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**Evidence Hierarchies**

If you are considering legal action against a planned development which may have an adverse impact on the local community it is important to start considering the evidence which you are planning to rely on from the outset. This article is split into two sections; the first section will consider different types of evidence and the effect each has on a planning dispute. The second section concerns practical tips for preparing evidence.

**Types of Evidence**

As a general rule, in planning law different types of evidence will attract a different level of weight. The ‘weight’ of evidence simply means how strong it is and how far it can persuade a decision maker to support a certain view point. This article will run through the three main types of evidence, in an ascending order of weight, that normally appear in planning law cases.

**Surveys and Local Observations**

Most community action groups will spend a considerable about of time preparing surveys to record local activity. Visually this information can be persuasive and demonstrate the effect of a proposed development; such as a shop, or restaurant could have on the local area. Unfortunately, evidentially surveys and local observations rank fairly low on the impact scale because there is no way to verify the accuracy of the data collected. An independent survey or one which is tightly controlled and verified can carry some weight but again the effect of this evidence needs to be balanced against the traditional interpretation of this type of evidence.

**Statements from Local Residents**

In disputes a community action group will often have a lead spokesperson. This individual will be expected to prepare a statement setting down their position to a matter. The benefit of this type of evidence is that it is very much personal to a specific issue. In the 2016 Planning Inquiry into the proposed development of a McDonalds restaurant in Kenton, Newcastle upon Tyne the lead resident was a local lady, however, further evidence was provided by other key individuals in the community. These key individuals included a local school governor, the Principal of the local school and the Member of Parliament for that constituency. This was a strategic approach to demonstrate the effect of the proposed development from a number of different angles. This style of statement carries weight provided that what is being said is backed up with supporting information. The second section of this article will consider the structure of this type of evidence.

**Expert** **Evidence**

The strongest type of evidence that a party can rely on is expert evidence. This is evidence prepared by an independent expert in a specific field. As an example, if a local authority received a planning application for a chemical plant near a town which was rejected but appealed to a Planning Inquiry the local community as a Rule 6 Party may wish to instruct a toxicologist as an expert witness to explain the effect of the chemicals on living organisms.

Understandably, experts tend to be busy people, so it is important that their availability and suitability is checked well in advance. Expert witnesses will normally wish to receive a large amount of raw data to include in their evidence. To assist them it is beneficial to have a dedicated point of contact in the group who can liaise with the expert. An important tip to remember is that where multiple experts are used their work will need to be coordinated. In the Kenton Planning Inquiry, the local residents had two experts; a transport expert and a professor of public health.

**Practical Tips on Evidence**

Regardless as to the factual background to a case there are a number of core rules which need to be followed when preparing evidence, including:

1. The golden rule of evidence is that it will be scrutinised. The applicant in a planning dispute will read what has been prepared as will the party adjudicating the dispute such as a Planning Inspector. It is therefore imperative that the information presented is accurate and the statement is well drafted.
2. Evidence should not be duplicated. This means there is no need for more than one person to say a particular point unless that point is being developed and expanded on.
3. It takes a considerable amount of time to draft evidence and ensure that what is being created corresponds with the other evidence. Don’t under estimate the time it takes to prepare evidence and ensure that any co-ordination is disseminated to the key individuals in any community action campaign.
4. Evidence should be written in the style and language of the person given the evidence. The important thing to remember is keep the language simple and write in short sentences. When writing a statement, it is useful to follow the ‘PEC’. The ‘PEC’ approach means making a point, followed by evidencing the point (such as saying, ‘see Exhibit 12, a site plan of the proposed development …’) and then concluding with a comment about the evidenced point. Exhibits should be included at the end of the document and be clearly identified with a reference number.
5. There is no format for evidence, but the Planning Inspectorate does give some guidance on what should be included. This includes providing the name and address of the person given the evidence along with a ‘statement of truth’ to confirm the content is accurate. Evidence should be signed and dated by the maker at the end of the document.

**About the Author**

Adam Chaffer is a Commercial Litigation Solicitor at Samuel Phillips in Newcastle upon Tyne. In 2016, prior to qualification, Adam organised the pro bono legal case in the Kenton Planning Inquiry between Newcastle City Council and McDonald’s Restaurants Limited with two hundred local residents act as the Rule 6 Party. The case was successful with McDonalds withdrawing their appeal and ultimately led to a change in policy by the Local Authorities to fast food restaurants in close proximity to schools.

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