



● ● ● cornerstone

● ● ● barristers

Planning appeals in the era of COVID-19

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Introduction by Lisa Busch QC

Fairness and access to justice



Why does it matter?

- In principle
- In practice

The approach of the Courts



March 2020 and two differing approaches:

- PINS
- The Court Service

The approach of the Courts



March 2020 and two differing approaches:

- PINS
- The Court Service

The approach of the Courts



- The Court of Appeal
- Two appeals from the Family Court
- “Exceptional circumstances” required for in-person events

The approach of the Courts



Balancing enthusiasm with caution

- LCJ announcement
- CA cases
- Likely similar approach by PINS

Lawyers' response



- Resistance to PINS immediate cancellation
- Law Society Committee letter to Robert Jenrik
- Suggestions for keeping the system moving

Lawyers' response



As regards appeals, these included:

- Written reps
- Topics to remote hearings
- Extending time limits across the board
- Acknowledged potential 3rd party prejudice

Planning Bar's Response



Emphasised Doody principles:

- Presumption of fairness
- Standards of fairness not immutable
- Fairness is context specific
- Statutory scheme is key to context
- An opportunity to make representations
- Information about gist of case to answer

So ...



- Representations do not need to be in person to be fair
- Remote technology can still ensure fairness
- Provided:
 - Parties informed of opposing case
 - Have opportunity to make representations

Article 6 ECHR



- Planning appeals do determine civil rights
- But Article 6 not offended by remote participation
- No requirement for in-person attendance

Article 6 Aarhus Convention



- “... in writing or, as appropriate, at a public hearing ...”
- Participation does not need to be in person
- Participation via remote technology permissible

Focus on the positive ...





Planning Inspectorate Position

The PINS position



- All in person site visits, hearings and inquiries have been suspended from 17 March.
- Rosewell timescales now abandoned as of early May.

The PINS position



- Keen to keep things moving via virtual events.
- No settled view (although note MS Teams used internally).
- Public participation the biggest challenge.

The PINS position



- Special challenges not faced by the Courts raised by public participation:
 - e.g. **Kendal v Rochford** [2014] EWHC 3866 (Admin) at [94]

What does PINS say?



- 1,700 decisions issued since Lockdown
- 13 Local Plan letters issued since Lockdown
- First appeal determined with virtual site visit 28 April 2020
- First “digital pilot” 11 May 2020

BUT

What does PINS say?



- 3 months = roll out good practice “widely”
- 6 months = fully digital and hybrid events
- Graham Stallwood is planning for the long term:
 - Blended approaches to appeals format
 - 3D and augmented reality encouraged



Before the Event

What can we expect?



- Parties are likely going to be required to assemble a single .pdf document, containing all the core documents which is:
 - Indexed.
 - Continuously paginated.
 - Hyperlinked/bookmarked.
 - Available on-line.

What can we expect?



- Likely sensible for Appellants to take a leading role where possible building documents
- Also hosting documents on their own websites
- LPAs may need to amend SCI
- EIA rules on ES copies (cf. Pipelines Regs)

What can we expect?



- Topic specific SoCG and Scott Schedules
- Likely need for more than one telephone conference to ensure events run smoothly



During the Event

What can we expect?



- Round-table most likely to be prominent over XX
- Enforcement appeals likely to be delayed, so time to think creatively.
- Topic basis more likely
- No set video conference platform but will need document sharing facility (or online library)

What can we expect?



- Essential for parties to have a secure means of communicating during the event
- Dangers of in-program messaging services
- PINS concerned about the “digitally challenged”



After the Event

What can we expect?



- Site visits likely to be unaccompanied where possible
- Witnesses need to think early about an agreed route, to be shared with third parties



Issues to head-off now

What can we do now?



- Surveys and site visits
 - Risk assessments for site visits
- Reg.6(2)(f) Health Protection (Coronavirus Restrictions) (England) Regulations 2020, travelling “for the purposes of work”
- See NE guidance on COVID and surveys

What can we do now?



- Invest in document building software
- Set-up hosting websites in contact with LPA



Concluding thoughts



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