Department for Communities and Local Government

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Planning Act 2008:

Guidance for the examination of applications for development consent

March 2015
Department for Communities and Local Government

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Introduction

1. The 2008 Planning Act ("the Planning Act") created a new development consent regime for nationally significant infrastructure projects in the fields of energy, transport, water, waste water, and waste. These projects are commonly referred to as major infrastructure projects and will be throughout this document. Through the Localism Act 2011 the Government made significant changes to the regime by abolishing the Infrastructure Planning Commission and transferring responsibility for decision making to the Secretary of State[1].

2. This guidance is about the examination of applications for development consent under the Planning Act. The examination is undertaken by an Examining Authority appointed by the Secretary of State. Users should bear in mind that, in practice, many of the Secretary of State's functions relating to the handling of applications for major infrastructure projects, including the acceptance of applications for examination and the appointment of Examining Authorities, are carried out through the Planning Inspectorate. Therefore all communications about the examination of applications should be directed to the Planning Inspectorate in the first instance.

3. This guidance is to be read alongside the Planning Act, The Infrastructure Planning (Examination Procedure) Rules 2010 ("the Procedure Rules") and The Infrastructure Planning (Interested Parties and Miscellaneous Prescribed Provisions) Regulations 2015.

Purpose

4. This guidance is provided principally for the Examining Authority. It is also for the benefit of applicants, their legal advisers, statutory consultees, other interested parties and the general public. Key aims are to promote best practice; to ensure consistent application of examination procedures; and to promote fairness, transparency and proportionality. This guidance also sets out the criteria which the Secretary of State will apply when deciding on the examination process for a specific application.

[1] Applications relating to energy projects will be decided by the Secretary of State for Energy and Climate Change; those relating to transport by the Secretary of State for Transport, hazardous waste by the Secretary of State for Communities and Local Government and those for waste water and water supply will be a joint decision by the Secretary of State for Communities and Local Government and the Secretary of State for the Environment.

Legal status

5. This guidance is non-statutory. Section 87 of The Planning Act provides that it is for the Examining Authority to decide how an application for development consent for a major infrastructure project is to be examined.

6. Nothing in this guidance should be taken as indicating that any requirement of Planning law or any other law may be overridden (including the obligations placed on the authorities under human rights legislation). The guidance does not in any way replace the statutory provisions of the Planning Act nor does it add to their scope. Only the courts can give an authoritative interpretation of legislation.

The examination process

General

7. When an application for development consent for a major infrastructure project is received, the Secretary of State must determine whether the application complies with the acceptance criteria set out in section 55 of the Planning Act. When deciding whether to accept an application, the Secretary of State must be satisfied that the application has been prepared to a satisfactory standard, whilst having regard to any standards and guidance made under section 37 of the Planning Act. The applicant must also have complied with the provisions of Chapter 2 of Part 5 (pre-application procedure) of the Planning Act and any applicable Regulations. This means that the Secretary of State must consider, among other things, whether the applicant has properly carried out a pre-application consultation in accordance with the Planning Act, relevant Regulations and guidance[2].

8. Where the Secretary of State considers that the application can be accepted, the applicant must be notified of the acceptance by the end of the period of 28 days beginning with the day after the day on which the application was received.

9. This notification will also remind the applicant of the requirement to amongst other matters, notify all prescribed parties of the application and to make copies of the application available. The applicant must certify to the Secretary of State that it has complied with these requirements before examination of the application can commence.

[2] Planning Act 2008: Guidance on the Pre-Application Process

The Examining Authority

10. The Planning Act establishes two distinct processes for the Examining Authority to examine applications for development consent for major infrastructure projects reflecting the differences between the projects that are likely to come before the Secretary of State.

11. The examination and consideration of an application will either be by a single appointed person or a panel of inspectors. In both cases, following examination, and within a further period of up to three months, a recommendation will be put to the Secretary of State who will then have three months to make a decision.

Criteria for Appointing the Examining Authority

12. Section 61 of the Planning Act requires the Secretary of State to publish the criteria to be applied when deciding whether an application should be handled by a single appointed person or panel. In making this decision, the Secretary of State will apply the following criteria:

a) The complexity of the case

The complexity and the number of issues raised by individual applications will vary greatly depending, amongst other things, on the nature and location of the proposed infrastructure development. An initial assessment of the application documents, including the consultation report, will enable the Secretary of State to determine the issues which require examination. In particular, the application documents will indicate to the Secretary of State whether the proposal:

- raises novel issues for development;
- raises complex legal or technical considerations;
- proposes associated development which would require consideration of policy contained in more than a single National Policy Statement; or
- involves analysis of policy issues because, for example, there is no relevant designated National Policy Statement.

b) The level of public interest in the outcome

Anyone is entitled to support or object to any application for development consent or any particular elements of it. Individuals may have social, political, environmental or purely personal concerns about a particular development proposal or any aspects of it. Each application for a major infrastructure project is likely to be unique, and the level of public interest generated will

vary greatly depending on the size, scale, location and nature of the proposed development.

The initial assessment of the application documents, including the consultation report, will provide the Secretary of State with an indication of the level of public interest in the proposed development, and the likely level of public participation in the examination of the application. In particular, the Secretary of State will consider the likelihood of the examination requiring hearings so that interested parties can make oral representations about the application to the Examining Authority.

13. The Secretary of State's assessment of the complexity of the case and the likely level of public interest will be used to consider whether the examination of the application would benefit from more than one appointed person examining the application. The Secretary of State will also decide whether the case may be dealt with more expediently if the Inspectorate could delegate the holding of hearings to more than one appointed person so that, for example, specific issues could be probed at concurrent hearings.

14. It should be noted that where the Secretary of State has appointed a single appointed person to examine an application, the application can be transferred to a Panel at any time if the Secretary of State considers that the application is more complex than the original assessment indicated, and that it requires a wider range of expertise.

Who can take part in examining the application?

15. Section 102 of the Planning Act, and The Infrastructure Planning (Interested Parties and Miscellaneous Prescribed Provisions) Regulations 2015, define the key bodies and individuals who have important roles in the examination of applications.

Interested parties

16. The statutory definition of an "interested party" is a very significant one, because interested parties are given important entitlements before, during and after the examination process. These include the right to be invited to a preliminary meeting; the right to require, and be heard at, an open-floor hearing; the right to be heard at an issue-specific hearing, if one is held; the right to be notified of when the Examining Authority has completed its examination; and the right to be notified of the reasons for the decision.

17. A full definition of interested parties is set out under section 102 of the Planning Act, but they include the following persons and bodies:

- the applicant
- certain persons with an interest in relevant land who have been notified of the acceptance of the application under section 56(2)(d)
- the Marine Management Organisation for relevant applications
- the local authority or authorities where the land for development is located
- the Greater London Authority where the land is in Greater London
- persons who have made "relevant representations" about the application to the Examining Authority (see below); and
- (if they notify the Examining Authority) local authorities adjacent to the authority in which the development is located and other statutory parties.

18. The Localism Act 2011 made several important changes to the interested party provisions. The first change, which is reflected in the final point in the list above, is that statutory parties and local authorities adjacent to the authority in which the development is located are no longer automatically interested parties. They will be involved in the process as a matter of course up to, and including, the preliminary meeting, but must notify the Examining Authority or make a relevant representation if they wish to become interested parties. Secondly, people who believe themselves to be in one of the categories set out in section 102B of the Planning Act (persons with interests in certain relevant land) may apply to become an interested party after the examination of the application has begun. The Examining Authority must consider the matter, and if the Examining Authority agrees that that person falls within section 102B, must inform that person that they have become an interested party. The Examining Authority may also inform someone that they may fall within section 102B, but is under no obligation to seek out eligible parties. Finally, interested parties may deregister as an interested party by writing to the Examining Authority, informing the Examining Authority of their wishes.

19. During the examination of an application there may be changes to land interests (e.g. changes of ownership or removal of interests or plots). When applicants become aware that there has been a change of ownership or new interest added, it would be helpful if applicants could make the relevant person aware that they can make a request to the Examining Authority to become an interested party under section 102A of the Planning Act. This can be done by filling in the relevant form on the National Infrastructure website. The Examining Authority will also need to be advised of any changes to land interests by the appropriate deadlines in the examination timetable. Applicants do not need to provide a revised Book of Reference each time, a simple schedule is sufficient. However, a final form Book of Reference which

consolidates all the relevant information will need to be provided by the final deadline set for the examination.

20. Where an interested party wishes to take part in an oral hearing, they may either speak themselves at the hearing or appoint a representative, including a legal representative, to speak on their behalf.

Relevant representations

21. Any person who has made a relevant representation will be treated as an interested party for the purposes of the examination. This ensures that people who have an interest in the application (other than applicants, statutory parties, and relevant local authorities), can register their interest and assert their right to make representations about the application to the Inspectorate.

22. A "relevant representation" is defined in section 102(4) of the Planning Act. A representation will only be "relevant" if it is in accordance with regulation 4 of the Infrastructure Planning (Interested Parties and Miscellaneous Prescribed Provisions) Regulations 2015, and is received by the Secretary of State by the deadline specified in the application acceptance notice given by the applicant. A representation is not relevant to the extent (but only to the extent) that it contains material about compensation for compulsory acquisition of land or an interest in or right over land; material about the merits of policy set out in a national policy statement; or material that is vexatious or frivolous.

23. A relevant representation should contain an outline of the principal submissions which a person intends to make in respect of the application. To be accepted as a "relevant representation", this outline does not need to set out the full detail of the arguments which the person intends to make during the examination of the application. However, it should contain sufficient information to enable the Secretary of State to understand which aspects of the application the person supports or objects to, and the reasons why.

24. These outlines of principal submissions have two functions. Firstly they provide advance warning of arguments which the various participants are proposing to deploy at the examination. It should be possible to identify from these outlines the issues that are likely to feature most prominently during the examination process. Secondly, they provide the information that the Examining Authority requires to structure and programme the examination. In light of what is said in them, the Examining Authority may wish to invite participants who appear to hold the same or similar views to consider collaborating to present a single case at any hearing (see paragraph 92 below). The outline of principal submissions will also help the Examining Authority see whether there are any relevant issues which are at risk of not being properly covered, and to consider how to remedy any deficiencies, for

example by inviting persons who have expert knowledge of the matter concerned to take part in the examination.

25. Where a person has not submitted a relevant representation within the specified period and wishes to participate at a later stage, the Examining Authority may consider whether to exercise its discretion to allow the person to participate in the examination of the application. Any relevant submission received after the specified period should be accompanied by an explanation for the late submission. Also, to be a relevant representation a submission must be made on the correct form and answer all the mandatory fields. It is at the discretion of the Examining Authority whether or not anyone who provided their submission late, incomplete or on the wrong form can participate in the examination.

Vexatious and frivolous representations

26. The Secretary of State will determine whether any representation by an interested party is frivolous or vexatious. It may be concluded, for example, that the points raised in a representation were so trivial in the context of the application, not worthy of serious consideration, and should therefore be rejected.

27. In certain cases it may be difficult to determine whether a request is frivolous or vexatious. In such borderline cases, the benefit of the doubt will be given to the party making the representation. Any subsequent examination of the representation, at a hearing for example, would then provide an opportunity for the person or party making the representation to amplify and clarify it. If it then emerged that the representation did not merit any further serious consideration, the Examining Authority could decide to give it little weight. In such circumstances, the Examining Authority should limit any further time that may have been allocated for the consideration of that representation, and ensure that any further oral or written representations made by the person address other matters or provide additional information.

Affected persons

28. “Affected persons” are the bodies or individuals known to the applicant, after making diligent inquiry, as having an interest in the land to which a compulsory acquisition request relates (see sections 59 and 92 of the Planning Act).

29. It should be noted that for applications which include the compulsory acquisition of land, the applicant is under a duty under section 59 of the Planning Act to notify the Secretary of State of the names, and such other details as may be prescribed, of each affected person in relation to the application.

30. The Government is firmly committed to ensuring that the rights of those whose land is being compulsorily acquired are properly protected under the major infrastructure development consent regime. The Planning Act provides that before an application involving the authorisation of the compulsory acquisition of land can be approved, the decision-maker must be satisfied that such purchase is required to facilitate the development or is incidental to it, or is replacement land, and there is a compelling case in the public interest for it. The Secretary of State has issued separate guidance on compulsory acquisition procedures under the Planning Act[3].

31. Affected persons are able to request that a compulsory acquisition hearing be held to consider the issues arising in connection with the authorisation of the compulsory acquisition of the land (for example, whether there is a compelling case for it) and to make oral representations at that hearing.

Other persons

32. The legislation provides that only interested parties (or their appointed representative) have an automatic right to participate in the examination. However, under the Procedure Rules, the Examining Authority is also able to permit any other person to make written submissions about the application, or participate in any hearing held for the purpose of examining the application.

33. In particular, the Procedure Rules allow the Examining Authority to call expert witnesses to give evidence on specific points at hearings. They may also consider requests from the applicant and other interested parties to call expert witnesses in support of representations they make about the application.

34. It is for the Examining Authority to decide whether to allow persons other than those categorised as interested parties to participate in the examination of the application, including expert witnesses. But where a request is received from an interested party to allow an expert witness to take part in the examination of an application, this should be given serious consideration in the interests of informed decision making.

How the application is examined

35. It is for the Examining Authority to decide how the application is to be examined, in compliance with the Procedure Rules.

36. The examination of applications is generally carried out in public. This means that all meetings and hearings presided over by an Examining Authority will generally be held in public.

[3] Planning Act 2008: Guidance related to procedures for the compulsory acquisition of land

37. The one exception to examinations being public is where, under section 95A of the Planning Act, the Secretary of State intervenes in an application in the interest of defence or national security. He can then direct that representations on matters relating to defence or national security are to be made to a specified person instead of being made in public.

Initial assessment of the application

38. The Examining Authority is required to make an initial assessment of the principal issues arising from the application from its preliminary examination of the application documents. It may also take into account any of the relevant representations received from interested parties (from information contained in their registration forms). This initial assessment will guide the Examining Authority to form a provisional view as to how the application is to be examined.

39. The Examining Authority will normally complete its initial assessment of the application within a period of 21 days. This begins with the day after the deadline for receipt of relevant representations (set out in the applicant's notification to interested parties that its application has been accepted by the Secretary of State).

Preliminary meeting

40. The Examining Authority is required to hold a preliminary meeting after it has made an initial assessment of the application. It will invite the applicant, each statutory party and interested party, each relevant local authority and any other person the Examining Authority think appropriate, giving them at least 21 days' notice. There is not a specified timeframe for when the preliminary meeting is to be held, however, the Secretary of State's expectation is that, in most cases, it should take place within a period from six weeks to two months from receipt of the relevant representations.

41. The purpose of the preliminary meeting is to assist the Examining Authority in determining how the application should be examined. The Examining Authority will hear any comments the invited attendees wish to make on this. It may also use the meeting to get a better understanding of the approach to take in examining the issues raised in order to determine whether hearings need to be held (and who should be invited to attend) and the overall timetable for the process. The preliminary meeting will not be used to discuss the merits of the application or to hold a substantive discussion on a particular issue - these will be dealt with during the examination itself.

42. Investing time ahead of the examination to identify issues and work out how best to consider them is vital to ensuring an effective and efficient examination process. It ensures a proper assessment of the issues by the

Examining Authority and gives interested parties the opportunity to share their views on how the application should be handled.

43. Ahead of the preliminary meeting, the Examining Authority will notify all invitees of the matters it wishes to discuss and will circulate their initial assessment of the principal issues. This is intended to assist the Examining Authority and other parties in preparing for the examination of the application. However, it will not be a definitive statement of the issues to be considered since the Examining Authority must be free to hear all evidence that it believes is relevant to its consideration of the case. The Examining Authority may also wish to give an indication of those matters which it determines do not need to be considered, or which need not be considered in great detail, during the examination process.

44. The Examining Authority will make the application and relevant representations available to all participants in accordance with rule 21 of the Procedure Rules. In any event, arrangements will be made for copies of all representations to be available for public inspection.

45. Rarely, applicants may wish to delay the start of the examination of an accepted application. Such a delay may be appropriate, depending on the circumstances, but should be kept to the minimum period necessary. This will limit the risk that the application, including pre-application consultation and environmental information, will no longer be sufficiently current to form the basis of an examination. The Secretary of State's expectation is that Examining Authorities will not normally agree to postpone the start of the examination for longer than three months.

Decision on handling examination

46. The Examining Authority will decide how the application is to be examined in light of the discussions held at the preliminary meeting. It will notify all participants of this procedural decision at the preliminary meeting, or as soon as practicable afterwards.

Timetable

47. The Examining Authority is required to comply with the statutory timetable for completing the examination of the application, as set out in section 98 of the Planning Act. It will also set out a timetable for each stage of the examination to provide greater certainty to all participants and interested parties about how the examination will proceed.

48. The Examining Authority should propose the timetable for the examination of the application at the preliminary meeting. The timetable can then be confirmed or amended in light of the representations received about it from interested parties and other invitees.

49. The timetable must specify the date by which any written representations allowed by rule 10 of the Procedure Rules are to be received. It should also cover any hearings, where it is known (at the time the timetable is first set) that any hearings are required. Where the application is examined by a Panel, the Planning Act enables hearings to examine specific issues to be held in concurrent sessions by a number of appointed persons. The use of concurrent sessions should help to achieve overall savings in the length of the examination process. However, when considering the timetabling of concurrent sessions, the Examining Authority will have due regard to enabling any interested party who may wish to participate in concurrent sessions to be able to do so.

50. The Examining Authority will keep the timetable under review at all times, as the full extent of the issues to be investigated will not always be clear at the outset of the examination of an application, and this may make providing exact timings difficult. If at any point during the examination, the Examining Authority believes that the timetable will not be met for any reason (for example, because of any unforeseen circumstances, difficulties in relation to a particular stage or any change to the statutory timetable) then it must prepare a revised timetable and notify all interested parties, and any other persons invited to the preliminary meeting, of the changes made.

51. The timetable must also specify the dates by which:

(i) the Examining Authority is to receive the local impact report(s);

(ii) the Examining Authority is to receive comments on the contents of the local impact report;

(iii) the Examining Authority is to receive any statements of common ground from the applicant and any interested parties.

Local Impact Report

52. The local impact report is a written report submitted by a local authority detailing the likely impact of the proposed development on any part of the local authority's area, based on their existing body of local knowledge and robust evidence of local issues. The Examining Authority will invite local authorities to submit a local impact report, listing the impacts and their relative importance[4].

53. The report may differ from other representations made by the local authority, as it is intended to allow local authorities to represent the broader views of their community. Consequently, a local authority which has been invited to submit such a report may decide to cover a broad range of local interests

[4] Advice on the form and content of local impact reports is set out in the Planning Inspectorate's Advice Note 1 - http://infrastructure.planningportal.gov.uk/wp-content/uploads/2012/03/Advice-note-1v2.pdf

and impacts, including economic and social ones. The impacts should be presented in terms of their positive, neutral and negative effects.

54. The report is distinct from any representation a local authority may make on the merits of an application or any subsequent approvals that should be delegated to the local authority for determination (for example, on detailed design). The report should not replicate the Environmental Statement produced as part of the developer's application.

55. The deadline for a local impact report to be submitted to the Examining Authority will be set out in the timetable. Local authorities are under no obligation to prepare or submit a report, but if one is submitted it should have a clear auditable trail covering its drafting and approval.

56. Interested parties will usually be given not less than 21 days to submit their comments on the local impact report to the Examining Authority, starting from the day after the local impact report is made available on the National Infrastructure Planning website[5].

57. The Examining Authority and the Secretary of State must have specific regard to the local impact report when making their recommendation and decision.

Statements of common ground

58. A statement of common ground is a written statement prepared jointly by the applicant and another party or parties, setting out any matters on which they agree. As well as identifying matters which are not in real dispute, it is also useful if a statement identifies those areas where agreement has not been reached. The statement should include references to show where those matters are dealt with in the written representations or other documentary evidence.

59. The Government recognises that producing these statements requires a lot of work from all parties but believes that statements of common ground are very helpful in ensuring that the examination focuses on the material differences between the main parties. Effective use of such statements leads to a better and more efficient examination process. The topics on which agreement might be reached in any particular instance (or those areas where agreement might not be reached) will depend on the matters at issue and the circumstances of the case but early identification of these topics helps the Examining Authority to focus the examination on the most important issues.

60. Applicants should start to work with relevant statutory consultees on agreeing statements of common ground during the pre-application period and should aim to have reached an initial agreement in the pre-examination

[5] www.infrastructure.planningportal.gov.uk

period before the preliminary meeting is held. It is expected that these statements will continue to evolve including in some cases during the Examination period in the light of discussions between the applicants and other parties. Early submission of the statements of common ground is encouraged and applicants should not wait until the examination period has started to prepare or submit statements of common ground.[6]

61. There are good examples of statements of common ground on the National Infrastructure Planning website. The statement should be clear about the basic information on which the parties have agreed, such as the precise nature of the proposed infrastructure, a description of the site and its planning history. Effective cross-referencing of other application documents should be used in order to avoid duplication between documents and keep the volume of examination material to the necessary minimum.

62. In addition to basic information agreement can often be reached on technical matters and topics that rely on basic statistical data. For example, the evidence to be submitted on traffic flows. Ideally, agreement should also be sought before the examination commences about any requirements (i.e. conditions) that should be attached to a Development Consent Order if granted.

63. How such agreement is reached will vary depending on the nature and complexity of the application and the matters at issue. Where there are only two or three major parties involved and the issues are fairly straightforward, the Examining Authority is likely to expect the parties to have considered producing a statement of common ground containing agreed facts or setting out those areas where agreement will not be reached. For more complex applications it is likely that the Examining Authority will expect the applicant to agree a number of statements of common ground with different parties, each focused on separate aspects of the application.

64. However, the duty of the Examining Authority is not simply to accept the statement of common ground or to react to the evidence presented. The role of the Examining Authority is to ensure that all aspects of any given matter are explored thoroughly, especially with regard to the matters fundamental to the decision, rather than simply accepting the statement of common ground without question.

65. Consequently, the Examining Authority should probe the evidence thoroughly if their judgement or professional expertise indicates that either:

- all of the evidence necessary for a soundly reasoned decision has not been put before them, or

[6] The Examining Authority may set a deadline for the submission of statements of common ground in the rule 6 letter.

- that a material part of the evidence in front of them has not been adequately tested.

Appointment of assessor

66. When it seems likely that evidence to be given about an application will be of a specialist nature, or of a level of complexity outside the normal experience of the persons appointed to examine an application, the Examining Authority can request that the Secretary of State appoints one or more assessors to advise and assist them.

67. Although the Examining Authority will be able to draw on a wide range of skills and expertise, the use of an assessor could be important in assisting the progress of the examination towards a quicker understanding of the more technical and specialised issues.

68. The initial assessment of the application should have identified the issues that require further examination and whether these could be examined more efficiently and expediently with the assistance of an assessor. In most cases, therefore, the appointment is likely to be made at the pre-examination stage, although an assessor can be appointed at any time during the examination of the application. The Examining Authority must notify the assessor's name, and the matters on which the assessor is to assist the Examining Authority, to persons entitled to participate in the examination..

69. The Examining Authority should define the role of the assessor and their contribution to the running of the examination, and to the Examining Authority's report. In most cases this will be before the examination begins. The assessor should be introduced at the preliminary meeting, and his or her role should be explained at the meeting and at any subsequent hearing. Where the assessor is appointed at some stage after the examination of the application has begun, the interested parties should be notified of the appointment, and his or her role should be explained, as soon as is practicable.

Appointment of barrister, solicitor or advocate

70. The Planning Act sets out an inquisitorial approach to the examination of applications, and this includes examination at hearings. It is envisaged that in most cases it will be the Examining Authority that will ask questions of persons making oral representations at hearings. However, the Planning Act recognises that the Examining Authority might sometimes need the support of a professional advocate to ensure that the evidence is tested in the most effective and revealing way. The Secretary of State may therefore appoint a barrister, solicitor or advocate to provide legal advice and assistance to the Examining Authority where they request it. The advice and assistance which may be provided includes the ability to conduct oral questioning at a hearing.

Written representations

Procedure for written representations

71. The use of written representations will be the primary means by which the Examining Authority will examine applications. They will also be one of main types of evidence which the Secretary of State will take into account when taking a decision. It is envisaged that in most cases there will be at least two rounds of written representations. This will include the relevant representations made by the interested parties in accordance with rule 3 of the Procedure Rules, and any detailed written representations requested by the Examining Authority.

72. In the majority of cases, it is likely that the Examining Authority will require further written representations to obtain greater details of interested parties' cases. The Examining Authority will set out deadlines in the timetable, giving at least 21 days' notice.

73. The written representations should include each party's detailed case and set out the reasons why they support or oppose the application. It should identify those parts of the application and specific matters with which they agree, and those parts or matters where they do not agree. Reasons for any agreement or disagreement should be provided.

74. Participants should also provide with their written representations any data, methodology and assumptions used to support their submissions. If this is not done it could cause delays in the examination of an application. For example, if extensive tables, graphs, diagrams, maps etc. are not produced until after an issue-specific hearing has opened, this can cause unnecessary delay as other interested parties might well need extra time to study these. If new material which another interested party has not had adequate time to consider is raised at a very late stage, delays in the examination of the application may result and, unless there is good reason for the late submission, an award of costs could arise.

75. The Examining Authority can also ask written questions and require additional information from anyone at any stage of the examination process, and require that a response is to be made in writing within a period it specifies. It may disregard any written representations and responses to its questions if these are received after the specified date.

76. Where either no relevant representations are received about the application within the period specified, or the representations received do not object to the proposal contained in the application, the Examining Authority should not need to seek further detailed written representations about the application.

77. Where no relevant representations are received in response to an application being examined, it will not mean that the Secretary of State will

automatically grant consent. Instead, the Examining Authority will proceed with examining the application against the criteria set out in any relevant National Policy Statement, whilst having regard to any local impact report and any matters prescribed by the Secretary of State in relation to the development of the description proposed.

Hearings

Notification of hearings

78. Once a hearing date has been fixed, it should be changed only for exceptional reasons. The venue for the hearings should be provided by the developer and afford adequate facilities for those with special needs.

79. The Examining Authority will set a deadline for all those entitled to appear at compulsory acquisition and open-floor hearings of the date by which they must notify the Examining Authority of their wish to be heard at such hearings[7].

80. The Examining Authority must also notify those entitled to appear at the hearings giving at least 21 days' notice of the date, time and place fixed for the holding of the hearing as well as the subject matter for the hearing.

81. Hearings will normally take place during the working day and early evenings when most people are available to participate in discussion. Exceptionally and only if appropriate, the Examining Authority may hold hearings late in an evening or at weekends. The expectation is that the statutory notice period for hearings of 21 days should allow interested parties enough time to make arrangements to attend a hearing during the working day or early evening.

82. In addition, the Procedure Rules impose an obligation on the applicant regarding publicity for the hearing(s). Firstly, the applicant is required to publish a notice of the hearing in one or more local newspapers circulating in the locality in which the land in question is situated. Secondly, the applicant is required to post a notice of the hearing in places near to the location of the proposed development, and, where within the control of the applicant, post a notice of the hearing on the land itself so as to be visible and legible to members of the public.

83. The published and posted notices must state the place, date and time of the hearing; the relevant section of the Planning Act under which the application has been made; sufficient description of the proposals in the application to identify their location with or without reference to a specified map; and details

[7] This deadline is set out in rule 8 letter as part of the examination timetable.

of a place where a copy of the application and relevant documents can be inspected.

Specific issue hearings

84. If the Examining Authority decides that consideration of oral representations are necessary to ensure adequate examination of the issue, or to ensure an interested party has a fair chance to put forward its case, it must hold an issue-specific hearing.

85. All interested parties will be invited to participate in the issue-specific hearing and, subject to the Examining Authority's powers of control over the conduct of the hearing, will be able to make oral representations on the specific issue or issues being examined at the hearing.

86. Where the application is examined by a Panel, hearings to examine specific issues can be held in concurrent sessions by a number of panel members. The use of concurrent sessions should help to achieve overall savings in the length of the examination process. When considering the use of concurrent sessions, the Examining Authority will have due regard to the need for any interested parties who wish to participate in concurrent sessions to be able to do so.

Compulsory acquisition hearings

87. Where the Examining Authority receives one or more requests for a compulsory acquisition hearing from affected persons within the date specified, it must cause a hearing to be held. All affected persons will be invited to the hearing and, subject to the Examining Authority's powers of control over the conduct of the hearing, may make oral representations about the compulsory acquisition requests in relation to their land interests.

88. Where the application contains a number of requests for authorisation of the compulsory acquisition of land, the Examining Authority may choose whether to consider all requests at a single hearing or at separate hearings.

Open-floor hearings

89. The Examining Authority must arrange for an open-floor hearing to be held where it receives one or more requests for an open-floor hearing from interested parties before the specified deadline. The Examining Authority will endeavour to hold an open-floor hearing early in the examination period and will invite all interested parties to the open-floor hearing, giving them not less than 21 days' notice. Interested parties will, subject to the Examining Authority's powers of control over the conduct of the hearing, have an opportunity to make oral representations about the application.

Procedure at hearings

90. Under section 94 of the Planning Act, it is for the Examining Authority to determine how hearings are to be conducted, including the amount of time to be allowed at the hearing for the making of a person's representations. The Examining Authority is expected to make use of its powers of control over the conduct of hearings to ensure that they are carried out as efficiently as possible, whilst remaining fair to all parties and thorough in their examination of evidence.

91. The Examining Authority is expected to identify the matters to be considered, and those on which it requires further information, either before, or at the start of, the hearing. The issues they might consider appropriate to be dealt with in such manner could include those relating to the impact of the development on the locality, including issues in relation to noise, air quality, and quality of life. For a compulsory acquisition hearing, a key matter to be considered will be whether there is a compelling case in the public interest for the compulsory acquisition of land. Ultimately it will be for the Examining Authority to decide, in light of the particular circumstances of the case, which matters it wishes to receive oral evidence on.

92. The Examining Authority will determine the order in which persons entitled or permitted to appear will be heard. In most cases the applicant will give evidence first and will have the right of final reply, unless the Examining Authority in a particular case decides otherwise. The Examining Authority will usually try to allocate a specific amount of time for the making of oral representations. It must act even-handedly in using this provision and will ensure that the timetable agreed in rule 8 of the Procedure Rules allows reasonable time for persons to make representations.

93. Rule 14 of the Procedure Rules requires that oral submissions must be based on an interested party's relevant or written representation. This is to ensure that the hearing can focus primarily on the matters for which it has been arranged. However, subject to the Examining Authority's discretion as to the conduct of the hearing, rule 14 does not prevent someone from referring to matters not included in their written representation where it is relevant to the issues under consideration at the hearing, or to the examination more generally. This may also be the case where documents have changed since representations were made (for example, the draft Development Consent Order).

94. Under section 94 of The Planning Act, the Examining Authority may refuse to hear evidence which is, in its view, irrelevant, vexatious or frivolous; relates to the merits of policy set in a National Policy Statement; repeats other representations already made; or relates to compensation for compulsory acquisition of land or of an interest in or over land. Additionally the Examining Authority may request any person behaving in a disruptive manner to leave the hearing, or to remain only if that person complies with specified conditions.

95. The Examining Authority is expected to use its powers to control the conduct of the hearing reasonably. Where possible, it will allow organisations or individuals with similar interests to make their own individual representations on the application, as they may bring different perspectives to bear on a given issue. This should not, however, be at the expense of unnecessary repetition of the same arguments. For example, where the Examining Authority is aware that a number of those attending the hearing are likely to wish to repeat others' representations (for example, because they represent a campaign or a neighbourhood group opposing the application) it will encourage individuals who intend to submit the same, or very similar evidence, to work together to agree upon a spokesperson to put forward a case on everyone's behalf.

96. The Examining Authority, or the barrister, solicitor or advocate appointed to assist it, will probe, test and assess the evidence through direct questioning of persons making oral representations. Normally parties will be invited to summarise their case, made in their relevant or written representations, and then be questioned on the evidence they have put forward to support their case. While truth-seeking, the Examining Authority should seek to set an approach which is not aggressively adversarial.

97. In formulating their questions, the Examining Authority will have discussed with interested parties the issues that require testing and the information from oral representations which the parties might require in order to be able to present their cases properly. These discussions are most likely to take place at the preliminary meeting but could be at any time during the examination.

98. In certain circumstances the Examining Authority may allow an interested party, or his/her representative, to question a person making oral representations at a hearing (i.e. allow cross-examination). It may do so where it considers that this is necessary to ensure the adequate testing of any representations, or where it considers that it is necessary to allow an interested party a fair chance to put their case.

99. The Examining Authority will carefully consider all requests from parties for cross examination. It will ensure that parties are not denied the opportunity to ask questions where the answers are required in order to complete their cases. Where the Examining Authority permits one party to cross-examine another, there is no presumption that reciprocal rights will apply. It will be for the Examining Authority to determine where this procedure is necessary. An interested party who is aggrieved by a rejection of their request to be allowed to question persons making oral representations may challenge the Examining Authority's decision by way of a claim for judicial review.

100. Where the Examining Authority permits a party to ask questions of a person making oral representations at a hearing, it will determine the amount of time to be allowed for the questioning and the matters to which the questioning may relate. The Examining Authority will intervene if it considers the

questioning is beginning to stray from the matters which it has allowed questions on; if the questioning is taking too much of the examination time and could jeopardise the timetable; or if it becomes aggressively adversarial. The Examining Authority will act even-handedly in using these powers.

101. Other than having a representative to speak on their behalf (see paragraph 20 above), persons who are entitled to appear at hearings do not have an automatic right to call witnesses to corroborate their evidence. However, the Procedure Rules give the Examining Authority the discretion to permit any other person to make oral representations at a hearing. This enables the Examining Authority to invite witnesses themselves or if requested to do so by interested parties. Witnesses may help ensure adequate and proper examination of issues and may provide a fairer chance for some interested parties to make their case. Therefore, where a request is received from an interested party to allow an expert witness to take part in the examination of an application, the request should not be denied unreasonably.

102. Hearings should be open to journalists and the wider public, as well as interested parties. Provided that it does not disrupt proceedings, all individuals present at hearings should be allowed to report, record and film proceedings including using electronic and social media. Examining inspectors will advise persons present at the start of hearings that the proceedings may be recorded and/or filmed, and that any persons using social media during or after the end of the proceedings should do so reasonably.

Site inspections

103. It is common practice for the persons appointed to examine applications for development consent to make a site visit to familiarise themselves with the proposed development area.

104. Under the Procedure Rules, the Examining Authority may make an unaccompanied inspection of an application site before, or during the examination, without giving notice to the persons entitled to take part in the examination.

105. The Rules also allow the Examining Authority to make accompanied site visits during the examination which it will notify to all interested parties. The Examining Authority will refuse to hear evidence or other submissions during any accompanied visit. It is acceptable, however, for people to draw their attention to particular features of the site and its surroundings.

Final matters

Service of Notices and Inspection of Documents

106. Under the Procedure Rules, the Examining Authority may publish notices/information on a website where possible and use electronic transmission to notify interested parties of the procedural steps before and during the examination. In accordance with Procedure Rule 21, the Examining Authority will make available all relevant and written representations at the end of each round of representations.

Allowing further time

107. Exceptionally there may be circumstances where it would be reasonable to allow further time for the taking of any step in respect of which the Procedure Rules specifies a time limit. Rule 23 therefore enables the Examining Authority to do so at any time and in any particular case.

108. Where an applicant has applied for consent from another consenting body (for example from a local planning authority under the Town and Country Planning Act 1990) but is still waiting for the decision during the examination, the Examining Authority will take into account the likelihood of the consent being granted, as well as the probable delay, before deciding how to proceed. Any extension to the overall statutory timetable would require the relevant Secretary of State to make a statement to the Houses of Parliament and would not be a decision which would be taken lightly.

Changing an application post acceptance

109. It is expected that applications will be as well prepared as possible prior to submission and an application will not be accepted if it is not of a satisfactory standard. However, the Government recognises that there are occasions when applicants may need to make material changes to a proposal after an application has been accepted for examination. Reasons for this could include, for example, regulatory changes, technical developments or the discovery of previously unknown factors arising from representations received after acceptance or examination submissions.

110. However, if it is determined that a proposed change is of such a degree that it constitutes a materially different project then the applicant will need to determine how best to proceed. The applicant may decide to withdraw their existing application and restart the pre-application process or continue with their application in its original form or they may decide to submit an alternative proposal for change. It should be noted that the Examining

Authority will not be able to indicate what degree of change would be acceptable in advance of the applicant submitting a proposed change.

111. It is important for all parties to remember that it is for the applicant to decide whether or not to propose a change to a proposal during the examination. Other parties can highlight those areas where they think a proposal should be changed during their discussion with the applicant in the pre-application period and also in their written representations.

112. Before proposing a change, applicants should carefully consider the impact that it will have on any non-planning permits which they are seeking alongside their Development Consent Order. A change in the Development Consent Order may mean that it is not possible to issue these non-planning permits to the same timescale as the Development Consent Order.

113. In considering a proposed material change to an application and before making a procedural decision[8] about whether and how to examine the changed application, the Examining Authority will need to ensure it is able to act reasonably and fairly, in accordance with the principles of natural justice[9] and in doing so, there will be a number of factors to consider such as:

- whether the application (as changed) is still of a sufficient standard for examination;
- whether sufficient consultation on the changed application can be undertaken to allow for the examination to be completed within the statutory timetable of 6 months[10]; and
- whether any other procedural requirements can still be met.

114. It is expected that applicants will discuss the implications of any changes they wish to make with relevant statutory consultees and notify the Examining Authority at the earliest opportunity. This should allow the Examining Authority to accommodate any appropriate consultation on the change within the six month examination period.

115. If an applicant seeks to introduce a material change during the final stages of the examination period, it is unlikely to be accepted on the basis that the application cannot be examined within the statutory timetable without breaching the principles of fairness and reasonableness.

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8 Pursuant to sections 87(1) and 89 of the Planning Act

9 See Bernard Wheatcroft Ltd V Secretary of State for the Environment (1982) 43 p & CR 233 where it was held that anyone affected by amended proposals should be provided with a fair opportunity to have their views on these amendments heard and properly taken into account.

10 Section 98(1) of the Planning Act 2008 imposes a duty on the Examination Authority to complete the examination within 6 months. The Secretary of State has the power to extend this period, but this is rarely exercised (see section 98(4) of the Act).

Procedure after the completion of examination

116. Within three months of the end of the examination, and sooner if possible, the Examining Authority will make its recommendation on an application to the Secretary of State. The Secretary of State will then have up to three months to reach a decision.

117. The Secretary of State is required under the Procedure Rules to notify all interested parties if he is inclined to disagree with the Examining Authority's recommendation because he differs from the Examining Authority on any matter of fact mentioned in, or appearing to be material to, a conclusion reached by the Examining Authority, or because the Secretary of State proposes to take into consideration any new evidence or any new matter of fact.

118. The Secretary of State will set out the reasons for disagreement with the Examining Authority and will give interested parties the opportunity to make representations in writing, in respect of any new evidence or new matter of fact, by an appropriate deadline.

Notification of decision

119. Interested parties are entitled to be notified of the decision. Any written reports of assessors will be made available on the National Infrastructure Planning website. The Secretary of State will also provide each interested party with a copy of the statement of reasons for his or her decision to grant or refuse development consent.

Procedure following the quashing of a decision

120. Rule 20 of the Procedure Rules relates to the procedure to be followed where the original decision has been quashed by a Court. It ensures that those who were entitled to take part in the examination of the application and who did so are given the opportunity to make further comments on the case, following the Court's decision. The Secretary of State will send to those participants a written statement of the matters on which further representations will be invited, for the purposes of further consideration of the application. It is expected that 21 days will normally be allowed for this purpose.