

# STOPPING UP ORDERS UNDER PART X OF THE TOWN AND COUNTRY PLANNING ACT 1990

## GUIDANCE NOTES ON PROCEDURES FOR THOSE ATTENDING PUBLIC INQUIRIES

### 1. General

1.1 There are no specific Inquiry rules or regulations that govern inquiries into stopping up orders under part X of the Town and Country Planning Act 1990. However, such Inquiries are conducted in the spirit of the Town and Country Planning (Inquiries Procedure) (England) Rules (SI 2000 No. 1624). This provides that all parties having an interest will be informed of the date and venue of the Inquiry not less than 42 days before the date on which the Inquiry is to commence. In addition, subsection (2) to (5) of section 250 of the Local Government Act 1972 (local inquiries: evidence and costs) apply in relation to these inquiries. Some useful information about the conduct and procedures at local inquiries is contained in the publication "Public Footpath Orders" issued by the Planning Inspectorate.

### 2. At the Inquiry

2.1 The Inspector, who is completely impartial, will normally be appointed from the Lord Chancellor's panel of independent Inspectors. His or her job will be to hear all the evidence and then to advise the Secretary of State whether the order should be made with or without modifications.

2.2 To ensure the Inquiry is conducted fairly, everyone attending the Inquiry is subject to the same rules and procedures, as determined and laid down by the Inspector. Inspectors will make sure that they have all the information needed to make their decision.

2.3 Any part to an Inquiry may avail themselves of legal or professional advice to state their case. The Inspector will however treat all evidence presented at the Inquiry in the same way whoever presents it. Stopping up Inquiries are not courts of law but ways in which parties to the Inquiry can set out their cases before an Inspector so that an informed recommendation can be made to the Secretary of State.

2.4 At the opening of the Inquiry the Inspector will begin by introducing himself or herself, announce the purpose of the Inquiry and ask for the names of all those who wish to speak. The Inspector will then explain how he/she intends to conduct the Inquiry. The Inquiry will usually be completed in one day but on occasions can last two days or longer.

---

2.5 The promoters of the case will normally be asked to present their arguments first, followed by any supporters. They will usually make an opening statement explaining their position, before calling any witnesses to support their case. Witnesses must

also be prepared to answer questions put to them by the Inspector or by the objectors to the order.

2.6 The objectors will then present their argument(s) in the same way, and the promoter and the Inspector will have the opportunity to ask questions of them and their witnesses.

2.7 Other parties with an interest in the Inquiry will usually be given a chance to put their points of view and the Inspector may allow them to be questioned or to question the promoter of the order.

2.8 The Inspector can also read out and take into account any written statements/letters from other objectors, supporters and interested parties who cannot attend the Inquiry in person. Both the promoter and objectors will be allowed to make a closing statement but will not be allowed to introduce new arguments at that stage.

2.9 Objectors and interested parties should remember that the Inquiry is specifically about the proposal to stop up and/or divert a highway or highway and only highway matters can be taken into account.

2.10 It will be for the inspector to determine whether evidence offered is material to the stopping up considerations and can therefore be heard and taken into account at the Inquiry.

2.11 Where a joint planning and stopping up Inquiry is held, the Inspector will explain at the beginning how the Inquiry is to be conducted. He will give clear instructions and guidelines to all as to what evidence and arguments would be relevant and could be put forward to support or oppose either the planning consent or the stopping up order.

2.12 Any evidence submitted after the Inquiry but before a decision has been made will be considered by the Secretary of State, who will decide whether the new evidence is relevant to his/her decision. If the new evidence is considered relevant it will be passed on to the parties to the Inquiry to allow further comment to be made. If necessary the Secretary of State can re-open the Inquiry.

### 3. Site Visit

3.1 The Inspector may decide to visit the site of the proposed development and the surrounding area alone before the Inquiry begins. Both the promoter and the objectors can also ask the Inspector to visit the site after the Inquiry has finished, when they may be present or represented.

3.2 The Inspector will listen to any points made about the site or surrounding area and may take them into account when making a recommendation, but he/she cannot hear further submissions or arguments at this stage.

### 4. Costs

4.1 It is usual for all parties at a stopping up Inquiry to meet their own costs and expenses. It is open to either party to make a claim to the Secretary of State or the Inspector to award costs against the other party. The Inspector will normally refer any claim for costs to the Secretary of State, sometimes adding a recommendation as to the award of costs.

4.2 The Secretary of State will normally only award costs if it can be shown that a party to the Inquiry has acted unreasonably, and has put the claimant to unnecessary expense. Costs are not awarded just because one side has lost and the other has won.

4.3 Any application for costs should be made at the outset of the Inquiry but can be made after its conclusion, or after the order has been determined. However, late applications may need to explain why an application was not lodged earlier. A decision on costs will be given as soon as possible, often as part of the decision letter if the application was made at or before the Inquiry.

4.4 Objectors may be hesitant about attending an Inquiry, or in pressing their case during it, because they feel concerned that costs might be awarded against them.

4.5 Any attempt by anyone seeking to intimidate any party to an Inquiry by threatening to ask for costs to be awarded against them will be treated seriously. Any such threats should be reported to the National Transport Casework Team immediately.

4.6 The Department meets the costs of posting notices, advertisements, hire of accommodation and Inspector's costs and expenses.

---

## 5. Decision

5.1 After the Inquiry the inspector will submit a report to the Secretary of State recommending whether or not the proposed order should be made. When the Inspector's report has been received and considered, a decision letter will be issued and sent to the promoter. A copy of the letter will also be sent to the objectors and placed on deposit at the same place where the draft order was made available.

5.2 The Secretary of State is not bound to agree with the Inspector's recommendation. If the Secretary of State decides to make the order he/she can do so with or without modifications. If the Secretary of State disagrees with the inspector's recommendations the decision letter will reflect that fact. The letter will also give reasons for the Secretary of State's decision.

## 6. Complaints

6.1 If a party to an Inquiry is not content with the way in which the Inspector conducted it, an approach can be made to the Complaints Officer,. The Planning Inspectorate, Room 3/13, Temple Quay House, 2 The Square, Temple Quay, Bristol BS1 6PN

6.2 Any other queries about stopping up Order applications should be directed to the National Transport Casework Team, who will be responsible for issuing the decision letter. Once a decision has been made it cannot be reconsidered or changed, unless there is a successful challenge in the high Court see section 7 below.

## 7. The High Court

7.1 A decision by the Secretary of State may be challenged in the High Court

on a point of law. To be successful it would need to be shown that:

(a) the Inspector or the Secretary of State had exceeded their powers; or (b) had acted unlawfully or erred in law; or

(c) that the proper procedures required by the legislation had not been followed, and as a result an argument had been damaged or rights had been denied.

7.2 If a challenge in the High Court were successful, the original decision made by the Secretary of State would be quashed and the case returned to the Department for Transport to be reconsidered. This might not always mean that the original decision would be reversed or modified. It might mean that the same decision would be reached, but for different reasons.