
THE ROLE OF THE INSPECTOR

This advice covers the role of Inspectors in decision-making, and the principles which guide the decision-making process. This information is up-to-date at the time these Guidance Notes are published – any changes affecting the role of Inspectors should be notified via PINS net. You can also refer to the Human Resources pages (in particular the Staff Handbook) for information not included here.

THE INSPECTOR'S TASK

The Inspector's Role in Relation to the Secretary of State

- 3.1 Inspectors are called upon to assist the Secretary of State for Communities and Local Government, the Secretary of State for Environment Food and Rural Affairs, the Secretary of State for Transport, the Welsh Ministers, the Mayor of London and occasionally other Secretaries of State in a wide range of casework under planning, housing, environment, highways and allied legislation. In this guidance references to the Secretary of State should be also taken as references to all other authorities for whom an Inspector may be appointed to carry out work. Through their work, and the support of office colleagues, disputes between individuals and public authorities are resolved taking into account the Secretary of State's policies and, where relevant, the development plan.
- 3.2 When Inspectors are instructed to hold inquiries on behalf of the Secretary of State, or appointed to determine Orders or appeals, they 'stand in the shoes' of the Secretary of State and have the same regard to the Secretary of State's policies as does the Secretary of State.
- 3.3 Each Inspector, in exercising the duty of making a recommendation or determining an Order or appeal is technically a tribunal. It is a basic principle that in an Order, appeal or other case in which an Inspector is instructed or appointed, there should be no evidence or policy advice relevant to the case before the Inspector which is not also available to the parties. It follows that government policy in relation to any case before an Inspector must be as presented to Parliament or otherwise published through the usual channels. Each Inspector must exercise independent

judgement and must not be subject to any improper influence, nor must it appear that the Inspector may be subject to such influence.

- 3.4 The Planning Inspectorate (PINS) is an Executive Agency of the Department for Communities and Local Government. The Chief Executive acts on behalf of the Secretary of State for Communities and Local Government in the instruction or appointment of Inspectors, most of whom are home-based, and is responsible for the maintenance of their professional standards and their efficient and effective deployment. In the case of the salaried Rights of Way Inspectors (ROWIs) this function is delegated to the Director of Casework.
- 3.5 The common link in all the decisions in which Inspectors assist the Secretaries of State is that the processes of decision making have a quasi-judicial character, mostly governed by Rules derived from Acts of Parliament, set out in Statutory Instruments, interpreted by the Courts and developed by practice. There are no procedure rules for local plan and UDP inquiries and some other kinds of inquiry but there are rules for public rights of way casework (the rules do not apply to schedule 14 appeals).
- 3.6 In considering the cases presented either at inquiries or through other procedures it is the role of the Inspector to take into account the requirements of relevant current legislation, rules and regulations, published guidance (Planning Policy Statements, Planning Policy Guidance Notes, Minerals Planning Guidance Notes, Regional Planning Guidance and other published government advice and guidance). This may include government policy on other relevant areas of environmental concern - not just those directly related to town and country planning matters and rights of way. Inspectors should have regard to ministerial announcements in parliament (e.g. answers to Parliamentary Questions) and at other public occasions. For Rights of Way casework, PINS also publishes a series of Advice Notes, which should also be taken into account. Up-to-date information is regularly published on PINS net and Inspectors should check this on a regular basis.

The Franks Principles

- 3.7 The watchwords of all Inspectors and all who work within the Inspectorate are openness, fairness and impartiality. These three principles are known as the "Franks" principles, forming the basis of the recommendations of the Committee on Administrative Tribunals and Enquiries, under the chairmanship of Sir Oliver Franks (1957 Cmnd 218).
- 3.8 Everything done by an Inspector should be based upon the practical application of these three principles. For example, openness means that Inspectors get no secret briefings - the advice on the relevant policy background is available to all the parties to the case just as it is to the Inspector, in the form of officially published material. Fairness means that all parties with an interest in a decision have a proper opportunity to state their case, and reply to the representations of others. As to impartiality, it is one of the objectives of the Agency to maintain the integrity of each Inspector as an independent tribunal, not subject to any improper

influence. In showing commitment to the policies of the Secretary of State, who is charged by parliament to carry them out, it has been argued that an Inspector cannot be impartial. But in the sense that an Inspector must come to a case with an open mind, and be indifferent as to the parties before him, an Inspector must not only be utterly impartial, but also be seen to be so. Advice on conflicts of interest is set out at 3.29 - 3.39 below

- 3.9 The issue of impartiality was examined in 1995 by the European Court of Human Rights in the case of *Bryan v UK* (44/1994/491/57). Article 6.1 of the European Convention of Human Rights provides that '*in the determination of his civil rights and obligations ... everyone is entitled to a fair and public hearing, ... by an independent and impartial tribunal.*' The Court found that the proceedings before the Inspector ensured a fair hearing, but the fact that the Secretary of State could at any time before the determination of the appeal revoke the Inspector's power to decide it was enough to deprive the Inspector of the requisite appearance of independence. However, the fact that remedies were available in terms of review by the High Court (see below) satisfied the requirements of Article 6.1 and there was no violation of the Convention. The context of the Bryan case was a transferred enforcement inquiry. The principle has since been extended by the UK domestic courts to other types of case in the context of the Human Rights Act 1998 (notably by the House of Lords in *Alconbury*).

Challenges

- 3.10 Decisions taken by an Inspector or by the Secretary of State can be challenged on a point of law (for example on a procedural failure) but there is no appeal against them on the merits of the case. Even if a complaint of maladministration were to be upheld against an Inspector, it would not be possible to change the decision. Inspectors should always bear these points in mind, whether taking the decision themselves or advising the Secretary of State; their decisions and advice must be as soundly based as possible.

RANGE OF WORK

Types of Casework

- 3.11 Most of the Inspectorate's work is related to planning and development control but it also includes public rights of way cases under the Highways Act 1980, Town & Country Planning Act 1990 and the Wildlife and Countryside Act 1981. Other types of casework include cases under the Transport & Works Act 1992 new Highway schemes under the Highways Act 1980, Access appeals under the Countryside and Rights of Way Act 2000 and coastal access casework under the Marine and Coastal Act 2009.
- 3.12 With very few exceptions, casework is dealt with by one of three methods: written representations (usually with a site visit but not always), a hearing or a public local inquiry. The exceptions relate to fairly rare types of casework which focus only on procedural or legal arguments.

Written Representations

- 3.13 The written representations method is the most common means for deciding Town & Country Planning Act 1990 Section 78 (s78) planning appeals, and is commonplace in enforcement appeal work (s174); cases arise less frequently in rights of way work. Where the parties have not asked for an inquiry or hearing, and the Secretary of State, Decision Branch or the Inspectorate (as the case may be) does not consider it necessary to hold one, the case will be dealt with by means of written representations. Where Inspectors are appointed to determine such cases they will take into account the representations made, inspect the site and write a reasoned decision - conveying their decision to the parties. Where the Secretary of State is to make the decision, the Inspector will usually be asked to inspect the property or site in question and its surroundings (except in Schedule 14 appeal cases), and to report on the case, together with comments and recommendations.

Hearings

- 3.14 If the case to be determined has relatively straightforward issues and has attracted only limited public interest, a hearing may be held. Like an inquiry, a hearing is held in public, but unlike an inquiry, members of the public are not automatically notified of a hearing. However, the Secretary of State may ask the order making authority to carry out appropriate publicity.
- 3.15 Hearings consist of an informal discussion led by the Inspector. By their very nature they are not adversarial and, as a consequence, the occasions when cross examination will be permitted are rare. Parties may claim costs at hearings.

Inquiries

- 3.16 At inquiries the principal parties and (at the Inspector's discretion) interested persons are heard and evidence is formally called and examined. Formal rules of procedure usually apply, except in certain kinds of inquiry such as those into objections to development plans. Even there, the planning procedure rules are normally followed in spirit. Traditionally, the standards by which Inspectors have conducted inquiries have been those by which the work of the whole Inspectorate is judged. There can be no doubt about the importance of inquiries to both the work of Inspectors and to the value which the community at large place upon that work.
- 3.17 The power of the Secretary of State to require that local inquiries (which must always be in public) be held derives from s250 of the Local Government Act 1972. These legal provisions give duly appointed Inspectors a wide range of powers: to issue witness summonses, hear evidence on oath and (more commonly) to determine applications made by the parties for their costs.
- 3.18 At longer or more complex inquiries an Inspector may be supported or assisted by a Deputy Inspector and/or specialist Assessors. However, in all cases, only one Inspector - referred to as the lead Inspector - is

appointed to determine the case. The lead Inspector must be satisfied that all contributions from those who have been appointed to assist or support him or her have been read by him or her, are consistent with all other parts of the decision or report, and accord with all current legislation, guidance etc..

Procedure Rules

- 3.19 The procedure to be followed before, during, and after most types of inquiry or hearing is prescribed in statutory rules and laid before parliament. These rules, insofar as they relate to the conduct of inquiries, reflect the procedure of the courts; but Inspectors are given considerable discretion, the exercise of which requires sound judgement and tact. Not all types of inquiry are covered by the Rules but it is government policy that, where none have been made, the spirit of the general pattern established by the rules should be applied. Inspectors are expected to act accordingly. Rules for public rights of way casework (written representations, hearings and inquiries) came into force on 1 October 2007 and apply to all Orders submitted after that date.

Transfer of Decisions to Inspectors in Rights of Way casework

- 3.20 Schedule 14 to the Town and Country Planning Act 1990 empowers the Secretary of State to appoint Inspectors to decide footpath and bridleway orders under s257 and s258. The Wildlife and Countryside Act 1981 also provides for decisions on orders relating to public rights of way to be taken by Inspectors. Schedule 15 to that Act empowers the Secretary of State to appoint Inspectors to take decisions on opposed orders for modifications to the Definitive Map and statement of public rights of way. Schedule 6 sets out a procedure for the confirmation by Inspectors, instead of by the Secretary of State, of orders made under the Highways Act 1980 for the creation, diversion or extinguishment of public rights of way. The Secretary of State may decide to retain jurisdiction in particular cases of any type of public rights of way order. Currently over 99% of rights of way orders are transferred to Inspectors for decision.
- 3.21 In any transferred case Inspectors are required to communicate a decision with reasons. Inspectors' decisions have the same force in law as a decision by the Secretary of State, and Inspectors assume the responsibility of the Secretary of State to secure consistency and continuity in the administration of orders.

Recovery of Jurisdiction

- 3.22 If a case is to be recovered for the Secretary of State's decision, the procedure group will normally have made the necessary arrangements before the file is sent to the Inspector. For cases where it only becomes apparent just before or at the inquiry or hearing that the case may have to be recovered, Inspectors should follow the advice given in Section 9 of the Training Notes on Public Inquiries.

DEALING WITH CASEWORK

Preparation: Files

- 3.23 Inspectors can expect thorough preparation of files from the procedure teams. They can also expect all procedural stages to be properly and expertly undertaken. For example, whether a case should have been recovered for the Secretary of State's own decision is a matter of discretion within published criteria. Inspectors can expect their colleagues in the administration sections to exercise that discretion sensibly and consistently. Nevertheless, decisions and recommendations are the Inspector's own, and any defect in procedure may affect matters which are held to be the Inspector's responsibility. Moreover, some procedural matters may arise only at or around the inquiry stage, for example whether the case falls within the criteria for recovery. Inspectors should also remember that when they have the file, it cannot also be with the procedure team and it is then their responsibility to see that all procedural details are completed.

Relevant Decisions

- 3.24 Often the parties will supply copies of other decisions on what may be regarded as similar types of cases, and these may be material considerations. However, very few cases offer an exact precedent. Rarely are two cases exactly the same in all respects and hence there need be no problem if you are led to a different conclusion. It is also fair to assume that in most cases you will not be referred comprehensively to every similar decision that might be of help to you, but only to those that the party quoting the decision or decisions considers to be helpful to his or her case. In any event, while the Agency strives for and places a high value on consistency, previous decisions of other Inspectors may be persuasive, but should not be regarded as binding. However, if you have been referred to what are claimed to be precedent cases you may need to give a brief explanation of why you do not see that (or those) case(s) guide you to your decision.

Background Information

- 3.25 Background information about the case will normally be on the case file and this, together with evidence or statements by the parties and the Inspector's site observations should normally be sufficient to determine the case or write the report. However, from time to time Inspectors may find that they need more information or that they need to do some more general background reading. It is the Inspector's responsibility to see that he or she has all the background information necessary before taking an inquiry or hearing or inspecting a site (see below). Inspectors should therefore study each case file they receive in time to obtain any further information that they need. However, in coming to a decision, Inspectors must be careful only to use information on which the parties have been given the opportunity to comment (see below).

Obtaining the Evidence

- 3.26 As a technical tribunal, Inspectors bring their own experience, expertise and common sense to bear in interpreting and weighing the evidence before them. Like the decisions of judicial tribunals, Inspectors' decisions or recommendations must flow from the evidence before them, and not from any external source. As a general principle, it is for the parties to put the relevant matters to be taken into consideration before the Inspector. The Inspector should not seek out further matters beyond those identified by the parties unless there is firm evidence that there are others which are relevant but have not been referred to. However, the duty of Inspectors is not simply to react to the evidence presented, but as public servants appointed by the Secretary of State to decide a case, also to ensure that their decisions reflect the wider public interest. Consequently, Inspectors must not leave matters alone if their judgement or professional expertise indicates that either all of the evidence necessary for a soundly reasoned decision has not been put before them, or that a material part of the evidence they do have has not been adequately tested.
- 3.27 Cases may arise in which Inspectors are aware from past knowledge and experience, or through dealing with earlier cases, of a relevant consideration that has not been quoted or referred to by the parties. If the matter would have an important bearing on the decision, it will need to be referred to the parties for comment before it can be taken into account. Indeed, in some cases there will be policy or legal requirements to explore and it will not be enough for Inspectors to sit back and wait for all the necessary information to be presented to them.
- 3.28 Having ensured that they have adequate information for their decision, Inspectors should deal with cases on the basis of the information given by the parties (including third parties), or canvassed with the parties, together with their inspection of the site and the area, making use of their own experience, expertise and common sense. They should not rely on matters or refer to documents in their decisions unless the parties have had an opportunity to comment upon them. As an exception to this rule, it may be acceptable to refer to generally available publications (e.g. Circulars) which constitute the Secretary of State's own guidance / policy, even where these have not been referred to by the parties. However, this is not generally a wise course of action, and if it is unavoidable, care should be taken to ensure that there are no unexpected references to fundamental points of which the parties are unaware, particularly when dealing with unrepresented appellants who should not be expected to be as familiar as the local authorities and professional agents with statements of government policy.

CONFLICTS OF INTEREST

General

- 3.29 Inspectors should not take on any casework in which it could be construed that they had some personal involvement or interest. The following guidelines aim to avoid actual or perceived conflicts of interest, whether in

terms of geographical location, knowledge of the parties or membership of organisations.

Geographical conflict

3.30 Inspectors should not take any cases relating, to sites in:

- the local authority area in which they live or where they own property - such as holiday homes
- local authority areas where they have been employed in recent years
- areas where they have any other interest, or close to their place of residence, which might conflict with or appear to conflict with their duty.

3.31 Inspectors should inform the office immediately if they find they have been allocated work in a locality with which they have had some previous connection and within which they are still likely to be known by some people and where they consider their impartiality might be open to question. Inspectors should also advise their Sub-Group Leader (SGL) or Group Manager (GM) if they are allocated a case which has close connections with an earlier one with which they dealt, unless it is clear that they have been specifically allocated to it for good reason.

3.32 Inspectors should also inform the SGL or GM if they know personally one of the parties to an inquiry or hearing, have a personal interest in property near to the site, or are allocated a case where one of the parties is a company in which they hold shares directly.

3.33 In view of the need for efficiency of travel patterns, Inspectors need to review their precluded areas with their SGL on an annual basis. However, the need for Inspectors to be seen to be impartial and unbiased is a paramount requirement.

Membership of Societies and Organisations

3.34 Inspectors are not precluded from becoming members of any organisation. Most Inspectors are members of one or more professional bodies and may also be members of social, recreational and other organisations as well as bodies like the National Trust. Ordinary membership of such bodies will not give rise to any doubts about the Inspector's impartiality, although where such an organisation has direct involvement in the inquiry or hearing, Inspectors must announce the fact that they are members. However, prominent office in such organisations could give rise to doubts about impartiality. When conducting a site visit, inquiry or hearing Inspectors should not wear club, regimental, university or school ties, nor wear lapel badges or display badges or stickers in their cars when used for official business.

3.35 However, the onus is upon Inspectors to consider on a case-by-case basis, whether there is anything in their private, professional or financial life which would conflict with their duty to act fairly, openly and impartially in regard to the matters before them. In any case where an Inspector

considers that his or her impartiality might be reasonably brought into question it may be necessary to:

- a) bring the matter to the immediate attention of their SGL or GM and, after agreement, step aside from the case;
- b) abandon the interest (if practical to do so); or
- c) bring the matter to the attention of the parties in order for them to have an opportunity to say whether they are content to continue with the appointed Inspector.

- 3.36 Inspectors who have, or develop associations with, national or local organisations which have specific environmental objectives - such as village preservation societies, countryside protection groups or ecological pressure groups will need to exercise common sense about whether or not these would lead a reasonable person to question their impartiality in a particular case. Particular caution must be exercised with land-based concerns e.g. Friends of the Earth or (for public rights of way casework) the Ramblers' Association. Such membership would call into question the Inspector's impartiality in dealing with cases involving such environmental issues. Inspectors should contact their SGL if in doubt about whether membership of any particular body is appropriate. Where such interests are not disclosed and there is subsequent complaint or litigation, disciplinary action may follow.
- 3.37 Before seeking or accepting any official position in a professional institution, Inspectors should obtain prior approval of the SGL and GM. If an Inspector holds such a position he or she should consider carefully whether, if asked to represent or speak on behalf of their institution, this raises a direct conflict of interest with their role as an Inspector. No Inspector should be personally associated with a criticism of government policy made by a professional body.
- 3.38 Refer to the Staff Handbook on the Human Resources pages on PINS net for further information and advice on these matters.
- 3.39 All Inspectors must register their interest in Freemasonry. PINS maintains a register of Inspectors who are and who are not members of the Freemasons and of those who have declined to provide this information. If an Inspector makes a false declaration he or she will be deemed to have committed a serious disciplinary offence. The record should be kept up to date to note changes. If asked at an inquiry, an Inspector should provide the information in accordance with the entry on the register. If asked at an accompanied site visit, the questioner should be referred to Human Resources (Room 4/20, Hawk Wing, Temple Quay House) where a copy of the register is kept.

Other Casework Involving PINS Staff or their Relatives.

3.40 To ensure that appeals or other casework that involve PINS staff personally, including Inspectors, are dealt with impartially and are seen to be so, the following guidelines should be observed.

- If an Inspector or a member of their household is involved in a case the Inspector must immediately notify the SGL or GM who will arrange for the case to be dealt with by another Inspector. In England it will be allocated to a salaried Inspector working for the National Assembly for Wales, and if in Wales it will be allocated to an English Inspector in so far as such distinctions are possible in respect of the casework concerned.
- If the case involves an Inspector's relatives who are not part of the Inspector's household, the case should be handled normally unless their involvement has been specifically brought to PINS attention by a third party. In such cases the SGL and GM must be notified to see if the case should be dealt with by another Inspector under the arrangements outlined above.