



Development Plan Document Examination Procedural Advisory Notes (August 2009)

These notes do not seek to cover all matters required by the Planning and Compulsory purchase Act 2004 ('the 2004 Act') as amended¹ or the Town and Country Planning (Local Development)(England) Regulations 2004 as amended². They are intended as general procedural guidance to local planning authorities submitting Development Plan Documents (DPDs) to the Inspectorate for examination. More detailed guidance is provided in the Planning Inspectorate publication 'Examining Development Plan Documents: Procedural Guidance' and 'Examining Development Plan Documents: Soundness Guidance'³.

If you have a query on an LDF procedural matter you may send an email setting out the issue to ldf.team@pins.gsi.gov.uk and we shall seek to respond to the matter within 10 working days.

Introduction

It is very important for Local Planning Authorities (LPAs) to appreciate the implications of the fact that the examination process is concerned with the legal compliance and soundness of the document as a whole. Consequently the focus at the examination is no longer on individual objections as used to be the case at local plan/UDP inquiries. This fundamentally important difference means that local planning authorities no longer need to respond to each and every individual representation. What authorities are required to do is to assess the representations made at publication stage and to provide the Inspectorate with a summary of the main issues at submission.

It is also important to appreciate the significance of the frontloaded process which should flush out opposing views and options before the LPA prepares its final document for publication.

Once submitted LPAs should await specific instructions from the appointed Inspector as to what additional material, if any, the Inspector wants them to produce before the hearings start. No unsolicited material should be sent to the Inspector after submission. In making a decision about what may be needed the Inspector will be guided by what he or she considers to be the critically important issues in relation to the soundness of the DPD. These could include an issue or issues identified by the Inspector but not raised in any representation. This reflects the 'inquisitorial' nature of the examination.

¹ View at 2004 Act at http://www.opsi.gov.uk/acts/acts2004/pdf/ukpga_20040005_en.pdf

And view the amending Planning Act 2008 at http://www.opsi.gov.uk/acts/acts2008/pdf/ukpga_20080029_en.pdf

² View the 2004 Regulations at: <http://www.opsi.gov.uk/si/si2004/20042204.htm>. View the 2008 amending Regulations at: http://www.opsi.gov.uk/si/si2008/uksi_20081371_en_1

³ View at : <http://www.planningportal.gov.uk/planning/planningsystem/ldf>

1. Publication

Representations and the database

1.1 A suggested model form for gathering representations at regulation 27 is provided in the Planning Inspectorate's Procedural Guide with an accompanying model note. Experience has shown that it will be most effective to collate the representations in plan/policy order. Sometimes representations covering a number of policies are contained in a single letter/form. In such instances the LPA should scan and include only the relevant parts of the letter (and include the necessary referencing) under each policy. A schedule should be prepared of representations received in plan/policy order giving reference details (including wherever possible which element/s of soundness - 1 Justified; 2 Effective or 3 Consistent with National Policy - are being referred to) as well as a brief summary of what change is being sought.

1.2 It is advisable to populate the database as the representations are received during the minimum 6-week consultation period. A programme officer (PO) should be in post by publication stage so this may be done by them. The early appointment of a PO helps considerably not least in setting up an appropriate database and in helping to ensure that you are properly prepared for publication and examination stage.

1.3 The representations should be checked to make sure they are in time and relate to the published DPD. It is not the role of the Inspector to decide whether a representation is to be considered. Only those who have submitted their representations within the specified minimum 6 week period have the statutory right to have their representations considered.

1.4 Where those making representations have not understood the elements of soundness or have clearly made a mistake, about which element of soundness the representation relates to, the LPA should decide what course of action to follow. Some authorities have sought to contact representors to resolve the matter. This has not proved to be successful and is unlikely to be practical unless there are only a very few representations in these categories. Even in this case there may be difficulties contacting people and some people contacted may feel that the LPA is seeking to influence them. The most practical approach is probably for the database to simply reflect what, if anything, the representors have said about the elements of soundness. However the LPA should begin the process of assessing what the principal issues being raised are and which of the elements of soundness are being used by those seeking a change to the DPD.

1.5 The importance of the database cannot be over-emphasised. Having a suitable database in place at the outset allows the LPA to start recording and collating representations in the most effective way. Bear in mind that **the examination is not a separate process. It is part of an end-to-end production of the DPDs. It is therefore advisable that the creation of the database takes place at the beginning of the process.**

1.6 As a minimum the Inspectorate requires the database to include fields for a unique representation number, a unique representor number, the part of the DPD that the representation relates to and which of the 3 elements of soundness that the representation relates to. The LPA may well want a variety of other matters on the database. The database field for elements of soundness should be an optional field for completion. Legal compliance can be annotated as 'LC' in place of soundness

element number. It is helpful to populate this field where possible but (as noted above) there are likely to be some representations where no reference is made to the 3 elements of soundness or legal compliance.

1.7 The database should be in a form whereby it can be interrogated to extract a variety of information that the Inspector may require. For example the Inspector may ask to see all the representations listed that relate to a specific policy or may ask for all representations from e.g. the HBF or all representations that refer to a specific element of soundness. It is not possible to predict what the Inspector will want as this will depend entirely on the issues that the Inspector regards as critical to the soundness of the document. Annex 1 contains the guidance we provide on the database in our PO training courses⁴.

1.8 Discuss the IT implications and needs with the LPA's IT department. Consider if and how the LPA's web site is to be used. Bear in mind the capacity of the site. Depending on how the web site is to be used special arrangements may need to be made to accommodate all the material.

1.9 The LPA should seek to complete the database and the collation of the representations as soon as possible so that minimal delay occurs between the end of the consultation period on publication and submission of the DPD to the Planning Inspectorate.

Quality of DPD and evidence base

1.10 LPAs should consider reviewing the evidence base to ensure that it is complete and sufficiently comprehensive for the specific DPD in question. The point is that unless the evidence base is complete and sufficiently comprehensive the LPA will not be able to satisfy itself that the DPD being submitted is sound and ready for examination as required by s20(2) of the Act. The practice therefore of the LPA supplementing the evidence base with topic papers and the like in the run up to the hearing part of the examination is neither necessary nor appropriate unless the Inspector specifically requests papers on specific issues or topics. These will only be requested where the Inspector feels that there is a deficiency in the evidence base or the Inspector needs to be further informed about the stance the LPA is taking to issues identified by the Inspector. A sensible course of action may be to get an independent view of the adequacy of the evidence base before publication.

1.11 The publication of the draft DPD should be informed by earlier extensive public participation to ensure that what the council publishes is sound. This makes it less likely that matters will be raised at this stage which have not been the subject of previous representations. Where post publication changes are required, the CLG Plan Making Manual provides further advice⁵. If only very minor changes are required (e.g. editorial changes) prepare a schedule of these changes for the Inspector to consider on submission.

1.12 Seeking to make changes post submission in the run up to the hearing part of the examination will create significant problems, not least because the Inspector's

⁴ Revised guidance is being prepared on the role of the programme officer which will be placed on the LDF page of the Inspectorate's website (<http://www.planningportal.gov.uk/planning/planningsystem/ldf>) and in the CLG Plan Making Manual (<http://www.pas.gov.uk/pas/core/page.do?pageId=78326>). The Inspectorate also provides programme officer training sessions for LPA employees - for further information please email ldf.team@pins.gsi.gov.uk

⁵ View at: <http://www.pas.gov.uk/pas/core/page.do?pageId=64905>

ability to make changes is subject to constraints. A document that requires significant change is likely to be unsound. The risk of late changes can be minimised through effective frontloading combined with a proper assessment of realistic options whether identified by the LPA or others.

1.13 Carry out a self assessment of the DPD using the PAS guide⁶. Although not a statutory requirement, it is clear from the feedback we have had, using this tool helps very considerably. LPAs are advised to use the self assessment toolkit from the start of the plan making process as the kit has been designed to take an authority through all the stages of the process. Even if the toolkit has not been used from the start there are major advantages to applying it retrospectively. Experience has shown that those using the toolkit are more likely to produce a sound DPD. The Inspector may ask you to undertake a form of self assessment if the toolkit has not been completed.

1.14 Paragraphs 1.1-1.2 of the Planning Inspectorate's publication, 'Examination of Development Plan Documents: Soundness Guidance' provides a checklist of the document submission requirements. The regulations now require that the local authority send copies of the representations to the Inspectorate with the published DPD on submission⁷.

2. Submission

2.1 The examination starts as soon as the DPD is submitted and the Inspectorate is committed to completing the examination within a very tight timetable. There is a danger that if you are not adequately prepared or the document is not in a form that you are completely satisfied with, you may have to request that the Secretary of State directs withdrawal. (Note an LPA has no power to withdraw a DPD once submitted⁸). Long delays or requests for time to provide extra material or evidence will not be appropriate as the examination is intended to come at the end of a properly front-loaded process.

2.2 On submission the Inspectorate will discuss with the LPA dates for any Pre-Hearing Meeting (PHM) and start dates for any hearing stage (in accordance with the Service Level Agreement. These will be agreed with the Inspector and the PHM and the start date for the hearings sessions will be confirmed. The aim is to hold the PHM around 8 weeks after submission and for hearings to start around week 14.

2.3 It is essential to keep the Inspectorate fully informed of the anticipated programme. Make sure that your team is in place and likely to be available for the hearing sessions. If an outside advocate is to be used confirm their availability.

2.4 Adequate provision should be made for accommodating the hearing sessions, the PO and the Inspector. The examination room should wherever possible be relatively informal so that participants can more readily be put at their ease. Unless a large number of people are expected a relatively modest room such as a committee room will usually be adequate although a larger room is likely to be needed for the PHM. Consideration should be given to matters such as access for the disabled and the facilities for the hard of hearing: it must be compliant with the requirements of the

⁶ View at <http://www.pas.gov.uk/pas/core/page.do?pageId=85629>

⁷ Regulation 30(1)(f).

⁸ The LPA may not withdraw the **submitted** document without the consent of the Secretary of State – Section 22(2) 2004 Act

Disability Discrimination Act 1995 (as amended). The PO's room should be readily accessible to the public and the Inspector needs a separate room preferably close to the PO's room. Clearly the PO will need a computer linked to the database and ideally the Inspector should also be provided with this facility. The LPA should ensure that these computers are not linked into the wider LPA system.

3. Before the PHM

3.1 Confirm the team to be fielded by the LPA and ensure that they are available to attend the PHM.

3.2 The Inspector will provide a PHM note/agenda which will include the matters and issues. Consider whether the LPA needs to request any adjustments to the agenda.

4. At the PHM

4.1 The Inspector will: -

1. introduce himself/herself and the PO
2. invite the LPA to introduce their team
3. explain how the hearings are to be run
4. detail the issues which the Inspector believes are relevant to the legal compliance and soundness of the DPD which need to be explored further at the hearings
5. detail any further material that the Inspector wishes to receive – any such material is likely to be limited to 3000 words
6. set out the administrative arrangements for the hearings including sitting times and the draft programme
7. answer any questions relating to the running of the hearings or the examination in general.

4.2 A note of the PHM will be circulated by the Inspector via the PO to all those who have made representations.

5. The Hearing

Hearing sessions

5.1 The emphasis at the hearing sessions will be on informality with the Inspector inquiring into and leading a debate on the issues identified in advance. The Inspector will invite participation from those who wish to be heard and anyone else who might be required to properly explore the relevant issue. Experience shows that the group should not be larger than 15 to 20 people. You may wish to have support staff available sitting behind the person who is representing the LPA at the table.

5.2 The old-style local plan or UDP sessions where individuals presented their cases one by one and the local authority responds is not appropriate to the examination format. The emphasis is on the soundness of the DPD not specifically on the representations made on it. The formal presentation of evidence followed by cross-examination and re-examination will not be allowed other than in very exceptional instances where the Inspector is convinced that a formal approach is essential to adequately test the evidence. If you wish the Inspector to consider having a formal session you must be prepared to make a strong case for this. The final decision about

whether or not to have a formal session rests with the Inspector. Consequently there will usually be no need for any party to employ advocates to present their cases although there is no reason why barristers or solicitors cannot take part in the informal group discussions on the same basis as any other party. LPAs may find that a fruitful way of using advocates is at earlier stages in the preparation process when professionals familiar with presenting cases may prove useful in reviewing the adequacy and appropriateness of the evidence base and marshalling the evidence to assist the Inspector to explore the issues raised by the elements of soundness.

5.3 Because the hearing programme will be based on group sessions, parties wishing to appear will be expected to attend the sessions relevant to their representations or to send a representative if they are unable to attend on that particular day. Failing this they may have to rely on written representations. The programme will therefore be intensive and focussed with the hearings part of the examination usually lasting days rather than weeks or months.

Sitting times

5.4 Because of the intensive nature of the hearing sessions it is likely that the Inspector will usually sit for an intensive 3 days a week to allow adequate preparation time between sessions although this will vary depending on the nature of the DPD and on whether more than one Inspector is allocated to the DPD in question. The Inspector, who will be leading the discussion, requires adequate time to prepare for sessions. In our experience LPAs also find the examinations very demanding and need time to prepare material and frequently have to prepare responses to matters raised in earlier sessions. Do not under-estimate the amount of time and work that has to be put in by all concerned. You will undoubtedly need the gaps in the programme. Where hearings extend for more than 2-3 weeks the Inspector is very likely to take a break to allow adequate time for preparation.

5.5 All documentation at the hearing session will be taken as read and hence the sessions will be focussed on matters that the Inspector has identified for discussion. The Inspector will at an early stage, look to identify what the key issues are. In order for the Inspector to be able to do this he or she will need to have all material before him or her on submission. It is therefore not helpful to the process to submit further unsolicited evidence.

Note taker

5.6 Some Inspectors may ask if the LPA can provide a note-taker. This is because it is very demanding to both lead a discussion and to take notes. If such a request is made the notes taken will be treated in the same way as the Inspector's private notes. Hence they will not form part of the examination documentation and will not be disclosed other than if required by the freedom of information legislation.

Refreshments

5.7 Refreshments at the hearing sessions should be provided for the Inspector and the PO. The extent to which refreshments are provided for the other participants is a matter for the LPA to decide.

Annex 1: The Database

An adequate database is essential in ensuring that the examination can run efficiently and effectively. It provides the Programme Officer with the means to control all aspects of the examination process. It is essential therefore that the Programme Officer is given access to the database. The Programme Officer must also have the means to update it and extract information in a format that is required by both the Council and the Inspector.

If the database has already been set up by the Council, the Programme Officer should inspect it carefully to ensure that it can easily be manipulated and interrogated to produce queries and reports.

When constructing the database, care should be taken to ensure that if any of the fields are not populated it will not crash. This is particularly important concerning the elements of soundness field.

Table and Fields

Separate tables for representors and representations, linked by representor number are required.

The Representors Table

Fields for inclusion are:

Representor Number
Title
Initials
Surname
Position
Company/Organisation
Representing on behalf of:
Address 1
Address 2
Address 3
Address 4
Postcode
Your ref
Telephone Number
Fax Number
Email
Remove from Mailing List
Reason
Notes

- A separate number for each respondent
- One record for each respondent
- The Representor is the organisation. If this field is blank the respondent will be the title, initials and surname.

Occasionally you will be asked to remove a representor's details from the mailing list because they have moved away, removed their representation or died. A simple tick in the field 'Remove from Mailing List' coupled with an additional field entitled 'Reason' enables the appropriate information to be recorded.

The Representations Table

Fields for inclusion are:

Representor Name
Representor Number
Representation Number
Object/support
Policy
Chapter/Paragraph
Element of Soundness - 1 Justified; 2 Effective or 3 Consistent with National Policy
Intent
Summary of Representation
Council's response
Council's proposed action
Representor Evidence No
Council Evidence No

The critical part is that for representors with multiple representations it is possible to identify each separate representation.

The Intent Field

This identifies how the representors wish their representations to be dealt with:

- AE – Attending examination
- WR – Written Representation
- UC – Representation withdrawn
- CW – Representation conditionally withdrawn
- OR – Relying on original representation

A third table listing policies with policy titles may be useful in preparing reports.

Sorting the information in this manner will enable the creation of reports and queries.

In particular it is essential that the database can be interrogated regarding the number of representations for each element of soundness, legal compliance and or policy.

Representations should be analysed carefully by an experienced member of the planning team, not the programme officer as any inadequate or inconsistent analysis may lead to misunderstandings and mistakes leading to abortive work later on.

Only duly made representations, either objecting or supporting should be entered on the database. It is the responsibility of the Council to judge whether a representation has been duly made.

All representations will need to be acknowledged and representors advised of their respondent number. The summary of the representation can also be sent if it has been entered on the database.

For PINS purposes the referencing system MUST as a minimum comprise four parts:

- i. Unique number for each representor
- ii. Unique number for each representation
- iii. Which policy/part of the DPD does the representation relate to
- iv. To which of the 3 elements of soundness does the representation refer. This field should also be able to be annotated with 'LC' to denote Legal Compliance.

Examples

019/02/E4/1

Representation by the Home Builders Federation (019), their second representation, relates to Policy E4 and they are challenging it on the grounds that it fails element of soundness 1

019/03/H1/3

Representation by the Home Builders Federation (019), their third representation, relates to Policy H1 and is being challenged on the grounds that it fails element of soundness 3.

So if the Home Builders Federation has challenged 10 policies/parts of the plan there will be 10 entries in the database all under representor reference 019

NOTE: It is essential that the database can be interrogated to meet requests from the Inspector. For example "I want to see all the representations from the Home Builders Federation" or "Please can I see all the Representations relating to Policy H1."

Additional Fields

Additional fields may be needed over and above what the Inspectorate requires as a minimum. For example; does the representor want to appear at the examination, have they confirmed attendance, have they submitted any additional material requested or what is the representation about/issues raised?