

# The importance of Appeal PRE-EXAMINATION MEETINGS – Rachel Connor

## What are they?

Many people are confused as to why they cannot bring up their particular areas of concern (e.g. noise from wind turbines or effects on their private water supplies) in appeal proceedings, such as Public Inquiries or Hearings.

SAS has successfully petitioned the DPEA to produce public guidance on the procedure and administration for such oral examinations and we have gone back to DPEA to try and make this a bit clearer.

In essence, the key to any appeal is the Pre-Examination Meeting (PEM)

An explanation of the purpose of a PEM is available at this link <https://dpea.public-i.tv/core/portal/webcasts> in the DPEA Guide to Appeals Videos section. Full length webcasts of recent PEMs are also available on the page.

Here are some bullet points, but please refer to the DPEA guidance for full details (excerpt of the PEM guidance below)

- You may only participate in a PEM if you have submitted representation (objection or support) to an application and you have replied to DPEA, following invitation/notification by DPEA that you wish to participate.
- If this is an appeal procedure (for a previously refused application) it is the Reporter's discretion whether they will examine your area of concern (e.g. noise, chemical pollution, bird kill etc) at a Hearing or Inquiry (PLI)  
If this is a s.36 or other planning application which is to be decided de novo by DPEA, then under the Aarhus convention, there is more of a right of public participation and you have more rights to insist that your voice is heard and your area of concern is addressed
- There may be several PEMs and the trend is for these to be held virtually. The Reporter will also try and set future dates that are convenient for the appellant and main parties.
- At the PEM, interested parties will 'lobby' the Reporter for their areas to concern to be examined (eg Landscape and Visual) and how it should be examined e.g. with written submissions, a Hearing or an Inquiry and how long may be required for each topic. Usually, it seems the appellant and Local authority (LPA) or other statutory consultee have the Reporter's attention and third parties are 'also rans', so it's important to make your case clearly, if this is not already a disputed topic.
- A PEM is not a meeting to discuss the merits or details of disputed topics.
- Once the Reporter has decided on what topics are to be examined and what procedure is to be used, that is effectively the agenda for the appeal or Decision. As a third party to an appeal, you are very unlikely to be able to bring up anything else which is not on that Agenda, if this is not listed as a topic to be heard at a Hearing or Inquiry. (e.g. noise), even if you consider there are errors or omissions in the appellants documents.
- **Bottom line- The PEM is very important and critical to your interests. Make sure you attend to be able to get your area of concern addressed in whatever future format the appeal takes**

## DPEA Guidance:

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### **Pre-examination Meetings**

The reporter may require that a pre-examination meeting (PEM) is held. These may be held virtually or in-person. The purpose of a PEM is to discuss the administrative arrangements for any further procedures (further written submissions, hearing and/or inquiry sessions) that are to be held and to discuss how the case can be conducted in the most efficient manner. DPEA will set the date, time and venue for the meeting and will give notice of the arrangements to the parties.

The PEM is a public meeting and so members of the public can attend. It should be noted, though that only those who submitted responses for/against the original proposal (interested parties) will be invited to provide their views on the proposed arrangements for further procedure. No discussion on the merits of the appeal will be discussed at the PEM, only the procedural aspects of making arrangements for any further submissions or oral sessions that will be held. The reporter will set the agenda for the PEM. Amongst other things the agenda will identify the reporter's provisional views on the issues requiring no further procedure and the issues requiring further information or evidence and the reporter's proposed procedures for dealing with them. The reporter will give parties the opportunity to make representations on the identification of the issues, the proposed method of procedure and the arrangements for site inspections. At the PEM, the reporter will consider parties' representations on the procedure to be adopted and likely duration of proceedings and will fix a timetable for the case and the dates of any oral sessions. For appeals, the decision with regards to further procedure rests with the reporter alone. For non-appeal cases, there may exist the right to be heard, in which case parties may be able to insist on an oral process.

Following the PEM, the reporter will issue a note of the meeting that records the matters discussed and the reporter's decision on the procedure to be adopted. It will also contain dates for submission of any statements, documents and precognitions required by the reporter. Parties must advise DPEA within 14 days of receiving the note of the PEM whether or not they intend to participate in any hearing and/or inquiry sessions and, if so, in which they intend to participate.

No further submissions are required in advance of a PEM.