

# Chartered Town Planners at Inquiries

## RTPI Practice Advice Note 4

### 1. Introduction

This guidance note was first published in 1989. Whilst the advice remains technically accurate in so far as it applies to the involvement of Chartered Town Planners at formal Inquiries run along adversarial lines, changes to the planning system since the introduction of the Planning and Compulsory Purchase Act 2004 mean that the issues raised in this note do not usually apply to Local Development Frameworks or Regional Strategies, in part because of their inquisitorial nature.

Formal Inquiries are now relatively few in number, mainly reserved for the largest and most controversial development schemes. Therefore the RTPI will publish new advice covering all these issues in the near future.

A section containing hyperlinks to [sources of further information](#) and [key publications](#) is available at the end of this document.

The Note is intended to assist the Chartered Town Planner in his or her professional role at public local inquiries, most especially in those instances where there is a potential conflict of interest between the maintenance of professional integrity and responsibility either to an employer or a client.

The professional responsibilities of a Chartered Town Planner as a witness at a local inquiry or other hearing are governed by the Institute's Code of Professional Conduct which requires members to conduct themselves in such a manner as to uphold the reputation of the Institute and of the planning profession. In particular, it requires that members do not undertake any duties or carry out any instructions of a public employer or other employer, or a client or supervisor which involve making statements purporting to be their own, but which are contrary to their bona fide professional opinion.

The requirements of the Code should be taken into account by the town planner working in the consultancy sector before the acceptance of a commission which might involve the presentation of evidence at an inquiry contrary to the principles of the Code. Provided that this is done any conflict of interest ought to be avoided.

All town planners should be aware of the possibilities of conflict of interest which could prevent them acting as an advocate or witness. The most frequently encountered conflict of interest is likely to be acting as a witness at an inquiry arising from a decision taken by a local planning authority contrary to a professional recommendation. There may also be some difficulty in deciding whether to act as an advocate only at an inquiry, or as both advocate and expert witness.

The need to bear in mind responsibilities to a former planning authority employer when now engaged elsewhere in practice in the same geographical area, is the subject of separate guidance in, "[GPN2: Consultancy by Current and Former Public Sector Employees](#)".

The types of inquiries at which such issues may arise are normally those held under the provisions of the Town and Country Planning Acts at which the procedures are as required by the various Inquiries Procedure Rules. Chartered Town Planners may also be involved as witnesses at planning hearings or in inquiries into matters ancillary to planning under the Housing and Highways Acts.

## **2. The town planner as professional witness**

The town planner as a witness at an inquiry is there to give evidence which must be true evidence, true to the best of his or her understanding and knowledge. If the evidence is of facts, they must be true facts and, if given in the form of a professional opinion, it must be the planner's own professional opinion if it is to carry weight as expert evidence. If a planning officer is giving evidence of a superior officer's opinion - e.g. an assistant planning officer giving evidence as to the chief planning officer's recommendation to the local planning authority - he or she can do so only as evidence of a matter of fact. Expert evidence by way of professional opinion must be first-hand so that it can be tested in cross-examination.

Care must be taken to avoid giving the impression that any statement made or views expressed at the inquiry represent a planner's own view if these are contrary to his or her bona fide professional opinion. This must be borne in mind in the preparation of any proof of evidence. It does not mean that the planner should volunteer the information that the case being supported is at variance with his/her own professional opinion. Nevertheless, if challenged on the point, the planner must be prepared to declare an opinion. For a planner working for a local planning authority such a difference of opinion with an employer or superior officer must not be concealed.

Clearly, the planner whose bona fide professional opinion is not in conformity with the case the evidence is supposed to support, is unlikely to be the best witness in such a case. It will be for those responsible for the conduct of the case to judge. The planner should ensure that whoever is so responsible is aware beforehand of the difference of opinion that may be revealed at the inquiry if the planner is called as a witness.

If, nonetheless, a planning officer is called in such circumstances, the person conducting the case and the employing authority must be prepared to accept the consequences of such a revelation, if it is made. The better alternative is not to require that officer to give evidence, but to call someone else, who is in a position to speak with conviction of the reasons for the authority's decision. If the officer is the chief planning officer this may involve calling the Chair of the Planning Committee. Equally, an authority might seek to employ a planning consultant to undertake the task.

It is important that a planning officer, as a member of the planning profession, should be able to maintain professional integrity by being frank and open about his or her professional opinion or the advice given to their authority. It is also important to the good name of the employing council as a planning authority that this should be so. That councils may not always follow the advice of their officers is of the essence of democratic local government, which would be suspect if this were not so. The professional officer, too, may

have a change of opinion, but this must be on the basis of professional judgement, and not because an authority, its members or other officers have prevailed upon the officer to put forward his or her professional view as something other than it really is.

Although the preceding paragraphs apply primarily to town planners employed by local planning authorities, the principles apply with equal force to those engaged in consultancy or other areas of professional activity.

### **3. The town planner as an advocate**

Some Chartered Town Planners will wish to appear as advocates as often as they can. Others will only wish to act as advocates in those proceedings in which they are also appearing as expert witnesses or have given advice or prepared reports in connection with the subject matter of the inquiry.

Whilst the Institute would not wish to lay down hard and fast rules, a Chartered Town Planner, in deciding whether it is appropriate for him or her to act as an advocate, should have as a primary concern the best interests of a client or employing authority, as well as the need to retain professional integrity. In so doing, the Institute suggests that the planner should ask the following questions:

- (a) is my experience adequate to warrant my acting as an advocate?
- (b) is the complexity of the case (including the legal elements of it), or the amount at stake in the event of failure, such that my client's or authority's chances would be improved by the engagement of a solicitor or barrister to act as the advocate? Particularly for those engaged in Planning Aid, the question may be settled by the lack of financial resources of the client to engage the services of a solicitor or barrister;
- (c) how contentious is the case?
- (d) will I be prevented by my responsibilities as expert witness from adequately performing my role as advocate as well?
- (e) would I, as advocate for my client or authority, be required to put forward for consideration by the inquiry or tribunal, evidence or submissions which, if they could be put to me as expert witness in cross-examination, I would have difficulty in supporting?
- (f) if I have been previously employed as an officer of the local planning authority concerned with the inquiry, am I likely to make use of information known to me only by reason of that employment?

In the light of the answers to questions such as these a Chartered Town Planner will decide whether or not it is appropriate to appear as an advocate. It is not a role which the Institute considers to be an appropriate one for Students of the Institute, except insofar as it forms part of their training and is carried out under appropriate supervision. This limitation would not preclude students who are otherwise qualified to act as advocates from doing so.

### **4. The role of the advocate**

A Chartered Town Planner who decides to act as an advocate will probably be familiar with the procedure followed at inquiries and tribunals as a result of appearing as an expert witness in such proceedings. However, to succeed as an advocate the Chartered Town Planner will need to do more than to read and understand the relevant legal provisions.

Advocacy is a skill in its own right most especially in cross-examination techniques. It is a skill which needs to be studied and practised and which will elude some. The Institute wishes to ensure that those who do act as advocates do so well. In paragraph 7 methods are discussed by which a Chartered Town Planner might be assisted to acquire that skill if he or she does not already have it.

It is essential that the role of the advocate is correctly perceived by all who practise it. The business of the advocate is, in short, to present to the inquiry or tribunal that which the authority or client would say for themselves if they possessed the requisite skill and knowledge, and to do this in such a way as to assist the inquiry or tribunal and not to mislead it.

A Chartered Town Planner who assumes the role of advocate will need to develop skill in advising on case content and actually presenting the case, and he or she will still need to consider whether to seek legal advice where appropriate.

## **5. Procedure at the inquiry**

The precise role of the Chartered Town Planner at an inquiry will depend on whether the procedure is formal or informal. A hearing is not now subject to the Inquiries Procedure Rules and there is no place for advocacy in such cases.

At an inquiry, however, an advocate may expect to:

- (a) introduce the case by making an opening statement;
- (b) call the evidence to be given;
- (c) cross-examine evidence presented by opposing participants;
- (d) re-examine or deal with points raised in cross-examination which are damaging to the client's case or where clarification of evidence given by a witness is needed;
- (e) make a closing statement in the interests of the client.

## **6. The difference between the Chartered Town Planner's role as advocate and expert witness**

It should be clearly recognised that a Chartered Town Planner's role as an advocate is quite different from his or her role as an expert witness and he or she must decide in the individual case whether the roles are reconcilable.

The role of an advocate is not based on professional training or status as a town planner, but that of someone engaged by a client to speak on their behalf in the proceedings. If the planner's professional view differs from the evidence being advanced on behalf of the client, they may nonetheless act as advocate if they wish, provided that they do not wilfully mislead the inquiry or tribunal or fail to give the presiding inspector or other officer the help they are entitled to receive.

The Chartered Town Planner has no such discretion in regard to the role as expert witness. As an expert witness the planner puts professional reputation and integrity at stake, presenting on behalf of the client his or her professional opinion relating to the matter under inquiry, accepting that this view may be tested on cross-examination and that his or her personal standing and reputation depend on the professional worth of this evidence.

## 7. Advocate training for the planner

It is of the utmost importance to recognise that advocacy skills need to be learned by study and experience if high professional standards are to be maintained. The learning process is likely to contain at least four elements:

- (a) watching experienced professionals at work before inquiries and tribunals;
- (b) studying the relevant statutes and statutory instruments governing proceedings;
- (c) reading some of the excellent books on inquiries readily available;
- (d) joining a course on public speaking or advocacy.

Any training can be undertaken as part of the Institute's requirement for Continuing Professional Development.

It would be sensible for the first case undertaken to be a straightforward one so that the planner may learn by experience, taking on more complicated issues once knowledge and confidence is gained.

## 8. Other roles at an inquiry

A Chartered Town Planner may have occasion to be present at an inquiry in some capacity other than as a professional planning witness or advocate, for example, whilst exercising their rights as a private citizen or as the promoter of the development. He or she must be careful in such circumstances to make it plain the capacity in which he or she is taking part.

## 9. Conclusion

Within the framework of this general advice, RTPi staff are available to give members further informal advice on the circumstances of particular cases. Enquiries should be sent to [piwp@rtpi.org.uk](mailto:piwp@rtpi.org.uk)

## 10. Sources of further information

For more information please visit:

RTPi Code of Professional Conduct [www.rtpi.org.uk/about-the-rtpi/codecond.pdf](http://www.rtpi.org.uk/about-the-rtpi/codecond.pdf)

RTPi Continuing Professional Development [www.rtpi.org.uk/careers-and-membership/cpd/index.html](http://www.rtpi.org.uk/careers-and-membership/cpd/index.html)

Planning Aid [www.planningaid.rtpi.org.uk](http://www.planningaid.rtpi.org.uk) or email: [info@planningaid.rtpi.org.uk](mailto:info@planningaid.rtpi.org.uk)

Planning Inspectorate [www.planning-inspectorate.gov.uk/](http://www.planning-inspectorate.gov.uk/)

Department for Communities and Local Government [www.communities.gov.uk](http://www.communities.gov.uk)

## Key publications

Local Development Frameworks: Assessing The Soundness of Development Plan Documents and Statements of Community Involvement - PINS (2005)

[www.planning-inspectorate.gov.uk/pins/appeals/local\\_dev/Soundness\\_of\\_DPD.htm](http://www.planning-inspectorate.gov.uk/pins/appeals/local_dev/Soundness_of_DPD.htm)

Planning Inspectorate and Public Inquiries

[www.communities.gov.uk/index.asp?id=1143711](http://www.communities.gov.uk/index.asp?id=1143711)

PPS12: Local Development Frameworks (esp. Appendix D.)

[www.communities.gov.uk/pub/848/PlanningPolicyStatement12LocalDevelopmentFrameworks\\_id1143848.pdf](http://www.communities.gov.uk/pub/848/PlanningPolicyStatement12LocalDevelopmentFrameworks_id1143848.pdf)

Circular 04/06: Planning Inquiries into Major Infrastructure Projects: Economic Impact Reports (DCLG) [www.communities.gov.uk/index.asp?id=1164612](http://www.communities.gov.uk/index.asp?id=1164612)

Circular 02/02 (ODPM): Enforcement Appeals Procedures

[www.communities.gov.uk/index.asp?id=1144349](http://www.communities.gov.uk/index.asp?id=1144349)

Planning Inspectorate and Public Inquiries

<http://www.communities.gov.uk/index.asp?id=1143711>

This guidance is written for chartered town planners working with the English system, but much of the advice is relevant to all parts of the UK.

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