well as general guidance on appeals, is provided in the Planning Inspectorate's booklet "Making your planning appeal". Appeal forms are obtainable from the Planning Inspectorate or may be downloaded from the Inspectorate's website (www.planning-inspectorate.gov.uk). Completed forms must be returned by post.

22. Appellants are also required to send a copy of the appeal form and relevant documents direct to the local planning authority. Any appeal not served on both the Secretary of State and the local planning authority would not normally be accepted as being valid. Any local planning authority in doubt about the validity of an appeal should immediately contact the appropriate case officer in the Planning Inspectorate in Bristol (see [paragraph 20](#)).

Choice of Procedure

23. For any appeal under section 78 of the Town and Country Planning Act 1990, the appellant and the local planning authority have a statutory right to appear before and be heard by a person appointed by the Secretary of State. If neither party wishes to be heard, and the Secretary of State does not consider it necessary to hold a hearing or an inquiry, the appeal is determined by means of the **written representations** procedure. Where either of the principal parties exercise their right to be heard, they will be asked to state which procedure they would regard as suitable, giving their reasons. The Planning Inspectorate, acting on behalf of the Secretary of State, will decide whether a hearing or inquiry is to be held taking into account the circumstances of each appeal, including any preferences already expressed by the principal parties. **Before choosing their preferred procedure, it is important that the parties carefully consider the nature of the appeal and the time and resource implications of each procedural method.**

Written Representations

24. This is by far the most common procedure and normally offers the quickest, simplest and cheapest way of deciding appeals. On average, hearing appeals tend to take half as long again as written representations appeals to decide, and inquiry appeals twice as long. The Secretary of State will continue to encourage the use of the written method wherever appropriate.

25. The procedures for appeals determined by the written method are prescribed by The Town and Country Planning (Appeals) (Written Representations) (England) Regulations 2000 (SI 2000 No 1628). Advice on the contents of the Regulations, including the statutory time limits for action calculated from the starting date, is contained in Annex 1 to this Circular. Annex 1 also contains a diagram of the appeal stages and time limits and guidance on the parties' written statement, where appropriate.

Hearings

26. The hearings procedure is simpler and quicker than the inquiries procedure. A hearing enables the parties to present their case fully and fairly in a more relaxed and less formal atmosphere than at an inquiry. It usually takes the form of a round-the-table discussion led by the Inspector. Without formal cross-examination or advocacy, hearings can be much less daunting for unrepresented parties. Where one of the parties has exercised their right to be heard, the Department's policy is to promote the use of hearings in preference to inquiries for appropriate cases. However, hearings are not suitable for all planning appeals, eg where a substantial number of third parties wish to speak, or where complex policy or technical issues are likely to be raised (see also paragraph 11 of Annex 2).

27. Hearings are conducted in accordance with the Town and Country Planning (Hearings Procedure)(England) Rules (SI No 1626), as explained in Annex 2 which also contains a diagram of the appeal stages and the time limits and guidance on the parties' hearing statement and the procedure at the hearing.

Inquiries

28. Where either the appellant or the local planning authority have exercised their right to be heard, an inquiry will be held if the case is not considered suitable for the hearings procedure. In recent years, as the proportion of appeals dealt with by written representations and hearings has grown, the number of inquiries has decreased significantly.

29. In the case of a planning appeal which the Secretary of State has recovered for his own decision, the planning appeal inquiry is subject to the Town and Country Planning (Inquiries Procedure) (England) Rules 2000 (SI 2000 No 1624) (informally referred to as "the Secretary of State Rules"). In the case of a planning appeal where the decision has been transferred to an Inspector, the planning appeal inquiry is subject to the Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2000 (SI 2000 No 1625) (informally referred to as "the Inspectors' Rules").

30. The Rules are designed to make the inquiry process as efficient and expeditious as

possible. The Rules give Inspectors wide powers in the conduct of proceedings, without impairing the fairness of the proceedings or the ability of the parties to express their views. It is essential that all the deadlines provided for in the Rules are observed by the parties in the interests of fairness for all parties. Failure to do so could expose the party responsible to a claim for costs. Under Rule 18(2) of the Inspectors' Rules and Rule 17(4) of the Secretary of State Rules. Inspectors may disregard evidence if it is submitted after an inquiry has closed. When closing an inquiry Inspectors will give an estimate of when they expect to submit their decision or report.

31. Advice on the contents of the Rules is contained in Annex 3 to this Circular, which also includes a diagram of the appeal stages and time limits. Annex 4 contains the updated version of the **Code of Practice for Preparing for Major Planning Inquiries** (referred to in [paragraph 8](#)).

Costs

32. Both principal parties (the appellant and the local planning authority) risk an award against them of the other party's costs if it is shown, on specific application, that they behaved unreasonably in the proceedings, so that the other party incurred unnecessary expense. Causing the appeal process to be delayed unnecessarily - for example, as a result of an adjournment to hear late evidence - is likely to amount to unreasonable behaviour, leading to unnecessary additional expense. In the case of third parties, awards of costs, either in their favour or against them, are only made in exceptional circumstances. Causing an unnecessary adjournment would be an example of exceptional circumstances.

33. Costs can be awarded in planning appeal cases dealt with by a hearing or an inquiry, but not by written representations. Costs can be awarded on procedural grounds where "unreasonable" conduct in withdrawing an appeal results in the late cancellation of a scheduled inquiry or hearing. DOE Circular 8/93 "Award of Costs Incurred in Planning and Other (Including Compulsory Purchase Order) Proceedings" gives detailed guidance on the award of costs in planning appeal proceedings. **Discussion of, and agreement on, outstanding issues between the principal parties will help to reduce the risk of a subsequent successful costs application, as well as minimising the overall cost of the process to all concerned.**

Mayor of London

34. Where the Mayor has issued a direction to refuse an application, the applicant will have the normal right to appeal against refusal of planning permission. The detailed annexes explain the involvement of the Mayor in the different procedures available for consideration of an appeal. Further guidance on the Mayor's role in the planning system generally is set out in a separate circular on strategic planning in London which also supplements guidance in Circular 8/93 in respect of an award of costs involving the Mayor.

Transitional Arrangements

35. Appeals received before **1 August 2000** will be processed through to a conclusion on the basis of the previous procedures and guidance set out in DOE Circular 15/96 in relation to

such appeals. Appeals that have been heard under the 1992 Rules but which are then quashed on appeal to the High Court will be redetermined under the new Rules, except hearings which will be redetermined under the Code of Practice in DOE Circular 15/96.

Financial and Manpower Implications

36. The purpose of this Circular is to update existing guidance in the light of new Rules revising existing procedures. This should not have an adverse effect on local government manpower or expenditure. Neither should it create a burden for business, developers and the private sector generally. Rather the improvements in procedures, and gains in time taken to handle appeals, which the new Rules are designed to bring about, should lead to positive benefits for all concerned.

Christopher Bowden,
Assistant Secretary

Endnote

[1] The Government's call in policy is set out in Annex 5.

[2] "Starting date" means the date of (a) the Secretary of State's written notice to the appellant and the local planning authority that he has received all the documents required to enable him to entertain the appeal; or (b) the relevant notice - whichever is later.

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Annex 1: Written Representations

The Town and Country Planning (Appeals) (Written Representations Procedure) (England) Regulations 2000

1. This Annex is referred to in paragraph 25 of the main body of the Circular. The main body of the Circular should be read in conjunction with this Annex.

Scope of the Rules

2. The Regulations apply to all appeals under section 78 of the Town and Country Planning Act 1990 which are to be determined by the written representations procedure but not to tree preservation order appeals¹. The Regulations will also apply to appeals which have been successfully challenged and returned to the Secretary of State for redetermination. The Regulations cease to apply when the Secretary of State informs the local planning authority and the appellant that the appeal is to be determined by an inquiry or hearing. The Regulations do not apply to appeals which have been commenced under the 1987 Regulations but not yet determined. These continue to be dealt with under the old Regulations.

Notification of the Starting Date

3. The "starting date" means the date of the Secretary of State's written notice to the appellant and local planning authority that he has received all the documents to enable him to entertain the appeal, or the date of his written notice under regulation 4, whichever is the later. It is the point from which all other procedural steps in the Regulations are calculated.

4. The Secretary of State will as soon as practicable after he receives all information necessary to enable him to entertain the appeal, notify the appellant and the local planning authority of the starting date, the appeal reference number, and the address for communications to the Secretary of State. In addition, he will also inform the local planning authority of the name of the appellant and the address of the appeal site.

Regulations 5, 6 and 7 - The Local Planning Authority

5. Under the Regulations the local planning authority are required:

Within 2 weeks of the starting date of the appeal

(i) to give written notice that an appeal has been made to those who are required to be consulted on the application under the Act or a development order and those who made representations to the local planning authority about the application. Generally, there should be no need to notify or consult others not specified in the Regulations. The notice must give the appeal reference, the address for communications to the Secretary of State, the name of the appellant, a description of the application, the address of the appeal site and the starting date. A notice to interested persons should state that any representations made at application stage

will be forwarded to the Secretary of State and taken into account unless they are subsequently withdrawn. The notice should also state that any further written representations must be submitted to the Secretary of State not later than 6 weeks after the starting date.

(ii) to send the completed questionnaire to the Secretary of State and the appellant together with copies of any papers referred to in the questionnaire. These should include copies of correspondence or directions from statutory consultees about the application, copies of relevant representations from other interested persons, the planning officer's report to committee (if any), any relevant committee minutes and extracts from the relevant plans or policies on which the decision relied.

If the questionnaire and its supporting documents comprise the local planning authority's full case, the questionnaire should clearly state this. This will inform the appellant that no further statement is to be submitted, and therefore enable him to respond to that case, if he wishes to do so, immediately. Local planning authorities should also indicate, to both the Secretary of State and to the appellant, whether they intend to prepare any further statement to explain the reasons for their decision. The relevant background documents to the planning committee's decision and the planning officer's report to the committee, where available, may often be sufficient to present the authority's case.

(iii) *within 6 weeks of the starting date*, where the questionnaire is not going to be used as the main representations to submit to the Secretary of State 2 copies of any further representations specially prepared. The Secretary of State will send a copy of those representations received within the deadline to the appellant.

(iv) *within 9 weeks of the starting date*, shall submit 2 copies of any comments it has on the appellant's representations. The Secretary of State will send a copy of these comments received within the deadline to the appellant.

(v) comment on third party representations within a specified period of not less than 2 weeks (see [paragraph 9 of Annex 1](#)).

The blank questionnaire is obtainable from the Planning Inspectorate and may also be downloaded from the Inspectorate's website (see paragraph 21 of the main body of the Circular).

6. Local planning authorities should make clear in their notifications at the application stage that, in the event of an appeal, any representations will be forwarded to the Secretary of State and the appellant in accordance with the Regulations.

Regulation 7 - The appellant

7. The Regulations require the appellant:

(i) *within 6 weeks of the starting date*, further to the notice of appeal which should contain the full grounds of appeal together with supporting reasons and relevant documents, to submit 2 copies of any representations he wishes to make to the Secretary of State. The Secretary of State shall send a copy of those

representations to the local planning authority as soon as practicable after receipt.

(ii) *within 9 weeks of the starting date*, to submit 2 copies of any comments he has on the local planning authority's representations to the Secretary of State, who will then send a copy of these comments received within the specified deadline to the other party.

(iii) to comment on third party representations within a specified period of not less than 2 weeks (see [paragraph 9 of Annex 1](#)).

Regulation 8 - Third Parties

8. Any interested party, notified of the appeal under regulation 5(1), may submit representations about the appeal to the Secretary of State within 6 weeks of the starting date. The Secretary of State shall send a copy of those representations received within the time limit to the appellant and the local planning authority as soon as practicable after receipt for comment within a specified period of not less than 2 weeks.

9. The Secretary of State may disregard comments made by the local planning authority on third parties' representations if they have failed to notify interested persons in accordance with regulation 5.

Regulation 11 - Mayor of London

10. Where the Mayor has directed the local planning authority to refuse planning permission, Regulation 11 sets out a modified procedure for ensuring the Mayor is notified about the appeal, is provided with copies of representations made and is given the opportunity to make representations himself and to comment on other parties' representations. In the event of the Mayor being notified but not directing refusal, of an application, which is subsequently the subject of an appeal, the Mayor has the status of an "interested party" and the provisions of Regulation 5 apply.

Site Visits

11. Although there is no statutory provision for it in written representations cases, the Inspector dealing with the case will carry out a site visit. No discussion of the merits of an appeal is allowed at a site visit. It is not necessary for the Inspector to be accompanied by either party if the site can be seen satisfactorily from a public highway (or other publicly accessible land). The Inspector should not be accompanied at any stage by the representative of only one of the main parties. Unaccompanied site visits do not require formal arrangements to be made with the parties. Accompanied site visits will not normally be delayed because the local planning authority's case officer would be unavailable on the date suggested. The local planning authority will be asked to provide another representative sufficiently familiar with the case to be able to point out important site features and, if necessary, be able to verify the plans. Both these tasks are standard parts of an accompanied visit.

General

12. A diagram of the several stages of, and time limits for, appeals to be determined by the written representations procedure may be found here.

Annex 1(i): Format of a Statement in Written Representations Cases

1. This Annex is referred to in paragraph 25 of the main body of the Circular. In many cases, the appellant's grounds of appeal and the local authority's questionnaire will already have given a sufficient opportunity for their respective cases to have been made. Where it is necessary to submit a more detailed statement, the following format should be adopted.

2. The statement should include the Planning Inspectorate reference number for the appeal, and the local authority reference number for the application. It should also include the description of the site, the location of the proposal and the actual proposal itself, reflecting the proposal as it was (or, in a failure case, would have been) determined by the local authority. Any revisions or amendments to the original proposal should be explained.

3. The statement should also include a concise statement of development plan policies material to the outcome of the appeal. The status of all plans referred to should be given: a copy of the title page of the subject document should normally suffice for this purpose. Extracts from, or copies of, both the text of and written justification for all policies to which reference is made should be set out in an appendix. Relevant parts of Government Planning Policy Guidance Notes and Circulars should be referred to by the paragraph number of the document concerned. Their text need not be quoted or copied unless essential.

4. Explanatory comments may also be included to clarify or augment the reasons already given in the grounds of appeal or the questionnaire for granting, or not granting, planning permission.

5. Where conflict with policy is given as a reason for refusal it should be made clear in what ways the policy's objective would be materially harmed or put at risk by the proposed development. In every case the comments should explain how the development would or would not cause material harm to interests of acknowledged importance.

6. A detailed history of the application should be avoided where this is not relevant to the appeal. The comments of persons (other than the appellant and the local planning authority) in support of the case, and references to relevant planning decisions, should be set out in an appendix.

7. In larger or more complex written representations cases, the statement format recommended for use in hearings cases (see Annex 2(i) to this Circular) may be more appropriate.

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Annex 2: Hearings

The Town and Country Planning (Hearings Procedure) (England) Rules 2000

1. This Annex is referred to in paragraph 27 of the main body of the Circular. The main body of the Circular should be read in conjunction with this Annex.

Scope of the Rules

2. The procedure for Hearings was formerly set out in an informal Code of Practice which has now been revised and given statutory force, in SI 2000 No 1626. The Rules apply to all appeals under section 78 of the Town and Country Planning Act 1990 and listed building and conservation areas consent appeals, where the appeal is to be determined by the hearings procedure, but not tree preservation order appeals. All the parties involved in hearings are required to comply with the Rules; keeping to the timescales is important and in the interests of all the parties, and ensures that a decision is reached as quickly as possible. The Rules cease to apply when the Secretary of State informs the local planning authority and the appellant that the appeal is to be determined by an inquiry.

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.

4. The Secretary of State will decide whether a hearing is the most suitable procedure for considering an appeal. Where either the appellant or the local planning authority wishes to exercise their right to be heard, the Secretary of State will consider whether the case is suitable for a hearing, taking into account the circumstances of the appeal and the views of the principal parties.

Notification of the Starting Date

5. "Starting date" means the date of the (a) Secretary of State's written notice to the appellant and the local planning authority that he has received all the documents required to enable him to entertain the appeal; or (b) relevant notice ([see endnote 1](#)), whichever is the later. It is the point from which all other steps in the Rules are calculated.

6. The Secretary of State will, as soon as practicable after he receives all the information necessary to enable him to entertain the appeal, notify the appellant and the local planning authority of the starting date, the appeal reference number, and the address for communications to the Secretary of State. In addition he will also inform the local planning

authority of the name of the appellant and the address of the appeal site.

Rule 4 - The Local Planning Authority and Notification of Interested Parties

7. Under the Rules, the local planning authority are required:

(i) *as soon as practicable after receipt of notice from the Secretary of State that a hearing is to be held*, to give written notice to the Secretary of State and the appellant of the name and address of any statutory party who has made representations to them;

(ii) *within 2 weeks of the starting date*, to ensure that the completed questionnaire has been received by the Secretary of State and the appellant together with copies of any papers referred to in the questionnaire; and

(iii) *within 2 weeks of the starting date*, to ensure that any statutory party, and anyone else i.e. a third party, who made representations at the application stage, has been notified that an appeal has been made and has been notified of the address and timescale in which representations to the Secretary of State may be made.

Rule 6 - Hearing Statements, and Other Comments

8. Under Rule 6:

(i) *within 6 weeks of the starting date*, the appellant and the local planning authority shall ensure that two copies of their written hearing statement have been received by the Secretary of State, and one copy has been received by any statutory party ([see endnote 2](#)). The hearing statement differs from the statement of case for inquiries in that it contains full particulars of the case that the appellant and the local planning authority wish to make at the hearing, **including copies of any documents** to which they wish to refer;

(ii) *within such period as the Secretary of State may reasonably require*, the appellant and the local planning authority must ensure that the Secretary of State has received two copies in writing of further information about the matters contained in their hearing statement as he may specify; this further material should also be copied to any statutory party;

(iii) *within 6 weeks of the starting date*, any statutory party and any third party who was notified at the application stage (see paragraph 7 (iii) above) shall ensure that three copies of any comments they wish to make to the Secretary of State have been received by the Secretary of State;

(iv) *within 9 weeks of the starting date*, the appellant and the local planning authority must ensure that two copies of any comments either party wishes to make on: the other's hearing statement, the comments made by any statutory party or third party who was notified at the application stage, or comments made

by any other party, are received by the Secretary of State. At the same time one copy of these documents should be sent to any statutory parties. The Secretary of State shall send a copy of the hearing statement and further information received from the appellant or the local planning authority to the other of those two parties, and shall send written comments made by third parties to the local planning authority and the appellant. The local planning authority shall make available for inspection copies of the pre-hearing statements and other associated documents on request and shall specify in their hearing statement where and when the documents may be inspected; and

(v) *as soon as practicable after receipt*, the Secretary of State shall send to the Inspector, any hearing statement, document, part of any document or written comments received by him within the relevant period specified for receipt. In the case of a non-transferred appeal, the Secretary of State, and in the case of a transferred appeal, the Inspector, may in determining the appeal disregard any comments which are received after the relevant period specified for receipt (see paragraph 14 of the main body of the Circular).

Rule 7 - Date and Notification of Hearing

9. The Secretary of State: will fix the hearing date *for not later than 12 weeks after the starting date or the earliest practicable date thereafter*. He may vary the date, time and place for the holding of a hearing, and will give reasonable notice of any such changes. The Secretary of State shall give *not less than 4 weeks written notice of the date, time and place fixed by him for holding the hearing*, unless a lesser period is agreed with the appellant and the local planning authority. The local planning authority and the appellant will be permitted one refusal of a date before the date, time and place of the hearing are fixed. The Secretary of State may also require the local planning authority to:

(i) *not less than 2 weeks before the date of the hearing*, publish a notice of the hearing in one or more local newspapers; and/or

(ii) send a notice of the hearing to such persons as he may specify. This would normally include all those other than the appellant, with an interest in the land, and all who made representations at planning application stage i.e. including any interested third parties, and anyone else specified by the Secretary of State within a prescribed time (such parties might also be advised that they may, at the discretion of the Inspector, participate in the discussion at the hearing). Details of where and when copies of the hearing statements and any other associated documents sent by and copied to the local planning authority may be inspected must also be included in the notice of hearing.

10. If after a previous notification that an inquiry will be held it is decided to hold a hearing instead, any step taken under the Inquiries Rules which could have been taken under any corresponding provision shall have effect as if taken under the relevant provision of the Hearings Rules.

11. If at any time before or during the hearing the appellant or the local planning authority forms the view that the hearing procedure is inappropriate and that they no longer wish to

proceed in this way, they should explain their reasons to the Secretary of State or, during the hearing, the Inspector, who will, after seeking the views of the other party, decide whether an inquiry should be held instead. If it becomes apparent to the Inspector during the hearing that the procedure is inappropriate, the Inspector may, after consulting the appellant and the local planning authority, close the proceedings and a local inquiry will be arranged.

The Accommodation Arrangements for the Hearing

12. The arrangements for a hearing and the conduct of it are designed to create the right atmosphere for discussion and to eliminate or reduce the formalities of the traditional local inquiry. Generally, the accommodation provided for the hearing will be less formal than for an inquiry. The Inspector and the parties should wherever practicable sit round a table; a small, local authority committee room is usually satisfactory, but the more formal atmosphere of a Council chamber should be avoided. The venue for the hearing should afford adequate facilities for those with special needs.

Rule 11 - Procedure at Hearing

13. Details of the procedure at a hearing are set out in Annex 2 (ii).

Rule 12 - Site Inspections

14. It may appear to the Inspector that certain matters could be more satisfactorily resolved if the hearing were to be adjourned to the site, and concluded there. The Inspector will only do this, having had regard to all the circumstances, when he is also satisfied about a number of other matters. These are that:

- (i) the hearing would proceed satisfactorily and no party would be placed at a disadvantage;
- (ii) all parties present at the hearing would have the opportunity to attend; and
- (iii) the local planning authority, the appellant or any statutory party has not made reasonable objections to the discussion continuing on the site.

15. When a hearing is not adjourned to the site, the Inspector may inspect the site during the hearing, or after it has closed, and will do so if he has previously been requested to do so by the appellant or local planning authority before or during the hearing. The Inspector will ask the appellant or the local planning authority if they wish to be present. If an accompanied site visit is requested, the date and time of the visit will be announced at the hearing. The appellant, landowner and representative of the local planning authority may attend the visit, as may any other person entitled or permitted to appear at the hearing, at the discretion of the Inspector and with the consent of the landowner. The Inspector should not be accompanied at any stage by the representative of one of the principal parties without the representative of the other also being present. The Inspector may carry out an unaccompanied site visit if the local planning authority and appellant are not there at the time arranged.

Award of Costs

See also paragraphs 32 and 33 of the main body of the Circular

16. The Inspector will normally ask for applications for awards of costs (if any) to be made at the end of the proceedings in the hearing room and before adjournment to the site. A party may become liable for costs if another party is put to unnecessary expense e.g. through the late submission of statements. Other circumstances in which costs may be awarded in respect of a hearing are set out in DOE Circular 8/93.

Rule 20 - Mayor of London

17. Rules 20(1) and 20(2) set out the revisions to the normal procedure required in conducting a hearing into an appeal where the Mayor has directed a local planning authority to refuse planning permission. These are designed to ensure the Mayor has a similar level of involvement in the process as the appellant and the local planning authority. Rule 20(2)(a) requires the Secretary of State to inform the Mayor that a hearing is to be held. Rule 20(2)(b) ensures that the Mayor is informed of the name and address of any statutory party who has made representations to the local planning authority or the Secretary of State. This rule also ensures that the Mayor is notified that an appeal has been made and of the period within which he may make representations to the Secretary of State. Rule 20(2)(c) imposes the same requirements on the Mayor, as on the local planning authority, to prepare, submit and circulate his hearing statement, further information and comments on other hearing statements. In addition, the Rule ensures that the Mayor receives copies of these documents prepared by the other parties. The Mayor is to be informed of the date and place of the hearing (Rule 20(2)(d)) and given the opportunity to request, and to be consulted on a request by another party, that the appeal be dealt with by way of an inquiry (Rule 20(2)(e)). The Mayor is entitled to appear at the hearing and call evidence (Rule 20(2)) and is entitled to appear at the site inspection. Under Rule 20(2)(h) the Mayor is informed if the hearing is to be re-opened and is informed of the decision by the Secretary of State. Where a hearing is held into an appeal arising from an application which a local planning authority is required to notify the Mayor, but on which he has not directed refusal, the Mayor will be treated as a statutory party (Rule 20(3)).

General

18. A diagram of the appeal stages and time limits for hearings cases may be found here.

Annex 2(i): Format of a Statement in Hearings Cases

1. This Annex, which is referred to in paragraph 27 of the main body of the Circular, gives guidance on the form and content of hearings statements as referred to in Rule 6 of the Hearings Procedure Rules.

2. As well as producing their own individual statements, it would be helpful if appellants and local planning authorities co-operate to produce and submit a short summary setting out the evidence upon which they can agree. This can be annexed to the main statement. Such a summary will not only avoid unnecessary repetition ([see paragraph 7 below](#)), but will also remove the possibility of small but potentially confusing differences of emphasis on undisputed

matters.

- 3.** The main purpose of a hearing statement is to provide a succinct statement of the submitting party's reasons for proposing or opposing the development to inform the other parties and persons participating or interested in the appeal. The statement may be used, in whole or in part, for reference at the hearing by the Inspector in writing his decision or report; and, in recovered appeals, as an annex to the Inspector's report.
- 4.** Statements should concentrate on the main issues and include the Planning Inspectorate reference number for the appeal, and the local authority reference number for the application. The statement should also include a description of the proposal reflecting the proposal as it was (or, in a failure case, would have been) determined by the local authority. It would be helpful if any revisions or amendments to the original proposal could be explained. Statements should include a description of the site and location and a concise statement of the policies in approved, adopted or emerging development plans which will be relevant to the outcome of the appeal. The status of all plans referred to should be given: a copy of the title page of the subject document should normally suffice for this purpose. Extracts from, or copies of, both the text of and the written justification for all policies to which reference is made should be set out in an appendix. References to relevant parts of Government Planning Policy Guidance Notes and Circulars should be given by means of their document and paragraph numbers. Their text need not be quoted or copied.
- 5.** If included in an agreed summary, the information referred to in paragraph 4 above need not be repeated in the hearing statement.
- 6.** The main body of the statement should set out the key facts, reasoning and conclusions necessary to make the case in a logical form. If appropriate, expert opinions should also be stated and substantiated. Opinions on matters involving subjective judgements (such as the visual impact of the proposal) should be kept brief; but should be adequately explained. It would be helpful if the appellant considers conditions in his hearing statement.
- 7.** Where detailed calculation and/or analysis is necessary, the relevant background material should be set out if it can be agreed before the hearing, in an appendix to the agreed summary or, if not, in an appendix to the hearing statement. If case law is cited, it would be helpful if the full report reference was given, and a copy of the case report included as an appendix. If two or more people covering different fields of expertise are to speak in support of the appellant at the hearing, the main hearing statement need only note this fact. The hearing statement conclusions should be briefly summarised at the end with references to paragraph numbers.
- 8.** Rule 6(4) of the Hearings Procedure Rules provides that the appellant and the local planning authority may comment, in writing and before the hearing, on each other's hearing statement and/or the previous written submissions of other parties or persons.
- 9.** It is not necessary formally to rebut another's submission where it is clear from the circumstances of the case that issue would not be taken with it. Likewise, it should be remembered that unchallenged evidence will not necessarily be accepted merely because of the absence of a challenge to it. The Secretary of State and his Inspectors should bring their experience, knowledge and judgement to bear on **all** evidence presented to them.

10. Appendices should be bound separately. For each volume, a title page should be provided. If more than one document is included, an index should be provided and each page of the volume should be numbered. Both statements and appendices should be of A4 size, and bound so that when opened they can be laid flat. To enable notes to be made on them, statements should be typed on one side of the paper only. Where appendices include larger documents such as plans, these should be folded to A4; a transparent, plastic wallet to hold them may be useful here. Photographs should be mounted on A4 card, and should be prefaced by a plan showing the viewpoints from which they were taken. Other relevant details, such as their time and date, and the focal length of the lens used should be given.

Annex 2(ii): Procedure at the Hearing

- 1.** Rule 11(1) of the Hearings Procedure Rules provides that the procedure to be adopted at hearings shall, unless otherwise stated, be determined by the Inspector. Most hearings will be conducted along the following lines.
- 2.** The Inspector will open the hearing at the appointed time, even if one or more of the parties is not by then present. He will start by introducing himself and describing the nature of the subject appeal. After resolving any residual doubts about the application or plans, the Inspector conducting the hearing will explain that it will take the form of a discussion which he will lead.
- 3.** The Inspector will summarise his understanding of the case from reading the papers and any pre-hearing site visit. At that stage, the Inspector will outline what he considers to be the main issues and indicate those matters for which further explanation or clarification is required. This will not preclude the parties from referring to other aspects which they consider to be relevant.
- 4.** Appellants may present their case through an agent or adviser but such representation is not essential. Legal representation should not normally be necessary. The appellant will usually be asked to start the discussion. In some cases it may be appropriate for the local planning authority to start if, for example, it is necessary to clarify development plan policy matters in order to guide the debate. Written material should have been circulated and exchanged well beforehand and will not need to be read out at the hearing.
- 5.** Those at the hearing will be given the opportunity to participate. Any questions must be relevant and discussion should proceed in an orderly manner. The appellant will be allowed to make any final comments before the discussion is closed. Any planning obligation which has been submitted will usually be discussed in association with the issue(s) which it is intended to address.
- 6.** The principal parties' hearing statements should identify what conditions, if any, they consider it would be necessary to impose in the event of planning permission being granted. The discussion of suggested conditions is an important and integral part of the hearing process because it enables all present to give their views on whether or not objections to the proposal might be overcome by their judicious use. It also ensures that if the appeal is determined in the appellant's favour, the decision will not place him under any obligation on which he has not had the opportunity to comment.
- 7.** Parties should not normally introduce at the hearing material or documents which are new,

i.e. they have not previously been referred to, as this may necessitate adjournment of the hearing to a later date to give the other parties adequate time to consider this new material. However, those parties at the hearing, including any statutory party, will be given the opportunity to participate. Any questions must be relevant and discussion should proceed in an orderly manner. Anyone behaving in a disruptive manner may be asked to leave. Repetitious debate may be ruled out, but the appellant may be allowed to make any final comments in writing before the hearing is closed. Cross-examination will not be permitted unless the Inspector considers that cross-examination is required to ensure a thorough examination of the main issues. If the Inspector considers that cross-examination is required, he will consider, in consultation with the appellant and the local planning authority, whether the hearing should be closed and an inquiry held instead.

8. If at any time before or during the hearing the appellant or the local planning authority comes to the view that the informal procedure is inappropriate and that they no longer wish to proceed this way, they should explain their reasons to the Secretary of State or, during the hearing, the Inspector, who will, after seeking the views of the other party, decide whether an inquiry should be held instead. If it becomes apparent during the hearing that the procedure is inappropriate, the Inspector will close the proceedings and a local inquiry will be arranged.

9. It may appear to the Inspector during the hearing that certain matters could be more satisfactorily resolved if the hearing was to be adjourned to the site, and concluded there.

10. Applications for costs, if any, should be made at the hearing venue, before adjournment to the site.

Endnotes

[1] "The relevant notice" means the Secretary of State's written notice informing the appellant and the local planning authority that a hearing is to be held.

[2] As defined by Rule 2 of the Rules.

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Annex 3: The Town And Country Planning (Inquiries Procedure) (England) Rules 2000 (SI 2000 No 1624)

The Town and Country Planning (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2000 (SI 2000 No 1625)

1. This Annex is referred to in paragraph 31 of the main body of the Circular. The main body of the Circular should be read in conjunction with this Annex.

Scope of the Rules

2. SI 2000 No 1624 (the "Secretary of State Rules") applies to local inquiries held into (i) planning appeals, but not tree preservation orders, under section 78 of the Town and Country Planning Act 1990 which are decided by the Secretary of State rather than by an Inspector appointed by him; (ii) planning applications referred to the Secretary of State under section 77 of that Act (called-in applications); and (iii) applications or appeals decided by the Secretary of State under the Planning (Listed Buildings and Conservation Areas) Act 1990 in relation to listed building consent and conservation area consent.

3. SI 2000 No 1625 (the "Inspectors' Rules") applies to local inquiries held into section 78 appeals and into appeals relating to listed building consent and conservation area consent which are decided by Inspectors appointed by the Secretary of State.

Background to the Rules

4. The principle objective of these new Rules is to improve the handling of inquiries for the benefit of all parties. The changes to the Rules are designed to retain the existing high standards of fairness and impartiality while improving performance ie in meeting the deadlines set in the Rules. This should ensure that all stages are carried out as efficiently and effectively as possible, and that everyone is acting constructively. This is in the interest of all concerned.

5. The revisions are further intended to ensure that the procedure is as clear and user-friendly and remains as fair as possible, for all the parties, including third parties. The Rule concerning pre-inquiry meetings sets the norm to be applied in most cases. However, on occasion it will also be useful to arrange pre-inquiry meetings in respect of inquiries which it is estimated - in the light of the case information available - will last less than eight days. It should also be noted that where under the Rules, the Inspector arranges a timetable, he has discretion to act flexibly and vary it, particularly in relation to the matters to be discussed, at any time as necessary. The Rules contain a change in the procedure concerning the role of the Secretary of State; under the Rules parties are now required to send statements of case etc to the Secretary of State who will be responsible for forwarding documents to the parties at the appropriate time. The Rules also contain a change that in most cases the local planning authority will be expected to present its case first in order to concentrate the proceedings on the main factors.

6. Failure by a party to comply with the Rules could, if it led to another party incurring unnecessary expenditure due to unreasonable behaviour, result in an award of costs.

7. The following paragraphs explain the 2000 Rules in more detail. For ease of presentation, and to avoid unnecessary repetition, both sets of Rules are referred to at the same time. Where the corresponding Rule in the Inspectors' Rules has a different number, or there is no corresponding Rule, this is mentioned in brackets after the Secretary of State Rule number.

Notification of starting date

8. "Starting date" means the date of the (a) Secretary of State's written notice to the appellant and the local planning authority that he has received all the documents required to enable him to entertain the appeal; or (b) relevant notice ^(see endnote.1), whichever is the later. It is the point from which all other steps in the Rules are calculated.

Rule 5- Procedure where Secretary of State causes pre-inquiry meeting to be held (no equivalent Inspectors' Rule)

9. The significance of the Secretary of State causing a pre-inquiry meeting to be held under Rule 5(1) is that it triggers the special procedures in the remainder of the Rule (see paragraphs 10 to 12 below). Pre-inquiry meetings will be held when the Secretary of State expects an inquiry to last for 8 days or more, unless this is considered unnecessary. Pre-inquiry meetings may be held in respect of any inquiry to which these Rules apply; Rule 5 will normally be invoked in the case of all inquiries to which the Code of Practice for preparing for Major Planning Inquiries is applied. Inspectors have the power under Rule 7(1) to hold a pre-inquiry meeting where no meeting is held under Rule 5.

10. Rule 5(2)(a) requires the Secretary of State to provide a statement of "the matters about which he particularly wishes to be informed for the purposes of his consideration of the application or appeal in question". Its purpose is to provide a clear statement of what, on the information before him, he considers to be the key issues. This statement is intended to assist the parties and Inspector in preparing for the inquiry. It is not intended to be a definitive statement since Inspectors must be free to hear all evidence that they believe is relevant to their consideration of the case.

11. Rule 5(2) (c) requires the local planning authority to give notice of the Secretary of State's intention to hold a pre-inquiry meeting and of the statement under Rule 5(2)(a). In practice, the Department will provide a suggested form of notice for local authorities to use.

12. Under Rule 5 the applicant (or appellant) and the local planning authority must ensure that *within 8 weeks of the starting date*, 2 copies of their outline statements have been received by the Secretary of State. Other parties may be required by the Secretary of State to provide an outline statement, *within 4 weeks of being so required*. The (first) pre-inquiry meeting is to be held *within 16 weeks of the starting date*, and the Inspector may, under Rule 5(9), call further pre-inquiry meetings where he considers it necessary. These meetings provide an important opportunity for the Inspector to identify clearly the main issues with which the inquiry is likely to be concerned and any need for additional information. This makes it easier to arrange a programme for the inquiry and to make the necessary procedural arrangements to ensure that the inquiry will run smoothly, speedily and efficiently.

Rule 5 of the Inspectors' Rules - Notification of Identity of Inspector

13. Rule 5(1) requires the Secretary of State to notify the Inspector's name to every person entitled to appear at the inquiry, except where there is insufficient time to give notification of a replacement Inspector before the inquiry opens. In those circumstances the Inspector will identify himself at the start of the inquiry.

Rule 6 - Receipt of statements of case etc.

14. Both the local planning authority, and the applicant (or appellant) must ensure that 2 copies of their statements of case are received by the Secretary of State either *within 4 weeks of its conclusion* where a pre-inquiry meeting is held under Rule 5, or *within 6 weeks of the starting date* where no pre-inquiry meeting is held under Rule 5.

15. Rule 6(5) enables the applicant and the local planning authority to require from each other copies of any documents (or relevant extracts) which the other intends to refer to or put in any evidence at the inquiry. Furthermore, to avoid unnecessary copying of documents, the assumption is that the parties will only require those documents (or relevant extracts) which they do not already have.

16. Under Rule 6(6) the Secretary of State has a discretionary power to require other parties who have notified him that they wish to appear at the inquiry, to provide 3 copies of their statement of case to him *within 4 weeks*, and one copy to any statutory party. Third parties who provide a statement (where required) are entitled to appear at the inquiry under Rule 11(1)(h).

17. The statement of case should contain the *full* particulars of the case which a party proposes to put forward at the inquiry; i.e. it should set out the arguments (planning and legal) that a party intends to put forward at inquiry and describe, but not contain, the evidence, and possibly cite the statutory provisions and case law, that a party intends to call in support of its arguments. It should also include a list of all the documents that a party will rely on when presenting their case at the inquiry and refer to in their proofs of evidence. This enables the parties to know as much as possible about each other's case at an early stage and will help the parties to focus on the matters which are in dispute. It can also help the parties assess whether there is scope for negotiation while there is still time for this to lead to a satisfactory outcome. Starting negotiations early can help avoid late cancellations of inquiries or requests for postponement.

18. To assist in ensuring that adequate information is supplied in advance of the inquiry, Rule 6(8) enables the Secretary of State or the Inspector to require the provision of such further information as may be specified. If any party considers a statement of case produced by another party to be inadequate or incomplete, this should be drawn to the Inspector's attention at the earliest opportunity.

19. Third parties are entitled under Rule 6(7) to receive from the Secretary of State a copy of the principal parties' statements of case where they themselves have been required to serve a statement. Rule 6(13) ensures that copies of statements and relevant supporting documents are available for public inspection. Late statements and supporting documents will only be

accepted under extraordinary circumstances (see paragraphs 13 and 14 of the main body of the Circular).

20. Under Rule 6(12) (which cross-refers to Rule 5(2)(a)) of the Secretary of State Rules the Secretary of State may (or, in the case of called-in planning applications, is required to) provide a pre-inquiry statement of matters (see paragraph 11). Rule 7(1) of the Inspectors' Rules is the equivalent provision in those Rules.

Rule 7 - Further power of Inspector to hold pre-inquiry meetings

21. Rule 7 of the Secretary of State Rules enables an Inspector to hold a pre-inquiry meeting where he considers it desirable, other than in cases where one is held pursuant to Rule 5; and the Inspector is similarly given the power in Rule 7(2) of the Inspectors' Rules to hold a pre-inquiry meeting for any appeal to which those Rules apply.

Rule 8 - Inquiry timetable

22. Rule 8 enables the Inspector to arrange a timetable where he considers that this would be helpful. For the Secretary of State Rule 5 cases and for other inquiries expected to last for at least 8 days, he is required to do so.

23. Rules 8(2) and 8(4) enable the Inspector to arrange and specify, in any timetable arranged under this Rule, a date for sending any proof of evidence and summary required by Rule 13 (Rule 14 of the Inspectors' Rules). This links in with the provision in Rule 13(3) requiring a proof and summary to be sent to the Inspector either 4 weeks before the date fixed for the inquiry, or by any other date specified in a timetable arranged under Rule 8. The related Rule 8(4) and Rule 13(3) (Rule 8(3) and 14 (3) in the Inspectors' Rules) provisions, taken together, will give the Inspector the discretion to vary the time limit for proofs and summaries to suit the particular circumstances of a case.

Rule 9 - Notification of appointment of assessor

24. Where a suitably qualified assessor has been appointed, Rule 9 requires the Secretary of State to notify persons entitled to appear at the inquiry of the assessor's name and the matters on which he is to advise. Rules 17 and 18 of the Secretary of State and the Inspectors' Rules respectively refer to reports by assessors ([see paragraph 47 of this Annex](#)). Assessors are important in assisting the progress of inquiries towards a quicker understanding of more specialised issues.

Rule 10 - Date and notification of inquiry

25. For Secretary of State-decided cases where a pre-inquiry meeting is held under Rule 5, Rule 10 specifies that the date for the inquiry must be no later than 8 weeks from the conclusion of the (last) pre-inquiry meeting. For other cases, the relevant period is not later than 22 weeks after the "starting date" in Secretary of State-decided cases and not later than 20 weeks in Inspector-decided cases. It will often be possible and desirable for the inquiry to start well before the specified time. Where the Secretary of State considers that it is impracticable to start the inquiry within the period specified in the Rule, it gives him the power

to extend the date by which the inquiry must open to the earliest practicable date thereafter.

26. The Department's aim, in every case, is to fix as early an inquiry date as possible. To this end, each principal party to an appeal will only be permitted one refusal of a date offered for the inquiry before the Secretary of State will proceed to fix a date, time and place for the inquiry. The period allowed for negotiation of inquiry dates will, in normal circumstances, be limited to one month. This negotiation period will be deemed to have started when the first offer of an inquiry date is made. If one or both parties refuse the first date offered, and it is clear that they are not prepared to negotiate an alternative date acceptable to the Secretary of State, the Secretary of State may proceed to fix the date of the inquiry before the negotiation period has expired. Once a date has been fixed, it will be changed only for exceptional reasons. Ultimately the decision rests with the Secretary of State. The venue for the inquiry should afford adequate facilities for those with special needs.

27. The Secretary of State must normally give the parties at least 4 weeks' notice of the inquiry under Rule 10. In practice, it will often be possible to give much more notice.

28. The extent of publicity for an inquiry is, in practice, generally left to the discretion of the local planning authority, although the Secretary of State may stipulate requirements in a particular case under Rule 10(6) of the Secretary of State Rules (Rule 10(5)). Local planning authorities will usually be in the best position, from their local knowledge, to decide upon the appropriate extent of press publicity or individual notification. It is important that persons or bodies known to have an interest in a referred application or an appeal are informed in good time of the inquiry details particularly where such a body is a statutory consultee. Where a local planning authority is required to publish notice of an inquiry in a newspaper, it is a requirement that this should be done not later than 2 weeks before the inquiry.

Rule 11 - Appearances at inquiry

29. Rule 11(1)(c) lists the bodies entitled to appear at an inquiry, including certain public authorities. These authorities are bodies who can exercise local planning authority functions, although they may not necessarily be the local planning authority in the particular case.

30. Rule 11(2) makes clear that the Inspector will not unreasonably withhold permission for any other person to appear at an inquiry (ie beyond those entitled to appear under Rule 11(1)). In practice, anyone who wishes to appear at an inquiry will usually be allowed to do so, provided they have something relevant to say which has not already been said.

31. It is good practice for individuals with a similar interest to get together to agree upon a spokesperson (or spokespersons) and it is not considered that this needs to be subject to the Inspector's approval.

Rule 12 - Representatives of Government Departments and other authorities at inquiry

32. Although under this Rule a representative of a Government Department is not required to answer any question directed to the merits of Government policy, the Inspector may permit such a question if the representative is prepared to answer it.

Rule 13 - (Rule 14 of the Inspectors' Rules) - Proofs of evidence

33. This Rule contains a number of provisions that are designed to assist improved public participation in the inquiry process and to help achieve savings in inquiry time, without detracting from the fairness of the proceedings nor the ability of participants to make their views known.

34. Any person entitled to appear at an inquiry who intends to read, or call another person to read, from a proof of evidence is required to send a specified number of copies to the Secretary of State and to any statutory party within the time periods laid down in the Rules. A guide to presenting written evidence at public inquiries is at Annex 3(i).

35. Rule 13(7) of the Secretary of State Rules (Rule 14(7)) requires the local planning authority to give any person a reasonable opportunity to inspect and, where practicable, take copies of any document sent to or by them, under this Rule. These provisions enable all interested parties to familiarise themselves with proofs of evidence before an inquiry opens.

36. Where a summary is provided, in accordance with the Rules, only that summary, as opposed to the full proof, shall be read out at the inquiry unless the Inspector permits or requires otherwise. This provision, and the discretion it affords to the Inspector, remains a crucial element of the Rules. However, the full proof will be treated as tendered in evidence under Rule 15(7) of the Secretary of State Rules (Rule 16(7)) and cross-examination can take place on it.

37. It is recognised that a certain amount of flexibility, and sensible use of discretion by the Inspector, is important in using these provisions effectively to shorten inquiries while ensuring that they remain as thorough as possible, and without making them more difficult to follow. Thus, there is no statutory limit on the length of summaries. Attention is drawn, however, to the advice on the length of summaries given in Annex 3(i), paragraph 10. It is appreciated that it may sometimes be difficult to summarise complex technical evidence effectively, and it is not intended to prevent witnesses properly explaining their evidence. Situations may also arise where the Inspector considers it necessary or very important that more than the summary should be read out, e.g. in order to make the proceedings more intelligible for third parties or to ensure that germane points are adequately explained. In such exceptional situations, Inspectors will use their own discretion to enable or require more than the summary to be read out.

38. However, summaries of complex evidence can help to make the salient points clearer to the interested parties, as well as saving time, which is in the interest of all participants.

39. Under the Rules all the parties are required to facilitate the exchange of relevant information in good time before an inquiry opens, so that everyone has adequate time to prepare properly. Parties should normally provide with their proofs of evidence, the data, methodology and assumptions used to support their submissions unless this material has been agreed and is included as part of the statement of common ground. This is particularly important for major inquiries. If extensive tables, graphs, diagrams, maps etc are not produced until after the inquiry has opened, this can cause unnecessary delay, and the other parties might well need time, by means of an adjournment, to study these. If new material evidence is raised at a very late stage which another party has not had adequate time to consider, an

adjournment may result and, unless there is good reason for the late submission, an award of costs could arise.

Rule 14 (Rule 15) - Statement of Common Ground

40. The local planning authority and the applicant (or appellant) will ensure that the Secretary of State has received an agreed statement of common ground, 4 weeks before the date fixed for the inquiry. The applicant (or appellant) will be responsible for sending a copy of the agreed statement to the Secretary of State. A guide to the statement of common ground is at Annex 3(ii)

Rule 15 (Rule 16) - Procedure at inquiry

41. The local planning authority shall give evidence first, unless the Inspector in a particular case decides otherwise, and the applicant (or appellant) shall have the right of final reply. Other parties entitled or permitted to appear shall be heard in the order determined by the Inspector.

42. All persons entitled to appear at an inquiry are entitled to call evidence. Only the applicant (or appellant), the local planning authority and any statutory party have an entitlement to cross-examine, although the Inspector may permit other persons to do so.

43. Under paragraph (6) of this Rule, the Inspector may refuse to hear evidence or to permit cross-examination which is irrelevant or repetitious, and he may require any person behaving in a disruptive manner to leave the inquiry.

44. Rule 15(7) of the Secretary of State Rules (Rule 16(7)) makes clear that, notwithstanding the requirements relating to the provision and reading of summaries of proofs of evidence, the full proof will still be treated as tendered in evidence and open to cross-examination (unless the person required to provide the summary notifies the Inspector that he wishes to rely on the summary only).

45. Rule 15(12) of the Secretary of State Rules (Rule 16(12)) enables the Inspector to take into account written representations, evidence or other documents received during the inquiry, as well as before it opens, provided that they are disclosed at the inquiry. Late representations will normally be disregarded unless there are extraordinary circumstances (see paragraph 14 of the main body of the Circular).

Rule 16 (Rule 17) - Site inspections

46. This Rule allows the Inspector to make accompanied site visits during the inquiry and after its close, as well as unaccompanied visits before or during the inquiry. The Inspector will refuse to hear evidence or other submissions during any accompanied visit. It is legitimate, however, for people to draw his attention to particular features of the site and its surroundings.

Rule 17 (Rule 18) - Procedure after inquiry

47. Where an assessor has been appointed to sit with an Inspector at an inquiry to advise on

specialist matters, he may subsequently provide the Inspector with a written report on those matters. The Inspector is, however, entirely responsible for the writing of his report to the Secretary of State and for the recommendation made (or in Inspector-decided appeals, for reaching a decision). In Rule 17(3) of the Secretary of State Rules, there is a requirement for any written report made by an assessor to be appended to the Inspector's own report, and for the Inspector to state how far he agrees or disagrees with the assessor. This does not apply to the Inspectors Rules, since the Inspector does not provide a report to the Secretary of State where he is determining an appeal himself; but the existence of an assessor's report will be made known under Rule 18(1) of those Rules, to enable inspection to take place under Rule 19(2).

48. Regarding the treatment of evidence received after the inquiry, Rule 17(5) of the Secretary of State Rules requires reference back to the parties where the Secretary of State is disposed to disagree with the Inspector's recommendation. Such disagreement might be because he differs from the Inspector on any matter of fact mentioned in, or appearing to him to be material to, a conclusion reached by the Inspector, or he proposes to take into consideration any new evidence or any new matter of fact (not being a matter of Government policy). For appeals to be decided by an Inspector, Inspectors are required under Rule 18(3) of the Inspectors' Rules to refer back to the parties where they propose to take into account any new evidence or any new matter of fact (not being a matter of Government policy) which was not raised at the inquiry and which they consider to be material to their decision. It is accepted that there may be circumstances other than those set out in the above-mentioned Rule where the Secretary of State, or the Inspector in the case of a transferred appeal, may consider that reference back should take place in the interests of natural justice. These will continue to be identified on a case-by-case basis.

49. Where reference back takes place under Rule 17(5) of the Secretary of State Rules or Rule 18(3) of the Inspectors Rules for transferred appeals - all persons entitled to appear at the inquiry who appeared at it will be afforded the opportunity of submitting written representations within 3 weeks. Where reference back is required because it is proposed to take account of some new evidence or new matter of fact, the parties may, alternatively, ask for the inquiry to be re-opened; and if such a request is made by the applicant (or appellant) or the local planning authority, the inquiry will have to be re-opened. In other circumstances, the Secretary of State (or the Inspector for a transferred appeal) may, at his discretion, cause the inquiry to be re-opened.

50. When making his decision or recommendation the Inspector may disregard any written representations or evidence or other document received after the close of the inquiry.

Rule 18 (Rule 19) - Notification of decision

51. Any persons entitled to appear at the inquiry who did appear are entitled to be notified of the decision in writing, whether or not they have asked to be notified, and any other person, who appeared at the inquiry and asked to be notified will also be notified. Where an assessor provides a written report, this will, in cases to be decided by the Secretary of State, be distributed with the Inspector's report as an appendix. The right to apply to the Secretary of State to inspect documents extends to 6 weeks from the date of decision to tie in with the High Court challenge period.

Rule 19 (Rule 20) - Procedure following quashing of decision

52. This Rule relates to the procedure to be followed where the original decision has been quashed by a Court. It ensures that those who were entitled to appear at the inquiry and who did so are given the opportunity to make further comments on the case, following the Court's decision. The Secretary of State will send to those parties a written statement of the matters on which further representations are invited within a 3 week period, for the purposes of his further consideration of the application or appeal, and will afford them the opportunity of asking for the inquiry to be re-opened. The Secretary of State may, at his discretion cause the inquiry to be re-opened, whether by the same or a different inspector.

Rule 20 (Rule 21) - Allowing further time

53. There may, exceptionally, be circumstances where it would be reasonable to allow further time for the taking of any step in respect of which the Rules specify a time limit, and this Rule therefore enables the Secretary of State at any time, in a particular case to do so. The Secretary of State will be extremely sparing in the use of this power.

Rule 21 (Rule 22) - Additional copies

54. At any time before the close of an inquiry, the Secretary of State can request additional copies of a statement of case, a proof of evidence or any other document or information sent to him before or during an inquiry. The Secretary of State will specify the time within which the copies should be received by him.

Rule 23 (Rule 24) - Mayor of London

55. Rule 23 of the Secretary of State Rules (Rule 24) modifies the rules where: (a) the Mayor of London has directed a local planning authority to refuse an application; or (b) the Mayor is required to be notified of an application, but has not directed refusal of it, and in either case, the application is subsequently the subject of an appeal.

56. Where an appeal follows a direction issued by the Mayor, the general principle is to provide for a similar level of involvement for the Mayor in the inquiry process as the local planning authority and the applicant (or appellant). Thus, under Rule 23 (2)(a)(i) of the Secretary of State Rules (Rule 24 (2)(a)(i)) the Mayor is sent a copy of the relevant notice from the Secretary of State at the same time as the local planning authority and the applicant. The Mayor is informed of the names and addresses of the statutory parties under Rule 23(2)(b)(i) (Rule 24(2)(b)(i)); and receives a copy of the completed questionnaire prepared by the local planning authority at the same time as the Secretary of State and the applicant under Rule 23(2)(b)(iii) of the Secretary of State Rules (Rule 24(2)(b)(iii)).

57. Under Rules 23 (2)(c) where the Secretary of State holds a pre-inquiry meeting, the Mayor must submit and will receive copies of outline statements in the same timescale as the local planning authority and applicant (there is no equivalent Inspectors' Rule). Rule 23(2)(d) of the Secretary of State Rules (Rule 24(2)(c)) requires the Mayor to submit his statement of case within the same timescale as the local planning authority, which will be circulated to the local planning authority and the applicant. The same requirements are imposed on the Mayor, as

the local planning authority and the applicant, if further information is requested by the Secretary of State. Rule 23(2)(g) of the Secretary of State Rules (Rule 24(2)(f)) adds reference to the Mayor of London, to the list of those persons entitled to appear at an inquiry. Rule 23(2)(h) of the Secretary of State Rules (Rule 24(2)(g)) allows an opportunity for the local planning authority, the applicant and any other person entitled to appear at the inquiry to apply to the Secretary of State to request that a representative of the Mayor attend the inquiry. Rule 12(2) requires the Secretary of State to forward the request to the relevant body, in this case the Mayor, who must make a representative available.

58. Rule 23(2)(i) of the Secretary of State Rules (Rule 24(2)(h)) modifies the rules in respect of the submission of proofs of evidence to ensure that the Mayor is subject to the same rules as the local planning authority and the applicant and Rule 23(j) of the Secretary of State Rules (Rule 24(2)(i)) requires that the Mayor joins the local planning authority and the applicant in preparing a statement of common ground.

59. Rule 23(2)(k) of the Secretary of State Rules (Rule 24(2)(j)) adds the Mayor to the list of those parties entitled to cross examine other persons at the inquiry. Rule 23(2)(l) of the Secretary of State Rules (Rule 24(2)(k)) allows the Mayor to require the re-opening of an inquiry in the circumstances set out in Rule 17(5) of the Secretary of State Rules (Rule 18(4)) and within the period mentioned in Rule 17(6) of the Secretary of State Rules (Rule 18(3)).

60. Where the Mayor is required to be notified of an application, but has not directed refusal of it, and the application is subsequently the subject of an appeal, Rule 23(3) of the Secretary of State Rules (Rule 24(3)) provides that the Mayor shall have the same status and involvement in the inquiry as a statutory party.

General

61. A diagram of the appeal stages and time limits in inquiry cases may be found here.

Annex 3(i): A Guide to Presenting Written Evidence at Public Inquiries

1. This guide is referred to in paragraph 34 of Annex 3.

Proofs of Evidence and Summaries

2. The term "proof of evidence" is used in the Inquiry Procedure Rules. It refers to the document containing the written evidence about which a person appearing at a public inquiry will speak.

3. Proofs should be concise and ideally contain facts and expert opinions deriving from witnesses' own professional or local knowledge as applied to individual cases. It would also be helpful if they were to address the question of conditions to the extent appropriate to a witness's evidence.

4. Proofs should not include matters which are not in dispute. The statement of common ground prepared jointly by the applicant (or appellant) and the local planning authority should contain basic matters such as site description, planning history and the relevant planning

policy. In addition, the statement of common ground should include the results of any pre-inquiry agreement the main parties have reached on what conditions might be needed.

5. Where it is important to set out facts in detail, the proof should focus on what is really necessary to make the case and avoid including unnecessary material. Where the proof makes a point which relies on a document, the page and paragraph number in that document should always be identified and cross-referenced.

6. Reasons for refusal must specify all relevant development plan policies. These policies should therefore be quoted in the proof only to the extent needed to understand the argument being put forward and only those that are fundamental to an appraisal of the proposal's merits.

7. If case law is to be cited in the proof, it would be helpful if the full law report reference is included together with a copy of the report are included as a document and cross-reference.

8. Where a party calls more than one witness, the evidence of each should address distinct topics. It is important that witnesses do not overlap in their evidence. Even fairly small differences in emphasis can confuse the case being presented.

9. Proofs should, as far as possible, be bound so that they can be opened flat. They should be bound separately from any supporting documents. To allow notes to be made they should be printed on only one side of each page. Proofs should have their pages and paragraphs numbered. Sufficient copies should be prepared for all the main participating parties and distributed in accordance with the Rules. Additional copies should be made available for inspection at the local planning authority's offices prior to the inquiry and for inspection and circulation at the inquiry. The number required will depend on the likely level of public interest.

10. Summaries should be provided when a proof exceeds 1500 words. As a guide, summaries should not exceed 10% of the length of the proof. It is normally only the summaries that are read out at the inquiry. These should accurately condense the gist of the proof, concentrating on the case in relation to the main points at issue. The content of the summary should not go beyond the scope of the text it purports to summarise otherwise unproductive disputes can arise.

Documents

11. All documents accompanying proofs of evidence should be carefully prepared, presented and, where appropriate, edited so as to exclude irrelevant matter. Their purpose is to set out in an ordered and readily-identifiable form the factual material and technical data upon which the evidence is based. They should be separate from the proofs of evidence and have identifiable reference numbers prefixed by letters denoting the name of the party producing them. The relevance of all documents submitted should be explained in evidence or submissions.

12. Lists of core documents, such as policy statements and development plan extracts, should be compiled and indexed by local planning authorities and submitted as statements of case. Co-operation between parties should ensure that as far as possible a list of core documents is agreed and that extracts contain all material to be referred to. All main parties should start to number their own documents before the inquiry, and keep an up-to-date list to be completed

and submitted before the close of the inquiry.

13. As far as possible documents should be of A4 size. Extracts from published material must indicate the precise context with full titles, chapter headings and dates. A photocopy of the document's title page is sufficient to indicate its origin and publication date.

14. Plans, maps and diagrams should be similarly identified and be of A4 size or folded to A4 size. Plans and maps may be photographically reduced and incorporated in an A3 size plan brochure provided it is flexible enough to be folded to A4 size. Otherwise, photographs should be mounted on a series of A4 cards. Each photographic view should be individually numbered and the viewpoints from which they were taken shown on a separate Ordnance Survey extract. The time and date at which a photograph was taken should be given. It is also helpful to give the focal length of the lens used. Models displayed at inquiries should be photographed, preferably in colour, and copy prints submitted as documents.

15. In preparing for longer inquiries local planning authorities should compile lists of core documents and submit them with statements of case. These documents will include policy statements and development plan extracts, and other key policy documents and background material. The test for including a document is whether it is probable that it will need to be referred to before the inquiry closes. As the pre-inquiry process continues the parties should consult to agree on any additions to the core document list prior to the submission of these documents to the Secretary of State. If a document is a core document there is no need to produce separate extracts to accompany individual proofs. The proof only needs to refer to it by its core document reference number.

16. Plans, photographs and diagrams should be listed as documents. All should display the already notified Planning Inspectorate reference number as well as the document number. Local planning authorities should include both a copy of the Inquiry Notice and of the letter of notification of the inquiry as documents. They should also specifically identify the application site plan and application drawings. Bundles of correspondence can be submitted as single documents provided that each letter is separately numbered.

17. Proofs of evidence are not normally inquiry documents and should not be listed in the document list. Where there are many of them, they should however be separately numbered and indexed.

The Importance of Timeliness

18. It is essential that proofs, summaries, statements of common ground and documents are submitted in time to be received 4 weeks before the inquiry opens. It is vital for the efficient functioning of the inquiry process that all parties have adequate time to prepare for the inquiry in the light of the case being promoted by the opposing side.

Annex 3 (ii): A Guide to the Statement of Common Ground

1. This guide is referred to in paragraph 40 of Annex 3.

2. The statement of common ground is a written statement prepared jointly by the local

planning authority and the applicant (or appellant). The purpose of the statement of common ground is to set out the agreed factual information about the proposal. The inclusion of agreed material in the statement of common ground should result in shorter proofs of evidence and shorter inquiries.

- 3.** The statement of common ground should complement the proofs of evidence and both should be received by the Secretary of State no later than 4 weeks before the inquiry. The main parties will therefore need to meet before that date to try to narrow the areas of dispute and agree on what should go in the statement. It is the responsibility of the applicant (or appellant) to send the statement to the Secretary of State.
- 4.** The statement of common ground should be kept factual and should not include opinion and comment.
- 5.** In all cases agreement can be reached on some matters: the precise nature of the proposal before the inquiry, the description of the site, its planning history and the relevant policies can all be agreed.
- 6.** Evidence on technical matters and topics that rely on basic statistical data can often be fruitful areas for pre-inquiry agreement. Traffic evidence, for example, can be simplified and the issues refined, by pre-inquiry agreement on matters such as traffic flows, design standards, and the basis for forecasting the level of traffic the proposal would generate. Other examples of topics where a degree of factual agreement might be possible are the pattern and frequency of public transport routes, applicable air quality standards, acceptable noise impact thresholds, nature conservation survey data, and housing land availability. What might be agreed in any particular appeal will depend on the matters at issue and will be unique to that case.
- 7.** The statement of common ground, by clearly identifying the matters which are not in real dispute, may save time and cost at the inquiry. It may also be useful for the statement to identify areas where agreement is not possible.
- 8.** Time can also be saved at the inquiry by seeking to agree beforehand the conditions that any permission granted should contain and any planning obligations being considered. The Rules reinforce the established presumption against taking into account material submitted after the inquiry is closed. It is therefore sensible to reach agreement on any necessary section 106 planning obligations before the inquiry.
- 9.** Failure to reach agreement on the statement of common ground could, if resulting from a non-co-operative attitude rather than a genuine disagreement on the facts, lead to an application for costs. If it can be shown that a lack of co-operation has extended the inquiry, for example, and caused additional expense, an award of costs could be made.
- 10.** The Rules require the local planning authority to allow anyone who requests it an opportunity to inspect the statement of common ground.

Endnote

[1] "The relevant notice" means the Secretary of State's written notice informing the appellant

and the local planning authority that an inquiry is to be held.

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Annex 4: Preparing for Major Planning Inquiries in England: A Code of Practice

1. This Annex is referred to in paragraph 31 of the main body of the Circular.
2. This Code of Practice relates to procedures leading up to major inquiries under the Planning Acts in England. The purpose of the Code is to enable the Inspector to structure the inquiry in such a way as to ensure that the proceedings run smoothly, speedily and efficiently, to help save time and resources, and to help participants to concentrate on the real issues that have to be resolved. This is in the interests of all parties to the inquiry.
3. The Code is based on experience gained at a number of past inquiries, and takes as its legal basis the provisions of the Inquiries Procedure Rules (the "Rules") ([see endnote 1](#)). At the same time, the code also includes administrative arrangements which are not set out formally in the Rules but which are intended to be helpful to all participants during the pre-inquiry stages of a major planning case where the Secretary of State has decided to apply the alternative pre-inquiry procedures appropriate to a major inquiry. The code does not apply to inquiries into an Order proposed by the Minister (though elements of the Code could usefully be applied to such Orders where relevant - as they could be to inquiries into major proposals held under other legislation).
4. The Code is intended for application in cases where the development proposal is of major public interest because of its national or regional implications, or the extent or complexity of the environmental, safety, technical or scientific issues involved, and where for these reasons there are a number of third parties involved as well as the applicant and the local planning authority.
5. Experience suggests that some of these third parties are likely to wish to be represented formally at the inquiry, and to play a major part in the proceedings, for example by calling witnesses and by cross-examination of witnesses called by other parties, particularly the promoters of the scheme. Other third parties may simply wish to have the opportunity to express their concern about the scheme, without playing a major part in the remainder of the inquiry.
6. The Code seeks to help the Inspector and the parties prepare for the inquiry by:
 - (i) identifying in advance those who intend to participate in the inquiry and the extent to which they wish to do so, making them known to one another, and enabling them to use their time and resources to best advantage;
 - (ii) encouraging advance presentation of information and views to help participants concentrate their inquiry statements on the key issues;
 - (iii) where possible, agreeing certain facts between the parties; and
 - (iv) enabling the inquiry arrangements and procedures to be properly planned for the benefit of all concerned.

First Steps

7. It will be for the Department to decide whether or not the provisions in the Rules relating to pre-inquiry meetings and the Code of Practice should be applied to any particular inquiry. This decision will be taken as soon as possible after the submission of the planning appeal to the Secretary of State or the calling in of the application under the provisions of section 77 of the Town and Country Planning Act 1990. The Code is likely to be applied only to the few very large inquiries and when it is applied, a separate inquiry secretariat will be set up.

8. Once a decision has been taken to apply the Code, the applicant and local planning authority will be notified and sent a copy of the Code, together with a written statement of the matters about which the Secretary of State particularly wishes to be informed for the purposes of his consideration of the application or appeal. (This statement may be supplemented at a later stage if necessary).

9. The local planning authority will, in addition, be sent a standard registration form for use by interested parties who wish to participate in the inquiry. This form will request the following information:

(i) the name, address and telephone number of the person or organisation registering;

(ii) the name, address and telephone number of any agent, or, in the case of an organisation, of the contact person;

(iii) whether or not the person or organisation registering has an interest in any property that will be affected by the proposal;

(iv) whether or not the person or organisation registering is likely to want to be represented formally and to play a major part in the inquiry, e.g. by calling witnesses and/or cross-examining other parties and their witnesses. (v) if not, whether or not the person or organisation registering will wish to give oral evidence at the inquiry or will wish only to submit representations in writing.

10. The Department will notify the local planning authority of those persons or organisations who are known at that stage to have a right to appear at the inquiry or to have an interest in the proposal. The local planning authority will be asked:

(i) to send a copy of the Code, the Secretary of State's statement of issues and the standard registration form to all those interested persons notified to them by the Department; to any statutory parties^(see endnote 2); and to any other persons or organisations known to it to have an interest in the proposal;

(ii) to publish, in the local press, the formal notification of the application of the Code; the application of the Rules, provisions relating to pre-inquiry meetings; the Secretary of State's statement of issues; and a request that anyone interested in participating in the inquiry should obtain from the local authority a copy of the Code and the registration form.

The local planning authority will be asked to confirm to the Department that the steps at (i) and (ii) have been undertaken and to forward a copy of the newspaper notice.

11. The registration forms will include the address of the inquiry secretariat or other nominated persons to whom they should be returned, and the date by which this should be done. This will normally be within 21 days of the publication of the formal notification in the local press.

12. The inquiry secretariat will liaise with the local planning authority to ensure that the authority has sufficient copies of the code, the registration form and the statement of relevant issues to distribute as necessary.

Register of participants

13. The inquiry secretariat will prepare a register of participants from the information contained in the registration forms. The register will be in 3 parts. Part 1 will contain details of all those who have indicated that they wish to play a major part in the proceedings (referred to subsequently as "major participants"). Part 2 will contain details of those who have indicated that they wish to give oral evidence without playing a major part in the remainder of the proceedings. Part 3 will contain details of those who wish to submit representations in writing without taking part in the inquiry itself. A copy of the register will be sent to the applicant, the local planning authority and other major participants, and arrangements will also be made for copies to be available for public inspection. Additions or deletions or transfers between one part of the register and another can be made at any time, and these will be notified in the same way.

14. The Inspector will normally allow all those included in Part 1 of the register to appear at the inquiry, regardless of their legal entitlement to do so. Those included in Part 2 of the register will also normally be allowed to appear, provided that their evidence is relevant, and does not merely duplicate evidence already given by others. Those not included in Part 1 or Part 2 of the register with no legal entitlement to appear at the inquiry will be allowed to appear at the discretion of the Inspector.

15. The major participants are likely to derive most benefit from formal pre-inquiry procedures (see also paragraphs 9-12 of Annex 3). They will be sent a copy of the Code, and will be expected to comply with its provisions on such matters as the pre-inquiry exchange of documents, and, provided they do so, they will in turn receive copies of documents circulated by other participants, which are relevant to their interests. They will also receive individual notification of arrangements for pre-inquiry meetings.

16. Other participants will be much less affected by the provisions of the Code, but its use is not intended in any way to diminish their opportunity to make representations or the importance of their contribution to the inquiry proceedings. The information obtained will help the Inspector to plan the inquiry in the most effective manner, and to prepare a timetable for it, and this will be to the benefit of everyone. The register will also enable all those with an interest in the inquiry to discover who is taking part, and this will provide an opportunity for those with similar points of view to get together and to consider combining their representations.

Preliminary notification of the inquiry arrangements

17. As soon as possible after the publication of the formal notification of the application of the code in the local press, the Department will notify the applicant, the local planning authority and any interested Government Department and all those who are known to have a right to appear at the inquiry and who wish to do so, of the:

- (i) name of the Inspector appointed to hold the inquiry;
- (ii) name of the assessors (where required, and if known at this stage);
- (iii) arrangements for the first pre-inquiry meeting;
- (iv) target date for the commencement of the inquiry.

The local planning authority will be asked to publish this information in the local press, and it will also be sent to other major participants as they register.

Outline Statement

18. In accordance with the provisions of Rule 5 of the Rules, the inquiry secretariat will ask the local planning authority and the applicant to provide, not later than 8 weeks ^(see endnote.3) after the Secretary of State's notification that an inquiry is to be held, a written outline statement. Other major participants may also be asked to serve such a statement. If so, they will be required by the Rules to provide it within 4 weeks of being asked to do so. These statements should contain the general lines of the case which they intend to put forward and explain its relationship to the matters identified by the Secretary of State about which he particularly wishes to be informed. They should include an estimate of how long the presentation of the case is likely to take; information about witnesses likely to be called and an indication of which other witnesses the participant would like to cross-examine; a list of any special studies which have been taken into account or are being prepared. The Secretary of State will send the local planning authority and the applicant (or appellant) a copy of each others' outline statements of case. In any event, arrangements will be made for copies of all statements to be available for public inspection. In addition, all participants remain free to submit other written statements to the Inspector at any time: such statements will be made available for public inspection and circulated as appropriate.

19. The outline statements have two functions. First, they provide advance warning of arguments which the various participants are proposing to deploy at the inquiry. It should be possible to identify from these statements the issues that are likely to feature most prominently at the inquiry. Secondly, the outline statements provide the information that the Inspector requires to structure and programme the inquiry. In the light of what is said in them the Inspector may wish to invite participants who appear to hold the same or similar views to consider collaborating to present a single case at the inquiry. The outline statement will also help the Inspector to see whether there are any relevant issues which are in danger of not being properly covered at the inquiry, and to consider how to remedy any deficiencies, for example by inviting persons who have expert knowledge of the matter concerned to take part

in the inquiry.

20. The Inspector will seek to identify from the statements those areas where facts appear to be capable of agreement between main parties, such as descriptions of the proposal, the site and surroundings, or the fact and methodologies relating to environmental effects. He will do this as soon as possible after the receipt of the outline statements. The statement of common ground will then be deposited and circulated in the same way as the written statements. When participants agree to work together to prepare an agreed statement of facts (see paragraph 22(iv) below) or statement of common ground, the statement will be circulated as soon as possible after agreement has been reached.

The pre-inquiry and programme meeting

21. The purpose of the pre-inquiry meeting is to help the Inspector and the participants to prepare for the inquiry proper, and so enable the proceedings to be conducted as efficiently and speedily as possible. It will be a public meeting, presided over by the Inspector, and more than one meeting may be held where the Inspector considers this to be desirable. No discussion of the merits of the development proposal is permitted. It is not the function of a pre-inquiry meeting to consider matters, including evidence, which should appropriately be discussed at the inquiry itself.

22. The matters to be considered at the pre-inquiry meeting will include:

- (i) any necessary clarification of the Departmental statement of issues;
- (ii) identification of any material required by the Inspector and not already covered by statements, and consideration of how this is to be provided, including the progress of any special studies being undertaken, and the need for additional participants;
- (iii) responses to any invitation from the Inspector to participants to consider collaboration;
- (iv) arrangements for preparation of the statement of common ground including arrangements for any informal meetings that may be required to assist in preparing such statements;
- (v) a review of the timetable for the work to be done before the inquiry opens, including the submission of any further statements;
- (vi) the role of any assessors.

23. Procedural matters will also be considered at the pre-inquiry meetings and a separate meeting (the programme meeting) may be held for this purpose. The matters to be considered will include:

- (i) details of the venue and proposed dates and times of sittings, including any provision for evening sessions or for sessions away from the main venue;

- (ii) programming the inquiry including the order of appearances and whether a topic by topic programme is to be adopted;
- (iii) accommodation and facilities at the inquiry (e.g. copying, transcripts, telephones, public address system, and facilities for the media);
- (iv) secretariat arrangements;
- (v) procedural matters, including consideration of the form of opening and closing statements, the need for and use of daily transcripts and requirements for proofs of evidence and summaries;
- (vi) arrangements for the submission, circulation and inspection of documents, including the listing of documents already submitted;
- (vii) agreement on the units of measurement, nomenclature, acronyms, etc to be used at the inquiry.

24. The secretariat will send a note of conclusions reached at any pre-inquiry meeting to major participants, and arrangements will be made for copies to be made available for public inspection. In addition the applicant, the local planning authority, persons included in Parts 1 and 2 of the register and any persons not included in those Parts of the register who have a right to appear at the inquiry will be given notice in writing of the date, time and place for the holding of the inquiry.

Informal meetings

25. Either before or during the inquiry the Inspector may wish to arrange for informal meetings to be held to see whether agreed statements of facts can be prepared on particular issues (eg statistical methodology) to help participants with similar views to consider the possibility of collaboration, or for similar purposes. As with formal pre-inquiry meetings, it is not the function of the meeting to hear evidence on matters which should appropriately be discussed at the inquiry itself. The Inspector will indicate the purpose of such meetings, and designate a chairman who will normally be either the Inspector himself or one of the assessors. In the case of technical evidence, the chairman should aim to produce a report which will identify matters which are agreed, the matters in dispute, and the factors or assumptions which have led to the differences of view. Wherever possible, copies of the report will be sent to major participants who have an interest in the issue concerned, at least two weeks before evidence on that issue is due to be given.

Written statement of case

26. The applicant and local planning authority will, and other major participants may, be required to provide a written statement containing full particulars of the submissions which they propose to put forward, together with a list of any documents (including maps and plans) which they intend to refer to, or put in evidence, at the inquiry. If such a statement is required, it will need to be provided by the applicant and the local planning authority not later than four weeks before the inquiry opens and by any other party within four weeks of being required to provide

it.

Proof of evidence and summary

27. Any person entitled to appear at the inquiry who proposes to give, or call upon a witness to give, evidence at the inquiry by reading a proof of evidence, is required by the Rules to provide the Inspector with a copy of the proof not later than four weeks before the inquiry opens, or any alternative date specified by the Inspector. Furthermore, unless the proof contains no more than 1500 words it must be accompanied by a written summary. Where a written summary is required, only that summary may be read out at the inquiry unless the Inspector permits or requires otherwise. Nevertheless, the full proof of evidence will be treated as tendered in evidence (unless the witness decides to rely on the summary alone) and the person reading the summary may be cross-examined on the contents of the full proof. As a guide, summaries should not exceed 10% of the length of the proof.

Introduction of new evidence

28. If a participant giving oral evidence at the inquiry introduces into his submissions any matters not covered by their pre-inquiry statements, the Inspector may agree to a request from another participant to adjourn the inquiry to allow time for the consideration of the additional material. The Inspector may also agree to such a request where failure to provide a statement by the required date has prejudiced presentation of another participant's case. The Inspector may consider making a recommendation for an award of costs against a person who unreasonably causes such an adjournment.

Mayor of London

29. Guidance on the Mayor's role in the planning system generally is set out in a separate circular on strategic planning in London (see also paragraph 34 of the main body of the Circular and paragraphs 55 to 60 of Annex 3).

Endnotes

[1] The Town and Country Planning (Inquiries Procedure) (England) Rules 2000 (SI 2000 No 1624)

[2] As defined by Rule 2 of the Rules

[3] These periods may be extended, at the Secretary of State's discretion (see paragraph 53 of Annex 3).

Annex 5: Called-in Planning Applications - Government Policy statement

Hansard, Written Answer, 16 June 1999, 138

Planning Applications

Mr. Bill Michie: To ask the Secretary of State for the Environment, Transport and the Regions if he will make a statement about his policy on calling in planning applications under section 77 of the Town and Country Planning Act 1990.

Mr. Caborn: My right hon. Friend's general approach, like that of previous Secretaries of State, is not to interfere with the jurisdiction of local planning authorities unless it is necessary to do so. Parliament has entrusted them with responsibility for day-to-day planning control in their areas. It is right that, in general, they should be free to carry out their duties responsibly, with the minimum of interference.

There will be occasions, however, when my right hon. Friend may consider it necessary to call in the planning application to determine himself, instead of leaving the decision to the local planning authority.

His policy is to be very selective about calling in planning applications. He will, in general, only take this step if planning issues of more than local importance are involved. Such cases may include, for example, those which, in his opinion:

- may conflict with national policies on important matters;
- could have significant effects beyond their immediate locality;
- give rise to substantial regional or national controversy;
- raise significant architectural and urban design issues;
- or may involve the interests of national security or of foreign Governments

However, each case will continue to be considered on its individual merits.

