



Hearings and Inquiries: contrasts and expectations



Peter Rose – Planning Inspector, 21 May 2020



Presentation summary:

1. Statutory/procedural background
2. Form and process
3. Implications of Rosewell
4. Summary features – similarities and differences
5. Some tips for good practice
6. Thoughts around documents
7. A few useful further references
8. Questions and answers



1. Statutory/procedural background – making the distinction

- 3 modes of appeal with accompanying methods of fact finding:
 1. Written Representation - analytical
 2. Hearing - inquisitorial
 3. Inquiry - adversarial
- s319A T&CPA 1990
- 'Procedural Guide Planning appeals - England' March 2020 Annex K – but not determinative
- a pattern of escalating complexity moving from 1. to 2. to 3.



1. Annexe K - Written Representation procedure - would include circumstances where:

- the planning issues raised can be clearly understood from the appeal documents and from a site inspection (if required); or
- the issues are not complex and the Inspector is not likely to need to test the evidence by questioning, or need to clarify any other matters.



1. Annexe K - Hearings - would include circumstances where:

- the Inspector is likely to need to test the evidence by questioning the parties himself/herself or would otherwise need to clarify matters; or
- there is no need for evidence to be tested through formal questioning by an advocate or given on oath; or
- the case has generated a level of local interest such as to warrant a Hearing; or
- it can reasonably be expected that the parties will be able to present their own cases (supported by professional witnesses if required) without the need for an advocate.



1. Annexe K - Inquiries - would include circumstances where:

- there is a clearly explained need for the evidence to be tested through formal questioning by an advocate; or
- the issues are complex; or
- the appeal has generated substantial local interest.



2. Form and process - Written Representations

- Town and Country Planning (Appeals) (Written Representations Procedure) (England) Regulations 2009 (SI 2009/452) (NB for planning appeals only)
- submission and analysis of documents
- site inspection (and not always accompanied)
- advocates may still be contributing through client advice and documents





2. Form and process - Hearings

- Town and Country Planning (Hearings Procedure) (England) Rules 2000 (SI 2000/1626)
- Inspector discretion - Rule 11(1) 'Except as otherwise provided in these Rules, the inspector shall determine the procedure at a hearing'.



2. Form and process - Hearings (cont.)

- in essence, a structured ('roundtable') discussion led by the Inspector and directed through an agreed agenda
- significantly characterised by an 'inquisitorial burden' upon the Inspector - see *Dyason v SSE & Chiltern* [1998] (the absence of an adversarial procedure)





2. Form and process - Inquiries

- section 78 appeals determined by the Inspector – The Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2000 (SI 2000/1625)
- a highly formal and structured event
- Inspector discretion - Rule 16(1) - 'Except as otherwise provided in these Rules, the inspector shall determine the procedure at an inquiry'.



2. Form and process - Inquiries (cont.)

- Each main party is usually advocate-led and the event proceeds through a logical sequence of distinct and formal adversarial phases, including:

Openings

Examinations-in-Chief

Cross examination

Re-examination

Submissions/closings





3. Inquiries - The implications of Rosewell

Independent Review of Planning Appeal Inquiries Report,
Bridget Rosewell OBE, published December 2018

Background:

- s78 only
- 22 detailed recommendations
- full implementation by June 2020
- 2000 Inquiry Rules remain unaltered





3. Inquiries - The implications of Rosewell (cont.)

In summary, two broad themes:

- procedure – not just for the role of the Inspector and for PINS' management of Inquiries, but for the engagement of all other participants, including interested third parties
- timescales for actions, and subsequent speed of decision

= a step change in Inquiry culture and practice





3. Inquiries - The implications of Rosewell (cont.)

- p16 'At present, in around 70% of inquiry appeals, the first substantive engagement between the inspector and the main parties is on the first day of the inquiry.'
- Inspector to be more proactive in shaping events and actions, and from PINS' initial receipt of an appeal
- far more pre-event engagement by the main parties in accordance with Inspector directions
- speedier decisions - 90% determinations to be within 24 weeks from receipt to decision (c.f. an average of 47 weeks in 2017/18)



3. Inquiries – The implications of Rosewell (cont.)

New features include:

- very early fixing of event date, venue, Inspector allocation and programme
- Pre-Inquiry conference (about procedure, not case merits)
- Pre-Inquiry Inspector directions
- greater reliance on IT
- greater use of costs awards to ensure deadline compliance

The bottom line - 10.00 on the first morning - everything should already be set, the main parties are familiar and ready to go, and the event just hits the ground running as agreed and understood (c.f. p16!)



3. Inquiries - other implications of Rosewell (cont.)

- possible use of Hearing-style roundtable discussions within an Inquiry e.g. possibly for disputes around character and appearance, or 5-year housing land supply, or other suitable issues as per Inspector directions
- use of 'Other Witness Sessions'
- possible greater use of Rule 6 status by third parties
- important issues around the inclusiveness of interested third parties



4. Similarities - Hearings and Inquiries

Each:

- is a specific method of fact finding to enable an Inspector to understand and appreciate the evidence, and to then go away, to reflect on the evidence, and to take a decision
- will be suitable to different circumstances
- can (and often does) involve active and significant participation by interested third parties
- is governed by the same general rules of natural justice and considerations of procedural fairness
- is subject to sanction by the same costs regime, and subject to the same rights of subsequent legal challenge



4. Key differences - Hearings and Inquiries

Inquiries:

- are more formal and structured
- involve a more direct engagement by advocates in presenting and confronting evidence and leading their client's case
- will now require greater pre-event engagement by the main parties themselves and led by advocates (post-Rosewell)
- will now be subject to extensive pre-event direction from the Inspector (post-Rosewell)



4. Key differences - Hearings and Inquiries (cont.)

Hearings:

- are more informal and more conversational in character
- involve a structured discussion directly led by the Inspector with any questioning through him/her and not through advocates
- often, parties are not advocate-led. Role of advocates?
- but remember – ‘This is not a public meeting’ (but a focussed, structured discussion in an open public forum)



5. Tips for good practice (for both Hearings and Inquiries)

- be Inspector-led, and engage with the Inspector - if in doubt, ask!
- focus on the planning merits of the matters in dispute (including third party interests)
- agree where the differences are between the parties and what the substance is of those differences - that then should be the nub of attention for the event and for your evidence
- maximise opportunities for co-operation between the parties and for pre-event discussion and agreement (and even during the event as circumstances may evolve)
- try to contribute to a professional and cordial atmosphere throughout the event – respectful tones, helpful attitudes etc.



5. Tips for good practice (cont.)

- respect the rights of engagement by interested lay third parties
- try to ensure that lay parties don't feel intimidated or alienated
- as an advocate, continue to ask yourself:
 - ✓ just how much of the evidence really does need to be covered orally?
 - ✓ is this really helpful to the event and/or to the Inspector?
 - ✓ do you really need to go there?
- engage the Inspector in your take on those matters in dispute
- your prior estimates of timings for Inquiries - critical to event management, but work with and through the Inspector



5. Tips for good practice (cont.)

And do remember:

- an appeal is not a re-run of historical events but a contemporary assessment of the appeal proposal afresh with particular regard to those matters remaining in dispute, and including up-to-date development plan documents and all other current considerations
- be alert to all possible issues of procedural fairness - ultimately relevant to the interests of all parties
- it's about the message (the key evidence), not the messenger!
- s38(6) – generally where everything s78-related begins and ends! (see also para 12 of NPPF)



6. Thoughts around documents

- timeliness and deadlines (risks of costs and/or default)
- focus text on those matters in dispute and your take on those matters. Just how necessary is background and why?
- relevance – to the matters in dispute and to the development plan
- conciseness
- summaries (with helpful cross-referencing as appropriate)
- annotations and key extracts



6. Thoughts around documents (cont.)

Inquiries:

- Statements of Common Ground (also for Hearings)
- Statements of Disagreement (post-Rosewell)
- Position Statement on Main Issues (post-Rosewell)
- written closings/submissions, but also presented orally
- pre-agreed conditions and obligations (also for Hearings) – but will the Inspector necessarily agree?
- agreed compendia of Core Documents (but only as relevant to the evidence) – complete, accurate, up-to-date, user friendly etc.



7. And finally

For further reference/follow-up in your own time.....



A PINS introductory video for customers:

- gov.uk video (and with related appeal guidance),
[‘How to take part at a planning inquiry’](#)

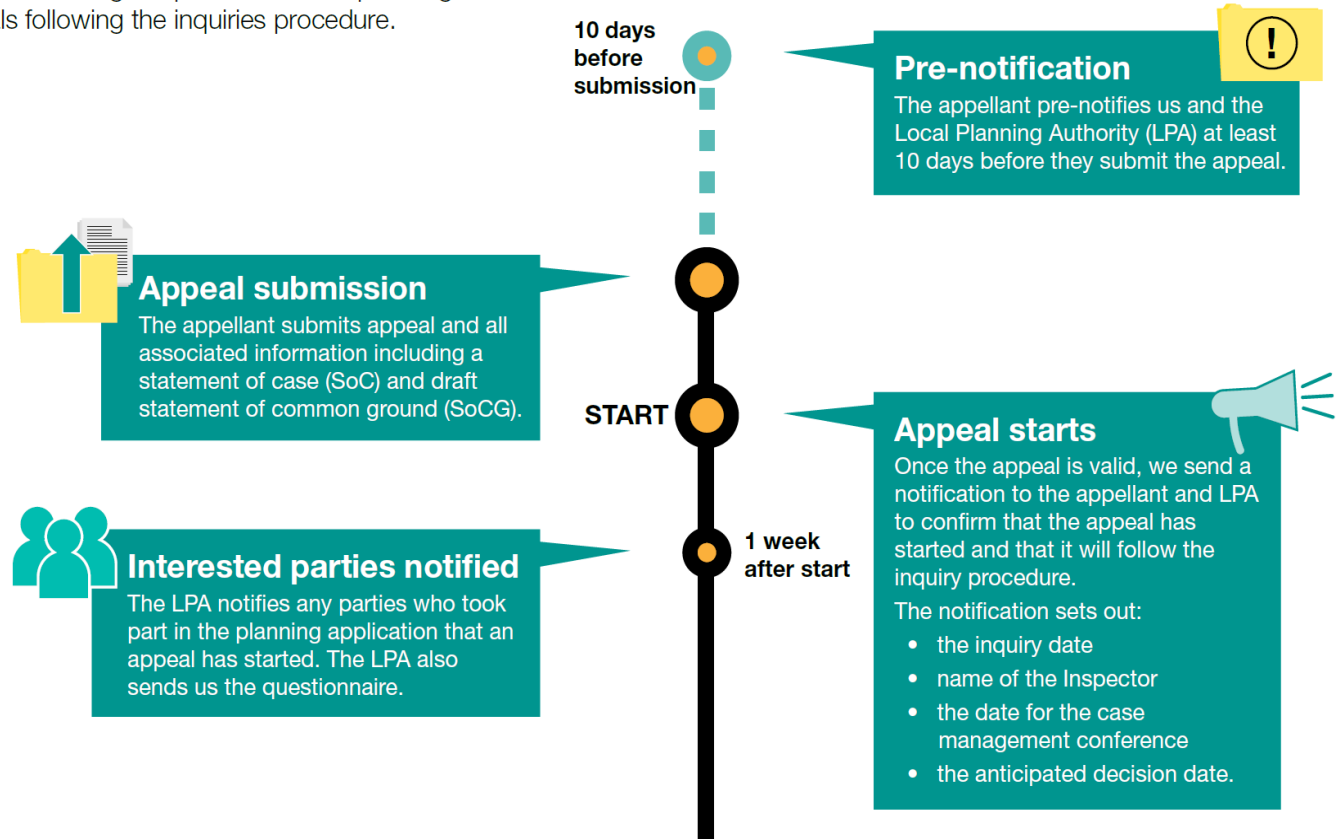
<https://www.gov.uk/government/publications/planning-appeals-dealt-with-by-an-inquiry-taking-part>





Inquiry appeal process

Timeline showing the process for s78 planning appeals following the inquiries procedure.





Comments

This is the deadline by when we need to receive any additional comments from interested parties, including local residents.

5 weeks
after start



Main SoCG

The LPA sends us the main SoCG that they have jointly prepared and agreed with the appellant. At this point, the LPA sends their SoC to us. We share the LPA's SoC with the appellant.

7 weeks
after start



Case conference

An inspector will hold a conference call with the appellant, the LPA and any party who has been afforded Rule 6 status to discuss the matters that will be examined during the inquiry and will issue a follow-up note.

It also provides an opportunity for the parties to ask any procedural questions.

10 weeks
after start



Proofs of evidence

The appellant, the LPA and any Rule 6 party send us copies of their proof of evidence including any topic-based SoCG required by the Inspector.

These are required no less than four weeks before the inquiry.



Reporting

After the inquiry finishes, reporting commences. The Inspector considers all the evidence put before them and writes a decision or a report to the Secretary of State.

Between
13 weeks
and 16
weeks
after start



Inquiry

The Inspector will conduct an inquiry which may last for multiple days or sometimes weeks depending on the complexity of the case.



24 weeks after validation
(26 weeks maximum)*



Decision

The decision is issued to all parties and published online.



* The appeal must be determined by the Inspector within 24 weeks of the date it was validly made in 90% of cases (within 26 weeks in all cases). For recovered appeals, the Inspector's report must be submitted to the Secretary of State within 30 weeks of the date the appeal was validly made in all cases. These targets have been set out in the recommendation report by Bridget Rosewell on the independent review of planning appeal inquiries.



8. Thoughts arising?

