

## INQUIRIES RELATING TO MODIFICATIONS TO ORDERS

If objections are made when proposed modifications to an order are advertised, it may be necessary for a further inquiry to be held. Such an inquiry can arise under Para.2(3) of Schedule 6 to the Highways Act 1980, Para.8(2) of Schedule 15 to the Wildlife and Countryside Act 1981, or Para.3(6) of Schedule 14 to the Town and Country Planning Act 1990.

Where an inquiry is held into proposed modifications, the format may differ to some extent from that of a 'normal inquiry'.

### The Role of the Inspector

- Although the matters to be considered at the inquiry are the modifications that have been proposed by the Inspector himself (or possibly another Inspector), the Inspector's task is the same as at any other inquiry. That is, to gather all the necessary evidence to enable a conclusion to be reached which is properly argued and supported by that evidence. It is not up to the Inspector to argue the case for or justify the proposed modifications.
- Following such an inquiry the options open to an Inspector are to confirm the order subject to the proposed modifications, to confirm it without the proposed modifications (that is, as originally made), or to propose further and / or different modifications, which may themselves require advertisement.
- The only matters to be considered at the inquiry are those relating to the proposed modifications (refer to the decision in the case of *Marriott v. Secretary of State for the Environment, Transport and the Regions* (2000) and Rights of Way Advice Note 10).

### The Role of the Order Making Authority (OMA)

- The modifications to be considered at the inquiry will not necessarily be supported by the OMA. In practice, the OMA will often adopt a neutral stance but, in some cases, may wish to support or oppose the modifications. It will be important for the Inspector to establish the OMAs position as early as possible as this will affect the conduct of the inquiry.
- If the OMA adopts a neutral stance, there may still be some merit in giving them the opportunity of appearing before other parties to set out their position and the background to the inquiry.

### Opening the Inquiry

- In some cases, for example where all parties present were also at the previous inquiry, it may be appropriate to omit certain elements of the usual opening announcements. On the other hand there may be parties at the modifications inquiry that did not attend previously.
- Opening announcements must include a description of the proposed modifications. It will also usually be appropriate to give a brief summary of the reasoning behind them. It is not however necessary to justify the

proposals and it is reasonable to assume that parties have read and understood the interim decision.

- Reference should be made to the advertisement of the modifications and the details of the objections and representations of support that have been made.
- The stance of the OMA should be established and made clear to all parties.
- The order in which parties are to be heard should be established. In modifications inquiries it may sometimes be appropriate to differ from the usual sequence of events and, for example, hear objectors first, particularly if their objections involve new evidence. The role of the OMA may also vary as mentioned already. Ideally the order of appearance should be agreed with the parties.

### **Cross-examination**

- In general, similar considerations apply as in other inquiries. However, there can sometimes be pressure on the inspector to play a more pro-active role than normal, particularly if, for example, there are no other parties appearing in support of the proposed modifications. That is, the Inspector may have to be more investigative. It is nevertheless essential for the Inspector to continue to be seen to be impartial.
- The Inspector is not there to be cross-examined or to cross-examine other parties. However:
  - Because the modifications under consideration have been proposed by an Inspector it may well be that other parties seek to question the Inspector at the inquiry. However, the reasoning behind the modifications should have been made clear in the interim decision and it is not up to the inspector to justify them at the inquiry. The purpose of the inquiry is for other parties to satisfy the Inspector on the basis of their own evidence and submissions that the modifications should or should not be confirmed. That is, Inspectors should not allow themselves to be cross-examined on the proposed modifications. Nevertheless, clarification may well be helpful and courteous in response to questions even though justification is not necessary.
  - The Inspector needs to leave the inquiry with all the information needed to reach a decision. To this end it will often be necessary to ask questions of clarification of other parties. This is again not the same process as cross-examination and the Inspector must remain 'above the fray' even though he or she may well have proposed the modifications being discussed.