

# **PUTTING THE PUBLIC IN THE PICTURE**

**A public perspective on the proposed use of videolink technology for Hearings and Inquiries by the Planning Inspectorate during the Coronavirus pandemic.**

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## **Introduction**

This paper contributes a much-needed public perspective to the debate about the proposed use of videolink technology by the Planning Inspectorate (PINS) for Hearings, Inquiries and Examinations during the Coronavirus crisis (and afterwards). It is informed by some of PINS aspirations in implementing the recommendations of the Rosewell review and by the written proposal made to PINS in March 2020 by the Planning & Environmental Bar Association (PEBA).

Within a few weeks of the start of the Coronavirus crisis, a PEBA working group convened, met and rapidly concluded that there is scope for greater use to be made of remote technology such as video-conferencing and live streaming in Hearings, Inquiries and Local Plan Examinations. The PEBA papers also stated that, legally and procedurally, any objection that there may be people who are unable to access the virtual place at which a Hearing or Inquiry is held would be 'without substance'.

Paul Brown QC, Chair of PEBA, has confirmed to the author that no member of the public sat on the working group or reviewed and commented on the proposals it produced for PINS. This paper therefore seeks to address that gap and to consider the matter from the perspective of the many members of the public who engage with PINS. It sets out the perceived advantages and disadvantages of using videolink technology from a public perspective, identifies some issues that need to be resolved and suggests a way forward.

Effective public engagement in Hearings, Inquiries and Local Plan Examinations is vital in order to maintain public confidence and trust in the planning system. While videolink technology offers some advantages in the short and longer term, it also creates some new barriers to public engagement and some challenges for PINS that need to be overcome.

The proposed way forward is a constructive suggestion of how PINS might progress the introduction of videolink technology, while ensuring that the planning system continues to engage with and serve the public well, so that public trust and confidence are maintained.

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Gareth is a Chartered IT Professional and has a Master's degree in Major Programme Management from the University of Oxford, Saïd Business School. He specializes in leading major programmes of technology-enabled organizational change and has a particular interest in stakeholder engagement. In his local community, Gareth is Chairman of the planning campaign group Kirby Hill RAMS (**R**esidents **A**gainst **M**otorway **S**ervices). He advises the local Parish Council on planning matters and has led the local community's case at Planning Committees, Public Inquiries and Local Plan Examinations for 20 years. He is currently preparing to lead Kirby Hill RAMS' case at a Public Inquiry during the Coronavirus crisis.

## **Advantages of Videolink Technology**

### **Business Continuity**

Many businesses and individuals are using videolink technology to overcome the challenges of home working, social distancing and self-isolation during the Coronavirus pandemic. The technology enables face-to-face meetings to occur remotely and facilitates the sharing of documents on-screen for collaborative working. For many white-collar workers, a computer with video and audio, plus a high-speed internet connection, are all that is required to continue business-as-usual, with the added benefit of working from home.

### **Casework**

The proposed use of videolink technology, if successful, would allow some planning casework to continue despite the Coronavirus pandemic. This would have the advantage of minimising the backlog of cases that will build-up at PINS due to the crisis. However, Coronavirus will still have an impact on PINS casework, due to its direct effects on PINS staff and on others – professionals and members of the public - who need to attend Hearings and Inquiries, but cannot during the crisis. Videolink technology will not solve this problem. It is unreasonable to expect that technology will enable PINS to maintain a business-as-usual situation during the Coronavirus pandemic and continue to meet the timelines and performance requirements set out in the Rosewell review.

### **Professional Fee Income**

If videolink technology could be used for some Hearings and Inquiries, it would help mitigate the impact of the Coronavirus pandemic on the fee income of planning consultants and lawyers, who would otherwise suffer an interruption to their businesses and revenues. It is unsurprising, therefore, that PEBA is strongly advocating this approach.

### **Social Interaction**

A successful implementation of good, reliable videolink technology delivers an improved interaction, when compared with the use of documents and e-mail alone. It provides at least some social interaction and non-verbal, face-to-face communication. It is more participative and works particularly well for people who already know each other in person and can therefore read each other's vocal and non-verbal cues well. By using videolink technology to facilitate such social interaction, it might be possible to avoid the 'downgrade' of cases to written submissions, if the quality of the interactive experience delivered by the technology is considered suitable by all participants.

### **Public Engagement**

Videolink technology has the potential to improve public engagement in Hearings, Inquiries and Examinations, by giving the public easy, online access to proceedings from their own homes, their workplaces or wherever they happen to be. Public and media attendance at virtual planning events is likely to be easier and therefore potentially much higher than it is at the equivalent physical events. Videolink technology also offers the opportunity for the documents being considered to be made available and shared on-screen as they are discussed, overcoming a disadvantage which members of the public often face, when they do not have in front of them copies of all the papers that the professionals are discussing.

## Disadvantages of Videolink Technology

### Social Interaction

Videolink technology does not offer the same quality of social interaction as a face-to-face event. Even a high-quality videoconference is a downgraded social experience, when compared with a physical event. Many of the non-verbal cues which consciously or unconsciously govern human interaction, natural communication and trust are lost. This subject has been studied extensively by psychologists with an interest in how technology affects human communication, for example:

1. Slovák, P. (2007). 'Effect of Videoconferencing Environments on Perception of Communication.' *Cyberpsychology: Journal of Psychosocial Research on Cyberspace*, 1(1), Article 8.
2. Anderson, A.H., O'Malley, C. et. al. (2000). 'Video data and video links in mediated communication - what do users value.' *International Journal of Human-Computer Studies* 52, 165-187
3. Boyle, E.A., Anderson, A.H. and Newlands, A. (1994). 'The effects of eye contact on dialogue and performance in a co-operative problem solving task.' *Language and Speech*, 37, 1-20

Compared with other modes of human interaction, face-to-face communication conveys the greatest number of observable details between the parties. In addition to the meaning of words, we pay attention to voice modulation, speed of speech, gaze, eye contact and many other non-verbal signals given by the face and the rest of the body, plus the context of the communication (who else is present and their verbal and non-verbal reactions). We take in and use all of this information to get a better understanding of what the other party is presenting and how we should respond.

It is important for PINS to recognise that a Hearing, Inquiry or Examination held by videolink would be a downgraded social experience for all participants. This 'downgrade' would inevitably affect the public perception of communication and potentially, public trust in the proceedings. Since videolink technology works best for people who already know each other, participants who do not already know each other are the most disadvantaged by this downgraded social interaction. They are unfamiliar with the verbal and non-verbal cues of other participants and with the context of the communication, especially if they have never attended such an event before. This affects their perception of the proceedings and their willingness to participate and interact. The vast majority of members of the public will fall into this category. PINS should assess the likely impact on them very carefully.

A further question for PINS to consider is to what extent does the downgraded social interaction affect the ability of the parties and the Inspector to test and scrutinise evidence? How does the absence of a significant amount of non-verbal and contextual information on a videolink affect the conduct of the session by the Inspector, the quality and effectiveness of Counsel's questioning, the credibility of witnesses and the confidence of the public?

Finally, there is the matter of community. Holding public events to discuss and take decisions about important issues affecting the whole community has been a fundamental part of human society for millennia. The community aspects and benefits of this model are evident in all such settings: from tribal elders meeting in public in a village, to parish councils today; from mediaeval courts, to parliamentary democracy; from the wisdom of King Solomon adjudicating disputes in public, to the role of Planning Inspectors and the Secretary of State in deciding planning appeals today. When people come together physically to witness and participate in the taking of an important decision that affects all

their lives, the pervading sense of community enables them to feel that they have 'had their say' and 'done their bit' and been seen to do so. By extension, the whole community feels that it has had a voice in the proceedings. This creates public confidence and trust in the planning system and helps the community to accept decisions, even if the outcome is not what they wanted. The power of a Planning Inspector holding a physical event in the community should not be underestimated. Inevitably, these social benefits of the community coming together will be lost if events are held by videolink. This is likely to have an adverse impact on public satisfaction and on public confidence and trust in the planning system.

### Practical Issues

Allowing access via videolink to Hearings, Inquiries and Examinations from anywhere also has some potential practical disadvantages.

Firstly, PINS would need to ensure that it has effective means of controlling who attends such events. How would the public be invited? How many members of the public could participate? Would they have to be adults and if so, how would this be controlled? Could members of the public join from outside the UK? Those who are temporarily abroad might wish to join an event, but what about citizens of other countries using the global Internet? Should journalists or researchers be allowed to join? Instances of unwanted 'Zoom-bombing' of videolinks have recently made the headlines. How would PINS handle the risk of unwanted interlopers (potentially from abroad)? How would all of this be managed?

Secondly, PINS would need a robust mechanism for managing behaviour at virtual events. People often behave very differently online than they do in person. The sense of 'protection' conferred by a remote videolink and the loss of important non-verbal cues leads to a loss of inhibition, causing people to use language and behaviour that they would not use face-to-face. Procedures need to be put in place to deal with inappropriate behaviour and deliberate disruption of the event (foul language, naked protests, etc.). Of course, poor behaviour may not be deliberate. Participants may not remember to mute their microphone when not speaking. They may be interrupted by their partner, their children or their dog. They may lose their connection and have to re-join, or simply choose to come and go. All of these behaviours would need to be anticipated by PINS and managed effectively.

### Technological Challenges

We cannot at this time make the universal assumption that the public has the necessary infrastructure and skills to participate in virtual events.

The latest 2018/19 data shows that 88% of UK households have a home computer and 96% have a broadband internet connection, though speeds vary considerably. 1.9% of the population (1.26 million people) are unable to receive decent broadband at all and 1.8% (another 1.2 million people) can only get very slow broadband at a speed less than 2Mbps. Typically these people live in rural areas, so PINS would need to take particular care to ensure that rural populations facing development threats are not disadvantaged by the use of videolink technology in Hearings and Inquiries.

Even if they have a suitable computer and broadband internet connection, many members of the public, particularly older people, do not have the confidence or skills to install and use videolink software. Whereas in normal times they could be offered support and assistance, during the Coronavirus crisis, even their close family members are not permitted to visit. Furthermore, while many white collar workers may be familiar and therefore at ease with the use of videolink technology from their experience using it in a business context, most

blue collar workers will not have such familiarity and may therefore feel uncomfortable and at a disadvantage if required to use videolink technology.

PINS should recognise that for the above reasons, there will be a significant section of the population for whom the use of videolink technology represents an insurmountable barrier to participating in events. While PEBA argues that people are already prevented from participating in Hearings and Inquiries by work, child care commitments or travel abroad, in those situations, people have a choice. They can, if they wish, take a day off work, arrange a child-minder or reschedule their travel, so that they may participate in the event. This is very different from the situation where people without the necessary technology or skills to join a videolink event are prevented from participating by PINS' use of technology. The total number of people in the UK in this category is, at a very conservative estimate, 10 million. They tend to be older people, lower-skilled workers and those living in rural areas. PINS must ensure that the use of videolink technology does not discriminate against them.

As a Government body, PINS must have regard to the security of whatever videolink technology it is proposed to use. The security flaws of products such as Zoom have been well-publicised recently and the MoD has issued a blanket ban on the use of this product. Whatever software is employed must provide a safe and secure means of communication for all. The risks of PINS spreading computer viruses or malware to the public, or providing access for hackers to target any computer on which the software runs, must be avoided. The personal data of participants must also be protected and PINS must ensure that no-one gathers information about individuals from videolink events, which could then be used inappropriately to target them afterwards. Members of the public must feel safe when using the technology. PINS should take advice from the Government's National Cyber Security Centre regarding the security aspects of any proposed solution.

The public will also quickly lose confidence in a technology solution that is unreliable, for example, if they experience their connection to an event dropping more than once or twice, or the audio or video being distorted. Videolinks involving large numbers of people do require a robust and resilient IT infrastructure, with plenty of bandwidth. It is essential that any solution considered by PINS is underpinned by such an IT infrastructure.

### Procedural Issues

As discussed above, the use of videolink technology would mean that PINS has to develop procedures to manage a new style of public engagement and the online behaviours of potentially large groups of participants and observers. A key question is whether, given the social disadvantages cited above, an event held via videolink would provide the same level of effective public scrutiny as a face-to-face event? The use of videolink technology also creates the potential for new procedural abuses. PINS should consider how it would handle the following examples:

- A witness who keeps a chat window open on-screen next to their video window and receives online help from someone else to answer questions asked of them by Counsel or the Inspector.
- The parties confer among themselves or with others online during the proceedings.
- A group of activists stages a protest via the videolink.
- Someone shares a screenshot of the call on social media, identifying who attended.
- Someone records the video proceedings and releases them to the media.

## **A Proposed Way Forward**

The use of videolink technology would be a bold new venture for PINS. The potential advantages and disadvantages need to be fully explored, in consultation with relevant technology experts, PINS staff, professional participants and members of the public.

To gain experience of hosting and managing a large public event via videolink, PINS could use the proposed technology to conduct a public consultation. It should be relatively straightforward to invite Rule 6 parties and individuals who have participated in Hearings, Inquiries and Examinations over the last 6-12 months to participate in such a consultation, use the technology and provide feedback on the concept and their experience of it. This could then inform a pilot at a small Hearing or Inquiry, where all parties agree to trial the videolink technology, before moving on to larger, more complex cases where significant public interest and interaction is anticipated.

Of course, during the Coronavirus pandemic, just because videolink technology may enable planning casework to continue, that does not necessarily mean that it is the right thing for Society that it should. PINS needs to recognise that the public's ability to participate in planning cases during the Coronavirus pandemic is highly compromised. Approximately 7 million key workers are committed to keeping the country – as well as their own families – running and are unlikely to be able to attend planning events. Many of the 4.7 million UK families with dependent children are having to home-school as well as work, meaning they are also likely to be preoccupied with other commitments. A further 1.5 million of the most vulnerable people have been told by Government to self-isolate for 12 weeks, but PINS is, at the moment, still scheduling events during this period and requiring these people to attend. The Prime Minister solemnly advised the nation that it is likely that most families will lose someone to Coronavirus. Across the UK, people are under the unprecedented strain of maintaining some semblance of normality, while shouldering more than their usual physical and psychological burdens. COVID-19 strikes without warning and disrupts lives and families. It is currently causing at least 1,000 deaths a day. The public is distracted by serious, life-and-death issues.

Given this context, PINS should consider whether a pilot of videolink technology during the crisis would be truly representative of how the public would normally engage with the planning process. Furthermore, PINS should address the question of whether it is even appropriate to continue with Hearings, Inquiries and Examinations – which are arguably non-essential Government work – when the ability of the public to participate is so severely compromised by a national crisis. These are not normal times. Achievement by PINS of the timelines set out in the Rosewell review is bound to be affected, when the nation is distracted by an unprecedented crisis of this magnitude. Some discretion and dispensation that takes account of our shared humanity is required.

Clearly, there are more fundamental issues to consider than simply whether or not videolink technology will work in the context of PINS casework. PINS should adopt a strategy of stakeholder engagement that takes the public with it on this journey. This should involve consultation about these issues and a pilot of the technology and the concept, involving a cross-section of the public, before any decisions are made.

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