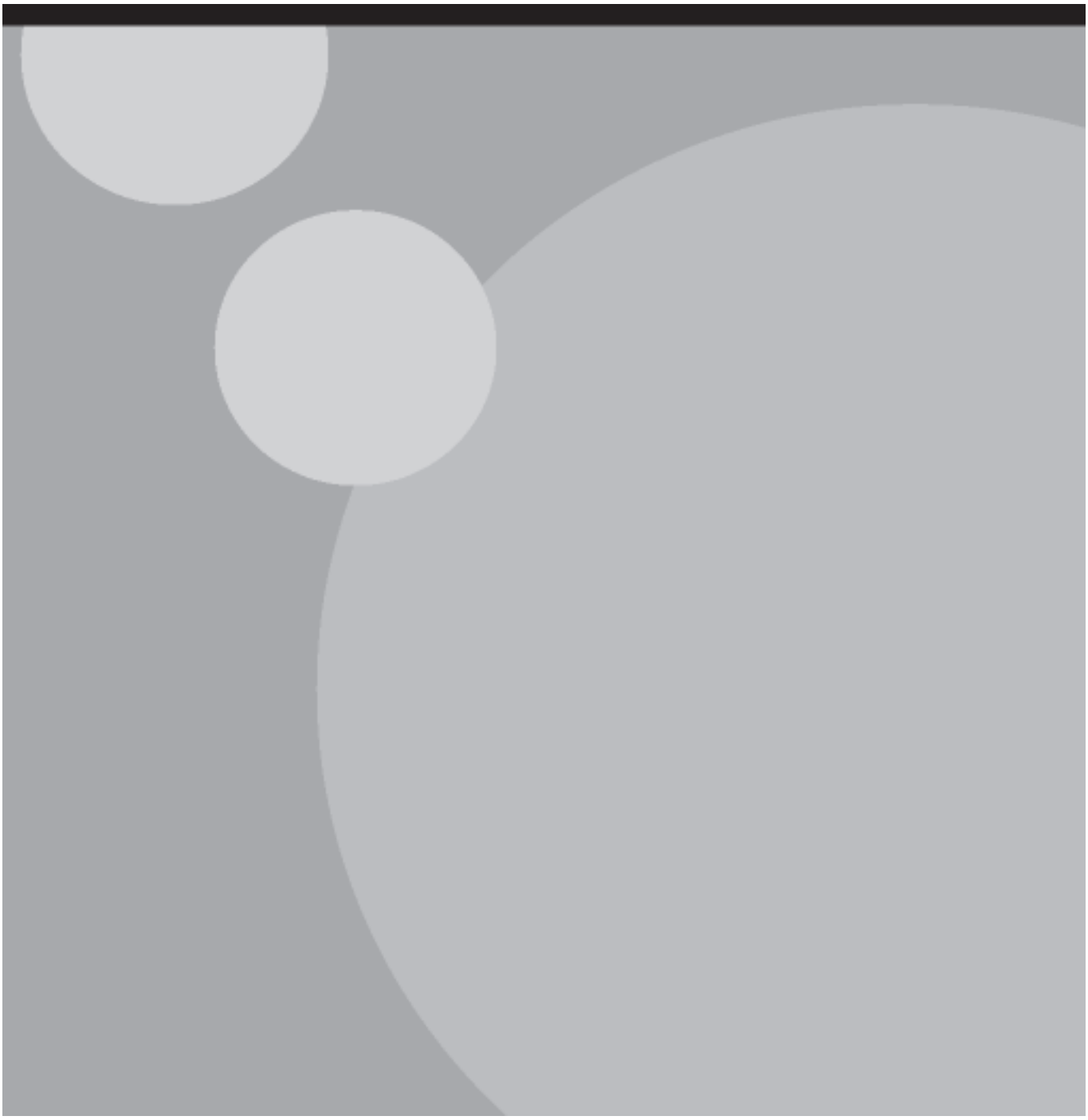
Communities and Local Government

Planning Act 2008

Guidance for the examination of applications for development consent for nationally significant infrastructure projects: Consultation



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Guidance for the examination of applications for development consent for nationally significant infrastructure projects: Consultation

April 2012
Department for Communities and Local Government

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April, 2012

ISBN: 978-1-4098-3451-9

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Introduction

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

2. Though the Secretary of State bears legal responsibility for it, the Government has made the decision to delegate responsibility for accepting and examining applications to the Planning Inspectorate ("the Inspectorate"), which will allocate appointed persons to act as the Examining Authority for individual applications. Where this guidance refers to the Secretary of State users should bear in mind that, in practice, the Inspectorate will carry out all functions on the Secretary of State's behalf, except for decision-making, and it is to the Inspectorate that all communication should be directed in the first instance. The relevant provisions of the Localism Act were commenced on 1 April 2012 and where this guidance refers to the Planning Act, unless otherwise stated, it should be read as the Planning Act as amended by the Localism Act

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

Purpose

4. This guidance is provided for the Inspectorate and the Examining Authority, when carrying out their delegated functions of examining applications for development consent for major infrastructure projects. It is also for the benefit of applicants, their legal advisers, other interested parties and the general public. It is a key mechanism for promoting best practice, ensuring consistent application of examination procedures and for promoting fairness, transparency and proportionality. This guidance also sets out the criteria which the Secretary of State will apply when deciding on the examination process for a specific application.

Legal status

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

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

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

The examination process

General

7. When the Secretary of State receives an application for development consent for a major infrastructure project, he or she must determine whether the application complies with the acceptance criteria set out in s55 of the the Planning Act. When deciding whether to accept an application, the Secretary of State must be satisfied that the application has been prepared to a satisfactory standard, whilst having regard to the standards and guidance set out in section 37 of the Planning Act. The application must also comply with the Regulations made under Chapter 2 of Part 5 (pre-application procedure) of the Planning Act. This means that the Secretary of State must consider, among other things, whether the applicant has properly carried out a pre-application consultation in accordance with the Regulations and guidance[2].

8. Where the Secretary of State considers that the application is in accordance with the provisions of the Planning Act and that it can be accepted, the applicant must be notified of the acceptance by the end of the period of 28 days beginning with the day after the day on which the application was received.

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

The Examining Authority

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

11. The examination and consideration of an application will either be conducted by a group of three or more appointed persons as a panel, or by a single

[2] Planning Act 2008: Nationally significant infrastructure projects Application Form guidance; Planning Act 2008 Guidance on the Pre-Application Process

appointed person. In both cases, following examination a recommendation will be put to the Secretary of State who will then have three months to make a decision. Section 61 of the Planning Act provides that it is for the Secretary of State to decide whether an application should be handled by a single appointed person or a Panel.

Criteria for Appointing the Examining Authority

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

A) The complexity of the case

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

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

B) Level of public interest in the outcome

Anyone is entitled to support or object to any application for development consent. Individuals may have social, political, environmental or purely personal concerns about a particular development proposal. Each application for a major infrastructure project is likely to be unique, and the level of public interest generated will vary greatly depending on the size, scale, location and nature of the proposed development.

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

parties can make oral representations about the application to the Inspectorate.

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

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

Who can take part in examining the application?

15. Section 102 of the Planning Act, and The Infrastructure Planning (Interested Parties) Regulations 2010, define the key bodies and individuals who have important roles in the examination of applications.

Interested parties

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

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

- the applicant
- Persons who have been notified of the acceptance of the application under section 56(2)(d)
- the Marine Management Organisation for relevant applications
- the local authority or authorities where the land for development is located
- the Greater London Authority where the land is in Greater London; and

- persons who have made “relevant representations” about the application to the Examining Authority (see below)

18. The Localism Act makes several important changes to the interested party provisions. First, statutory parties and local authorities adjacent to the autjhority in which the development is located are no longer automatically interested parties. They will be involved in the process up to, and including, the preliminary meeting, but must make a relevant representation, thereby becoming interested parties, if they are to participate further. Second, people who believe themselves to be in one of the categories set out in s102B may apply to become an interested party after the examination of the application has begun. The Examining Authority must consider the matter, and if the.Examining Authority agrees that that person falls with section 102B, must inform that person that they have become an interested party. The Examining Authority may also inform someone that they may fall within section 102B, but is under no obligation to seek out eligible parties. Third, interested parties may deregister as an interested party by writing to the Examining Authority, informing them of their wishes.

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

Relevant representations

20. A “relevant representation” is defined in section 102(4) of the Planning Act. Treating any person who has made a relevant representation as an interested party for the purposes of the examination will ensure that people other than applicants, statutory parties, and relevant local authorities, who have an interest in the application, can register their interest and assert their right to make representations about it to the Inspectorate.

21. A representation will only be “relevant” if it is in accordance with regulation 4 of the Infrastructure Planning (Interested Parties) Regulations 2010, and is received by the Secretary of State by the deadline specified in the application acceptance notice given by the applicant. A representation is not relevant to the extent (but only to the extent) that it contains material about compensation for compulsory acquisition of land or an interest in or right over land; material about the merits of policy set out in a national policy statement; or material that is vexatious or frivolous.

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

23. These outlines of principal submissions have two functions. First, they provide advance warning of arguments which the various participants are proposing to deploy at the examination. It should be possible to identify from these outlines the issues that are likely to feature most prominently during the examination process. Secondly, they provide the information that the Secretary of State requires to structure and programme the examination. In light of what is said in them, the Secretary of State may wish to invite participants who appear to hold the same or similar views to consider collaborating to present a single case at any hearing. The outline of principal submissions will also help the Secretary of State see whether there are any relevant issues which are at risk of not being properly covered, and to consider how to remedy any deficiencies, for example by inviting persons who have expert knowledge of the matter concerned to take part in the examination.

24. Where a person has not submitted a relevant representation within the specified period and decides to participate at a later stage, the Examining Authority may consider whether to exercise its discretion to allow the person to participate in the examination of the application. The relevant representation should be accompanied by an explanation for the late submission.

Vexatious and frivolous representations

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

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

Affected persons

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

28. It should be noted that for applications which include the compulsory purchase of land, the applicant is under a duty under section 59 of the Planning Act to notify the Secretary of State of the names, and such other

details as may be prescribed, of each affected person in relation to the application.

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

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

Other persons

31. Although the legislation provides that only interested parties (or their appointed representative) have an automatic right to participate in the examination of an application for development consent for a major infrastructure project, the Examining Authority is able to permit any other person to submit written representations about the application, or make oral representations about the application at any hearing held for the purpose of examining the application. This is provided for in the Procedure Rules[4].

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

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

[3] Planning Act 2008 Guidance relating to procedures for the compulsory Acquistion of land

[4] Planning Act 2008 The Infrastructure Planning (Examination Procedure) Rules 2010

How the application is examined

34. It is for the Examining Authority to determine how the application is to be examined. However, the Examining Authority, in making the decision on how the application is to be examined, must comply with the Procedure Rules made by the Lord Chancellor.

35. The examination of applications is to be carried out in public except where, as set out in s95A, the Secretary of State intervenes in an application in the interest of defence or national security and directs that representations on matters relating to defence or national security are to be made to a specified person instead of being made in public.

36. "Carried out in public" means that all meetings and hearings presided over by the Examing Authority (as opposed to a person prescribed by the Secretary of State in the interests of defence or national security) are to be held in public, and the Examining Authority may only take into account any representation or evidence or any other information received from any person before the examination opens or during the examination provided that it is made available for public inspection in accordance with rule 21 of the Procedure Rules.

Initial assessment of the application

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

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

Preliminary meeting

39. The Examining Authority is required to hold a preliminary meeting after it has made an initial assessment of the application, and it will invite the applicant, each statutory and interested party, each relevant local authority as set out in the Planning Act and any other person the Examining Authority thinks is appropriate, giving them at least 21 days' notice. In most cases a preliminary meeting should be held within a period of six weeks from the day after the deadline for receipt of relevant representations as set out in the applicant's notification to interested parties that its application has been accepted by the Secretary of State.

40. The purpose of the preliminary meeting is to assist the Examining Authority in determining how the application should be examined. The Examining

Authority will hear any representations the invited attendees wish to make in this regard. It may also use the meeting to hear more about the issues which have been raised to determine what needs to be explored during the examination, which meetings need to be held, who should be invited to attend and the overall timetable for the process. The preliminary meeting should not be used to discuss the merits of the application or to hold a substantive discussion on a particular issue - these will be discussed during the examination phase.

41. Investing time up front, ahead of the examination itself, to identify issues and work out how best to consider them is vital to ensuring an effective and efficient examination process. This will ensure that the Examining Authority makes a proper assessment of the issues and gives interested parties the opportunity to share their views on how the application should be handled.

42. The Examining Authority will, ahead of the preliminary meeting, notify all invitees of the matters it wishes to discuss and provide a clear statement of what it, on the information before it, considers to be the key issues. This is intended to assist the Examining Authority and other parties in preparing for the examination of the application. It is not intended, though, to be a definitive statement of the issues to be considered since the Examining Authority must be free to hear all evidence that it believes is relevant to its consideration of the case. The Examining Authority may also give an indication of those matters which it determines do not need to be considered or which need not be considered in great detail during the examination process.

43. The Examining Authority will make the application and relevant representations available to all participants in accordance with rule 21 of the Procedure Rules[5]. In any event, arrangements will be made for copies of all representations to be available for public inspection.

Procedural decision

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

Timetable

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

[5] Planning Act 2008 The Infrastructure Planning (Examination Procedure) Rules 2010

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

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

48. Since the full extent of the issues to be investigated will not always be clear at the outset of the examination of an application, which will make providing exact timings difficult, the Examining Authority should keep the timetable under review at all times. If, at any point during the examination, the Examining Authority believes that the timetable will not be met for any reason, including any unforeseen circumstance, any difficulty concerning any stage of it, or any change to the statutory timetable, then it must prepare a revised timetable and notify all interested parties, and any other persons it invited to the preliminary meeting, of the changes to the timetable.

49. The timetable must also specify the date by which the Examining Authority is to receive the local impact report from the relevant local authority, or authorities as the case may be, and the date by which the Examining Authority is to receive comments on the contents of the local impact report from the interested parties.

50. The timetable is also to specify the date by which the Examining Authority is to receive any statement of common ground from the applicant and any interested parties.

Local Impact Report

51. The Local Impact Report is a written report submitted by a local authority detailing the likely impact of the proposed development on the local authority's area, or any part thereof. This report is distinct from any representation a local authority may chose to make in respect of the merits of an application and any subsequent approvals that should be delegated to the local authority for determination (e.g. on detailed designs). The Examining Authority will invite local authorities to submit a Local Impact Report, listing the impacts, each with an associated weighting.

52. This report may differ from other representations made by the local authority, in that Local Impact Reports are intended to allow local authorities to represent the broader views of their residents. Consequently, a local

authority which has been invited to submit a Local Impact Report may decide to cover a broad range of local interests and impacts, including economic and social ones. The impacts should be presented in terms of their positive, neutral and negative effects.

53. The Local Impact Report should be used by local authorities as the means by which they submit their views to the Examining Auhtority on the likely impacts of the proposed development on their area, based on their existing body of local knowledge and evidence on local issues. Hence there is no need for the local impact report to replicate the Environmental Statement. The Examining Authority and the Secretary of State must have specific regard to this report when making their recommendation and decision.

54. Normally, the local impact report should be received by the Examining Authority within a six week period starting from the day following the end of the preliminary meeting, unless the Examining Authority considers that the relevant local authority (or authorities) requires a longer period to prepare the report because of the number of issues raised by the application. Local authorities are under no obligation to submit a report.

55. Interested parties are to be given not less than 21 days to submit their comments on the local impact report to the Examining Authority, starting from the day after the local impact report was made available to them by the Examining Authority.

Statements of common ground

56. A statement of common ground is a written statement prepared jointly by the applicant and another party or parties, setting out any matters on which they agree. A statement of common ground is useful to ensure that the evidence at the examination focuses on the material differences between the main parties. Effective use of such statements is expected to lead to a more efficient examination process.

57. The statement should contain the basic information on which the parties have agreed, such as the precise nature of the proposed infrastructure, a description of the site and its planning history. In addition to basic information about the application, agreement can often be reached on technical matters and topics that rely on basic statistical data. For example, traffic evidence can be simplified and the issues refined by agreeing matters such as traffic flows, design standards, and the basis for forecasting the level of traffic the application would generate. The topics on which agreement might be reached in any particular instance will depend on the matters at issue and the circumstances of the case.

58. As well as identifying matters which are not in real dispute, it may also be useful for the statement to identify areas where agreement is not possible. The statement should include references to show where those matters are dealt with in the written representations or other documentary evidence. Agreement should also be sought before the examination commences about the requirements that any granted order should contain.

59. How such agreement is reached will vary depending on the nature and complexity of the application and the matters at issue. Where there are only two or three major parties involved and the issues are fairly straightforward, the Examining Authority may encourage the parties at the preliminary meeting to get together with a view to producing a single statement of common ground containing agreed facts. For major applications it may be necessary for the applicant to agree a number of statements of common ground with different parties, each focused on separate aspects of the application.

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

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

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

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

Appointment of assessor

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

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

64. Where an assessor has been appointed to assist the Examining Authority, the Examining Authority must notify persons entitled to participate in the examination of the assessor's name and the matters on which the assessor is to assist the Examining Authority.

65. Although an assessor may be appointed at any time during the examination of the application, in most cases the appointment is likely to be made at the pre-examination stage. This is because the initial assessment of the application would usually have identified to the Examining Authority the issues that require further examination and helped it assess whether these could be examined more efficiently and expediently with the assistance of an assessor.

66. Therefore, in most cases, before the examination of the application begins, the Examining Authority should consult the assessor and define the latter's role and contributions to the running of the examination, and to the Examining Authority's report. The assessor should be introduced at the preliminary meeting and any subsequent hearing and his or her role explained. Where the assessor is appointed at some stage after the examination of the application has begun, the assessor should be introduced, and his or her role explained, as soon as is practicable.

Appointment of barrister, solicitor or advocate

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

Written representations

Procedure for written representations

68. Written representations are one of the main types of evidence which the Secretary of State will take into account when taking a decision. It is envisaged that in most cases there will be at least two rounds of written representations. This will include the relevant representations made by the interested parties in accordance with rule 3 of the Procedure Rules, and any detailed written representations requested by the Examining Authority at or subsequent to the preliminary meeting.

69. In the majority of cases, it is likely that the Examining Authority will require further written representations to obtain greater details of interested parties' cases. The Examining Authority will normally request written representations at the preliminary meeting, or as soon after as is practicable, giving at least 21 days' notice.

70. The written representations should include each party's detailed case (the reasons why they support or oppose the application), and identify those parts of the application proposals or specified matters with which they agree and each part with which they do not agree, stating reasons for any disagreement.

71. Participants should normally also provide with their written statements, the data, methodology and assumptions used to support their submissions. If this is not done it could cause delays in the examination of an application. For example, if extensive tables, graphs, diagrams, maps etc. are not

produced until after an issue-specific hearing has opened, this can cause unnecessary delay, and the other interested parties might well need extra time to study these. If new material is raised at a very late stage which another interested party has not had adequate time to consider, delays in the examination of the application may result and, unless there is good reason for the late submission, an award of costs could arise.

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

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

74. The fact that no relevant representations have been received to an application by the Examining Authority should not be taken to mean that the Secretary of State would automatically grant consent to the applicant. Instead, the Examining Authority is to proceed with examining the application against the criteria set out in any relevant the National Policy Statement, whilst having regard to any local impact report submitted by the relevant local authority or relevant local authorities, and any matters prescribed by the Secretary of State in relation to the development of the description proposed.

Hearings

Notification of hearings

75. The Government's aim, in cases where hearings are required, is for the Examining Authority to fix as early a hearing date as possible. Once a date has been fixed, it should be changed only for exceptional reasons. The venue for the hearings should afford adequate facilities for those with special needs.

76. The Examining Authority is to notify all those entitled to appear at compulsory acquisition and open-floor hearings (that is, affected persons and interested parties respectively) of the date by which they must notify the Examining Authority of their wish to be heard at such hearings. The notification should be made as soon as is practicable after the date specified for the receipt of relevant representations.

77. The notification must give those entitled to appear at the hearings at least 21 days' notice of the date, time and place fixed for the holding of the hearing. In practice, it may normally be possible to give much more notice.

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

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

Specific issue hearings

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

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

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

Compulsory acquisition hearings

83. Where the application includes a request for compulsory acquisition, the Examining Authority will, as soon as is practicable after the date specified for the receipt of relevant representations, notify all affected persons of the date by which it is to receive requests to hold a compulsory acquisition hearing.

84. Where the Examining Authority receives one or more requests for a compulsory acquisition hearing from affected persons within the date specified, it must cause a hearing to be held at which all affected persons are invited and can make oral representations about the compulsory acquisition requests.

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

Open-floor hearings

86. As soon as is practicable after the date specified for the receipt of relevant representations, the Examining Authority will notify all interested parties of the date by which it is to receive requests to hold an open-floor hearing.

87. If the Examining Authority receives one or more requests for an open-floor hearing from interested parties before the specified deadline, then it must arrange for an open-floor hearing to be held. The Examining Authority will invite all interested parties to the open-floor hearing, giving them not less than 21 days' notice. All interested parties will have an opportunity to make oral representations about the application.

Procedure at hearings

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

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

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

91. Rule 14 of the Procedure Rules requires that oral submissions must be based on an interested parties' relevant or written representation. This is to ensure that the hearing can focus primarily on the matters for which it has been arranged. However, subject to the Examining Authority's discretion as to the conduct of the hearing, rule 14 does not prevent someone from

referring to matters not included in their written representation where it is relevant to the issues under consideration at the hearing, or to the examination more generally.

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

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

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

95. It is expected that in formulating their questions, the Examining Authority will have discussed with interested parties the issues that require testing – most likely at the preliminary meeting, but this can be anytime throughout the examination process – and the information that may need to be obtained from the person making the oral representations which the parties might require to enable them to present their cases properly.

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

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

98. Where the Examining Authority permits a party to ask questions of a person making oral representations at a hearing, it will determine the amount of time to be allowed for the questioning and the matters to which the questioning may relate. The Examining Authority should be prepared to intervene if it considers that the questioning is beginning to stray from the matters which it has allowed the questioning to relate to, or the questioning is taking too much of the examination time and could jeopardise the timetable. The Examining Authority must act even-handedly in using this power.

99. Persons who are entitled to appear at hearings do not have an automatic right to call witnesses to corroborate their evidence. The Secretary of State considers that it is for the Examining Authority to decide whether other persons (other than the applicant or an interested party) are to participate in the examination of the application, including witnesses. Rule 14 gives the Examining Authority the discretion to permit any other person to make oral representations at a hearing.

100. This provision will enable the Examining Authority to invite witnesses itself, or on behalf of interested parties who request it, if it considers it necessary to ensure adequate examination of an issue or that an interested party has a fair chance to put forward its case. Where a request is received from an interested party to allow an expert witness to take part in the examination of an application, the request should not be denied unreasonably.

Site inspections

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

102. Under rule 16 of the Procedure Rules the Examining Authority may make an unaccompanied inspection of the land (or place, if offshore) before or during the examination without giving notice of their intention to the persons entitled to take part in the examination. This rule also allows the Examining Authority to make accompanied site visits during the examination.

103. The Examining Authority will refuse to hear evidence or other submissions during any accompanied visit. It is acceptable, however, for people to draw their attention to particular features of the site and its surroundings.

Final matters

Service of Notices and Inspection of Documents

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

Allowing further time

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

106. Where an applicant has applied for a consent from another consenting body but is still, during the Examination, waiting for the decision, the Examining Authority will take into account the likelihood of the consent being granted, as well as the probable delay, before deciding how to proceed. Any extension to the statutory timetable would require the Secretary of State to make a statement to House of Parliament and would not be a decision which would be taken lightly.

Changing a draft Development Consent Order post submission

107. Whilst it is expected that applications are as well prepared as possible prior to submission, it may be the case that applicants are required to make a material change to an application after it has been accepted for examination. Reasons for this could include, for example, regulatory changes, technical developments or the discovery of previously unknown factors which need to be addressed to preserve the benefit of the proposed development. When an applicant submits a proposed change to a draft Development Consent Order post submission, it will be for the Secretary of State to decide on the materiality of the change and to determine whether the change is to such a degree that it constitutes a new project or whether it can still be considered under the existing application. If the Secretary of State decides that the change is such that it would result in a materially different project, the applicant will have to decide whether to withdraw the existing application and restart the pre-application process with new plans, a redrafted Development Consent Order and a new application pack, or whether to continue with the application in its original form.

108. Depending on the circumstances, in accordance with the principles of fairness and reasonableness, and specifically the principles set out in Wheatcroft[6], the Examining Authority may need to:

[6] Bernard Wheatcroft Ltd v Secretary of State for the Environment (1982) 43 P & CR 233

- Ask the Secretary of State to extend the examination using the power in section 98(4) of The Planning Act to consult interested parties on the effect of the proposed amendments, and allow for time to consider any amendments accepted for examination

- take into account what publicity (if any) the applicant has carried out to ensure people who are not interested parties have an opportunity to make representations

- use the general power to control the examination of an application in section 87(1) of the Planning Act to make changes to the non statutory aspects of the timetable to allow for representations to be made regarding any such amendments or to request the Secretary of State to make changes to the statutory timetable

- exercise its discretion under rules 10(3) and 14(10) of the Infrastructure Planning (Examination Procedure) Rules 2010 to permit representations to be made by people who are not interested parties in cases where it is appropriate to do so.

Procedure after the completion of examination

109. Within three months of the end of the examination, the Examining Authority will make a recommendation to the Secretary of State, who will then have three months, starting from the day the examination is completed, to take a decision.

110. Rule 19 of the Procedure Rules requires reference back to participants where the Secretary of State is disposed to disagree with the Examining Authority's recommendation for certain reasons. Such disagreement might be because the Secretary of State differs from the Examining Authority on any matter of fact mentioned in, or appearing to be material to, a conclusion reached by the Examining Authority, or because the Secretary of State proposes to take into consideration any new evidence or any new matter of fact.

111. Where reference back takes place under rule 19 of the Procedure Rules, all persons entitled to take part in the examination of the application and who participated in it will be afforded the opportunity of submitting written representations within 21 days of the notification.

Notification of decision

112. Any persons entitled to take part in the examination of an application and who did take part are entitled to be notified of the decision, unless they have specifically asked not to be included in any further correspondence. Any other person who took part in the examination and asked to be notified will also be notified. Any written reports of assessors will be appended to the notification of the decision. The Secretary of State will also provide each

interested party with a copy of the statement of reasons for his or her decision to grant or refuse development consent.

Procedure following the quashing of a decision

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