

**APPEAL REF: APP/B1605/W/19/3238462**  
**Land off Kidnappers Lane, Leckhampton, Cheltenham**

**CASE MANAGEMENT CONFERENCE 6 DECEMBER 2019 - SUMMARY**

1. The Planning Inspector appointed to conduct the Inquiry is Mrs Susan Hunt, a chartered town planner. The Inquiry is scheduled to sit for four days and is to be held at Cheltenham Borough Council, Promenade, Cheltenham, opening at 10.00am on Tuesday 21<sup>st</sup> January 2020.
2. The advocates were confirmed as Miss Sarah Clover for the Council and Mr Christopher Lockhard-Mummery QC for the appellant. The Rule 6 Party will be solely represented by Mr Chris Nelson for Leckhampton with Warden Hill Parish Council.
3. The Council may wish to draw the attention of interested parties to this Note. At the very least, a copy should be posted on the Council's website.
4. All parties should familiarise themselves with the latest Procedural Guides in relation to appeals and Inquiries in particular, as they have recently been updated to reflect the recommendations in the Rosewell Review. <https://www.gov.uk/government/publications/planning-appeals-procedural-guide>

**Main Issues**

5. In the light of the putative reasons for refusal put forward in the Council's statement of case, the attached officer report and the discussion at the conference, the main issues are likely to relate to:
  - The effect of the proposals on the character and appearance of the area (encompassing landscaping and visual effects); and
  - Whether the site is an appropriate location for housing development having regard to the National Planning Policy Framework and relevant adopted and emerging development plan policy.
6. In relation to the second putative reason for refusal, it was agreed that this could be overcome by the completion of a Section 106 Agreement to secure affordable housing and would not form a main issue at the Inquiry.
7. The Council confirmed that it is still the case that they cannot demonstrate a five year housing land supply and therefore that Paragraph 11(d) of the National Planning Policy Framework would be engaged. The Appellant wishes this to remain a live issue until the Proofs of Evidence are received.

8. The Inspector would like confirmation as a matter of urgency after the exchange of Proofs of Evidence (by **3 January 2020** at the latest) if any witnesses on Housing Land Supply would be called by any of the parties. This is important, as to include this as a main issue may affect the timings and smooth running of the inquiry.
9. Although not featuring as reasons for refusal on the Council's decision notice, local residents continue to have concerns which will need to be addressed in the appellants evidence, including:
  - Traffic and highway safety matters
  - Loss of green space
  - Capacity of local infrastructure
  - Air quality, noise and disturbance
  - Wildlife and ecology
  - Flooding and drainage
10. The Parish Council as the Rule 6 party raised no other issues at the conference and confirmed that they would be supporting the Council's position in relation to the conflict with the development plan and the landscape and visual effects.
11. The Inquiry will also look at any benefits to be weighed in the planning balance, including any implications of not proceeding with the scheme.

### **Dealing with the Evidence**

12. It was discussed whether the first main issue in relation to character and appearance would be best dealt with via a round table discussion informed by the Proofs of Evidence (Proofs) and a Statement of Common Ground (SoCG). The Council expressed a preference for this to be via formal examination of evidence for a number of reasons including the experience at the previous inquiry relating to this site. The Appellant had no preference either way and the Rule 6 Party liked the idea of a round table discussion.
13. It was confirmed that the Inspector will reserve judgement on this until she has sight of the Proofs and will confirm the approach as soon as possible afterwards.
14. Planning policy and planning balance will be dealt with through the formal presentation of evidence in chief by the relevant witness for each of the main parties, which would be subject to cross-examination. Any outstanding matters raised by interested parties would be a matter for the examination of the Appellant's planning witness.
15. Presentation of evidence would be topic based, with the order being character and appearance first, then planning policy/balance.
16. Time estimates for opening statements and witnesses are expected to be provided by **10 January 2020**.

17. The agreement of topic specific SoCG's is ongoing. The Inspector expects the latest versions by **20 December 2019**.
18. The deadline for submission of Proofs is currently **24 December 2019**. It was agreed that as this is the start of the Christmas break, the date for exchange of Proofs should be brought forward to **20 December 2019**. This includes the Rule 6 Party, which, having made clear that they will focus on the main issues only, will not submit a Statement of Case but instead go straight to the Proof of Evidence.
19. An agreed list of core documents should be submitted on the same date. The appellant would be responsible for providing a printed set for the Planning Inspectorate and a library copy.
20. It is understood that a library of core documents still exists from the previous inquiry relating to this site. It would be prudent to re-use them where they are still of relevance and update as necessary, using the same references as far as possible.
21. The documents should be in lever arch files, with dividers and tabs, fully paginated. Essential documents only should be included with extracts rather than full documents where possible if they are lengthy. Appeal decisions should include paragraphs to be referred to.
22. Any documents submitted once the Inquiry has opened will be recorded as additional Inquiry Documents on a separate list, overseen by the Inspector.
23. A minimum of four copies of any new documents produced at the Inquiry will be required - one for each of the other main parties and one for the Inspector, together with extra copies to be made available to assist interested parties.

## **Conditions**

24. The Council should provide a list of conditions should the appeal be allowed and supply this with their Proofs. The Inspector then expects a final list to be agreed with the Appellant no less than 2 weeks before the inquiry (**7 January 2020**), and input from the Rule 6 Party on this too.
25. The list of suggested planning conditions should include the reasons for them, including references to any policy support. The conditions will need to be properly justified having regard to the tests in paragraph 55 of the National Planning Policy Framework.
26. Any difference in view on the suggested conditions, including suggested wording, should be highlighted in the schedule with a brief explanation given.

## **Planning Obligations**

27. Draft Section 106 Agreements for affordable housing and public open space have recently been provided. The Council confirmed they will be in a position to agree a final draft so that the second putative reason for refusal in relation to affordable housing falls away.
28. A final draft of the Agreement should be submitted no later than **7 January 2020**, and on receipt of this the Council should then submit a CIL compliance statement in time for the start of the inquiry.
29. The statement must contain a fully detailed justification for each obligation sought, setting out how it complies with the 2010 CIL Regulations, in particular the test of necessity, in terms of how it would mitigate a harm arising out of the development proposed. It should include reference to any policy support and, in relation to any financial contribution, exactly how it has been calculated and on precisely what it would be spent. Although the restrictions on pooling of contributions has been lifted, the Inspector will still need to know whether any of the schemes are the subject of other pooled financial contributions in order to be able to come to a view on whether any contribution sought in relation to this appeal is justified. A short time will be allowed after the Inquiry for submission of a signed version if necessary.

## **Inquiry Running Order/Programme**

30. In terms of running order, following her opening comments on the first day of the Inquiry, the Inspector will invite opening statements from each of the main parties which will set the scene and should be no longer than 15 minutes each.
31. She will then hear from any interested parties who wish to speak, although there is scope for some flexibility if someone has difficulties that prevent them from attending and speaking on day one.
32. Pursuant to the discussion at the case management conference, the Inquiry will then proceed either with a round table discussion or formal examination of the landscape witnesses.
33. The second main issue and the planning evidence for the Council will be presented and cross-examined, followed by the Rule 6 Party and then the Appellant on the same basis. The appellant's evidence will also need to address the other matters raised by interested parties.
34. The Inspector will then lead the round table discussion on conditions and provisions of the planning obligation.
35. The accompanied site visit will fit in either before or after the conditions session, depending on the time of day given the lack of light at this time of year. The purpose of the visit is simply for the Inspector to see the site and its surroundings. Whenever it takes place, she will not be able to

listen to any representations/ discussion/arguments during the visit, but parties can point out physical features. Therefore, it is important that you give some thought as to where you wish her to see the site from and submit a route map with list of suggested viewpoints in advance of the inquiry by **20 January 2020 (12 noon)**. This is important as the Inspector will visit the site from public viewpoints in advance of opening the Inquiry.

36. That will be followed by closing submissions (Council, then Rule 6 Party, then the Appellant) which should be no longer than 45 minutes each. They should set out your respective cases as they stand at the end of the Inquiry, with a written copy handed up at the time, appropriately cross-referenced where evidence is relied on, for the avoidance of doubt. There will then be a final opportunity for submission of costs, which should be in writing.

### **Timings**

37. As agreed at the conference, all proofs are to be submitted no later than **20 December 2019**. Details of the preferred format and content of proofs and other material were annexed to the pre-conference note. The topic specific statements of common ground, which should inform your proofs, and are to be submitted at the same time (**20 December 2019**).
38. An agreed draft of the proposed planning obligation is to be submitted by **7 January 2020**), with a CIL Compliance Statement prepared by the Council to be submitted by **20 January 2020**.
39. The Council is to make sure a copy of the Inquiry notification letter, and a list of those notified is sent in to PINS no later than **7 January 2020**.
40. There is no reference in the Rules or the Procedural Guide to supplementary or rebuttal proofs and PINS does not encourage the provision of such. However, where they are necessary to save Inquiry time, copies should be provided no later than **10 January 2020**. It is important that any rebuttal proofs do not introduce new issues. As an alternative to a rebuttal, it may be that the matter could more succinctly be addressed through an addendum Statement of Common Ground.
41. The advocates are to work collaboratively on the time estimates for each stage of their respective cases, with timings for openings and closings, evidence in chief and cross-examination, to be submitted no later than **10 January 2020**. A draft programme will be issued following receipt of your final timings prior to the start of the Inquiry, when the Inspector will have a better feel for the overall duration. Other than in exceptional circumstances, you are expected to take no longer than the timings indicated, which will require the cooperation of both advocates and witnesses.

<b>Friday 20 December 2019</b>	<ul style="list-style-type: none"> <li>- Statements of Common Ground (earlier if possible)</li> <li>- Proofs of evidence</li> <li>- Suggested planning conditions</li> <li>- Core documents list</li> </ul>
<b>Friday 3 January 2020</b>	<ul style="list-style-type: none"> <li>- Confirmation if a five year supply witness will be called.</li> </ul>
<b>Tuesday 7 January 2020</b>	<ul style="list-style-type: none"> <li>- Inquiry notification letter</li> <li>- Final draft S.106 agreement</li> <li>- Agreed Planning Conditions</li> </ul>
<b>Friday 10 January 2020</b>	<ul style="list-style-type: none"> <li>- any <i>necessary</i> rebuttal proofs</li> <li>- Timings for examination of witnesses &amp; openings</li> </ul>
<b>Monday 20 January 2019 (12 Noon)</b>	<ul style="list-style-type: none"> <li>- CIL Compliance Statement</li> <li>- Route map/viewpoints for Site Visit</li> <li>- Draft Inquiry timetable</li> </ul>
<b>Tuesday 21<sup>st</sup> January 2020</b>	Inquiry opens 10.00 am

## Costs

42.No application for costs is currently anticipated by any party at this stage, although positions were reserved. If any application is to be made, the Planning Practice Guidance makes it clear that they should be made in writing to the Inspector before the Inquiry. You are also reminded that in order to support an effective and timely planning system in which all parties are required to behave reasonably, the Inspector has the power to initiate an award of costs in line with the Planning Guidance. Unreasonable behaviour may include not complying with the prescribed timetables.

## Practical Matters

43.The Inspector will aim to finish each day between 17.00 and 17.30pm and will aim to resume at 09.30am on Thursday 23 January and Friday 24 January (10.00am on Wednesday 22 January due to later opening of the office).

44.The Council is expected to double check various housekeeping matters as discussed at the conference in relation to the venue. This would include parking arrangements for the Inspector, disabled access, Wifi access code, provision of microphones and photocopying facilities. Please refer to the

following guidance : <https://www.gov.uk/government/publications/setting-up-a-venue-for-a-public-inquiry-hearing-or-examination>

45. The Inspector requires a large table (preferably with a cloth to the front) with side table, and access to power for a laptop. A retiring room is necessary for the Inspector at all times during the Inquiry.
46. An Officer of the Council is to be on hand at all times during the Inquiry to assist with administration and act as a point of contact for interested parties, as well as taking responsibility for the attendance sheet each day.

### **Survey**

47. Following the conference, you will have been sent a link to a short survey asking for views on the conference call as a part of the early engagement process. You are urged to complete the survey if at all possible. Feedback on this is very important to us in helping to ensure that the early engagement is as productive as it can be in supporting effective improvements to the way we conduct inquiry appeals following the Rosewell Review.

**S. Hunt**  
PLANNING INSPECTOR

6 December 2019