



Procedural Practice in the Examination of Spatial Development Strategies

The Planning Inspectorate
February 2020 (1st Edition)

Contents

Introduction.....	1
Legislation.....	1
Preparation of the Spatial Development Strategy.....	2
National Planning Policy and Guidance.....	2
Maintaining Effective Cooperation.....	3
Evidence.....	3
Public Participation.....	3
Data Protection.....	3
Appointment of Examination Secretary.....	4
Appointment of the Panel.....	4
Examination Website and Library.....	4
Considering Representations.....	5
Mayor’s Suggested Modifications to the SDS.....	5
Preliminary Questions.....	6
Draft List of Matters and Participants.....	6
Comments about draft list of Matters.....	7
Comments about draft list of Participants.....	7
Final List of Matters and Participants.....	7
Technical Seminars.....	7
Written Statements.....	8
Hearing Sessions.....	8
Further Suggested Modifications to the SDS.....	8
The Panel Report.....	9
Quality assurance.....	9
Fact-check procedure.....	9
Delivery of the final report.....	10
Publishing the Spatial Development Strategy.....	10
Secretary of State Direction.....	11
Annex A.....	12

Introduction

This document provides procedural guidance for the examination in public (“examination”) of Spatial Development Strategies (“SDS”) prepared by an elected Mayor or a Combined Authority¹. It is structured to reflect the chronology of events from the preparation of a draft SDS through examination to its publication.

This guidance is relevant to all SDS Examinations. It may be supplemented by detailed and specific procedural guidance for individual examinations prepared by the person or persons (“Panel”) appointed to conduct the examination

SDS sometimes goes under another name, for example “The London Plan”. However, the legislation requires the title to include the words “spatial development strategy”.

When published in its final form, the SDS will comprise part of the statutory development plan for the relevant area, along with any local plans and neighbourhood plans².

SDS is examined to assess whether it has been prepared in accordance with legal and procedural requirements, and whether it is sound ie whether it is positively prepared, justified, effective and consistent with national policy³. It is expected that the Mayor will prepare and submit what he considers to be a sound SDS.

Legislation

In London, the SDS is prepared under the *Greater London Authority Act 1999 (as amended)* (“GLA Act 1999”), in particular sections 334-342, 346 and 348 in Part XIII, and the *Town and Country Planning (London Spatial Development Strategy) Regulations 2000* (“2000 Regulations”).

Elsewhere, SDS is prepared under sections 334-342, 346 and 348 of the *GLA Act 1999* (with certain modifications)⁴ and the *Combined Authorities (Spatial Development Strategy) Regulations 2018* (“2018 Regulations”) (as amended)⁵.

This procedural guidance reflects that legal framework.

¹ In the interests of brevity, all future references in this document are simply to Mayors rather than Mayors and Combined Authorities.

² *Planning and Compulsory Purchase Act 2004 (as amended)* section 38, as amended by the *the Combined Authority Orders*.

³ *National Planning Policy Framework* (2019) (“NPPF”) paragraph 35.

⁴ *The Greater Manchester Combined Authority (Functions and Amendment) Order 2016; The Liverpool City Region Combined Authority (Functions and Amendment) Order 2017; and The West of England Combined Authority Order 2017* (“the Combined Authority Orders”) give the Combined Authorities functions corresponding to the Mayor of London’s SDS functions in sections 334-342, 346 and 348 of the *GLA Act 1999* subject to certain modifications.

⁵ The 2018 Regulations were modified on 30 August 2018 (S.I. 2018 No. 924) to “correct an error” in regulation 5(6) by substituting “allocations” for “locations”.

Preparation of the Spatial Development Strategy

Mayors prepare draft SDS in accordance with the requirements of the above legislation along with other relevant legislation, for example relating to strategic environmental assessment, habitat regulations and the public sector equality duty.

The legislation requires SDS to include the Mayor's general policies in respect of the development and use of land in the relevant area⁶, and statements dealing with general spatial development aspects of the Mayor's other policies and proposals⁷. In London, the SDS must also include statements dealing with the general spatial development aspects of the Mayor's other strategies.

The SDS must deal only with matters which are of strategic importance to the relevant area⁸, but it may make different provision for different cases or for different parts of that area⁹.

SDS must include reasoned justification and a key diagram¹⁰. It may also contain inset diagrams to a larger scale illustrating the Mayor's general policies to part of the area covered by the SDS. If so, the area covered by the inset diagram shall be identified on the key diagram and the application of the general policies to that area shall be illustrated on that inset diagram only¹¹. In London, no key diagram, or any inset diagram, may be on a map base¹². In areas outside London, the SDS may also include diagrams in addition to the key diagram and the inset diagram, which identify strategic allocations; such diagrams may be on a map base¹³.

The Mayor is required to have regard to the need to ensure that the SDS is consistent with national policies and the EU obligations of the UK¹⁴.

Regard must also be had to the effect that SDS would have on health, health inequalities, the achievement of sustainable development, climate change and the consequences of climate change¹⁵.

National Planning Policy and Guidance

The NPPF sets out national policy applicable to SDS, and this is supplemented by *Planning Practice Guidance* ("PPG"). This includes policy and guidance about plan making, what strategic policies should focus on, and what should be dealt with by non-strategic policies in parts of the statutory development plan other than the SDS.

⁶ GLA Act section 334(3) as modified by the Combined Authority Orders.

⁷ GLA Act section 334(4) as modified by the Combined Authority Orders.

⁸ GLA Act section 334(5) as modified by the Combined Authority Orders.

⁹ GLA Act section 334(8) as modified by the Combined Authority Orders.

¹⁰ Regulation 4 and 5(1) of the 2000 and 2018 Regulations.

¹¹ Regulation 5(2) and 5(3) of the 2000 and 2018 Regulations.

¹² Regulation 5(4) of the 2000 and 2018 Regulations.

¹³ Regulation 5(6) of the 2018 Regulations (as amended).

¹⁴ GLA Act section 41, and GLA Act section 342 as modified by the Combined Authority Orders.

¹⁵ GLA Act section 41, and GLA Act section 342 as modified by the Combined Authority Orders.

Maintaining Effective Cooperation

The preparation of SDS is not included in the list of activities that the duty to cooperate under section 33A of the *Planning and Compulsory Purchase Act 2004* applies. However, national policy is clear that effective and on-going joint working between strategic policy-making authorities and relevant bodies is integral to the production of a positively prepared and justified strategy¹⁶. This will be considered by the Panel at an early stage of the examination. It is not expected that each constituent local planning authority within the area covered by the SDS will be signatories to statements prepared for the SDS¹⁷.

Evidence

SDS must be informed by relevant and up to date evidence¹⁸ and by sustainability appraisal and other assessments carried out during its preparation¹⁹.

Only evidence that informs the content of the SDS should be submitted to the examination. As a minimum, this should include all documents referenced in the submitted plan. If the SDS is submitted without adequate evidence, the examination is likely to be delayed.

It should be clear in the SDS how the evidence has been used to inform strategy and policies, including through appropriate references in the reasoned justification. It can also be useful to prepare topic papers to provide fuller explanation of how the evidence has been used to inform the choices about strategic options and policy approaches that were made in preparing the SDS.

The PPG includes guidance on evidence for plan making²⁰.

Public Participation

The draft SDS must be subject to public participation in accordance with the legislation referred to above. Representations made in response to that public participation will be considered by the Mayor²¹, and will be sent by the Mayor to the Panel responsible for conducting the examination as soon as practicable after their appointment (see below).

Data Protection

The Mayor will be aware of the importance of complying with data protection responsibilities under the Data Protection Act 2018. To ensure an effective and fair examination, it is also important that the Panel and all other participants in the examination process are able to know who has made representations on the plan. The Mayor should therefore ensure that they are able, lawfully, to process personal data held in relation to representations on the SDS so that the

¹⁶ NPPF paragraph 26.

¹⁷ PPG-ID-61-028-20190315.

¹⁸ NPPF paragraph 31.

¹⁹ NPPF paragraph 32.

²⁰ PPG-ID-61 paragraphs 034-049 - 20190315

²¹ GLA Act 335(2)(e) as modified by the Combined Authority Orders.

representations can be made available without redaction of names and addresses and taken into account by the Panel.

Appointment of Examination Secretary

The Mayor should ensure that an Examination Secretary is in post well before the end of the public participation on the draft SDS. It is likely to be advantageous to appoint someone as soon as possible as that person may be able to assist with processing representations and setting up the website as well as being a contact point for the Panel.

The Examination Secretary is independent of the Mayor and will act under the direction of the Panel. The Secretary will provide administrative and programming support to the Panel, and is responsible for the day to day running of the examination including recording and circulating all material, maintaining the library and website, and organising the hearing sessions. That person will also act as a channel of communication between the Panel and all parties, including the Mayor's representatives and representors.

Appointment of the Panel

When the timing of the statutory public participation exercise is known, the Mayor should contact the Planning Inspectorate who will arrange, on behalf of the Secretary of State, the appointment of the Panel.

The Panel will typically comprise one, two or three Planning Inspectors, depending on the content and complexity of the SDS in question.

It is unlikely that the Panel will carry out any significant work before the end of the public consultation exercise and receipt of the copies of all representations (and any modifications to the SDS that the Mayor wishes to suggest following his consideration of them). However, some initial preparatory work by the Panel, and contact with the Examination Secretary, is likely to help ensure an efficient and timely examination.

The role of the Panel is to conduct the examination into the draft SDS²². They will determine the matters that affect the consideration of the SDS ("matters") and the persons who may take part in the examination ("participants"), and make a report in writing to the Mayor²³.

Examination Website and Library

The Examination Secretary will be responsible for the examination website. Whilst this is likely to be hosted on the Mayor's website, it should be a discrete section and all content must be agreed by the Examination Secretary on behalf of the Panel.

²² GLA Act section 338(3) as modified by the Combined Authority Orders.

²³ GLA Act section 338 as modified by the Combined Authority Orders and regulation 8 of the 2000 and 2018 regulations.

The examination website will set out procedural information. All those who wish to be involved with the examination should, if possible²⁴, use the website as the means of keeping themselves informed. To this end, it is good practice for the website to have an easily identifiable “latest news” or “updates” section which announces all key events and publication of documents.

The website will also include a comprehensive examination library. This will (ultimately) contain all relevant documents including:

- the draft SDS
- the sustainability appraisal and other relevant assessments
- all of the Mayor’s evidence documents and any topic papers.
- all representations about the draft SDS made in accordance with the legislation.
- any modifications to the draft SDS suggested by the Mayor.
- Panel Notes and other documents issued by the Panel.
- Written statements on the matters to be discussed.
- Other documents requested or accepted by the Panel

Considering Representations

Copies of all representations about the SDS that were received by the Mayor in accordance with the relevant legislation must be sent to the Panel as soon as practicable after the Panel has been appointed.

Representations should be sent electronically to the Examination Secretary.

It is helpful if the Mayor also sends a summary of main issues raised in representations. The Panel is likely to provide guidance on the nature and format of any such summaries, for example they may ask for them to be arranged policy by policy and, if relevant, for any cross cutting topics within the SDS (such as about sustainability appraisal or viability assessment).

All representations, and any summaries provided by the Mayor, will be published on the examination website.

Mayor’s Suggested Modifications to the SDS

Having considered all of the representations made about the draft SDS, the Mayor may wish to address a number of issues raised by suggesting modifications to the SDS that they intend to make when it is published. If so, a comprehensive schedule should be prepared and submitted with copies of all representations to the Panel (see above).

The Panel will take account of any such suggested modifications, along with the representations and evidence, in determining the draft list of matters and participants. The Panel will assume that the Mayor will incorporate his suggested modifications into the SDS when it is finalised, unless any of their

²⁴ If anyone has difficulties in using the internet, they should contact the Examination Secretary who will seek to make alternative arrangements.

recommendations indicate otherwise. So, in effect, the Mayor's suggested modifications will be treated as part of the draft SDS to be examined.

Preliminary Questions

The Panel may ask the Mayor to respond to a number of Preliminary Questions if they consider this is necessary to clarify anything about the content of the draft SDS or supporting evidence. If so, the questions and Mayor's response should be published on the examination website.

Draft List of Matters and Participants

Having considered the representations, evidence and any modifications to the draft SDS suggested by the Mayor, the Panel will prepare draft lists of matters and participants. They will consult with the Mayor before publishing the draft lists for consultation not later than 12 weeks before the start of the examination hearing sessions²⁵.

No person has a right to be heard at the EIP, but any person invited to do so by the Panel may take part (as well as the Mayor)²⁶.

Matters

Based on the draft SDS, evidence and representations, the Panel will determine the critical issues on which they consider the soundness (and legal compliance) of the SDS depends and, associated with these, specific questions intended to elicit information to help them reach conclusions. Collectively these issues and questions will be the examination "matters".

Participants

In selecting participants the Panel will have regard to the following principles, where relevant to the matter in question:

- To assist the Panel to consider the examination matters.
- To obtain specialist or expert advice.
- To obtain informed inputs from economic, environmental and social perspectives.
- To obtain informed inputs from private, local authority, other public, community and voluntary perspectives with, as far as possible, a mixture of participants attending relevant sessions.
- Supporters of the SDS will not generally be invited to participate as representatives of the Mayor are expected to justify the SDS, calling where necessary on experts from other organisations.

It is likely that the Panel will set a limit of around 20 participants for each session, in addition to 2 or 3 representatives for the Mayor, for each session. Any greater number can make it difficult for the Panel to probe the evidence adequately, and for participants to contribute effectively.

²⁵ Regulation 8(2) of the 2000 and 2018 Regulations.

²⁶ GLA Act section 338(6) and (7) as modified by the Combined Authority Orders.

Comments about draft list of Matters

Comments about the draft matters should only be about their scope and broad content. For example, it could be argued that the matters do not cover a part of the SDS that a representation raised significant soundness issues about.

There will be an opportunity to make written submissions that address the matters and associated questions once they have been finalised (see below). Any comments made in response to the draft list that attempt to address the matters and associated questions will not be taken into consideration by the Panel.

Comments about draft list of Participants

Anyone not included on the draft list that wishes to participate should specify for which matter and give a brief explanation why this would assist the examination (the Panel may wish to set a word limit, for example 200 words). In so doing they should bear in mind that the purpose of the examination is not to hear representations as such, but rather to test for soundness and reach conclusions on the defined matters. Furthermore, written submissions about the final matters can be made by non-participants, and the Panel will attach equal weight to those as to those made by participants and oral contributions made at hearing sessions.

Representors who are considering asking to participate are encouraged to liaise with other people and organisations who have similar interests and if possible to agree on nominating a spokesperson to act as a participant.

Representors should have regard to any changes to the SDS suggested by the Mayor as these may have addressed some of the points previously made in representations.

The Panel will not enter into correspondence about those that have been selected to appear and those that have not.

Anyone who is included on the draft list of participants but does not wish, or is unable, to participate should inform the Examination Secretary.

Final List of Matters and Participants

The Panel will consider any representations about the draft lists of matters and participants made within 28 days, and consult the Mayor, before finalising the lists of matters and participants. The final lists will be published and advertised at least 6 weeks before the start of the examination hearing sessions²⁷.

Technical Seminars

The Panel may hold seminars relating to a limited number of technical matters prior to the first examination hearing sessions. The purpose of these is to clarify the supporting evidence and establish matters of fact in order to reduce the scope of the matters that need to be considered at the examination itself. Any

²⁷ Regulations 8(1) to 8(4) of the 2000 and 2018 Regulations.

such seminars would normally be held before the deadline for submission of written statements.

Written Statements

Written statements may be made on the matters to be examined both by those invited to participate in the examination and others²⁸.

Statements must be shorter than 2,000 words in length (for each matter), unless otherwise stated by the Panel²⁹. Extra material should not be included as Appendices but rather any key documents may be added to the library (see below) subject to the Panel's agreement.

The legislation requires all written statements to be received by the Examination Secretary at least 3 weeks before the opening of the examination³⁰. However, in practice the Panel will be likely to set deadlines for the receipt of statements so that these are staggered. If the examination is programmed to last for several weeks it is therefore likely that there will be more than one deadline to allow a greater amount of time for the preparation of statements relating to matters to be heard at later hearing sessions. However, all deadlines should normally be at least three weeks before the relevant session.

Statements should directly address the questions relating to each matter, and do so in the context of the tests of soundness set out in the NPPF.

Hearing Sessions

The hearings stage of the examination is intensive and places considerable demands on the Panel, Examination Secretary, the Mayor's team and the other participants. For this reason, and to allow time for preparation and follow up work, hearing sessions will usually be limited to three days per week and programmed in blocks of two or three weeks.

The Examination Secretary will liaise with the Mayor's team to ensure appropriate arrangements are made for the sessions and detailed guidance from the Panel will be published relating to the timetable, venue and procedures.

The hearings will take the form of structured discussions led by one or more of the Panel members relating to the defined matters. The Panel will adopt an inquisitorial approach, and all participants will have the opportunity to speak. However, all written statements and other evidence will be taken as read so there will be no need for that to be quoted or summarised; rather all contributions should be focussed on responding to the questions that the Panel ask at the session.

Further Suggested Modifications to the SDS

In addition to publishing suggested modifications to the SDS in response to the

²⁸ Regulation 8(5) of the 2000 and 2018 Regulations.

²⁹ Regulation 8(6)(b) of the 2000 and 2018 Regulations.

³⁰ Regulation 8(6) of the 2000 and 2018 Regulations.

representations made about the draft SDS, the Mayor may wish to suggest further modifications during the examination, for example:

- a) In response to any Preliminary Questions that the Panel may have published.
- b) In written statements, in response to the published matters.
- c) Prior to hearing sessions, in response to written statements submitted by representors.
- d) Following hearing sessions, in response to the discussions that took place and any steer that the Panel may have given.

In the case of (a) and (b), there would be the opportunity for participants to comment on the further suggested modifications during the relevant hearing session.

In the case of (c), these should normally be published at least a week before the relevant hearing session so that the Panel and participants have a chance to consider them before the discussion takes place.

With regard to (d), the Mayor would be expected to continue to develop any such further modifications as the examination progresses. Rather than publish them during the examination, it may be preferable for a comprehensive set of suggested modifications to be compiled and published after the last hearing session.

The Panel will consider all of the Mayor's suggested modifications, along with all of the evidence, in reaching their findings and setting recommendations in their report.

The Panel Report

The Panel will take account of all of the submitted evidence, including the written statements, the discussions at the examination hearing sessions, and all modifications suggested by the Mayor. The Panel's written report will set out its findings in relation to the examination matters and will include recommendations relating to the content of the draft SDS and associated matters. The report will not respond to individual representations made about the draft SDS; rather it will identify any aspects of the SDS that mean that it is not sound and recommend how any such deficiencies should be addressed by the Mayor.

Quality assurance

The completed Panel report will be subject to the Planning Inspectorate's internal quality assurance process.

Fact-check procedure

Following the quality assurance process, the Panel's report will be sent to the Mayor in electronic format for fact-check.

The primary purpose of the fact-check process is for the Mayor to draw attention to any factual errors or inconsistencies in the report. The Mayor may not

question the conclusions and recommendations in the report, although they may seek clarification on anything that they consider to be unclear. The Mayor should complete the fact-check within two weeks of receiving the fact-check report. They should not publish the report at this stage.

There is no mechanism for the final report to be amended by the Panel or anyone else after it has been sent to the Mayor. It is therefore important that the Mayor checks the accuracy of the report very carefully at the fact-check stage.

Delivery of the final report

Once the fact check has been completed and the Panel has dealt with any points raised, the final report will be sent to Mayor with a copy to the Secretary of State for Housing, Communities and Local Government³¹. Submission of the final report to the Mayor marks the end of the examination.

The Mayor will make the report available for inspection and send a copy to each borough, district and unitary Council in the area covered by the SDS within 8 weeks of receipt³².

Publishing the Spatial Development Strategy

The Mayor may not publish the SDS until after he has received the Panel report³³.

Whilst the Panel's recommendations are not binding, if the Mayor proposes not to accept any recommendation contained in the Panel report he must publish and send to the Secretary of State a statement of his reasons³⁴.

The Mayor must send to the Secretary of State a copy of the SDS which he intends to publish. The SDS cannot then be published until a period of six weeks, or longer if notified by the Secretary of State, has elapsed³⁵.

The SDS to be published by the Mayor may be in the form of the draft published for public participation, or as modified to take account of the representations made about it, any direction by the Secretary of State, the Panel report, or any other material considerations³⁶.

There is no legal requirement for public consultation to be undertaken on modifications to the draft SDS before it is finalised.

It is likely that the sustainability appraisal will need to be updated in accordance with relevant legislation before the SDS is finalised.

³¹ Regulation 8(8) of the 2000 and 2018 Regulations.

³² Regulation 8(9) of the 2000 and 2018 Regulations.

³³ GLA Act section 337(4) as modified by the Combined Authority Regulations.

³⁴ GLA Act section 337(4) as modified by the Combined Authority Regulations and regulation 9(2) of the 2000 and 2018 Regulations.

³⁵ Regulation 9(2) of the 2000 and 2018 Regulations.

³⁶ GLA Act section 337(2) as modified by the Combined Authority Regulations.

Secretary of State Direction

The Secretary of State may, at any time before the Mayor publishes the SDS, give direction that it may not be published except in a form which includes modifications in order to remove inconsistency with national policy or any detriment to an area outside the area covered by the SDS³⁷.

³⁷ GLA Act sections 337(6)-(8) as modified by the Combined Authority Regulations.

Annex A

Example Timetable for an Examination with 4 Weeks of Hearing Sessions

Week	Event
	SDS published for public consultation.
	Examination Secretary appointed.
	End of public consultation period.
-6	Panel appointed.
	Initial preparation by the Panel.
0	Representations, summaries and any proposed modifications sent to the Panel.
0 to 5	Panel assessment of SDS, evidence and representations.
5	Panel consult the Mayor on draft lists of matters and participants.
6	Draft lists of matters and participants published for consultation (at least 12 weeks before hearings start).
10	End of consultation period on draft lists of matters and participants.
12	Final lists of matters and participants published and notice given by advertisement of the times and places the list and matters can be inspected, the date and address where the examination is to be held, and name and address of the officer to whom written submissions should be sent (at least 6 weeks before hearings start).
16	(First) deadline for submission of hearing statements.
19 to 20	Hearing sessions weeks 1 and 2.
23 to 24	Hearing sessions weeks 3 and 4.
25 to 30	Report writing.