

The role of local authorities in the development consent process

Advice Note two: The role of local authorities in the development consent process

The Planning Act 2008 (as amended) (PA 2008) contains many processes where a local authority has a special role and their participation is expected. This advice note seeks to explain when and why a relevant local authority should take part in the process.

This advice note provides an overview of that special role to enable authorities to target their resources more appropriately and effectively. To aid understanding of the various terms used in the advice note please refer to the Glossary of Terms on the National Infrastructure website.¹

The Planning Act and the Planning Inspectorate

The PA 2008 explains how applications for nationally significant infrastructure projects (NSIPs) relating to energy, transport, water, waste, waste water and certain business and commercial developments will be examined. It includes opportunities for people to have their say before a decision is made by the relevant Secretary of State (SoS).

The Planning Inspectorate carries out certain functions related to these major proposals on behalf of the SoS. More information about the application process can be found on the National Infrastructure website.

Status of this Advice Note

This Advice Note has no statutory status and forms part of a suite of advice provided by the Planning Inspectorate.

This version of this Advice Note supersedes all previous versions. It will be kept under review and updated when necessary.

This advice note makes reference to other advice notes, these can all be found at: <http://infrastructure.planningportal.gov.uk/legislation-and-advice/advice-notes/>

1. <http://infrastructure.planningportal.gov.uk/help/glossary-of-terms/>

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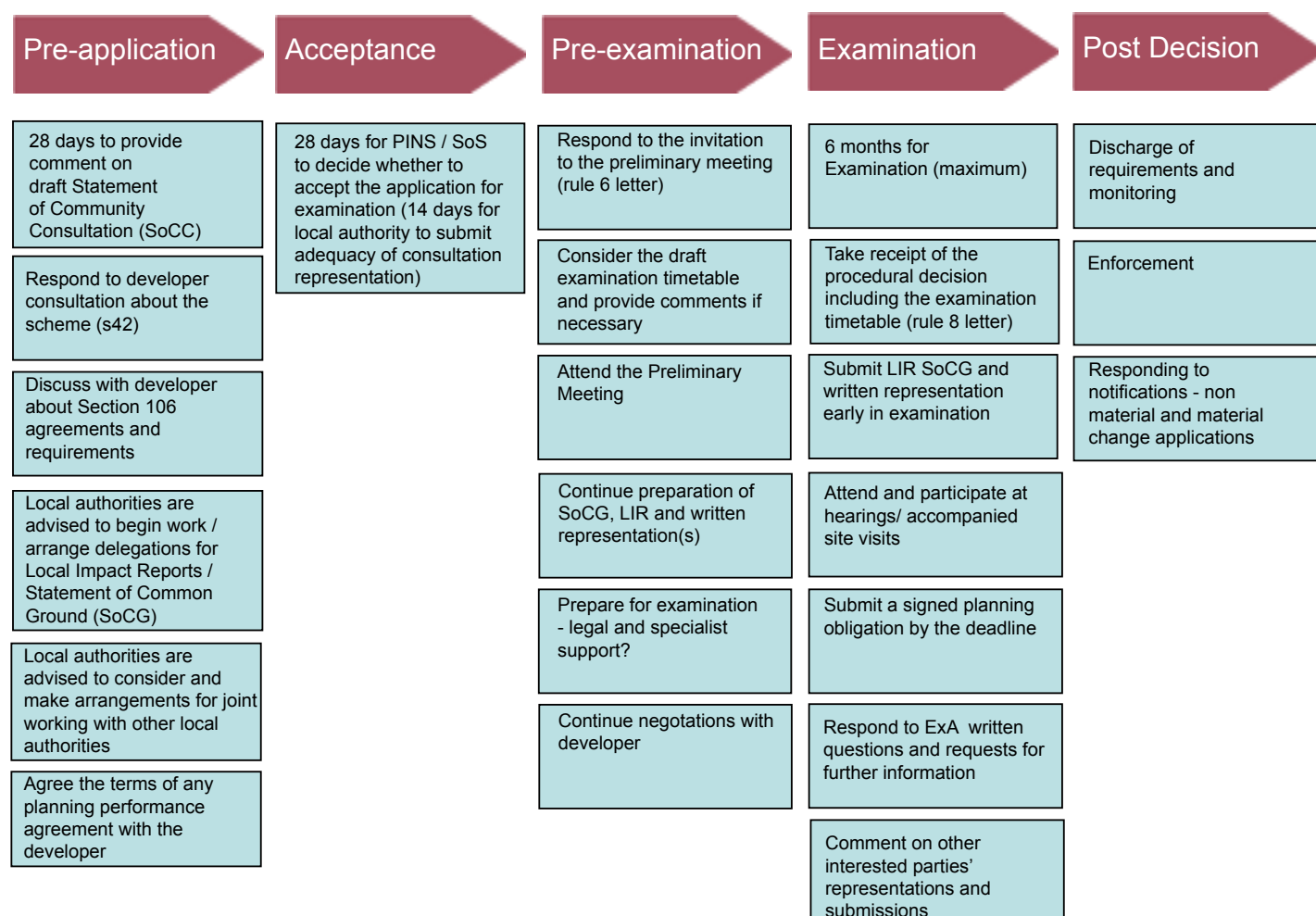
Introduction

1. A Local Authority's Role

1.1 Host and neighbouring local authorities have an important role in the PA 2008 process. Participation is not obligatory but is strongly advised. Whilst it is appreciated that local authority resources are limited, relevant authorities are strongly encouraged to discuss and work through the issues raised by NSIP proposals. A local authority will provide an important local perspective at the pre-application stage, in addition to the views expressed directly to the developer by local residents, groups and businesses. Local authorities are likely to become responsible for discharging many of the requirements (akin to planning conditions) associated with an NSIP in their area if development consent is granted. Local authorities are also likely to have a role in monitoring and enforcing many of the Development Consent Order (DCO) provisions and requirements.

Figure 1

The role of local authorities

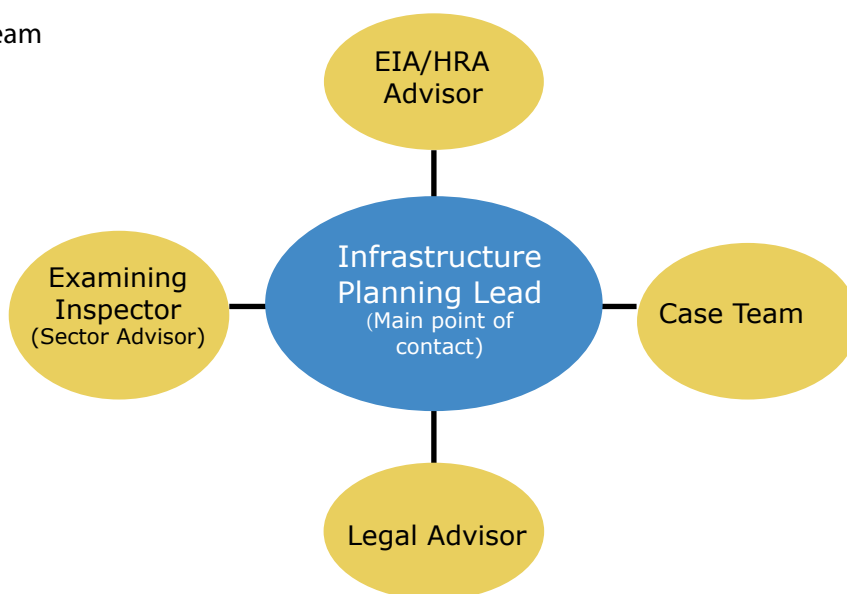




2. Planning Inspectorate roles and responsibilities

2.1 Each sector team is led by an Infrastructure Planning Lead (IPL) that will be the main point of contact for pre-application matters. The IPL will be supported by technical advisors and an examining inspector identified as the sector advisor.

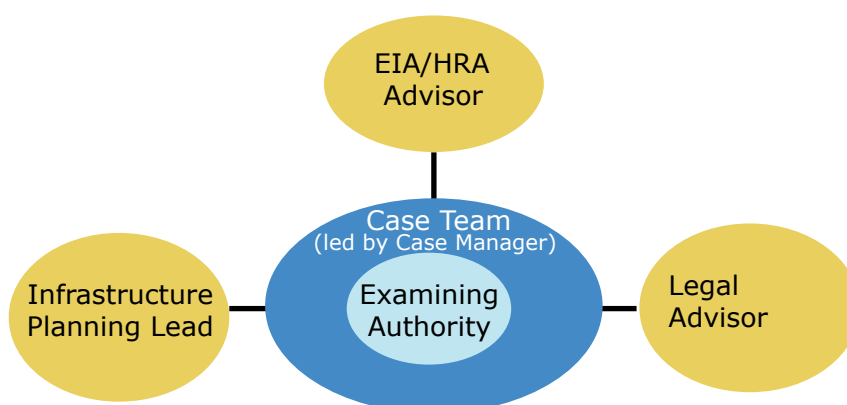
Figure 2 Pre-Application Team



2.2 Once the application reaches a point where draft documents can be reviewed it is likely that a Case Manager will become involved, being the main point of contact from acceptance of the application onwards. Depending on the scale and complexity of the application, during examination each case team may comprise a Case Manager, Case Officer, Assistant Case Officer; support from the Environmental Services Team and a Legal Adviser.

2.3 Throughout all stages of the process the Case Team are able to provide local authorities and others with advice about the process and policy as it relates to nationally significant infrastructure projects.

Figure 3 Post Submission Team





Pre-Application Stage

3. Roles and responsibilities

3.1 This is a very important part of the process for all participants. Pre-application consultation is a statutory requirement of the process. It is the responsibility of the developer to carry out the pre-application consultation. While local authorities will have a keen interest in making sure that the consultation with the communities affected is carried out properly, there should be no ambiguity about who and where members of the public should provide their comments to. In this context it is not helpful for local authorities to run their own consultation events in relation to a NSIP project.

3.2 A local authority and the local community are consultees in their own right. Whilst local authorities should have regard to what the community is saying, it is not intended that they necessarily adopt all of those views put to them. In this context, local authorities in particular must conduct themselves in line with the National Policy Statements and the relevant guidance.

3.3 It is important that local authorities use the pre-application process to inform themselves about the application and gather information that will assist in the production of the Local Impact Report (LIR), written representations and any Statement of Common Ground (SoCG). Adopting a proactive approach at this stage is likely to reduce the demand on the local authority's resources during the set timescales of the examination stage. For example, early legal advice could prove helpful during the pre-application stage and could reduce the need for it later in the process.

3.4 For very large NSIP projects that are likely to have wide-ranging impacts, some local authorities have prepared a Supplementary Planning Document (SPD). It is for a local authority to decide whether this would be a good use of their resources. If so, the local authority will need to ensure that any SPD is in accordance with any relevant National Policy Statement(s) (NPS). If there is any conflict between a designated NPS and any local planning document, the policies in the NPS will prevail. Local authorities should also be careful not to undermine the purpose and effectiveness of the developer's pre-application consultation by being too prescriptive in any emerging SPD or local planning policy. For example, by severely curtailing the choice of options for the location of associated development so as to undermine the purpose of the pre-application consultation. Local authorities should engage early with developers of NSIPs before and during the drafting stage of any SPD that is likely to affect an NSIP that the SoS has been notified about.

4. Environmental Impact Assessment

4.1 If the SoS either receives a notification that the applicant proposes to provide an environmental statement (ES)² or adopts a positive screening opinion, the SoS must notify the prescribed consultation bodies in writing.

4.2 Local authorities are identified as consultation bodies under the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 as each local authority that is within s43³ of the PA 2008. The categories of prescribed local authorities are based on administrative boundaries and neighbouring local authorities, not the distance to the proposed site. Further information about local authorities as prescribed consultees can be found in Advice Note 3 – EIA Consultation and Notification.

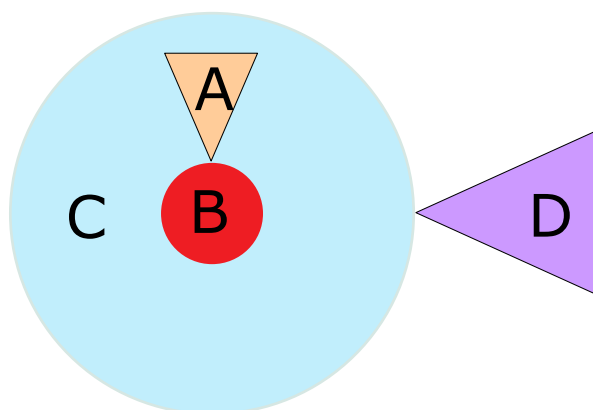
2. Regulation 6 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 (as amended)

3. Planning Act 2008 (as amended) Section 43 (3)

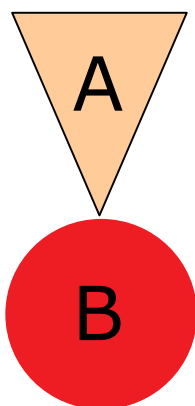


Figure 4 Local authorities that are prescribed consultees

Where B is a lower tier district council



Where B is a unitary authority



A is a neighbouring local authority (s43(3)) that shares a boundary with a unitary council or lower-tier district council within whose area development is situated.

B is either a unitary council or a lower-tier district council in which the development is situated – a host authority.

C is an upper-tier county council in which the development is situated – a host authority.

D is either a unitary council or an upper tier county council which shares a boundary with a host 'C' authority - a neighbouring authority (s43(3))

4.3 There are a number of ways that a local authority will be asked to be involved. The Planning Inspectorate will inform the local authority of the name and address of the developer, and of its duty to enter into consultation with the developer and make information in the authority's possession that is relevant to the preparation of the ES available to the developer. This is known as a Regulation 9 Notification⁴.

4.4 Before submitting an application for a development consent order (DCO), the developer has the opportunity to ask the SoS for a formal written opinion on the information to be included in the ES. This is known as a scoping opinion.

4.5 Host and neighbouring local authorities will receive an email or letter directing them to the electronic copy of the developer's scoping report on the National Infrastructure website. Local authorities should provide the Planning Inspectorate with any comments they may have on the proposed scope of the Environmental Impact Assessment (EIA) within 28 days, the deadline will be specified in the letter. Please note this is a statutory deadline and can therefore not be extended.

4. Regulation 9(1)(a) of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 (as amended).



4.6 The Planning Inspectorate normally directs this correspondence to the planning department, unless requested otherwise. Local authorities will often need to consult other internal departments or specialists (e.g. environmental health, ecologists and archaeologists) in order to assist in the production of any response.

4.7 You can provide the Planning Inspectorate with your main point of contact by e-mailing:
environmentalservices@infrastructure.gsi.gov.uk

5. Statement of Community Consultation

5.1 If an NSIP proposal is situated within a local authority's boundary, it will be consulted by the applicant about their Statement of Community Consultation (SoCC). The SoCC sets out how the applicant proposes to consult the community.

5.2 This is a key opportunity for a local authorities to advise the applicant, using its local knowledge, as to how the community consultation should be conducted. The PA 2008 states that a developer must give a local authority 28 days⁵ to comment on the draft SoCC, starting on the day after the local authority receives it. Some local authorities work collaboratively with a developer to prepare the SoCC in an iterative way and this is encouraged. A developer must have regard to any comments a local authority provides at this stage but is not required to act on them; however, any disagreement about the effectiveness of the methodology used can be reflected in any adequacy of consultation representation that a relevant local authority will be invited to make (see later section) and may have a bearing on the acceptance decision.

5.3 Local authorities are advised to think about the characteristics of the communities affected and may also wish to ask for input from parish or community councils to help inform the response provided to the developer. Engagement with the developer is strongly encouraged as it is in communities' interests that a developer adopts appropriate consultation methods which reflect the local circumstances, such as access to online content (internet speeds) and the geographical spread and nature of communities (including hard to reach groups). Local authorities may also wish to consider any particular parts of the community which they feel will be disproportionately affected by a project such as retired people, school children, businesses, tourists and commuters in a particular locality. A local authority's adopted Statement of Community Involvement (or Community Involvement Scheme in Wales) is likely to have a bearing on its response to the developer's SoCC Consultation. However, a local authority may wish to consider how the policies and principles set out in the Statement of Community Involvement/Community Involvement Scheme can be tailored to the needs of a particular NSIP project.

5.4 Local authorities should consider the proposed duration of pre-application consultation; this is likely to have a bearing on the level of detail in the SoCC and therefore how flexible it needs to be. Longer, multi stage pre-application consultation programmes may benefit from a flexible format which will allow the developer to respond proactively to issues that arise. A balance should be struck between flexibility and providing clarity to communities and others about the commitments the developer is making about the consultation methodology.

5.5 It may be appropriate for local authorities to review the SoCC if there is a long delay to the start of the consultation or between stages of consultation. The communities affected and economic indicators may have changed over time or the scale and nature of the proposals may have changed significantly.

5.6 There is no automatic requirement for a developer to review their SoCC if additional events or an additional stage of consultation is planned. The Planning Inspectorate would expect the developer to consult a relevant local authority about any changes. Developers are advised to include any correspondence with local authorities in relation to consultation on the SoCC in an appendix to the Consultation Report.

5. Planning Act 2008 section 47(3)



5.7 The purpose of the developer's Consultation Report is to capture and reflect on all of the responses received during the pre-application consultation. It should explain how the developer has met its duty⁶ in the preparation of the application to have regard to the views expressed. Further information can be found in Advice Note 14 - Compiling the consultation report.

6. Engaging in developer consultation

6.1 Local authorities are able to influence the preparation of the developer's application. The preparation of the application will be an iterative process which means that the amount of detail should increase as the preparation proceeds.

6.2 Local authorities should engage proactively with a developer even if they disagree with the proposal in principle. It is important to recognise that a local authority is not the decision maker but will want to contribute towards the development of the emerging proposals with the benefit of their detailed local knowledge. Local authorities are not undermining any 'in principle' objections to a scheme by engaging with a developer at the pre-application stage.

6.3 Nothing is to be gained by disengaging from the pre-application consultation process. It is in a local authority's own interests to engage in shaping a scheme. Once an application has been submitted it cannot be changed to the extent that it would be a materially different application, so as to constitute a new application. It is therefore important for local authorities to put any fundamental points to the developer during the pre-application stage.

6.4 If the developer will not engage with local authorities on issues of interest or an impasse is reached, the Planning Inspectorate can set up a meeting to try and unlock any areas of disagreement. The Planning Inspectorate has a Pre-application Prospectus⁷ which sets out its service for developers at the pre-application stage. Whilst it is aimed at developers, much of the content is relevant to other parties in terms of setting the tone and spirit in which the pre-application consultation should take place. You can view the prospectus by clicking on the Application Process tab on the National Infrastructure website.

6.5 Local authorities may have a wide range of land interests that could be affected by Compulsory Acquisition in an NSIP proposal. It is possible that a corporate services team (or similarly named department) may be contacted separately by the developer about those land interests at the pre-application stage. The contact information used is taken from information provided to the developer by the Land Registry.

7. Concerns about the pre-application consultation

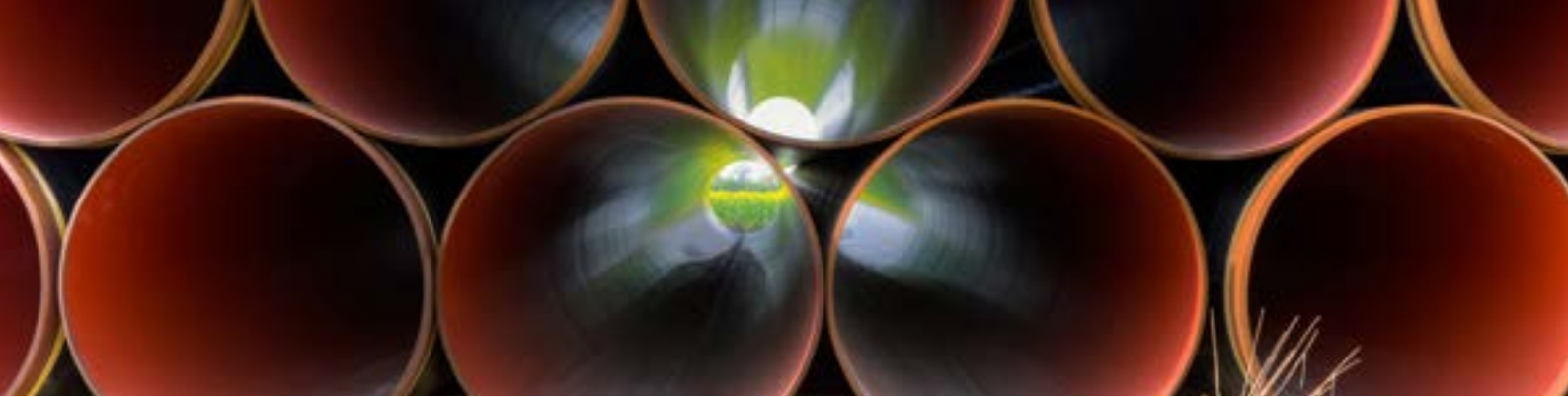
7.1 If members of the public raise issues or concerns about the quality of a developer's consultation during the pre-application stage, the Planning Inspectorate will advise them to contact their local authority. Relevant local authorities will be invited to submit an adequacy of consultation (AoC) representation, as explained later. If they wish, local authorities can append any correspondence received about a developer's consultation from members of the public or others to the AoC representation if they consider it could be useful to the SoS's decision about whether or not to accept the application for examination.

8. Wales

8.1 The PA2008 was drafted so that it was devolution-neutral. In other words the regime does not extend into matters that have so far been decided by the Welsh Government and its agencies. This means, for example, that in Wales only energy generating stations, electric lines, cross country pipe-lines, underground gas storage facilities and harbour facilities, which meet the thresholds in the PA2008, can be consented through the development consent process.

6. Planning Act 2008 (as amended) Section 49

7. http://infrastructure.planningportal.gov.uk/wp-content/uploads/2014/05/NSIP-prospectus_May2014.pdf



8.2 The definition of associated development has a very limited application in Wales. It is therefore important to have early discussions between developers and local authorities regarding the identification of associated development that will need to be progressed by way of a planning application(s) under the Town and Country Planning Act 1990 (TCPA) or another consent.

8.3 To avoid the risk of gaining development consent for a scheme that is not implementable, it is recommended that developers should try to secure agreements for land needed for associated development and secure planning permission and other consents in advance of submitting the DCO application. This will require the relevant local authority to work with the developer to carefully plan and co-ordinate the submission of necessary TCPA and other applications, and provide the developer with pre-application advice. It is also useful for the developer and local authority to discuss the progress of the DCO application and any linked TCPA applications with the Inspectorate, at regular intervals.

8.4 With regard to the Environmental Impact Assessment of a project consisting of a DCO application and linked TCPA applications, a single Environmental Statement for both NSIP and TCPA elements of the scheme can be submitted. However, each decision making authority (Secretary of State and the local planning authority) will need to be able to distinguish the environmental information relating to the development for which consent from it is sought, and also the cumulative effects of that development with the other elements and any other reasonably foreseeable developments. This is explained further in Advice Note 9 - Rochdale Envelope

9. Mitigation

9.1 Local authorities should consider, as part of the pre-application consultation, discussing the requirements (akin to planning conditions) that should be included within the draft DCO and how they will be discharged. Whilst the detailed wording can be clarified at the examination stage, early agreement on draft requirements will help the Examining Authority (ExA) to provide greater focus to the examination and make the best use of the time available.

9.2 One of the key tasks a local authority will need to undertake if the SoS decides to make an Order to grant development consent, will be to discharge those requirements for which it has been identified as the discharging authority.

9.3 Local authorities should work with the developer to reach agreement on the procedures for discharging requirements and any costs associated with undertaking this duty. In many cases a DCO will include a provision and a schedule that will set out the process of discharging requirements.

9.4 Early pre-application discussions can also aid the drafting of planning obligations. In particular, if a s106 agreement is proposed then it is important to at least have the heads of terms in place at the submission of the application. More information about planning obligations is set out later.

9.5 Important mitigation documents which may be relied on in the application might include: Code of Construction Practice; Environmental Management Plan; s106 Planning Agreement; air quality and other strategies. Local authorities have a key role to play in informing the drafting of these documents by the developer during the pre-application stage. These documents are likely to be a focus for the ExA during the examination.

10. Planning Performance Agreements

10.1 Planning performance agreements (PPA) are a matter for the local authority and the developer and may be justified by the impact on the local authority's resources. The Planning Inspectorate is, in principle, supportive of PPAs but will not get involved in the negotiation of a PPA as it is a legal agreement between two parties. The duration that any PPA is in effect and the scale of support at different stages is a matter for negotiation and is likely to be driven, in part,



by the commitments in the DCO in terms of the scale of the local authorities' ongoing role if the SoS decides to grant development consent.

11. Joint working arrangements

11.1 The pre-application stage is the best time to sit down with other officers from host and neighbouring local authorities affected by the proposals in order to decide any joint working arrangements and how they can be structured.

11.2 Local authorities may benefit in terms of sharing costs and resources through joint working agreements. It is possible to structure Planning Performance Agreements (PPAs), Adequacy of Consultation (AoC) representations, LIRs, SoCG and written representations in such a way that the shared areas of concern and/or interest are clearly distinguished from specific sections related to the individual authorities where there are site specific or novel matters.

12. Delegations

12.1 During the examination there will be numerous deadlines for local authorities and other interested parties to submit further representations. These often require swift responses to ensure all matters can be fully explored before the close of examination. In making its recommendation to the relevant SoS, the ExA can only take into account evidence that has been received by the close of the examination.

12.2 Some local authorities may want to seek their members' approval for certain key examination documents such as the LIR, written representation or SoCG, although this is not required. The ExA's main concern is that once the examination timetable is published, interested parties adhere to the deadlines in it. Late submission of an important document such as the LIR or SoCG may prejudice the ability of other interested parties to consider and comment on its content, potentially disrupting the examination timetable and resulting in additional costs for other interested parties.

12.3 A local authority will therefore need to ensure it has adequate delegations in place. There is unlikely to be time to seek committee approval for representations made by a local authority during the examination. In general terms a local authority must assume that it won't be possible for the examination timetable to be structured around its committee cycle.

Acceptance Stage

13. Roles and responsibilities

13.1 The acceptance stage is similar to the checking and validation process that a local authority would carry out in respect of a planning application. Given the statutory status of the pre-application stage in the NSIP process, the Planning Inspectorate also has a role to check that the pre-application consultation was undertaken in accordance with the PA 2008, including the SoCC. The Inspectorate must also consider whether the application and its supporting documents are satisfactory and capable of being examined within the statutory timescale.

14. Just before submission

14.1 Between one month and a week before submission the Planning Inspectorate will normally send a letter to relevant local authorities to advise them of the likely submission date of the application. The letter is to inform the relevant local authorities that, upon submission, the Planning Inspectorate will be requesting a representation from them on the adequacy of the applicant's pre-application consultation and to ensure that they are prepared for the fast turnaround of this response.



15. Submission of application

15.1 With the agreement of the applicant, the application documents will be published on the relevant project page of the National Infrastructure website, as soon as practicable after submission. At this point it is important that local authorities start reading and familiarising themselves with the application documents; in particular, the draft DCO.

16. Adequacy of consultation representation

16.1 As soon as possible after receipt of the application, the Planning Inspectorate will invite the host and neighbouring local authorities to submit an adequacy of consultation representation (AoC). The Planning Inspectorate must have regard to any comments it receives from host and neighbouring authorities in deciding whether or not to accept an application⁸. The AoC is a representation as to whether the applicant has complied, in relation to the proposed application, with:

- its duties under sections 42, 47 and 48 of the PA 2008 relating to consultation and publicity.
- its duty to consult a relevant local authority about the preparation of the SoCC (whether the applicant had regard to the local authority's comments on the draft SoCC),
- the commitments set out in the SoCC in terms of undertaking the pre-application consultation in compliance with the stated consultation methodology.

16.2 A positive view about compliance with these statutory duties will not prejudice a local authority's objection in principle to the application or any part of it. Local authorities are not being asked for views on the merits of the application at this stage.

16.3 The statutory timetable for acceptance of an application is 28 days, beginning with the day after the date of receipt of the application. As a result the Planning Inspectorate will be seeking the AoC representation from the relevant local authorities within 14 calendar days of the day of the request. In light of this, local authorities are advised to ensure that appropriate internal approval procedures are in place to meet this deadline. Given the statutory nature of the acceptance deadline, the Inspectorate cannot extend it, for example, to accommodate a local authority's committee schedule.

Pre-Examination Stage

17. Roles and responsibilities

17.1 At the pre-examination stage, local authorities are encouraged to continue to engage with the developer. Agreement on any remaining issues should be sought and/or negotiations continued. There may also be the need to continue negotiation in respect of any compulsory acquisition affecting the local authority's land holdings or interests. Reaching agreement on as many issues as possible in advance of the examination is likely to lead to a more focused and expedient examination process for all participants.

18. Relevant representations

18.1 Local authorities are encouraged to complete a relevant representation form and submit it to the Planning Inspectorate.

18.2 In the event that no relevant representation is forthcoming from them neighbouring local authorities (as opposed to a host authority) will not automatically become interested parties unless they take action. Neighbouring local authorities may also secure interested party status by responding to an invitation from the ExA in its procedural decision following

8. Planning Act 2008 (as amended) Section 55 (4)(b)



the Preliminary Meeting (the Rule 8 letter). However, it is advised that host and neighbouring local authorities take a more proactive approach and submit a relevant representation. This will allow their views to be considered by the ExA when it carries out its initial assessment of principal issues in advance of the preparation of the draft examination timetable, which is included in the ExA's invitation to the Preliminary Meeting (Rule 6 letter).

18.3 A relevant representation should include a summary of what the local authority agrees and/or disagrees with in the application, what they consider the main issues to be, and their impact. The content of relevant representations is used by the ExA to help inform their initial assessment of principal issues for examination.

18.4 There is a relevant representation form to use in order to register as an interested party. This will be available at the relevant project page of the National Infrastructure website during the registration period, which is set by the applicant. Following publication of a statutory notice, the applicant is required to allow at least 28 days, from the day after the notice is last published, for anyone wishing to submit a relevant representation to do so. After the registration period has closed the Planning Inspectorate will publish the relevant representations on the relevant project page of the National Infrastructure website.

18.5 Interested parties will have the opportunity to submit a written representation during the examination which can elaborate on the matters raised in a relevant representation. In view of the volume of documents usually associated with NSIP applications, it helps all involved in the examination process if the main areas of interest are clearly and legibly expressed in the relevant representation.

18.6 Further information on submitting a relevant representation can be found in Advice Note 8 - How to get involved in the planning process.

19. The Preliminary Meeting

19.1 The ExA will send out an invitation to the Preliminary Meeting to interested parties and statutory parties, including host and neighbouring authorities, which is called a 'Rule 6 Letter'⁹. This invitation to the Preliminary Meeting also includes;

- The draft examination timetable;
- The ExA's initial assessment of the principal issues;
- Appointment of the ExA letter; and
- Any procedural decisions the ExA chooses to make at this stage.

19.2 When looking at the draft examination timetable, consider the structure of the examination as a whole, not just the detail of when the deadlines and hearings occur. This will help local authorities to manage resources and ensure personnel are available throughout the examination. If the draft timetable presents difficulties, there is an opportunity to make these constraints known to the ExA before the timetable is finalised shortly after the Preliminary Meeting. For example, think about what needs to be done and is there a need to attend all the hearings? Are some deadlines more important /more resource intensive than others?

19.3 Remember that the statutory notice periods built into the examination timetable are calendar days, not working days. The ExA does not have the power to "stop the clock" during an examination in order to account for public or school holiday periods.

19.4 Consider when local / mayoral elections will take place and ensure that any potential constraints such as a purdah period are brought to the attention of the ExA at the Preliminary Meeting.

9. Rule 6 of the Infrastructure Planning (Examination Procedure) Rules 2010



19.5 The purpose of the Preliminary Meeting is to discuss the procedure and timetable to be followed during the examination stage, which will be a maximum of 6 months. The Preliminary Meeting is not the time or place to raise matters related to the merits of the application or for members to make politically motivated speeches.

19.6 The ExA will invite interested parties to submit their views in writing about any procedural matters in advance of the Preliminary Meeting. Attendance is not mandatory at the PM; however, host and neighbouring local authorities are advised to attend where possible so that they can respond to issues arising from the applicant and other interested parties. Often matters raised by other parties will have wider timetabling implications that could have an impact on a local authority's resources.

Examination Stage

20. Roles and responsibilities

20.1 The examination stage can often be a resource-intensive period for local authorities, therefore, it is beneficial to anticipate this and the resources required early on in the process. For example, while most deadlines and events will be set out in the examination timetable, there may be occasions that will require participants to react to requests for information by the ExA and, if invited, to comment on documents and representations received by the ExA within a defined time period. In this context it may be advisable for a dedicated officer and/or team to be identified to be available to respond to any requests of this nature.

20.2 The examination is primarily a written process. Hearings are supplemental and therefore it is important that local authorities include any information they want to rely on in their written representations.

20.3 During the examination a local authority will typically undertake a variety of tasks such as: submitting a written representation a LIR and a SoCG. They will also have the opportunity to comment on others' written representations and to submit answers to the ExA's written questions.

20.4 A main aspect of a local authority's input at the examination is likely to be focused on ensuring that the draft DCO provisions/requirements and any s106 agreement (if one is required) are deliverable and consistent to ensure that the construction and operation of the development is sufficiently controlled and mitigated.

20.5 Other documents such as a Code of Construction Practice and /or Environmental Management Plans may also contain vital components in any mitigation package. Usually documents like these will be cross-referred to in the draft DCO requirements.

20.6 Given the responsibilities of local authorities post consent in enforcement and discharging requirements it is often beneficial for a local authority to be represented at issue specific hearings, especially at the issue specific hearing on the draft DCO. Further information can be found in Advice note 15: Drafting Development Consent Orders.

21. Local Impact Reports

21.1 A LIR is defined as 'a report in writing giving details of the likely impact of the proposed development on the authority's area (or any part of that area)'.¹⁰

21.2 When preparing your LIR and for good practice examples of other documents you may find it helpful to consult the National Infrastructure website to look at good examples from previous projects.

10. Planning Act 2008 Section 60(3)



21.3 Local authorities should cover any topics they consider relevant to the impact of the proposed development on their area. The LIR should be used by local authorities as the means by which their existing body of local knowledge and evidence on local issues can be reported to the ExA. The local authority can set out its local planning policy considerations as they relate to the proposal in the LIR.

21.4 The ExA and the SoS must have regard to any LIR submitted by a relevant local authority¹¹ and as such local authorities should not underestimate the potential importance of this document in the context of the wider examination.

21.5 LIRs should be proportionate and it is important to remember that they are separate from a local authority's written representations. The LIR's principal purpose is to make the ExA aware of the potential impacts of the project with the benefit of local knowledge. It is not necessary or useful for the LIR to attempt to replicate the scale and complexity of the Environmental Statement submitted by the applicant. If a local authority is opposed to an application, its case of opposition should be made out in its written representation. Advice Note 1 provides further advice about preparing a Local Impact Report.

22. Statements of Common Ground

22.1 ExAs find signed SoCG's extremely useful in the context of their inquisitorial examination. It allows them to clearly identify matters agreed, matters currently the subject of negotiation, and those matters which are not agreed. Understanding the status of the matters at hand will allow the ExA to focus their questioning, providing greater predictability for all participants in the examination.

22.2 It is often beneficial (and can reduce resourcing requirements) if you work proactively to prepare a SoCG in the pre-application and pre-examination stages. Having a clear understanding between a local authority and developer about the matters agreed / not agreed from the outset will assist in the preparation of other documents such as the LIR and written representations; potentially allowing these documents to take their lead from the SoCG and focus the detailed consideration of matters on issues which are the most controversial and remain outstanding.

22.3 Examination practice has evolved towards setting an early deadline for the submission of SoCGs, if these have not already formed part of the application documents. It is likely that the ExA will request a SoCG between the applicant and relevant local authorities. The Department of Communities and Local Government (DCLG) has issued guidance on the examination of applications for development consent, including guidance on the production of SoCGs.¹² The Inspectorate is also signposting good examples of application documents on the National Infrastructure website.¹³

22.4 The preparation of a SoCG can be iterative and, particularly for larger NSIPs, agreement may evolve over the course of the examination. As such, an ExA may find it useful for a local authority and developer to review and finalise a SoCG in advance of the close of the examination, which they can then rely on for the purposes of reporting to the SoS. With this in mind, an early SoCG, developed during the pre-application stage can and should be signed by both parties; however, any intention to review it before the close of the examination should be clearly identified in the preamble.

22.5 It is worth noting that just because a matter has been agreed in a SoCG does not necessarily mean that the issue will not be the subject of further questioning by the ExA, who may want to test the basis upon which agreement was reached on a particular issue. Other interested parties may also object to the position set out in the SoCG.

11. Planning Act 2008 section 104(2)(b)

12. <https://www.gov.uk/government/publications/planning-act-2008-examination-of-applications-for-development-consent>

13. <http://infrastructure.planningportal.gov.uk/application-process/example-documents/>



23. Written representations

23.1 Written representations and LIRs are distinct documents giving a local authority the opportunity to express information differently. The LIR is usually a technical document setting out an evidence based assessment of the impacts of a proposal on the communities affected. A written representation is the most appropriate document for a local authority to set out its view on the application i.e. whether or not it supports the application and its reasons. The deadline for the submission of a written representation is usually near the start of the examination, often at the same time as the deadlines for the LIR and SoCG.

23.2 Cross reference to application documents, the SoCG and the LIR is encouraged to assist in keeping submissions as concise as possible and to avoid repetition. Please note that once a representation is submitted it cannot be withdrawn. However, it is possible to provide further written and oral representations during the course of the examination, which can inform the ExA and interested parties if the local authority's view or policy position changes, for example, due to a change in political leadership.

24. Planning obligations

24.1 A deadline for receipt of a signed Planning Obligation is likely to be set in the examination timetable. The ExA can only take into account submissions and documents that have been submitted by the close of the examination period. For s106 agreements, this means a fully signed copy must be submitted to the Planning Inspectorate before the deadline for the close of examination.

24.2 Brinkmanship by any party is inappropriate and may backfire within the context of a timetabled examination. It is perfectly legitimate for applicants to submit a Unilateral Undertaking to the ExA if they cannot agree a s106 agreement with another party.

24.3 The process makes provision for other interested parties to have an opportunity to comment on any Planning Agreement or Unilateral Undertaking before the close of the examination.

25. Open floor hearings

25.1 Open floor hearings can be requested by interested parties and must be held if requested.

25.2 The ExA will control the proceedings and ask questions of interested parties, based upon their written submissions.

25.3 Typically, open floor hearings are more community focused, with an emphasis on individuals and community representatives putting their views directly to the ExA and being questioned about them. In this context there may be a limited role for the local authority as a technical / statutory consultee.

25.4 Local councillors may find these hearings are suited to their role as a community representative, but should be clear with the ExA in what capacity they are speaking (on behalf of the local authority / themselves / their constituents).

26. Issue specific hearings

26.1 These hearings are held only if the ExA considers they are necessary to ensure adequate examination of an issue or that an interested party has a fair chance to put forward their case.

26.2 Issue specific hearings are inquisitorial and the ExA will generally ask questions of the participants. Cross examination is an exception but can be requested by an interested party. In such cases the ExA will decide whether or not cross examination of a matter is needed and would benefit the examination of the application. If the ExA decides to allow cross examination it will endeavour to notify the relevant parties in advance so they can prepare for it.



26.3 Depending on the nature of the issue specific hearing and those present, typically the ExA will ask the applicant to respond to questions posed under the agenda items and then seek the views of the local authority(ies), other statutory bodies and then other interested parties before providing the developer with a final opportunity to respond to the views heard.

26.4 Issue specific hearings are likely to be topic based but can also be site-specific. The ExA will try to issue an agenda a week in advance of an issue specific hearing in order to provide interested parties with a guide as to who will need to attend.

27. Compulsory acquisition hearings

27.1 These take place at the request of anyone whose interest in land or rights over land are proposed to be compulsorily acquired.

27.2 A local authority's legal team are likely to play an important role in ensuring that the local authority's interests as a land owner, leaseholder and/or other land interests are properly considered.

27.3 Negotiations may be on-going between the applicant and the local authority's corporate services team. As such, local authorities are encouraged to make sure they understand the scale and nature of the land rights being sought by the applicant and how this may impact upon the authority's wider interests and views as they relate to the application. The local authority's legal team may be the bridge between the various Council functions in this regard.

27.4 It is likely to be beneficial to review the applicant's Book of Reference¹⁴ to identify any relevant plots and any wider interactions with other issues that may arise.

27.5 As with issue specific hearings, the ExA will try to issue an agenda a week in advance of a compulsory acquisition hearing.

28. End of the examination

28.1 The end of the examination can be very busy and the ExA may seek further information from interested parties and / or comments on additional information submitted. Therefore, it is important for local authorities to focus on securing any agreements necessary as early as possible so that they are in a position to be able to meet any requests from the ExA before the close of the examination. This is relevant to all interested parties, not just local authorities.

Post Examination

29. Roles and responsibilities

29.1 Once the examination has closed it is no longer possible to make submissions to the ExA. Any submissions made at this stage will be forwarded directly to the relevant SoS at the same time as the ExA's recommendation. They will not be seen by or inform the ExA's recommendation.

29.2 The ExA's recommendation will be published on the relevant National Infrastructure project page at the same time as the SoS's decision, no more than 6 months from the close of the examination.

14. Regulation 7 of the Infrastructure Planning (Applications: Prescribed Forms and Procedures) 2009 (as amended)



Post Decision

30. Roles and responsibilities

30.1 A local authority's role does not usually end once a decision is made by the SoS to grant development consent. As with any planning permission a local authority will have responsibilities to discharge requirements (as discussed earlier) and also to enforce the terms of a DCO. Sections 160 to 173 of the PA2008 set out local authorities' powers to enforce a breach of the terms of an order granting development consent.

30.2 An application process exists for applicants to make non material and material changes to a DCO. This is set down in secondary legislation in the Infrastructure Planning (Changes to, and Revocation of, Development Consent Orders) Regulations 2011¹⁵. In order to maintain the integrity of the DCO the SoS retains decision-making powers in respect of non-material and material change applications. Local authorities are prescribed consultees for the purposes of the regulations and as such they may be notified of the application and invited to submit a representation. The extent of notification, as it relates to local authorities and other prescribed consultees, will depend on the scale and nature of the change proposed. The SoS has a power to take a proportionate approach to consultation and notification for the purposes of handling applications under these regulations.

15. <http://www.legislation.gov.uk/uksi/2011/2055/contents/made> NB - The legislation relating to making changes to a DCO after consent is granted is expected to be amended during 2015

Further information

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