COMMON LAND GUIDANCE SHEET 3

Common Land and Village Greens: inquiries and hearings into applications for consent to carry out works or deregister land

Applications under the common land enactments

1. The Planning Inspectorate carries out the functions of the Secretary of State for Environment, Food and Rural Affairs (Defra) in relation to consents under common land and village green legislation. The consents most commonly sought are:

- **Section 38 of the Commons Act 2006**: Consent is generally needed from the Secretary of State for any "restricted works" on registered common land. Restricted works are those which prevent or impede access to or over the land, which might include erecting fencing, constructing buildings, digging ditches or resurfacing of land with tarmac and similar materials.

- **Section 23 of the National Trust Act 1971**: Commons owned by the National Trust are subject to special legislation. Section 23(1) of the National Trust Act 1971 enables the Trust to carry out works on common land that it considers "desirable for the purpose of providing, or improving, opportunities for the enjoyment of the property by the public, and in the interests of persons resorting thereto", but the consent of the Secretary of State may be required under section 23(2).

- **Articles 12 and 17 of the Greater London Parks and Open Spaces Order 1967**: under article 12, the Secretary of State can give consent for London borough councils to carry out works on metropolitan commons under powers conferred on them by articles 7 and 8 (generally to provide various recreational facilities). Article 17 provides for the construction, widening and alteration of streets affecting metropolitan commons.

- **Section 16 of the Commons Act 2006**: Owners of registered common land or town or village greens can apply to have the land released from registration. The application must include exchange land to be registered as common land or town or village green in place of the land to be deregistered. If the land to be released is less than 200 square metres the application does not have to include replacement land.

- **Section 19**: Local authorities, statutory undertakers (e.g. utility companies) or government departments can compulsorily purchase land. Section 19 of the Acquisition of Land Act 1981 states that when a compulsory purchase order authorises the purchase of land forming part of a common or town or village green, the order is subject to special parliamentary procedure unless the Secretary of State gives a certificate under that section. Local authorities can also make an Appropriation Order under section 229 of the Town and Country Planning Act 1990 to appropriate common land or town or village green which is already owned by the local authority but which is required for another purpose (e.g. a road scheme). Again, a certificate is needed under section 19 of the 1981 Act.
2. This note provides guidance on the procedures in an inquiry or hearing into an application for a commons consent. There are circumstances where a joint public inquiry will be held. For example this might happen where a section 19 application under the Acquisition of Land Act 1981 is considered alongside a compulsory purchase order. In such cases different statutory rules, timescales and procedures are likely to apply. The lead body responsible for organising the joint inquiry will normally issue its own procedural guidance.

3. A hearing is a discussion led by an Inspector who explores the various issues involved. Hearings are less formal than inquiries and generally shorter, often lasting less than one day.

4. Inquiries may last for more than one day and witnesses may be cross examined. Hearings and inquiries are open to the public and anyone wishing to speak may do so with permission from the Inspector.

5. The Planning Inspectorate will decide whether an inquiry or hearing should be held on a case by case basis depending on the individual circumstances. We may decide to hold an inquiry or hearing where —

   - the issues of the case are particularly complex;
   - the application evidence needs to be tested.

An inquiry or hearing will give the applicant an opportunity to fully present their case to an Inspector and also enables people who are affected by the proposal to put across their points of view.

**Procedures for a public inquiry or hearing**


8. Where an application is made under section 19 of the Acquisition of Land Act 1981, section 10 of the Tribunals and Inquiries Act 1992 would apply to any inquiry. Further, section 5 of
the 1981 Act also applies section 250 of the *Local Government Act 1972* (concerning the giving of evidence at inquiries).

**Notification of the arrangements**

9. If we decide to hold a public inquiry or hearing we will set a date and notify the applicant and anyone who made representations about the application as soon as possible (but not less than 6 weeks before the inquiry or hearing).

10. We will notify the applicant and those who wish to speak at the inquiry or hearing about the detailed arrangements and what they need to do (see paragraph 14). Applicants are asked to find a suitable local venue for the inquiry or hearing. We will reimburse the cost of hiring the inquiry or hearing venue. (The invoice for the venue hire costs should be submitted within 3 weeks of the public inquiry or hearing closing.) The Inspector will expect the venue to be available between 09:00 and 17:00. The venue will generally need to meet the requirements of the inquiries venue facilities note.¹

**Advertising the inquiry or hearing**

11. We will arrange for the publication of the inquiry or hearing notice, usually in the same local newspaper(s) as the application was advertised. The notice will be published at least 6 weeks before the date of the inquiry or hearing. We will send the applicant a copy of the inquiry or hearing notice for them to display locally. The applicant must also make copies of the application documents available for public inspection. We will also send a copy of the inquiry or hearing notice to all those who made representations. The applicant must confirm in writing to us that the notices have been displayed and that the application documents are available for inspection.

**Costs for those attending**

12. The applicant, legal advisors and any other persons attending the inquiry or hearing must pay their own costs and expenses.

**Administrative support**

13. Where required, applicants will be expected to arrange for someone to provide administrative support to the Inspector at the inquiry, such as photo copying tasks and to resolve “domestic” issues (e.g. heating/lighting) etc. The person providing administrative support should not take an active part in the inquiry or hearing.

**Inspector’s requirements**

14. Once the inquiry or hearing has been arranged the inspector will issue his/her requirements for the inquiry or hearing. This will set out which documents are to be submitted and when and the running order of the inquiry or hearing. **Any documents that are submitted late will be returned.**

**Pre-inquiry meeting**

15. If a large number of people want to go to the inquiry or the case is particularly complicated we may arrange a pre-inquiry meeting. We will tell the parties if we decide to

do this and will explain what the meeting will cover. A pre-inquiry meeting will be held by
the appointed Inspector and will only deal with matters such as the order in which
evidence is presented. The meeting will not deal with the merits of the application.

16. If the Inspector asks for further information from the parties at the pre-inquiry meeting
this must be submitted to us within the time specified by the Inspector. It is helpful for
the Inspector to know at this stage who is likely to appear at the inquiry but if a name is
not put forward at the pre-inquiry meeting the person will still be able to speak at the
inquiry, subject to the Inspector’s discretion.

At the inquiry

17. The Inspector will open the inquiry by announcing the subject and asking for the names of
all those who wish to speak. He/she will then explain the procedures and how the inquiry
will be conducted and identify the main issues to be considered.

18. Everyone who takes part in the inquiry must follow the same rules so that the procedure is
fair to everyone. The Inspector will want to make sure that he/she has all the information
needed to reach a decision on the application. The applicant will usually present their case
first and then call any witnesses. The Inspector may ask questions of the applicant and
may allow others attending to do the same. The objectors present their case in the same
way and the applicant and the Inspector may question their witnesses. The applicant has
the right to make a closing statement and will have the last word. This allows them to tell
the Inspector about the important points that have come up during the questions. New
arguments cannot be introduced at this stage.

19. Anyone involved in a public inquiry may use a lawyer or other person to present their case
but this is not essential. If a group of objectors is not formally represented it may be
useful if they appoint a spokesperson to speak for them and ask questions of the
witnesses. If anyone is unable to attend the inquiry in person they may arrange to be
represented.

20. You may ask the Inspector at the hearing or inquiry if he or she is willing to accept
audio/video evidence and allow it to be played at the inquiry or hearing. It is your
responsibility to contact the venue provider to find out whether it has suitable equipment
at the venue to show the evidence or if it will allow you to use your own. The equipment
must be suitable to play the evidence so that everyone can see/hear it.

21. In certain circumstances it may be necessary for the Inspector to adjourn the inquiry and
to resume at a later time or date. If this is necessary the Inspector will explain why at the
inquiry.

Inquiry library

22. For inquiries, the Inspector will find it helpful if the main documents relevant to the
application are available for inspection throughout the inquiry by participants and
observers alike.

At the hearing

23. As with inquiries, hearings are open to anyone interested in the subject matter. They are
run in a similar way to inquiries but there is no formal cross examination of witnesses. The
applicant and objectors present their case as part of a discussion led by the Inspector. Formal representations (e.g. by a lawyer) are generally not appropriate. If a group of objectors share similar objections it may be useful if they appoint a spokesperson.

The site visit

24. The Inspector will usually visit the application site and surroundings unaccompanied before the inquiry or hearing starts. If the Inspector intends to make an accompanied site visit he/she will say at the inquiry or hearing when it will take place. The Inspector will not normally allow discussion about the application at the site visit but the parties may point out physical features they have referred to in their evidence.

Late representations

25. The Inspector will only consider written evidence that is received after the inquiry or hearing has closed in exceptional circumstances. In such circumstances the late submission will be copied to the parties which attended the inquiry or hearing and their comments sought.

Decision on the application

26. After the inquiry or hearing the Inspector will determine the application. A copy of the decision will be sent to the applicant and to all of those who made written representations or spoke at the hearing or inquiry. The decision will also be available on the Gov.uk website. Further information on common land and town and village greens and the application procedures can be seen on the Gov.uk website at: https://www.gov.uk/guidance/carrying-out-works-on-common-land

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