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Planning Appeals & Planning Court Remote Hearings

Richard Ground QC Ashley Bowes and Ben Du Feu

Thursday 16 April 2020

The Three Speakers and Format



- Richard Ground QC
- Ben Du Feu.
- Dr Ashley Bowes

We will deal with the following 3 topics.

1. Changes in PD, protocols and guidance relevant to Planning Court Hearings.
2. Practical points about making remote hearings work.
3. Planning Appeals and remote events.

Questions & timings



How we are going to deal with questions.

1. We have some questions already asked.
2. Zoom has function to ask questions please use and we will pick as many as we can.
3. Email later and we will pick up after the session.

Timings

- 15 mins on remote Court hearings
- 15 mins on planning hearings
- 15 mins on questions.



Ben Du Feu on Practice Directions, the Remote Hearings Protocol & Admin Court Guidance

KEY DOCUMENTS



- Practice Directions 51Y and 51ZA
- Administrative Court Office Guidance – Covid-19 Measure
- Civil Justice in England and Wales Protocol Regarding Remote Hearings – 26 March 2020

PRACTICE DIRECTIONS 51Y AND 51ZA



- Public / private hearing? Court may direct that the hearing is to take place in private where it is necessary to do so to secure the proper administration of justice.
- Parties may agree extensions of time up to 56 days (8 weeks) increased from the usual 28 days. But restrictions in CPR 3.8(4) still apply:
 - must be by prior written agreement; and
 - must not put at risk any hearing date.
- Extensions of time beyond 56 days require the permission of the court (with applications initially being considered on the papers).

ADMINISTRATIVE COURT OFFICE GUIDANCE – COVID-19 MEASURE



- Detailed guidance on the filing of immediate applications, non-urgent work and claims and appeals.
- Detailed guidance on the formatting requirements, size, default settings, pagination, indexation, bookmarks, hyperlinking and other matters for bundles. Use of core and further bundles.
- Sanctions if do not comply i.e. application may not be considered and must provide an explanation for any departure from the guidance.

CIVIL JUSTICE IN ENGLAND AND WALES PROTOCOL REGARDING REMOTE HEARINGS – 26 MARCH 2020



- Remote hearings to be used wherever possible.
- Parties to be proactive in respect of forthcoming hearings and to consider with the listing office how the hearing should be undertaken.
- Parties may make representations to the judge on this who will make a binding determination if agreement cannot be reached.
- Electronic bundles – more guidance – should contain only documents and authorities which are essential to the remote hearing.



Richard Ground QC – practical tips

Practical Tips 1 the technology



- The technology.
 - Skype for business
 - Zoom
 - Microsoft Teams
 - BT MeetMe
- Good guide FLBA

Remote hearings and COVID-19
Response to paragraph 8.3 – APPENDIX 1
30 March 2020

FLBA

Video Conferencing / Remote Hearings

Instructions for use of Video Conferencing Platforms

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Mr Justice Holgate 6 top tips



1. Succinct skeleton x-referenced list of pre reading.
2. Limited bundles what is essential for legal arguments. Core bundles.
3. Authorities bundles limit to essential and do not duplicate ICLR book.
4. Bundle simple pagination.
5. This will help with reserved judgments.
6. Concede points with no merit early, D's if concede to judgment do early so Court time saved.



Practical tips



- Test technology for all those that want to be on the call.
- Taking instructions during hearing: email/Whatsapp.
- Basics all the same as zoom and Microsoft team video calls.
- What to do if technology cuts out.
- Organising the electronic bundles.

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Remote Planning Appeal Hearings:

what can we expect and what can we do?

Dr Ashley Bowes



CONTEXT

What are we facing?



- Current “lockdown” style measures until June
- Followed by social distancing measure and further rounds of “lockdown” style measures if necessary until vaccine available
- So even after this period, there may be challenges



Planning Inspectorate Position

What does PINS say?



- All site visits, hearings and inquiries are suspended as of 25 March 2020.
- Keen to keep things moving via virtual events.
- No settled view (although note MS Teams used internally).
- Public participation the biggest challenge.

What does PINS say?



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



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

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



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
- Establish protocols/policies to ensure safety of employees
- Reg.6(2)(f) Health Protection (Coronavirus Restrictions) (England) Regulations 2020, travelling “for the purposes of work”

What can we do now?



- Where site visits not possible – consider drones
- Consider duties under RIPA 2000 and the Protection of Freedoms Act 2012

What can we do now?



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



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