

**Procedure Guide  
for Local Plan Examinations**

**The Planning Inspectorate  
June 2019 (5<sup>th</sup> Edition)**

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## NOTE

The Planning Inspectorate also produces a model representation form for local plans which is available for use by local planning authorities at publication (Regulation 19) stage. It can be downloaded from:

<https://www.gov.uk/guidance/local-plans>

## Glossary of abbreviations

HRA	Habitats Regulations Assessment
Plan	Local Plan
LPA	Local Planning Authority
MHCLG	Ministry of Housing, Communities and Local Government
MM	Main Modification
NPPF	National Planning Policy Framework
PCPA	Planning and Compulsory Purchase Act 2004 (as amended)
PHM	Pre-Hearing Meeting
PO	Programme Officer
PPG	Planning Practice Guidance
QA	Quality Assurance
The Regulations	The Town and Country Planning (Local Planning) (England) Regulations 2012 (as amended)
SA	Sustainability Appraisal
SLA	Service Level Agreement
SoS	Secretary of State for Housing, Communities and Local Government

## Introduction

1. This document provides practical guidance on the procedural aspects of the examination of local plans<sup>1</sup>. It is aimed at all those involved in the process of examining a plan, including the appointed Inspector. This fifth edition has been updated<sup>2</sup> to take account of the revised National Planning Policy Framework [NPPF] published in February 2019<sup>3</sup> and updated national Planning Practice Guidance [PPG]<sup>4</sup>. It also draws on recent experience of examinations and the advisory visits which Inspectors make to local planning authorities [LPAs].

2. The content of this document is guidance only with no statutory status. However, in the interests of consistency, efficiency and fairness, all parties should follow its general principles, as will Inspectors who may adapt them as necessary for an individual examination while ensuring that no party is prejudiced.

3. The legislative requirements for the examination are contained in the *Planning and Compulsory Purchase Act 2004* (as amended) [PCPA] and the *Town and Country Planning (Local Planning) (England) Regulations 2012* (as amended) [the Regulations]. Some guidance on procedure is also provided in the PPG chapter on *Plan-making*. However, many of the detailed procedural aspects of the examination are not prescribed in legislation, allowing the Inspector a degree of flexibility in conducting the examination. This enables the Inspector to adapt the procedures to deal with situations as they arise, so as to achieve positive outcomes in a range of different circumstances.

4. Nonetheless there is a need for reasonable consistency in the way that local plan examinations are conducted. Together with the PPG, therefore, this document provides the main operational framework for examinations. Inspectors will also have regard to the spirit of other procedures adopted in the planning system. For example, timescales for making documents available and giving notice to hearing participants will be based on established good practice. As in all their work, Inspectors will adhere to the Franks principles of openness, fairness and impartiality.

5. The NPPF advises that the planning system should be genuinely planned, with succinct and up-to-date plans providing a positive vision for the future of each area. LPAs invest substantial time and resources in

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<sup>1</sup> It also applies to the examination of joint local plans. References in the document to local plans should be taken to include joint plans, and references to "the LPA" to include a group of LPAs preparing a joint plan.

<sup>2</sup> It replaces the fourth edition, which was entitled *Procedural Practice in the Examination of Local Plans* (June 2016).

<sup>3</sup> Note however that the previous version of the NPPF (March 2012), still applies for the purpose of examining plans submitted on or before 24 January 2019.

<sup>4</sup> PPG is subject to updating from time to time. This document is consistent with the PPG at the date of publication.

preparing their plans, including engaging with the community in their preparation<sup>5</sup>. The examination is the final stage in the plan process and the Planning Inspectorate will seek to ensure that plans are taken through the examination as quickly and efficiently as possible. LPAs must also play their part by ensuring that when they submit their plan it is ready for examination, the evidence base is complete, representations are properly ordered and collated, and a Programme Officer (PO) and an examination website are in place.

6. Once the plan has been submitted, the Inspector will take control of the examination process from start to finish. The Inspector's role is to examine whether the submitted plan meets the tests of soundness defined in the NPPF<sup>6</sup> and meets all the relevant legislative requirements, including the duty to co-operate. The examination will therefore concentrate on the issues that affect the plan's soundness and legal compliance, and will not delve into other matters. The Inspector's conclusions will be based on a consideration of all the evidence and on the application of professional expertise and judgment.

7. The Inspector will always bear in mind that the plan belongs to the LPA, and subject to the duty to ensure the plan's soundness, will not seek to impose his or her own views on its vision or its content. The Inspector will be conscious of the benefits of having a robust and up-to-date plan adopted as quickly as possible. The Inspector will raise any potential problems with the LPA as soon as they become apparent, and will give the LPA the opportunity to overcome them wherever this is possible. If this involves the LPA carrying out further work, the timetable for the examination will be adjusted as necessary.

8. The legislation<sup>7</sup> allows for three possible outcomes to the examination:

- The Inspector finds that the plan is sound and legally-compliant as submitted: in these circumstances the Inspector must recommend that the plan is adopted;
- The Inspector finds that the plan is unsound and/or legally non-compliant as submitted, but that it is possible to make it sound and legally-compliant by making main modifications to it. In these circumstances the Inspector must recommend the necessary main modifications, if requested to do so by the LPA. The main modifications must relate directly to the reasons why the Inspector has found the plan unsound or legally non-compliant;
- The Inspector finds the plan unsound and/or legally non-compliant as submitted, and that it is not possible to make it sound and legally-compliant by making main modifications to it. In these

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<sup>5</sup> LPAs are also responsible for meeting the costs of the examination. See paragraph 8.7 below.

<sup>6</sup> The tests of soundness are that the plan is positively prepared, justified, effective and consistent with national policy. See paragraph 35 of the NPPF.

<sup>7</sup> PCPA, sections 20(7),(7A),(7B) & (7C)

circumstances the Inspector must recommend non-adoption of the plan. In practice, the LPA would be asked to consider withdrawing the plan before any such recommendation was made.

9. At the end of the examination the Inspector produces a report for the LPA setting out recommendation(s) and the reasons for them. The report is not binding on the LPA, but the LPA may not adopt an unsound plan<sup>8</sup>.

## Overview of the examination

10. The tables below provide an overview of the examination process. Each of the stages and key actions outlined is considered in more detail in the following sections, as indicated in the tables.

11. The duration of each examination depends on the type of plan under examination, and on the nature of any soundness issues or legal compliance issues that arise and the steps that are needed to resolve them. Typically, the examination of a full local plan containing both strategic and non-strategic policies will tend to last around a year, and sometimes longer. However, if the LPA only need to update a small number of specific policies in their plan, it may be possible to complete the examination in a shorter timescale.

<b>Stage 1 – Submission to opening of hearing sessions</b>
<b>Key actions [See Sections 1 to 5 below]</b>
<p><b>Submission</b></p> <ul style="list-style-type: none"> <li>The LPA submits the plan to the Planning Inspectorate together with a complete, proportionate evidence base and the documents required by legislation.</li> </ul> <p><b>IMPORTANT:</b> It is essential that the Programme Officer [PO] is in place by the time of submission and that the examination website has been set up by the time the Inspector is appointed.</p>
<ul style="list-style-type: none"> <li>Provided that adequate notice of submission has been given and a PO is in place, the Planning Inspectorate aims to appoint an Inspector:             <ul style="list-style-type: none"> <li>Within 3 weeks, for plans containing strategic policies</li> <li>or</li> <li>Within 5 weeks, for plans without strategic policies.</li> </ul> </li> </ul>
<p><b>Initial assessment of the plan and organisation of the hearing sessions</b></p> <p>In the initial weeks after the Inspector’s appointment:</p> <ul style="list-style-type: none"> <li>The Inspector makes an initial assessment of the plan and makes contact with the PO.</li> </ul>

<sup>8</sup> PCPA, section 23(4)

- The Inspector looks for any fundamental flaws in respect of soundness or legal compliance and may write to the LPA in the first instance if there are major concerns.
- The Inspector may write to the LPA with questions on other matters.
- The Inspector determines the matters and issues for discussion at the hearings, and prepares the initial hearings timetable and a guidance note for participants.
- If the Inspector considers it necessary, the LPA (and other participants) are asked to submit information or statements on specific issues. These should not be submitted unless requested by the Inspector.
- The Inspector confirms the start date for the hearing sessions. The LPA must ensure that the start date is advertised at least 6 weeks in advance.
- The PO publishes the initial timetable for the hearing sessions, the matters and issues for discussion and the Inspector's Guidance Note. (If the plan is very straightforward and not contentious, and no representors wish to be heard, on rare occasions the Inspector may be able to deal with the examination by means of written representations, avoiding the need for hearing sessions.)

- The LPA and other participants are allowed 2-3 weeks to prepare any statements or other information requested by the Inspector, and submit them to the PO.
- The PO checks that they have been received and placed on the examination website, so that all participants have access to them.
- The PO clarifies and confirms participants' attendance at the hearings.

#### **Preparation for the hearing sessions**

- The Inspector ensures that the programme for the hearing sessions is updated as necessary, and may prepare agendas for the sessions as necessary.
- The PO publishes any updates to the programme and any agendas for the hearing sessions.
- The Inspector, the LPA and participants prepare for the hearing sessions, including reading any statements that have been submitted. 2-3 weeks are normally allowed for this.

#### **The hearing sessions**

- When the hearing sessions take place will depend on various factors, including the duration of the earlier processes, the availability of suitable venues, and the requirement for 6 weeks' notice to be given.
- The number of hearing days required will vary according to the type of plan, the number of issues which need to be discussed and the number of participants. Typically:
  - Plans containing just non-strategic policies on average require 2 to 6 sitting days, depending on the nature of the plan;
  - Minerals and waste plans on average require around 4 sitting days;
  - Plans containing strategic policies on average require 9 to 12 sitting days;
  - For comprehensive local plans containing both strategic and non-strategic policies, the Inspector may split the hearing sessions into two or more blocks: the first dealing with strategic policies (and any

strategic sites), and subsequent one(s) dealing with non-strategic site allocations, development management policies and other matters.

**Stage 2 – Main modifications and reporting**

**Key Actions [See Sections 6 & 7 below]**

- LPAs may ask the Inspector to recommend main modifications [MMs] to the plan where necessary to make the plan sound and legally-compliant. Most plans are subject to such a request.
- The Inspector agrees the text of the proposed MMs with the LPA, based in most cases on discussion at the hearing sessions.
- The post-hearing timetable is largely in the control of the LPA, as the LPA works with the Inspector to prepare the proposed MMs, and is then required to undertake sustainability appraisal [SA] and Habitats Regulations Assessment [HRA] as necessary and public consultation (minimum 6 weeks) on the proposed MMs.
- During this time the Inspector progresses work on the report, but it cannot be finalised until the Inspector has considered the responses to consultation on the MMs.
- The Inspector considers any representations on the MMs as expeditiously as possible. Further hearing sessions are only held where essential in the interests of fairness or in order to clarify or resolve substantial new issues arising from the representations.

**Stage 3 – Quality assurance, fact check and delivery of final report**

**Key Actions [See Section 8 below]**

- The Inspector’s report is subject to the internal QA (peer review) process. The fact-check report is then sent to the LPA.
- The LPA carries out a fact-check on the report.
- The Inspector deals with any factual matters raised by the LPA. The Inspector’s final report is then sent to the LPA<sup>9</sup>. This marks the end of the examination.

<sup>9</sup> In accordance with the letter of 18 June 2019 from the Secretary of State to the Chief Executive of the Planning Inspectorate, the fact-check report will be sent to the Ministry of Housing, Communities and Local Government on a for-information basis at least 48 hours before it is sent to the LPA - <https://www.gov.uk/guidance/local-plans>. See paragraph 8.2 below.



## Section 1: Before submission

1.1. The LPA should rigorously assess the plan before it is published under Regulation 19 to ensure that, in their view, it is sound and meets all the necessary legal requirements. In particular, they should ensure that it takes full account of all relevant policies in the NPPF and relevant guidance in the PPG. The plan should identify all the matters which need to be planned for, and provide policies to address them, paying careful attention to deliverability and viability. This approach may raise uncomfortable questions but the purpose of preparing a plan is to address all the necessary matters as far as possible, and not defer them to future updates or rely on the Inspector to deal with them at examination.

1.2. Section 20(2) of the PCPA specifically states that the LPA must not submit the plan unless they think it is ready for independent examination. The plan that is published for consultation at Regulation 19 stage should, therefore, be the plan that the LPA intends to submit to the Planning Inspectorate for examination. This is a key premise of delivering an efficient examination timetable.

1.3. Once the plan has been submitted, further changes may only be made in accordance with section 23 of the PCPA. This allows main modifications [MMs] to be made only if they are necessary to make the plan sound and/or legally compliant, provided that the LPA has formally requested that such modifications be recommended by the Inspector. The LPA may also make additional (minor) modifications to the plan on adoption, but only if they do not materially affect the plan's policies. Additional modifications are not subject to the formal examination process.

1.4. There is no provision in the legislation which allows the LPA to replace all or part of the submitted plan with a revised plan during the examination. If the LPA wish to make changes to the plan following the Regulation 19 consultation and before submission, and wish the changes to be considered as part of the submitted plan, they should prepare an addendum to the plan containing the proposed changes. The addendum, together with a sustainability appraisal [SA] of the proposed changes if they are significant, should be published for consultation, on the same basis as the Regulation 19 consultation, before the plan is submitted for examination<sup>10</sup>.

1.5. LPAs sometimes submit to the examination a list of proposed changes to the published plan that have not been the subject of consultation. The Inspector will not treat those proposed changes as part of the plan to be examined. However, the Inspector may consider it appropriate for some or all of the LPA's proposed changes to be discussed at the hearing sessions, and in appropriate circumstances they may form the basis for MMs.

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<sup>10</sup> This is to ensure that the addendum has been subject to an equivalent process of consultation as the original published plan.

## Appointing an Inspector

1.6. In order to ensure that a suitably experienced Inspector is available to examine a plan when it is submitted, it is essential that the LPA keep the Planning Inspectorate up to date on the progress of their plans. The Planning Inspectorate's administrative team [Plans Team] should be given three months' notice of a plan's publication for consultation under Regulation 19. Thereafter, the LPA should maintain regular liaison on plan progress with the Plans Team at [plans.admin@planninginspectorate.gov.uk](mailto:plans.admin@planninginspectorate.gov.uk) right up to the agreed submission date. Failure to provide three months' notice of publication, or a subsequent delay in submitting the plan, is likely to delay the appointment of an Inspector.

1.7. In some circumstances, where it would help to ensure a more efficient process, more than one Inspector may be appointed to carry out the examination of more complex plans. References below to "the Inspector" apply to "the Inspectors" in such cases. Occasionally, if the plan raises unusually complex technical issues, an external specialist advisor may be appointed to assist the Inspector.

## Evidential requirements

1.8. The guiding principle is that only evidence that informs the content of the plan should be submitted. As a minimum, the evidence base should include all documents referenced in the submitted plan. If the LPA submits a plan without an adequate evidence base, delays will inevitably occur. However, the LPA should avoid submitting large amounts of evidence which has not directly informed the content of the plan<sup>11</sup>.

*What is an adequate evidence base?*

1.9. The purpose of the evidence base is to support and justify what is in the plan. Before preparing or commissioning evidence, therefore, the LPA should be very clear about what they need it for, how they are going to use it and how much detail they need to go into. They must explain what conclusions they have come to from the evidence and how the choices they have made are based on it. It is often useful to prepare topic papers for this purpose. The plan should avoid assertions of fact that are not supported by evidence. Nor should evidence be collected retrospectively in an attempt to justify pre-conceived conclusions.

1.10. Local circumstances, and the nature of the plan under consideration, will affect what evidence is needed. For example, a plan for an area vulnerable to flooding will require more extensive evidence about this matter than a plan for an area where there is little flood risk. Plans which allocate sites for development will need to be supported by evidence

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<sup>11</sup> The PPG on Plan-making contains guidance on how the LPA can prepare evidence and sets out what evidence may be required for particular topic areas.

demonstrating that the LPA has followed a logical and consistent method to identify and select the allocated sites, and to reject alternatives.

*Is the evidence base sufficiently up-to-date?*

1.11. Evidence base documents, especially those relating to development needs and land availability, that date from two or more years before the submission date may be at risk of having been overtaken by events, particularly as they may rely on data that is even older. As a minimum, any such documents should be updated as necessary to incorporate the most recent available information. But this may not be necessary for evidence documents on topics that are less subject to change over time, such as landscape character assessments.

*Has the evidence been presented in a coordinated and informative way?*

1.12. Before submitting the plan, the LPA should ensure that it is clear what role each of the evidence base documents plays in supporting the content of the plan. In addition to the use of topic papers for this purpose (see paragraph 1.9), the LPA may wish to consider providing footnotes in the plan linking its policies and site allocations to relevant paragraphs in the evidence base which substantiate them.

1.13. On occasion, certain recommendations in an evidence base document are not accepted by the LPA. In such cases an explanation of why the recommendation was rejected should be provided. Similarly, any significant conflicts between documents in the evidence base must be explained. Where a lengthy explanation is needed it is best if a separate supporting document or topic paper is prepared.

*Has evidence to demonstrate compliance with the Duty to Co-operate been prepared?*

1.14. In order to demonstrate compliance with the duty to co-operate (section 33A of the PCPA), the most helpful approach is for the LPA to submit a statement of compliance with the duty. The statement of compliance should identify any relevant strategic matters and how they have been resolved – or if they have not, why not. It should detail who the LPA has co-operated with and on which strategic matter(s), the nature and timing of the co-operation (e.g. by including meeting notes), and the outcomes of the co-operation, including how it has influenced the plan. As part of this process, NPPF paragraph 27 advises that the LPA should prepare one or more statements of common ground with relevant bodies. The PPG on Plan-making contains guidance on preparing such statements.

1.15. The Inspector will need to be satisfied that the LPA has met the duty to co-operate by engaging with neighbouring authorities and other bodies constructively, actively and on an ongoing basis, in order to maximise the effectiveness of the plan preparation process<sup>12</sup>.

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<sup>12</sup> See PCPA, section 33A and Regulation 4 which define the duty to co-operate and the bodies with which the LPA is required to co-operate.

## Prescribed documents

1.16. Regulation 22 prescribes that the following documents must be submitted along with the plan for examination:

- The sustainability appraisal report;
- A submission policies map if the adoption of the local plan would result in changes to the adopted policies map;
- A statement setting out:
  - who was invited to make representations on the plan at Regulation 18 consultation stage, how those representations were invited, a summary of the main issues raised, and how the representations were taken into account; and
  - the number of representations made under Regulation 20 (in response to consultation at Regulation 19 stage) and a summary of the main issues raised;
- Copies of all representations made under Regulation 20 (in response to consultation at Regulation 19 stage); and
- Such supporting documents which the LPA consider are relevant to the preparation of the plan (these will include the evidence base)<sup>13</sup>.

1.17. It is well worth the LPA investing time in producing a focussed and comprehensive statement of the main issues raised in the representations made in response to consultation at Regulation 19 stage. This will help the Inspector gain an early understanding of issues that are likely to need addressing in the examination. While not a legal requirement, it will also be very helpful to the Inspector if the LPA provides brief responses to the main issues it has identified and to any substantial concerns about soundness or legal compliance raised in the representations.

1.18. It is vitally important that representations are submitted complete and in good order. They should be provided in an electronic database enabling the full text of each representation to be accessed easily in both policy and paragraph number order and representor order. The database should also clearly identify those who have made a request to be heard by the Inspector under section 20(6) of the PCPA. The Planning Inspectorate may decline to start an examination if the representation database is inadequate, as this can have a significant impact on Inspector preparation time.

1.19. LPAs will be aware of the importance of complying with their data protection responsibilities under the Data Protection Act 2018 when they exercise their planning functions. To ensure an effective and fair examination, it is also important that the Inspector and all other

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<sup>13</sup> The supporting documents must also be published alongside the plan at Regulation 19 consultation stage.

participants in the examination process are able to know who has made representations on the plan. The LPA should therefore ensure that they are able, lawfully, to process personal data held in relation to representations on the plan so that the representations can be made available without redaction of names and addresses and taken into account by the examining Inspector. If names and addresses are not provided it is very unlikely that it will be possible for the plan to be examined. A data sharing agreement is part of the *Agreement for the supply of services* which sets out the steps the LPA and the Planning Inspectorate will take to help deliver an efficient examination. This is available on request by e-mailing [plans.admin@planninginspectorate.gov.uk](mailto:plans.admin@planninginspectorate.gov.uk).

1.20. Other material necessary for the examination includes:

- An Appropriate Assessment under the *Conservation of Habitats and Species Regulations 2017* [HRA], or evidence to demonstrate that an Appropriate Assessment is not required and confirmation from Natural England that they concur;
- The LPA's current Local Development Scheme;
- In London, confirmation that the Mayor has indicated general conformity with the London Plan (note however that the Inspector is entitled to take his/her own view on conformity).

It is also helpful if the LPA provide an Equalities Impact Assessment of the plan and a copy of their latest Authority Monitoring Report.

1.21. All the submission documents should be provided to the Planning Inspectorate electronically and published on the examination website at the same time. Documents should be referenced using a simple and logical numbering system. On an individual basis the Inspector may reasonably request that a limited number of key documents are provided in paper form. However, it is helpful for the LPA to provide a copy of the plan and the submission policies map in paper form.

1.22. Before submission, the LPA may find it helpful to carry out a self-assessment of the soundness and legal compliance of the plan, although this is not compulsory. Comprehensive checklists are provided by the Planning Advisory Service and are available on their website.

## Section 2: Submission

2.1. The examination begins when the plan is submitted to the Planning Inspectorate.

2.2. **It is of paramount importance that the Programme Officer [PO] is in post by the time the plan is submitted.** The PO undertakes the administration of all aspects of the examination under the Inspector's

direction, and all communications outside the hearing sessions between the Inspector, the LPA and other parties involved in the examination are handled by the PO. The PO also ensures that all the documentation for the examination is received, recorded and placed on the examination website<sup>14</sup>.

2.3. All personal information submitted is handled by the Planning Inspectorate in accordance with the requirements of the Data Protection Act 2018, as explained in the Plans Privacy Statement, available at: <https://www.gov.uk/guidance/local-plans>

**2.4. It is also vital that an examination website has been set up by the time of submission.** The examination website is the principal means by which all the documents for the examination are made available to participants and the public. An easily-accessible and well-structured website, on which documents are published promptly, is essential for the smooth running and transparency of the examination.

2.5. Provided that the LPA has met the statutory and procedural requirements on submission, the Planning Inspectorate, on behalf of the Secretary of State [SoS], will appoint the Inspector. The Plans Team will allocate time in the Inspector's programme for examining the plan, allowing for initial desk-based examination time, holding hearing sessions, and reporting.

2.6. The number of Inspector days required for the examination will vary according to a range of factors, including the complexity of the plan's subject matter and the number and significance of the representations. The Plans Team can offer general advice to LPAs on likely time requirements and indicative costs for examinations of individual plans. Please email [plans.admin@planninginspectorate.gov.uk](mailto:plans.admin@planninginspectorate.gov.uk).

2.7. In general, around half the Inspector's time is likely to be spent on initial assessment of the plan and preparation for the hearing sessions. The Stage 1 table (in the *Overview of the examination* section above) gives an indication of how many hearing days are typically required, although this will vary depending on the plan's complexity and the likely number of participants.

## Section 3: Initial assessment and organisation of the hearing sessions

3.1. At the outset the Inspector will make contact with the PO and begin an initial assessment of the plan. One of the first administrative tasks is to set a provisional start date for the hearing sessions. That is often

<sup>14</sup> The Planning Inspectorate may be able to provide PO training sessions for LPA employees and other prospective POs – for further information please email [plans.admin@planninginspectorate.gov.uk](mailto:plans.admin@planninginspectorate.gov.uk).

dependent on the availability of a suitable venue<sup>15</sup>. If possible, therefore, the LPA should establish the availability of venues in advance of submission. The PO will usually send an initial email to representors to make contact and provide some early information about the examination. However, the start date for the hearings will not normally be published until the Inspector's initial assessment of the plan is complete.

3.2. The Inspector will consider whether all the relevant procedural requirements have been met and all the necessary documents have been submitted. Any queries on these and other procedural matters will be raised in correspondence with the LPA. On rare occasions the Inspector may have more substantial concerns about procedural matters which cannot be resolved through correspondence – for example about the scope of the plan, or about the consultation process. In such circumstances the Inspector may hold an early hearing session<sup>16</sup>, or a procedural meeting with the LPA (which will be open to the public to observe), to discuss the concerns.

3.3. During the initial assessment the Inspector will identify the matters and issues affecting the plan's soundness. These will provide the focus for the examination. The Inspector will take a proactive and inquisitorial approach to this task, taking account of the representations but bearing in mind that the absence of representations on a matter is not a guarantee of soundness (and vice versa). The Inspector may also write to the LPA with a series of initial queries to assist in understanding the plan and the evidence base.

3.4. The duty to co-operate must be fulfilled when preparing the plan and any failure in this regard cannot be rectified after the plan has been submitted for examination. If the Inspector's initial assessment raises concerns that the duty may not have been met, or identifies what appear to be fundamental flaws in the plan or the evidence base, the Inspector will raise these with the LPA as soon as possible, in order to avoid abortive further work and unnecessary cost to the LPA. In the first instance this is likely to involve writing to the LPA to ask for further explanation or information. Any such letters will be sent to the Ministry of Housing, Communities and Local Government [MHCLG] on a for-information basis at least 48 hours before they are sent to the LPA<sup>17</sup>.

3.5. In some circumstances it may also be necessary to hold one or more early hearing session(s) focussed on the Inspector's concerns, in order to explore the issues further. Whichever method is adopted, the Inspector will give the LPA every opportunity to respond to the concerns. If the Inspector considers that the examination cannot proceed without additional work being undertaken to resolve the concerns, a pause in the examination may need to be considered (see section 9 below).

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<sup>15</sup> See also paragraphs 4.5-4.7 below.

<sup>16</sup> See paragraph 3.5 below.

<sup>17</sup> See the letter of 18 June 2019 from the Secretary of State to the Chief Executive of the Planning Inspectorate - <https://www.gov.uk/guidance/local-plans>

## Matters, Issues and Questions

3.6. The Inspector will normally produce a list of matters, issues and questions for discussion at the hearing sessions. The Inspector will keep these under review to ensure that any new evidence or information that emerges (for example, in response to the Inspector's initial queries) is taken into account.

- *Matters* are the broad topics to be considered in the examination: for example, housing need and supply, settlement strategy, flood risk;
- *Issues* are the critical issues, identified by the Inspector, on which the soundness (and legal compliance) of the plan will depend; and
- *Questions* are set by the Inspector in order to elicit information relevant to the issues.

## Arranging and allocating participants to hearings

3.7. The hearings stage of the examination is intensive and places considerable demands on the Inspector, the LPA and the other participants. For this reason hearing sessions will usually be limited to three days per week, to allow adequate time between sessions for preparation and follow-up work. For the same reasons, hearings in longer examinations will usually be divided into two- or three-week blocks, with one- or two-week breaks between each block.

3.8. In some cases the Inspector may decide that one or more key matters (for example, the housing requirement or the duty to co-operate) raise substantial issues which are likely to affect the progress and timing of the rest of the examination. It is often most effective for those matters to be dealt with in the first block of hearings, and for the Inspector to consider them before setting out how the examination is to continue. In such cases there will usually be a longer break after the first block of hearings, or the Inspector may delay setting firm dates for the remaining block(s). Individual arrangements will vary depending on the nature of the plan.

3.9. The right to appear and be heard by the Inspector at a hearing session is limited to those persons defined in section 20 (6) of the PCPA i.e. any person who has made a representation seeking a change to the plan within the deadline set by the LPA for Regulation 19 consultation responses. (This includes anyone seeking a change to the addendum of changes to the plan, if the LPA have submitted one in accordance with the procedure described in paragraph 1.4 above.) The Inspector may invite any other person to attend a hearing session if, in the Inspector's view, their participation will assist in assessing the soundness of the plan. But the Inspector has no power to summon a person to a hearing.



3.10. Following the publication of the matters and issues for discussion at the hearings, representors who meet the criteria described in paragraph 3.9 will be asked to indicate which hearing session(s) they wish to participate in. Their requests to participate should be based on the relevance of their representations seeking a change to the plan to the issues and questions for discussion. However, the final decision on who is invited to each hearing session rests with the Inspector.

3.11. The Inspector will seek to finalise the matters, issues and questions and the list of participants for each session as soon as possible. If there are representors who have asked to be heard whose representations fall outside the ambit of the Inspector's matters and issues, they may be allocated to a general matters session at the end of the hearings.

3.12. It may occasionally be appropriate to arrange a hearing session involving only the Inspector and the LPA: for example if the Inspector identifies a soundness or legal compliance issue that is not raised in any of the representations. While there may be no other participants, this session, like all the others, would be open to anyone to observe.

3.13. At the hearings, the role of explaining and justifying the submitted plan is performed by the LPA. Representors who are not seeking any changes to the submitted plan, including landowners or developers who are promoting a site that is allocated in the plan, do not have a right to appear at the hearings and will not usually be invited to participate. However, in some circumstances the LPA may wish to include one or more such representors as part of their team for a hearing session. It is also open to the Inspector to invite them to appear in their own right, if it would assist his or her understanding of a soundness or legal compliance issue.

3.14. Statutory and advisory bodies such as Highways England, Natural England or the Environment Agency may not have sought to attend the hearings, but in some cases the Inspector may consider that it would be helpful to invite them. For example, they may have an unresolved objection to the plan, or their specialist expertise on an important soundness issue may be needed. However, such invitations will be issued sparingly, in view of the resource pressures on these bodies.

## **Managing large numbers of participants**

3.15. The number of participants at any one hearing session should not exceed 20 wherever possible, and around 25 participants should usually be regarded as a maximum. Experience has shown that any larger number makes it difficult for the Inspector to probe the evidence adequately, and for participants to contribute effectively.

3.16. Where a large number of requests have been made to attend a hearing session, the Inspector and the PO will seek to manage the number of participants by taking one or more of the following steps:

- reminding those concerned that written representations carry the same weight as oral evidence and inviting them to reconsider whether they need to appear;
- asking those with similar views to appoint a single spokesperson;
- considering whether it is possible to split the issues and questions for the over-subscribed session between two separate hearing sessions; and
- as a last resort, arranging two hearing sessions to discuss the same issues and questions. Under this arrangement, representors scheduled for the second session would be encouraged to attend and observe the first one, and vice-versa. It would be open to representors to withdraw from the second session if, after observing the first session, they consider it is unnecessary for the Inspector to hear similar contributions again.

## Additional written material

3.17. Once the plan has been submitted for examination, no additional written material should be submitted, by the LPA or any other party, unless it has been requested by the Inspector. For example, if the LPA wishes to submit topic papers, they should form part of the evidence base submitted with the plan. Similarly, representors should ensure that all their evidence is provided with their original representations and should not rely on having an opportunity to submit further material during the examination<sup>18</sup>.

3.18. The LPA and the other participants should await specific instructions from the Inspector about what additional material, if any, is required before the hearings commence. For example, the Inspector may wish to invite hearing statements on some or all of the identified matters, issues and questions. A limit of 3,000 words is normally set for hearing statements, and representors should only address those matters, issues and questions relevant to their original representations, unless advised otherwise. It is also open to the Inspector, if he or she considers it necessary, to invite further written statements from representors who have decided not to attend the hearings, on matters covered in their representations. In some cases the Inspector may issue a discussion note to set the context for statements.

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<sup>18</sup> However, the Inspector has discretion to accept additional documents provided it would not be unfair to other participants. For example, examination statements of common ground, which typically take longer to prepare because of the number of parties involved, may be accepted outside the normal timescales.

3.19. Where appropriate, the Inspector may also ask the LPA and other parties to prepare examination statements of common ground<sup>19</sup>, in order to help define areas of agreement and disagreement. These may be particularly helpful in the examination of technical matters. The LPA and other parties may also prepare examination statements of common ground on their own initiative. However, the fact that parties may agree on certain issues will not prejudice the Inspector's ability to investigate them further if the Inspector considers it necessary.

3.20. The deadline for submission of hearing statements and other written material will usually be two or three weeks before the hearings open, in order to give the Inspector and participants sufficient time to absorb their contents. If the hearings are split into two or more blocks, staggered deadlines may be set. Since late submission of statements causes difficulties for all parties, the Inspector will not normally accept statements that miss the deadline.

3.21. Because the examination is an inquisitorial rather than an adversarial process, it is inappropriate for parties to make further submissions countering the arguments of others. In order to avoid this situation arising, the date for submission of hearing statements will normally be the same for all parties, including the LPA. However, the Inspector may invite further submissions on particular matters from the LPA or any other participant, if that is helpful to aid understanding of the issues.

## Site visits

3.22. The Inspector will decide which sites and locations they need to visit in order to assess the soundness of the plan, and may also undertake a familiarisation tour of the area. Site visits may take place at any time during the examination. The Inspector will make any necessary site visits unaccompanied, unless arrangements need to be made to enter private land.

## Inspector's guidance note

3.23. The Inspector will usually produce a Guidance Note outlining the procedures to be followed in the examination, which the PO will circulate to all representors. In most cases this will avoid the need for a Pre-Hearing Meeting<sup>20</sup>.

3.24. The Inspector's Guidance Note will normally:

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<sup>19</sup> As distinct from the statements of common ground prepared as part of the evidence base, in accordance with NPPF paragraph 27 – see paragraph 1.14 above.

<sup>20</sup> Section 9 below explains the procedure for a pre-hearing meeting and the circumstances in which one may, exceptionally, be necessary.

- explain that the role of the Inspector is to carry out an independent examination of the soundness and legal compliance of the plan and to produce a report and recommendations to the LPA;
- clarify that the submitted plan will form the basis for the examination and that the Inspector will take into account all the representations made on it;
- if an addendum of changes has been submitted with the plan, make clear whether the Inspector accepts the addendum as part of the submitted plan: if so, the Inspector will confirm that he or she will also take into account the representations that have been made on the addendum;
- make it clear that written representations carry as much weight as oral evidence given at the hearing sessions;
- explain the procedures for making main and additional modifications to the plan;
- explain the role of the PO as an impartial person assisting the Inspector with administrative and procedural matters, and acting as a point of contact outside the hearing sessions;
- explain that the examination website is where all the examination documents will be published,
- advise that the PO (liaising with the LPA) will arrange for documents to be made available to anyone without access to the website;
- explain the procedure for deciding who will appear at the hearing sessions;
- outline the procedures to be followed during the examination including the hearing sessions;
- explain the role of the Inspector's list of matters, issues and questions;
- explain that omission sites will not normally be discussed at the hearings<sup>21</sup>;
- explain how site visits will be handled;
- advise whether the Inspector is inviting hearing statements or other written submissions, and set out the arrangements and deadline for their submission;

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<sup>21</sup> See paragraph 5.14 below.

- advise that the hearings programme may change and that participants are responsible for keeping themselves up-to-date by regularly monitoring the examination website.

(This is a summary of the topics normally covered in the Inspector's Guidance Note. The note itself will provide more details on each topic and may cover others if the Inspector considers it necessary.)

## **Section 4: Preparation for the hearing sessions**

4.1. The LPA and the other participants will prepare any hearing statements or other written material requested by the Inspector. If requested, hearing statements should directly address the Inspector's issues and questions, insofar as they are relevant to the participant's representations at consultation stage<sup>22</sup>. The PO will ensure that statements are published on the examination website as soon as possible after the deadline for their receipt. Hard copies may be requested for the Inspector and the LPA, but other participants should expect to access the statements via the website.

4.2. It is important that participants familiarise themselves with relevant representations, hearing statements and any other submitted written material before the hearings begin. The Inspector will treat all the submitted material as having been read, and will not expect it to be reiterated at the hearing sessions.

4.3. The Inspector will review the list of matters, issues and questions for the hearings in the light of the written material submitted. The Inspector may consider that certain issues have been sufficiently clarified by written statements, or may wish to vary the order of the questions or raise additional ones. The Inspector may prepare an agenda, or a revised list of issues and questions, for each hearing session setting out these changes. Wherever possible the PO will make these available to participants in advance of the sessions.

4.4. The Inspector's agenda, or list of issues and questions, will provide the structure for the discussion at each hearing session. In some cases the Inspector may circulate a discussion note in advance of the relevant hearing session, if this would help to clarify one or more issues. Occasionally, there may be a need to hold a technical seminar or meeting before or during the hearings (see Section 9 below).

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<sup>22</sup> But the LPA's statement, if requested, should address all the Inspector's issues and questions.

## Practical arrangements for the hearing sessions

4.5. The most appropriate room layout for the hearing session(s) will include a large rectangular table, or a set of tables arranged in a rectangle or a horseshoe, around which the participants are seated with the Inspector on his or her own at one end. One or more rows of seats should be provided behind the seats at the table itself, to accommodate members of participants' teams. A desk and chair should be provided for the PO, usually near the door.

4.6. Adequate seating should also be provided for members of the public to attend and observe the hearing sessions. Unless only a very small attendance is expected, a good-quality amplification system should be installed so that the Inspector and participants can hear each other clearly and members of the public can follow the proceedings. Wherever possible the venue should be provided with wi-fi for participants capable of allowing access to examination documents.

4.7. The LPA will be best placed to estimate the likely numbers attending and should liaise with the PO to find a suitable venue. Should it turn out that the venue is not big enough to accommodate all those who come along wishing to observe, the hearing(s) might need to be postponed. If there are very large numbers expected, therefore, it might be appropriate for the LPA to consider live-streaming the event to an overspill room and/or on the internet.

4.8. Representors may appear on their own behalf, or may be represented by an agent, for example a planning consultant or chartered surveyor. Apart from the LPA who will normally have two seats, one seat will usually be allocated to each representor, regardless of the size of their team. Any additional representatives will usually be expected to sit behind the lead speaker and "hot-seat" at an appropriate time if necessary. However, if there is sufficient space, the Inspector may allow additional representatives to sit at the table.

4.9. The Inspector will usually take notes at the hearing sessions. Their purpose is to act as an *aide-memoire* for the Inspector: they will not be published.

## Section 5: Conduct of the hearing sessions

### Purpose of the hearing sessions

5.1. By the time the hearing sessions begin, the Inspector will have completed the initial assessment of the plan. The Inspector will be familiar with the content of the plan, the evidence base and the written material that has been submitted, including the representations and any hearing statements that have been invited. From the initial assessment

the Inspector is likely to have formed a preliminary view on at least some of their identified issues and questions.

5.2. The main purpose of the hearing sessions is for the Inspector to probe the evidence further, by asking questions of the participants and hearing their oral contributions on the issues and questions that are critical to the soundness and legal compliance of the plan. The Inspector will encourage discussion on how any soundness or legal compliance issues with the plan can be resolved. Participants will be invited to contribute on the issues and questions relevant to their original representations. Unless invited to do so, they should not comment on other matters or reiterate at length points already made in their written submissions.

## **Attending the hearing sessions**

5.3. Participation at the hearing session is limited to those who meet the criteria summarised at paragraph 3.9 above and those who have been invited to participate. Anyone may come and observe but non-participants have no right to speak.

5.4. It is participants' responsibility to make themselves available at the time arranged for the hearing sessions to which they are invited. As it is not practically possible to arrange hearings around the availability of individual representors, anyone unable to attend will be expected to send a representative. Where it is genuinely impossible for them to attend, and all reasonable steps have been taken to facilitate their attendance, they will be given the option of submitting further written representations.

5.5. Members of Parliament may make representations and take part in the examination on the same basis as any other person. In addition, the Inspector will allow an MP, as a representative of their constituents, to take part in a hearing session, even if the MP did not make a representation. In view of MPs' parliamentary duties, the Inspector will make reasonable arrangements to enable the MP to take part.

5.6. MPs may wish to make a statement or to take part in the discussion at the hearing session. Either is acceptable, as it is for any participant. It will be helpful if the PO is able to establish the intentions of the MP beforehand. If the MP has not previously made a representation it is reasonable for the PO to ask what they will be speaking about, and for the LPA to be made aware. It will also be helpful for the PO to send the MP the examination guidance notes and provide any other clarification about the examination that might be relevant.

## **Filming or recording hearing sessions**

5.7. Provided that it does not disrupt proceedings, anyone will be allowed to report on and make audio and visual recordings of the hearings,

including on digital and social media. If any media organisations are planning to record or film the event, they should contact the Planning Inspectorate's press office in advance. Anyone who wishes to record or film the event on equipment larger than a smartphone, tablet, compact camera or similar, especially if that is likely to involve moving round the venue to record or film from different angles, they should contact the Programme Officer in advance to discuss arrangements. Responsibility for compliance with data protection legislation lies with the person(s) doing the recording or filming.

5.8 The Inspector will advise people present at the start of each hearing session that the proceedings may be recorded or filmed, and ask that anyone using social media during or after the end of the proceedings should do so responsibly and in accordance with the data protection legislation. The Inspector will also check that everyone is comfortable with this (for example, someone may not wish to have their face shown).

5.9 If concerns are raised, the Inspector will take steps to address them, for example by asking that filming is restricted to certain angles. It is unlikely to be appropriate to film children or vulnerable adults even if no concerns are raised. In such circumstances, and in circumstances where concerns cannot be resolved such that the effective and efficient running of the hearing session is likely to be disrupted, it may be necessary for the Inspector to restrict, or as a last resort to prevent, filming or recording. This would include situations where there is danger to the safety of an individual.

## **Procedure at the hearing sessions**

5.10. On the first day, the Inspector will make a brief opening statement, setting out the purpose and format of the hearing sessions as well as explaining the potential outcomes of the examination and any other relevant procedural and administrative matters. Thereafter each hearing session will follow the agenda, or the list of issues and questions, set by the Inspector.

5.11. In keeping with the inquisitorial nature of the examination, the Inspector will control the proceedings, inviting contributions from individual participants as appropriate. The Inspector will draw participants into the discussion in a logical order, reflecting their likely contributions. The LPA will be invited to respond at appropriate points. During the hearings the Inspector will explore the issues and questions, and wherever possible will seek to identify the potential for MMs to make the plan sound and legally compliant (see Section 6 below). When discussion on an issue has reached the point at which no more is likely to be said to assist the Inspector's conclusions on soundness, the Inspector will move on to explore the next issue.

5.12. To ensure that the time is used effectively, all submitted written material, including hearing statements, will be taken as read. Unsolicited



additional written material will not usually be accepted at the hearing sessions unless it is directly relevant to the soundness and legal compliance of the plan and could not reasonably have been provided sooner.

5.13. During the hearing sessions the Inspector may sometimes decide it is necessary to ask the LPA and/or other participant(s) to prepare further written information or evidence on a particular topic. A deadline will be set for its receipt. Other participants with an interest in that topic may be given the opportunity to comment on it, either at a later hearing session or in writing, where this is necessary to ensure fairness.

5.14. If the plan is allocating sites for development, the hearing sessions will usually involve discussion of the soundness of the allocated sites and of the method by which they were selected and alternative sites were rejected. But the merits of sites not allocated in the submitted plan (known as "omission sites") will not normally be discussed at the hearing sessions. This is because the focus of the examination is on the soundness of the submitted plan. However, there may be exceptional circumstances where it is necessary to discuss alternative sites. For example, if the provision of housing land in the plan falls below the area's identified housing need, such a discussion may assist the Inspector in determining whether or not additional housing land is available and suitable for allocation.

5.15. Sometimes participants choose to be represented at the hearings by a legal advocate (barrister or solicitor). Legal advocates take part in the hearings in the same way as any other participant. They will not usually be permitted to present evidence formally and cross-examine as they would at an appeal inquiry, as this would undermine the inquisitorial purpose of the hearing as well as the principle that all participants are equal partners in the discussion<sup>23</sup>.

5.16. It is often particularly helpful for the LPA to be assisted by a legal advocate. Their familiarity with presenting cases can prove useful in reviewing the adequacy and appropriateness of the LPA's evidence base and marshalling the evidence to assist the Inspector.

5.17. At the end of the hearing sessions the Inspector will usually deal with outstanding procedural matters, for example, the arrangements for drafting and consulting on the MMs, the deadline for any further written submissions that have been requested, or the arrangements for accompanied site visits. This may occur at the end of the last regular hearing session, or as a separate session. Usually only the LPA will participate in this discussion, but like all the hearing sessions it will be open to anyone to observe. Alternatively, the Inspector may deal with any outstanding procedural matters through correspondence with the LPA after the hearings close.

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<sup>23</sup> Circumstances where formal presentation of evidence and cross-examination may be permitted are considered in Section 9 below.

## After the hearing sessions

5.18. After the hearing sessions, the examination remains open until the Inspector has completed his or her report. But the Inspector will only request additional written material if it is essential to inform his or her conclusions on the soundness and legal compliance of the plan. Unsolicited correspondence and other written material will not be accepted.

5.19. It might occasionally be necessary for the Inspector to arrange one or more further hearing sessions during the reporting period, for example to resolve a fundamental soundness issue. Significant representations on the proposed MMs might also give rise to the need for further hearings (see Section 6 below).

5.20. As paragraph 3.4 above makes clear, the Inspector will raise any fundamental flaws in the plan or the evidence base with the LPA as soon as possible. In some cases, however, it may not be possible for the Inspector to determine whether or not fundamental problems exist until the evidence has been thoroughly tested at the hearing sessions. It may therefore be necessary, after the hearing sessions have concluded, for the Inspector to write to the LPA asking them to undertake further work on the evidence base or to identify additional sites for allocation.<sup>24</sup> The Inspector will seek to agree a timetable with the LPA for this further work and any necessary SA and consultation. A pause in the examination (see Section 9 below) will usually be necessary to allow the further work to take place.

5.21. A practical problem can occur if the PO is released from post at the end of the hearing sessions, as there will then be no direct channel of communication between the Inspector, the LPA and the other examination participants. LPAs should therefore keep the PO in post until the Inspector's fact-check report is delivered.

## Section 6: Main modifications to the plan

6.1. Throughout the examination, the Inspector will explore the potential for MMs to resolve the soundness and legal compliance issues he or she has identified. Section 20(7C) of the PCPA requires the Inspector to recommend MMs if asked to do so by the LPA, provided that the MMs are necessary to make the plan sound and legally-compliant. If the LPA wish to make a request under section 20(7C), they must do so before consultation on MMs begins.

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<sup>24</sup> Any such post-hearing letters will be sent to MHCLG on a for-information basis at least 48 hours before it is sent to the LPA. See the letter of 18 June 2019 from the Secretary of State to the Chief Executive of the Planning Inspectorate - <https://www.gov.uk/guidance/local-plans>

6.2. Any change to the submitted plan<sup>25</sup> that would materially affect one or more of the plan's policies can only be made as a MM recommended by the Inspector<sup>26</sup>. MMs may be suggested by the LPA, by representors and hearing participants, or by the Inspector. They can range in scope from redrafting parts of an individual policy or of the reasoned justification, to the deletion of whole policies or site allocations and the insertion of new ones.

6.3. During the hearing sessions the Inspector will aim to identify any MMs that may be needed to achieve a sound and legally-compliant plan. If the Inspector is not able to conclude on the need for any particular MM at the hearing session, they will write to the LPA after the hearings to set out their position. It may sometimes be possible to draw up the detailed text of a MM at a hearing, but it is usually more efficient for this to be done afterwards. The Inspector will normally ask the LPA to maintain a running list of potential MMs discussed during the course of the hearing sessions.

6.4. The Inspector will aim to ensure that the LPA has a reasonable understanding of why all the potential main modifications are likely to be needed. Wherever possible the Inspector will seek to communicate this during the hearing sessions, but if there are issues for which this is not possible the Inspector will do so in writing as soon as possible afterwards. However, the Inspector's final recommendations, and the reasons for them, will be set out in the Inspector's report at the end of the examination.

6.5. Any post-hearing letter issued by the Inspector will be sent to MHCLG on a for-information basis at least 48 hours before it is sent to the LPA<sup>27</sup>.

6.6. The policies map is not defined in legislation as a development plan document. This means that the Inspector has no powers to recommend MMs directly to it. However, the role of the policies map is to illustrate geographically the application of policies in the plan. If the geographical illustration of a policy is flawed, the policy will be unsound. In such circumstances, therefore, the Inspector will ask the LPA to draw up a proposed change to what is shown on the submission policies map. To ensure fairness, any such proposed changes will need to be subject to consultation alongside the MMs. When the plan is adopted, it will be for the LPA to update the adopted policies map to include those changes.

6.7. All proposed MMs must be subject to public consultation and, where necessary, SA and HRA before the Inspector can make recommendations on them. The Inspector will therefore agree a timetable with the LPA for

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<sup>25</sup> If the submitted plan is accompanied by an addendum of changes on which appropriate consultation has taken place, the addendum forms part of the submitted plan. See paragraph 1.4 above.

<sup>26</sup> PCPA, sections 23(2),(2A),(3)&(4)

<sup>27</sup> See the letter of 18 June 2019 from the Secretary of State to the Chief Executive of the Planning Inspectorate - <https://www.gov.uk/guidance/local-plans>

the drafting of the proposed MMs, any necessary SA and HRA, and the public consultation. Any proposed policies map changes should be subject to the same procedure. Where possible the timetable will be agreed before the hearings close, but if this is not feasible, as soon as practicable thereafter. As the first part of the process the LPA will be asked to produce a schedule of proposed MMs for the Inspector's comment.

6.8. The precise arrangements for public consultation will vary from case to case but will follow these general principles:

- it will be made clear that the consultation is only about the proposed MMs and any policies map changes (and no other aspect of the plan), that they are put forward without prejudice to the Inspector's final conclusions, and that all representations made will be taken into account by the Inspector;
- the consultation document will include all the proposed MMs, making no distinction between those originally proposed by the LPA and those proposed by the Inspector or others;
- if the LPA wish to include additional modifications in the consultation document, they should be clearly distinguished from the MMs and it should be made clear that they are not before the Inspector for consideration;
- the scope and duration of the consultation will reflect those of the consultation held at Regulation 19 stage: this means it will last at least six weeks.

6.9. The Inspector will consider all the representations made on the proposed MMs before finalising the examination report and the schedule of recommended MMs. Further hearing sessions will not usually be held, unless the Inspector considers them essential to deal with substantial issues raised in the representations, or to ensure fairness.

6.10. If the MMs are likely to involve the allocation of additional sites that did not appear in the submitted plan, the Inspector may ask the LPA to undertake SA and consultation on the additional sites as a separate process, before the schedule of MMs is agreed. This will enable the Inspector to consider the representations on the additional sites, and if necessary hold further hearing sessions to discuss them, before consultation on the other MMs takes place. No further consultation on the additional sites will usually be necessary unless there are subsequent substantive changes.

6.11. When deciding whether or not to recommend that the LPA should make the MMs, the Inspector will normally consider them in the form in which they were published for consultation. However, in some limited circumstances, the responses to consultation may lead the Inspector to consider that a new MM, or an amendment to one that has already been consulted on, is also necessary to make the plan sound or legally compliant; or that a proposed MM is not in fact necessary for soundness and should not be recommended. The Inspector may only recommend

such changes to the MMs without further consultation if he or she is satisfied that no party would be prejudiced as a result. For example, the consultation already undertaken on the MMs might have adequately addressed the point, or the amendment might be a very minor one.

6.12. In some circumstances, the Inspector may determine that the plan is unsound as submitted, but that it can be made sound provided that the LPA commit to bringing forward a review/update to it within a defined timescale<sup>28</sup>. An example might be where further work is needed to identify additional sites for housing in the later part of the plan period, and the further work would involve a lengthy delay to the examination, whereas dealing with the issue through a future plan review/update would enable the plan to be adopted. In such cases a MM to the plan should set out the commitment to a review/update, the matters that will be dealt with, and the date by which it will be submitted for examination. Consultation on that MM, together with any other necessary MMs to the plan, should take place in the usual way.

## Section 7: The Inspector's report

### Key principles for reporting

7.1. The Inspector will make the report as concise as possible while ensuring it is adequately reasoned. In drafting the report, the Inspector will concentrate on:

- reaching clear conclusions, backed by reasoned judgements, on soundness and legal compliance of the plan; and
- recommending MMs as necessary to rectify any aspect of the plan which he or she considers to be unsound or legally non-compliant<sup>29</sup>, provided it is possible to do so.

7.2. The legislation enables the Inspector to recommend a MM only if the plan would otherwise be unsound or legally non-compliant. The Inspector has no power to recommend other changes, even if they would improve the plan. Representations are sometimes made about points that do not bear on soundness or legal compliance. The Inspector will not make recommendations on those points.

7.3. The focus on soundness and legal compliance means that, as far as possible, the Inspector's report will avoid summarising the cases of individual parties, referring to specific representations and representors, or describing what was said at hearing sessions. The report will not respond to every point or issue raised by those objecting to the plan, or refer to every policy and site allocation. Instead, it will explain concisely

<sup>28</sup> See the PPG chapter on Plan-making - paragraph 050.

<sup>29</sup> If the LPA have requested the Inspector to do so.

why the Inspector has arrived at his or her conclusions and recommendations.

## Structure of the report

7.4. The report will normally contain the following sections:

- *Summary:* summarising the outcome of the examination and, where appropriate, the principal changes to the plan made by the MMs and why these are necessary;
- *Introduction:* setting out the purpose and context of the examination, the status of the submitted plan and the policies map, and any other preliminary procedural matters. It will usually also include a description of the process followed in preparing, consulting upon and recommending MMs. Where an addendum of changes was submitted with the plan, the introduction will make it clear whether or not the Inspector has treated the addendum as part of the submitted plan;
- *Assessment of the duty to co-operate:* considering whether or not the LPA has complied with the duty to co-operate under section 33A of the PCPA. Because any failure in this regard cannot be remedied after the plan has been submitted for examination, the Inspector must recommend non-adoption of the plan if he or she concludes that the duty to co-operate has not been met;
- *Assessment of soundness:* this will normally be the main part of the report, assessing whether the plan meets the tests of soundness contained in the NPPF. It will deal in turn with each of the main issues identified by the Inspector on which the soundness of the plan depends. It will make it clear why any recommended MMs are needed to make the plan soundness and legally-compliant;
- *Assessment of legal compliance:* in most cases this will be dealt with in summary form. But if one or more MMs are necessary to ensure legal compliance, or more detail is necessary on a legal compliance issue, it will be dealt with at greater length;
- *Overall conclusion and recommendation:* setting out clearly, in terms of the relevant parts of section 20 of the PCPA, whether the Inspector recommends that the plan should be adopted with or without MMs, or that it should not be adopted; and
- *Schedule of main modifications:* see paragraphs 7.6-7.8 below.

## Recommendations on main modifications

7.5. In cases where an Inspector is recommending MMs, section 20 of the PCPA requires that he or she must first recommend that the plan as submitted (without the MMs) should not be adopted, before recommending MMs to make the submitted plan sound and legally-compliant. The text of the Inspector's *Overall conclusion and recommendation* will reflect this requirement. Section 20 requires that the LPA must then make the recommended MMs (together with any additional modifications at their discretion) if they wish<sup>30</sup> to adopt the plan.

7.6. Any MMs that are recommended will be set out in full in a schedule provided as an appendix to the report. The schedule will be based on the public consultation document prepared by the LPA. In the main body of the report the Inspector will explain why each MM is needed to resolve a soundness or legal compliance issue. In doing so, he or she will highlight the relevant MM reference number(s) in the report. This will provide a clear link between the reasoning in the report and the schedule of MMs.

7.7. The exact wording of each recommended MM must be set out in the schedule, following the usual convention of ~~striketrough~~ for deletions from the text of the submitted plan and underlining for additions to the text. The schedule must make it unambiguously clear what needs to be deleted from or inserted into the plan. Where a new or amended drawing, diagram or table needs to be inserted into the plan, the Inspector will ask the LPA to prepare it and attach it to the schedule.

7.8. As the Inspector has no power to recommend main modifications to the policies map, any such changes will not appear in the schedule of MMs. However, if any changes to what is shown on the submission policies map are necessary for soundness, the Inspector will make this clear in the report. See paragraph 6.6 above.

## Section 8: Quality assurance, fact-check procedure and delivery of final report to the LPA

### Quality assurance

8.1. The completed Inspector's report will be subject to the Planning Inspectorate's quality assurance [QA] process before it is sent to the LPA for fact-check. QA is a peer-review process, the principal aim of which is to ensure a reasonable consistency of approach between Inspectors, while recognising that the circumstances of each examination are different.

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<sup>30</sup> The PCPA does not require the LPA to adopt the plan.

## Fact-check procedure

8.2. Following the QA process, the Inspector's report will be sent to the LPA in electronic format for fact-check. In accordance with the letter of 18 June 2019 from the Secretary of State to the Chief Executive of the Planning Inspectorate, the fact-check report will be sent to MHCLG on a for-information basis at least 48 hours before it is sent to the LPA.<sup>31</sup>

8.3. The primary purpose of the fact-check process is for the LPA to draw attention to any factual errors or inconsistencies in the report. The LPA may not question the conclusions and recommendations in the report, although they may seek clarification on any that they consider to be unclear. The LPA should complete the fact-check within two weeks of receiving the fact-check report. They should not publish the report at this stage because it is not in its final form.

8.4. There is no mechanism for the final report to be amended by the Inspector or anyone else after it has been sent to the LPA. It is therefore important that the LPA check the accuracy of the report very carefully at the fact-check stage. It is particularly important to check that the report and the schedule of MMs are fully consistent.

## Delivery of the final report

8.5. Once the fact check has been completed and the Inspector has dealt with any points raised, the final report will be sent to the LPA. This marks the completion of the examination.

8.6. The Planning Inspectorate will not publish the report. It is produced for the LPA, who are required to publish it as soon as is reasonably practicable after they receive it (Regulation 25(1)). Similarly, the Planning Inspectorate will not make known the outcome of a completed plan examination until the report has been published by the LPA. The Planning Inspectorate maintains lists of the plans that have been submitted for examination and (where they are found sound) their date of adoption<sup>32</sup>. LPAs are therefore requested to advise the Planning Inspectorate when their plan is adopted.

8.7. The LPA will be invoiced in accordance with the service level agreement [SLA]<sup>33</sup> between the LPA and the Planning Inspectorate. The charging regime is set out in the *Town and Country Planning (Costs of Independent Examinations) (Standard Daily Amount) (England) Regulations 2006*. The first invoice is normally sent six months after

<sup>31</sup> <https://www.gov.uk/guidance/local-plans>

<sup>32</sup> These lists are regularly updated and can be viewed at <https://www.gov.uk/guidance/local-plans>

<sup>33</sup> The SLA covers the arrangements between the Inspectorate and the LPA for the examination and the delivery of the Inspector's report.



submission of the plan and subsequent invoices are sent at the end of each six-month period during the examination.

## **Section 9: Other Procedures**

### **Pausing the examination**

9.1. If issues of soundness or legal compliance emerge that cannot be resolved within the usual examination timetable, the Inspector will explore the potential for pausing the examination, in whole or part, so they can be addressed. Examples of circumstances in which this might be necessary are given in paragraphs 3.5 and 5.20 above. The Inspector will normally outline, in a letter to the LPA, the scope of the additional work he or she considers is necessary to address the issues. The LPA will be asked to prepare a detailed brief and a realistic timetable for the additional work for the Inspector's agreement.

9.2. As part of this process it may sometimes be helpful for the LPA to hold one or more technical meetings (see paragraph 9.9 below) with stakeholders and other interested parties to discuss the process or the outcome of the additional work, in order to resolve or minimise areas of disagreement.

9.3. Any proposed changes to the plan arising from the additional work carried out during a pause in the examination will usually need to be the subject of consultation, equivalent in scope and duration to that carried out at Regulation 19 stage. SA will also be necessary if the proposed changes are significant. Further hearing sessions are likely to be required to consider the outcome of the further work, any proposed changes to the plan, and the consultation responses.

9.4. In some instances a partial pause in the examination, covering only a certain part of the plan, may be appropriate. This will allow the examination of the rest of the plan to continue, with less disruption to the examination timetable. However, a partial pause will only be appropriate where significant soundness or legal compliance issues affect only a discrete part of the plan, and the further work required will not have implications for the rest of the plan.

### **Technical seminars and meetings**

9.5. If a plan raises complex technical issues, the Inspector may decide to hold a technical seminar. The technical seminar will not test the evidence: that is the role of the hearing sessions. The purpose of the technical seminar is to provide the Inspector and other participants with a clearer understanding of the methodology and assumptions underpinning the technical evidence, thus saving time during the hearings.

9.6. Before arranging a technical seminar the Inspector will consider whether inviting additional explanatory material, and/or examination statements of common ground, would adequately clarify the methodology and assumptions underpinning the technical evidence.

9.7. If a technical seminar is required, the parties presenting the technical evidence will be asked to prepare the necessary explanatory material. The material will be circulated to the participants who have been invited to attend the relevant hearing session(s). Those participants may participate in the technical seminar and it will be open to anyone to observe. It should be publicised in a similar manner to the hearing sessions.

9.8. It will be appropriate for participants to ask questions of clarification during the technical seminar, but discussion of the implications of the technical evidence for the soundness of the plan should only take place at the relevant hearing session(s).

9.9. Occasionally the Inspector may ask the LPA to hold a technical meeting with stakeholders and interested parties during the course of an examination, aiming to resolve or minimise issues in dispute. These meetings are held outside the formal examination process, without the Inspector being present, but the outcome of any such meetings should be published.

## **Formal presentation of evidence and cross-examination**

9.10. There may be rare occasions – for example if unusually complex technical issues, or disputes over crucial matters of fact, arise – when the Inspector considers that formal presentation of evidence followed by cross-examination and re-examination is necessary to test the evidence adequately. In such exceptional circumstances the Inspector has discretion to allocate all or part of a hearing session to this formal procedure.

9.11. If any participant (including the LPA) wishes the Inspector to consider using this formal procedure, he or she must be prepared to make a convincing case for this well in advance of the session. The final decision will rest with the Inspector. Participants will be informed in advance of the session which subject(s) the formal procedure will apply to and that it will not apply otherwise.

## **Pre-hearing meetings**

9.12. Exceptionally, if the examination is unusually complex, the Inspector may decide to hold a pre-hearing meeting [PHM]. The purpose of the PHM is to inform participants about the proposed arrangements for the examination and to discuss with them any procedural and administrative

matters that need to be resolved before the arrangements are finalised. There is no discussion of the soundness of the plan.

9.13. The PHM can help to ensure the smooth running of unusually complex examinations: for example, examinations dealing with more than one plan, or where the hearings need to be split into several stages, or where there are exceptionally large numbers of potential participants for the hearings. However, in the vast majority of cases the necessary information can be disseminated in the Inspector's initial guidance note (see paragraphs 3.23-3.24 above). In cases where a PHM is held, a guidance note will still be circulated as usual.

9.14. If the Inspector decides that a PHM is necessary, a suitable date will be set as soon as possible after submission. The notice period is not prescribed in legislation but at least four weeks is recommended. Everyone who has made a representation on the plan will be notified. Anyone who intends to be involved in the examination, and particularly in the hearing sessions, should attend the PHM if at all possible.

9.15. By the time the PHM is held, the start date for the hearing sessions should have been published, giving the statutory minimum six weeks' notice.

9.16. At the PHM the Inspector will introduce the PO and will briefly outline the arrangements for the examination and the other main points in the guidance note. The Inspector will then explain the particular procedural or administrative matters that have given rise to the need for the PHM, and will usually set out proposals for dealing with them, while remaining receptive to reasonable alternative suggestions. There will be an opportunity for questions to be put to the Inspector and for the Inspector to put questions to others. The PO will publish the notes of the PHM as soon as practicable afterwards.