1964 No. 181 (S. 15)

TRIBUNALS AND INQUIRIES

The Town and Country Planning Appeals (Inquiries Procedure) (Scotland) Rules 1964

Made - - - -	*6th February* 1964
Laid before Parliament	*13th February* 1964
Coming into Operation	*2nd March* 1964

I, James Latham Clyde, Lord President of the Court of Session in exercise of the powers conferred upon me by section 7A of the Tribunals and Inquiries Act 1958(a) and of all other powers enabling me in this behalf and after consultation with the Council on Tribunals, hereby make the following Rules :—

Citation and Commencement

1.—(1) These Rules may be cited as the Town and Country Planning Appeals (Inquiries Procedure) (Scotland) Rules 1964.

(2) These Rules shall come into operation on 2nd March 1964 but shall not affect any appeals brought before that date.

Application of Rules

2. These Rules shall apply—

(*a*) to local inquiries caused by the Secretary of State to be held for the purpose of appeals to him under section 14 of the Town and Country Planning (Scotland) Act 1947(b) and (to the extent provided in Rule 13 hereof) to hearings before a person appointed by the Secretary of State for the purpose of such appeals ; and

(*b*) to local inquiries caused by the Secretary of State to be held for the purpose of appeals to him under the Town and Country Planning (Control of Advertisements) (Scotland) Regulations 1961(c) and (to the extent provided in Rule 13 hereof) to hearings before a person appointed by the Secretary of State for the purpose of such appeals, subject to the following modifications, that is to say—

(i) Rule 4(1) shall not apply and the references in these Rules to section 36 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.

Interpretation

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

" the Act of 1947 " means the Town and Country Planning (Scotland) Act 1947 ;

(a) 6 & 7 Eliz. 2. c. 66. (b) 10 & 11 Geo. 6. c. 53.
(c) S.I. 1961/195 (1961 I, p. 308).

" the Act of 1959 " means the Town and Country Planning (Scotland) Act 1959(a);

" section 50 of the Act of 1945 " means section 50 of the Town and Country Planning (Scotland) Act 1945(b) (as re-enacted in Schedule 11 to the Act of 1947 and having effect by virtue of section 100 of that Act);

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

" the land " means the land (including buildings) to which the inquiry refers;

" local authority " has the meaning assigned to it by section 113(1) of the Act of 1947;

" local planning authority " has the meaning assigned to it by section 2 of the Act of 1947;

" reporter " means the person appointed by the Secretary of State to hold the inquiry;

" section 36 parties " has the meaning assigned to it by Rule 4(3).

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

Procedure before Inquiry

4.—(1) The local planning authority, on being notified of the Secretary of State's intention to proceed with the consideration of an appeal to which these Rules relate, shall forthwith inform the Secretary of State and the appellant in writing of the names and addresses of all persons who pursuant to the provisions of section 36 of the Act of 1959, have made representations to the local planning authority on the application which is the subject of the appeal.

(2) Where the Secretary of State has given a direction restricting the grant of permission for the development for which application was made, the local planning authority shall also inform the Secretary of State that such direction is relevant to the appeal and the Secretary of State shall, where he has not already done so, forthwith furnish to the local planning authority a statement in writing of the reasons for the direction.

(3) 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 28 days' notice in writing of such date, time and place to—

(*a*) the appellant

(*b*) the local planning authority

(*c*) all persons (hereinafter referred to as " section 36 parties ") who pursuant to the provisions of section 36 of the Act of 1959 have duly made representations on the application which is the subject of the appeal, whether to the local planning authority or to the Secretary of State, and

(*d*) any other person to whom notification is required to be given under section 50(3) of the Act of 1945;

Provided that—

(i) with the consent in writing 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

(a) 7 & 8 Eliz. 2. c. 70. (b) 8 & 9 Geo. 6. c. 33. (c) 52 & 53 Vict. c. 63.

authority and in that event he may specify a date for service of the statement referred to in paragraph (5) of this Rule later than the date prescribed in that paragraph ;

(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.

(4) Without prejudice to the foregoing provisions of this Rule, the Secretary of State may require the local planning authority to serve notice of the inquiry in such form and on such persons or classes of persons as he may specify, but the requirements as to the period of notice contained in paragraph (3) of this Rule shall not apply to any such notices.

(5) Not later than 21 days before the date of the inquiry (except where the Secretary of State specifies a later date under proviso (i) to paragraph (3) of this Rule), the local planning authority shall serve on the appellant and on the section 36 parties a written statement containing the observations of the local planning authority on the appeal and unless they have already done so, shall supply a copy of the statement to the Secretary of State.

(6) Where the Secretary of State has given a direction restricting the grant of permission for the development for which application was made, the local planning authority shall refer to this in their statement and shall include in the statement a copy of the direction and the reasons given for it ; and where a government department has expressed in writing to the local planning authority a view with respect to the application and reference to that view has been included in their statement, they shall supply a copy of the statement to the government department concerned.

(7) 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 36 parties ; and the local planning authority shall afford them a reasonable opportunity to inspect and take copies of the documents.

(8) The local planning authority shall afford any other person interested a reasonable opportunity to inspect and to take copies of the authority's statement and the other documents referred to in the last foregoing paragraph.

Appearances at Inquiry

5.—(1) The persons entitled to appear at the inquiry shall be—

(*a*) the appellant ;

(*b*) the local planning authority ;

(*c*) section 36 parties ;

(*d*) any other persons to whom notification has been given under section 50(3) of the Act of 1945 ;

(*e*) any persons on whom the Secretary of State has required notice to be served under Rule 4(4).

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

(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 or solicitor or, with the leave of the reporter, by any other person.

(4) Where there are two or more persons having, in the matter under inquiry interests which do not conflict, the reporter may allow one or more persons to appear for the benefit of some or all persons so interested.

Representatives of the Secretary of State at Inquiry

6. Where the Secretary of State has given a direction restricting the grant of permission for the development for which application was made, the appellant may, not later than 14 days before the date of the inquiry apply in writing to the Secretary of State to make a representative available at the inquiry; and in that case the Secretary of State shall make a representative available who shall at the inquiry answer questions in elucidation of the statement of the reasons given for the Secretary of State's direction not being questions which, in the opinion of the reporter are directed to the merits of Government policy.

Representatives of Other Government Departments at Inquiry

7.—(1) Where a government department has expressed in writing to the local planning authority a view with respect to the application and the local planning authority have set out such view in their statement referred to in Rule 4(5) the local planning authority or 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 attending the inquiry in pursuance of this Rule shall state the reasons for the view referred to in paragraph (1) hereof and shall give evidence and be subject to cross-examination to the same extent as other witnesses, provided that the reporter shall disallow any questions which in his opinion are directed to the merits of Government policy.

Procedure at Inquiry

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

(2) The reporter shall state at the commencement of the inquiry the procedure which, subject to consideration of any submission by the parties he proposes to adopt and shall inform the parties what he proposes as regards any site inspection arising out of the inquiry.

(3) Unless in any particular case the reporter with the consent of the appellant otherwise determines, the appellant shall be heard first; the other persons entitled or permitted to appear shall be heard in such order as the reporter may determine; and any closing statements shall be made in the same order as that in which the parties were heard, unless the reporter otherwise determines.

(4) The appellant, the section 36 parties and the local planning authority shall be entitled to make opening statements, to call evidence and to cross-examine persons giving evidence, but any other persons appearing at the inquiry may do so only to the extent permitted by the reporter.

(5) The reporter 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 Rules 6 and 7(3) and section 50(4) and (5) of the Act of 1945, any evidence may be admitted at the discretion of the reporter, 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.

(6) The reporter may allow the local planning authority to alter or add to the submissions contained in the statement served under Rule 4(5) or 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 and the section 36 parties an adequate opportunity of considering any fresh submission or document and may make in his report a recommendation as to the payment of any additional expenses occasioned by such an adjournment.

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

(8) The reporter shall be entitled (subject to disclosure thereof at the inquiry) to take into account any written representations or statement made prior to the inquiry by any person entitled to appear at, but who, for whatever reason, does not attend, the inquiry.

(9) The reporter may from time to time adjorn 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

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

(2) The reporter may, and shall if so requested by the appellant or the local planning authority before or during the inquiry, inspect the land during or after the close of the inquiry in the company of such of the parties to the inquiry as desire to do so 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 reporter 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

10.—(1) After the close of the inquiry—

(*a*) the reporter shall prepare the first part of his report comprising a summary of the evidence led at the inquiry together with his findings of fact;

(i) shall provide a copy of the first part of his report to every party to the inquiry, if so required by any of the parties.

(ii) shall consider any comments received by him from any such party within 14 days from the furnishing of the first part of his report;

(iii) may, after consulting all the other parties to the inquiry, amend the first part of his report, so however that he shall not, except with the consent of all parties, introduce into his report any matter that had not been raised at the inquiry; and

(*b*) the reporter shall thereafter prepare the second part of his report, including any necessary reasoning and his recommendations, if any, or his reason for not making any recommendations.

(2) Where the Secretary of State—

(*a*) differs from the reporter on a finding of fact, or

(*b*) after the close of the inquiry receives any new evidence (including expert opinion on a matter of fact) or takes into consideration any new issue of fact (not being a matter of Government policy) which was not raised at the inquiry, and by reason thereof is disposed to disagree with a recommendation made by the reporter, he shall not come to a decision which is at variance with any such recommendation without first notifying the appellant, the local planning authority and any section 36 party who appeared at the inquiry of his disagreement and the reasons for it and affording them an opportunity of making representations in writing within 21 days or (if the Secretary of State has received new evidence or taken into consideration any new issue of fact not being a matter of Government policy) of asking within 21 days for the reopening of the inquiry.

(3) The Secretary of State may in any case if he thinks fit cause the inquiry to be reopened, and shall cause it to be reopened if asked to do so in accordance with the last foregoing paragraph; and if the inquiry is reopened paragraphs (3) and (4) of Rule 4 shall apply as they applied to the original inquiry, with the substitution in paragraph (3) of the words " 21 days " for the words " 28 days ".

Notification of Decision

11.—(1) The Secretary of State shall notify his decision, and his reasons therefor, in writing to the appellant, the section 36 parties and the local planning authority and to any person who, having appeared at the inquiry, has asked to be notified of the decision; and, where a copy of the report is not sent with the notification of the decision, the notification shall be accompanied by a summary of the reporter's conclusions and recommendations.

(2) If any person entitled to be notified of the Secretary of State's decision under the last foregoing paragraph has not received a copy of the report, he shall be supplied with a copy thereof on written application made to the Secretary of State within one month from the date of his decision.

(3) For the purposes of this Rule, " report " means the report submitted to the Secretary of State by the reporter but does not include documents, photographs or plans appended to the report.

Service of Notices by Post

12. Subject to the provisions of section 101 of the 1947 Act, notices or documents required or authorised to be served or sent to any person under the provisions of any of the foregoing Rules may be sent by post addressed to that person at his usual or last known address, or in a case in which an address for service has been furnished by that person, at that address.

Hearings

13. These Rules, except Rule 4(4) and Rule 5(1)(*e*), shall apply to any such hearing as is mentioned in Rule 2 hereof and for that purpose references in these Rules to an inquiry shall be construed as references to such a hearing.

J. L. Clyde.

6th February 1964.

EXPLANATORY NOTE

(This Note is not part of the Rules, but is intended to indicate their general purport)

These Rules prescribe the procedure to be followed at and in connection with local inquiries caused by the Secretary of State to be held for the purpose of appeals to him under section 14 of the Town and Country Planning (Scotland) Act 1947 and under the Town and Country Planning (Control of Advertisements) (Scotland) Regulations 1961, and hearings before a person appointed by the Secretary of State for the purpose of such appeals.