



ACHIEVING THE MOST AT PUBLIC INQUIRIES

A STEP BY STEP GUIDE

Increasing Branches and their members are becoming involved in planning issues which may result in them or CPRW wanting to present evidence at a Public Inquiry.

The following step by step guide has been produced to assist those who face this challenge, achieve the greatest impact possible from their involvement with the Inquiry process.

How to present your case at a public Inquiry

If a planning application is refused permission, or conditions are attached to the permission that restrict the development in some way, the applicant may decide to appeal.

The Planning Inspectorate can deal with an Appeal in one of three ways:

- through written representations,
- with an informal hearing, or
- by ordering a Public Inquiry.

In each case, an Inspector is appointed in most instances by the Welsh Government to preside over the Appeal and make a recommendation to the relevant Minister for confirmation. In exceptional circumstances, the decision is referred to the Minister of Communities, Housing and Regeneration (as Planning Minister) in the Welsh Government who has responsibility for such matters.

If a Public Inquiry is held, anyone who wants their opinion to be taken into account by the Inspector has the right to present their case to him or her. There are steps you can take to ensure you present your case as well as possible.

Pre-Inquiry procedure

Whenever an Inquiry is called, the Local Authority must draw up a timetable of proceedings and distribute copies to all interested parties. If you have not been involved prior to this stage, contact your Local Planning department for the timetable.

As a witness, you must provide a document known as a **Proof of Evidence**, which will be sent to all other parties three weeks before the Inquiry. Your Proof of Evidence is a written account of the case you want to put before the Inspector at the Inquiry.

Preparing your case

Prepare your Proof of Evidence carefully and you will be well equipped to make your case orally on the day if the Inquiry involves a public hearing.

In the three weeks before the Inquiry, you will also have an opportunity to examine the **'Statements of Case'** and Proofs of Evidence prepared by all the other Inquiry participants.

You can draw on this evidence to strengthen your own case and to prepare yourself to tackle opposing arguments. If for some reason you cannot appear at the Inquiry, and no one else can appear for you, you may choose to submit written evidence only.

Writing your Proof of Evidence

Your Proof of Evidence is a written account of the argument you want to present at the Inquiry. Set aside as much time as possible to prepare it. Make sure that your points are easy to read out loud and to follow, as you will need to take the Inspector step by step through your arguments. They should be set out in a way that leads the Inspector to your preferred decision.

In Planning Appeals, each party pays for the cost of preparing and presenting its own case. Legal costs can only be awarded to or against third parties in exceptional circumstances. If you feel intimidated at any point in the proceedings by threats of costs being brought against you, bring this to the attention of the Inspector.

Procedure at the Inquiry

A Public Inquiry may take from days to months. It usually takes the following form.

- The Inspector opens the Inquiry by describing the appeal. Then will note which members of the public wish to speak.
- The Appellant's (Planning applicant's) lawyer or representative will open their client's case. The Appellant's first witness will be called, usually to read the summary Proof of Evidence. Additional points may be raised from other witnesses' Proofs of evidence. This process is called "Examination in Chief".
- Other principal parties can then cross-examine the witness. The Inspector may then ask questions.
- The appellant's lawyer can re-examine the witness on matters raised in the cross-examination.

This procedure is followed for each of the Appellant's witnesses. The Local Authority then presents its evidence; and all other interested parties are invited to put present their case. This may take the form of a short statement by an individual member of the public, or be a full case presented by a lawyer.

Your role

You may feel daunted at the prospect of appearing at an Inquiry, especially if you've never done so before. The best thing you can do is to be as well prepared as possible. Checklists of all the documents and other props that you need can be very useful. It is your right to speak out and the Inquiry is designed to help you do this.

If you represent a body of local opinion, choose the person who is most familiar with the case to present it.

Remember that the Inspector, as the person who makes the final decision, is the most important person at an Inquiry. Be sensitive to their reaction to the proceedings and focus on persuading him or her of the merits of your case . Be prepared to suggest alternative uses

for the site. Don't save points for cross-examination – you may not get a chance to use them.

At some point during the proceedings, the Inspector will ask all parties involved for a list of conditions they would want imposed on the planning application, if permission were granted. **This does not necessarily mean permission will be granted.** Have ready a clear, precise list of conditions you would like to see imposed.

All parties are given an opportunity to make a Closing Statement at the end of the Inquiry. Use this if you want to make as strong a case as possible: make a note of the points you may want to make as the Inquiry progresses but you are not allowed to introduce new evidence at this late stage of the proceedings.

If necessary, ask for a 10–15-minute adjournment to prepare your speech. Do not repeat everything you said in your evidence. Deal with new points that have emerged in the course of the Appeal. Highlight key points and add supplementary points that have emerged from other submissions. Summarise your case concisely.

Cross-examination

Cross-examination by both sides is the opportunity to challenge evidence put forward by all the witnesses and is the way advocates will seek to reduce its weight in the eyes of the Inspector; but also enables helpful evidence from the witness for your own case to be highlighted.

Prepare model answers to questions that you think other parties might ask. Always stay calm and polite and answer questions as directly as possible. Your evidence is there in writing in your Proof of Evidence, so refer the lawyer to the answer if it is in the Proof. If you feel there was something in the cross-examination you did not make clear, ask the Inspector for an opportunity to do so.

Although you will be facing the person cross-examining you, always direct the substance of your answers to the Inspector. Keep your points focused on the planning merits of the case.

Do not try to cross-examine another party's witness without preparing. Don't try to be clever, a good solicitor will always do better than an amateur!. Make sure you prepare the questions you wish to ask based on their Proofs of Evidence and sort out the order in which you propose to ask them. Ensure you do not ask questions which have already been asked.

Pay attention to the questions asked by the Inspector of all witnesses. This is one of the few pointers you will get about which issues the Inspector is focusing on.

Find out more: Visit www.planninghelp.org.uk/action and click on 'How to stop or improve a bad development'. Also read Circular 05/00, available at www.planningportal.gov.uk : search for 'circular 05/00'.

Writing a good Proof of Evidence

Your Proof of Evidence should be clearly set out. This will help both you and the Inspector to understand it. It needs to be clearly written and supported by appropriate evidence. Ensure it is

- Structured and well written
- Comprehensive, but succinct.
- Don't leave things out just because you are reluctant to deal with them. If you introduce difficult issues at this stage, it will give you time to think about how best to present them at the Inquiry.
- Make sure your Proof of Evidence is accurate – if you exaggerate your case, it will weaken it.
- Use evidence and facts, not speculation or supposition. Be objective not subjective in your conclusions and opinions.

It is especially important at Inquiries to establish your credentials for giving evidence on the topic in question. Therefore you should set out your particular qualifications, and involvement in local organisations, giving details of any organisation that you are representing.

- Describe the site and surrounding area. Although others may do this, it is important to put your case in a local context, in the way you see things.
- Describe the proposed development. Point out elements of particular concern to you or the local environment or its sense of place.
- Draw attention, in the following order, to national planning guidance (Planning Policy Wales) the policies of the Local Development Plan, and any other official documents that strengthen your case. Only quote from them sparingly, but explain their relevance to the appeal. Always provide references to secondary material.
- Use information about the history of the site that illustrates your case in relation to the development. Your proof should lead the Inspector into the decision you want him or her to make.
- Use graphs, diagrams and statistics to simplify your case.
- Summarise the arguments precisely.
- Supply any documents you have referred to in your evidence.

Dealing with lawyers and lay advocates

While lawyers may be helpful, you do not have to have one.

If your Local Authority is not presenting the same legal or technical case that you support, you may want to seek advice from a Planning lawyer or another expert when you are

preparing your case. Contact the Local Authority lawyer first to assess the approach they are taking. Planning Aid (Wales) also provides useful advice in this respect.

Establish how much it will cost to get experts involved. Organisations that provide low-cost legal and planning advice, such as the Environmental Law Foundation or Planning Aid (Wales), may be able to help. You can also choose to nominate one of your own group to act as a lay advocate.

Do not be intimidated if a lawyer representing another party is aggressive. If you are having trouble explaining your case, ask the Inspector for assistance. If a lawyer confuses you, refer them to your answers in your Proof of Evidence or ask them to repeat the question.

Generally speaking, the tougher the cross-examination you are facing, the more seriously you are being taken, so make sure you keep your nerve.

If you are using a lay advocate, or non-professional to present your case, here is some advice for them to follow.

- They should ensure they are clear about the procedure;
- familiarise themselves with the material;
- call witnesses in an order that helps to make sense of your arguments;
- plan any supplementary questions, and deal with additional points that witnesses may want to add;
- wait until the Inspector has finished before asking another question;
- prepare cross-examinations from other parties' proofs of evidence; and
- attend as much of the Inquiry as possible.

Remember the more the Inspector writes the more he is paying attention and understanding the points you are making

We hope that these useful tips help you get the most out of the experience.

Good luck !

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