

Procedural Guide

Called-in planning applications - England

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PROCEDURAL GUIDE

CALLED-IN PLANNING APPLICATIONS – ENGLAND

| Table of contents | | Page |
|--------------------------------|--|-------------|
| IMPORTANT CHANGES | | 1 |
| 1 | INTRODUCTION | 2 |
| 1.1 | Background | 2 |
| 1.2 | Responsibilities of the applicant, the local planning authority and other parties | 2 |
| 1.3 | Calling-in a planning application..... | 2 |
| 1.4 | What is the timetable for a called-in application and what are the rules?..... | 2 |
| 1.5 | What happens if there are new or emerging policies?..... | 3 |
| 1.6 | What happens if a relevant decision is made on another case?..... | 3 |
| 1.7 | What happens if there is new legislation or national policy or guidance | 3 |
| 1.8 | What will the Inspector do and what will be taken into account? | 3 |
| 2 | GENERAL MATTERS | 4 |
| 2.1 | Postponements, adjournments, abeyance, and linked cases | 4 |
| 2.2 | Communicating with us electronically | 4 |
| 2.3 | Planning conditions | 4 |
| 2.4 | What is the process for challenging a decision made during the processing of a case?..... | 5 |
| 2.5 | What is the role of interested people? | 5 |
| 3 | OTHER IMPORTANT INFORMATION | 5 |
| 3.1 | Can a proposed scheme be amended? | 5 |
| 3.2 | Can there be new material? | 5 |
| 3.3 | Planning obligations | 5 |
| 3.4 | What is "Expert evidence"?..... | 6 |
| 3.5 | Openness and transparency | 6 |
| 4 | THE DECISION | 6 |
| 4.1 | Where will the decision be published? | 6 |
| 5 | AFTER THE DECISION | 6 |
| 5.1 | Questions about a decision | 6 |
| 5.2 | What happens if an error has been made?..... | 6 |
| 5.3 | How can someone give feedback? | 7 |
| 5.4 | How are complaints dealt with?..... | 7 |
| 5.5 | How can a decision be challenged?..... | 7 |
| 5.6 | Who makes sure that development is in accordance with planning permission? | 7 |
| 5.7 | Should I wait until the time limit for making a challenge in the High Court has passed, before implementing the planning permission? | 7 |
| 6 | CONTACTING US | 8 |
| 6.1 | Before the Inspector's report has been sent to the Secretary of State | 8 |

| | | |
|-----|--|---|
| 6.2 | After the Inspector’s report has been sent to the Secretary of State | 8 |
| 6.3 | General enquiries | 8 |

Annexes

| | | |
|---|---|----|
| A | Calling-in a planning application | 9 |
| B | Inquiries procedure | 11 |
| C | Communicating electronically with us | 19 |
| D | How can a decision be challenged? | 23 |
| E | Can a proposed scheme be amended? | 26 |
| F | Can there be new material at “called-in” stage? | 27 |
| G | Planning obligations | 28 |
| H | What is “Expert evidence”? | 42 |
| I | What happens if an error has been made? | 43 |
| J | Feedback and complaints | 44 |

IMPORTANT CHANGES

This document contains revised guidance on:

- the process for challenging a costs decision following changes that came into force under Schedule 16 of the Criminal Justice and Courts Act 2015 – Procedure for Certain Planning Challenges;
- the risk in implementing a planning permission / commencing development before the High Court challenge time limit has expired;
- planning obligations and counterpart documents.

1 INTRODUCTION

1.1 Background

1.1.1 The content of this document is guidance only with no statutory status. However, all parties should follow the general principles, as will Inspectors who may adapt them as necessary for an individual called-in application whilst ensuring that no party is prejudiced. It should be read alongside the [planning practice guidance](#) published by the Department for Communities and Local Government.

1.2 Responsibilities of the applicant, the local planning authority and other parties

1.2.1 The Secretary of State's ability to deliver timely and high-quality decisions on called-in applications relies on all parties following good practice and behaving reasonably. The parties must meet the statutory timetables to ensure that no-one is disadvantaged and the called-in application can be processed efficiently.

1.2.2 If a party does not behave reasonably they leave themselves open to costs being awarded against them. This would be on the basis that the behaviour had directly caused another party to incur expenses that would not otherwise have been necessary.

1.2.3 Costs may be awarded in response to an application for costs by one of the parties. Also costs may be awarded at the initiative of the Inspector.

1.2.4 There is guidance about [costs awards](#) in the planning practice guidance.

1.3 Calling-in a planning application

1.3.1 The Secretary of State will "call-in" a planning application for him to decide only if certain circumstances apply. For further information please see Annexe A. Also, guidance on the Secretary of State's decision making functions on called-in planning applications is available in [Guidance on Planning Propriety Issues](#).

1.4 What is the timetable for a called-in application and what are the rules?

1.4.1 Once we have received a called-in application we will send our initial letter confirming the inquiry procedure and notifying the applicant and the local planning authority of the reference number, the timetable for the called-in application and the specific address (room number and email address) to which any correspondence should be sent. For further information please see Annexe B.

1.4.2 We will invite the applicant, the local planning authority and any Rule 6 party to agree a bespoke programme, which will set out the timetable for the case. For further information please see Annexe B and our "[Guide to Rule 6 for interested parties involved in an inquiry – planning appeals and called-in applications - England](#)".

1.4.3 Keeping to the timetable is fundamental to an efficient and fair called-in applications service and we expect everyone to comply with them.

1.4.4 Where the change in circumstances set out below in paragraphs 1.5 to 1.7 is likely to affect the outcome of the case we will ensure that all parties have an appropriate opportunity to comment on the new material. For further information please see Annexe F.

1.5 What happens if there are new or emerging policies?

1.5.1 The local planning authority must alert us in writing, as soon as possible, if it becomes aware at any stage before the decision is issued of any material change in circumstances which have occurred since the application was called-in (eg a newly adopted or emerging policy) that is directly relevant to the case. It should indicate the anticipated date of adoption of any emerging policy. The applicant may also do this in writing, as soon as possible, and ask for our agreement to their sending in further representations, necessary as a result of the change(s), and agree a date for the receipt of representations.

1.6 What happens if a relevant decision is made on another case?

1.6.1 The local planning authority must alert us in writing, as soon as possible, if it makes a decision (either to grant or refuse planning permission or to issue an enforcement notice) on a similar development. Also it should alert us if it is aware of a decision on another called-in application or on an appeal that is relevant. The applicant may also do this in writing, as soon as possible, and ask for our agreement to their sending in further representations, necessary as a result of the change(s), and agree a date for the receipt of representations. For further information please see Annexe F.

1.7 What happens if there is new legislation or national policy or guidance

1.7.1 If a party to a called-in application considers that changes to legislation or Government policy or guidance are a material consideration, they should inform us, in writing, as soon as possible and ask for our agreement to their sending in further representations, necessary as a result of the change(s), and agree a date for the receipt of representations.

1.8 What will the Inspector do and what will be taken into account?

1.8.1 The Inspector has to make a report and recommendation to the Secretary of State under the circumstances existing at the time he or she makes it. The Inspector will therefore take account of:

- the material submitted to the local planning authority;
- all the documents, required by the Inquiries Procedure Rules;
- any relevant legislation and policies, including changes to legislation, any new Government policy or guidance and any new or emerging development plan policies since the local planning authority's decision was issued;
- any other matters that are material to the case.

2 GENERAL MATTERS

2.1 Postponements, adjournments, abeyance, and linked cases

2.1.1 Our usual practice is to resist postponements and adjournments in view of the delay and disruption this causes. We will not put cases into abeyance unless there are exceptional reasons.

2.1.2 We may decide to link appeals or other casework (eg Compulsory Purchase Orders) that relate to the same site in order to minimise the use of resources for all parties. We will make decisions to link on a case by case basis.

2.2 Communicating with us electronically

2.2.1 We encourage and support applicants, local planning authorities and interested people to work electronically with us both online and by email. Wherever possible the applicant should send their document(s) online through the [Appeals Casework Portal](#) or by email.

2.2.2 For further information about system availability, system requirements and our guidelines for submitting documents to us electronically please see Annexe C.

2.3 Planning conditions

2.3.1 The applicant and local planning authority should look at the planning practice guidance on the [use of planning conditions](#); and Appendix A – "Suggested Models of Acceptable Conditions for Use in Appropriate Circumstances" (which is still in existence) to Circular 11/95: Use of conditions in planning permission (which has been cancelled).

2.3.2 The applicant and the local planning authority when sending us their statement of case should indicate if they wish to accept or can suggest a planning condition(s) that they think would mitigate the impact of the proposal.

2.3.3 The fact that conditions are suggested does not mean that the application will be granted planning permission or that, if allowed, conditions will be imposed. The inquiry will usually include a discussion about the conditions which may be imposed if the proposal is granted planning permission.

2.4 What is the process for challenging a decision made during the processing of a case?

2.4.1 If the applicant, the local planning authority or an interested person thinks that we have made an administrative decision during the processing of a called-in application that is wrong, they should write to our Case Officer giving clear reasons why they think we should review our decision.

2.4.2 For decisions made by administrative staff during the processing of a called-in application there is no statutory right to challenge that decision in the High Court. However it is possible to make an application for judicial review of such a decision. For further information please see Annexe D.

2.5 What is the role of interested people?

2.5.1 People who are interested in the outcome of a called-in application "interested people" (often also called "third parties", "interested parties" or "interested persons") have an important role to play in the planning process. Their representations indicating support for, or opposition to, a proposed scheme are taken into account along with other material considerations.

2.5.2 There is a document "[Guide to taking part in planning and listed building consent appeals proceeding by an inquiry – England](#)" which although it relates to appeals, does explain the inquiry process and how interested people can be involved in an inquiry.

3 OTHER IMPORTANT INFORMATION

3.1 Can a proposed scheme be amended?

3.1.1 If, exceptionally, the applicant wishes to amend a scheme after it has been called-in we will consider each request on its own merits. For further information please see Annexe E.

3.2 Can there be new material?

3.2.1 There will be rare occasions when new matters will arise during the processing of a called-in application which ought to be considered by the Inspector. For further information please see Annexe F.

3.3 Planning obligations

3.3.1 If they did not do so when the application was made the applicant and the local planning authority should include with their documentation any certified or draft (as appropriate) section 106 planning obligation which they wish the Inspector to consider. Where the planning obligation provides for a pooled contribution towards items that may be funded by the Community Infrastructure Levy, the local planning authority should also clarify the number of planning obligations which have been entered into on or after 6 April 2010 which provide for the funding or provision of a project, or provide for the funding or provision of that type of infrastructure for which it is seeking an obligation in relation to

the appeal proposal. This information is required for each obligation sought by the local planning authority. The local planning authority (and the appellant) should inform us as a matter of urgency of any further changes in circumstances on this matter as the appeal progresses. For further information please see Annexe G and [planning practice guidance paragraphs 99-104](#).

3.4 What is “Expert evidence”?

3.4.1 Expert evidence is evidence that is given by a person who is qualified, by training and experience in a particular subject or subjects, to express an opinion. For further information please see Annexe H.

3.5 Openness and transparency

3.5.1 Inquiries are open to journalists and the wider public, as well as interested people. Provided that it does not disrupt proceedings, anyone will be allowed to report, record and film proceedings including the use of digital and social media. Inspectors will advise people present at the start of the event that the proceedings may be recorded and/or filmed, and that anyone using social media during or after the end of the proceedings should do so responsibly.

3.5.2 If anyone wants to record or film the event on equipment larger than a smart phone, tablet, compact camera, or similar, especially if that is likely to involve moving around the venue to record or film from different angles, they should contact us and the local planning authority in advance to discuss arrangements.

4 THE DECISION

4.1 Where will the decision be published?

4.1.1 When made, the decision will be published online and can be viewed using the [search facility](#) and on the Department for Communities and Local Government area of the [GOV.UK website](#).

5 AFTER THE DECISION

5.1 Questions about a decision

5.1.1 Questions about a decision of the Secretary of State should be sent to the address on his decision letter.

5.2 What happens if an error has been made?

5.2.1 We cannot change the decision, for further information please see Annexe I.

5.3 How can someone give feedback?

5.3.1 We welcome feedback about people's experience of dealing with us. This can be provided to us at any time. Further information is available [here](#).

5.4 How are complaints dealt with?

5.4.1 If after the decision on a case has been published, we receive a complaint about the Inspector or the way we administered a case it is dealt with by the Customer Quality Team who are independent of the teams who process cases. All complaints are investigated thoroughly and impartially. For further information please see Annexe J.

5.5 How can a decision be challenged?

5.5.1 The High Court is the only authority that can formally identify a legal error in an Inspector's or Secretary of State's decision and require that decision to be re-determined. Applications to challenge decisions on a called-in application and related costs decisions must be received by the Administrative Court within 42 days (6 weeks) from the date of the decision. For further information please see Annexe D.

5.6 Who makes sure that development is in accordance with planning permission?

5.6.1 If planning permission is granted, by the local planning authority at application stage, by the Inspector on appeal or by the Secretary of State on appeal or on an application that has been called-in, the local planning authority has the sole responsibility for monitoring the implementation of the permission and ensuring that it is in accordance with the plans and any conditions.

5.6.2 If the local planning authority considers that the development does not comply with the permission it has the power to take enforcement action.

5.7 Should I wait until the time limit for making a challenge in the High Court has passed, before implementing the planning permission?

5.7.1 You should be aware that there is a risk in implementing a planning permission / commencing development before the High Court challenge time limit has expired. This is because if the planning permission is quashed by the Court, development will become unlawful. In some circumstances, the local planning authority may consider taking enforcement action against development that exists without a valid planning permission.

5.7.2 If the time limit for making a challenge in the High Court has passed without a challenge being made, you may implement a planning permission / commence development without risk of the planning permission being quashed by a Court.

6 CONTACTING US

6.1 Before the Inspector's report has been sent to the Secretary of State

6.1.1 To discuss a particular called-in application, **before the Inspector's report has been sent to the Secretary of State**, please contact our Case Officer – the local planning authority can provide their details or they can be found online using the [search facility](#).

6.2 After the Inspector's report has been sent to the Secretary of State

6.2.1 If the report has already been sent to the Secretary of State please contact:

**The Department for Communities and Local Government
2 Marsham Street**

**London
SW1P 4DF**

Phone 0303 444 1325
PCC@communities.gsi.gov.uk

6.3 General enquiries

6.3.1 For general enquiries our contact details are:

The Planning Inspectorate
Customer Support Team
Room 3/13
Temple Quay House
2 The Square
Bristol
BS1 6PN

Helpline: 0303 444 5000
Email: enquiries@planning-inspectorate.gsi.gov.uk

6.3.2 Or for queries about problems with working electronically:

Email: pcs@pins.gsi.gov.uk

Further information on the Planning Inspectorate is available at:

<https://www.gov.uk/government/organisations/planning-inspectorate>

A Calling-in a planning application

A.1 Legislation

A.1.1 Under section 77 of the Town and Country Planning Act 1990 the Secretary of State has power to direct the local planning authority to refer an application to him for decision. This is what is meant by a 'called-in' application.

A.1.2 The Secretary of State will, in general, only consider the use of his call-in powers if planning issues of more than local importance are involved. For the criteria used to decide if an application should be called-in please see [paragraph 22 of Determining a planning application](#) in the planning practice guidance.

A.1.3 If an application is called-in it may be that the local planning authority support the application (and may have granted permission if it had not been called-in). In these cases the only opposition to the proposed development may be by local residents or special interest groups, statutory consultees or other Government Departments.

A.2 If an application is called-in what happens?

A.2.1 When the Secretary of State calls-in an application, he gives his direction in a letter to the local planning authority which will be issued by the National Planning Casework Unit, which also writes to the applicant and any statutory party.

A.2.2 An inquiry will be held. The inquiry procedure is set out in The Town and Country Planning (Inquiries Procedure) (England) Rules 2000, Statutory Instrument 2000/1624 (as amended).

A.2.3 All called-in applications will follow a bespoke timetable. For further information please see Annexe B.

A.2.4 The Inspector must approach the inquiry with an open mind. For this reason, he or she will not see correspondence which may have influenced the Secretary of State to call-in the application. So even if an interested person has already written to the local planning authority or National Planning Casework Unit about the application, if they want to make sure that the Inspector is aware of their views they must write to our Case Officer.

A.2.5 If a party has a statutory right to appear at the inquiry they will be asked to provide a full written statement of case before the inquiry under the Rules. It should be direct and to the point.

A.2.6 If any other party wishes to appear and present evidence at the inquiry we may require them to provide a full written statement of case – under Rule 6. Please see paragraphs B.7.2 and B.11 and for further information please see our ["Guide to Rule 6 for interested parties involved in an inquiry – planning appeals and called-in applications - England"](#).

A.2.7 We will:

- require the local planning authority to publicize the inquiry arrangements in the local press;
- require the local planning authority to inform owners and occupiers of properties near the application site, those who made representations to the local planning authority at application stage and anyone else it thinks may be affected by the development of the inquiry arrangements;
- require the applicant, if he or she controls the site, to post a notice on the site -in a place where it can be seen by the public -giving details of the inquiry arrangements.

A.2.8 If an interested party is not going to attend the inquiry but wants their views to be known they should send their representations to our Case Officer within 6 weeks of our initial letter.

A.3 Report to the Secretary of State and the decision

A.3.1 For an application which has been called-in, the Inspector will write a report which will contain his or her conclusions and make a recommendation on whether planning permission should be granted (with or without conditions) or refused. The report will be sent to the Secretary of State to make the decision taking into account the Inspector's recommendation. When the Secretary of State has reached a decision, this will be explained in the decision letter. This letter will normally be sent by Planning Casework which is part of the Department for Communities and Local Government, based in London.

A.3.2 Under the statutory timetabling provisions set down by the Act¹ all parties involved in the called-in application will normally be advised of the expected date of the Secretary of State's decision within 10 days of the close of the inquiry.

A.3.3 Called-in application decision letters are available on the Department for Communities and Local Government area of the [GOV.UK website](#) and online using the [search facility](#).

¹ Section 55 and Schedule 2 of the Planning and Compulsory Purchase Act 2004.

B Inquiries procedure

The Town and Country Planning (Inquiries Procedure) (England) Rules 2000 (Statutory Instrument 2000/1624)²⁷, as amended by The Town and Country Planning (Hearings and Inquiries Procedures) (England) (Amendment) Rules 2009 (Statutory Instrument 2009/455)

B.1 Background

B.1.1 Please see Annexe A "Calling-in a planning application".

B.1.2 The inquiry process is governed by the Inquiries Procedure Rules which set out the fixed points at which action must be taken and/or documents must be sent to/received by us.

B.1.3 However, for longer, more complex inquiries this approach is not necessarily the best way to deal with a case. Therefore using the flexibility provided in the Rules we are able to manage all called-in planning applications on a bespoke timetable.

B.2 General principles

B.2.1 As soon as an applicant knows that their application is likely to be called-in, they should discuss a draft bespoke timetable with the local planning authority and all other parties who have the right to appear including any Rule 6 parties where they are known at that time. For further information please see our ["Guide to Rule 6 for interested parties involved in an inquiry - planning appeals and called-in applications - England"](#).

B.2.2 Parties must work constructively to identify mutually acceptable dates within the timetable and must not try to gain a "tactical advantage". This requires close liaison and co-operation at all stages. Parties should be confident that they can keep to the timetable.

B.2.3 If it is not apparent why an extended bespoke timetable is being proposed, or we are not satisfied that one is justified, we may not agree to the proposed timetable.

B.2.4 If the parties cannot agree a bespoke timetable with us we may impose one. In applying the bespoke process we will always have full regard to the fairness of the process to all parties' interests.

B.2.5 Inquiry dates agreed as part of a bespoke timetable may not always meet the 22 weeks target as given in the Inquiries Procedure Rules. However, if it is suggested that it should be later the proposed date should be as close as possible to 22 weeks.

B.2.6 Similarly, it may be that the parties propose to vary the timing of the receipt of documents. This should not substantially extend the overall timescale of the case.

B.3 Setting the length of the inquiry

B.3.1 The applicant and the local planning authority should let us know the expected number of witnesses, topics to be addressed by witnesses, and an estimate for the overall inquiry length.

B.3.2 They should be realistic, the estimate should include time for opening and closing the inquiry, any sessions on conditions and any section 106 obligation and the time they consider may be necessary for questions to be put to witnesses. If they have instructed an advocate it may be useful to get their views on the likely length of the inquiry.

B.3.3 We will take account of the estimates we receive from the applicant and the local planning authority and our own experience when we set the likely length of the inquiry. Once set we will normally expect the length of the inquiry to stay within the agreed timetable.

B.4 Complying with a bespoke timetable

B.4.1 We expect the parties to comply with a bespoke timetable so all parties must co-operate to ensure that it is met. Where, exceptionally, a party wishes to vary an element of the timetable, it should normally first try to obtain the agreement of the other main party, or parties, before proposing the variation to us. In considering the request we will need to be sure that:

- no other parties' interests would be unreasonably prejudiced; and
- it would not result in a need to rearrange an inquiry.

B.4.2 Failure to keep to a bespoke timetable which has caused another party unnecessary or wasted expense could result in a claim for costs against the offending party being upheld.

B.5 What is the process?

B.5.1 An inquiry provides for the investigation into, and formal testing of, evidence, usually through expert witnesses. Parties may be formally represented by advocates. The site may be visited before, during or after the inquiry.

B.5.2 Statutory parties³ are entitled to participate in an inquiry. Interested people⁴ can attend and may participate in an inquiry at the discretion of the Inspector.

³ Statutory Parties are defined in The Town and Country Planning (Inquiries Procedure) (England) Rules 2000 Statutory Instrument 2000/1624 (as amended) and in The Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2000 Statutory Instrument 2000/1625 (as amended).

B.6 Who tells statutory parties and interested people that the application has been called- in?

B.6.1 Within 2 weeks of our initial letter the local planning authority must notify interested people:

- that an application has been called-in;
- that if they wish their views to be considered by the Inspector (even if they have already written to the local planning authority or the National Planning Casework Unit) they should send written representations to the Planning Inspectorate within 6 weeks of our initial letter and give the address and email address to which any further representation should be sent); and
- that the decision will be published on the Department for Communities and Local Government area of the [GOV.UK website](https://www.gov.uk).

B.6.2 We encourage local planning authorities to use the online [model notification letter](#) adapting it as necessary for a called-in application.

B.7 Statutory parties' and interested people's representations in accordance with the bespoke timetable

B.7.1 If a statutory party or an interested person wishes to make representations (even if they have already written to the local planning authority or the National Planning Casework Unit) they should do so online using the [search facility](#) or send them by email or by post to us (3 copies if possible). They should ensure that they are received by the date given in the local planning authority's notification letter. We will copy any representations received to the applicant and the local planning authority.

B.7.2 If any person notifies us of an intention to appear and give evidence at an inquiry we may require them (under Rule 6 (6) of the Inquiry Procedure Rules) to provide a statement of case. They should send their statement of case to us (3 copies if not sent electronically) and a copy to any statutory party within 4 weeks of us telling them to do this. We will copy the statements of case to the local planning authority and the applicant.

B.7.3 For further information please see "[Guide to Rule 6 for interested parties involved in an inquiry – Planning appeals and called-in applications - England](#)" and paragraph B.11 which contains information about the statement of case.

B.8 Who tells people about the inquiry?

B.8.1 We will notify the applicant, the local planning authority and any statutory party of the date, place, time and length of the inquiry and the name of the Inspector who will conduct it. We will ask the local planning authority to notify those persons other than the applicant with an interest in the land, other

⁴ "Interested persons" being (a) any person notified or consulted in accordance with the Act or a development order about the application which has given rise to the appeal; and (b) any other person who made representations to the local planning authority about that application.

owners/occupiers of property near the site, those who made representations at the application stage, those entitled to appear at the inquiry and anyone else it considers to be affected by or interested in the proposed development.

B.9 Pre-inquiry instructions from the Inspector

B.9.1 A pre-inquiry meeting may be held to discuss the programming of the inquiry and other matters. We will give not less than 2 weeks written notice of a pre-inquiry meeting to:

- the applicant;
- the local planning authority;
- any statutory party;
- any other person known to be entitled to appear at the inquiry; and
- any other person whose presence at the meeting appears to the Inspector to be desirable.

B.9.2 The Inspector will normally issue a note of the meeting setting out agreed points. This will set out matters which the Inspector wants the parties to address, may direct the manner in which they wish to receive evidence, which may include giving advice about the length of proofs and may also set out a provisional timetable to which the parties will be expected to keep.

B.9.3 Sometimes an Inspector may merely issue a pre-inquiry note rather than holding a pre-inquiry meeting.

B.10 Statement of common ground

B.10.1 As required by the Inquiry Procedure Rules, the applicant and the local planning authority must prepare the statement of common ground together, and ensure that we and any statutory party receive a copy of it by the date in the bespoke timetable. The applicant is expected to send it to us.

B.10.2 A statement of common ground is essential to ensure that the evidence at an inquiry focuses on the material differences (if any) between the applicant and the local planning authority. It will provide a commonly understood basis for the applicant and the local planning authority to inform the statements of case and the subsequent production of proofs of evidence.

B.10.3 If there are any Rule 6 parties they can be involved in producing the statement. For further information please see the "[Guide to Rule 6 for interested parties involved in an inquiry – planning appeals and called-in applications - England](#)".

B.10.4 The statement of common ground should clearly identify matters that are agreed between the applicant and the local planning authority followed by matters that are in dispute. This means that the other documents and the inquiry can focus on the areas still at issue. The statement should:

- be a single document, compiled and signed by the main parties;
- be concise and not duplicate information already sent – by anyone;
- describe the site, the surrounding area and important features, and the planning history. If appropriate, photographs of the site and the surrounding area should be included;

- explain revisions or amendments to the original proposal and confirm if they were agreed at application stage⁵;
- include a list of the agreed plans and drawings on which the Inspector will be asked to base his or her recommendation and which were considered by the local planning authority at application stage;
- include a list of agreed and/or shared core documents, ministerial statements, and policies and references to any relevant passage of the National Planning Policy Framework “the Framework”;
- include relevant statutory and emerging development plan policies, their status and the suggested weight to be attached to them and Supplementary Planning Guidance and Supplementary Planning Documents;
- identify and provide the reference number(s), of any relevant call-in or appeal decisions, relating to the site or neighbouring sites;
- identify whether there is/is not agreement over measurements, identify agreed elements of the evidence and any technical studies that have been undertaken;
- include a list of suggested conditions (agreed and not agreed) which should meet the tests in the planning practice guidance and include the reasons why the conditions are suggested;
- where case law is cited, include the full Court report/transcript;
- say if there is a draft planning obligation. For further information please see Annexe G.

B.10.5 There is a [statement of common ground form](#) available online. Applicants can complete that form, save it to their computer and email to the other party and, when finalised, to us.

B.11 Statement of case

B.11.1 The applicant and the local planning authority must send their statement of case (2 copies if not sent electronically) to us ensuring it is received by the date in the bespoke timetable. We will inform the applicant and the local planning authority of the name and address of any statutory party who makes representations on the case as they must also send a copy to any statutory party.

B.11.2 A statement of case:

- must include a list of documents, maps and plans the applicant intends to rely on;
- should describe, but not contain, the evidence;
- should refer to any policies or other documents not referred to by the local planning authority but considered to support an appellant’s case;
- should not, normally, in the local planning authority’s statement introduce additional policies;

⁵ Any “called-in” stage” amendments will be at the discretion of the Secretary of State/Inspector in light of Wheatcroft considerations (see Annexe E) so any references in a statement of common ground to a jointly agreed amended drawing should be made on that understanding.

- should set out briefly both the planning and legal arguments which a party intends to put forward at the inquiry;
- should cite any statutory provisions and case law they intend to use in support of their arguments;
- should briefly describe any suggested mitigating factors;
- should focus on the areas of differences - as the areas of agreement will be in the statement of common ground.

B.12 What are “proofs of evidence”?

B.12.1 The term “proofs of evidence” is used in the Inquiries Procedure Rules and refers to the document containing the written evidence about which a person appearing at a public inquiry will speak.

B.12.2 It should:

- include the information that witnesses representing the applicant, or the local planning authority wish the Inspector to take into account;
- revisit the suggested conditions set out in the statement of common ground;
- cover only areas which remain at issue and should not include new areas of evidence or arguments;
- contain concisely expressed argument and evidence supported by technical appendices;
- where case law is cited include the full Court report/transcript reference and cross refer to a copy of the report/transcript;
- include any data referred to, and outline any assessment methodology and the assumptions used to support the arguments;
- not repeat or quote national or local policy, but should provide policy name and paragraph numbers;
- not include long irrelevant biographical detail of the witness;
- not omit necessary detail.

B.12.3 The evidence of each witness should address distinct topics and not overlap another’s.

B.12.4 Witnesses and their advocates should limit the length of proofs. If the proof exceeds 1,500 words it should be accompanied by a summary. It is normally only the summaries that will be read out at the inquiry.

B.12.5 Summaries should concentrate on the main points at issue. They should not introduce new or different evidence nor go beyond the scope of the text they summarise. It may sometimes be difficult to summarise complex technical evidence effectively, and the above advice is not intended to prevent witnesses properly explaining their evidence. Successful summaries of complex evidence will help make the salient points clearer to the interested parties, as well as saving time.

B.12.6 Before the inquiry Inspectors may direct the manner in which they wish to receive evidence which may include giving further advice about the length of proofs.

B.12.7 If the proof of evidence includes evidence given by an expert witness please see Annexe H.

B.13. Acceptance of late documents in exceptional circumstances

B.13.1 Applicants, local planning authorities and interested people should not try to “get around” the rules by taking late evidence to the inquiry.

B.13.2 However if, exceptionally, a party feels that a document, should be taken to the inquiry and be taken into account, Inspectors do have discretion whether to accept late evidence.

B.13.3 Before deciding whether, exceptionally, to accept it, the Inspector will require:

- an explanation as to why it was not received by us in accordance with the rules; and
- an explanation of how and why the material is relevant; and
- the opposing parties’ views on whether it should be accepted.

B.13.4 The Inspector will refuse to accept late evidence unless fully satisfied that:

- it is not covered in the evidence already received; and
- that it is directly relevant and necessary for his or her recommendation ; and
- it would be procedurally fair to all parties (including interested people) if the late evidence were taken into account.

B.13.5 If the Inspector accepts late evidence this may result in the need for an adjournment. Another party may make an application for costs or the Inspector may initiate an award of costs. This would be on the basis that the necessary adjournment had directly caused another party to incur expenses that would not otherwise have been necessary.

B.14 The report

B.14.1 We will undertake to ensure that the date by which the report will be submitted to the Secretary of State will normally be notified to the parties within 10 working days of the closure of the inquiry unless there are exceptional reasons.

Usual order of events for the bespoke inquiry procedure

| Order of events | Interested people | Applicant | Local planning authority |
|---|--|---|---|
| An application is called-in | | Is told that the application has been called-in | Is told that the application has been called-in |
| The bespoke timetable is agreed | If Rule 6 party – may be involved in agreeing the bespoke timetable | Agrees bespoke timetable with us | Agrees bespoke timetable with us |
| Usually within 2 weeks from our initial letter | Receive the local planning authority's notification that an application has been called-in and telling them the date by which they must send any representations to us | | It writes to interested people about the called-in application |
| In accordance with the bespoke timetable | Send their representations to us by the date given in the local planning authority's letter | Sends us their inquiry statement and the statement of common ground that they have agreed with the local planning authority | Sends us its inquiry statement |
| We set the inquiry date which will normally be within 22 weeks of the start date Though this may be varied for the bespoke process | | | |
| Normally 4 weeks before the inquiry, though this may be varied for the bespoke process | | Sends us their proof of evidence. | Send us its proof of evidence. It may put a notice in a local paper about the inquiry |
| At least 2 weeks before the inquiry | Receive details from the local planning authority about the inquiry arrangements | Displays a notice on site giving details of the inquiry | Notifies interested people about the inquiry arrangements |
| No later than 10 working days before the inquiry | | If there is one, sends us the draft planning obligation | |

C Communicating electronically with us

(Please note: this annexe is common to all our procedure guides and so refers to appeals as well as called-in applications.)

C.1 System availability

C.1.1 Our online facilities will usually be available 24 hours a day. We will sometimes need to take the system out of service for a while to implement upgrades. Wherever possible, we will do this outside of usual office hours.

C.2 System requirements

C.2.1 Before you start, you should ensure that you have the following system requirements:

- Adobe Acrobat (Version 9 or higher recommended);
- an internet browser (Internet Explorer/Chrome/Firefox recommended);
- an email account;
- ensure that your internet browser has JavaScript enabled, which is usually the default setting.;
- ensure that cookies are allowed;
- ensure that the web address <http://www.planningportal.gov.uk/> for the Planning Portal is NOT added to the IE proxy server exceptions.
Note – This is normally only applicable to corporate networks.

C.3 Guidelines for submitting documents

C.3.1 Please see Appendix C.1 for our detailed advice.

Guidelines for submitting documents

| | | | | | | | | | | | | | |
|---------------------------------------|---|-----|------|----------------|---------------|-----|---------------|------|---------------|-----|------|-----|------|
| <p>Acceptable file formats</p> | <table border="1"> <tr> <td>PDF</td> <td>.pdf</td> </tr> <tr> <td>Microsoft Word</td> <td>.doc or .docx</td> </tr> <tr> <td>TIF</td> <td>.tif or .tiff</td> </tr> <tr> <td>JPEG</td> <td>.jpg or .jpeg</td> </tr> <tr> <td>PNG</td> <td>.png</td> </tr> <tr> <td>ZIP</td> <td>.zip</td> </tr> </table> | PDF | .pdf | Microsoft Word | .doc or .docx | TIF | .tif or .tiff | JPEG | .jpg or .jpeg | PNG | .png | ZIP | .zip |
| PDF | .pdf | | | | | | | | | | | | |
| Microsoft Word | .doc or .docx | | | | | | | | | | | | |
| TIF | .tif or .tiff | | | | | | | | | | | | |
| JPEG | .jpg or .jpeg | | | | | | | | | | | | |
| PNG | .png | | | | | | | | | | | | |
| ZIP | .zip | | | | | | | | | | | | |
| <p>File sizes</p> | <p>Documents submitted may be no bigger than 15mb each. It is your responsibility to keep your documents to a manageable size.</p> <p>If you have documents that are larger than this you can try the following;</p> <ul style="list-style-type: none"> • Break long documents into several files, but note the document naming conventions below. • Try and use black and white wherever possible (unless submitting photographs). • If submitting images, your software may have file/image compression facilities to make them smaller. • Note scanned documents are usually bigger than non-scanned versions. • Provided you are using the acceptable file types above, you can use ZIP files to compress documents. • If you have a large file and you are unable to use the options listed, you can email anything up to 10mb to appeals@pins.gsi.gov.uk | | | | | | | | | | | | |
| <p>Security</p> | <p>Remove any document security and enable macros if necessary. Documents should not be password protected, they should not be formatted as 'read only' and printing should be enabled.</p> | | | | | | | | | | | | |
| <p>Copyright</p> | <p>Ensure you have the owner's permission and have paid any copyright licence fee before sending in documents.</p> | | | | | | | | | | | | |
| <p>File names</p> | <ul style="list-style-type: none"> • Ensure all documents have descriptive names, including the type of document you are sending, eg '<i>Proposed plan 1 March 2014</i>'. • Number appendices and submit them as separate documents. Ensure the first page includes the appendix number. Name them to indicate what they form part of, and their sequence eg '<i>Appeal statement Appendix 2 Traffic census</i>'. • Use '<i>Part 1</i>', '<i>Part 2</i>' etc in the file name if you have split up a large document eg '<i>Appeal statement in Appendix 1 Environmental Assessment Part 1 of 3</i>'. • Include the required paper size in the document name for plans and drawings eg '<i>Proposed plan A3 size 1 March 2014</i>'. • Include scale bar(s) on all plans and drawings. • Do not use a colon ':' in any file names. | | | | | | | | | | | | |

| | |
|------------------------|---|
| Scanning | Ensure documents are complete and legible and avoid scanning more than one document into a single file. Use black and white unless colour is essential. |
| Ordnance Survey | <p>People may only scan an Ordnance Survey map if they;</p> <ul style="list-style-type: none"> • Have an annual licence to make copies; or • Have purchased a bulk copy arrangement; or • Are using a local planning authority supplied map under the 'map return scheme' (for which a fee is normally payable at the local planning authority's discretion), or • Have purchased the site-specific map from the Planning Portal for the purposes of attaching to a planning application, appeal or representation. <p>More information on map licensing is available on the Ordnance Survey website: http://www.ordnancesurvey.co.uk/support/licensing.html</p> |
| Images | Send pictures, photographs, plans, maps or drawings as individual files. Avoid the use of bitmap images as they are very large. |
| Hyperlinks | <ul style="list-style-type: none"> • You should not use hyperlinks within documents you send to us. Instead, you should download such documents yourself and attach them separately. • You should not use hyperlinks to a website page containing multiple documents or links. |
| Formatting | You should ensure that you number all pages accordingly. |
| Sending emails | <p>If you send anything by email you should get an automatic acknowledgement, provided it is sent to appeals@pins.gsi.gov.uk or to a team email address (which can be found at the top of letters from us about the appeal). If you do not get an automatic acknowledgement, then you should contact us.</p> <p>For any correspondence which you send to us via email, you should;</p> <ul style="list-style-type: none"> • Quote the appeal reference and/or appellant's name, site address and local planning authority name in the subject line or in the body of your email. • If you are attaching more than one document, please list them in the covering email. • If you are sending a series of emails, include '1 of 5', '2 of 5' etc in the subject line of the email, so we know how many to expect and can check with you if any appear to be missing. |

D How can a decision be challenged?

Important Note - The content of this document is guidance only with no statutory status. This guidance is not definitive. Because High Court challenges can involve complicated legal issues, if someone is considering making a challenge they may wish to take legal advice from a qualified person, such as a solicitor. Further information is available from the Administrative Court (see below).

D.1 What is the process for challenging a decision made during the processing of a case?

D.1.1 For decisions made by administrative staff during the processing of a called-in application (other than those relating to an award of costs) there is no statutory right to challenge that decision in the High Court (please see the information about High Court challenges below). However it is possible to make an application for judicial review of such a decision. Rule 54.5(5) of the Civil Procedure Rules 1998 (as amended) requires that an application for judicial review relating to a decision of the Secretary of State⁶ under the planning acts must be made not later than 6 weeks after the grounds to make the claim first arose.

D.1.2 However if the called-in application is decided before the end of this time limit then the only way to challenge decisions by administrative staff would be as part of the challenge to the decision itself through the High Court (see paragraph D.2).

D.2 What is the time limit for making a challenge in the High Court?

D.2.1 A challenge to a decision on a called-in planning application or related costs decision in the High Court must be made within 42 days (6 weeks) of the date of the decision- this period cannot be extended.

D.3 On what grounds can a decision be challenged?

D.3.1 A decision cannot be challenged merely because someone disagrees with the Secretary of State's decision. For a challenge to be successful the challenger would have to satisfy the High Court that the Inspector in their recommendation or the Secretary of State in their decision made an error in law, eg misinterpreting or misapplying a policy or failing to take account of an important consideration. If following a challenge the Secretary of State's decision on a called-in planning application or related costs decision is quashed, he will decide on the most appropriate method to re-determine the case.

⁶ Our administrative staff make decisions about the processing of an appeal or called-in application on behalf of the Secretary of State.

D.4 Under what legislation can a decision on a called-in planning application or a costs decision be challenged?

D.4.1 Decisions on called-in planning applications can be challenged under section 288 of the Town and Country Planning Act 1990. For listed building consent decisions and related costs decisions challenges are made under section 63 of the Planning (Listed Buildings and Conservation Areas) Act 1990. Challenges must be received by the Administrative Court within 42 days (6 weeks) of the date of the decision - this period cannot be extended. To challenge a decision under section 288 or section 63 you must first get the permission of the Court. If the Court does not consider that there is an arguable case, it can refuse permission.

D.5 Who can make a challenge?

D.5.1 In planning cases, a person aggrieved by the decision may do so if they have sufficient interest in it. This could include interested people as well as applicants, local planning authorities and landowners.

D.6 How much is it likely to cost?

D.6.1 An administrative charge is made by the Court for processing a challenge (the Administrative Court should be able to give advice on current fees – please see Further information below). The legal costs involved in preparing and presenting a case in Court can be considerable, and if the challenge fails the challenger will usually have to pay our costs as well as their own. However, if the challenge is successful we will normally be required to meet their reasonable legal costs.

D.6.2 Sometimes a request can be made to the Court for an order (a Protective Costs Order) which excludes liability or limits liability for the other side's costs up to a certain amount including costs of the decision maker and any interested people. The Administrative Court or a legal adviser will be able to advise if this is possible.

D.7 How long will it take?

D.7.1 This can vary considerably. Many challenges are decided within 6 months, some can take longer.

D.8 Does a challenger need to get legal advice?

D.8.1 A challenger does not have to be legally represented in Court but it is normal to do so, as they may have to deal with complex points of law made by our legal representative.

D.9 Will a successful challenge reverse the decision?

D.9.1 Not necessarily. If a challenge is successful the High Court will return the case to the Secretary of State for it to be decided again. This does not necessarily mean that the original decision will be changed or reversed

D.10 What happens if a High Court challenge fails?

D.10.1 Although it may be possible to take the challenge to the Court of Appeal, a compelling argument would have to be put to the Court for the judge to grant permission to do this.

D.11 Further information

D.11.1 Further information about making a High Court challenge can be obtained from:

Administrative Court at the Royal Courts of Justice
Queen's Bench Division
Strand
London
WC2A 2LL

Phone: 020 7947 6655

Website: <http://www.justice.gov.uk/about/hmcts/>

D.12 Contacting us

High Court Team
The Planning Inspectorate
4/06 Kite Wing
Temple Quay House
2 The Square
Bristol
BS1 6PN

Phone: 0303 444 5000

Email: feedback@pins.gsi.gov.uk

Website: [feedback](#)

D.13 Contacting the Ombudsman

The Parliamentary & Health Service Ombudsman
Millbank Tower
Millbank
London
SW1P 4QP

Helpline: 0845 0154033

Website: www.ombudsman.org.uk

Email: phso.enquiries@ombudsman.org.uk

E Can a proposed scheme be amended?

E.1 The Wheatcroft Principles

E.1.1 Where, exceptionally, amendments are proposed during the called-in application process the Inspector will take account of the Wheatcroft Principles when deciding if the proposals can be formally amended. In the 'Wheatcroft' judgment⁷ the High Court considered the issue of amendments in the context of conditions and established that "the main, but not the only, criterion on which... judgment should be exercised is whether the development is so changed that to grant it would be to deprive those who should have been consulted on the changed development of the opportunity of such consultation". It has subsequently been established that the power to consider amendments is not limited to cases where the effect of a proposed amendment would be to reduce the development⁸.

E.1.2 Whilst amendments to a scheme might be thought to be of little significance, in some cases even minor changes can materially alter the nature of an application and lead to possible prejudice to other interested people.

E.1.3 The Inspector has to consider if the suggested amendment(s) might prejudice anyone involved in the case. He or she may reach the conclusion that the proposed amendment(s) should not be considered and that the case has to be considered on the basis of the proposal as set out in the application.

⁷ *Bernard Wheatcroft Ltd v SSE* [JPL, 1982, P37]. This decision has since been confirmed in *Wessex Regional Health Authority v SSE* [1984] and *Wadehurst Properties v SSE & Wychavon DC* [1990] and *Breckland DC v SSE and T. Hill* [1992].

⁸ See *Breckland DC v. Secretary of State for the Environment* (1992) 65 P&CR.34.

F Can there be new material at "called-in" stage?

F.1 Changed circumstances

F.1.1 If:

- a decision has been made, or enforcement action taken, on a local similar development since the application was called-in (either by the local planning authority or on an appeal);
- there has been a change in circumstances (eg new or emerging legislation or Government policy or guidance or local policy) since the application was called-in ;

the local planning authority must alert us in writing, as soon as possible (copying their correspondence to the appellant), to the decision or the change in circumstances. The applicant may also do this. See paragraphs 1.5 to 1.8.

F.1.2 New evidence will only be exceptionally accepted outside the published timetable where it is clear that it would not have been possible for the party to have provided the evidence when they sent us their inquiry statement of case at the date in the bespoke programme.

F.1.3 If, exceptionally, any party provides new evidence this may lead to:

- delay – so that we can give the other party or interested people the opportunity to comment; and/or
- additional expense by another party who may make an application for costs; or
- the Inspector initiating an award of costs.

G Planning obligations

G.1 Introduction

G.1.1 Planning obligations in connection with called-in planning applications (please see Annexe A) comprise both agreements and unilateral undertakings (section 106 of the Town and Country Planning Act 1990 “the Act” as amended). In this annexe where it refers to the Inspector, it should be taken to mean the Secretary of State for called-in planning applications.

G.1.2 This annexe provides good practice advice to guide applicants in preparing planning obligations. It should be read alongside Government policy on the use of [planning obligations](#) in the National Planning Policy Framework and the planning practice guidance. Also the Law Society has published a second edition of its model section 106 agreement (June 2010).

G.1.3 It is the responsibility of the applicant to clarify at an early stage the details of those with an interest in the land and therefore the numbers of parties and the logistics of completing the deed.

G.1.4 A glossary of legal and technical terms is at Appendix G.1. Guidance on Execution of a Deed is at Appendix G.2.

G.2 Deadline for receipt of planning obligations

G.2.1 If the applicant intends to send a planning obligation they should make sure that a final draft, agreed by all parties to it, is received by us no later than 10 working days before the inquiry opens. The Inspector’s and other parties’ ability to prepare for the inquiry is likely to be significantly hampered if this deadline is not met.

G.2.2 We ask for a final draft, rather than an executed planning obligation, to allow for the possibility that the wording may need to be changed as a result of discussion and examination during the inquiry. Nonetheless the planning obligation should normally be executed before the inquiry closes, without the need for an adjournment. However if that is not practicable the Inspector will agree the details for the receipt of the executed planning obligation with the applicant and the local planning authority at the inquiry.

G.3 Justifying the need for the planning obligation

G.3.1 Regulation 122 of the Community Infrastructure Levy Regulations 2010 Statutory Instrument 2010/948, makes it unlawful for any planning obligation to be taken into account in determining a planning application if it does not meet the 3 tests set out in the Regulation. The Inspector will need to assess whether these tests are met by a planning obligation, even where the parties are satisfied with it. The parties should ensure that they provide the necessary evidence to enable this assessment to be made. Inspectors will not take into account any obligations, including standard charges or formulae, which do not meet one or more of the statutory tests.

G.3.2 The Framework sets out at paragraph 204, 3 policy tests which mirror the tests in the Regulations.

G.3.3 The following evidence is likely to be needed to enable the Inspector to assess whether any financial contribution provided through a planning obligation (or the local planning authority's requirement for one) meets the tests:

- the relevant development plan policy or policies, and the relevant sections of any supplementary planning document or supplementary planning guidance;
- quantified evidence of the additional demands on facilities or infrastructure which are likely to arise from the proposed development;
- details of existing facilities or infrastructure, and up-to-date, quantified evidence of the extent to which they are able or unable to meet those additional demands;
- the methodology for calculating any financial contribution necessary to improve existing facilities or infrastructure, or provide new facilities or infrastructure, to meet the additional demands;
- details of the facilities or infrastructure on which any financial contribution will be spent.

G.4 Format of the planning obligation

G.4.1 All parts of the planning obligation, including the signatures, should follow in sequence without gaps. The signatures should preferably not start on a new page. The planning obligation should be securely bound and its pages should be numbered.

G.4.2 Any manuscript alterations to the text must be initialled by all the parties. Any documents or plans which are annexed to the planning obligation must be clearly identified in the text (by document title and date or drawing number) and any plans which are identified must be attached. Any plans must be signed by all the parties and any colouring of plans must match the description given in the text. If any plan is found to be inaccurate or missing, the planning obligation will need to be re-executed with the correct plan(s) attached.

G.4.3 The original planning obligation should be held by an officer (a solicitor) of the enforcing planning authority. A copy should be sent to us with a signed statement by that officer certifying that it is a true copy of the original.

G.5 Parties to the planning obligation

G.5.1 Under section 106(1) of the Act, any person interested in the land may enter into a planning obligation. Persons can only bind their own interest and any successors in title to that interest. Normally, therefore, all persons with an interest in land affected by a planning obligation – including freeholder(s), leaseholder(s), holders of any estate contract(s) and any mortgagees – must sign the obligation. Where there are different ownerships it may be necessary to define them by reference to a plan.

G.5.2 The planning obligation must give details of each person's title to the land. This should be checked by the local planning authority, and in hearing and inquiry cases the Inspector will ask for its assurance. In written representations cases, and in cases where the local planning authority is unable to give an assurance, the applicant or appellant will need to provide evidence of title to the Inspector. Normally this is in the form of an up to date copy entry or entries from the Land Registry.

G.5.3 Where a developer has only an option to purchase the land, the current landowner(s) will need to be party to any obligation binding the land.

G.5.4 Counterpart documents are legal documents identical in all respects except that each is signed by a different party or parties. This is not appropriate to planning obligations, since these are public law documents which are entered on the planning register and the local land charges register and are often copied to residents and other interested people. The planning obligation should be one single document executed by all the relevant parties.

G.5.5 There may be exceptional circumstances where it is agreed in advance by the parties that counterparts are the only practical option. In these cases, both the Inspector and the local planning authority should be satisfied that certified copies of all of the individually signed documents have been provided (by a solicitor or other suitably legally qualified person). It is preferable in such circumstances that each counterpart document includes a clause confirming that while the deed may be executed in counterparts, or in any number of counterparts, each of these shall be deemed to be an original (or a duplicate original), but all of them, taken together, shall constitute one and the same agreement. While such a clause is recommended in order to improve clarity, its absence will not make the counterparts invalid.

G.6 Content of the planning obligation

General points

G.6.1 It should provide clear and concise definitions for frequently-used terms and use consistent terminology throughout.

G.6.2 The planning obligation must be dated, signed by all the parties to it, and executed as a deed. For details of how to achieve execution as a deed, see Appendix G.2.

G.6.3 The planning obligation must identify:

- the land to which it relates (by a plan if necessary); and
- the parties to the obligation, by names and addresses, and their relevant interest in the land. If a party is an offshore company it must give an address for service of documents in the UK.

G.6.4 It must state:

- that it is a planning obligation and name the planning authority by which it is enforceable;
- that it comes into effect upon the grant of planning permission – even if the actions required by the obligation are triggered by subsequent events, such as commencement of the development;
- precisely the requirements which it imposes on the party or parties giving the covenant(s) in sufficient detail (including the parts of the land to which they are to apply, where relevant) to make them enforceable; and
- that any financial contributions are to be paid to the local planning authority or (by a suitably worded provision in the deed) any other relevant authority responsible for the provision of the particular public services to which the contributions apply.

G.6.5 It might be necessary to define by reference to a plan the proposed site(s) of particular facilities (eg open space) to be provided, or the detailed specification of the purposes to which particular financial contributions are to be put (including any time limits, quality checks, etc. which are to be applied).

G.6.6 It must make it clear when each of its requirements is triggered and whether there are any conditions affecting the performance of that requirement. For example, it should make it clear whether some other event needs to occur, or formal notice needs to be given, before a financial contribution becomes payable; or whether the terms of a transfer of land need to be agreed before affordable housing or some other community benefit is delivered.

G.6.7 Care should be taken to ensure that the obligations fall within the terms of section 106. See for example *Westminster City Council v. Secretary of State* [2013] EWHC 690 (Admin.).

Requirements imposed by unilateral undertakings

G.6.8 If using the unilateral undertaking form of obligation, it is acceptable for it to set out the conditions under which any financial contribution may be made – such as the purpose for which it may be used and the timing or phasing of the payments.

G.6.9 However, a unilateral undertaking should not try to impose requirements or obligations on any person other than the signing party eg it would not be acceptable to try to require a Registered Provider to exchange contracts within a set period.

G.7 Modifying or discharging planning obligations

G.7.1 A deed executed under section 106 cannot provide for its own modification or discharge after a given period or in given circumstances.

G.7.2 Planning obligations, whether section 106 agreements or unilateral undertakings, can usually only be modified or discharged under section 106A of the Act⁹. Section 106A enables modification or discharge to be achieved either by an agreement with the local planning authority (which must be executed as a deed), or by an application to the local planning authority.

G.7.3 Periods within which applications to modify or discharge an obligation can be made, are as follows:

- for obligations entered into on or before 6 April 2010 – an application can be made at any time;
- for obligations entered into after 6 April 2010 – an application can be made after 5 years beginning with the date the obligation has been entered into to.

G.7.4 There is a right of appeal under section 106B if any application is refused.

G.7.5 Great care should be taken in preparation, before executing a unilateral undertaking, so as to avoid any need to modify it subsequently. However, sometimes during the course of a called-in application it becomes clear that changes are required to an executed unilateral undertaking to ensure that it will deliver what is intended. The strong preference is for this to be done by an agreement with the local planning authority as that can provide for the original unilateral undertaking to be superseded. If an application is made the original unilateral undertaking will remain in force (as it cannot be “withdrawn” or “superseded” other than by agreement with the local planning authority), but it will be for the local planning authority to secure enforcement of the preferred version.

G.8 Planning obligations and the provision of affordable housing

G.8.1 This section should be read alongside the relevant sections of the Law Society’s model section 106 agreement (second edition - June 2010).

G.8.2 If a planning obligation provides for affordable housing as part of the proposed development, the Inspector will need to be satisfied that:

- the type(s) of affordable housing which it is proposed to provide are satisfactorily defined;
- where there is a split between the different types of affordable housing it is justified and that there are arrangements to secure it;
- there are clear and specific provisions dealing with the distribution of the affordable housing;

⁹ The Growth and Infrastructure Act 2013 inserted new sections 106BA, BB and BC into the Town and Country Planning Act 1990. This introduced a new application and appeal procedure to review affordable housing obligations on the grounds of viability. Information for applicants and local planning authorities on this measure and the procedures is in the Department for Communities and Local Government guidance - Section 106 affordable housing requirements: review and appeal (April 2013).

- the covenants are drafted in a way which will ensure delivery of the proposed housing. The planning obligation should state who is to be responsible for the construction of the affordable housing;
- if the land to be used for affordable housing is to be transferred (eg to a Registered Provider), the relevant land is clearly identified on a plan, and there is a restriction on development until arrangements for the transfer are made as set out in the planning obligation or in a document annexed to it;
- if the Registered Provider is a party to the planning obligation, it includes positive covenants to ensure that the affordable housing will be constructed and (by a suitably worded provision) transferred to the Registered Provider (possibly with a cascading mechanism in case of default by the preferred Registered Provider);
- if none of the parties to the planning obligation is a Registered Provider (and assuming the applicant itself is not going to build the affordable housing), there are adequate and reasonable arrangements for securing a Registered Provider;
- the phasing arrangements for delivery of the affordable housing are satisfactory. The planning obligation should not allow most of the market housing to be sold before the affordable units are available for occupation. The provision/occupation of both types of housing should be appropriately synchronised;
- if the affordable housing is to be provided off-site, or a financial contribution made in lieu of provision, there is robust justification for this, and what is on offer is of broadly equivalent value (see paragraph 50 of the Framework);
- the planning obligation contains adequate controls to ensure that any affordable housing is retained as affordable for an unlimited duration;
- the arrangements for allocating the affordable housing (eg nomination rights involving use of the local authority's housing waiting list or allocations to qualifying persons by a Registered Provider) are satisfactory;
- if the planning obligation includes a cascade arrangement, there are adequate time-periods at each stage, especially before triggering any "fall-back" clause which would enable the affordable housing to revert to the developer for sale on the open market; and
- the proposed arrangements for managing the affordable housing are adequate.

G.9 Planning obligations for pooled contributions/tariffs

G.9.1 The Community Infrastructure Levy Regulations 2010, Regulation 123(3) as amended concerns limitations on the use of planning obligations in the determination of planning applications and appeals. Following the end of the transitional period on 6 April 2015, the requirements of the Regulation came into effect. The Regulations are available [online](#). For further information please see planning practice guidance [paragraphs 99-104](#).

G.9.2 Broadly, following the end of the transitional period, a planning obligation may not constitute a reason for granting planning permission where it provides for the funding or provision of an infrastructure project or type of

infrastructure, and five or more separate planning obligations have previously been entered into on or after 6 April 2010 that already provide for the funding or provision of that project or type of infrastructure. Obligations requiring a highway agreement to be entered into are not limited in this way.

G.9.3 Planning practice guidance [paragraph 24](#) outlines that local planning authorities are required to keep a copy of any planning obligation, together with details of any modification or discharge of the planning obligation, and make these publically available on their planning register.

G.9.4 Where the local planning authority considers that a contribution/contributions secured by a planning obligation or obligations would be required to make the appeal proposal acceptable in planning terms, we ask that it should also clarify the number of planning obligations which have been entered into on or after 6 April 2010 which provide for the funding or provision of a project, or provide for the funding or provision of that type of infrastructure for which it is seeking an obligation in relation to the appeal proposal. This information is required for each obligation sought by the local planning authority.

G.9.5 The local planning authority (and the appellant) should inform us as a matter of urgency of any further changes in circumstances on this matter as the appeal progresses, i.e. if any further relevant obligations have been entered into as a result of the local planning authority granting permission and/or appeals being allowed. It is in the interest of both the local planning authority and the appellant to do so, as any failure to keep us informed could result in delays in the processing of the appeal and/or, at worst, unlawful appeal decisions being made.

Glossary

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|---|--|
| Affordable housing | See National Planning Policy Framework [DCLG, March 2012]. |
| Agreement | A legal document executed and delivered by all the parties named. Must be between 2 or more parties. |
| Attorney | A person appointed by another to act in the latter's place. |
| Benefit | Something, for example an area of open space, a community facility, an item of infrastructure, or a financial contribution, which is provided by means of a planning obligation. |
| Certified copy | A copy of a legal document which has been signed and certified as a true copy by the person to whose custody the original is entrusted. |
| Common seal | See Sealing below. |
| Completed | A legal document that has been executed and delivered to the other party or parties unconditionally. |
| Completion | The act of completing a legal document. |
| Condition precedent | A provision which delays the right or requirement to do something until another action or event has occurred. |
| Covenant | A binding promise given by one party to another to observe or perform an obligation. |
| Deed | A legal document that is executed as a deed. |
| Delivered | A deed is delivered at the point at which it takes effect, that is to say when it has been both executed and dated. |
| Discharge | Release from a planning obligation. |
| Enforceable / Legally enforceable | Binding in a legal sense and capable of being enforced if not complied with. |
| Estate contract | A contract by an owner of land to convey the land to another. |
| Evidence of title / Details of title | Documents which evidence ownership of property, (also sometimes referred to as Title Deeds – see below.) |
| Executed | See Appendix G.2. |
| Instrument / Legal instrument | A formal legal document. |
| [Legal] interest in land | An interest in land includes freehold ownership, leasehold interest, interest as a mortgagee, etc. Under section 106 it is a pre-requisite to entering into a planning obligation. |
| Landowner | Person holding a legal estate in land, eg a freeholder or leaseholder. |
| Liability | A duty or obligation enforceable by law. |
| Mortgagee | A person with security against a property usually by way of a loan. |

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|---|---|
| Obligation / Planning obligation | <p>An obligation in the strict sense is something which a party is legally bound to do (eg they may be bound by a section 106 agreement or unilateral undertaking to make a financial contribution towards educational facilities, lay out an access road, and so on).</p> <p>However the term "obligation" is also sometimes used as shorthand for "planning obligation", which in this generic sense refers to both section 106 agreements and unilateral undertakings.</p> |
| Option to purchase | A right (made by agreement) to buy or not, within a certain time. |
| Power of Attorney | Legal document authorising a named person to sign documents on another's behalf in specified circumstances. |
| Registered Provider | An organisation which is registered with the Homes and Communities Agency as a provider of social housing. This can include Housing Associations, Local Authorities and private companies. |
| Section 106 agreement | An agreement made under section 106 of the Town and Country Planning Act 1990, containing covenants from one or more parties (who must have a legal interest in the land) to another party (usually the local planning authority). |
| Sealing (of a legal document) | Method of signing a document by means of a corporate or common seal. See Appendix G.2. |
| Successor(s) in title | Persons who are entitled to succeed the current holder(s) of a title to a property. |
| Title | A right to ownership of land or property. |
| Title Deed | A legal document which provides evidence of title to the land or property. |
| Unilateral undertaking | A planning obligation executed solely by the party or party giving the covenants and not by the party (usually the local planning authority) having the benefits of those covenants. In this way it differs from a section 106 agreement which is executed by all the parties including the local planning authority. |
| Witness / witnessing | A document is witnessed if it is signed in the presence of one or more other persons – the witness(es) – who then also sign to indicate that they have witnessed the signature. |

Execution as a deed

Section 106(9) of the Town and Country Planning Act 1990 (as substituted by section 12 of the Planning and Compensation Act 1991) states that a planning obligation may not be entered into except by an instrument [that is to say, a formal legal document] executed as a deed.

Execution of a deed can be fulfilled in the following ways:

1. Execution by an individual

Section 1(3) of the Law of Property (Miscellaneous Provisions) Act 1989 provides that an instrument is validly executed as a deed by an individual if:

- (i) it is signed by him in the presence of a witness who attests the signature;
(or, at his direction and in his presence and the presence of two witnesses who each attest the signature)

and

- (ii) it is delivered as a deed by him or a person authorised to do so on his behalf.

Example

The above requirements are satisfied if:

The following words appear in the document: *In Witness to the above the Owner has executed and delivered this Deed the day and year first above written.*

and

The document is signed in the following manner:

Signed as a Deed by:)
A N Other) *(A N O signs here)*
In the presence of)

.....
(Signature of witness)

.....
(Name of witness in print)

.....
.....
.....
(Address of witness)

Signed as a Deed by)
J R Ltd) [signatures of authorised signatories¹⁰ here]
Acting by)

.....
(Signature) (Signature)

.....
(Name and position (Name and position
in print) in print)

(iii) By signature in the presence of a witness

The document should be signed in the following manner:

Signed as a Deed by)
JR Limited) [signature of Director here]
Acting by)

.....
(Signature) (Signature of witness)

.....
(Name and position (Name of witness)
in print)

3. Other scenarios

If it is proposed to execute a document in any other way, documentary evidence that the signatories are authorised to sign should be provided. For example:

- If a Company signs on behalf of an individual or another Company - section 44(8) of the Companies Act 2006 applies.
- If the office of Director or Secretary of a Company is held by an individual of a Firm (e.g. a firm of accountants or solicitors) - section 44(7) of the Companies Act 2006 applies.
- If a Building Society or Bank refers to "authorised signatories" who are not Directors or the Company Secretary.
- If a document is signed on behalf of a Trust by named Trustees.
- There are special provisions for execution under a power of attorney.
- In the case of foreign corporations, it is usually necessary to obtain opinion letters from suitable foreign lawyers to confirm due execution.

¹⁰ See above for definition of "authorised signatories".

4. General note

If parties are legally represented we would expect their lawyers to inform the Inspector as to whether or not they are satisfied with the execution of the obligation.

H What is "Expert evidence"?

H.1 Who provides expert evidence?

H.1.1 Expert evidence is evidence that is given by a person who is qualified, by training and experience in a particular subject or subjects, to express an opinion. It is the duty of an expert to help an Inspector on matters within his or her expertise. This duty overrides any obligation to the person from whom the expert has received instructions or by whom he or she is paid.

H.1.2 The evidence should be accurate, concise and complete as to relevant fact(s) within the expert's knowledge and should represent his or her honest and objective opinion. If a professional body has adopted a code of practice on professional conduct dealing with the giving of evidence, then a member of that body will be expected to comply with the provisions of the code in the preparation and presentation (written or in person) of the expert evidence.

H.2 Endorsement

H.2.1 Expert evidence should include an endorsement such as that set out below or similar (such as that required by a particular professional body). This will enable the Inspector and others involved in a called-in application to know that the material in a proof of evidence, written statement or report is provided as 'expert evidence'. An appropriate form of endorsement is:

"The evidence which I have prepared and provide for this called-in planning application reference /xxx (in this proof of evidence, written statement or report) is true and has been prepared and is given in accordance with the guidance of my professional institution and I confirm that the opinions expressed are my true and professional opinions."

H.2.2 Giving expert evidence does not prevent an expert from acting as an advocate so long as it is made clear through the endorsement or otherwise what is given as expert evidence and what is not.

I What happens if an error has been made?

I.1 Background

I.1.1 Under section 56 of the Planning and Compulsory Purchase Act 2004, certain types of errors within decision notices (sometimes referred to as the "Slip Rule") may be corrected if it is considered to be in the public interest to do so.

I.1.2 The Act requires any person who wants a decision to be corrected to request this in writing and within the relevant High Court challenge period. This is within 6 weeks from the date of the decision notice for called-in applications.

I.1.3 If any person wants the Secretary of State to consider correcting a decision they should explain clearly what error they think has been made.

I.2 Contacting the Department for Communities and Local Government

**The Department for Communities and Local Government
2 Marsham Street
London
SW1P 4DF**

Phone: 0303 444 1325

Email: PCC@communities.gsi.gov.uk

J Feedback and complaints

(Please note: this annexe is common to all our procedural guides, therefore in general it applies to appeals and to called-in applications. Depending on what stage the called-in application has reached we may send any feedback or complaint to the Department for Communities and Local Government to respond on behalf of the Secretary of State.)

J.1 How do we handle feedback?

J.1.1 We try hard to ensure that everyone who uses the planning system is satisfied with the service they receive from us. We welcome feedback and like to hear that we have provided a good service. However although we aim to give the best service possible, there will unfortunately be times when things go wrong and we fail to achieve the high standards we set ourselves.

J.1.2 We appreciate that many of our customers will not be experts on the planning system and for some it will be their one and only experience of it. We consider that people's opinions are important and realize that they may be strongly-held.

J.1.3 All correspondence we receive after the appeal decision is issued is handled by the Customer Quality Team which works independently of all of our casework and Inspector teams. We will reply as soon as possible in clear, straightforward language, avoiding jargon and complicated legal terms.

J.1.4 People can contact us by email, write to us, or phone us (see 'Contacting us' below). Whilst we are happy to talk to people on the phone, where there are a number of issues to relay it may be easier to put these in writing setting out the points clearly. We will acknowledge all correspondence, advise who is dealing with it and provide a timescale for replying. We aim to reply to 80% of all correspondence within 20 working days.

J.2 Looking at appeal documents

J.2.1 Before making a complaint it would usually be a good idea to look at the appeal documents. We normally keep appeal files for one year after the decision is issued, after which they are destroyed. People can look at appeal documents at our office in Bristol, by contacting us to make an appointment (see 'Contacting us' below). We will obtain the file from our storage facility ready for it to be viewed at the appointment.

J.2.2 Alternatively, if visiting Bristol would involve a long or difficult journey it may be more convenient to arrange to view the local planning authority's copy of the file, which should be similar to ours.

J.3 How we investigate complaints

J.3.1 There is no time limit in which complaints must be made, but we would normally expect them to be made promptly once the reason for the complaint

becomes apparent. As explained in paragraph J.2.1 above, we normally only keep appeal files for one year after the decision is issued, after which they are destroyed. Whilst we are able to deal with complaints that are older than that, our ability to do so thoroughly may be restricted if the file has been destroyed, and the recollections of the people concerned will naturally fade over time. In such circumstances, complainants will probably need to send us documents to support their complaint.

J.3.2 It is the job of the Customer Quality Team to investigate complaints about procedure, decisions or an Inspector's conduct. All complaints are investigated impartially and as thoroughly as possible.

J.3.3 However, to help us gain as full a picture as possible, we may need to ask the Inspector or other staff for comments. This helps us to decide whether an error has been made. If this is likely to delay our full reply we will let the complainant know.

J.3.4 Sometimes complaints arise due to misunderstandings about how the appeal system works. When this happens we will try to explain things as clearly as possible. Sometimes there is confusion about what the appeal decision means. In planning appeals (under section 78 of the Town and Country Planning Act 1990) 'Allowed' means that planning permission has been granted, 'Dismissed' means that it has not.

J.3.5 Planning appeals often raise strong feelings and it is inevitable that there will be at least one party who will be disappointed with the outcome of an appeal. This often leads to a complaint, either about the decision or the way the appeal was handled.

J.3.6 Sometimes the appellant, the local planning authority or a local resident may have difficulty accepting a decision simply because they disagree with it.

J.3.7 We appreciate that the party, especially an appellant, that 'loses' an appeal will be disappointed but it is very important to understand that we cannot re-open an appeal to re-consider its merits, add to what the Inspector has said or change the decision. We will however do our best to clarify things, if it is necessary and possible.

J.3.8 Sometimes a complaint is not one we can deal with (for example, complaints about how the local planning authority dealt with another similar application), in which case we will explain this and suggest who may be able to deal with the complaint instead.

J.3.9 Similarly we cannot resolve any issues someone may have with the local planning authority about the planning system or the implementation of a planning permission.

J.3.10 If the complainant considers that our reply has not adequately responded to their concerns, our policy is that a senior manager will review their complaint and send a final reply.

J.4 What we cannot change

J.4.1 As we have already stated above, we **cannot change the Inspector's decision**, or re-open the appeal once the decision has been issued.

J.4.2 Although we can rectify certain minor errors (please see Annexe I), we cannot reconsider the evidence the Inspector took into account or the reasoning in the decision or change the decision reached even if we acknowledge that an error has occurred. This can only be done following a successful High Court challenge resulting in the appeal being returned to us to decide it again, please see Annexe D.

J.5 What we will do if we have made a mistake

J.5.1 We are keen to learn from our mistakes and try to make sure they do not happen again. Complaints and our responses to them are therefore one way of helping us improve the appeals system.

J.5.2 If a mistake has been made we will write explaining what has happened and we will apologize. The Inspector, or the administrative member of staff, and their line manager will be told that the complaint has been upheld and we will look to see if lessons can be learned from the mistake, such as whether our procedures can be improved or training given, so that similar errors can be avoided in future.

J.5.3 Remedies which we may offer include:

- an apology, explanation, and acknowledgement of responsibility;
- remedial action which may include:
 - reviewing service standards;
 - revising published material;
 - revising procedures to prevent the same thing happening again;
 - training or supervising staff;

or any combination of these.

J.5.4 Where maladministration or an error by us has led to injustice or hardship, we will try to offer a remedy that returns the complainant to the position they would have been in otherwise. If that is not possible, we will provide compensation for additional expenses incurred as a direct result of an acknowledged error by us, where there are compelling reasons to do so. However, certain circumstances will be beyond our control, and where this is the case we will not meet a claim for financial compensation unless there are very exceptional circumstances.

J.5.5 We will consider carefully requests for financial compensation and would expect these normally to be received within 6 months of the date of the error or of any subsequent appeal decision by us related to that error (eg a decision on an appeal that we have had to re-determine). However in exceptional circumstances (which should be explained) we will consider requests outside of this time limit.

J.6 Role of the Ombudsman

J.6.1 The Parliamentary and Health Service Ombudsman can investigate complaints of maladministration against Government Departments or their Executive Agencies. Normally the Ombudsman will not investigate a complaint:

- unless the complainant has followed our complaints process completely and is still not satisfied with our replies; or
- if there is a legal route that can be followed to challenge a decision.

J.6.2 For appeals and called in applications there **is** a legal route, for further information please see Annexe D.

J.6.3 Complaints to the Ombudsman must be made through a Member of Parliament. We would normally expect such a complaint to be made within 6 months of the date of our final reply to the original complaint, but it is for the Ombudsman's office to determine whether they will accept a case.

J.6.4 Even if the Ombudsman does decide to investigate a complaint the Ombudsman **cannot change the Inspector's decision.**

J.7 Frequently asked questions

"Why did an appeal succeed when local people were all against it?" – The representations of local people are important but they are likely to be more persuasive if based on planning reasons, rather than a basic like or dislike of the proposal. Inspectors have to make up their own minds based on all of the evidence, including the representations, whether the appeal should be allowed or dismissed.

"How can Inspectors know about local feeling or issues if they don't live in the area?" – Using Inspectors who do not live locally ensures that they have no personal interest in any local issues or any ties with the appellant or their agent, the local planning authority or its policies. However, Inspectors will be aware of policies and local opinion from the information provided by the appellant and the local planning authority and the representations people have made on the appeal.

"I wrote to you giving my opinion, why didn't the Inspector mention this?" – Inspectors must give reasons for their decision and take into account all representations received but it is not necessary to list every piece of evidence.

"Why did my appeal fail when similar appeals nearby succeeded?" – Although two cases may be similar, there will nearly always be some aspect of a proposal which is unique. Each case must be decided on its own particular merits taking into account the evidence provided by the parties on that case (which is likely to differ from case to case).

"I've just lost my appeal, is there anything else I can do to get my permission?" – Perhaps you could change some aspect of your proposal to increase its acceptability. For example, if the Inspector thought your proposal would look out of place, could it be re-designed to be more in keeping with its surroundings? If so, you can make a revised application to the local planning

authority. Talking to a planning officer about this might help you explore your options.

J.8 Contacting us

Customer Quality Team
The Planning Inspectorate
4D Hawk Wing
Temple Quay House
2 The Square
Bristol
BS1 6PN

Phone: 0303 444 5000
Email: feedback@pins.gsi.gov.uk
Website: [feedback](#)