STATUTORY INSTRUMENTS

1968 No. 1952

TRIBUNALS AND INQUIRIES

The Town and Country Planning Appeals (Determination by Appointed Persons) (Inquiries Procedure) Rules 1968

Made - - -	*9th December* 1968
Laid before Parliament	*16th December* 1968
Coming into Operation	*1st January* 1969

The Lord Chancellor, in exercise of the powers conferred upon him by section 7A of the Tribunals and Inquiries Act 1958(**a**) (inserted in that Act by section 33 of the Town and Country Planning Act 1959(**b**)) as applied by section 26 of the Town and Country Planning Act 1968(**c**) and after consultation with the Council on Tribunals, hereby makes the following Rules:—

Citation and Commencement

1.—(1) These Rules may be cited as the Town and Country Planning Appeals (Determination by Appointed Persons) (Inquiries Procedure) Rules 1968.

(2) These Rules shall come into operation on 1st January 1969 but shall not affect any appeal brought before that date.

Application of Rules

2.—(1) These Rules apply—

(*a*) to local inquiries held by a person appointed by the Minister of Housing and Local Government or by the Secretary of State for Wales for the purpose of appeals to the said Minister or Secretary of State under section 23 of the Town and Country Planning Act 1962(**d**), where such appeals fall to be determined by the said person instead of by the said Minister or Secretary of State by virtue of the powers contained in Part III of the Town and Country Planning Act 1968 and of regulations made thereunder and (to the extent provided in rule 17) to hearings before such a person for the purposes of any such appeal;

(*b*) to local inquiries held by a person appointed by the said Minister or the said Secretary of State for the purpose of appeals to the said Minister or Secretary of State under a tree preservation order, where such appeals fall to be determined as aforesaid, and (to the extent provided in rule 17) to hearings before such a person for the purpose of any such appeal, subject to the following modifications, that is to say—

(i) rule 4 shall not apply and the references in these Rules to section 17 parties shall be omitted;

(ii) references to development shall be construed as references to the cutting down, topping, or lopping of trees;

(**a**) 1958 c. 66.
(**b**) 1959 c. 53.
(**c**) 1968 c. 72.
(**d**) 1962 c. 38.

(iii) references to permission shall be construed as references to consent;

(*c*) to local inquiries held by a person appointed by the said Minister or the said Secretary of State for the purpose of appeals to the said Minister or Secretary of State under paragraph 7 of schedule 5 to the Town and Country Planning Act 1968, where such appeals fall to be determined as aforesaid, and (to the extent provided in rule 17) to hearings before such a person for the purpose of any such appeal, subject to the following modifications, that is to say—

(i) references to development shall be construed as references to works for the demolition, alteration or extension of a listed building;

(ii) references to permission shall be construed as references to a listed building consent;

(*d*) to local inquiries held by a person appointed by the said Minister or the said Secretary of State for the purpose of appeals to the said Minister or Secretary of State under the Town and Country Planning (Control of Advertisements) Regulations 1960(**a**), where such appeals fall to be determined as aforesaid, and (to the extent provided in rule 17) to hearings before such a person for the purpose of any such appeal, subject to the following modifications, that is to say—

(i) rule 4 shall not apply and the references in these Rules to section 17 parties shall be omitted;

(ii) references to development shall be construed as references to the display of advertisements;

(iii) references to permission shall be construed as references to consent.

(2) These Rules apply in relation to Greater London, as defined in section 2(1) of the London Government Act 1963(**b**), subject to the modifications specified in rule 18.

Interpretation

3.—(1) In these Rules, unless the context otherwise requires—

" the Act " means the Town and Country Planning Act 1962;

" the Act of 1968 " means the Town and Country Planning Act 1968;

" the Minister " means either the Minister of Housing and Local Government or the Secretary of State for Wales, as the case may be;

" appointed person " means the person appointed by the Minister to determine the appeal;

" inquiry " means a local inquiry to which these Rules apply;

" the land " means the land (including trees and buildings) to which the inquiry relates;

" local authority " has the meaning assigned by section 221(1) of the Act (as amended by section 29(5) of the London Government Act 1963);

" local planning authority " means—

(*a*) the local planning authority (within the meaning of section 2 of the Act) for the area in which the land is; or

(*b*) an authority exercising delegated functions on behalf of that authority;

" section 17 parties " means persons from whom representations are received by the local planning authority in pursuance of section 17(3) of the Act, or by the Minister in pursuance of section 17(3) as applied by

(**a**) S.I. 1960/695 (1960 III, p. 3253). (**b**) 1963 c. 33.

section 23(6) of the Act, within the time prescribed and, in relation to appeals brought under paragraph 7 of schedule 5 to the Act of 1968, persons from whom representations are received, in pursuance of regulations made under paragraph 2 of the said schedule, within the time prescribed;

" tree preservation order " means an order under section 29 of the Act;

" trees " includes groups of trees and woodlands.

(2) References in these Rules to section 17 of the Act shall be construed as including where appropriate references to the regulations made under paragraph 2 of schedule 5 to the Act of 1968.

(3) The Interpretation Act 1889(a) shall apply to the interpretation of these Rules as it applies to the interpretation of an Act of Parliament.

Preliminary information to be supplied by local planning authority

4. The local planning authority, on being notified by the Minister of the intention to proceed with the consideration of an appeal to which these Rules apply and of the name and address of any person who, pursuant to the provisions of section 17 of the Act, has made representations to the Minister, shall forthwith inform the appellant in writing of the name and address of every section 17 party and the Minister of all such persons who have made representations to the local planning authority.

Notification of Inquiry

5.—(1) A date, time and place for the holding of the inquiry shall be fixed and may be varied by the Minister, who shall give not less than 42 days' notice in writing of such date, time and place to the appellant and to the local planning authority and to all section 17 parties at the addresses furnished by them:

Provided that—

(i) with the consent of the appellant and of the local planning authority, the Minister may give such lesser period of notice as shall be agreed with the appellant and the local planning authority and in that event he may specify a date for service of the statements referred to in rule 7(1) later than the date therein prescribed;

(ii) where it becomes necessary or advisable to vary the time or place fixed for the inquiry, the Minister shall give such notice of the variation as may appear to him to be reasonable in the circumstances.

(2) Without prejudice to the foregoing provisions of this rule, the Minister may require the local planning authority to take one or more of the following steps, namely—

(*a*) to publish in one or more newspapers circulating in the locality in which the land is such notices of the inquiry as he may direct;

(*b*) to serve notice of the inquiry in such form, and on such persons or classes of persons as he may specify;

(*c*) to post such notices of the inquiry as he may direct in a conspicuous place or places near to the land;

but the requirements as to the period of notice contained in paragraph (1) of this rule shall not apply to any such notices.

(3) Where the land is under the control of the appellant he shall, if so required

(a) 1889 c. 63.

by the Minister, affix firmly to some object on the land, in such a manner as to be readily visible to and legible by the public, such notice of the inquiry as the Minister may specify, and thereafter for such period before the inquiry as the Minister may specify the appellant shall not remove the notice, or cause or permit it to be removed.

Notification of identity of appointed person

6. The Minister shall give to the appellant, to the local planning authority and to all section 17 parties written notice informing them of the name of the appointed person:

Provided that, where, in exercise of his powers under section 23 of the Act of 1968, the Minister has appointed another person to determine the appeal in the place of a person previously appointed for that purpose and it is not practicable to give written notice of the new appointment before the inquiry is held, in lieu of the Minister's giving such notice the person holding the inquiry shall, at the commencement thereof, announce his own name and the fact of his appointment.

Statements to be served before Inquiry

7.—(1) Not later than 28 days before the date of the inquiry (or such later date as the Minister may specify under proviso (i) to paragraph (1) of rule 5), the local planning authority shall serve on the appellant and on the section 17 parties a written statement of any submission which the local planning authority propose to put forward at the inquiry and shall supply a copy of the statement to the Minister for transmission to the appointed person.

(2) Where a government department has expressed in writing the view that the application should not be granted, either wholly or in part, or should be granted only subject to conditions or, in the case of an appeal under a tree preservation order, should be granted together with a direction requiring the replanting of trees and the local planning authority propose to rely on such expression of view in their submissions at the inquiry, they shall include it in their statement and shall supply a copy of the statement to the government department concerned.

(3) Where the local planning authority intend to refer to, or put in evidence at the inquiry, documents (including maps and plans), the authority's statement shall be accompanied by a list of such documents, together with a notice stating the times and place at which the documents may be inspected by the appellant and the section 17 parties; and the local planning authority shall afford them a reasonable opportunity to inspect and, where practicable, to take copies of the documents.

(4) The local planning authority shall afford any other person interested a reasonable opportunity to inspect and, where practicable, to take copies of any document referred to in the preceding paragraph of this rule, as well as of any statement served on the authority by the appellant under paragraph (5) of this rule.

(5) The appellant shall, if so required by the Minister, serve on the local planning authority, on the section 17 parties and on the Minister for transmission to the appointed person, within such time before the inquiry as the Minister may specify, a written statement of the submissions which he proposes to put forward at the inquiry; and such statement shall be accompanied by a list of any documents (including maps and plans) which the appellant intends to refer to or put in evidence at the inquiry and he shall, if so required by the Minister, afford the local planning authority and the section 17 parties a reasonable opportunity to inspect and, where practicable, to take copies of such documents.

Appointed person may act in place of the Minister

8. The appointed person may himself in place of the Minister take such steps as the Minister is required or enabled to take under or by virtue of rule 5, rule 7(1) or (5), rule 9A(1) or (2) (as provided by rule 18 of these Rules) or rule 10(1) or (2).

Appearances at Inquiry

9.—(1) The persons who are entitled to appear at the inquiry shall be—

(*a*) the appellant;

(*b*) the local planning authority (within the meaning of section 2 of the Act) for the area in which the land is;

(*c*) where the land is in a united district for which a joint planning board has been constituted under section 2 of the Act, the council of the administrative county in which the land is;

(*d*) where the land is not in Greater London or a county borough, the council of the county district in which the land is, or the Council of the Isles of Scilly, as the case may be;

(*e*) section 17 parties;

(*f*) where the land is in an area designated as the site of a new town, the development corporation of the new town;

(*g*) any persons on whom the Minister or the appointed person has required notice to be served under rule 5(2)(*b*).

(2) Any other person may appear at the inquiry at the discretion of the appointed person.

(3) A local authority may appear by their clerk or by any other officer appointed for the purpose by the local authority, or by counsel or solicitor; and any other person may appear on his own behalf or be represented by counsel, solicitor or any other person.

(4) Where there are two or more persons having a similar interest in the matter under inquiry, the appointed person may allow one or more persons to appear for the benefit of some or all of the persons so interested.

Representatives of Government Departments at Inquiry

10.—(1) Where a government department has expressed in writing the view that the application should not be granted, either wholly or in part, or should be granted only subject to conditions or, in the case of an appeal under a tree preservation order, should be granted together with a direction requiring the replanting of trees and the local planning authority have included this view in their statement as required by rule 7(2), the appellant may, not later than 14 days before the date of the inquiry, apply in writing to the Minister for a representative of the government department concerned to be made available at the inquiry.

(2) The Minister shall transmit any application made to him under the last foregoing paragraph to the government department concerned, who shall make a representative of the department available to attend the inquiry.

(3) A representative of a government department who, in pursuance of this rule, attends an inquiry on an appeal, shall be called as a witness by the local planning authority and shall state the reasons for the view expressed by his department and included in the authority's statement under rule 7(2), and shall

give evidence and be subject to cross-examination to the same extent as any other witness.

(4) Nothing in the last foregoing paragraph shall require a representative of a government department to answer any question which in the opinion of the appointed person is directed to the merits of government policy and the appointed person shall disallow any such question.

Procedure at Inquiry

11.—(1) Except as otherwise provided in these Rules, the procedure at the inquiry shall be such as the appointed person shall in his discretion determine.

(2) Unless in any particular case the appointed person with the consent of the appellant otherwise determines, the appellant shall begin and shall have the right of final reply; and the other persons entitled or permitted to appear shall be heard in such order as the appointed person may determine.

(3) The appellant, the section 17 parties and the local planning authority shall be entitled to call evidence and cross-examine persons giving evidence, but any other person appearing at the inquiry may do so only to the extent permitted by the appointed person.

(4) The appointed person shall not require or permit the giving or production of any evidence, whether written or oral, which would be contrary to the public interest; but, save as aforesaid, any evidence may be admitted at the discretion of the appointed person, who may direct that documents tendered in evidence may be inspected by any person entitled or permitted to appear at the inquiry and that facilities be afforded him to take or obtain copies thereof.

(5) The appointed person may allow the local planning authority or the appellant, or both of them, to alter or add to the submissions contained in any statement served under paragraph (1) or (5) of rule 7, or to any list of documents which accompanied such statement, so far as may be necessary for the purpose of determining the questions in controversy between the parties, but shall (if necessary by adjourning the inquiry) give the appellant or the local planning authority, as the case may be, and the section 17 parties an adequate opportunity of considering any such fresh submission or document; and the appointed person may make to the Minister a recommendation as to the payment of any additional costs occasioned by any such adjournment.

(6) If any person entitled to appear at the inquiry fails to do so, the appointed person may proceed with the inquiry at his discretion.

(7) The appointed person shall be entitled (subject to disclosure thereof at the inquiry) to take into account any written representations or statements received by him before the inquiry from any person.

(8) The appointed person may from time to time adjourn the inquiry and, if the date, time and place of the adjourned inquiry are announced before the adjournment, no further notice shall be required.

Site Inspections

12.—(1) The appointed person may make an unaccompanied inspection of the land before or during the inquiry without giving notice of his intention to the persons entitled to appear at the inquiry.

(2) The appointed person may, and shall if so requested by the appellant or the local planning authority before or during the inquiry, inspect the land

after the close of the inquiry and shall, in all cases where he intends to make such an inspection, announce during the inquiry the date and time at which he proposes to do so.

(3) The appellant, the local planning authority and the section 17 parties shall be entitled to accompany the appointed person on any inspection after the close of the inquiry; but the appointed person shall not be bound to defer his inspection if any person entitled to accompany him is not present at the time appointed.

Procedure after Inquiry

13.—(1) If, after the close of the inquiry, the appointed person proposes to take into consideration any new evidence (including expert opinion on a matter of fact) or any new issue of fact (not being a matter of government policy) which was not raised at the inquiry and which he considers to be material to his decision, he shall not come to a decision without first notifying the appellant, the local planning authority and any section 17 party who appeared at the inquiry of the substance of the new evidence or of the new issue of fact and affording them an opportunity of making representations thereon in writing within 21 days or of asking within that time for the re-opening of the inquiry.

(2) The appointed person may in any case if he thinks fit cause the inquiry to be re-opened and shall cause it to be re-opened if asked to do so in accordance with the foregoing paragraph; and if the inquiry is re-opened, paragraphs (1) and (2) of rule 5 shall apply as they applied to the original inquiry, with the modifications that, for the figure "42" in paragraph (1), there shall be substituted the figure "28" and, for references to the Minister wherever they occur, there shall be substituted references to the appointed person.

Costs

14. Where any person makes application at any inquiry for an award of costs, the appointed person shall report in writing the proceedings on such application to the Minister and may in such report draw attention to any considerations which appear to him to be relevant to the Minister's decision on the matter.

Notification of decision

15. Unless the Minister has, under section 22 of the Act of 1968, directed that the appeal shall be determined by the Minister, the appointed person shall notify his decision and his reasons therefor in writing to the appellant, the section 17 parties and the local planning authority and to any person who, having appeared at the inquiry, has asked to be notified of the decision.

Service of notices by post

16. Notices or documents required or authorised to be served or sent under the provisions of any of these Rules may be sent by post.

Hearings

17. These Rules, except paragraphs (2) and (3) of rule 5 and rule 9(1)(*g*), shall apply to any such hearing as is mentioned in rule 2, and for that purpose references in these Rules to an inquiry shall be construed as references to such a hearing.

Application to Greater London

18. In their application to Greater London these Rules shall apply with the following modifications:—

(i) In rule 3, after the definition of " the Act ", there shall be added—

" ' the Act of 1963 ' means the London Government Act 1963; " and, for the definition of " local planning authority ", the following definition shall be substituted:—

" ' local planning authority ' means—

(*a*) in relation to the appeals referred to in rule 2(1)(*a*), the authority which, by virtue of section 24 of the Act of 1963 or of regulations made under that section, is the local planning authority in relation to the class of development concerned in the area of Greater London where the land is; or

(*b*) in relation to the appeals referred to in rule 2(1)(*b*), (*c*) or (*d*), either the Common Council of the City of London or the council of the London borough in which the land is, as the case may be."

(ii) Rule 4 shall be re-numbered rule 4(1) and, at the end of the same the following paragraph shall be added:—

"(2) Where either—

(*a*) in pursuance of regulations under section 24(6) of the Act of 1963, the application which is the subject of the appeal was required to be referred to the Greater London Council, or

(*b*) in pursuance of paragraph 5 of schedule 5 to the Act of 1968, notification of the application for listed building consent was required to be given to the Greater London Council,

and, in either case, that Council has either—

(i) issued a direction to the local planning authority in whose area the land is as to the manner in which the application is to be dealt with or determined, or

(ii) (whether before or after the appeal to the Minister) otherwise expressed an opinion to such local planning authority on any such application,

the Greater London Council shall, at the request of the local planning authority, forthwith furnish to them a statement in writing of their reasons for that direction or opinion."

(iii) At the end of rule 7, the following paragraph shall be added:—

" (6) In a case falling within rule 4(2) the local planning authority shall include in their statement particulars of the direction or opinion of the Greater London Council and of the reasons given for it."

(iv) For rule 9(1)(*b*) there shall be substituted the following:—

" (*b*) the local planning authority and—

(i) where the application was required to be referred under section 24(6) of the Act of 1963, or required to be notified under paragraph 5 of schedule 5 to the Act of 1968, the Greater London Council, or

(ii) where the Greater London Council is the local planning authority, the Common Council of the City of London or the council of the London borough in which the land is, as the case may be."

(v) After rule 9, the following rule shall be inserted:—

" *Representatives of the Greater London Council at Inquiry*

9A.—(1) In a case falling within rule 4(2), the appellant or the local planning authority may, not later than 14 days before the date of the

inquiry, apply in writing to the Minister for a representative of the Greater London Council to be made available at the inquiry.

(2) The Minister shall transmit any application made to him under the last foregoing paragraph to the Greater London Council who shall make a representative of the Council available to attend the inquiry.

(3) A representative of the Greater London Council who, in pursuance of this rule, attends an inquiry shall be called as a witness by the local planning authority and shall give evidence and be subject to cross-examination to the same extent as any other witness."

Dated 9th December 1968.

Gardiner, C.

EXPLANATORY NOTE

(*This Note is not part of the Rules.*)

These Rules prescribe the procedure to be followed at local inquiries and hearings held in connection with appeals to the Minister of Housing and Local Government or the Secretary of State for Wales (*a*) under section 23 of the Town and Country Planning Act 1962, or (*b*) in respect of tree preservation orders, or (*c*) in respect of listed building consents, or (*d*) under the Town and Country Planning (Control of Advertisements) Regulations 1960, where such appeals fall to be determined by a person appointed for the purpose by the Minister or the Secretary of State in accordance with regulations made under section 21 of the Town and Country Planning Act 1968.

The principal provisions are as follows:

Rules 4 and 5 prescribe the procedure before an inquiry. Not less than 42 days' notice of the inquiry must be given, unless the parties agree to shorter notice.

Rule 6 provides that the Minister concerned shall notify the parties in writing of the name of the person appointed to determine the appeal and makes provision for notifying any change in the appointment.

Rule 7 requires the local planning authority to serve on the appellant and on any owner or agricultural tenant who has made representations under section 17 of the Town and Country Planning Act 1962, or under regulations made under paragraph 2 of schedule 5 to the Town and Country Planning Act 1968, a statement of the submissions which the authority propose to put forward at the inquiry. The statement must include any views expressed in writing by a government department in opposition to the application on which the authority propose to rely. Any persons interested must be given a reasonable opportunity of inspecting and taking copies of the statement. The appellant may also be required to serve a written statement of the submissions which he proposes to put forward at the inquiry.

Rule 8 makes provision for the appointed person, instead of the Minister, to carry out certain of the procedural steps.

Rule 9 describes the persons who may appear at the inquiry, while rule 10 provides for the representation at the request of the appellant of any government department which has expressed views in opposition to the application.

Rule 11 prescribes the procedure at the inquiry and rule 12 makes provision for the inspection of the site by the person appointed to determine the appeal.

Rule 13 provides that if the appointed person proposes to take into consideration any new evidence or new issue of fact which was not raised at the inquiry and which he considers to be material to his decision, he must not come to a decision without first giving the appellant, the local planning authority and any " section 17 party " who appeared at the inquiry an opportunity of making representations or of having the inquiry re-opened.

Rule 14 requires the appointed person to report to the Minister any proceedings on any application at the inquiry for an award of costs.

Rule 15 requires the appointed person to notify his decision and reasons to the appellant, " section 17 parties ", the local planning authority and to any other person who appeared at the inquiry and has asked to be notified.

Rule 18 contains adaptations of the rules in regard to Greater London.