

Flood protection schemes - Code of practice for hearings

This code contains the procedure which the objectors, the local authority and, if relevant, other parties should follow where a hearing is to take place. The code is intended to save the parties time and money and to allow the Reporter to lead a structured discussion about the matters at issue. The aim is to give everybody, including interested third parties, a fair hearing and to provide the Reporter with all the information necessary for his Report, but in a more flexible and less formal atmosphere than at a local inquiry. Although the code does not have statutory force, all parties to a hearing are expected to comply with it. Paragraph 14(1) of Schedule to the Act does though allow Scottish Ministers to make provision for the procedure to be followed at a hearing held under paragraph 8, which may be considered should this code need to have statutory force.

The Reporter may be appointed by the Directorate of Planning & Environmental Appeals (DPEA) or the role of 'Reporter' may be undertaken by the local authority or commissioned separately. However, given that the local authority will have already made two decisions, to promote the scheme and a preliminary decision to confirm it with or without modification under paragraph 5 of Schedule 2 to the Act, the local authority should consider whether to appoint a person independent of the local authority to hold the hearing and Report to them although this is not a requirement of the Act.

Agreement on procedure

The Reporter will give the objectors and the local authority an opportunity to comment on the proposal to use the code. Each party should within 7 working days inform the Reporter of their views on whether or not the code is appropriate. If it is suitable the aim will be for the hearing to take place within 12 weeks of the date (the "relevant date") on which it is known that the objections are to be heard at a hearing.

Written Statements

An important element of this procedure is that the Reporter must be fully aware of the issues involved and the arguments likely to be put forward at the hearing so that he can properly lead the discussion. It

is therefore essential that, within 4 weeks of the relevant date, the objectors and the local authority provide a written statement containing full particulars of the case they wish to make at the hearing, and a list of any documents to which they intend to refer. At the same time, the objectors and the local authority should send copies to each other.

Where he considers it appropriate, the Reporter may request one or more third parties to submit statements and documents to the Reporter, the objectors and the local authority. In such circumstances, the objectors and the local authority will be asked to send additional copies of their statements and documents to those third parties.

If any party wishes to respond in writing to any aspect of another party's statement, this should be done within 2 weeks of the receipt of that statement. Copies of the response should be submitted to the objectors and the local authority, as appropriate, and to the Reporter.

Copies of documents to which parties intend to refer to should be submitted to the Reporter and to the other party or parties at least 4 weeks before the hearing is due to start.

Failure to adhere to the timetable may be fatal to the procedure. If the Reporter cannot be provided with the necessary information in sufficient time before the hearing, it may be necessary to delay or defer it. A party may become liable for expenses if another party is put to unnecessary expense through the late submission of statements or through other unreasonable behaviour.

Arranging the hearing

The local authority must invite to the hearing each objector whose objection is to be considered and give notice of the hearing in the manner set out in paragraphs 1(1)(a) and (b) of Schedule 2 to the Act. Invitations must be given not less than 28 days before the hearing and notices must be published at least 21 days before the hearing.

The local authority will also send to each objector a copy of this procedure and a note of the topics that the Reporter has decided should be considered at the hearing.

The arrangements for the hearing and the conduct of it should be designed to create the right atmosphere for discussion and to eliminate or reduce the formality sometimes encountered at a public local inquiry. To this end, the accommodation provided for the hearing should be informal, and the Reporter and the parties should wherever possible sit round a table. Small committee rooms are usually satisfactory, whereas council chambers, which often have a more formal atmosphere, should generally be avoided.

Procedure at the hearing

The Reporter will conduct the hearing. After resolving any doubts about the scheme or plans, he will explain that the hearing will take the form of a discussion which he will lead. The Reporter will then summarise his understanding of the relevant issues from reading the papers and any pre-hearing site visit, and will indicate those matters where further explanation or clarification is required. This will not preclude the parties from referring to other aspects which they consider relevant, provided that adequate prior notice and particulars have been given.

Written material should have been circulated and exchanged beforehand, and so it will not normally need to be read out at the hearing. Parties should avoid introducing new material or documents not previously referred to, as this may necessitate adjournment of the hearing to a later date and frustrate the objectives of the hearing procedure. It may also result in a claim for an award of expenses.

Objectors may present their case through an agent or advisor, but such representation is not essential. Legal representation should not normally be necessary. The local authority will usually be asked to start the discussion. Those participating in the hearing will have the opportunity to comment on the submissions made by other parties, and they will be able to ask questions informally (through the chair) throughout the proceedings, subject only to the questions being relevant and the discussion being conducted in an orderly manner. The Reporter will indicate when he considers that sufficient clarification of a topic has been achieved and will then move on to the next issue. He will also discourage repetitive or irrelevant evidence and questioning. The objectors will be allowed to make any final

comments before the discussion is closed (although formal closing submissions are not appropriate).

Before the end of the hearing, the Reporter will consider whether there should be a further, accompanied, visit to the site, and will advise parties of the arrangements. If appropriate, the Reporter may decide to allow further limited discussion of relevant matters on site before formally closing the hearing.

The Reporter will prepare a report and recommendation for the local authority. The local authority will consider the Report of the hearing and will make a final decision, which will subsequently be notified to all those who took part in the hearing.

Expenses

It is not uncommon for parties to seek expenses when attending a hearing. However, parties are normally expected to meet their own expenses when presenting a case, in person or through an agent or advisor, at an inquiry hearing.

The normal practice is, where an objector is successful in his/her objection, is an award of reasonable expenses including professional fees. A partial success will similarly get a partial award. Statutory objectors who are unsuccessful are expected to bear their own expenses.

Whilst the 2009 Act is not specifically provided for under Circular 6/1990 "Award of Expenses in Appeals and Other Planning Proceedings and in Compulsory Purchase Order Inquiries", it would not be unreasonable to adopt the provisions of the Circular for the purposes of this guidance.

The circular indicates that an award of expenses is only made in certain circumstances - there are three tests which require to be met. Consideration therefore should be given to making contingency budgetary arrangements on a 'case by case' basis.

