

## 8. HOW DO I PRESENT AT A PUBLIC INQUIRY?

### 8.1 Introduction

A public inquiry is an adversarial forum similar to a court of law. There are three main types of airport-related public inquiry. Member of the public can observe all of them and participate in the first two:

1. A *planning inquiry* where 1. a planning application has been 'called in' (see [Section 4.2](#)) or 2. a developer (say an airport operator) has appealed to the Secretary of State because they are unhappy with a local authority's planning decision: because the local authority has not reached a decision in the allotted time, because the developer was not given planning permission, or because they are unhappy with the conditions or obligations imposed by the authority. A planning appeal must be made within six months of the local planning authority's decision. A planning appeal can be rejected, in which case no inquiry is held.
2. An '*examination*' of a *Development Plan Document* (DPD) to consider whether the DPD meets the requirements of the relevant legislation and is 'sound'. [Section 3.4](#) discusses DPD 'soundness'. The DPD may contain policies that affect airport-related development. After the examination, the inspector issues a legally binding report to the local planning authority which states what changes, if any, must be made to the DPD before it can be formally adopted.
3. An '*examination in public*' of a *Regional Spatial Strategy* (RSS) which has the same purpose as a DPD examination. RSSs contain policies related to airport-related development. The examination in public is run by a panel of inspectors, who then prepare a 'Panel Report' which recommends what changes that need to be made to the RSS. Only invited participants can make representations at the examination in public, and (if you are invited) the basic process is similar to that for DPD enquiries, so they are not discussed further here.

Only rarely have members of the public been able to get a public inquiry to reconsider a planning application that has been approved (as opposed to developers being able to challenge non-approval). Stout lobbying of the regional Government Office is your best bet in that regard.

Anyone can observe a public inquiry: you just show up on the day and sit in the area designated for observers. However this will not affect the inquiry's outcome: only active participation has the potential to do that.

Active participation in a public inquiry one takes considerable preparation and can seem daunting. But there have been plenty of instances of inquiries where Davids with good arguments have won over seeming Goliaths. In 2007, for instance, the inspector for the Thames Gateway Bridge, which objectors thought would be rubberstamped through, essentially refused permission, at least until rather better arguments could be made in the bridge's favour.

[Sections 8.2](#) and [8.3](#) discuss the different types of public inquiries and a typical public inquiry format. [Section 8.4](#) gives tips on how to prepare a written proof of evidence before the inquiry, and how to verbally present evidence at the inquiry.

## 8.2 Types of inquiry/examination

The key players at a public inquiry are:

- The *planning inspector*, who is attached to the Planning Inspectorate. The inspector may make the final decision, or the Secretary of State can reserve the right to make the decision, taking the planning inspector's recommendation into account.
- The *appellant*: the party who made an appeal and thus instigated the inquiry
- The *defendant*: the party against whom the appeal is made, typically the local planning authority
- *Barristers or other legal representatives* for the appellants and defendants
- Various *clerks, assistants etc.* linked to the inspector, appellant and/or defendant, and
- *Third parties*, including non-government organisations, nearby local authorities, and local residents.

Inquiries can take one of three forms. All involve advertising the inquiry in the local newspaper, and consideration by the inspector of written evidence:

1. *'Public inquiry on the papers'*: The local planning authority, appellant, statutory bodies and public can all make written representations; and these are considered by the inspector. There is no face-to-face meeting between the parties as part of the inquiry. The procedure for this kind of inquiry is set down in the [Town and Country Planning \(Appeals\) \(Written Representations Procedure\) \(England\) Regulations 2000 SI 1628](#).
2. *Informal public inquiry*: After written evidence from all relevant parties has been presented to an inspector, an informal inquiry is held, which is more like a round table debate than a formal inquiry. It allows parties to put questions to each other and test evidence, but not as much as in a formal inquiry. The procedure for informal inquiries is set down in the [Town and Country Planning \(Hearings Procedure\) \(England\) Rules 2000 SI 1626](#).
3. *Full public inquiry*: This is the Full Monty adversarial process described at Section 8.3. The process for full public inquiries determined by inspectors is governed by the [Town and Country Planning Appeals \(Determination by Inspectors\) \(Inquiries Procedure\) \(England\) Rules 2000 SI 1625](#), and for those determined by the Secretary of State is governed by the [Town and Country Planning \(Inquiries Procedure\) \(England\) Rules 2000 SI 1624](#).

The rules governing public inquiries are strict. Inspectors can only consider certain issues (for instance 'material considerations' or 'soundness'), and will not be influenced by mere strength of local opposition. Even 'informal' inquiries are formal events dominated by people in dark suits carrying large folders of documents. However members of the public have a key role in helping to ensure that the inspector(s) get a well-rounded view of the issue that they have to make a decision on, so do join in.

The next section discusses the full public inquiry process. The informal public inquiry is a less robust and less scary version of this.

### 8.3 Format of public inquiry

For a planning appeal, the local planning authority will normally be the defendant and the developer the appellant. For an examination of a DPD or RSS, the planning authority will normally be in the role of the defendant, and other organisations will be in the role of the appellant.

#### Before the inquiry

The public inquiry process begins with the local authority or Secretary of State putting an article in the local newspaper for two weeks, informing the public where they can send their representations and by when.

The defendant prepares a (written) 'statement of case' or topic papers which summarise the main points that they plan to make at the inquiry; and then the appellant prepares their statement of case. Each witness, including members of the public who wish to speak at the inquiry, then produces a 'proof of evidence' which is a full statement of their case. Witnesses may also make 'rebuttal proofs of evidence' which aim to counter the evidence in the other party's proofs of evidence. [Box 8.1](#) gives tips on what you can do at this stage.

#### **Box 8.1 What to do at the pre-inquiry stage**

- Find out from the local authority
  - the inquiry timescale and venue;
  - what you need to do (e.g. what evidence you need to prepare and in what format) by what date;
  - what (if any) other advice they can give you; and
  - whom you should be contacting about the inquiry in the future.
- Consider whether and how you want to be involved in the inquiry. It really only makes sense for you to jump through the hoops of preparing a proof of evidence and presenting it at the inquiry if you are happy to play by the inquiry rules. If your style is more protest-oriented, then you may want to consider different forms of 'involvement' instead.
- (If appropriate) organise a group of people to present evidence at the inquiry. Consider whether the group also wants to do other things, for instance give press briefings outside the inquiry venue.
- Meet up with other people/groups on 'your' side (and your side's legal representative if there is one), and agree on who will focus on what main points in their proof of evidence.
- Prepare and send in your proof of evidence on time – see [Section 8.4](#).
- Consider whether you or your group will need funding for the inquiry. Costs include transport and subsistence, and possibly a legal representative and expert witnesses. You may need to consider fundraising for this.

Before the inquiry, the inspector may carry out an unaccompanied site visit. For larger inquiries, the inspector may also hold a pre-inquiry meeting where he/she sets the agenda for the inquiry and tells the parties what he/she specifically wants to hear about. Larger inquiries have a clerk who keeps a library of all the documents and takes care of procedural issues, such as the agenda. For smaller inquiries these jobs will be split between the inspector and someone from the local authority.

### During the inquiry

The inquiry proceeds as follows:

- Opening speech by the inspector
  - Opening speech by the appellant (typically by their legal representative)
  - Statements and examinations of witnesses:
    - appellant's witnesses
    - witnesses of other parties supporting the appellant
    - defendant's witnesses
    - witnesses of other parties supporting the defendant
    - members of the public<sup>1</sup>
- } for each witness
- witness reads out their proof of evidence, helped by their side's legal representative if there is one
  - opposing party can cross-examine the witness
  - witness's side's legal representative may ask the witness questions
  - Inspector may ask questions
- Closing submissions by both parties which sum up their case and highlight problems with the other party's submissions
  - Inspector carries out a formal site visit if appropriate
  - Closing speeches by both parties, and presentation of issues relating to planning conditions
  - Inspector closes the inquiry

[Box 8.2](#) gives tips on what you can do during the inquiry.

#### **Box 8.2 What to do during the inquiry**

- Sit in on proofs of evidence and cross-examinations of witnesses who come before you. This will give you a feel for the rhythm and style of the inquiry, and what kinds of questions you might be asked. It also shows support for your side.
- Particularly sit in on witnesses whose evidence is related to yours. For opposition witnesses, this can help you to identify points that you may want to refute in your own testimony. For witnesses from your side, it can help to ensure that you do not contradict each others' testimony. Where it is not possible to sit in on the session, read the transcripts from the sessions – they will be available on the inquiry website.
- Present your own evidence – see [Section 8.4](#).

<sup>1</sup> The inspector determines the level of participation of members of the public. Few inspectors will allow member of the public to cross-examine opponents. For information on 'Rule 6 Status', which allows members of the public to be treated like other parties, please see [Planning Sanity](#).

### After the inquiry

For a planning appeal, if the inspector is making the decision, he/she will normally issue a decision letter within a month. If the Secretary of State is making the decision, then the inspector prepares a report which goes to the Secretary of State, who will make a decision: this process takes much longer, sometimes more than a year. For an examination or enquiry in public, the inspector or Panel will issue a report after several – sometimes many – months.

Further information on planning appeals is available from the government [Circular 05/00: Planning appeals procedures](#). Further Information on examinations of DPDs can be found in the Communities and Local Government [‘Making Plans: Good practice in plan preparation and the development plan process’](#), and [‘Development Plans Examination - A Guide to Assessing the Soundness of Development Plan Documents’](#). Further information on public inquiries generally can be found at [Planning Sanity](#).

## 8.4 Tips for preparing a proof of evidence and presenting at public inquiry

Your main audience at the public inquiry is the inspector. The whole point of the inquiry is to help him/her make a decision, by teasing out arguments that the inspector will ultimately use to help support his/her decision. For development projects, the decision will be on the basis of “material considerations” and/or the local authority’s decision-making process about the project. For plans, the decision will be on the plan’s “soundness”. So ***your evidence should aim to 1. provide the inspector with the evidence to support the planning decision that you want him/her to come to, and 2. not give ammunition to the other side.***



The two inspectors and a clerk at the Stansted ‘Generation 1’ inquiry, summer 2007 (photo by Stop Stansted Expansion)

Inspectors are keen to get a well-rounded understanding of the issues affecting the decision that they have to make. This includes learning about impacts and issues that only local residents will know about; and making sure that they have thought about the problem from all angles. So ***your ‘unique selling point’ will be local knowledge and any new interpretations that you can offer*** on the other evidence in front of them.

Because inquiries operate by very clear rules, *not* playing by the rules will probably not get you very far. So if you are presenting at the inquiry (as opposed to, say, protesting at it):

<p>✓ <b>Do, generally:</b></p> <ul style="list-style-type: none"> <li>• Dress conservatively</li> <li>• Act like the other parties at the inquiry act, and argue in ways that are similar to theirs</li> <li>• Make use of legal representatives and support where possible</li> </ul>	<p>✗ <b>Don't, generally:</b></p> <ul style="list-style-type: none"> <li>• Use 'creative' ways of making your point (e.g. dance, streaking, speaking in a bird costume), though videos might be acceptable</li> <li>• Interrupt the proceedings, yell at the speakers etc.</li> </ul>
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[Box 8.3](#) gives tips for preparing a proof of evidence. For examples of effective proofs of evidence, you may want to look at those given by Brian Ross and Maggie Sutton at the Stansted 'Generation 1' public inquiry. [Mr. Ross's economic evidence](#) aims to refute the developer's argument that Stansted will support economic growth in the region: it makes very effective use of government reports, provides a novel take on the topic, and very much pits Mr. Ross's expert economic analysis against the developer's. [Ms. Sutton's evidence on community cohesion](#) is completely different: it is much more emotive (but effectively so), makes excellent good use of her local contacts and her knowledge of the local area, and hits the developer where they are particularly vulnerable since no developer could provide a comparable level of knowledge.

### **Box 8.3 Tips for preparing a proof of evidence**

- Look at examples of previous proofs of evidence: your legal representative or council may be able to make some available to you. The document should be clearly structured, with an introduction that sets out what your evidence will cover, sections with section headings that summarise your main points in a few words, and a summary. It should briefly and precisely state what aspect of the project or plan is being objected to, what change is being proposed, and why.
- Where possible, refer to the other side's documents or government reports to support your points. That way, the other side won't be able to argue about your evidence, just about the use you make of it.
- Imagine what kind of arguments the other side might use against you and try to already deal with them in your evidence.
- Where your proof of evidence is more than 2 or 3 pages long, a summary proof of evidence is also required: these summaries are read out at the public inquiry.
- Make sure that you will feel comfortable and confident reading out your summary proof of evidence at the public inquiry. Try reading it out loud: does it make sense? does it 'speak' well?
- At the end, check again: do the main points that you want the inspector to get out of your evidence come out really clearly?
- Send it to the right person, in time.

When you are presenting your evidence at a public inquiry and being cross-examined, everyone will be scrupulously polite. The other side won't want to look like they're bullying a defenceless member of the public, so you are very unlikely to be interrogated or browbeaten like in a television drama. [Box 8.4](#) gives tips for presenting at a public inquiry.

#### **Box 8.4 Tips for presenting a proof of evidence at a public inquiry**

- Speak loudly, slowly and clearly. A clerk will be writing down everything that you say. If they can't hear you or keep up with you, their report will say "...unintelligible..". This won't help your case if the inspector needs to go back to the transcript.
- Consider practicing in front of an audience (I use my ironing board as the 'audience' at first, and then my husband) to get the rhythm and main points of the argument absolutely straight.
- If you are really scared of speaking in public, you could take a short course on public points you are trying to make.
- Keep a list of the key points that you want the inspectors to get out of your testimony. Make sure that they come through really clearly. At the end of your cross-examination, read out that list again to the inspectors.

That said, cross-examination in particular is scary and takes a lot of preparation. It means that you have to be able to defend as well as present your argument. To be able to do this, your argument needs to go beyond a straightforward emotive statement, and be supported by evidence that you can refer to under cross-examination. You can also use certain tricks to help you survive the adversarial situation of cross-examination: [Box 8.5](#) lists some of these.

For an example of an effective response to cross-questioning, you may want to look at the [transcripts for John Rhodes](#), who was the main expert witness for the airport operator BAA at the Stansted 'Generation 1' inquiry (he is person 'A', look for instance at pages 77 onwards). Rephrasing questions so that they can be answered more easily, including plenty of qualifiers into responses, and answering only parts of questions is a fine art.

#### **Box 8.5 Tips for dealing with cross-examination at a public inquiry**

- Check in advance whether you are likely to be cross-examined: don't worry about the stuff below if you aren't.
- Prepare, prepare, prepare. Read the opposing party's proofs of evidence that might relate to your topic; and also previous cross-examinations of relevant witnesses. Have at hand any documents that you might want to quote from etc.
- Ask the legal representative for your party (if you can) to recommend an example of where a witness (either an earlier witness at your inquiry or at another inquiry) has been particularly effective, and read their cross-examination to see how they handled things.
- The opposing party will have prepared, in advance, a list of the documents that they'll be asking you about. A copy of the documents will be given to you. The

opposing party will tell you what page to look at as they ask you questions.

- If the opposing party quotes documents that aren't in their advance list, feel free to ask for those documents to be found and given to you.
- Take your time in answering questions. Set up a glass of water that you drink from before answering questions; get into a rhythm early on of taking a few seconds before answering any question; and take your time flicking through documents. This will give you time to collect your thoughts.
- The opposing party will try to get you to answer questions as simple yes or no statements. Where a clear yes or no does not represent your views, say so: add qualifiers ("in these and these circumstances the answer would be yes, but in other cases no" or "if these measures were put in place then yes"). This will give your side's legal representative a hook to rescue you with, in case that's necessary.
- Feel free to use the opposing party's questions to make additional points that you have thought of since you finished reading out your evidence.
- After your cross-examination, your party's legal representative may ask you some follow-up questions. These should help you to 1. try to rescue any gaffes that you made during the cross-examination (everyone makes them, don't worry), and 2. pull out key points from your evidence.
- Keep a list of the key points that you want the inspectors to get out of your testimony. Make sure that they come through really clearly. Near the end of your cross-examination, find a way of reiterating the points on that list to the inspectors.

After you have finished giving your evidence, you will first feel a huge surge of relief, and then spend the next month (normally in the middle of the night) minutely dissecting what happened and coming up with infinitely better points that you could have made, documents that you could have quoted, etc. if only you had been better / brighter / etc. Don't worry: even the most expert witnesses go through that process. Besides, there will always be some future airport-related public inquiry in which you can get everything perfect.