



Commons Act 2006

PROCEDURAL GUIDE FOR PUBLIC INQUIRIES AND HEARINGS INTO APPLICATIONS FOR CONSENT FOR

- **WORKS ON COMMON LAND; and**
- **EXCHANGES OF LAND IN RESPECT OF
COMMON LAND AND VILLAGE GREENS**



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Procedural guide for public inquiries and hearings into applications for consent for

- works on common land; and
- exchanges of land in respect of common land and village greens

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Note: The information contained within this guidance relates to procedures in **Wales only**.

This leaflet should be read in addition to the leaflet 'General Overview for applications under s16 and s38'.

The information in this leaflet was correct when it was published, but it has no legal status.

1. Introduction

The Planning Inspectorate exercises various of the functions of the Welsh Ministers in relation to consents under Common land and village green legislation designed to give special protection to these areas. The consents most commonly sought are:

Section 38 of the Commons Act 2006: Consent is generally needed from the Welsh Ministers for any "restricted works" on registered common land. Restricted works are those which prevent or impede access to or over the land, which might include erecting fencing, constructing buildings, digging ditches or resurfacing of land with tarmac and similar materials.

Section 23 of the National Trust Act 1971: Commons owned by the National Trust are subject to special legislation. Section 23(1) of the National Trust Act 1971 enables the Trust to carry out works on common land that it considers "desirable for the purpose of providing, or improving, opportunities for the enjoyment of the property by the public, and in the interests of persons resorting thereto", but the consent of the Welsh Ministers may be required under section 23(2).

Section 16 of the Commons Act 2006: Owners of registered common land or town or village greens can apply to have the land released from registration. They must make an application at the same time to register replacement land as common land or green in its place. If the land to be released is smaller than 200 square metres in size, a proposal to register replacement land may not be necessary (section 16(4) and (7)).

Section 19 of the Acquisition of Land Act 1981: Local authorities, statutory undertakers (e.g. utility companies) or government departments can compulsorily purchase land. Section 19 of the Acquisition of Land Act 1981 states that when a compulsory purchase order (CPO) authorises the

compulsory purchase of any land forming part of a common (or an open space or fuel or field garden allotment), the order must be subject to special Assembly procedure unless the Welsh Ministers give a certificate under section 19 of the 1981 Act.

Paragraph 6 of Schedule 3 to the Acquisition of Land Act 1981: Local authorities, statutory undertakers (e.g. utility companies) or government departments can compulsorily acquire rights over land. Paragraph 6 of Schedule 3 to the Acquisition of Land Act 1981 states that when a compulsory purchase order (CPO) authorises the acquisition of rights over land forming part of a common (or an open space or fuel or field garden allotment), the order must be subject to special Assembly procedure unless the Welsh Ministers give a certificate under paragraph 6 of Schedule 3 to the 1981 Act.

The purpose of this note is to provide guidance on the procedures followed in conducting an inquiry or hearing into an application made for a consent in respect of common land or a village green. There are circumstances where a joint public inquiry will be held. For example this might happen where a section 19 application under the Acquisition of Land Act 1981 is considered alongside a compulsory purchase order. In such cases different statutory rules, timescales and procedures are likely to apply. The lead body responsible for organising the joint inquiry will normally issue its own procedural guidance.

2. Decision to hold a public inquiry or hearing

The procedures for applications for consents in respect of common land or village greens are designed to give the public an opportunity to have their views taken into account. All applicants are required to advertise their proposals and make copies of plans available for inspection locally so that the public can then make representations to the Planning Inspectorate Wales. We send copies of any representations to the applicant and ask for a response. In the light of these exchanges of correspondence, we may decide that a public local inquiry or a hearing would be the best way to obtain all the necessary information about the case.

A hearing is a discussion led by an Inspector who explores the various issues involved. Hearings are less formal in character than inquiries and generally shorter, often lasting less than one day.

Inquiries are more formal than hearings. They may last for more than one day, and witnesses may be cross examined. They are usually best suited for cases where there is a lot of evidence or a large number of objections. Hearings and inquiries are open to the public, and anyone wishing to speak may do so with permission from the Inspector.

An inquiry or hearing is held at our discretion. The decision to hold an inquiry or hearing is made on a case by case basis, depending on the individual

circumstances. We may decide to appoint an Inspector to hold an inquiry or hearing where:

- a wide range of grounds of objection have been received in response to the application;
- the issues of the case are particularly complex; or
- an inquiry appears to be the only way to obtain the necessary information in order to reach a considered conclusion on the proposals.

An inquiry or hearing will give the applicant an opportunity to fully present their case to an Inspector and also enables people who are affected by the proposal to put across their points of view.

3. Procedures for a public inquiry or hearing

The procedures for inquiries and hearings under section 38 of the Commons Act 2006 and section 23 of the National Trust Act 1971 are set out in the Works on Common Land, etc (Procedure) (Wales) Regulations 2012 SI 2012 No. 737 (W.97).

The procedures for section 16 inquiries are set out in the Deregistration and Exchange of Common Land and Greens (Procedure) (Wales) Regulations 2012 SI 2012 No. 738 (W.98).

The above Regulations do not set out very detailed procedures and the following guidance draws on the spirit of the *Town and Country Planning (Inquiries Procedure) (Wales) Rules 2003 (SI 2003 No. 1266)* and *The Town and Country Planning (Hearings Procedure) (Wales) Rules 2003 (SI 2003 No. 1271)* to supplement those procedures.

The purpose of this guide is to explain some of the procedures and how they specifically apply to applications for consents in respect of common land or village greens.

Where an application is made under section 19 of the Acquisition of Land Act 1981, or paragraph 6 of Schedule 3 of the 1981 Act, section 10 of the *Tribunals and Inquiries Act 1992* would apply to any inquiry. Further, section 5 of the 1981 Act also applies section 250 of the *Local Government Act 1972* (concerning the giving of evidence at inquiries).

4. Notification of the arrangements for an inquiry or hearing

If we decide to hold a public inquiry or hearing we will notify the applicant, objectors and other consultees such as the Open Spaces Society. We set a date for the inquiry or hearing and appoint an Inspector.

We will fix the inquiry or hearing date as early as possible and contact the applicant about the detailed arrangements and what action they need to take. We will follow this up with written confirmation. Applicants are entitled to at least 6 weeks' notice, in writing, of the inquiry or hearing arrangements. Applicants are asked to suggest a suitable local venue for an inquiry or hearing. Once the date and likely duration of the inquiry or hearing have been agreed the applicant will be expected to book the venue for the number of days required. The applicant is expected to meet the cost of the venue. The Inspector would expect the venue to be available between 9:00 am and 5:00 pm. The choice of venue will need to accord with the requirements of the inquiries venue facilities note.

The inquiry venue facilities note can be found here:

http://www.planningportal.gov.uk/uploads/pins/venue_and_facilities_for_public_inquiries_and_hearings_engwel.pdf

5. Administrative support

Applicants will be expected to provide at least one person to attend the inquiry or hearing to provide some basic administrative support to the Inspector at the inquiry, where required, such as for photo copying tasks and to resolve "domestic" issues (e.g. heating/lighting) etc. A person providing administrative support should not be a person who is intending to be heard before the inquiry or hearing. Please see the Venue and Facilities note for further information.

The Commons Registration Authority/ Local Authority may be able to advise you about potentially suitable venues.

6. Advertising the inquiry or hearing

We will write to the applicant to formally confirm the inquiry or hearing arrangements. Inquiries and hearings must be advertised, and we will provide the applicant with wording of the notice of the inquiry or hearing for them to publish, generally in the same local newspaper where the original application was also advertised. The notice will be published at least 6 weeks before the date of the inquiry or hearing. The applicant should also display the inquiry or hearing notice locally and send the notice to all those who made representations. At the same time, we will publish notice of the inquiry or hearing on the planning portal (www.planningportal.gov.uk)

The applicant must send us a copy of the published notice, and confirm in writing to us that the notices have been displayed and the documents placed on deposit. The applicant must provide additional copies of the displayed documents if requested.

If the notice is not published or displayed at the correct time, the inquiry or hearing will have to be rescheduled.

7. Costs for those attending

The applicant, legal advisors and any other persons attending the inquiry or hearing must pay their own costs and expenses.

8. Written statements

Applicants are asked to produce a statement in support of their application setting out in full the reasons why they believe the proposals are necessary and appropriate. This should be placed on deposit for public inspection (along with copies of the original application and representations received) and a copy submitted to us, ideally at least 6 weeks before the inquiry or hearing. If the statement is more than 1,500 words long, there should also be a summary. The summary should reflect the content of the statement and should not introduce new evidence. When requested by objectors or interested parties, the applicant should send them a copy of the statement or the summary.

9. Proofs of Evidence in Inquiries

There is no statutory requirement for proofs of evidence to be submitted by the main parties involved in an application. However, if the applicant or any of the witnesses have statements that are going to be read out at the inquiry they would be treated as a 'proof of evidence'. Two copies, bound or in a ring binder, should be submitted to us at least 4 weeks before the start of the inquiry. Statements not submitted in time will be considered at the Inspector's discretion. If a statement is more than 1,500 words long there should also be a summary. The summary should reflect the content of the statement and should not introduce new evidence. Where a summary is provided usually only that will be read at the inquiry.

10. Meetings before an inquiry

If a large number of people want to go to the inquiry or the case is particularly complicated, we may arrange a pre-inquiry meeting. We will tell the parties if we decide to do this, and will explain what the meeting will cover. A pre-inquiry meeting will be held by the appointed Inspector and will only deal with matters such as the order in which the applicant and other people will present their evidence. The meeting will not deal with the detail of the representations or the case.

If the Inspector requests any further information from the parties at the pre-inquiry meeting this must be submitted to us within the time specified by the Inspector. It is helpful for the Inspector to know at this stage who is likely to appear at the inquiry but if a name is not put forward at the pre-inquiry meeting

the person will still be able to speak at the inquiry, subject to the Inspector's discretion.

11. At the inquiry

The Inspector will decide on the running order of the inquiry, including who will be asked to speak, in what order and for how long. The Inspector will open the inquiry by announcing the subject and asking for the names of all those who wish to speak. He or she will then explain the procedures and how the inquiry will be conducted and identify the main issues to be considered.

Everyone who takes part in the inquiry must follow the same rules, to make sure that the procedure is fair to everyone. The Inspector will want to make sure of having all the information needed to inform the decision. The applicant will usually present a case first, and then call any witnesses. The Inspector can ask questions and will then use discretion to allow any objectors, registered commoners or others with an interest to do the same. The objectors present their case in the same way, and the applicant and the Inspector can ask them and their witnesses any questions they may have. The applicant has the right to make a closing statement and will have the last word. This allows them to tell the Inspector about the important points that have come up during the questions. New arguments cannot be introduced at this stage.

Anyone involved in a public inquiry is entitled to use a lawyer or other person to present their case, but this is not a requirement. If a group of objectors is not formally represented, it may be useful if there is one spokesperson to speak for them and pose questions to other witnesses.

All written objections and representations that we have received are made available to the Inspector. If an objector is unable to attend the inquiry in person they may arrange to be represented at the inquiry or alternatively they can submit further written representations to the Inspector before or during the inquiry. In sending in additional statements or representations, parties should allow time for these to be read by the Inspector. Evidence that reaches the office in the last seven days prior to the opening of the inquiry may not be seen by the Inspector before the inquiry.

The displaying of posters and other material at the venue is at the discretion of the Inspector. Depending on the facilities available at the venue it may be possible for the parties to give a projected presentation but again this is at the Inspector's discretion. Any visual material should be supplied, at least 4 weeks before the inquiry, as A4 sized paper copies if the Inspector is to consider it as evidence. The applicant and other witnesses who intend to produce statements or proofs of evidence should bring copies along with them so they can be circulated. The applicant should also provide a display map showing the proposals in detail.

In certain circumstances it may be necessary for the Inspector to adjourn the inquiry proceedings and to reopen them at a later time or date. If this is

necessary the Inspector will make an announcement at the inquiry to explain the reasons.

12. Inquiry library

For inquiries, the Inspector will find it helpful if the main documents relevant to the application are available for inspection throughout the inquiry by participants and observers alike.

13. At the hearing

As with inquiries, hearings are open to anyone interested in the subject matter. They are run in a similar way to inquiries, but there is no formal cross examination of witnesses. The applicant and objectors present their cases as part of a discussion led by the Inspector.

For hearings, formal representation (by a lawyer or other person) is not generally expected. If a group of objectors share similar objections, it may be useful if they select a spokesperson.

As with inquiries, all written objections and representations that we have received are made available to the Inspector. In sending in additional statements or representations, parties should allow time for these to be read by the Inspector. Evidence that reaches the office in the last seven days prior to the opening of the hearing may not be seen by the Inspector.

14. The site visit

The Inspector will usually visit the application site and surroundings unaccompanied, before the inquiry or hearing starts. If the Inspector intends to make an accompanied site visit he will announce the timing at the inquiry or hearing. During the accompanied site visit the Inspector will ask if there is anything about the site that the parties want to point out but the parties will not be able to say anything about the actual proposals.

15. Late representations

The Inspector will only consider written evidence that is received after the inquiry or hearing has closed in exceptional circumstances. In such an exceptional case, the late submission will be copied to other parties.

16. Decision on the application

Applications under s38

After the inquiry or hearing the Inspector will determine the application - unless the Welsh Ministers have indicated that they will determine the application, in which case the Inspector will prepare a report for the Welsh Ministers. Once the application has been determined a decision letter will be sent to the applicant and copied to all of those who made written representations. The decision letter will also be available on our website, and anyone attending the inquiry or hearing can request a copy of the decision letter by indicating this on the attendance sheet.

Applications under s16

The Inspector will send a report to the Welsh Ministers. The Inspector's report will include conclusions on the issues raised and a recommendation as to whether the application should be allowed

The Welsh Ministers will consider everything that is relevant to the application but they do not have to accept the Inspector's recommendation. They may attach different weight to a particular issue or issues than the Inspector did and this could result in them reaching different conclusions to those of the Inspector. Where, however, the Welsh Ministers disagree with the Inspector's recommendation because they take into account new evidence introduced after the inquiry, or because they differ with one of the Inspector's findings of fact, they will provide the parties to the application with the chance to comment on that disagreement and the reasoning behind it before a decision is made. If it is necessary, the inquiry or hearing may be re-opened.

Decisions on this type of application will normally be taken by a Welsh Government official acting with the authority of the Welsh Ministers.

Further information on common land and town and village greens and the application procedures can be obtained from:

The Planning Inspectorate Wales

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Cathays Park
Cardiff
CF10 3NQ**

Tel: 029 2082 3866

Fax: 029 2082 5150

E-mail: wales@pins.gsi.gov.uk

