

PRE-INQUIRY MEETING NOTE

WATER RESOURCES ACT 1991 (AS AMENDED)

THE WATER RESOURCES (ABSTRACTION AND IMPOUNDMENT) REGULATIONS 2006

ENVIRONMENT AGENCY: PROPOSALS TO MODIFY ABSTRACTION LICENCES:

11/42/18.16/546	TESTWOOD
11/42/22.6/92	TWYFORD
11/42/22.6/94	OTTERBORNE
11/42/22.7/94	OTTERBORNE

ENVIRONMENT AGENCY: PROPOSAL TO RENEW (SUBJECT TO VARIATION):

SO/042/0031/026 CANDOVER STREAM

PRINCIPAL OBJECTOR – SOUTHERN WATER SERVICES LTD

CONFIRMED RULE 6 (EQUIVALENT) PARTY – NATURAL ENGLAND

Pre-Inquiry Meeting held at Winchester Hotel and Spa – 21 November 2017

PROPOSED INQUIRY START DATE: 13 March 2018 10.00am

INSPECTOR'S NOTES OF PRE-INQUIRY MEETING (PIM)

Introduction:

1. The Inspector introduced himself as Mr Mike Robins MSc BSc(Hons) MRTPI, appointed by the Secretary of State (Defra) to both hold the Inquiry and provide recommendation to the Secretary of State.
2. The purpose of the PIM was set out as providing an opportunity for procedural and administrative matters in relation to the upcoming Inquiry to be explained and discussed. A copy of the notes of this PIM will be sent to all parties who have made representations or subsequently expressed an interest in attending the Inquiry. A copy will also be available, along with all other documents pertaining to the case, on a dedicated Inquiry website, when that is set up.
3. The Inspector set out that his role was to hold the Inquiry and prepare reports in relation to the three cases for consideration and final decision by the Secretary of State for Environment, Food and Rural Affairs (SoS Defra)

Main Parties

4. The Environment Agency (the Agency) will be represented by Charles Banner of Counsel, instructed by the Agency's legal department. They intend calling up to eight witnesses.
5. Natural England (NE), confirmed as an equivalent Rule 6(6)¹ party, will be represented by Matthew Boyer. They anticipate that they will call two witnesses. They confirmed that they were in support of the Agency's proposals in principle, but may have a slightly different stance on some aspects.
6. Southern Water Services (SWS), as the principle objector to the proposals, will be represented by Justine Thornton QC, instructed by Southern Water Legal Department. They intend to call between five and ten witnesses, depending on the development of their case, to address water supply obligations, water resources and drought planning, economic evidence, modelling and ecological evidence.

Supporters / Interested Parties

7. Of those attending the PIM, all indicated that there were supportive of the proposed modifications, although some indicated their positions may not align completely with that of the Agency.
8. Fish Legal inquired about being a Rule 6(6) party, and the Inspector confirmed he would respond to that request directly. Their case for this was set out in an email and included questions over modelling. SWS confirmed that detail of their modelling would not be set out within their Statement of Case (SoC), although extensive modelling was being undertaken in response to the Agency's proposals for the River Test produced in June of this year.
9. The Inspector requested that, to ensure modelling approaches are fully understood by all parties, work be done on reaching agreement on the parameters of any modelling being carried out; a Modelling Statement of Common Ground (SoCG). He recommended that the Agency facilitate a meeting to include Fish Legal and SWS to progress this. He was clear that this related only to modelling work necessary to inform the party's cases at this Inquiry, and set out that the SoCG could also identify areas of disagreement.
10. A number of individuals and organisations indicated their wish to contribute to or speak at the Inquiry. Those who may wish to speak were recorded as follows:

¹ The Town and Country Planning (Inquiries Procedure) (England) Rules 2000
The Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2000

- Simon Barker – representing the Barker-Mill Estate and two mills on the Great and Little Test
- Guy Linley-Adams – representing Salmon and Trout Conservation UK and WWF-UK, Mr Linley-Adams contact details will be added to those notified for the appeals
- Jeremy Legge – representing the Itchen Association
- Andrew Kelton – representing Fish Legal and Little River Management & Dry Fly Fishing Ltd
- Dr Martin Burton – representing the Upper Itchen Initiative
- Mike Johnson – Test Fishery Co-Leaseholder

11. Others indicated an intention to provide further statements in relation to the appeals. If any other person/s who have not been mentioned, or who were not able to attend the PIM, would wish to speak in relation to the proposed modifications, they should contact the Planning Inspectorate initially, as soon as possible.

12. All parties wishing to speak at the Inquiry should submit a Statement by the relevant date, and the Inspector confirmed that this date was also acceptable for further submissions from parties making written statements. The Inspector undertook to append to this note some information in relation to Interested Party's engagement with Public Inquiries, but noting that this guidance is in relation to planning appeals, which differ from appeals in relation to Abstraction Licences. All parties are advised to consider the scope, nature and timetable for the submission of evidence set out later in this note.

Scope of the Inquiry and Procedures

13. SWS confirmed that, subject to acceptance of their submissions in relation to an initial appeal made against the non-determination of their own modification proposals for the Testwood Licence, they were not pursuing that appeal. As such three separate cases are now before the SoS. These relate to Agency initiated modifications of their own Licence, for the Candover Stream, and for those Licences held by SWS on the Rivers Test and Itchen.

14. Although the objections to the modifications are necessarily made against different sections of the relevant legislation and regulations², nonetheless, it was agreed that there were considerable areas of overlap between the three cases and that some of the evidence to be given may relate to all of the relevant licences. An Inquiry which addressed all three was accepted to be appropriate.

Programme Officer and Management of the Inquiry

15. The Inspector requested progress on appointment of a Programme Office (PO). The Agency confirmed that they had considered the suggestion, but noted that

² The Water Resources Act 1991 and The Water Resources (Abstraction and Impoundment) Regulations 2006

they had been involved in previous events where a PO was not appointed. SWS observed that the complexity of this case was such that there would be benefits from an appointment, and had identified a potential candidate and offered funding support. Confirmation has been received that there will be a PO for this Inquiry – full details will be provided when available.

16. In absence of a PO at this stage, the main point of contact for all communication on this Inquiry will be:

environment.appeals@pins.gsi.gov.uk Attn. Sarah Tudor

When the PO is appointed they will become the main point of contact from that point on.

Documentation

17. Initial submissions, including those in relation to the Agency's assessment of the proposed modifications, and those made following the initial objections made by SWS, have been submitted to the Planning Inspectorate. The timetable for the submission of further evidence and any other documentation is set out below.

18. The Inspector encouraged the provision of a dedicated website to allow full access to relevant documentation. The Agency confirmed that they had a potential 'Sharefile' site set up. They will provide details of this for assessment by the Planning Inspectorate in relation to accessibility. This service may be provided by the PO when appointed – full details will be provided.

19. The Inspector encouraged all parties to consider developing a set of Core Documents supporting the cases made to the Inquiry. He recommended that there should be agreement on a set of Documents, which can then be made available on a website and at the Inquiry.

20. It was agreed that a proposed Core Document list would be developed as part of the development of the main SoCG. If any interested party seeks to rely on any documents likely to be referred to by others these too could form part of a Core Document list. The PO will maintain a document record, which will be available on the Inquiry website and Inquiry library.

Nature and Format of Evidence

21. All parties that submit a Statement of Case are entitled to speak at the Inquiry.

22. All main parties should provide a Proof of Evidence for each witness. In principle these should be submitted no later than four weeks prior to the start of the Inquiry. Responding to the timetable originally set out, SWS and the Agency had considered a revised timetable. The implication of this for all parties was discussed and the Inspector confirmed the following:

14 December 2017	Statement of Case - SWS and Agency.
19 December 2017	Statement of Case – NE and all other interested parties.
23 January 2018	Statements of Common Ground
6 February 2018	Proposed procedural approach (see below)
27 February 2018	Proofs of Evidence
	Rebuttal Proofs

23. For information SWS confirmed that they would be submitting their draft Water Resources Management Plan and Drought Plan to Defra for initial assessment prior to being able to release these for public consultation. It was accepted that no date can currently be put on the release of those documents.

24. If any party is unclear on the nature of evidence to be supplied or has questions regarding the production of Statements or Proofs, they should inform the Planning Inspectorate initially, who, where practicable, will direct them to guidance and support. Please also see the guidance appended to this note. This does not include financial support.

25. In all cases where a Proof exceeds 1500 words, then a summary should be produced. This will form the basis of any submissions to the Inquiry, albeit questioning of that evidence may address the entire Proof. All documentation submitted should be clearly referenced with the name of the submitting party at the top. Where a number of parties may have the same or similar cases, the Inspector confirmed that there may be benefits in acting together, although this is entirely up to the individuals involved.

Venue

26. The Agency are investigating a possible venue. The Inspector confirmed that this should be reasonably local to the relevant catchments, of sufficient size to accommodate likely attendees, have break out rooms for the Inspector and main parties and have sufficient access to facilities for photocopying, printing and any AV requirements necessary. The Agency should ensure that sufficient parking, including for those with restricted mobility, is provided.

27. The Agency committed to update the Planning Inspectorate on the venue by **28 November 2017.**

Sitting Times and Programme

28. The Inspector set out that in light of the number of witnesses, the Inquiry is likely to require all of the scheduled time currently allocated, 11 days, and noted that this is constrained by the Easter period. Generally it was felt by the main parties that this should be sufficient. Unless otherwise stated the Inquiry timetable will be as follows:

13-19 March 2018
20-23 March 2018
27-29 March 2018

29. The Inquiry will normally sit between 10.00 and 17.00 (10.00 to 13.30 on Fridays), with suitable breaks taken during the day. However, the Inspector was clear that there would be flexibility in this to ensure completion within the allocated time, albeit he confirmed that extra sitting days may need to be considered if required.
30. Inquiries of this type typically involve the initial presentation of the full case of the proposer and any supporters, followed by submissions by objectors and the recall of relevant witnesses, including for questioning or cross examination. With three proposed modifications relating to different licences and different catchments, these would normally be held consecutively. However, it was noted that there was some considerable amount of evidence that crossed over all three cases, and while some arguments were site or licence specific, some were more topic focussed.
31. The Inspector led a discussion on alternative approaches. These included an approach where each party presented their case in full for all three proposals, allowing single opening and closing addresses, or alternately an approach based around topics such as demand control measures, modelling, ecology, economics, water supply etc.
32. In developing an agreed SoCG, it was suggested that procedural approaches could be discussed between the main parties and a proposal submitted by the **23 January 2018**. The Inspector confirmed he would consider that and set out an agreed way forward, if necessary considering a second PIM to resolve and confirm matters, although he felt this should not be necessary.
33. Any party that has unbreakable commitments during the above periods should inform the Planning Inspectorate initially as soon as possible to assist in that programming.

Site Visits

34. The Inspector confirmed that where necessary he would be carrying out site visits. He requested that anyone who felt there were particular aspects of the schemes or the catchments that would require a site visit to inform the PO.

Main Issues

35. While the principal objections were set out in grounds of appeal submitted in relation to the proposed modifications, SWS confirmed that their case had moved forward and they had produced a Provisional Case for information. This is appended to this note.

Closing Remarks

36. The Inspector underlined that the Inquiry was to be conducted in a fair, open and impartial manner. To that end he confirmed that he should only be addressed in the context of the Inquiry itself and that parties should not seek to contact him directly outside of the event. Any communications should be through the Planning Inspectorate or PO, and parties should be aware that all evidence and supporting documentation submitted would be made available to opposing parties and lodged on the Inquiry website and library.
37. He noted the concern that Portsmouth Water and Ofwat were not present at the PIM and had not confirmed that they would be attending the Inquiry. The Inspector set out that he would entertain submission of evidence from all parties, but in almost all cases it was up to them whether they intended to contribute or appear. He emphasised that interested parties could make out their own case on such matters.
38. Finally he asked that those who would be representing an organisation make clear in their submissions exactly what sort of organisation that was, what its purpose and membership was and what their role was, including how any representation was authorised by the organisation.

Mike Robins

Inspector