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## **TOWN OR VILLAGE GREEN CLAIMANT'S PREPARATION FOR AND PARTICIPATION IN INQUIRIES**

**(HEREINAFTER TOWN OR VILLAGE GREEN IS REFERRED TO AS TV GREEN)**

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### **THE POINT IN THE PROCESS AT WHICH THIS GUIDANCE BEGINS**

The matters covered in this guidance apply to the period in a green claim process after all the evidence has been gathered, the claim has been submitted and accepted, all subsequent exchanges have been concluded and the registration authority is arranging to hold a public inquiry.

The registration authority will appoint an Inspector to conduct the inquiry.

From the evidence the Inspector gathers, his task is to advise the registration authority in regard to whether or not, on the balance of probability, the evidence supports or does not support a recommendation that the involved land should be registered as a TV green. Acting on that recommendation the registration authority will finally decide whether or not to register the land as a TV green.

**THE SELECTION AND IDENTIFICATION OF WITNESSES PREPARED TO ATTEND AND GIVE EVIDENCE BEFORE THE INQUIRY** (in this guidance, use of the term "witness" refers to those who have filled out an evidence questionnaire and who are prepared to present their evidence at the inquiry)

Either in the course of gathering evidence questionnaires, or from your knowledge of those who have supplied them, you will have had the opportunity to consider those who you would wish to approach with a view to them appearing at the inquiry as witnesses.

Those who accept this challenging, but certainly not fearful, role will need to be confident, articulate and intelligent, and claimants should attempt to select those who will give a firm but not belligerent, confident but not over confident and reliable account of their use of the land claimed as a TV green in response to cross-examination questions of a searching and robust character.

The necessary number of witnesses to be selected for appearance at inquiries is not stated in statute nor in any judicial authority. However a crude guide range between 10, from claims involving small localities or neighbourhoods, up to an absolute maximum of 30 or so from those with larger local inhabitant boundaries and populations size is suggested in this paper.

Further detailed guidance on this subject is provided at pages 8, 9 and 10.

## **THE INSPECTOR WHO WILL HOLD THE PUBLIC INQUIRY**

This is usually a barrister selected and appointed by the registration authority.

The Inspector has one overarching task which is to weigh all the written evidence, known as the evidence in chief, and all the oral evidence, provided by witnesses in answer to questions, and any statutory declarations, opening and/or closing statements or any other evidence submitted by all the parties and their witnesses.

From these very careful, thoughtful and thorough considerations the Inspector will write a detailed report to the registration authority, copies being made available to all of the parties. The report will comprise all of the grounds upon which his decision is based.

The key and decisive element of his decision will comprise what from his detailed assessment of the evidence, considered on the balance of probability, he judges to be the appropriate recommendation to the registration authority in regard to whether or not the land should or should not be registered.

## THE INSPECTOR'S DIRECTIONS

The Inspector's task is therefore a very demanding one and he will exercise his skill, knowledge and experience independently and impartially weighing all of the evidence placed before him.

In order to ensure that the Inspector has all of the evidence presented to him, in the way he judges to be most appropriate for the most effective discharge of his duty in the light of any particular circumstances, the Inspector will always issue directions in regard to all of the key matters of evidence and procedures that he wishes to have presented before him.

Within certain overall conventions, individual barristers may have their own unique detail variants in the composition of their directions which may also, to some extent, vary to reflect the claim as it has evolved. It is to be expected therefore that some barristers' requirements may be much more detailed and complex than others.

In all cases all parties submitting evidence to an inquiry, including applicants, can expect to be engaged in considerable secretarial and administrative exercises in order to compile and present their evidence, usually in a tabbed and indexed form as the appointed Inspector wishes and has accordingly directed.

An inquiry may be expected to last for three days and many in certain cases, perhaps with many witnesses and/or in regard to which there have been extensive exchanges of initial arguments, may take longer than three days for all of the evidence to be given and the associated processes to run their course.

Overall therefore very substantial costs can be associated in bringing a lengthy inquiry to a conclusion.

With that thought occupying the Inspector's concerns, in cases where there appears to the Inspector to be one single key issue upon which the whole basis of the claim may founder, he may decide to launch what is known as a Preliminary Issue which may be expected to comprise a one-day proceeding to enable him to reach an opinion on the particular point.

Normally, where the circumstances appear to him to warrant it, the Inspector would make such a decision rather than letting the particular issue arise as part of a longer and much more costly three or four-day proceeding which tested everyone of the complex range of involved issues.

The Inspector may be persuaded to take such a "Preliminary Issue" course, perhaps after representations having been made to him on this point and in regard to which there appears to him to be sufficient doubt.

Readers of this paper will I hope appreciate that with the great variability of matters of evidence to be submitted, evaluated and tested there is an equal variability in the directions issued to inquiry participants .

However, in order to provide you with some indication of what the Inspector's directions may involve, the following gives a good indication of the generality of what to expect and which may well look something after the style below.

While this may seem a great deal of work I strongly recommend that it is produced with as much professional enthusiasm as can be mustered having firmly in mind that the objective of all inquiry participants is to assist the Inspector in delivering his obligation to make a recommendation to the Registration Authority.

## INDICATIVE INSPECTOR'S DIRECTIONS

**IN THE MATTER OF AN APPLICATION UNDER \*\* DATED \*\* BY \*\*  
TO REGISTER LAND SITUATED \*\* AS A TOWN OR VILLAGE GREEN  
("TVG")**

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### **INSPECTOR'S DIRECTIONS FOR THE NON-STATUTORY PUBLIC INQUIRY COMMENCING ON \*\***

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1. *An Inspector will attend at (insert address) on (insert date (s)) at 10 am to hold an inquiry.*
  
2. *In these Directions, "Defra's Guidance Notes" mean the Guidance Notes issued by the Department for Environment, Food and Rural Affairs in February 2007 (amended September 2008) relating to Applications (under Section 15 of the Commons Act 2006 ("the 2006 Act") for the registration of land as a Town or Village Green.*
  
3. *The registration authority will publicise the inquiry:*
  - (a) *by placing an advertisement in a local newspaper circulating in the area of the application site; and*
  
  - (b) *by posting at the main points of entry to the town or village green (or, if there are no such places, in a conspicuous place at the site) not less than \*\*days before \*\*.*
  
4. *On \*\*, the applicant shall prepare a fully paginated and indexed inquiry bundle containing the documents listed in paragraph 5 below, and serve a copy of that bundle upon the following:*
  - (a) *two copies to the registration authority, \*\* Council etc (one copy to then be passed by the registration authority to the Inspector*
  
  - (b) *the objector, for the attention of \*\*.*
  
5. *The applicant's bundle for the inquiry shall contain the following copy documents:*
  - (a) *the application (with supporting statutory declaration);*

*(b) a large scale OS map (to a scale not less than 1/2500) on which the boundaries of the land the subject of the application are clearly marked;*

*(c) a large scale OS map on which the boundaries of any area relied upon by the applicant as a “locality” for the purposes of the application are clearly marked;*

*(d) a large scale OS map on which the boundaries of any area relied upon by the applicant as a “neighbourhood” for the purposes of the application are clearly marked;*

*(e) a list of the witnesses whom the applicant intends to call to give oral evidence at the inquiry;*

*(f) (in chronological order) signed and dated witness statements of every witness the applicant intends to call, containing (in numbered paragraphs) the substance of their evidence to which should be attached a copy of any document or photograph to which the witness refers in the witness statement (including a copy of any evidence questionnaire previously completed by such witness);*

*(g) all other witness statements (if any), evidence questionnaires, statutory declarations and affidavits upon which the applicant wishes to rely;*

*(h) (in chronological order) any other documents (including maps and photographs) (i) used by the applicant in support of the application and (ii) which would have been required by paragraph 9 of Defra’s “Guidance Notes”;*

*(i) a written “summary of the applicant’s case” (in numbered paragraphs), including legal submissions; and*

*(j) all legal authorities on which the applicant intends to rely (whether or not referred to in the summary of the applicant’s case).*

*6. By 4pm on \*\* the objector shall prepare a fully paginated and indexed inquiry bundle containing the documents listed in paragraph 7 below, and serve a copy of that bundle upon the following:*

*(a) two copies to the registration authority, \*\* Council etc (one copy to then be passed by the registration authority to the Inspector and*

*(b) the applicant.*

*7. The objector's inquiry bundle shall contain the following copy documents:*

*(a) the objection (and any supplemental objection statements);*

*(b) a list of the witnesses whom the objector intends to call to give oral evidence at the inquiry;*

*(c) (in chronological order) signed and dated Witness Statements of every witness whom the objector intends to call, containing the substance of their evidence;*

*(d) all other witness statements, evidence questionnaires, statutory declarations and affidavits upon which the objector wishes to rely;*

*(e) (in chronological order) any other documents (including maps, photographs and grants of planning permission) (i) relied upon by the objector in support of the objection or (ii) which, if the objector were the applicant, would have been required by Defra's Guidance Notes;*

*(f) a written "summary of the objector's case", including legal submissions;*

*(g) all legal authorities on which the objector intends to rely (whether or not referred to in the summary of the objector's case).*

*8. Though paragraphs 5 and 7 above refer to "copy documents" the applicant and the objector shall bring to the inquiry the originals of any such copy documents as are in their possession or control. In respect of documents the originals of which are not in their possession or control, details of where the original is kept and available for inspection (if necessary or requested) shall be included in the inquiry bundle.*

*9. The registration authority shall bring one copy of each inquiry bundle (and any supplementary bundle) to the inquiry for use by witnesses when giving evidence.*

*10. Any interested person shall be entitled, on reasonable notice, in registration authority business hours at any time before the conclusion of the inquiry to inspect at the address given in paragraph 4(a) above any of the inquiry bundle held by the registration authority.*

*11. The sitting hours are subject to any direction by the Inspector during the course of the inquiry, but will generally be from 10am to 5pm. There will be an hour's break for lunch and short breaks in the morning and afternoon (as convenient).*

*If an evening session is requested by any party at the opening of the inquiry, then subject to the Inspector's approval an evening session of not more than 2 hours may be held from 6pm (or such later time as shall be established at the inquiry as convenient to the parties) finishing at about 8pm.*

*12. The inquiry will be conducted in the following order:*

*(a) opening statement by the registration authority;*

*(b) introductory remarks by the Inspector;*

*(c) any opening statement by the applicant;*

*(d) the evidence of the applicant's witnesses (including cross-examination and re-examination);*

*(e) any opening statement by the objector;*

*(f) the evidence of the objector's witnesses (including cross-examination and re-examination);*

*(g) evidence and submissions by members of the public, at the discretion of the Inspector;*

*(h) the objector's closing statement;*

*(i) the applicant's closing statement;*

*(j) closing observations by the registration authority.*

*13. Witnesses and/or submissions may be heard out of order at the discretion of the Inspector.*

*14. Evidence will be given unsworn.*

*15. The Inspector, if requested by any party, will hold an accompanied site visit to the application site at a time to be arranged following the conclusion of the evidence and may make an unaccompanied site visit at any time.*

*16. The applicant or the objector may make a written application to the Inspector to vary or supplement these directions, or to hold a pre-inquiry meeting, at any time before the inquiry commences. Any such application shall be simultaneously served on the other party and on the registration authority at the addresses given in paragraphs 3 and 5 above.*

*17. The Inspector may supplement or vary these directions at any time prior to the commencement of the inquiry, with or without such an application.*

*18. The Inspector will provide the registration authority with a report and recommendation to assist the registration authority in deciding whether or not to grant the application.*

## **MATTERS TO TAKE INTO ACCOUNT IN REGARD TO COMPLYING WITH ANY DIRECTIONS THE INSPECTOR MAY INSTRUCT**

- Always ensure that such means as may be necessary are employed in order to fully comply with all delivery deadlines the directions may specify and require.
- If after you have complied with the delivery deadlines some unforeseen or unforeseeable circumstances impose some substantive and material change in the information you have provided notify the registration authority informally by telephone as immediately as reason enables and in writing as soon as you are able. Do not rely merely and solely upon a telephone call.
- In all cases it may well be appropriate to make reference, in your opening statement to the inquiry, to such changed circumstances as may have arisen.

## PARTICIPATION DECISIONS

There are two main decisions. The first concerns the witnesses who have agreed to take the stand to give oral evidence at the inquiry and the second concerns the matters related to advocacy.

The first decision with regard to witnesses is how many to call to give oral evidence in support at the inquiry and here I return to the subject I introduced briefly on page two.

On this subject, as with many other matters concerned with new green claims, there is no judicial authority to guide us and very little learned opinion.

However an experienced barrister speaking at a seminar I attended in 2009, having reported the fact that there is no absolute rule concerning the number of witnesses called to give oral evidence which is applicable to all cases, offered the following opinion.

The required ideal number in any particular case may turn on the facts of that individual case.

Somewhat courageously he did then go on to speculate how many witnesses should be required to attend to give oral evidence, in support, in order to convey an adequately convincing and compelling case before the Inspector.

In his very valuable view the number of oral witnesses to call in support of an applicant's case should not be less than ten and should not exceed a maximum of thirty.

He also indicated that to call too many witnesses may undermine the goodwill of the Inspector.

He did not expand upon the facts which might influence the number of witnesses to be called in support of any individual case.

However one fact which does appear to me to be worthy of being taken into account by an applicant is the choice of the number of witnesses called to attend to give oral evidence which would appear to be beneficially considered in relationship to the number of witness evidence questionnaire forms that have been submitted.

There are two related reasons why this appears to me to be a valid consideration.

Firstly it appears to me to be valid because the number of witness evidence questionnaires submitted is most usually related to the size of the local inhabitant area and the larger the local inhabitant area the greater the expectation must be that there will be a greater number of witnesses who will wish to be called to speak in support of the claim.

Secondly it appears to me that, if a number of witnesses who have submitted evidence questionnaires are prepared to attend to give oral submissions in support of them, this is likely to increase the probability that more of the submitted evidence questionnaires whose authors will not appear as oral witnesses will more probably be considered as having a higher evidential validity.

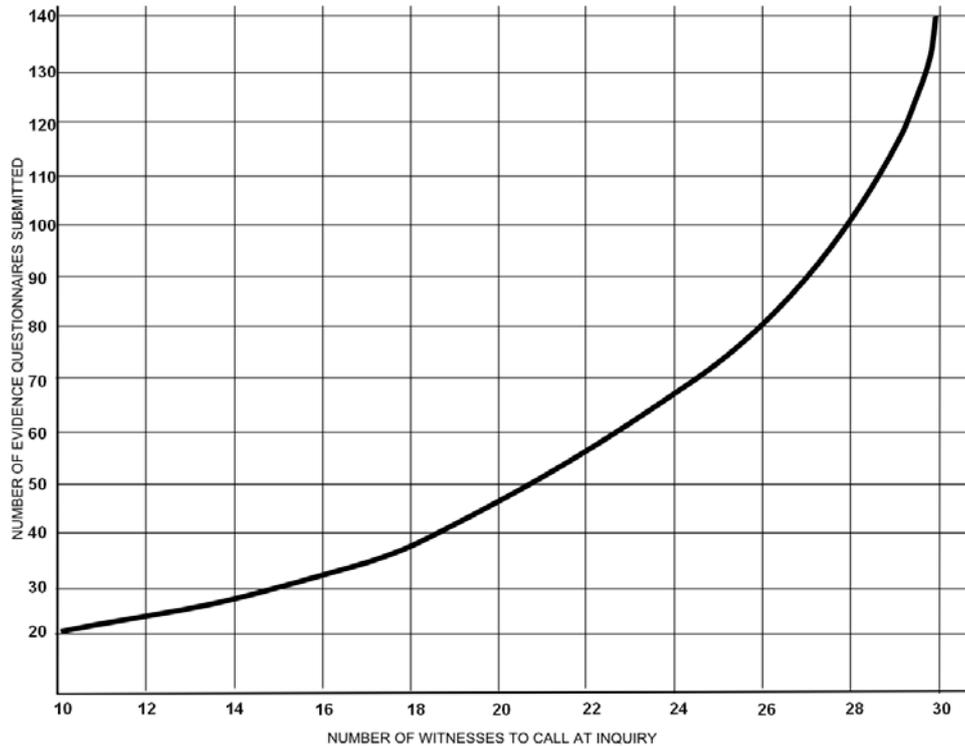
Therefore, in my opinion and within obvious limits, the greater the number of witnesses prepared to give oral evidence in support at the inquiry, the more favourable the ratio will be of orally-supported evidence questionnaire submissions to those which have not been orally supported.

In the absence of other more compelling authority, and taking account of the barrister's opinion referred to earlier, the graph below at the top of page 11 provides the best crude assessment I can offer, employing the reasoning I have addressed above, in regard to the choice of the number of oral witnesses to call at a TV Green inquiry which hopefully should provide the optimal level of support while not being likely to undermine the goodwill of the Inspector.

In regard to witnesses, the next details to be considered are the order in which the witnesses are to be called to give their evidence and whether there are particular times when some witnesses may not be available.

If some witnesses are only available at certain times, arrangements will need to be agreed with the Inspector in regard to their appearance at particular times.

**CRUDE ASSESSMENT OF THE NUMBER OF WITNESSES TO CALL AT INQUIRY**



The next decision to be taken is who will function as the advocate to be responsible for the cross-examination of the opposition witnesses and the re-examination of the claimant’s witnesses.

At some, often considerable, cost the advocate responsibility can be handed to a solicitor of your choice.

However if that decision is taken and the resources are available to facilitate that choice make sure that a solicitor is chosen who has the necessary skills, knowledge and experience you require.

In making your choice bear in mind that it is not a matter of inevitable and invariable fact that qualification as a solicitor inherently provides the skill-set you need.

A poor solicitor with little knowledge of town or village green matters and very limited experience is a choice which is worse by far as an advocate at TV green inquiries than an able, lay, local and perhaps involved advocate having good local knowledge, obvious abilities, albeit perhaps in a different but no less intellectually demanding discipline, and who has the necessary rational confidence to take on the role.

However a knowledgeable and experienced solicitor with the appropriately comprehensive skill-set may very well be the best choice if it can be afforded.

In most public inquiries, particularly in regard to public path orders, the advocates are what is known and referred to as lay advocates which means they have had no legal training and often no previous experience.

It is not an impossibly difficult task for an untrained and unqualified person to undertake, and provided a few simple and easily understood principles are competently mastered the activity is well within the grasp of many lay persons.

In addition most Inspectors are well experienced at having lay advocates before them and are almost always helpful and understanding towards them.

The most demanding rule in regard to which a lay advocate should be very clear is that concerned with leading questions.

A leading question is a question which in its construction and content suggests to the witness to whom it is addressed the answer the advocate wishes to hear.

It is sometimes said that a good advocate never asks a question to which he does not already have the answer. However the purpose of such a question is to persuade the witness to share with the Inspector what the advocate hopes by his clever questioning will prove to be an advantageous answer in persuading the Inspector in line with the advocate's objectives which he is championing on behalf of his "client".

The advocate may well be involved in opening and closing statements but his main functions are firstly in questioning opposition witnesses on what is known as cross-examination and secondly on re-examination of his own witnesses after they have been cross-examined by the opposition advocate.

The simple rules are that an advocate may put leading questions to opposition witnesses but may not put leading questions to his own witnesses on re-examination.

### **MATTERS THAT CAN BE ADDRESSED AND PERHAPS PRACTISED BEFORE THE INQUIRY**

Two facts present guidance in regard to the matters which might be addressed before the inquiry takes place.

Firstly most witnesses will never before have served as witnesses and will never have been cross-examined.

In many cases, where lay advocates have taken up this responsibility, they will not have had much, if any, experience of cross-examination.

A meeting of all of the witnesses provides the opportunity:-

1. to rehearse the guidance in this paper in regard to witness conduct at the inquiry;
2. for lay advocates to pretend they are advocates for the opposition and cross-examination witnesses in mock sessions. This has a number of benefits. In addition to providing experience of cross-examination for both witnesses and the lay advocate, it functions as a very good review of the evidence to be presented. Furthermore it may well show up a number of minor matters which need to be expanded upon in the interests of clarity and the improved presentation of their case.
3. to foster a sense of corporate endeavour and to share and identify matters of common concern so that they can be addressed.

## CONDUCT OF WITNESSES AT THE INQUIRY

Having engaged in the matters that can be addressed and perhaps practised before the inquiry, which I addressed in the previous paragraph, each witness intending to present evidence at the inquiry should by this time have a very good idea of what to expect. However these matters are of such importance that I repeat them here.

The 17 keys to being a good witness include those listed below:-

1. Remember that male Inspectors are addressed as Sir and female Inspectors are addressed as Ma'am. [Ma'am is often pronounced as 'marm' as in harm but widely held to be correctly pronounced as 'mam' as in jam. Neither is likely to give offence. The object of such forms of address is to convey respect which is important]
2. The overarching ethos of an inquiry is to provide assistance to the Inspector in reaching his conclusions. This fact may usefully be borne in mind.
3. Never attempt to approach the Inspector directly particularly during breaks in the proceedings.
4. Never attempt to introduce large and detailed documentary evidence to an inquiry which might lead to the seeking of an adjournment by the other side and an accusation of unreasonable behaviour.
5. If you have an additional small detail of evidence you wish to present to the inquiry to support a simple point you have addressed in your answer this may be acceptable provided you have sufficient copies for the Inspector and the opposing party but always request permission to introduce it and to circulate it as required.

6. As a witness it is very important to remember, and to have a clear understanding in your mind, that while the opposition advocate may have asked the question it is the Inspector to whom you are addressing your answer and you want the Inspector to write down everything you have to say.
7. To ensure that this is achieved remember always never to lapse into a jumble of confusing mumble and always try to speak in a clearly audible and well articulated manner, the objective of which being to ensure that everything you say is clearly heard by the Inspector.
8. When you are speaking remember that, while you can very comfortably speak at over 160 words per minute, even the best shorthand writers cannot achieve better than 120 words per minute and the average shorthand achievement is around 60 words per minute.
9. Many Inspectors have little or no shorthand ability so the safer thing to do is to assume that the Inspector can write at no better than 20 words per minute. Therefore seek to deliver your answers at dictation speed of a few words at a time pausing while keeping a close watch on the Inspector's pen and only continue with the next few words of your answer when that pen has stopped writing the previous element of your answer.
10. Don't argue with or seek to ask the opposition advocate substantive questions about the issues addressed in the question. For example DO NOT SAY SUCH THINGS AS "Well of course I did, wouldn't you"
11. You will also be asked questions by the Inspector and, as with the opposition advocate, do not argue with the Inspector nor seek to ask him substantive questions about the issues addressed in the questions he puts to you.

12. Don't allow yourself to be roused in anger by a statement made in the course of a question being put to you. What I believe to be a commendable mental state to seek to achieve is to always be as clear as water in what you have to say and as cool as ice in saying it.
13. Answer the question as fully and as honestly as you can but avoid going into extraneous detail over and above that necessary to minimally but fully express your answer.
14. Don't wrestle with creatively accounted reason in an attempt to avoid an answer you would rather not give or would wish to be improved. For example don't use "quite frequently" when obviously, but perhaps against your wishes, you know the answer would be more honest as "infrequently". Obvious honesty conveys a valuable impression of the quality of you as a witness and increases the likelihood of your other evidence being considered credible and of it being evaluated with believable respect.
15. If you don't understand the question it is perfectly proper to say so and to ask for clarification.
16. If the opposition advocate makes a statement within which you have not perceived there to be a question and then pauses for your answer it is perfectly reasonable to address the Inspector in something along the following lines "Sir I apologise, but the question is not clear to me. Can it please be repeated".
17. Always be polite and, if assertive strive more vigorously to be assertively polite and remember your task is to assist the Inspector.

## POSSIBLE FUTURE DEVELOPMENT AND EVOLUTION OF THE GUIDANCE

This guidance paper has been produced for purposes consistent with the Open Spaces Society's charitable objectives and therefore not only with a view to assisting those who are expecting to appear at TV green inquiries but also with a view to assisting generally in the smooth running of inquiries by disseminating relevant procedural conduct information.

Feedback will therefore be welcome from all those who through experience or otherwise believe they are able to make constructive contribution to this paper.

While anonymity will be preserved, from time to time such feedback as may be received will be objectively considered and if appropriate to the ethos and overall objective of the paper may well be incorporated.

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