The Planning Inspectorate
Yr Arolygiaeth Gynllunio

TRANSPORT ORDERS

This guide provides practical advice for use by Inspectors in order to assist them in carrying out their role consistently and effectively when dealing with transport orders. In particular it identifies relevant Court judgements which need to be taken into account.

This guide does not provide policy advice, nor does it seek to interpret Government policy. In addressing policy issues Inspectors will be expected to have regard to the policy guidance produced by the relevant Government Department. In the event that there appears to be a discrepancy between the advice in this guide and national guidance, the latter will be conclusive as the original policy source.

The Planning Inspectorate will continually update this guide to reflect legislative and policy changes, Court decisions and practical experience.

What's New since the last version

This guide supersedes the November 2004 "Notes for the Guidance of Inspectors Holding Inquiries into Orders and Special Road Schemes". Its scope has been extensively altered. It includes guidance relating to transport-related Orders proposed to be made under the Highways Act 1980, the Acquisition of Land Act 1981, the New Roads and Street Works Act 1991, Part X of the Town and Country Planning Act 1990, or the Road Traffic Regulation Act 1984. It does not provide general guidance on inquiry holding, decision writing, reporting to the Secretary of State, site visits or human rights save in so far as guidance specific to transport inquiries is required.

Relevant Legislation, Guidance and Case Law

Legislation

- Highways Act 1980
- Acquisition of Land Act 1981
- New Roads and Street Works Act 1991
- Town and Country Planning Act 1990
- Road Traffic Regulation Act 1984

- The Highways (Inquiries Procedure) Rules 1994 (SI 1994 No. 3263)
- The Compulsory Purchase (Inquiries Procedure) Rules 2007 (SI 2007 No. 3617)
- The Compulsory Purchase (Inquiries Procedure) (Wales) Rules 2010 (SI 2010 No. 3015
- The Compulsory Purchase of Land (Written Representations Procedure) (Ministers) Regulations 2004 (SI 2004 No. 2594)
- The Local Authorities' Traffic Orders (Procedure) (England and Wales) Regulations 1996 (SI 1996 No. 2489)
- The Secretary of State's Traffic Orders (Procedure) (England and Wales) Regulations 1990 (SI 1990 No. 1656)

Guidance

- Compulsory Purchase and the Crichel Down Rules (ODPM Circular 06/2004)
- Revised Circular on Compulsory Purchase Orders (NAFWC Circular 14/2004)
- Costs Awards in Appeals and Other Planning Proceedings (DCLG Circular 03/2009)
- The Compulsory Purchase (Inquiries Procedure) Rules 2007, SI 2007 No. 3617 (DCLG Circular 01/2008)
- Rights of Way: Guidance for Local Authorities (Defra Circular 1/09)[1]

Case Law

- *Vasiliou v SoS for Transport and another [1991] 2 All ER 77*
- *Bushell & Anor v SoS for Environment [1980] 2 All ER 608*
- *Smith & Others v SoS for Transport and Barnsley MBC [1995 QBCOF 95/1433 – 4D]*

[1] Replaces advice and guidance in Circulars: 1/08, 2/93, 3/93, 17/90, 18/90 & 32/81.

Contents

PART 1 - INTRODUCTION

1.1 These notes concern public local inquiries into schemes and orders made under Parts II and XII of the Highways Act 1980 and, in relation to Compulsory Purchase Orders, the provisions of the Acquisition of Land Act 1981; Toll Orders made under the New Roads and Street Works Act 1991 or under Local Act powers; orders made under Part X of the Town and Country Planning Act 1990; and Traffic Regulation Orders made under the Road Traffic Regulation Act 1984. Reference is also made to the written representation procedure that may be used for Compulsory Purchase Orders.

1.2 Much of the guidance which follows applies equally to all the types of order covered by the notes, but, because of the specific differences which are necessary in the treatment of the various types of order, they are dealt with in separate sections of these notes.

1.3 The notes do not apply to inquiries relating to planning applications or to rights of way work (including public path orders and definitive map orders), to orders made under the Transport and Works Act 1992 (for which the DfT published '*A Guide To Transport And Works Act Procedures 2006*'), the Harbours Act 1964 or the Cycle Tracks Act 1984.

1.4 Nor do these notes apply to nationally significant infrastructure projects which would be highway-related development as defined by section 22 of the Planning Act 2008. Section 33(4) of the 2008 Act sets out the interface between the development consent regime and the regulatory regimes established by the Highways Act 1980 and the New Roads and Street Works Act 1991. It is possible that trunk road Highways Act Orders may be promoted in England in future that could give rise to Inquiries – for example the de-trunking of a road might include no development and so might be promoted through section 10 of the 1980 Act which, if there were objections, might necessitate an Inquiry, as has happened in the past. Therefore, these notes do not discount the possibility that a Highways Act Order might be promoted in England by the Secretary of State.

1.5 No distinction is made in these notes between schemes and orders: the word order should be taken to mean scheme and the singular may be taken as the plural. All inquiries are public local inquiries. The Secretary of State in these notes should generally be taken to mean the Secretary of State for Transport (SST) for local authority road schemes under the Highways Act. For trunk road orders, the SST and the Secretary of State for Communities and Local Government (SSCLG) have a joint role. (Although this is the case, 'the Secretary of State' (SofS) is referred to throughout and should be taken to relate to circumstances where it refers to the SST alone or where there are joint responsibilities.) For road orders made under the Town and Country Planning Act,

the relevant SofS is SST; under the New Roads and Street Works Act and the Road Traffic Regulation Act, the responsible SofS is SST, though the decision maker on most local authority orders made under the Road Traffic Regulation Act 1984 following any inquiry is the local authority itself.

1.6 In Wales, the Welsh Government now exercises most of the powers formerly exercised by the SofS for Wales. Reports are made to the Welsh Ministers (WM). Where the Welsh Government itself promotes a scheme, orders may be prepared in draft by the WM. Section 22 of the 2008 Planning Act has no effect in Wales and trunk road schemes in Wales are promoted by the WM through the Highways Act 1980. For brevity, the term "Secretary of State" is used to refer to the WM when the context of a scheme so demands.

1.7 Following the Greater London Authority Act 1999, Transport for London, the Mayor's transport executive, is the highway authority for a network of London's most important roads – the GLA roads. The network is defined in the GLA Roads Designation Order 2000 and the GLA Roads Designation (Amendment) Order 2000. SST continues to have responsibility for motorways and some other roads linking to the national network. The London Boroughs are the local highway authority for other roads in their areas. The Mayor has power under Section 14B of the Highways Act 1980 to make an order directing that a GLA road should become a borough road or a borough road should become a GLA road. In both cases, the borough affected must give consent. Where consent is refused, the SST will then decide whether or not to confirm the order, with or without modification.

1.8 This guidance supersedes *"Notes For The Guidance Of Inspectors Holding Inquiries Into Orders And Special Road Schemes"*, which is withdrawn.

PART 2 – ORDERS MADE UNDER THE HIGHWAYS ACT 1980 (INCLUDING COMPULSORY PURCHASE ORDERS)

2.1 Under the Highways Act 1980, the Government has a dual role for motorways and trunk roads (also referred to as the strategic road network) as both promoter of orders and as the decision-maker. The highway authority for motorways and trunk roads in England is the SST. The Highways Agency promotes schemes on behalf of the SofS at any Highways Act inquiry. The SST and the Secretary of State for Communities and Local Government, acting jointly, make the decisions after the inquiry. In Wales, the Welsh Ministers promote motorway and trunk road schemes and take the decision after the inquiry.

2.2 Decisions concerning the confirmation of orders made by local authorities under the Highways Act 1980, or other relevant Acts in

relation to roads, which are not motorways or trunk roads, are made by the SST or the WM.

The origins of Highways Act Orders

2.3 Orders are prepared by Government departments on behalf of the SofS, the WM or by local authorities. Those prepared by Government departments are published in draft and not made until all the statutory processes have been completed. Local highway authorities authorise the making of orders by council resolutions. The orders are then sealed by the local authority, but do not take effect unless and until confirmed by the SofS/WM. It is important to establish that the appropriate procedure has been followed. If a local authority order is submitted for consideration at an inquiry in draft rather than in made form, the matter needs to be raised by the Inspector immediately with the Planning Inspectorate. Each order depends on a section or sections of the Highways Act 1980 and (in relation to Compulsory Purchase Orders), the Acquisition of Land Act 1981. In some cases, these sections specify criteria against which the order needs to be considered. Inquiries normally become necessary because of unresolved objections to a published order. Schedules to these Acts and regulations made under the Acts set out the procedures for making or confirming orders and the circumstances in which a public inquiry is to be held.

The statutory basis for inquiries into Highways Act Orders

2.4 Schedule 1 to the Highways Act 1980 and Section 5 of the Acquisition of Land Act 1981 give the SofS and the WM power to hold inquiries in relation to matters arising under those Acts. Section 13 of the Acquisition of Land Act (in regard to local authority orders) and Schedule 1, Paragraph 4 to that Act (as amended by the Planning and Compulsory Purchase Act 2004) (in regard to the SofS's and WM's draft orders) prescribe the circumstances where an inquiry or hearing is required in relation to a CPO.

2.5 The purposes for which orders or schemes are prepared under the various powers contained in the Highways Act include the following:

i. Section 10 – to direct that any highway, or any highway proposed to be constructed by the SST, should become or should cease to be a trunk road;

ii. Section 14 – to stop up, divert, improve, alter or construct a side road to a trunk road or classified road;

iii. Section 16 – to authorise the provision of a special road;

iv. Section 18 – to stop up, divert, improve, alter or construct a side road to a special road;

v. Section 106 – to construct a highway by means of a bridge over or a tunnel under any navigable waters;

vi. Section 108 – to divert any navigable watercourse where it is necessary or desirable to do so in connection with the construction, improvement or alteration of a highway, the provision of any new means of access from a highway or the provision of a maintenance compound (or a service area in relation to a special road);

vii. Section 124 – to stop up a private means of access to a highway;

viii. Sections 239 to 246 – to acquire land compulsorily (or, under section 250, to acquire rights over land) for highway purposes.

Section 248 of the Highways Act refers to the limited circumstances where land may be acquired, notwithstanding that it is not required immediately.

2.6 Useful information on Best Practice for Inquiries into Local Highway Proposals can be obtained via the Planning Portal website at http://www.planningportal.gov.uk/uploads/pins/highways_best_practice.pdf .

2.7 Inquiries into orders covered in this Guide are often expressed as being inquiries into objections or to hear representations and objections. However, the task of the Inspector is to inquire into the order in the light of the objections. Objectors at an inquiry may seek to show that the proposals of the promoter are ill conceived. If they do, and unless there are cogent reasons for adopting a different procedure, the promoting authority must explain its proposals and say why they are considered to fall within the provisions or tests contained within the Acts that authorise the making or confirmation of the order, and why they are considered to be expedient. This provides both the background against which the various objections can be considered and the basis on which a recommendation can be made on the orders.

2.8 Although inquiries are convened because of unresolved objections, the scope of the inquiry can be wider. For example, in the case of inquiries into CPOs, an Inspector is required not only to deal with the objections to the order, but must also be satisfied that:

- there is a compelling case for acquisition in the public interest;
- this justifies interfering with the human rights of those with an interest in the land affected;
- the acquiring authority has a clear idea of how it is intending to use the land it seeks to acquire;

- the acquiring authority can show that all necessary resources to carry out its plans are likely to be available within a reasonable timescale; and
- the scheme is unlikely to be blocked by any impediment to implementation.

2.9 These requirements are contained in ODPM Circular 06/2004 – *"Compulsory Purchase and the Crichel Down Rules"* - in relation to CPOs. (In Wales, see NAFWC Circular 14/2004 *"Revised Circular on Compulsory Purchase Orders"*.) The Rules and tests to which the circular refers are included for the convenience of local authorities and other statutory bodies, to whom they are commended. However, when reporting on a draft CPO promoted on behalf of the SofS, strictly speaking the guidance in Circular 06/2004 does not apply. Nevertheless, the same tests need to be met in relation to such a CPO because these tests are derived from statute, case law and the European Convention on Human Rights and therefore consideration should still be given to whether the tests are met.

2.10 Circular 06/2004 contains a number of helpful Appendices, providing information about the particular considerations which apply to CPOs prepared under certain specific authorising powers; about procedural issues; and about documents which should be submitted with an order. In particular, Appendix L concerns special kinds of land afforded additional protection against compulsory acquisition under Part III of the Acquisition of Land Act 1981. It is important to establish at an early stage whether any such land is affected by a CPO coming before a forthcoming inquiry. For example, whether there is any land within the CPO to which Section 19 of the Acquisition of Land Act (a common, open space, fuel or field allotment) applies. Such land may be compulsorily purchased when authorised by Special Parliamentary Procedure or when the relevant Secretary of State is satisfied either that other land, equally beneficial, would be given in exchange for such land or that the giving of exchange land is unnecessary. Section 19 (and Schedule 3 of the same Act) provides details. If the SofS is prepared to certify his satisfaction with the giving of exchange land then NPCU[2] (the National Planning Casework Unit) will issue a Notice of Intention to issue such a certificate. If this gives rise to objections, a Public Inquiry may be held. Therefore, the Inspector will need to know whether a certificate has been applied for or obtained from the SofS regarding the provision of appropriate exchange land. Often such an application will be referred by the SofS to the same inquiry, and the Inspector will then have to consider and report on the adequacy of the proposed exchange land at the same time as reporting on the CPO. But the lack of a Certificate is not fatal to a CPO in such circumstances, since it would remain open to the promoter to pursue Special Parliamentary Procedure (section 3, appendix L, Circular 06/2004).

[2] CPO Letter of 11 April 2012

2.11 When considering the amount of land incorporated in the order, the Inspector should give due regard not only to the area of land, but also to the estate or interest proposed to be taken in it. For example, it may well be argued that an order providing for the acquisition of title to the land is excessive because all that is required is for a right to be created under Section 250 of the Highways Act and for that right to be acquired under the CPO.

2.12 On occasion the circumstances identified in Section 13A(2) of (or Paragraph 4A(2) of Schedule 1 to) the Acquisition of Land Act 1981 may arise and the Written Representations Procedure may be used. The Compulsory Purchase of Land (Written Representations Procedure) (Ministers) Regulations 2004 will apply in such cases. The Regulations are straightforward.

Inquiries procedure

2.13 All inquiries concerned with orders and schemes proposed to be made under the Highways Act 1980 are subject to inquiries procedure rules. The current rules of procedure under this Act are:

- The Highways (Inquiries Procedure) Rules 1994 - Statutory Instrument 1994 No 3263 - which apply to inquiries concerned with orders either:
    - proposed to be made by the SofS/WM, or
    - made by a local highway authority and submitted to the SofS/WM for confirmation.

Inquiries considering Compulsory Purchase Orders made under the Highways Act and the Acquisition of Land Act are subject to further Rules, namely:

- In England, in relation to a CPO which is the subject of a public local inquiry of which written notice was given on or after 29 January 2008, the Compulsory Purchase (Inquiries Procedure) Rules 2007 – Statutory Instrument 2007 No 3617 - which apply to CPOs whether published in draft by the SofS or made by a local authority and submitted to the SofS for confirmation.
- In Wales, in relation to a CPO which is the subject of a public local inquiry of which written notice was given on or after 31 January 2011, the Compulsory Purchase (Inquiries Procedure) (Wales) Rules 2010 – Statutory Instrument 2010 No. 3015.
- In Wales in relation to a CPO which is the subject of a public local inquiry of which written notice was given before 31 January 2011 or in England in relation to a CPO which is the subject of a public local inquiry of which written notice was given before 29 January 2008,
    - the Compulsory Purchase by Ministers (Inquiries Procedure) Rules 1994 - Statutory Instrument 1994 No

3264 - which apply to CPOs published in draft by the SofS/WM, or

- the Compulsory Purchase by Non-Ministerial Acquiring Authorities (Inquiries Procedure) Rules 1990 - Statutory Instrument 1990 No 512 - which apply to CPOs made by local authorities and submitted to the SofS/WM for confirmation.

2.14 The various sets of Rules make fairly standard arrangements for the service of statements of case, the organisation of Pre Inquiry Meetings, service of statements of evidence and summaries, procedure at the inquiry, site inspections and procedure after the inquiry. The detailed differences between the Rules and the time limits they impose need to be studied. The main differences are analysed in DCLG Circular 01/2008.

2.15 One point to note particularly is that, under the 1994 Rules and the 2007 Rules, a Pre Inquiry Meeting called by an Inspector requires 3 weeks' notice, just like a PIM called by the SofS. Under the 1990 Rules, however, only 2 weeks' notice of an Inspector's PIM need be given. It should also be noted that the normal practice followed in relation to Highways Act orders is that the SofS does not cause a PIM to be held. Unless it is made plain that a PIM has been called by the SofS, any PIM held will be one which is to be regarded as having been convened at the instance of the Inspector. (PIMs are dealt with in more detail at paragraph 2.20 below and in Appendix A.)

2.16 The Highways (Inquiries Procedure) Rules contain certain differences from the procedure under the Inquiries Procedure Rules, which apply to Section 78 planning appeal cases. These are that:

i. there are differences in some of the time limits (statements of evidence three weeks before the inquiry rather than four);

ii. there is no provision for a statement of matters to be issued by the SofS;

iii. there is no provision for exchanging comments on the statements of case;

iv. there is no reference to the preparation of a statement of common ground (though that does not mean that this can not be encouraged by the Inspector);

v. there is no requirement for the Inspector to list the main issues at the outset of the inquiry (though there is nothing to prevent him or her from doing so); and

vi. there is no express requirement for closings to be provided in writing (though there is nothing to stop the Inspector asking for this at the PIM).

2.17 Sometimes the complex of Orders and matters before an inquiry means that a variety of different procedural rules applies. For example, a significant planning appeal under Section 78 or 77 of the Town and Country Planning Act may involve added Road Orders, or there may be an associated Transport and Works Act Order. Where this occurs, there may be conflict between the different provisions of the different sets of Rules. In that situation, it is normal to secure agreement at a PIM on which Rules will apply. This is also the line taken when the matters before the inquiry include, for example, a Harbour Order, for which there are no procedural rules. Very often, it is agreed that the Highways Procedure Rules will apply; but, if the planning applications on appeal represent a significant element of the matters under consideration, it may be appropriate to secure agreement that the Town and Country Planning (Inquiries Procedure) (England) Rules 2000 or the Town and Country Planning (Inquiries Procedure) (Wales) Rules 2003 (as appropriate) are followed at the inquiry.

2.18 In rare cases, the SofS may apply the Town and Country Planning (Major Infrastructure Project Inquiries Procedure) (England) Rules 2005 to the proceedings. This can only be done by the SofS under Section 76A of the Town and Country Planning Act 1990, but those Rules would then apply to any such inquiry.

Preparing for an inquiry

2.19 Inquiries into orders under the Highways Act 1980 can sometimes run for many days. The promoting authority is responsible for the inquiry arrangements, such as the venue and the setting out of the inquiry room, unless otherwise agreed with the Planning Inspectorate. For longer inquiries, however, the Inspector may have a Programme Officer, one of whose duties will be to liaise with the parties on the inquiry arrangements.

2.20 Before larger inquiries (generally those expected to last two weeks or more, or those with a large number of objectors proposing to appear) it is often convenient to arrange a pre-inquiry meeting to deal with preliminary matters such as the timing of the submission of statements of evidence, the production of particular information required by the Inspector, clarification of the procedures for the inquiry itself and the making of a start on the programme of appearances. Appendix A to these notes contains guidance on the arrangements to be made for a PIM.

2.21 The inquiries procedure rules for planning appeals require planning authorities and applicants to prepare and submit an agreed statement of common ground four weeks before the date fixed for the inquiry. Whilst, as noted at paragraph 2.16 above, there is no equivalent requirement in the procedure rules for highways inquiries, it is

nonetheless helpful if parties are able to agree factual information about the proposal and background environmental and other data before the inquiry. The inclusion of this data in mutually agreed statements, probably as core documents of the inquiry, can result in shorter statements of evidence and a shorter inquiry.

2.22 How such agreement is reached will vary depending on the nature and complexity of the proposal and the matters at issue. Where there are only two or three major parties involved and the issues are fairly straightforward, the Inspector might simply encourage the parties at the PIM to get together with a view to producing a statement of agreed facts. For major inquiries, however, a more formal arrangement may be necessary, particularly where several parties are expected to bring evidence of a technical nature to the inquiry. It is also helpful if the parties are asked to set out in such a common ground document, a list of the issues on which they differ. The provision of such statements at the earliest possible stage of preparation for the inquiry enables the time available before the inquiry to be spent concentrating on the matters in dispute between the parties.

2.23 An approach which has proved useful in some major inquiries is to set up 'Joint Data Groups' in advance of the inquiry opening. These are small working groups, on which all parties to the inquiry are represented, which would be set the task of assembling and agreeing baseline data relevant to a particular area of the inquiry, e.g. noise, traffic or ecology. In particularly complex cases it may also be appropriate to set up a Joint Working Party, chaired by an Inspector or an Assistant or Deputy Inspector, to co-ordinate and monitor the work of the individual Joint Data Groups. Inspectors considering setting up Joint Data Groups and/or a Joint Working Party are advised to contact the Planning Inspectorate for further advice.

2.24 One of the issues which might be raised at a PIM, is whether a transcript of the inquiry will be provided. In England, a transcript service may be arranged by the Highways Agency for motorway and trunk road inquiries which are expected to last for more than 16 sitting days. For other cases, transcripts may be allowed at the Inspector's discretion. Transcripts are not normally provided in Wales.

2.25 Normally, a Programme Officer will be required for an inquiry for which a PIM is necessary. The Programme Officer should be present at the PIM so that he or she can start work on programming and inquiry arrangements. In essence the Programme Officer's role is, on behalf of the Inspector and with his/her approval, to:

a) establish appropriate filing systems;
b) set up and maintain the Inquiry library and the Inquiry website, if there is one;
c) set up and use the Inquiry database;
d) liaise with all parties to the Inquiry;
e) prepare and manage the Inquiry programme;
f) organise the PIM;

g) receive and record all documents submitted to the Inquiry;
h) chase up any late documents within the set deadlines;
i) manage the use of the Inquiry venue;
j) notify respondents of the close of the Inquiry; and
k) arrange hand-over of any relevant issues to the Promoter following the close of the Inquiry.

The Orders before the Inspector

2.26 The Inspector should always bear in mind what he or she has been appointed to inquire into and therefore upon what he or she is required to make recommendations. The Inspector should be careful to confine his or her consideration to matters within the scope of the inquiry and resist broadening that consideration into matters that are not directly involved in the orders.

Policy, design standards etc

2.27 The merits and foundations of policies, methodologies, design standards and economic assumptions adopted by the Government are not matters for argument at an individual inquiry. Any argument about them should take place generally and at national level. This is clear Government policy from a Ministerial statement made in the House of Lords on 25 February 1976 (Appendix B to these Notes), and that approach is supported by the judgement of the House of Lords in the case of *Bushell and Another v SoS for Environment [1980] 2 All ER 608*. (An extract from the judgement of Lord Diplock is attached as Appendix C).

2.28 In general terms, the policy issues which are not matters for debate at inquiries are:

- the allocation of resources to each of the different transport modes;
- the combination of investment, subsidy, taxation and regulation by means of which the Government seeks to create the most efficient transport system;
- the general assumptions that Government makes about the availability and price of fuels and other economic factors which influence traffic growth;
- the objectives of the Government Road Programme; and
- the general methodologies and the adoption of design standards used in the preparation of schemes and orders - as opposed to their application to particular schemes and orders.

2.29 Objectors may express disagreement with Government policy, or contend that, for example, Government assumptions on the future level of traffic or the cost of travel are based on outdated information, but there is little point in permitting such disagreement to be

pursued. The Inspector's duty is confined to noting the objection and seeing that it does not take up too much inquiry time or distract attention from the main issues. If an objector is determined to pursue objections to general policy beyond reasonable limits he or she should be advised to submit his or her views in writing, either to the Inspector, who will enclose the document with his or her report, or directly to the SofS/WM.

2.30 Inspectors have to distinguish between those objections which challenge Government policy and those which question the need for the specific proposal. Argument as to whether or not a particular proposal conforms with, or is needed for the implementation of, Government policy is a matter for the inquiry and should be given careful attention by the Inspector.

2.31 Similarly, the fact that arguments concerning the methodologies and design standards adopted by the Government are out of place at an inquiry does not imply that their application to any particular proposal is immune from being thoroughly tested. Thus, whilst Government or local highway authority witnesses should not be expected to defend or justify national forecasts and general design standards, they are expected to be able to justify the way in which they have been applied to the case at issue and to justify their traffic predictions and assignments.

Compensation and hardship

2.32 If anyone wishes to object to a CPO on the grounds of hardship and/or inadequate compensation (as distinct from land use), it should be remembered that whilst hardship which cannot be met by compensation is always a relevant consideration, the Acquisition of Land Act 1981 (Schedule 1 Paragraph 4(4)) provides that the SofS or WM may disregard objections which relate to matters which can be dealt with by the Lands Tribunal, by whom compensation is assessed. Since the assessment of compensation is not a matter for the SofS/WM, the Inspector should neither hear evidence about the calculation of compensation nor seek the disclosure of expected levels of compensation. Authorities are nevertheless normally expected to be able to give the estimated costs of a scheme as a whole, and should do so to a specific valuation date, which should be mentioned in the Inspector's report.

Reopening decided issues

2.33 Objectors should not be allowed to seek to use the inquiry to reopen issues which have already been decided by a proper planning process. Thus, in the case of an inquiry into supplementary or variation orders, the Inspector should never permit the reopening of matters upon which a decision has already

been made after a previous inquiry. For example, an inquiry into objections to a supplementary proposal to build an interchange on a new road, the line of which has already been fixed after a previous inquiry, does not provide an opportunity for the question of the line of the new road to be re-opened. Any representation made in writing in such regard should simply be accepted and attached to the Inspector's report.

2.34 If a Line Order has been approved, and the inquiry concerns a consequential CPO, an objection challenging the need for the road or based on changing the line would not be heard. A CPO where planning permission for the road has been granted after the precise route has been included in an adopted Development Plan would similarly not give rise to reconsideration of the need for the road. If anyone is determined to make submissions or present such evidence, he or she should be invited to do so in the form of a written submission, which the Inspector can attach to the report.

2.35 If the Development Plan does not fix a specific route, but merely safeguards a swathe of land, however, there would be scope for objections to the precise line put forward within the safeguarded area of land; but not for objections concerning the need for the road. There could clearly also be objections to any proposal to a proposed alignment which falls outside the safeguarded area. Where planning permission alone has been granted, this indicates that the LPA consider that the road is an acceptable use of the land concerned; but in those circumstances, objections challenging the need for the road or the particular line would not be ruled out.

2.36 The development control provisions of the Town and Country Planning Act 1990 apply to the Crown. However, schemes put forward by the SofS in exercise of functions under the Highways Act 1980 are permitted development by reason of Class B of Part 13 of the Town and Country Planning (General Permitted Development) Order 1995 (amended by the Town and Country Planning (Applications of Subordinate legislation to the Crown) Order 2006 - SI 2006 No 1282). Work proposed by a local highway authority on land within the existing boundary of a road which would be carried out to maintain or improve the road, is permitted development under Class A of Part 13, as is work incidental to the maintenance or improvement of a highway on land outside but adjoining the existing boundary of the highway.

Challenge to the validity of the inquiry

2.37 If there is a challenge at the opening of the inquiry to the validity of the inquiry because of an alleged failure to comply with statutory requirements, the Inspector should hear the views of all parties. Unless the interests of any of the parties have been seriously prejudiced, the Inspector should endeavour to carry on with the

inquiry even if there is an admitted defect. Further reference is made to related issues at paragraph 2.63 below.

The tests for making or confirmation of the order

2.38 An Inspector must take account of all arguments relevant to the particular order before him or her. However, the Inspector will be concerned mainly with any tests for the making or confirmation of the order set out in the authorising legislation, with the justification for the order, and the likely environmental, social and economic effects of the particular proposals in the context of balancing the case for the promoter with those of the objectors. The main tests which apply to each type of order dealt with in these notes are set out in Appendix D.

2.39 It is for the Inspector to decide how much argument to hear about what, in his or her opinion, is unrelated to the vital issues. If the admission of evidence or argument is challenged and the Inspector is in any doubt about it, the best course is to admit the evidence or argument in question. The Inspector should say that the matter will be reported to the SofS/WM, together with the Inspector's own opinion, so that the SofS/WM can decide whether or not to take it into account when reaching a decision.

Consideration of suggested modifications and alternative proposals

2.40 In relation to modifications, the promoters themselves as well as objectors often seek detailed modifications to the order as submitted. These should be introduced at the earliest opportunity and presented in writing as a formal draft modification, so that everybody concerned can see and understand exactly what is being proposed.

2.41 Schedule 1 Part 1 and Part II to the Highways Act 1980 gives the SofS/WM the power to modify an order before it is made or confirmed, but if the SofS/WM wishes to do so, paragraph 8(3) (for orders) and paragraph 15(3) (for schemes) of that Schedule provide that, where it is proposed to exercise this power in such a way as to make a substantial change to the order, any person likely to be affected by the proposed modifications must first be given the opportunity to make representations.

2.42 The re-routeing of the whole or a substantial part of a scheme would go beyond what could reasonably be considered as a modification for the purposes of paragraph 8(3) or paragraph 15(3). This is ultimately for the SofS/WM to decide, but could result in the need for the publication of entirely new orders by the promoter where substantial modifications are involved.

2.43 Either way, the Inspector will need to obtain all the necessary information about any suggested modification or alternative proposal so that when the SofS/WM comes to make the decision all the relevant factors are known.

2.44 Whilst a CPO can be modified by the deletion of part of the land it covers or by the downgrading of the interest in the land proposed to be acquired (as referred to in paragraph 2.11 above), the order cannot be modified to authorise the purchase of further land or a greater interest in land unless all persons interested in the plot of land concerned give their consent (see Schedule 1, Paragraph 5 of the Acquisition of Land Act 1981 for orders published by the SofS/WM and Section 14 for local authority orders). If it is requested at the inquiry that land should be added to the CPO, the unequivocal written agreement of all persons with an interest in the land must be provided for the Inspector and copies should be enclosed with the Inspector's report.

2.45 Where an objector intends to submit at a local inquiry that the proposed highway should follow an alternative route, there are powers in Section 258(2) of, and Schedule 1 Paragraph 19 to, the Highways Act 1980 that allow the SofS/WM to give notice to that objector (or by the notice announcing the holding of the Inquiry or hearing) that he shall submit sufficient information about the proposed alternative route to enable it to be identified. Under these provisions in the Highways Act this information must be supplied within a period specified by the SofS/WM of not less than 14 days, provided this is not less than 14 days before the date fixed for the start of the inquiry. Providing an objector has supplied the necessary information prior to the expiry of the specified period, the objector should be regarded as having complied with the notice.

2.46 If an objector has failed to comply with such a notice, under the provisions of Paragraph 19(2) of Schedule 1 to the Highways Act 1980, the Inspector and the SofS/WM may disregard that objection in so far as it relates to proposed alternative route. Nevertheless, in deciding on a course of action, the Inspector should be guided by the principle that he or she should hear anything relevant which is going to enable the right decision to be reached. On the other hand, the late submission of the details of the alternative proposal could leave insufficient time for the promoters and others to give them their due consideration. Even more importantly, it could leave insufficient time for adequate notice of the alternative proposal to be given to those who would be affected by it.

2.47 Under the Inquiries Procedure Rules, it is not incumbent upon the promoters or anyone else to notify those who would be affected by suggested alternatives to proposed routes. However, in the interests of natural justice it is considered that such people should be notified if possible, and if there appears to be real substance in the alternative proposals being put forward.

2.48 If an Inspector is faced with a late submission about an alternative to the proposal, he or she should first consider whether it has substance, and only reject it immediately if it patently has not. The Inspector should ask if the persons who would be affected have been notified and, if not, should ask the promoters and any other interested parties at the inquiry for their views on the matter. The

Inspector will then have to use his or her judgement as to what is the best course of action to take, bearing in mind the considerations outlined in paragraph 2.46 above.

2.49 If the Inspector decides that the case for the alternative proposal should be heard despite its lateness, it might be possible during a long inquiry to postpone the hearing of the case for that alternative until such time as the people who would be affected by it have been notified and given time to prepare any counter-objections. Alternatively, the Inspector might find it necessary to adjourn the inquiry for a time to enable those affected to be given notice and time to prepare.

2.50 It is not the role of the Inspector to make a recommendation in favour of an alternative proposal. However, the Inspector must understand any alternatives proposed sufficiently well to be able to decide whether they appear to be worth further investigation. An important factor in such decisions will be whether or not the alternative would overcome or sufficiently mitigate some deficiency in the Order proposal that would otherwise render it incapable of passing the statutory tests. Should he or she come to the conclusion that an alternative proposal before the inquiry warrants further investigation as compared with the order proposal, it would clearly not be logical to recommend the making or confirmation of the orders.

2.51 When an alternative route is considered at an inquiry, the promoters should produce an evaluation of the merits and practicability of the alternative proposed, whether it would meet the aims and objectives set for the original scheme, taking into account its comparative impacts on the environment and adjoining owners, and comparative costs. When considering comparative costs, there will usually be an assessment of the cost of the delay, which would follow from considering an alternative scheme. An alternative would no doubt require detailed design work, followed in all probability by the preparation of new orders and the holding of a new inquiry. The assessed cost of delay is therefore often very substantial. In *Smith & Others v SoS for Transport and Barnsley MBC (1995 QBCOF 95/1433 – 4D)* the Court of Appeal held that delay and its costs could be a material consideration to be weighed along with all others in considering whether an alternative should be further considered, but that except in special circumstances it should not be regarded as an overriding and decisive factor. Decisions should be based upon what is appropriate in the public interest, and therefore all relevant factors should be taken into account.

Accommodation works

2.52 Anyone affected by an order may put to the Inspector the nature and extent of the accommodation works which the affected person would expect to be carried out if a road proposal were to be implemented. He or she should be allowed to do so, because what is said could have a bearing on whether what is proposed in the order before the

inquiry should proceed, with or without modification. However, the detail of the extent of the accommodation works is one of the factors taken into account in the calculation of the compensation payable when a proposal is approved. The precise details of the accommodation works are matters for the promoter of the order and the landowner concerned, and should not therefore be included in the Inspector's conclusions or recommendations. The Inspector should take care to avoid conclusions and recommendations in his or her report which would appear to usurp the functions of the Lands Tribunal.

The inquiry

2.53 For the most part, inquiries into the orders covered by these notes follow the same pattern as other public local inquiries. These notes therefore address only points of difference from other public inquiries arising from special considerations attaching to these orders.

Programming the inquiry

2.54 For larger inquiries, a Programme Officer will be appointed and it will be his or her responsibility, under the guidance of the Inspector, to draw up a provisional programme for the inquiry. As the inquiry proceeds, the Programme Officer should maintain a more detailed day-by-day and week-by-week rolling programme in consultation with the parties concerned and under the general direction of the Inspector. The programme should be displayed on an inquiry notice board and be accessible to the public. The parties should be told at the PIM and/or at the opening of the inquiry that it is their responsibility to keep in touch with the Programme Officer about the inquiry programme.

2.55 As a general rule, public bodies either supporting or objecting to the proposals should if possible be programmed to be heard before individual supporters or objectors, so that the latter know where such public bodies stand in relation to the proposals before they (the individuals) are called upon to present their own cases.

2.56 Most parties cannot spare the time to attend the whole of a long inquiry, and many attend only during the presentation of the promoter's and their own cases. Whilst there is no obligation on an Inspector to keep them informed, it is good practice to ask the Programme Officer to contact parties whose interests are likely to be seriously affected by evidence which might otherwise be given in their absence. In more major public inquiries, it is normal to maintain a web site, providing daily updated information on the progress of the inquiry and its forward programme. If a transcript of the inquiry is being prepared, this can also be made available on the web site.

Objections not previously notified

2.57 Anyone objecting to the proposal who failed to give notice of their objection within the statutory period or anyone else who comes along wishing to make representations at the inquiry will normally be programmed to speak after the statutory objectors have been heard, provided they have something relevant and not unduly repetitive to say.

Opening the inquiry

2.58 The Inspector's opening announcements at the inquiry should contain the following basic elements, expanded as necessary:

i) the Inspector's name and qualifications and those of any Assistant Inspector and/or Assessor;

ii) reference to the title of the scheme and/or order with which the inquiry is concerned;

iii) that the Inspector is appointed to hold the inquiry by the SST/SSCLG/WM or whichever other SofS or other body (see Sections 4 and 5 below) is listed on the Inspector's appointment to hear the case;

iv) taking a note of those who wish to appear at the inquiry;

v) that the inquiry is necessary because objections to the scheme and/or order have been received and not withdrawn;

vi) that within his or her discretion the Inspector will hear all relevant objections and representations;

vii) that the Inspector will be submitting to the SofS/WM a report on the gist of the evidence and submissions heard at the inquiry, and the written representations received, together with his or her conclusions and recommendations;

viii) that the SofS/WM will consider the Inspector's report together with all the written objections and representations received and will then issue a decision on the matter which is the subject of the inquiry;

ix) that the Inspector cannot settle points of law but that he or she will include in the report the gist of any legal submissions made;

x) that Government policies, and the methodologies, design standards and economic assumptions adopted by the Government are not for debate at the inquiry, but their application to the proposals before the inquiry may be relevant;

xi) that the Inspector cannot deal with the assessment of compensation which will become a matter for negotiation between parties or, if agreement cannot be reached, for determination by the Lands Tribunal – if, but only if, the scheme and/or order is eventually made/confirmed;

xii) an outline of the procedure to be adopted (see Appendices E and F), referring to any procedural matters settled at any PIM;

xiii) a statement to the effect that the Inspector has already made an unaccompanied inspection of the site and/or route of the proposal (insofar he or she has been able to do so without venturing onto private land), and that if he or she deems it necessary or if any party to the inquiry requires it, he or she will be making an inspection of the site or route during the course of the inquiry or at the end of the inquiry, accompanied by representatives of the promoters, the objectors and/or other interested parties;

xiv) a request to the promoters that they will ensure that all the relevant plans are on public display and that (if no Programme Officer has been appointed to the inquiry) they will maintain a library during the course of the inquiry where at least one copy of every relevant inquiry document (including each statement of evidence, written statement and letter received) will be available for public scrutiny;

xv) an explanation of the role of any Programme Officer, Deputy Inspector, Assistant Inspector or Assessor, and a reminder that it is the responsibility of the parties to keep in touch with the Programme Officer;

xvi) a reference to the pre-inquiry meeting (or meetings) if held;

xvii) a request to the promoting authority for their confirmation that all the appropriate statutory formalities have been observed;

xviii) a request that everyone present should sign the attendance register on each day that they attend; and

xix) details of any domestic matters such as breaks in the morning and afternoon, lunch, sitting times and any health and safety announcements.

Absence of objectors or other parties

2.59 Apart from the promoters, who must of course attend to describe their proposals and explain their purpose, it is not necessary for any particular party to appear at the inquiry in order to make their views known, since all written objections and other representations are taken into account with the Inspector's report to the SofS/WM. The

failure of certain of the objectors and/or other parties to appear at the inquiry is thus no reason for not proceeding with the inquiry.

2.60 In the rare instances in which there is only one objector, who neither appears nor is represented at the inquiry, the Inspector should immediately adjourn the inquiry for long enough to enable enquiries to be made about the objector's whereabouts. The Programme Officer or a representative of the promoters should be instructed to find out by the quickest means possible whether the objector intends to appear or to be represented. If so, arrangements should be made to await the objector's arrival and then to proceed with the inquiry in the usual way. If not, the promoters should be invited to state their case and to reply to the written objection. Any other people present who wish to be heard, should be heard and the inquiry should then be closed.

2.61 In the case of a CPO or similar inquiry where the Inspector is told that the sole outstanding objection has been withdrawn, the inquiry should still be opened in the usual way, bearing in mind that the inquiry is into the order itself and not merely the objection.

Legal submissions

2.62 Only the Courts can interpret the law authoritatively. Legal submissions made at the inquiry should be recorded in the Inspector's report. The SofS/WM will take a view on the relevance of the legal submission as it relates to the order when reaching a decision on it, but the Inspector should address this issue in his or her conclusions.

2.63 Submissions which challenge the legality of the inquiry or the validity of the scheme and/or order are sometimes made at inquiries. Such matters are usually not for the Inspector to resolve and therefore he or she should confine himself or herself to hearing (and later reporting on) the arguments put. The inquiry should proceed unless, of course, such submissions result in the promoters withdrawing their proposal or requesting an adjournment in order to deal with the matter raised. In the latter case the Inspector will be required to consider and rule on the request. Anyone who is not prepared to accept that this action on the part of the Inspector is all that can be done should be told that it is open to them to consult their own advisers as to whether any remedy is available. However, if all parties agree that the order has been inappropriately published it would not be sensible to continue with the inquiry. In that case, the inquiry should be closed and a report made to the SofS/WM explaining the circumstances and giving the reasons why no further progress could be made on the order.

2.64 Whenever legal arguments are put, it is often helpful to obtain these in writing, although this may not be feasible at a short inquiry. Legal submissions, particularly long ones, which can be reduced to writing undoubtedly save inquiry time and help to reduce the possibility of

error in recording them. Any documentation of this kind should accompany the Inspector's report.

Procedural submissions

2.65 Submissions concerned with the procedure to be adopted at an inquiry are very much the concern of the Inspector and are usually made on the opening day of the inquiry (or at a PIM if one has been held), though they may occur at any stage during the proceedings. The views of all concerned should be heard before matters are resolved. The Inspector may well find it useful to adjourn for a short while to consider his or her answer, or to postpone an answer until some specified future date, so as to have adequate time to give the matter the consideration it deserves without delaying the inquiry. In making his or her decision, the Inspector may exercise discretion as to the procedure to be adopted, except where the inquiries procedure rules make specific provision in this regard. Otherwise, the Inspector alone is in control of the inquiry and makes all decisions on procedure.

2.66 Procedural matters at an inquiry or PIM can be resolved by making a formal ruling, but every effort should be made to try to reach agreement first. If procedural matters have been raised at the PIM, it is advisable for the Inspector to mention any agreed procedural points at the opening of the inquiry, so as to give anyone who was not present at the PIM an opportunity to comment. Without their agreement they would not be bound by decisions made at the PIM.

Requests for adjournment

2.67 Requests for the adjournment of inquiries should normally be resisted unless there are compelling reasons for acceding to them. Adjournments result in inconvenience and delay and can be costly - often for a considerable number of people. The late receipt of critical evidence may justify an adjournment if another party's case might be prejudiced by the fact that it has not been possible to consider the evidence concerned. If an adjournment proves unavoidable, it should be announced at the first possible opportunity. Before the adjournment actually takes place, the time, date and place of the resumption must be announced. The Planning Inspectorate should be notified of any adjournment lasting more than a day.

2.68 Adjournments without setting a date for resumption (*sine die)* should not be contemplated except in extreme circumstances. Even if there is doubt as to whether the inquiry will have to be continued after the adjournment, a date should be set. In the very rare and unavoidable event of it not being possible to announce the time, date and place of the resumption, the Inspector should announce how the parties and others present at the inquiry are to be notified when the arrangements for the resumption have been completed. For example, with the promoting authority's agreement, the Inspector might announce that they would write to everyone who has appeared

at the inquiry or submitted written representations and anyone else present who leaves their address with the Programme Officer.

Evening sessions

2.69 Public inquiries should normally be conducted during morning and afternoon sittings in the manner of most other public tribunals. Occasional evening sessions for a specific purpose can prove useful, but they should be considered as exceptions. Statutory objectors are entitled to appear at an inquiry, but even they should be required to demonstrate the necessity of an evening session before one is agreed to hear their case. If an evening session is held, it should be towards the end of the inquiry when all other opportunities for hearing an objection have been exhausted. The Programme Officer should collect in advance a list of those wishing to speak together with a brief outline of the points they wish to make. An evening session should be held in lieu of, not in addition to, one of the earlier sessions in the day.

Withdrawn objections, conditionally withdrawn objections and counter objections

2.70 It is not the job of the Inspector to include information in his or her report to the SofS/WM which is peripheral or irrelevant to the issues in dispute. For example, if an objection is withdrawn before an inquiry opens or during the course of the inquiry, then it would be sufficient to report the fact that it was withdrawn. Usually, no further probing or questioning by the parties should be allowed, neither should the Inspector seek to reintroduce matters covered in the withdrawn objections. However, exceptions to this general rule may be appropriate where the withdrawn objection touched upon issues central to the consideration of the scheme, or raised a matter of national importance, but where the objector felt unable to pursue the objections because he or she was unavailable or unwilling to appear at the inquiry.

2.71 Participants may state at the inquiry that they would be willing to withdraw their objection if particular provisions were made in (say) a Works Agreement. The Inspector might accept this and recommend confirmation of the orders. However, if the objection is not formally withdrawn, this can leave the SofS/WM with a problem. The Inspector should therefore seek to obtain confirmation of the conclusion of a Works Agreement and a formal withdrawal of the objection. This is particularly the case if there is an outstanding objection from a statutory undertaker. Where such an objection is not formally withdrawn, the order may be subject to Special Parliamentary Procedure, with complex and time-consuming consequences. It is therefore important that Inspectors should obtain all possible information about such objections. This may, exceptionally, justify adjourning the inquiry for a short period whilst the statutory undertaker is contacted, so that a full explanation of the objection and its consequences may be sought.

2.72 Whether or not the matter is resolved at the inquiry, the Inspector must deal conclusively with all objections unless the objector has given a written statement withdrawing the objection clearly and unconditionally. Objections should not be considered to be withdrawn until the inspector receives written confirmation. The recommendation in the Inspector's report should not be based on the assumption that that any objection will be withdrawn. The substance of all outstanding objections must be covered explicitly in the Inspector's report and conclusions.

2.73 If, after investigation, there is an outstanding 'holding' or 'technical' objection by a statutory undertaker, the Inspector's report should state clearly how much weight should be attached to the objection and why, making explicit whether the land involved is crucial to the scheme. The report can then take this conclusion into account in the final recommendation.

2.74 There may also be counter-objectors who, whilst supporting the scheme as originally proposed, would object to the provisions set out in any proposed agreement or modification which would satisfy the original objector. It may be difficult to gather evidence on this point, particularly where the suggestion of an agreement or modification only arises during the course of an inquiry, and the supporters of the scheme may be unaware of the potential implications if they are not in attendance. However, the Inspector should, as far as is reasonably practical, ensure that no-one's interests would be prejudiced by any suggested agreement or modification. If there is a potential conflict of interests, this should be taken into account in the conclusions section of the report and brought to the attention of the SofS/WM.

The parties

2.75 Apart from the promoters, there may be many different parties presenting a variety of different interests and viewpoints at an inquiry. Such parties will normally fall into one or other of three basic categories, as follows.

i. Those who support the proposal.

ii. Those who object to it, including those who, in doing so, put forward one or more alternative proposals which they consider to be better than the one which is the subject of the inquiry.

iii. Those, known as counter-objectors, who oppose such alternative proposals.

The normal sequence of events

2.76 The normal sequence for any case presented by an advocate with a single witness consists of:

i. an opening statement by the advocate;

ii. the evidence-in-chief of the witness (which normally includes the reading of a statement or summary of evidence);

iii. the cross-examination of the witness by each of the parties entitled so to do, and others at the discretion of the Inspector;

iv. re-examination of the witness by the advocate;

v. the Inspector's questions, if any, of the witness; and

vi. a closing submission by the advocate.

2.77 When more than one witness is called, each is taken through the same sequence as the first witness (i.e. stages ii – v above) before the advocate makes his or her closing submission. The closing submission may well not be made until other parties' cases have been heard.

An unrepresented person

2.78 When an unrepresented person appears, he or she usually acts as both advocate and witness, but the same principles apply. To avoid confusion between his or her two roles, the person should be asked to give evidence and answer questions from the witness table. If the person is an objector, the opening and closing statements should be made from the objectors' table and any cross-examination of the promoter's witnesses should be conducted from that position. If the person merely wants to make a statement and is not offering himself or herself for cross-examination, he or she should be asked to submit it in writing.

Order of presentation of cases

2.79 Subject to compliance with any requirement of a specific set of Procedure Rules, in order that everyone with an interest in the matter can be fully apprised of what is involved right from the start, the case for the promoters should normally be presented first, and whenever possible this should be directly followed by the cases of those who support it. The cases of the objectors should follow, and these in turn should be followed by those of the counter-objectors. The promoters have the right to a final reply. The full sequence of events for simpler and for more complex inquiries is set out in Appendices E and F to these notes. The procedure for more complex inquiries is to be used where there is a significant number of witnesses for the promoter and/or when there is a significant number of supporters or objectors who wish to be heard at the inquiry. Normally, in that situation, many parties will only attend the inquiry to hear the case of the promoters and to present their own support or objection. Discussion on the most appropriate procedure to follow could take place at the PIM, and Inspectors may ask parties if they intend to attend the whole of the inquiry to inform this decision. If it appears likely that parties wish to attend

throughout the inquiry, it may be helpful to opt for the simple procedure, since no advantage would be gained (in terms of facilitating non-attendance at the inquiry) by using the more complex procedure.

2.80 Sometimes, it is convenient in a long inquiry to hear all the evidence from all parties on a particular topic on one day or in one week of the inquiry. This can be particularly helpful where an expert Assessor is sitting to assist in connection with a single topic or a limited range of topics. In that situation, topic based sessions can reduce the proportion of the inquiry for which the Assessor's attendance is required. The basic procedure can be readily adapted to allow this approach to be followed.

Questions of clarification

2.81 The more complex procedure set out in Appendix F provides an opportunity for questions of clarification to be put to witnesses for the promoters at the time at which they give their evidence in chief. Sometimes there is a fine line between questions of clarification and the cross examination of witnesses. Usually, a question of clarification should be addressed to a specific paragraph in a statement or summary of evidence – if it is not, the question is probably more appropriate to the objector's main case and should be pursued through cross examination.

2.82 Sometimes the number of objectors who wish to ask questions of clarification makes the practice unmanageable. If this seems likely the Inspector should consider adopting other means to assist objectors in understanding the evidence. If arrangements can be made at the PIM for statements of evidence to be produced four weeks before the inquiry opens (instead of the three weeks provided for in the relevant Rules) the Inspector might insist that any question of clarification should be submitted in writing a week before the opening of the inquiry. If the Inspector is satisfied that any such question raises a matter on which clarification is required, the question could be passed on to the promoters to be answered in writing by the relevant witness at the time at which he or she gives evidence in chief. Alternatively, from his or her pre-reading of the statements of evidence, the Inspector could compile his or her own list of questions and introduce this as an inquiry document. The Inspector should always encourage objectors and the promoting authority to confer outside the inquiry on matters which are not of general interest to the inquiry.

Supporters

2.83 Except in relation to any aspect of the promoter's case with which they have made it plain that they do not agree, supporters do not have the right to cross-examine the promoter's witnesses, though questions of clarification may sometimes be allowed. Similarly the

promoter does not have the right to cross-examine supporters except for clarification or on any point of disagreement. Supporters may cross-examine objectors.

Objectors' cross examination of supporters

2.84 At the discretion of the Inspector, objectors may cross-examine supporters, but normally should do so only on matters on which the supporters have given evidence or made submissions; they should not normally be permitted to question them on matters to which they have made no reference. This does not apply to such supporters as local authorities or statutory bodies, because the answers to certain questions, which objectors might require to enable them to present their cases properly, might be obtainable only from such authorities and might not be referred to when they present their cases. The Inspector should use his or her discretion in this regard, and should ensure that objectors are not denied the opportunity to ask questions to which they require the answers in order to complete their cases (unless such questions are patently not relevant to the subject of the inquiry).

2.85 Supporters represented by an advocate may be re-examined by their advocate following cross-examination by objectors. Unrepresented individual supporters should be given the chance to correct any false impression which might have been generated by answers given to questions put in cross examination. They should be told, however, that this should not be taken as an opportunity to introduce new evidence. If it is, then the objector would be liable to further cross examination on the new material introduced.

Statutory and non-statutory objectors

2.86 Statutory objectors in the context of Highway Inquiries are those objectors who have a vested interest in land or property which would be affected by the proposals. They should normally appear next and (if the complex procedure is being followed) have the right to cross-examine the promoter's witnesses on their evidence in chief when called upon to present their cases, and before they present their own evidence. Any evidence the promoter may wish to call to rebut that given by an objector should then be called. Such evidence is liable to be cross-examined in the usual way and when this process is completed the objector has a right to respond by way of additional evidence if conflicting evidence to that provided in rebuttal is available, or in the closing submission referred to at paragraph 2.89 below. An alternative approach to dealing with rebuttal evidence which is increasingly followed is outlined in Appendix F at paragraph F.2b. This is equally acceptable.

2.87 Non-statutory objectors, i.e. those people who have objected within the time for objections but who are not statutory objectors, normally follow, and should, at the discretion of the Inspector, be given the same opportunity to question the promoter's witnesses as statutory objectors (including the opportunity to cross examine any rebuttal

evidence given on behalf of the promoters). Questioning of the promoter's witnesses by objectors should not normally go beyond the substance of the matters contained in the evidence and submissions they have presented where this is relevant to the subject of the inquiry.

2.88 The objectors are liable to be cross-examined in turn, not only by the promoter and supporters, but also by counter-objectors to any alternative proposals they (the objectors) might put forward. Such questioning should be confined to the matters on which the objectors have given evidence or have made submissions, and should not normally be permitted to extend to matters to which they have made no reference. Both promoter's and objectors' witnesses may be re-examined by their advocates after cross-examination.

2.89 At the conclusion of the objector's case, the objector may wish to make a closing submission. This can be made immediately, or, if the Inspector agrees, at a later fixed time, when a considered closing can be made supported by a written copy (see also paragraph 2.111 below).

Response by the promoter

2.90 The promoter may reply to the various objectors' cases in a consolidated final reply at the end of the inquiry, or may make a response to each individual objector immediately following the hearing of that objector's case.

Counter objections

2.91 Counter-objectors should normally appear after the objectors whose alternative proposal they are opposing, but they will usually question the objectors during the presentation of the latter's cases. Counter-objectors may also question the promoter, although their questions to them should not normally be permitted to be used as a means of eliciting support for their cases. However, if a counter-objector, having seen the promoter's rebuttal of an objector's case, believes that such a rebuttal has not addressed a point considered to be important, he or she should be allowed to raise questions on that matter. Counter-objectors are open to questioning by those to whom they are opposed, and as usual have the right of re-examination and to make a reply.

2.92 Some counter-objectors may be both objectors in their own right and counter-objectors to other objectors' alternative proposals - and so may appear twice in the inquiry, firstly as objectors and secondly as counter-objectors. If such parties appear only once, the interplay of cross-examination becomes a little more complicated but still follows the same general pattern.

Strict adherence not always possible

2.93 In practice it may not be possible to adhere strictly to the sequence of events outlined in Appendices E and F because not all parties can make themselves available at any given time, but it is nearly always possible to follow the general pattern.

Evidence

2.94 At the inquiry, at most only the summary statements of evidence should be read out (unless the Inspector permits or requires otherwise), but the witness may be questioned on the whole of his or her statement. Any amendment made to the summary statement or the full statement (whether correcting a typographical error or amending the evidence in the light of further information) should be noted on the document. Statements of evidence should be listed as inquiry documents, but the Inspector's eventual report should make it clear that the statements set out the evidence as submitted to the inquiry, while the Inspector's report summarises the evidence as potentially amended in the light of answers to points put to the witness in cross examination.

2.95 Evidence or submissions which did not emerge in the pre-inquiry statements, objections or representations should not be automatically debarred simply because no such advance notice was given, as the Rules allow for amendments to be made to Statements of Case. The Inspector has the discretion to allow the introduction of new material at the inquiry and should normally do so provided it is relevant and failure to allow its introduction might risk conclusions being drawn in the absence of knowledge of material considerations.

2.96 If the promoter seeks to make an addition to his or her case, however, any affected objectors should be given sufficient opportunity (by means of an adjournment if necessary) to consider the new matter, and to give their responses to it. If a new matter is raised by an objector, the promoter should be permitted to call evidence in rebuttal. To achieve this it might be necessary for a new witness or new witnesses with the relevant expertise to be called who may not have been part of the original team put forward by the promoter. The late introduction of new evidence **may** be a ground for an application for an award of costs on the basis of unreasonable behaviour, particularly if an adjournment becomes necessary; and parties should be so advised.

Cross examination

2.97 The inquiries procedure rules give only the main parties (the promoter and the statutory objectors) the right to cross-examine persons giving evidence at an inquiry. The Inspector should normally permit non-statutory parties to question witnesses similarly, however.

2.98 The inquiries procedure rules make no distinction between witnesses who support and those who oppose the respective cases. The Inspector should, nevertheless, limit the questioning of friendly witnesses to the elucidation of matters of fact where these are

relevant; drawing out friendly opinion is not cross-examination. However the Inspector should take care to avoid inadvertently preventing anyone from cross-examining an otherwise friendly witness about some aspect of that witness's case which might have an adverse effect upon the would-be questioner's interests.

2.99 The promoters, or any other public body appearing at an inquiry, must be prepared to make someone available to answer any relevant questions, and unrepresented members of the public should be granted some latitude in the way they go about questioning. However, the cross-examination of a witness should normally be confined to relevant questions on the matters on which that witness has given evidence. Cross-examination of members of the public who have given evidence to the inquiry by the promoters and statutory objectors should also be permitted.

2.100 Inspectors should be aware that cross-examination might be related to a claim for costs, which will not be made until the end of the inquiry. Such cross-examination must therefore be heard even though it may be irrelevant to the merits of the case.

Re-examination

2.101 The purpose of re-examining a witness is to enable the witness to clarify points about the evidence already given and/or to seek to redress any unfavourable impression which arose as a result of the cross-examination. It is the witness's evidence which is required, however; advocates should not be permitted to ask their witnesses leading questions (that is, questions which suggest a particular answer) in re-examination.

2.102 New matter should not normally be introduced in re-examination, but if it is, it should be treated as being new evidence liable to further cross-examination.

Written representations

2.103 Written representations concerning the subject matter of an inquiry (whether addressed to the Inspector, the Highway Authority or the SofS/WM), received prior to or during an inquiry, become inquiry documents. Such documents form part of the material to be taken into account by the Inspector and the decision maker.

2.104 All written representations must be taken into account by the SofS/WM unless they can be disregarded under such specific powers as Section 258 of the Highways Act 1980 (objections amounting to an objection to a made line order); Schedule 1 Paragraph 19 of the same Act, relating to failing to comply with deadlines for alternative proposals; or Schedule 1, Paragraph 4(4), of the Acquisition of Land Act 1981 (matters of compensation).

Availability of written representations

2.105 It follows that the existence of all written representations must be disclosed at the inquiry. Although there is no need for the Inspector or any party to read them out, it may sometimes be appropriate to give the gist in order that the promoting authority's response may be understood by the public. A copy of each one must be made available for public scrutiny during the course of the inquiry.

Response by promoter

2.106 It is open to anyone to comment in writing or orally, at the Inspector's discretion, upon such representations. The Inspector should make a point of ensuring that the promoter does not neglect to give any response on those matters raised in any written objections which have not been dealt with during the course of the inquiry. This is so that the decision maker may be apprised of each side of every argument.

Round table sessions

2.107 For longer and more complex inquiries, for example, where there are alternative proposals, it may be helpful for parts of the proceedings to be taken as a round table session – along the lines of a hearing, with only the technical witnesses making contributions in response to a discussion led by the Inspector. Such sessions should only be used as a means of clarifying technical points – either to reach a common understanding of (say) traffic modelling techniques, or how other technical evidence has been prepared. It would probably not be an appropriate means of reconciling different approaches, but only of coming to an understanding of why there are apparently different views being deduced from the same or similar evidence: for example, where these may be the result of different or incompatible technical interpretations. It might be helpful if the Programme Officer took notes of the points made, leaving the Inspector free to direct the discussions. A note of the round-table session should be quickly prepared (over night if possible) and published as an inquiry document. Opposing advocates could then make witnesses available for cross-examination on their evidence in full inquiry session on subsequent days. Round table sessions should be open for all to attend and observe.

2.108 A round table session is sometimes helpful to allow the promoter of a CPO to take the Inspector through the CPO plot by plot to explain the reason for the proposed acquisition of each of the plots of land or the interests in them included in the CPO. Again, however, it is important to emphasise that such a session is open for all to attend, observe and participate in.

Action to be taken by the Inspector before final right of reply is exercised

2.109 Before the promoter makes his or her final reply at the inquiry, the Inspector should ask if there is anyone else who wishes to be heard. If there is, the person should be accommodated, provided he or she genuinely has something relevant to say which is not merely repetitive or obstructive. The Inspector should also check that, in either specific or general evidence, the promoter has responded to all of the written representations.

2.110 Issues concerning human rights may arise at an inquiry either in relation to the impact of a proposal on an individual or in relation to the procedure followed at the inquiry. The Inspector will address either of these matters where they are raised (or where it appears to the Inspector himself or herself that a human rights issue is involved).

Closing submissions

2.111 The closing submissions of supporters, objectors and the promoters are limited to responding to the cases of the other parties, in the sense that no new evidence may be introduced. However, it is now regarded as acceptable for such closing submissions to include also a summary of the overall case of the party concerned. Where the parties agree to supply such comprehensive closing submissions in electronic form, this can provide the basis for the report of the case of the party concerned, though the Inspector will remain responsible for ensuring that such a submission fully and accurately represents the case of the party concerned as it stood after cross examination. If the promoter has already responded to individual objectors when the latter were presenting their cases, there is no need for him or her to do so again.

Costs

2.112 After hearing the promoter's reply, the Inspector should be alert to see whether any application for costs is to be made. The mechanism for dealing with costs applications depends on the nature of the inquiry and the type of order which is being considered. In English casework in which the proceedings which give rise to the inquiry (the publication of notice of the drafting of an order or the submission for confirmation of an order made by a local authority) took place on or after 6 April 2009, the Costs Circular 03/2009 applies. In Wales the previous Circular (under its Welsh designation WO Circular 23/93) continues to have effect.

Applications for costs in relation to Orders drafted by the Secretary of State

2.113 Section 5 of the Acquisition of Land Act 1981 specifically excludes Section 250(5) of the Local Government Act 1972 (the Act which provides the costs jurisdiction at public inquiries) from applying to CPOs where the SofS is the acquiring authority. There is therefore no statutory requirement to pay costs to a successful objector to a CPO drafted by the SofS. However, costs may be awarded on a discretionary basis. Objectors to a published scheme or order with an interest in land affected (such as owners, lessees or occupiers) will normally have their reasonable costs of preparing and presenting their cases reimbursed in full or in part if the decision taken following the local inquiry is not to make the published scheme or order, or to modify the proposals so as to diminish or remove its effect on the land in which the objector has an interest. Similarly, there is no provision to award costs against the SofS in relation to a draft CPO on grounds of unreasonable behaviour.

2.114 In relation to other (non-CPO) orders drafted by the SofS under the provisions of the Highways Act, the costs provisions of the Local Government Act 1972 are applied by Section 302 of the Highways Act 1980; but no reference is made to such orders in either of the Circulars which deal with the award of costs in public inquiries, and the practice is not to entertain such applications. Inspectors should therefore make no announcement about costs applications when conducting such an inquiry. If an objector indicates he or she wishes to make an application for costs at a trunk road inquiry, Inspectors should say that no application need be made at the inquiry. The objector should be told that the Highways Agency, on behalf of the SofS, will invite applications for costs from objectors who successfully object to the compulsory acquisition of their interest in land. Where an objector insists on making a claim (including a claim based on alleged unreasonable behaviour), the Inspector should record the case in the main body of his or her report without coming to any conclusion or making any recommendation on the case. The Inspector should not make a separate costs report.

Applications for costs in relation to local authority road proposals

2.115 While parties are normally expected to meet their own expenses at public inquiries, where applications for costs relate to a CPO published by a local highway authority, the general power contained in Section 250(5) of the Local Government Act 1972, to make an award of costs to and against the parties at an inquiry, is applied by Section 5(3) of the Acquisition of Land Act 1981. The guidance in the Costs Circulars therefore makes it clear that a statutory objector (an owner, lessee or occupier of land), who has successfully defended his or her interests in relation to a CPO promoted by an acquiring authority other than a Minister, is eligible for an award of his or her reasonable costs incurred in doing so. The presumption is that the acquiring authority, which made the

order, will pay a successful objector's inquiry costs. Where an objector is partly successful in opposing a CPO, he or she would be entitled to a partial award of his or her costs.

2.116 No application for costs at the inquiry is necessary, as the SofS (through the National Transport Casework Team at Newcastle) will write to successful objectors, as advised in paragraph E7 of the Annex to Circular 03/2009. At the inquiry an objector will not, of course, know whether he or she has been successful.

2.117 However, if a CPO objector insists on making an application for costs in the expectation that his or her objection will succeed, the Inspector should simply record it in the main body of his or her report without coming to any conclusion or making any recommendation on the application.

2.118 Applications for costs from objectors to an order published by a local highway authority under the Highways Act 1980 on grounds of unreasonable behaviour should be dealt with in accordance with the guidance in paragraphs E8 to E10 of the Annex to Circular 03/2009. These state that in relation to CPOs and analogous orders there are some circumstances in which an application for costs may be made on grounds of unreasonable behaviour. In practice, such an award is likely to relate to procedural matters, such as unreasonably causing an inquiry to be adjourned or unnecessarily prolonging it. In these cases, paragraph E10 of the Annex to Circular 03/2009 indicates that such an application should be made to the Inspector at the inquiry, and the Inspector will then report to the SofS with his or her recommendation. However, the Welsh Office Circular 23/93 provides that an application should be made to the SofS *immediately after the inquiry*.

2.119 In practice, it has for some time been recognised in Wales that the guidance in WO Circular 23/93 to make such an application immediately after the inquiry could be interpreted as inhibiting the right to a hearing prescribed by the Convention Article 6(1) in the Human Rights Act 1998. Therefore, it has become accepted practice that, if any party insists on making a claim against another party on whatever basis, the Inspector should not refuse to hear it.

2.120 If on either basis (under paragraph 2.119 or under the arrangements set up by Circular 03/2009) an application is heard, an opportunity should also be provided for the other party to reply and for the applicant to have the final comment. The Inspector should report the application, and any response by other parties, to the SofS together with his or her conclusions and recommendation.

Closing actions by Inspector

2.121 After hearing the promoter's reply, and hearing any costs applications, the Inspector should satisfy himself or herself that there is no unfinished business and that all the inquiry documents, including the attendance list(s) have been handed in. The Inspector

should then make arrangements for the accompanied site inspection (if one is to be carried out) and, finally, should declare the inquiry closed.

2.122 An effect of declaring the inquiry closed is the Inspector can neither hear nor accept any further submissions or evidence, either oral or written. Anyone who wishes to make further representations should be advised to put them in writing and send them to the SofS/WM. It follows that no evidence or submissions can be accepted during a post-inquiry site inspection, and nothing the Inspector then hears can be included in his or her report.

2.123 Parties to the inquiry might ask when they can expect a decision from the SofS/WM. Once the report is written and submitted, the matter is out of the hands of both the Inspector and the Planning Inspectorate, and therefore it is impossible to give any indication of the likely decision date. An Inspector should not even attempt to estimate the date on which the SofS's/WM's decision will be issued.

2.124 However, the Inspector may give an indication of when he or she will be submitting his or her report. The Inspector should give his or her estimate of the week commencing date in which it is expected that the report will be sent from the Planning Inspectorate to the SofS/WM. The Inspector should take into account the reporting time allocated/required, work programmes and any other commitments. In addition, the Inspector must include a period to allow for the necessary administrative actions within the Planning Inspectorate. Taking account of all these factors the Inspector should be able to provide a reasonably reliable estimate of the submission date using the phrase "*week commencing"*.

2.125 For long and complex inquiries, the Inspector may announce a provisional submission date. A more firm estimated date can be obtained by the parties from the Case Officer upon request.

Post-inquiry correspondence

2.126 No letter or other written representation of any kind, or any other form of documentation received by an Inspector after the close of an inquiry, can be taken into account in composing the report; consequently, Inspectors should not encourage any party to submit them. It is for the SofS/WM, not the Inspector, to consider post-inquiry representations. If any are received, the Inspector should forward them immediately to the Planning Inspectorate. This does not apply to documents exhibited at the inquiry and which, in exceptional circumstances, need to be sent on, or copied and then sent on, for the Inspector's use after the inquiry has closed. However, no new matter must be covered in such documents. Any exception to the foregoing should only arise at the express request of the SofS having regard to the requirements of natural justice as described in paragraph 2.140 below.

2.127 If towards the end of the inquiry it becomes apparent that there is likely to be significant further evidence or documentation, which the Inspector should take into account and it is not forthcoming at the inquiry, the proper course is to adjourn the inquiry to a specified date, time and place, and to receive that evidence in open session, giving the opportunity for cross-examination as appropriate before the inquiry is closed. Where the documentation is simply confirmation of matters already presented in draft to the inquiry, it may be permissible to close the inquiry in writing after their receipt.

2.128 Inspectors should not encourage or agree to advocates forwarding copies of their closing addresses after the close of the inquiry since copies would have to be sent to other parties, which could then result in further exchanges and consequent delay in the reporting process. They should be presented in writing or preferably in electronic form at the actual closing of the inquiry.

Site inspections

2.129 An unaccompanied site visit (see paragraph 2.58 (xiii)) is made by the Inspector before the inquiry opens simply to gain familiarity with the area affected by the order. During that visit, the Inspector will seek to avoid getting into conversation with anybody, and will not enter on to private land. The Inquiries Procedure Rules allow the Inspector to make further unaccompanied inspections during the course of the inquiry.

2.130 Accompanied site visits can be carried out while the inquiry is adjourned (perhaps allowing time for advocates to prepare written closing submissions) or shortly after the Inquiry is closed. It should take place in the presence of at least one representative of the promoting authority and at least one representative of the objectors. An accompanied site visit should definitely be undertaken if a request for such a visit is made either by the promoting authority or by one of the statutory objectors.

2.131 If an accompanied site visit is arranged but after allowing a reasonable interval after the appointed time no representative of one relevant party has arrived, the visit should be abandoned as an accompanied site visit. The Inspector should make a further unaccompanied site visit if at all possible.

2.132 No evidence or submission should be presented to the Inspector during a site inspection, but the parties may draw the Inspector's attention to any feature which has been mentioned in oral or written evidence to the inquiry. This should be explained by the Inspector both when making the arrangements for the accompanied site visit at the inquiry and at the outset of the site visit.

2.133 An Inspector has no right to enter on to private land without permission. However, it is usually possible to arrange for permission to be given to allow entry on to land which the Inspector wishes to

visit, either through the Planning Inspectorate or the Programme Officer, if one has been appointed.

2.134 For propriety reasons, the Inspector should travel to and from the site visit either alone or accompanied by representatives of both the promoters and the objectors. The Inspector must never share transport with only one of the parties. The travel arrangements should be agreed with all the relevant parties in advance, preferably in open inquiry.

2.135 When the post-inquiry inspection has been completed, further unaccompanied site visits should be avoided, as the purpose of such a visit could be misinterpreted by the parties. If, in exceptional circumstances, the Inspector wishes to make a further inspection, the Planning Inspectorate should be consulted so that arrangements can be made for representatives of the various parties to have the chance to be present.

Reopened inquiries

2.136 The SofS/WM may cause an inquiry to be re-opened if it is deemed necessary to hear new evidence which has come to light since the inquiry closed.

2.137 Before re-opening an inquiry, the Inspector should study the new material. The SofS/WM will not want the scope of the re-opened inquiry to go beyond issues directly relevant to matters identified by the SofS/WM or for any further representations that may have been sought, to go beyond this. Re-opened inquiries should not be seen as a further opportunity of reintroducing matters heard at the earlier, closed, sessions of the inquiry. The Inspector should at the reopening of the inquiry make a statement to this effect so that there is no misunderstanding as to the purpose of the reopened inquiry.

2.138 The Inspector should not hear fresh evidence and submissions on matters that have already been considered at the closed inquiry and therefore fall outside the specified scope of the re-opened inquiry, although some flexibility may be advisable. Anyone who is determined to reintroduce matters dealt with at the earlier inquiry should be advised to submit this in a statement in writing to the Inspector. This can then be referred to in his or her report and enclosed for the attention of the SofS/WM.

The Inspector's report

Statutory basis - the Procedure Rules

2.139 All of the most recent editions of the relevant inquiries procedure rules provide that:

> *After the close of the inquiry, the Inspector shall make a report in writing to the Secretary of State which shall include*

his conclusions and his recommendations or his reasons for not making any recommendations.

2.140 All of these rules also provide that:

> *Where the Secretary of State [or Minister] differs from the appointed person [the Inspector] on any matter of fact, or after the close of the inquiry takes 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 by reason thereof is disposed to disagree with a recommendation made by the appointed person, he shall not come to a decision which is at variance with any such recommendation without first notifying the parties to the inquiry of his disagreement and his reasons for it, and giving them the opportunity to make fresh representations, or (if new evidence or any new issue of fact, not being a matter of Government policy, has been considered) of asking for a re-opening of the inquiry.*

(In certain cases dealt with in Sections 4 and 5 below, the report would be to a local authority rather than to a Secretary of State.)

Aim of the report

2.141 The report should provide concisely all the information that the SofS/WM will need in order to understand the issues involved and the representations made. However, it is only necessary to report the gist of the cases of the parties, rather than a fully detailed or verbatim record of the evidence and opinions. At the same time, the report should satisfy the parties to the inquiry that their evidence and submissions have been properly understood, fairly reported and accorded appropriate weight.

2.142 The report should be balanced in its presentation of the cases. It should not be seen to be unduly weighted in favour of one party, or group of parties. The conclusions reached by the Inspector should be clear, logical and robust, and fully support his or her recommendations on the scheme orders.

2.143 The general guidance contained in the notes dealing with reports to the SofS in cases concerning planning appeals should be followed when they are not inconsistent with the guidance contained in these notes.

Format of the report

2.144 The preferred format for the report consists of the following elements:

i. a title page;

ii. a table of contents (for longer reports);

iii. a list of abbreviations and acronyms used (for longer reports);

iv. case details;

v. a preamble;

vi. a description of the site of the proposal and its surroundings;

vii. the gist of the case for the promoting authority;

viii. the gist of the case for the supporters to the proposal;

ix. the gist of the case for the objectors to the proposal;

x. the gist of the case for any alternative route promoted at the inquiry;

xi. the gist of the case for any counter-objectors;

xii. the gist of the response of the promoting authority to the objections made (unless this has been included in the promoting authority's case);

xiii. the Inspector's conclusions;

xiv. the Inspector's recommendations (or his or her reasons for not making any recommendations);

xv. the Inspector's signature in stylised form.

2.145 Appendices must include:

i) a list of the names and qualifications of those who appeared at the inquiry, but not their addresses;

ii) lists of all the documents, plans and photographs submitted to the inquiry;

iii) any written report produced by an Assessor.

2.146 The Inspector's report should follow the normal format for a report to the SofS save in relation to the matters identified below, where particular considerations arise from the nature of the orders considered in this guidance. Appendix G provides examples of report layouts.

Preamble

2.147 The preamble should include:

i) a brief statement on the purpose and scale of the proposal;

ii) the number of objections outstanding at the start of the inquiry and the number since withdrawn; and the number of objectors who appeared or were represented at the inquiry;

iii) a brief summary (general headings) of the main grounds for objection;

iv) the date of any PIM (a note of the PIM being included as an inquiry document);

v) a brief statement about any requests for adjournment and the decision given;

vi) a record that the promoter of the published orders (if present) confirmed that they had complied with all the statutory formalities;

vii) a record of any environmental assessment carried out and any Environmental Statement submitted together with any additional environmental information submitted during the course of the inquiry;

viii) the dates on which formal site inspections took place;

ix) a brief statement about any legal submissions, with a cross reference to any further details of such submissions appearing in the body of the report;

x) the number of alternative routes or sites (if any) put forward by objectors, and the number of counter-objections made to each;

xi) a reference to any application for costs, or (as appropriate) to any suggestion that a party would be making an application for costs;

xii) any other matters the Inspector wishes to bring to the attention of the SoS/WM; and

xiii) the name and qualifications of any Assessor together with a note on his or her particular role.

2.148 The preamble should end with a note about the format of the report, along the following lines:

This report contains a brief description of the site of the proposals (the subject of the Order) and its surroundings, the gist of the cases presented and my conclusions and recommendations. Lists of inquiry appearances, documents, plans and photographs are attached.

Description of the site and its surroundings

2.149 As well as the description of the site itself and its surroundings, a brief description should be provided of any alternative routes or sites put forward by objectors. This can either be done here, or, if the alternative route is a substantial one which justifies its own part in the report, it would be more appropriate for the route description to be contained in that part.

2.150 References to any plans which might help the decision maker to identify the various features mentioned in a site description should be included. On-site agreements about measurements, physical features, etc, which may have been in dispute at the inquiry, should be recorded so that they can be referred to in the conclusions, if necessary. Where any maps or plans are out of date, it is usually helpful to mention this.

The case for the promoter

2.151 The case for the promoting authority should include the following elements:

i) a statement of Government policy relevant to the proposal being promoted, and details of any policy decision or document that has a bearing on the proposal. There is no need to go into detail regarding the content of documents such as the NPPF, because the SofS is aware of the contents of Government policy;

ii) a brief description of the proposal itself and of the need for it (unless its provision is a matter of Government policy);

iii) the reason for the chosen route or location;

iv) where applicable, reference to the details of the Environment Impact Assessment and the published Environmental Statement, together with comments from statutory consultees and any representations made by members of the public and others on the Environmental Statement; and,

v) specific indication of how the relevant statutory tests are satisfied.

2.152 In those instances in which a general rebuttal of objections has been made, this can be reported as part of the promoter's case. Alternatively, it can be inserted as a final reply after all the other cases have been reported. The reporting of specific rebuttals to each individual objection should follow the reporting of that objection.

The cases of the supporters

2.153 These should follow the case for the promoter. They may be either grouped together or reported singly, depending upon their extent and content. The cases for public authorities, statutory undertakers and national organisations should normally be reported separately.

The cases of the objectors

2.154 These should follow those of the supporters and, like the latter, may be either grouped together or reported separately depending upon their extent and content. Again, the cases for public authorities, statutory undertakers and national organisations should normally be reported separately, and where appropriate each should contain the gist of any comments or representations about the Environmental Statement and the likely environmental effects of the proposed development.

2.155 It is often possible to group individual objections together very effectively under a number of different subject headings (a topic-based report) thereby giving the reader a comprehensive picture of the nature and weight of the objections relating to the main considerations. However, unrelated objections (which are usually concerned with the effect of the proposal on individual properties) should be reported separately.

2.156 Usually, statutory objectors should be reported before other objectors and written submissions left to the end and only reported if they raise issues not already covered. Should that not be the case, then a simple statement "*The written submissions did not raise any issues not already reported.*" should be included.

2.157 Whichever method of reporting is chosen, the headings should be self-explanatory and consistent.

2.158 Where appropriate, the cases should include a full summary of the objections and, if appropriate, details of the objectors' property and the contended effect on that property of the proposed project, to fully understand their particular cases.

The cases of the counter-objectors

2.159 The cases of the counter-objectors should for clarity be reported in the most convenient place. This normally would be just after the reporting of those cases containing the proposal to which they were opposed.

Conclusions

2.160 The inquiry procedure rules require that an Inspector shall, in his or her report to the SofS, include his or her conclusions and recommendation. The conclusions must be based on the facts derived from evidence presented to the Inspector at the inquiry and summarised in the body of the report.

2.161 Conclusions should commence on a new page and be prefaced by words such as:

> *Bearing in mind the submissions and representations I have reported, I have reached the following conclusions, with reference being given in square brackets to earlier paragraphs where appropriate.*

The purpose of this is to cross-reference each conclusion to the summarised evidence and facts recorded earlier in the report on which it is based.

Legal issues

2.162 Any legal issues should be dealt with first and should always be prefaced by wording along the lines of "*whether or not … is the case is clearly a matter of law, but it seems to me that …"*. Whenever possible, the Inspector should then go on to give his or her view of the issue including, if possible or appropriate, the likely alternative outcomes according to whatever view is taken by the SofS/WM on the legal submission(s).

The main considerations

2.163 It is helpful then to set out what in the Inspector's view are the main considerations on which the decision on each order should be based. This shound include any statutory tests which exist for the making of each order or requirements of case law or the European Convention on Human Rights. The likely issues in relation to each type of order are listed in Appendix D.

Orders to be considered individually

2.164 Each of the published orders must be considered individually as the Inspector is required to reach a separate conclusion on each of the orders. To achieve this it may be helpful to consider the merits of the whole proposal first and then to address the individual orders. There are likely to be more objections to the proposal at large than to individual orders.

2.165 The case made by the promoters in favour of the scheme and the substance of the objections made either at the inquiry or in the written representations should be examined against the tests identified (see 2.163) as those the order should satisfy. In considering the objections, it is important that the Inspector reaches a conclusion on each one. Therefore, it can be helpful if the order of reporting the objectors' cases is followed in the conclusions.

Consideration of alternatives

2.166 Although the Inspector is not in a position to make a recommendation in favour of any alternative proposal, any such proposal (and any counter-objections to it) must be given due consideration, and its apparent advantages and disadvantages compared with the published

proposal. This is because the Inspector will need to advise the SofS/WM on whether the alternative in question appears to warrant further investigation where the Inspector comes to the conclusion that, whilst the original proposal may be justified in principle, the objections made against it are sufficiently overwhelming to lead the Inspector to recommend against it.

2.167 There will then follow an overall judgement on the proposal, together with the reasoning which leads to any recommended modification, bearing in mind the submissions and objections made, any relevant policies and any criteria specified in the enabling Act.

Consideration of the findings of any Assessor

2.168 Where an Assessor has been appointed to sit with the Inspector, he or she will give such advice to the Inspector on the specialised issues arising at the inquiry as may seem to him or her to be necessary. The Assessor should collaborate with the Inspector in the production of his or her report. It is for the Inspector to ascertain the facts, and to reach his or her own conclusions but, where the specialist issues are complicated or difficult, the Assessor may assist the Inspector by preparing draft findings on those issues, and any conclusions to be drawn from them which the Inspector may adopt. If adopted, however, they become the Inspector's findings and conclusions, and he or she must accept full responsibility for them. Any conclusions of the Assessor should, like those of the Inspector, derive from what he or she has seen and heard at the inquiry.

2.169 In many cases, all that will be necessary is for the Inspector to state at the end of his or her conclusions: "The Assessor, … agrees with my conclusions in paragraphs … " - provided, of course, that he or she does so. Alternatively, if it is felt that the Assessor's contribution should be more clearly identified, the report can be framed in such a way that the specialist advice can be introduced in appropriate places by the expression *"I am advised by the Assessor that …"*

2.170 In cases where there has been a great deal of discussion or argument and where the decision turns on specialist issues, it will be more appropriate for the Assessor to produce a written report to the Inspector. The report should only cover those specialist matters upon which the Inspector needs advice. It will be appended to the Inspector's own report and the Inspector will state in his or her report how far he or she agrees or disagrees with it.

2.171 Any differences of opinion between the Inspector and the Assessor should, wherever possible, be resolved before reports are submitted for decision. Where resolution cannot be achieved, the Inspector should highlight any differences and explain the reasoning behind any conclusion drawn contrary to the advice of the Assessor.

Environmental Impact Assessment

2.172 This and the following two paragraphs refer to the environmental impact assessment of projects for the construction or improvement of highways for which In England the Secretary of State and in Wales the National Assembly for Wales are respectively the highway authority. The requirement of the European Directive 2011/92/EU, on the publication of an Environmental Impact Assessment has been transposed by regulations into UK legislation making it a legal requirement (in the case of proposals which are the subject of orders to be made by the SoS/WM under the Highways Act 1980 this requirement is in section 105A) for the promoter to carry out an environmental assessment of the impact of the proposal. The promoter must indicate why the main alternatives to the scheme proposed were dismissed, as well as assessing the measures necessary to make acceptable the impact of the scheme which is proposed.

2.173 In relation to highways schemes, these requirements are now contained in the Highways (Environmental Impact Assessment) Regulations 2007, which amended the Highways Act under section 105A. These Regulations also require that, where appropriate, the promoting authority must as part of their Environmental Impact Assessment publish an Environmental Statement ("ES") and give appropriate statutory consultees and the public at large, the opportunity to express an opinion on it before approval is given for the project to proceed. The Regulations require the SofS/WM, before deciding whether or not to proceed with a proposal, to consider any opinion on the ES expressed by a statutory consultee or by a member of the public. The Inspector should therefore ensure that he or she has seen and taken into account any such opinions expressed in reaching his or her conclusions and recommendation.

2.174 The fact that this has been done should be made clear in the report. The ES produced by the promoter, together with any supplementary documents which amplify or update the statement, comments on the ES, and all the relevant evidence given at the inquiry together comprise the environmental information concerning the environmental impact of the proposal. It should be explicitly confirmed in the conclusions that the ES and other environmental information, including comments and representations made by statutory consultees and members of the public, have all been taken into account by the Inspector. This environmental information and the Inspector's analysis and views are crucial to the SofS's environmental assessment. If the adequacy of the environmental information is in dispute, the Inspector's view on the matter should be made clear.

The Development Plan

2.175 If the matters before the inquiry include the grant of planning permission, the Inspector's view of the consistency of the proposal with the Development Plan must be made clear in the report.

The Appraisal Summary Table

2.176 When consideration is originally given by Government to the relative priority for funding of individual highway schemes, an Appraisal Summary Table ("AST") is produced, summarising the impact of the proposal in environmental and economic terms.

2.177 The AST should normally be used only for its primary purpose of assisting in the assessment of the relative priority of a scheme as against others competing for resources. Unless the AST is before the Inquiry and the value judgements that it contains are raised by any party to the inquiry, it is not necessary for the Inspector to refer to the AST, either at the inquiry or in his or her report. If a value judgement in the AST is challenged by an objector, the Inspector should consider the evidence in support of that judgement, the evidence which criticises it and any rebuttal evidence, and include a conclusion on the issue in his or her report.

Wording of conclusions

2.178 The Inspector's conclusions should be so worded that they leave people in no doubt that their arguments have been comprehended and fully considered. Reasons should be given why any arguments were not successful. In framing overall conclusions on the orders before the inquiry, the Inspector should follow as closely as possible the wording of any tests contained in the authorising legislation (see 2.163). Any statutory test should be quoted verbatim from the appropriate sources and not paraphrased.

Recommendations

2.179 The Inspector's recommendation should accurately include the title of the Order as used on the Order and use the following form of words depending on which one of the following three courses of action are being recommended:

i) that the (specify) Order be made as drafted (or in the case of a local authority order, be confirmed without modification);

ii) that the (specify) Order be modified by … and that the Order so modified be made (or, in the case of a local authority order, be confirmed); or,

iii) that the (specify) Order be not made (or, in the case of a local authority order, be not confirmed).

2.180 Proposed modifications can be very long. If so, rather than embody them in the recommendations, it is better to refer to where the detail lies in the report, or in an Appendix to the report - for example, by

stating: "be modified as detailed in paragraph … above **or** as referred to in paragraph … above and detailed in Appendix _".

2.181 When the Inspector is unable to make a recommendation, reasons for this should be given in the report. Under the heading "Recommendation" the Inspector should state:

"For the reasons given in paragraph … I make no recommendation on the (specify) Order."

2.182 The Inspector's recommendations must be confined to the Orders that are the subject of the inquiry. They should not include recommendations on other matters or contain advice, suggestions or reasoning. Where circumstances require such items to be necessary, they should be included in the conclusions. The recommendations should flow logically and inevitably from the Inspector's conclusions.

2.183 An Inspector should never attempt to make a conditional recommendation, because neither the SofS nor the WM are empowered to attach conditions to highway Orders. If an Inspector concludes that an Order should not be made unless and until some negotiation or action has been completed, or before some matter has been dealt with, or some problem investigated and it is not appropriate for the inquiry to be adjourned until that issue has been resolved, the Inspector should say so in the conclusions. The Inspector should then recommend that the Order be not made or confirmed unless the matter in question has been cleared up.

Appendices to the report

Appearance List

2.184 A list of those who appeared at the inquiry in person is required for all inquiries. It should record the names of those who spoke at the inquiry - whether to make a statement, to present evidence for cross-examination, or to ask questions. It is good practice not to allow anyone to address the inquiry, even by way of a question, without first taking their name and address. The Appearance List should set out the names of those who appeared at the Inquiry. It is advisable, even if the Inspector considers the point they wish to make to be irrelevant or repetitious, as the person concerned may not share that view and may pursue the matter beyond the inquiry. The Appearance List should be attached to the report.

List of documents, plans and photographs

2.186 Documents, plans and photographs should be given unique numbers and listed in an appendix to the report. It may not be convenient to distinguish between documents, plans and photographs. Where plans and/or photographs are contained within a document, such as in a statement of evidence or an appendix to such a statement, they do not need to be separately numbered. The Attendance List for

each day of the inquiry should be submitted with the inquiry documents, but should not be listed as an inquiry document.

Dispatch of the Inspector's report

2.187 One copy of the undated report together with all the documents submitted, bearing unique numbers and bundled in logical sequence, should be sent to the Planning Inspectorate for onward transmission to the SofS/WM.

PART 3 – TOLL ORDERS

3.1 A Toll Order may be made to impose a charge on a new road or on a new section of road. Such a road could (but need not necessarily) be carried on a bridge or through a tunnel. Subsequently, a Toll Order may be made to vary, extend or revoke the original Order for the road. Such orders can be made under the New Roads and Street Works Act 1991, in which case the provisions concerning inquiries are contained in Section 25 of the Act and in paragraph 6 of Schedule 2 to the Act. But tolling powers for certain specific bridges and tunnels are contained in special or local Acts of Parliament, sometimes of considerable antiquity, and these contain their own provisions detailing how and on what basis applications for revision of the existing tolling arrangements should be dealt with.

3.2 A Toll Order made under the New Roads and Street Works Act 1991 may be considered alongside Highways Act Orders for a new special road. Such an order might be made by a local highway authority and submitted for confirmation to the SofS although most special roads are promoted by the SofS as the highway authority. Such a Toll Order can only be recommended for approval if the proposed new road is similarly recommended for approval.

3.3 A Toll Order under Section 6 of the Act of 1991 can only be made in relation to a special road proposed to be provided by a highway authority. The order shall state whether the charging of tolls will be by a concessionaire or by the highway authority.

3.4 A Toll Order under Section 8 of the Act of 1991 establishes that a toll Order authorising the charging of tolls by a concessionaire shall specify the maximum tolls that may be charged if, and only if, the road to which the Order relates consists of or includes a major crossing to which there is no reasonably convenient alternative, and Section 8 defines those terms.

3.5 Toll Orders specify the maximum toll which can be charged for different classes of traffic, and may exclude certain vehicles.

3.6 The Act of 1991 does not provide any criterion for the making or confirmation of Toll Orders under the Act. It is sufficient if the SofS is satisfied that it is appropriate to confirm the order.

3.7 In the same way, in relation to Toll Orders made under special or local Act powers, unless there are specific tests contained in the Act under which the tolling power was granted, the test is whether the SofS is satisfied that it is appropriate to confirm the order having considered the case presented by the promoter alongside all the objections and representations.

3.8 There are no procedural rules for Toll Order inquiries, so the usual rules of natural justice apply. If the order is dealt with at the same inquiry as an order to which the Highways Inquiries Procedure Rules apply, it is normal to secure agreement at the PIM that those Rules will also be followed in relation to the Toll Order.

3.9 Inquiries into Toll Orders can vary substantially in the length of time for which they run, but such an order is unlikely to generate the need for a Programme Officer or a PIM unless the inquiry at which it is to be considered is linked with other orders made under the Highways Act. Nevertheless, a pre-inquiry note may be useful so as to help parties prepare and submit their evidence in a timely way.

3.10 The guidance relating to inquiries and reports contained in Part 2 above of this Practice Guide applies equally, as appropriate, to Toll Orders, save for the following points:

- In relation to costs, section 25 of the Act of 1991 applies section 302 of the Highways Act 1980, which in turn refers to section 250 of the Local Government Act 1972 that allows a Minister to direct an application for costs where a local inquiry has been caused. However, there is no reference to Toll Orders in the current DCLG Circular 03/2009 on Costs Awards in Appeals and Other Planning Procedures. The practice is therefore not to entertain applications for costs in connection with Toll Orders. If there is an attempt to make an application, however, the practice outlined at paragraph 2.118 should be followed.

- Paragraphs 2.172 to 2.174 above on Environmental Impact Assessment and paragraphs 2.176 to 2.177 on Appraisal Summary Tables do not apply to Toll Orders.

PART 4 - ORDERS MADE UNDER PART X OF THE TOWN AND COUNTRY PLANNING ACT 1990

4.1 Section 247 of the Town and Country Planning Act 1990 gives the SST power to make an order authorising the stopping up or

diversion of any highway in order to enable development to be carried out in accordance with a valid planning permission.

4.2 In these cases it is not the place of the SST to reconsider whether or not planning permission should have been granted, or to interfere in any way with the planning permission. The SST's role is limited to considering the impact that closure of this highway would have on its users and to make a decision which determines where the ultimate public interest may lie. The SST's role is to balance the overall public interest in interfering with an established public right of way and to come to a decision on that public interest

4.3 To stop up or divert a highway in these circumstances, it is necessary to obtain an Order under section 247, for which the landowner or developer usually applies. Application is made to the DfT National Transport Casework Team ("NTCT") in Newcastle, who handle the procedure and following a local inquiry, when necessary, issue a decision on behalf of the SST. Very few of these cases are heard at a local inquiry.

4.4 The procedure is different in Greater London, following amendments made to Section 247 of the Town and Country Planning Act by Section 270 of and Schedule 22 to the Greater London Authority Act 1999. In Greater London, stopping up orders are made by the Borough Councils. Except where mentioned, however, the guidance given in relation to such orders below also applies in Greater London.

4.5 Related order making powers are contained in Section 248 (in relation to highways crossing or entering the route of a proposed new highway). Section 249 (in relation to extinguishing rights to use vehicles on highways) and Section 251 (in relation to extinguishing public rights of way over land held for planning purposes). The order will have been drafted by the relevant London Borough within the capital.

4.6 Outside Greater London, NTCT will have drafted an order and prepared an order map. If objections are received, NTCT will have made the arrangements for an inquiry. Section 252(4) and Schedule 14, Paragraph 3, of the Town and Country Planning Act 1990 detail the circumstances under which a public inquiry should take place for orders drafted under Part X of that Act.

4.7 In Greater London, if there are objections to an order prepared by a Borough Council, the Council proposing to make the order must notify the Mayor of London of the objections. The Mayor of London has to decide whether the holding of an inquiry is necessary. If the Mayor decides that an inquiry is necessary, then the Borough Council will appoint an Inspector to hold the inquiry. In effect, the Inspector will be nominated by the Planning Inspectorate, but will submit his report through the Inspectorate to the Borough Council rather than to the SofS.

4.8 The Inspector will receive a folder of objections and representations, possibly a statement from the developer, and possibly (outside Greater London) a brief from NTCT setting out the salient points as they see them. The papers should also contain a copy of the planning permission and the plan to which it relates.

The basic tests

4.9 In the case of orders made under each of the different sections within Part X, there is a basic requirement to be satisfied; but then there is an overall discretion for the SofS to exercise in deciding whether or not the Order is to be made.

Section 247 orders – necessary to enable development to be carried out

4.10 At the inquiry it will be necessary to establish in relation to a Section 247 order that the development authorised by the planning permission referred to in the order makes the closure or diversion of the highway necessary. For it to be desirable or convenient is not sufficient. An outline permission with siting and design reserved is therefore unlikely to justify the order. On the other hand, if detailed permission exists, it is not open to objectors to argue that the development could be carried out in a different manner, which would make closure or diversion unnecessary. It is not possible to reopen consideration of the planning application. A Grampian condition requiring closure or diversion of the highway before development can proceed would provide conclusive evidence of the need for the order.

4.11 If the development has already commenced, the Inspector will need to satisfy himself or herself that the remaining part of the development cannot be carried out (or the part constructed can not be brought into use) without the benefit of the order. If this is not the case, the recommendation should be that the order be not made. The promoter would then have to rely on other provisions such as those in section 116 of the Highways Act 1980, and bring forward a new application.

Section 248 orders – expedient in the interests of road safety or the movement of traffic

4.12 Under these orders, SST may authorise the stopping up or diversion of highways and private means of access to premises where they cross or enter the route of a proposed new or improved highway. The basic tests for these orders are:

i) either planning permission must have been granted for the construction or improvement of a highway ("the main highway") or the SofS must propose to carry out such work; and
ii) another highway must cross or enter the route or be affected by the construction or improvement of the main highway; and

iii) it must be expedient to stop up or divert that other highway either in the interests of the safety of users of the main highway or to facilitate the movement of traffic on the main highway.

4.13 Note that in the case of Section 248 orders it is expediency which is the test in iii) – not necessity.

Section 249 orders – pedestrianisation to improve amenity

4.14 These orders provide for a highway which is not a trunk road or a road classified as a principal road to be pedestrianised where a local planning authority resolve that to do so would improve the amenity of part of their area. The local planning authority must then apply to the SST for an order under Section 249 extinguishing vehicular rights over the highway concerned. The status of the road will be a question of fact; whether pedestrianisation would improve amenity would need to be determined on the basis of the evidence provided.

Section 251 orders – land held for planning purposes

4.15 Under these orders, SSEFRA may extinguish rights of way over land held or to be acquired for planning purposes to allow the later use of that land for a planning proposal. There is no necessity for a specific planning permission to have been granted at the time of consideration of the order, and application for such orders is often taken forward concurrently at an inquiry with, for example a planning CPO seeking to acquire land for a planning proposal. The SofS must be satisfied that either an alternative right of way has been or will be provided, or that the provision of an alternative right of way is not required.

The arguments for making such orders if the basic test is met

4.16 If the basic test in relation to any Part X order is met, that is not the end of the matter. In each case the SofS has discretion whether or not to make the order.

4.17 The leading case on this issue is *Vasiliou v SoS for Transport and another [1991] 2 All ER 77*, in which the Court of Appeal held that the SofS (and therefore the Inspector) should take into account any significant disadvantage arising from the order, particularly any financial disadvantage. In the Vasiliou case, the Court held that it had not been appreciated at the planning application stage that stopping up the right of way would prevent customers gaining access to the restaurant. Approving the stopping up order would have had that effect, and no compensation would be payable because there is no provision for compensation in the Act. The Court also held that when approving an Order this disadvantage should be taken into account in deciding whether to exercise discretion in making the order.

4.18 Following on from the question of loss of access to premises, the Inspector should also consider any wider significant disadvantages to present users of the highway and to the general public, and take them into account. This might (for example) be as a result of an unacceptably long diversion for through traffic, or increased noise and disturbance for residents on a diversion route.

4.19 Where the highway is to be physically diverted, the convenience of any alternative route to be provided will also be a matter that needs to be taken into account. This diversion route can include, in part, an existing highway; which may or may not be proposed to be improved. However, if the diversion route is wholly on an existing highway, the order should be for "stopping up" and not for a "diversion".

4.20 Where the diversion route would run over land not in the ownership of the applicant for the order, the Inspector should require the promoter to produce the consent of the land owner concerned in writing (and this needs to be submitted with the report as a document). An alternative to this is that there may be a CPO for the land required for the diversion route and/or improvement to existing highways, either made or in draft - there is provision for this in Section 254 of the Act. If the order is not already confirmed, it may come before the inquiry as a concurrent order.

4.21 In relation to some orders (for example under Section 247), there may be suggestions that road safety could be compromised by stopping up the highway. If the highway authority is represented at the inquiry, they should be asked for their view. If not, an effort should be made to establish whether the highway authority commented either on the original planning application or on the draft order. It is then for the Inspector to consider what weight to give to this aspect, taking into account what was seen on the site visit and relevant evidence given at the inquiry.

4.22 The Defra Circular 1/09: *Rights of Way* (at paragraph 7.15) states when considering the need to balance all the effects of an Order that -

> "*The local planning authority should not question the merits of planning permission when considering whether to make or confirm an order, but nor should they make an order purely on the grounds that planning permission has been granted. That planning permission has been granted does not mean that the public right of way will therefore automatically be diverted or stopped up. Having granted planning permission for a development affecting a right of way however, an authority must have good reasons to justify a decision either not to make or not to confirm an order. The disadvantages or loss likely to arise as a result of the stopping up or diversion of the way to members of the public generally or to persons whose properties adjoin or are*

near the existing highway should be weighed against the advantages of the proposed order."

Procedure at the inquiry

4.23 There are no Inquiries Procedure Rules for inquiries into orders under Part X of the Town and Country Planning Act. However, it is common practice to secure agreement at the PIM (or to give notice in the pre-Inquiry note, and to secure agreement at the start of the Inquiry) that the Highways (Inquiries Procedure) Rules 1994 should be used. There can be strong similarities between the effects of a Part X Order and the effects of side roads orders under the Highways Act. If there is a concurrent inquiry into a CPO, the Inquiry Procedure Rules for CPOs, as referred to in paragraph 2.13 above, may apply and be used to determine the matter in accordance with the arrangements set out in that paragraph.

4.24 The developer will be responsible for the housekeeping arrangements for the inquiry venue. This may be the only inquiry he or she has ever arranged so it is a good idea for the Inspector to arrive in plenty of time to check that the arrangements are satisfactory. There may also be a greater need than usual to explain the procedure to be followed.

4.25 The usual rules for an award of costs apply to Part X orders. Parties are expected to meet their own expenses, but may claim any extra costs resulting from unreasonable behaviour by the other party. If an application is made at the inquiry, this should be heard immediately before the inquiry is closed, and the Inspector should report separately on this matter to the SofS. In Greater London, the costs report should be submitted to the London Borough concerned.

4.26 As with Toll Orders, the guidance relating to inquiries and reports contained in Part 2 above applies equally, as appropriate, to Part X orders, save for the following points:

i) there is no scope for the consideration of an alternative proposal at a Part X order inquiry;

ii) it is not appropriate to consider the use of the complex inquiry procedure (Appendix F) at such an inquiry;

iii) the normal announcement about costs should be made at the opening of the inquiry, just as at a Section 78 appeal. This needs to be added to the list of announcements set out at paragraph 2.58 above;

iv) in Greater London, the opening announcements should make it clear that the Inspector is appointed by and will report to the Borough Council; and

v) no question of an Environmental Impact Assessment or an Appraisal Summary Table will arise.

PART 5 – TRAFFIC REGULATION ORDERS

5.1 Under the Road Traffic Regulation Act 1984 (RTRA 1984), traffic authorities can make Traffic Regulation Orders (TROs) to regulate, restrict or prohibit the use of a road or any part of the width of a road by vehicular traffic or pedestrians. A TRO may take effect at all times or during specified periods, and certain classes of traffic may be exempted from a TRO. County Councils, Metropolitan District Councils and London Boroughs (and the equivalent Councils in Wales) have powers to make TROs on the roads for which they are responsible, and the SofS has similar powers for trunk roads.

5.2 TROs can be made for the following purposes:

- avoiding danger to persons or traffic;
- preventing damage to the road or to buildings nearby;
- facilitating the passage of traffic;
- preventing use by unsuitable traffic;
- preserving the character of a road especially suitable for walking or horse riding;
- preserving or improving amenities of the area through which the road runs;
- for any of the purpose specified in paragraphs (a) to (c) of subsection 87(1) of Part IV of the Environment Act 1995 in relation to air quality;
- to conserve or enhance the natural beauty of listed special areas in the countryside such as National Parks (for a full list see subsection 22(1) of the RTRA 1984);
- to allow for improved access to recreational opportunities or to provide for the study of nature; or
- to avoid or reduce danger connected with terrorism.

5.3 TROs made by the SofS are subject to the Secretary of State's Traffic Orders (Procedure) (England and Wales) Regulations 1990. Inquiries into objections to TROs made by the SofS are dealt with by reporting to the SofS.

5.4 Permanent TROs made by local authorities are subject to the Local Authorities' Traffic Orders (Procedure) (England and Wales) Regulations 1996. Where there are objections, a public inquiry may be held by the local authority, who will appoint an Inspector from a panel chosen by the SofS on recommendation from the Planning Inspectorate. A public inquiry must be held if the TRO would prohibit loading or unloading of vehicles (i) at all times, (ii) before 07:00 hours, (iii) between 10:00 and 16:00, or (iv) after 19:00, or if the passage of public service vehicles would be restricted and there is an objection from an operator of an affected service. Experimental orders, which have a limited duration, are exempt from these provisions.

5.5 The procedure at the inquiry is at the discretion of the Inspector, and it is often the case that the Highways (Inquiries Procedure) Rules 1994 provide a suitable framework. Normally, the Inspector reports to the local authority, but in certain circumstances (set out in detail in paragraphs 13 and 14 of Schedule 9 to the RTRA 1984) the order can only be confirmed with the consent of the SofS. These circumstances include the situation where the TRO would prohibit or restrict access to premises for more than 8 hours in any 24 hours.

5.6 The Inspector's report in these local authority cases will be addressed to the local authority. If considered appropriate on the basis of the evidence heard, the Inspector can recommend modifications to the order proposed by the local authority. If the order is one which can only be confirmed by the SofS, the report will still be made to the local authority, which will then make an application for consent to the SofS if it still wishes to proceed.

5.7 The guidance relating to inquiries and reports contained in Part 2 above applies equally, as appropriate, to TROs, save for the following points.

i) There is no scope for the consideration of a complete alternative proposal at a TRO inquiry, although the SofS has power to modify the order. If the SofS proposes to modify an order in a way which would substantially affect the character of the order submitted, then, before doing so, the local authority and any other person likely to be concerned must be informed.

ii) It is rarely appropriate to consider the use of the complex inquiry procedure (see Appendix F) at such an inquiry, although very occasionally the scope of a TRO and the level of objection have been found to justify the use of the complex inquiry procedure.

iii) Costs are not available to any party involved in a TRO.

iv) No question of an Environmental Impact Assessment or an Appraisal Summary Table will arise.

APPENDIX A

PRE-INQUIRY MEETINGS

A.1 The purpose of the PIM is to help the Inspector and the participants to prepare for the inquiry proper, and so enable the proceedings to be conducted as efficiently and speedily as possible. It will be a public meeting, presided over by the Inspector, and more than one meeting may be held when the Inspector considers this to be desirable.

A.2 There are two ways in which a PIM might be arranged - (a) by the SofS/WM and (b) by the Inspector. In the first case, the SofS/WM will inform the main parties that a PIM will be held at the same time as he or she announces the holding of the inquiry. This will be at a very early stage in the proceedings and may even be before an Inspector has been appointed. In the second case, the Inspector has the power to call for a PIM to be held if he or she thinks it desirable. Normally, in the cases dealt with in these notes, the PIM is called on the initiative of the Inspector.

A.3 All the relevant Inquiries Procedure Rules provide that the Inspector shall preside at the meeting and shall determine the matters to be discussed and the procedure to be followed. The rules also provide that the Inspector may bar or remove persons acting in a disruptive manner from the meeting. Once the PIM has been arranged, the Inspector is therefore in control of the subject matter for discussion and the procedure at the PIM, but under the relevant Rules only the SofS can vary the opening date of or the venue for the inquiry.

A.4 Before the PIM, the Inspector should have drafted an agenda for the meeting and, if this has not already been circulated, he or she should have sufficient copies for each of the main participants as well as some spares for the public. Also, the Inspector should have prepared an opening announcement giving his or her name, qualifications, etc, in similar fashion to the opening announcement for the inquiry. The Inspector should outline the purpose of the meeting, emphasising that it is not to hear evidence, but to arrange for the efficient running of the inquiry when it opens. The Inspector should organise an attendance list.

A.5 The Inspector should explain that agreements reached at the PIM are without prejudice to the rights and entitlements of objectors and others who appear at the inquiry without having attended the PIM.

A.6 Any Assistant Inspector, Assessor or Programme Officer should usually attend the PIM, and the Inspector should introduce them and explain their function and the part that they will play at the inquiry. The role of the Programme Officer will be particularly important in the run-up to the inquiry. Details of how he or she can be contacted and the venue of the inquiry library for the deposit and inspection of documents must be clearly stated.

A.7 After the PIM, a note of the conclusions of the meeting is usually circulated to all those who made representations. The note will then be placed in the inquiry library. The Inspector (or possibly the Programme Officer) should therefore take a careful note of the proceedings from which he or she can prepare the final record.

A.8 The following matters are often considered at PIMs.

i) Clarification of the purpose and scope of the inquiry.

ii) Identification of main participants and registration of others wishing to appear at the inquiry.

iii) Identification of any material required by the Inspector and not already covered in the outline statements, and consideration of how this is to be provided, including the progress of any special studies being undertaken, and the need for additional participants.

iv) Responses to any invitation from the Inspector to participants to consider collaboration.

v) Arrangements for the preparation of generally agreed statements of facts, including arrangements for any informal meetings that may be required to assist in preparing such statements.

vi) A review of the timetable for the work to be done before the inquiry opens, including the submission of any further statements.

vii) The role of any Assessors.

viii) Details of the inquiry venue and proposed dates and times of sittings including any provision for evening sessions or for sessions away from the main venue.

ix) The programme for the inquiry.

x) Accommodation and facilities at the inquiry (eg copying, transcripts, telephones, public address system, and facilities for the media).

xi) The form of opening and closing statements.

xii) The presentation of evidence (normally by the reading of summaries only).

xiii) Timetables and arrangements for the submission, circulation, inspection, numbering and listing of documents, statements of evidence and summaries.

xiv) Agreement on the units of measurement, nomenclature, acronyms, etc to be used at the inquiry.

xv) Arrangements for the handling of alternative schemes (where applicable).

xvi) Arrangements for site visits.

xvii) Arrangements for further PIMs (if considered necessary).

A.9 In cases where a PIM is not appropriate, but nevertheless parties may need guidance in preparing for the Inquiry, it is open to the Inspector to produce and have issued to all parties a pre-Inquiry note so that parties can approach the Inquiry in an awareness of the Inspector's expectations. If this is done, the pre-Inquiry note should be made an Inquiry document.

APPENDIX B

EXTRACT FROM A STATEMENT BY BARONESS STEDMAN IN A HOUSE OF LORDS DEBATE ON 25 FEBRUARY 1976

B.1 "These Policy issues include .... the general assumptions which the Government make .... about the future growth of the economy and the broad effects which the Government expect these factors to have on traffic growth, and the design standards which are appropriate to various ranges of traffic volumes and speeds ....

B.2 "I do not believe that discussion involving, as it must, both detailed technical argument and broader discussion of the population and economic assumptions from which these general factors are derived can be of use either to the Inspector in making his recommendation or to the SofS in taking his decision. National forecasts must be discussed and settled nationally. This does not mean, my Lords, that we would attempt to exclude discussion of the particular traffic forecasts used for the road proposal under inquiry....

B.3 "Local conditions may affect actual growth in a particular corridor considerably. As I have already said, objectors may well put forward a case, and the Inspector may accept, that the forecasts presented by the department in support of their proposal have not paid sufficient attention to some particular local factor. The Inspector will, in those circumstances, expect the witness to be able to justify the traffic figures used…"

APPENDIX C

EXTRACT FROM JUDGMENT OF LORD DIPLOCK IN THE CASE OF BUSHELL AND ANOTHER v SoS for Environment [1980] 2 All ER 608

C.1 "*Policy* as descriptive of departmental decisions to pursue a particular course of conduct is a protean word and much confusion in the instant case has, in my view, been caused by a failure to define the sense in which it can properly be used to describe a topic which is unsuitable to be the subject of an investigation as to its merits at an inquiry at which only persons with local interests affected by the scheme are entitled to be represented. A decision to construct a nationwide network of motorways is clearly one of Government policy in the widest sense of the term. Any proposal to alter it is appropriate to be the subject of debate in Parliament, not of separate investigations in each of scores of local inquiries before individual inspectors up and down the country upon whatever material happens to be presented to them at the particular inquiry over which they preside. So much the respondents readily concede.

C.2 "At the other extreme the selection of the exact line to be followed through a particular locality by a motorway designed to carry traffic between the destinations that it is intended to serve would not be described as involving Government policy in the ordinary sense of that term. It affects particular local interests only and normally does not affect the interests of any wider section of the public, unless a suggested variation of the line would involve exorbitant expenditure of money raised by taxation. It is an appropriate subject for full investigation at a local inquiry and is one on which the Inspector by whom the investigation is to be conducted can form a judgment on which to base a recommendation which deserves to carry weight with the Minister in reaching a final decision as to the line the motorway should follow.

C.3 "Between the black and white of these two extremes, however, there is what my noble and learned friend, Lord Lane, in the course of the hearing described as a "grey area". Because of the time that must elapse between the preparation of any scheme and the completion of the stretch of motorway that it authorises, the department, in deciding in what order new stretches of the national network ought to be constructed, has adopted a uniform practice throughout the country of making a major factor in its decision the likelihood that there will be a traffic need for that particular stretch of motorway in fifteen years from the date when the scheme was prepared. This is known as the "design year" of the scheme. Priorities as between one stretch of motorway and another have got to be determined somehow.

C.4 "Semasiologists may argue whether the adoption by the Department of a uniform practice for doing this is most appropriately described as Government policy or as something else. But the propriety of adopting it is clearly a matter fit to be debated in a wider forum and with the assistance of a wider range of

relevant material than any investigation at an individual local inquiry is likely to provide; and in that sense at least, which is the relevant sense for present purposes, its adoption forms part of Government policy."

APPENDIX D

THE TESTS FOR THE MAKING OR CONFIRMATION OF ORDERS DEALT WITH IN THIS GUIDE

While every effort has been made to ensure the correctness of the information contained in this Guidance, in every case it should be carefully checked against the latest versions of the relevant Acts, Instruments and Circulars. This is to ensure that any subsequent amendments or change of requirements that may have occurred since this guidance was prepared, are taken fully into account.

See also the advice in paragraph D.19 below on The Road Traffic Regulation Act (sections 32 and 40) that provides powers to acquire land compulsorily for the provision of off-street parking.

Orders under the Highways Act 1980 ("the Act")

D.1 The promoters need to make it clear in every case which authorising sections of the appropriate legislation they rely on for the justification for their orders, and how the statutory test in the legislation, or contained in the authorising section, would be met. Thus under Section 10 of the Act, it should be made clear whether the order is promoted for the purpose of extending or improving or reorganising the trunk road system. It is also necessary under Section 10 for the promoter of a trunk road scheme to show that the requirements of local and national planning, including the requirements of agriculture, have been taken into consideration, and that their proposals are expedient for the purposes intended.

D.2 For an order under Section 14 of the Act, the SofS must be satisfied under the provision in section 14(6) of the Act that another reasonably convenient route is available or will be provided before the highway is stopped up.

D.3 Before approving a scheme for a special road under Section 16 of the Act, the SofS must before making or confirming that Scheme give due consideration to the requirements of local and national planning, including the requirements of agriculture as required under the provisions in section 16(8).

D.4 For supplementary orders relating to special roads under Section 18 of the Act, the SofS must be satisfied in respect of those matters identified in section 18(6) of the Act.

D.5 Under Sections 106 and 107 of the Act for the construction of a bridge over or tunnel under navigable waters as part of a scheme made by a local highway authority to be confirmed by the Minister, or in other circumstances as described in Sections 10, 14, 16 and 18 of the Act, the SofS must under the provisions in section 107(1) take into consideration the reasonable requirements of navigation over the waters affected by the order or scheme. The order or scheme must also include plans and specifications to indicate the

position and dimensions of a proposed bridge, including its spans, headways and waterways, and, in the case of a swing bridge, provisions for regulating its operation; or, in relation to a proposed tunnel, plans and specifications to indicate its position and dimensions, including its depth below the bed of the navigable waters.

D.6 An Order made under Section 108 of the Act may authorise a highway authority to divert part of a navigable watercourse, where this is necessary or desirable in connection with the construction, improvement or alteration of a highway (including a highway on a bridge or in a tunnel), the provision of a new means of access from any premises to a highway, or the provision of a maintenance compound or service area. Where a watercourse is diverted under Section 108, any new length of watercourse created must be navigable in a reasonably convenient manner by vessels of a kind which used the part of the original watercourse to be replaced.

D.7 For an Order under Section 124 of the Act (to stop up private means of access to a highway) to be made or confirmed by the Minister under the provisions in section 124(2), it must be shown that continued use of the access is likely to cause danger to or to interfere unreasonably with traffic on the highway (s124(1)), and either that no access from the premises to the highway in question is reasonably required or that another reasonably convenient means of access to the premises is available or will be provided (s124(3)).

D.8 Section 125 of the Act authorises the stopping up of a private means of access in conjunction with Orders under section 14 or 18 of the Act, providing that either no access to the premises is reasonably required, or that another reasonably convenient means of access is or will be available (s125(3)).

D.9 Sections 239 to 246 of the Act provide powers to acquire land compulsorily for a wide variety of specific purposes in connection with the provision of highways and facilities used in connection with them. This includes compulsory acquisition of exchange land to replace any common, open space or fuel or field allotment affected by a CPO. Section 250 deals with the compulsory acquisition of rights over land.

D.10 In each case, the SofS/WM needs to be satisfied (as a matter of Government policy, expressed in ODPM Circular 06/2004 and NAFWC 14/2004) that:

- all the land affected by the order is required for the scheme;
- the acquisition would not be premature; and,
- the case for acquisition has been made out in the public interest.

D.11 The SofS/WM also needs to be satisfied that the case for compulsory acquisition of the land covered by the order justifies

interfering with the human rights of those with an interest in the land affected; that the acquiring authority have a clear idea of how the land covered by the order would be used; that all necessary resources to carry out the plans are likely to be available within a reasonable timescale; and that the scheme is unlikely to be blocked by any impediment to implementation (ODPM Circular 06/2004, Memorandum, paragraphs 16 to 23). Where an Exchange Land Certificate is before the Inquiry, the tests in Section 19 and Schedule 3 of the Acquisition of Land Act 1981 should be applied as appropriate, with reference as necessary to Appendix L to the Memorandum attached to ODPM Circular 06/2004.

Toll Orders

D.12 A Toll Order under Section 6 of the New Roads and Street Works Act 1991 can only be made in relation to a special road proposed to be provided by a highway authority. The Act does not specify any criterion for the making or confirmation of a Toll Order under Section 6. It is sufficient if the SofS is satisfied that it is appropriate to confirm the order. The same applies to variation orders.

D.13 A Toll Order under Section 8 of the Act of 1991 authorising the charging of tolls by a concessionaire can only be made if the road to which the order refers consists of or includes a major crossing to which there is no reasonably convenient alternative. A major crossing means a crossing of navigable water more than 100 metres wide, and a reasonably convenient alternative means another crossing (other than a ferry) which is free of toll and within five miles (8.05 km) of the crossing. Subject to that point, the Act again does not specify any criterion for the making or confirmation of a Toll Order. It is sufficient if the SofS is satisfied that it is appropriate to confirm the order. Again, the same applies to variation orders.

D.14 Orders to vary tolls authorised by local Acts must comply with any tests contained in such Acts.

Orders under Section 247 Town and Country Planning Act 1990

D.15 The Secretary of State may by order authorise the stopping up or diversion of any highway outside Greater London if he is satisfied that it is necessary to do so in order to enable development to be carried out either (a) in accordance with planning permission granted under Part III or section 293A of the 1990 Act, or (b) by a government department. Such an Order may make such provision as appears to the Secretary of State to be necessary or expedient for the provision or improvement of any other highway outside Greater London. In England, Defra Circular 1/09 applies and it indicates that the stopping up or diversion that is the subject of the Order should be such that its advantages outweigh the

disadvantages or loss to the public generally or those nearby who would be affected by the Order.

Orders under Section 248 Town and Country Planning Act 1990

D.16 The tests to be satisfied are as follows.

- Planning permission shall have been granted for the construction or improvement of a highway ("the main highway") or the SofS shall propose to carry out such work (s248(1)(a));

- Another highway shall cross or enter the route of the main highway or shall be otherwise affected by the construction or improvement of the main highway (s248(1)(b));

- The place where the other highway crosses or enters the route of the main highway or is otherwise affected shall be outside Greater London (s248(2)) (for cases in Greater London, s248(2A) applies);

- It shall be expedient to stop up or divert that other highway either in the interests of the safety of users of the main highway or to facilitate the movement of traffic on the main highway (s248(2); and

- If in England, the advantages should outweigh the disadvantages or loss to the public generally or those nearby who would be affected by the order (DEFRA Circular 1/09).

Orders under Section 249 Town and Country Planning Act 1990

D15 The tests to be satisfied are:

- Confirm that the highway which is to be pedestrianised is not a trunk road or a road classified as a principal road (s249(1)(b));

- Has the local planning authority by resolution adopted a proposal whereby the proposed pedestrianisation would improve the amenity of part of the local planning authority's area (s249(1)(a)); and,

- If in England, would the advantages outweigh the disadvantages or loss to the public generally or those nearby who would be affected by the order (Defra Circular 1/09).

Orders under Section 251 Town and Country Planning Act 1990

D16 The tests to be satisfied are:

- Has the land over which the rights of way been acquired or appropriated for planning purposes and is it held by a local authority for that purpose;
- Would the extinguishment of the rights of way allow the later use of that land for planning purposes (s251(1));
- Has or will an alternative right of way be provided, or is no alternative right of way required (s251(1)); and
- Would the advantages outweigh the disadvantages or loss to the public generally or those nearby who would be affected by the order (Defra Circular 1/09).

Traffic Regulation Orders: The Road Traffic Regulation Act 1984

D.17 The Order must be made for a qualifying purpose. Through section 1 of the Road Traffic Regulation Act 1984 (outside London) or through s6 (in London) these are:

- Avoiding danger to persons or traffic;
- Preventing damage to the road or to buildings nearby;
- Facilitating the passage of traffic;
- Preventing use by unsuitable traffic;
- Preserving the character of a road especially suitable for walking or horse riding;
- Preserving or improving amenities of the area through which the road runs;
- For any of the purpose specified in paragraphs (a) to (c) of the Environment Act 1995 in relation to air quality;

Under section 22(2) of the Act:

- To conserve or enhance the natural beauty of listed special areas in the countryside such as National Parks (full list in section 22 of the Road Traffic Regulation Act 1984);
- To allow for improved access to recreational opportunities or to provide for the study of nature;

Under section 22C of the Act:

- To avoid or reduce danger connected with terrorism.

A TRO must also specify a form of restriction which is authorised by the Act – such as a vehicle restriction, a direction of travel restriction, a waiting restriction or other prohibition, restriction or regulation identified in section 2 of the Act.

D.18 Subject to these provisions, the SofS must be satisfied that it is appropriate to confirm the order.

D.19 The Road Traffic Regulation Act (Sections 32 and 40) also provides powers to acquire land compulsorily for the provision of off street parking. Orders promoted under these provisions must be supported by evidence to demonstrate that the parking provided would relieve or prevent congestion of traffic. Where the resulting parking space would also provide access to premises, it is necessary for the evidence to show that it would be possible to ensure that vehicles using the parking space to gain access to the premises in question would proceed in the same direction as other vehicles using the parking space.

Overall requirement

D.20 In every case, subject to the specific provisions for each type of order, the SofS needs to be satisfied when making or confirming a TRO that it is appropriate to do so balancing any public or private disadvantages against the public benefits.

APPENDIX E

PROCEDURE AT INQUIRIES - SIMPLER INQUIRIES

E.1 After the Inspector's opening announcements the proceedings will normally follow the sequence:

i) an opening statement by the advocate for the Promoting Authority;

ii) the promoting authority's presentation of the evidence-in-chief by their witness;

iii) the cross-examination of the promoting authority's witness by objectors;

iv) the re-examination of the promoting authority's witness by their advocate;

v) the presentation of the objector's evidence and representations;

vi) the cross-examination of the objector (or his or her witness if represented) by the promoting authority's advocate;

vii) the reply to the cross-examination (or re-examination if the objector is represented by an advocate) and a final statement by the objector;

[NOTE: stages (ii) to (iv) and stages (v) to (vii) would be followed for each individual witness and objector.]

viii) the closing statement by the promoting authority's advocate;

ix) arrangements for accompanied site inspection; and

x) the Inspector's closure of the inquiry.

E.2 If the Inspector considers that it would be in the interests of the inquiry or necessary to accommodate individuals or unusual circumstances, he or she may vary the procedure accordingly within the requirements of the appropriate inquiries procedure rules. For example, it may be convenient to defer some final statements to the end of the inquiry if the relevant parties wish, normally hearing them in the reverse order of appearance. As an alternative to the case-based sequence described above (that is to say, with each party presenting the whole of their case in turn) it may sometimes be preferable to have a topic-based sequence, where separate topics or issues are identified and each party presents the part of their case relating to each topic in turn.

APPENDIX F

PROCEDURE AT INQUIRIES - MORE COMPLEX INQUIRIES

F.1 After the Inspector's opening announcements, the proceedings will normally follow the following sequence:

i) an opening statement by the advocate for the promoting authority;

ii) the promoting authority's witnesses' presentation of their evidence in chief;

iii) questions of clarification by objectors to the promoting authority's witnesses;

iv) questions to the promoting authority's witnesses by their advocate about their response to iii).

In the case of supporters, after step iv and before step v the proceedings would follow the sequence:

a) the supporter's presentation of his or her case;

b) cross-examination of the supporter by objectors;

c) re-examination of the supporter by his or her advocate;

d) final address by the supporter's advocate.

Steps a) to d) are then repeated for each individual supporter.

v) cross-examination on evidence in chief of the promoting authority's witnesses by the first objector as a preliminary to vii);

vi) re-examination of the promoting authority's witnesses by their advocate;

vii) the first objector's presentation of his or her case (and introduction of alternative proposals);

viii) The cross-examination of the first objector by the advocate for the promoting authority;

ix) rebuttal evidence presented by the promoting authority's witnesses;

x) cross-examination of the promoting authority's rebuttal evidence by the first objector;

xi) re-examination of the promoting authority's witnesses by their advocate.

xii) first objector's presentation of final address;

xiii) The response of the promoting authority's advocate to the first objector's case.

NOTE: Steps v) to xiii) are then repeated for each individual objector, with provision being made for interested parties to have the opportunity to speak.

Counter-objectors to alternative proposals would normally be permitted to cross-examine the relevant objector after step viii and would then appear at the inquiry after step xi and before step xii. These proceedings would follow the sequence:

a) the counter-objector's presentation of his or her case;

b) cross-examination of the counter-objector by the relevant objector;

c) re-examination of the counter-objector by his or her advocate;

d) the counter-objector's presentation of his or her final address.

xiv) closing address by the promoting authority's advocate;

xv) final arrangements for accompanied site inspections;

xvi) the Inspector's closure of the inquiry.

F.2 In practice, steps i. iii and iv are sometimes omitted and incorporated in v and vi. If the Inspector considers that it would be in the interests of the inquiry or necessary to accommodate individuals or unusual circumstances, he or she may vary the procedure accordingly within the requirements of the appropriate procedure rules. Some of the more normal variations are listed below:

a) objectors have a few questions of clarification for the Promoting Authorities witnesses, or wish to reserve such questions for cross examination – stages iii and iv are then omitted as separate stages and incorporated within stages v and vi;

b) cross examination on evidence in chief and rebuttal evidence are combined – in that event, stage v is incorporated with stage x and stage vi is incorporated with stage xi;

c) some or all final statements are deferred to the end of the inquiry. If all are deferred in this way, it is normal to hear them in the reverse order of appearance;

d) the promoting authority does not close after each individual objection, but closes comprehensively at stage xiv.

APPENDIX G

REPORT LAYOUT

i) General report layout for transport Orders

ii) Modification to front sheet for Welsh casework.

The Planning Inspectorate

Report to the Secretary of State for Transport

by [Name of Inspector, Qualifications]

an Inspector appointed by the Secretary of State for Transport

[Assisted by [Name of Inspector/Assessor, Qualifications (delete as appropriate)]

Date

HIGHWAYS ACT 1980
ACQUISITION OF LAND ACT 1981

WESSEX COUNTY COUNCIL

CAMELOT WESTERN BYPASS

UPSTREAM BRIDGE, SIDE ROADS AND COMPULSORY PURCHASE ORDERS 2011

Dates of Inquiry: 19 July 2011 to 21 July 2011

Ref: INSERT REFERENCE

CASE DETAILS

1 [**Name of First Order]**

- This Order is made under of the and is known as
- [Name of order-making authority] submitted the Order for confirmation to the Secretary of State for Transport.
- The Order proposes to …….

Summary of Recommendation(s): ……

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2 **[Name of Second Order]**

- Etc.

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1. PREAMBLE

2. DESCRIPTION OF THE SITE AND ITS SURROUNDINGS

3. LEGAL/PROCEDURAL SUBMISSIONS

4. THE CASE FOR [THE PROMOTER]

5. THE CASES FOR THE SUPPORTERS

6. THE CASES FOR THE OBJECTORS

7. THE CASES FOR THE COUNTER OBJECTORS

8. THE RESPONSE OF [THE PROMOTER]

9. CONCLUSIONS

10. RECOMMENDATION

A.N. Other

INSPECTOR

[New page]

APPENDIX 1 – APPEARANCES

[New Page]

APPENDIX 2 – INQUIRY DOCUMENTS

The Planning Inspectorate
Yr Arolygiaeth Gynllunio

Adroddiad

Ymchwiliad a gynhaliwyd ar ******

gan *****

Arolygydd a benodir gan Weinidogion Cymru

Dyddiad: *****

Report

Inquiry held on ********

by *****

an Inspector appointed by the Welsh Ministers

Date: *****