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A practical guide to giving evidence at planning inquiries

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Practical Guide: Chapters



1. Duties and responsibilities of expert witnesses

2. Effective proof-writing

3. The structure of oral evidence

4. The Dos and Don'ts of oral evidence

5. The impact of Rosewell on giving evidence

6. A brave new world: remote inquiries



Chapter 1: Duties and Responsibilities of Expert Witnesses

Your duties as an expert witness



- Your duty is to the Inspector/the Inquiry – to enable them to make an informed decision
- This is consistent with professional responsibility e.g. to follow Code of Conduct
- You must not start with what your client wants and work backwards (Karl Popper Theory)

Your duties as an expert witness



Ikarian Reefer

- Be independent – uninfluenced by pressure from your team
- Give your objective, unbiased opinion on matters within your expertise
- State underlying facts and assumptions and do not omit adverse material facts
- Identify when an issue is outside your expertise
- If your opinion is provisional only, say so
- If your view is changed by the other side's evidence, say so
- Provide underlying documents, e.g.- photographs, plans, survey reports

Anglo Group plc v Winter Brown & Co

- You should cooperate with opposing experts to narrow issues at an early stage

Member Overturn – LPA witnesses



- RTPI Practice Advice September 2018:

If you hold a different professional opinion and consider that it was correct to refuse planning permission then the evidence you give at the inquiry should explain clearly why you hold a different professional view to another planner.

...

If you are concerned about representing a local authority position that you do not professionally support you should discuss your concerns in advance with more senior members of staff or your local authority's legal department if necessary

Experts – the challenge



- To persuade the Inspector that your opinion is the one which should be trusted and relied upon
- Not just what you say but how you say it
- Clear-navigated path – from the entrance of the maze to the centre of the maze



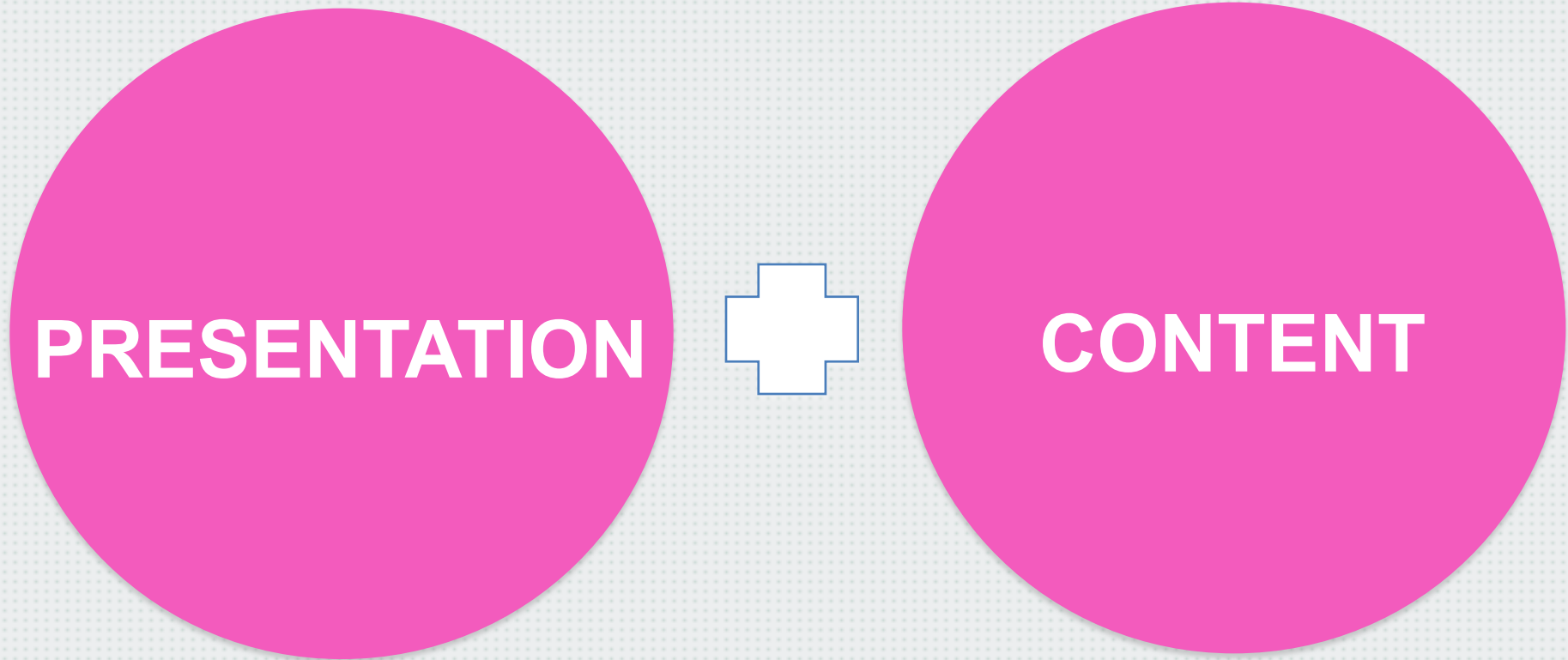
Chapter 2: Effective Proof-Writing



Planning Inspectorate: Procedural Guides

- Planning Appeals: Procedural Guide (March 2020)
 - Annexe F, paras 11.1-11.7; Annexe G, paras 12.1-12.8; Annexe O (all).
<https://www.gov.uk/government/publications/planning-appeals-procedural-guide>
- Planning Enforcement: Procedural Guide (March 2016)
 - Annexe D, paras 12.1-12.5; Annexe J (all).
<https://www.gov.uk/government/publications/enforcement-appeals-procedural-guide>

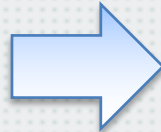
Effective Proof-Writing



Effective Proof-Writing



PRESENTATION



Easy to read: font, spacing, margins

Easy to navigate: page and paragraph numbers; headings and subheadings; set out a roadmap

Cross-reference documents

Effective Proof-Writing



Content: some building blocks

- Experience and qualifications
- Site description
- Planning/enforcement history
- Description of proposal
- Test for determination: s. 38(6) of Planning and Compulsory Purchase Act 2004
- Development plan policies (weight: NPPF, para. 213)
- Emerging plan policies (weight: NPPF, para. 48)
- Consistency of proposal with development plan
- Other material considerations
- Balancing exercise
- Summary and conclusion



Chapter 3: The Structure of Oral Evidence

Structure of oral evidence



Examination-in-Chief

Cross-Examination

Re-Examination

Inspectors' Questions

Structure of oral evidence



Examination-in-Chief

- Questions shouldn't be a surprise
- No leading questions (although in practice ok for non-contentious issues)
- Introduces you, your qualifications and experience
- Read out your summary (usually)
- Supplementary questions: clarifications of your evidence and comments on other side's written/oral evidence

Cross-Examination

- Cross-examiner aims to: achieve agreement where possible, identify weaknesses in your analysis, undermine your credibility, emphasise strengths of other side's position
- Leading questions permitted

Structure of oral evidence



Re-Examination

- Must arise out of cross-examination
- Non-leading questions
- Don't overthink it: answer simply

Inspectors' Questions

- Before or after re-examination
- Indication of Inspector's thinking (sometimes)
- Don't agree just because it's the Inspector who's asking!



Chapter 4: The DOs and DON'Ts of Oral Evidence

DOs and DON'Ts of Oral Evidence



PREPARATION



Confidence – Know your stuff!

Don't underestimate time
needed

Case conferences

Setting up: be organised at the
table and have a glass of water

DOs and DON'Ts of Oral Evidence



“Golden rules”

- Keep voice up
- Speak slowly
- Pause before answering
- Address answer to Inspector
- If you didn't hear, ask for question to be repeated
- If you didn't understand, ask for question to be repeated or rephrased
- If you need time before answering, ask for it
- Never guess
- Don't be afraid to agree/disagree
- Answer the question
- Don't go outside your expertise
- Be succinct
- Avoid imprecise language
- Avoid emotive language
- Never interrupt
- Don't be rude or discourteous (whatever the provocation!)
- Don't make jokes!
- Keep your poise



Chapter 5: The Impact of Rosewell on Giving Evidence

Rosewell – the problems causing delay



**Out-dated admin
processes**

**Back-loaded
process**

**Fairness and
fear of JR**

Rosewell – the Solutions



Earlier engagement by all parties

Greater certainty about timescales

Harnessing technology to improve efficiency and transparency

Recommendations affecting evidence



Within “earlier engagement by all parties” the following is suggested:

- identification of the inspector who will conduct the inquiry at the outset of the process (Recommendation 4);
- initial pre-inquiry engagement between the inspector and the parties involved, no later than week 7 after the start letter (Recommendation 8);
- case management directions, issued by the inspector to the parties about the final stages of preparation **and setting out how evidence will be examined at the inquiry** (Recommendations 8 & 9) within 8 weeks of the start letter.

4 key differences



- Earlier preparation
- Topic approach
- Hybrid approach
- Inspector-driven both in terms of case management and in hearing evidence

Advantages and Disadvantages



Advantages

- Inspector in control of timing
- Less formality for witnesses
- Less formality for interested parties

Disadvantages

- Barrister not in control of timing or questioning
- Fewer prompts for witness
- Inspector expertise
- Not necessarily shorter



Chapter 6: A Brave New World – Remote Inquiries

Remote inquiries



Impact of COVID-19 on appeals system

- PINS publish statement of intent 28th April
- First virtual hearing 11th May
- Written Ministerial Statement 13th May
- PINS publish progress report 28th May: virtual events here for the long-term, but not the end of face-to-face inquiries

Remote inquiries



Written Ministerial Statement (13 May 2020)

“The planning system has a vital role to play in enabling the delivery of housing and economic growth that will support the UK’s economic recovery. It is important that the system continues to operate effectively... while adhering to the Government’s guidance on social distancing... Moving to digital events and processes will be critical... The Government expects events to be taking place virtually by mid-June, other than in exceptional circumstances... Access to planning documents by physical inspection... is not now available... The Government considers that online inspection of documents should be the default position across all planning regimes... Where site visits are required or necessary, they should be undertaken in line with the Government’s guidance on social distancing and safety requirements...”

Remote inquiries



Practical arrangements

- Microsoft Teams
- Hosted by PINS
- 3 x 1.5 hour sessions per day
- CMC to test the technology
- Electronic bundle: single pdf - indexed, paginated, hyperlinked available online
- Public participation: notification letters explaining how to participate

Remote inquiries



Useful principles

- Liaise in advance
- Understand and test the technology
- Make sure can be seen and heard (backdrop, lighting, background noise)
- Know how to handle the documents
- Make the best use of written evidence
- Be succinct and relevant
- Avoid over-speaking
- Maintain confidentiality

Remote inquiries



Advocate/witness communication

- Purdah
- Don't use side-chat facility on Teams
- Side-chat via WhatsApp
- Disable side-chat when giving evidence



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