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Planning appeals in the era of COVID-19

Lisa Busch QC and Dr Ashley Bowes



::: Introduction by Lisa Busch QC

Fairness and access to justice



Why does it matter?

In principle

In practice



March 2020 and two differing approaches:

PINS

The Court Service



March 2020 and two differing approaches:

PINS

The Court Service



- The Court of Appeal
- Two appeals from the Family Court
- "Exceptional circumstances" required for inperson events



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 inquires have been suspended form 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. <u>Kendal v Rochford</u> [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





 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.



- 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)



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





- 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)



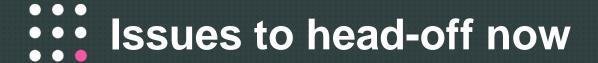
 Essential for parties to have a secure means of communicating during the event

- Dangers of in-program messaging services
- PINS concerned about the "digitally challenged"





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



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



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