STATUTORY INSTRUMENTS

1974 No. 420

TRIBUNALS AND INQUIRIES

The Town and Country Planning Appeals (Determination by Appointed Persons) (Inquiries Procedure) Rules 1974

Made - - -	*11th March* 1974
Laid before Parliament	*22nd March* 1974
Coming into Operation	*1st April* 1974

The Lord Chancellor, in exercise of the powers conferred on him by section 11 of the Tribunals and Inquiries Act 1971**(a)**, as applied by paragraph 7 of Schedule 9 to the Town and Country Planning Act 1971**(b)**, 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 1974.

(2) These Rules shall come into operation on 1st April 1974 but, save as provided in rule 20, 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 Secretary of State for the purpose of appeals to the said Secretary of State under section 36 of the Town and Country Planning Act 1971, where such appeals fall to be determined by the said person instead of by the said Secretary of State by virtue of the powers contained in Schedule 9 to that Act and of regulations made thereunder and (to the extent provided in rule 18) 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 Secretary of State for the purpose of appeals to the said Secretary of State under a tree preservation order, where such appeals fall to be determined as aforesaid, and (to the extent provided in rule 18) to hearings before such a person for the purpose of any such appeal, subject to the following modifications—

(i) rule 4 shall not apply and the references in these Rules to section 29 parties shall be omitted;

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

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

(*c*) to local inquiries held by a person appointed by the said Secretary of State for the purpose of appeals to the said Secretary of State under paragraph 8 of Schedule 11 to the Town and Country Planning Act 1971 (including appeals under that paragraph of that Schedule as applied by section 8 of and Schedule 2 to the Town and Country Planning (Amend ment) Act 1972**(c)**) where such appeals fall to be determined as aforesaid,

(a) 1971 c. 62. (b) 1971 c. 78. (c) 1972 c. 42.

and (to the extent provided in rule 18) to hearings before such a person for the purpose of any such appeal, subject to the following modifications—

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

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

(*d*) to local inquiries held by a person appointed by the said Secretary of State for the purpose of appeals to the said Secretary of State under the Town and Country Planning (Control of Advertisements) Regulations 1969 to 1974**(a)**, where such appeals fall to be determined as aforesaid, and (to the extent provided in rule 18) to hearings before such a person for the purpose of any such appeal, subject to the following modifications—

(i) rule 4 shall not apply and the references in these Rules to section 29 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 19.

Interpretation

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

"the Act" means the Town and Country Planning Act 1971;

"the Act of 1972" means the Local Government Act 1972**(c)**;

"appointed person" means the person appointed by the Secretary of State to determine the appeal;

"conservation area" means an area designated under section 277 of the Act;

"county planning authority" and "district planning authority" have the meanings assigned to them by section 1 of the Act;

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

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

"listed building" has the meaning assigned to it by section 54 of the Act;

"listed building consent" means consent required by section 55(2) of the Act in respect of works for the demolition, extension or alteration of a listed building and the consent required by that subsection as applied by section 8 of the Town and Country Planning (Amendment) Act 1972 for works for the demolition of a building in a conservation area;

"local authority" has the meaning assigned to it by section 290(1) of the Act;

"local planning authority" means—

(*a*) the county planning authority or district planning authority, as the case may be, who were responsible for dealing with the relevant application; or

(a) S.I. 1969/1532, 1972/489, 1974/185 (1969 III, p. 4962; 1972 I, p. 1730; 1974 I, p. 661).
(b) 1963 c. 33. **(c)** 1972 c. 70.

(*b*) any local authority or committee (including a National Park Committee) exercising the functions of the said planning authority in relation to the application by virtue of any arrangement under section 101 of the Act of 1972;

"National Park Committee" has the meaning assigned to it by paragraph 5 of Schedule 17 to the Act of 1972;

"section 29 parties" means persons from whom representations are received by the local planning authority in pursuance of section 29(3) of the Act, or by the Secretary of State in pursuance of section 29(3) as applied by section 36(5) of the Act, within the time prescribed and, in relation to appeals brought under paragraph 8 of Schedule 11 to the Act, 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 60 of the Act;

"trees" includes groups of trees and woodlands.

(2) References in these Rules to section 29 of the Act shall be construed as including where appropriate references to regulations made under paragraph 2 of Schedule 11 to the Act.

(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.—(1) The local planning authority, on being notified by the Secretary of State 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 29 of the Act, has made representations to the Secretary of State, shall forthwith inform the appellant in writing of the name and address of every section 29 party and the Secretary of State of all such persons who have made representations to the local planning authority.

(2) Where any local authority has given to the local planning authority a direction restricting the grant of permission for the development for which application was made or a direction as to how an application for planning permission is to be determined and where any government department or local authority has expressed in writing to the local planning authority 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 application for consent under a tree preservation order, should be granted together with a direction requiring the replanting of trees, the local planning authority shall inform the government department or authority concerned, as the case may be, that such direction or expression of view is relevant to the application or appeal and the government department or authority, as the case may be, shall (except where such action has already been taken) forthwith furnish to the local planning authority a statement in writing of the reasons for the direction or expression of view.

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 Secretary of State, 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 29 parties at the addresses furnished by them:

(a) 1889 c. 63.

Provided that—

(i) with the consent of the appellant and of the local planning authority, the Secretary of State 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 Secretary of State 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 Secretary of State may require the local planning authority to take one or more of the following steps—

(*a*) to publish in one or more newspapers circulating in the locality in which the land is situated 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 by the Secretary of State, 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 Secretary of State may specify, and thereafter for such period before the inquiry as the Secretary of State 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 Secretary of State shall give to the appellant, to the local planning authority and to all section 29 parties written notice informing them of the name of the appointed person:

Provided that, where, in exercise of his powers under paragraph 4 of Schedule 9 to the Act, the Secretary of State 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 Secretary of State'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 Secretary of State may specify under proviso (i) to paragraph (1) of rule 5), the local planning authority shall—

(*a*) serve on the appellant and on the section 29 parties a written statement of any submission which the local planning authority propose to put forward at the inquiry, and

(*b*) supply a copy of the statement to the Secretary of State for transmission to the appointed person.

(2) Where a local authority has given a direction restricting the grant of permission for the development for which application was made or a direction as to how the application was to be determined, the local planning authority

shall mention this in their statement and shall include in the statement a copy of the direction and the reasons given for it and shall, within the period specified in paragraph (1) above, supply a copy of the statement to the local authority concerned; and where a government department or a local authority has expressed in writing to the local planning authority 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 within the period specified in paragraph (1) above, supply a copy of the statement to the government department or local authority 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 29 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 Secretary of State, serve on the local planning authority, on the section 29 parties and on the Secretary of State for transmission to the appointed person, within such time before the inquiry as the Secretary of State 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 Secretary of State, afford the local planning authority and the section 29 parties a reasonable opportunity to inspect and, where practicable, to take copies of such documents.

Appointed person may act in place of the Secretary of State

8. The appointed person may himself in place of the Secretary of State take such steps as the Secretary of State is required or enabled to take under or by virtue of rule 5, rule 7(1) or (5), rule 10(1) or (2), rule 11(1) or (2), or rule 11A(1) or (2) (as provided by rule 19 of these Rules).

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;

(*c*) where the land is not in Greater London the council of the administrative county in which the land is situated, if not the local planning authority;

(*d*) where the land is not in Greater London, the council of the district in which the land is situated (or the Council of the Isles of Scilly, as the case may be) if not the local planning authority;

(*e*) where the land is in a National Park, the National Park Committee (if any), if not the local planning authority;

(*f*) any joint planning board constituted under section 1 of the Act (or any joint planning board or special planning board reconstituted under Part I of Schedule 17 to the Act of 1972), where that board is not the local planning authority;

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

(*h*) section 29 parties;

(*i*) the council of the parish or community in which the land is situated, if that council has made representations to the local planning authority in respect of the application in pursuance of a provision of a development order made under section 24 of the Act;

(*j*) any persons on whom the Secretary of State 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 ail 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 Secretary of State for a representative of the government department concerned to be made available at the inquiry.

(2) The Secretary of State 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.

Representatives of local authorities at inquiry

11.—(1) Where any local authority has—

(*a*) given to the local planning authority a direction restricting the grant of planning permission or a direction as to how an application for planning permission was to be determined; or

(*b*) expressed in writing the view that an application for planning permission should not be granted wholly or in part or should be granted only subject to conditions, and the local planning authority have included this view in their statement, as required under rule 7(2),

the applicant may, not later than 14 days before the date of the inquiry, apply in writing to the Secretary of State for a representative of the authority concerned to be made available to attend the inquiry.

(2) Where an application is made to the Secretary of State under the last foregoing paragraph he shall transmit the application to the authority concerned, who shall make a representative of the authority available to attend the inquiry.

(3) A representative of a local authority who, in pursuance of this rule, attends an inquiry shall be called as a witness by the local planning authority and shall state the reasons for the authority's direction or, as the case may be, the reasons for the view expressed by them and included in the local planning 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.

Procedure at inquiry

12.—(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 local planning authority and the section 29 parties 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 and without prejudice to the provisions of rule 10(4), 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 accompanies 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 29 parties an adequate opportunity of considering any such fresh submission or document; and the appointed person may make to the Secretary of State 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

13.—(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 29 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

14.—(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 29 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 Secretary of State, wherever they occur, there shall be substituted references to the appointed person.

Costs

15. 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 Secretary of State, and may in such report draw attention to any considerations which appear to him to be relevant to the Secretary of State's decision on the matter.

Notification of decision

16.—(1) Unless the Secretary of State has, under paragraph 3 of Schedule 9 to the Act, directed that the appeal shall be determined by the Secretary of State, the appointed person shall notify his decision and his reasons therefor in writing to the appellant, the local planning authority and the section 29 parties and to any person who, having appeared at the inquiry, has asked to be notified of the decision.

(2) Any person entitled to be notified of the decision of the appointed person under paragraph (1) of this rule may apply to the Secretary of State in writing within six weeks of the notification to him of the decision for an opportunity of inspecting any documents, photographs or plans listed in the notification and the Secretary of State shall afford him an opportunity accordingly.

Service of notices by post

17. 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

18. These Rules, except paragraphs (2) and (3) of rule 5 and rule 9(1)(*j*), 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

19. 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 situated; 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 situated, as the case may be;";

(ii) at the end of rule 4, the following paragraph shall be added:—

"(3) 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 6 of Schedule 11 to the Act 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 situated 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 Secretary of State) 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(3) 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 6 of Schedule 11 to the Act, 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 situated as the case may be;";

(v) after rule 11, the following rule shall be inserted:—

"*Representatives of the Greater London Council at inquiry*

11A.—(1) In a case falling within rule 4(3), the appellant or the local planning authority may, not later than 14 days before the date of the inquiry, apply in writing to the Secretary of State for a representative of the Greater London Council to be made available at the inquiry.

(2) The Secretary of State 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.".

Revocation of previous Rules

20. The Town and Country Planning Appeals (Determination by Appointed Persons) (Inquiries Procedure) Rules 1968**(a)** are hereby revoked, and any appeal to which those Rules applied and which has not been determined when these Rules come into operation shall be continued under these Rules.

Dated 11th March 1974.

Elwyn-Jones, C.

(a) S.I. 1968/1952 (1968 III, p. 5318).

EXPLANATORY NOTE

(This Note is not part of the Rules.)

These Rules replace with modifications the Town and Country Planning Appeals (Determination by Appointed Persons) (Inquiries Procedure) Rules 1968.

They prescribe the procedure to be followed at local inquiries and hearings held in connection with appeals to the Secretary of State—

(*a*) under section 36 of the Town and Country Planning Act 1971, or

(*b*) in respect of tree preservation orders, or

(*c*) in respect of listed building consents (including consent for the demolition of a building in a conservation area), or

(*d*) under the Town and Country Planning (Control of Advertisements) Regulations 1969-1974,

where such appeals fall to be determined by a person appointed for the purpose by the Secretary of State in accordance with Regulations made under paragraph 1 of Schedule 9 to the Town and Country Planning Act 1971.

Apart from the substitution of references to the provisions of the Town and Country Planning Act 1971 and the Tribunals and Inquiries Act 1971 for references to the provisions of the enactments consolidated by those Acts, the principal changes are:—

(*a*) applications and appeals relating to consent for the demolition of a building in a conservation area are brought within the Rules;

(*b*) account has been taken of the re-organisation of local government under the Local Government Act 1972 and of the amendments made by that Act to the Town and Country Planning Act 1971 by amending the definition of "local planning authority" in Rule 3(1), by giving a parish or community council which has made representations about an application, a right to appear at the relevant inquiry under Rule 9(1)(*i*), and by making provision in Rules 4(2), 7(2) and 11 for the circumstances in which another local authority may give a direction to the local planning authority or may express views as to the way in which a planning application should be dealt with;

(*c*) Rule 16(2) makes provision for the documents listed in an appointed person's notification of his decision to be made available for inspection by the persons entitled to receive a copy of that notification, on a written request made to the Secretary of State within the prescribed period.

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