

Procedures for Independent Examination of Local Development Plans

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Planning Appeals
Commission

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Introduction

[1] This publication explains how the Planning Appeals Commission proposes to carry out independent examinations into local development plans. Although not an exact statement of the law, it is intended to assist those who will be taking part in the examination process.

[2] The Commission has a default power under Section 204(5) of the Planning Act (Northern Ireland) 2011 to determine its procedures. The procedures set out here are based on the principles of openness, fairness and impartiality which the Commission practises. All participants in examinations will be expected to follow them and to act in a co-operative and reasonable manner.

[3] This document is concerned solely with procedures and does not attempt to give guidance on plan making. The procedures will be applied flexibly and may be adapted to meet particular circumstances. They will be kept under review and updated as necessary in the light of experience¹.

The Planning Appeals Commission

[4] The Planning Appeals Commission is a statutory tribunal, independent of any government department, government agency or district council. It is committed to ensuring that the examination process is as user friendly as possible and involves the best use of resources. Members of the Commission are public appointees and are called Commissioners. They have varied backgrounds and qualifications including town planning, architecture, environmental science and law. Administrative staff are responsible for the Commission's day-to-day work. While they are available to deal with queries from the public about procedures, they are unable to comment on the merits of local development plans or individual representations.

[5] All information presented to the Commission is processed in accordance with data protection legislation (see Appendix 1).

The Examination Process

[6] The 2011 Planning Act introduced entirely new provisions for the preparation and examination of local development plans. District councils are required to prepare a plan strategy and a local policies plan for their areas. In this publication, the word "plan" is used for development plan documents of both types. Councils must submit their plans to the Department for Infrastructure and the Department may cause an independent examination to be carried out by the Commission. More detailed provisions are contained in the Planning (Local Development Plan) Regulations (Northern Ireland) 2015.

[7] Where a plan is referred to the Commission, a Commissioner (or Commissioners) will be appointed to run the examination. The examination process will involve consideration of written evidence as well as the conduct of hearing sessions. The main events are set

¹ Please ensure you are reading the most up to date version of the document available on the web site pacni.gov.uk

out in Appendix 2. The Commission's current expectation is that Commissioner involvement will last on average nine to twelve months per plan.

[8] A Programme Officer will be appointed to administer the examination process. The Programme Officer will be the main point of contact for councils and members of the public throughout the process and will keep all parties apprised as to how the examination will proceed.

[9] Section 10(7) of the 2011 Planning Act provides that any person who makes representations seeking to change a plan must be given the opportunity to be heard by the person carrying out the examination. People can represent themselves at a hearing but if they need help to present their case, they may wish to appoint a professional adviser. People who make counter representations do not have a right of hearing.

[10] It is not anticipated that Departmental planning officials will be involved in the independent examination. Any correspondence between the Commission and the Department or the Council about the plan will be made publicly available. When the hearing sessions are concluded, the Commissioner will prepare a report to the Department, making recommendations and giving reasons for the recommendations. On receipt of the report, it will be for the Department to decide whether to direct the council to adopt the plan as submitted, adopt it with modifications, or withdraw it.

Soundness

[11] The purpose of an examination is to determine whether a plan satisfies statutory requirements and is sound. Legal compliance and soundness are overlapping concepts. In carrying out the examination, the Commissioner will apply a series of tests taken from the Department's Development Plan Practice Note (DPPN) 06. These tests are set out in Appendix 3. The soundness tests will be considered in the round, taking into account the supporting text in DPPN 06, and an overall judgment will be formed.

[12] It is very important that all participants appreciate that the focus of the examination and the Commissioner's report will be on the **soundness** of the plan and not on individual representations or sites. This represents a fundamental change from the development plan system that existed before the 2011 Planning Act came into force.

Making Representations

[13] People who make representations seeking to change a plan are strongly advised to state clearly why they consider the plan to be unsound, having regard to the tests in DPPN 06. The Commission recommends councils to provide forms similar to that in Annex A to the Department's DPPN 09 and encourages people making representations to use the council's form. Each suggested change should be the subject of a separate representation. Every representation should say precisely how the plan should be changed in order to achieve soundness. It should be supported, succinctly, by all the evidence thought necessary to justify the proposed change. **There will be no further opportunity to submit information unless the Commissioner requests it.**

[14] The substance of the representations is of more significance than the number of people making representations. Where several people share a common view on how a

plan should be changed, they are encouraged to co-operate with each other, pool resources and make a single representation.

[15] People who make representations seeking to change a plan should say whether they wish to be heard orally. Unless people specifically request a hearing, the Commission will proceed on the basis that they are content to have their representations considered in written form only. **The Commissioner will give every representation the same careful consideration regardless of whether the person who made it is heard orally or not.**

[16] A representation may be withdrawn at any time by notifying the council in writing. Once withdrawn, a representation cannot be reinstated.

Submitting the Plan

[17] The 2011 Planning Act states that a council must not submit a plan to the Department unless it has complied with the requirements of the Local Development Plan Regulations and unless it thinks that the plan is ready for independent examination. This calls for a critical and rigorous self-assessment of the plan by the council's planning team. The starting point for any examination will be that the council has submitted what it believes to be a sound plan.

[18] The council is required to send the Department certain prescribed documents in addition to the plan. These include:-

- a sustainability appraisal;
- the statement of community involvement;
- statutory notices published at various stages of plan preparation;
- the timetable for plan preparation;
- a report on the responses to the council's preferred options paper; and
- copies of all representations and counter representations.

[19] Before the plan is submitted, the council's planning team should carefully categorise and analyse all representations and counter representations. The council should create a spreadsheet to manage the responses. It should be set up so that the representations are capable of being listed in various ways, including by person or organisation, agent, soundness test, policy, paragraph, plan map and site address; and so that counter representations can be linked to representations and vice versa. The spreadsheet should highlight those representations where an oral hearing is required. Appendix 4 indicates how the spreadsheet might be structured.

[20] The council is required to send at submission stage a summary of the main issues raised in the representations and relevant supporting documents. The council should also set out its views on the main issues identified, perhaps in a series of topic papers, as well as its comments on all the representations. Other documents necessary for the examination include any technical supplements, any Habitats Regulations assessment and any self-assessment of soundness.

[21] Once the Department requests the Commission to conduct the examination, the council will be expected to make available to the Commission all documents it gave to

the Department at submission stage. The Commission will need an electronic copy and two hard copies of these for its own use. It is vitally important that complete, legible and clearly indexed sets of representations and counter representations are provided. A Commissioner will not be appointed until all information necessary to enable the examination to proceed has been received – a checklist is provided in Appendix 5.

[22] When the Commissioner is appointed, the Programme Officer will create a dedicated area on the Commission's website where relevant information can be hosted. The information will be updated regularly as the examination proceeds. This will enable participants to keep abreast of progress by checking the website regularly.

Initial Assessment

[23] The Commissioner's first tasks when starting work on a plan will be to check that all essential regulatory steps have been taken and to identify any fundamental concerns about the soundness of the plan. If the Commissioner forms an early view that the plan may have shortcomings indicative of unsoundness, these will be raised in writing with the council and with anyone who made representations relevant to those possible shortcomings.

[24] Depending on the replies received, the Commissioner may call an **exploratory meeting** with the council and the other relevant parties. That will normally happen in advance of the opening of the examination hearings. The Commissioner will lead the meeting, communicate his or her concerns, and invite the participants to give their views. If all concerns of a fundamental nature are resolved to the Commissioner's satisfaction, the examination process will proceed to the hearing sessions.

[25] Where, as a result of the exploratory meeting, the Commissioner concludes that there remain fundamental concerns which are unlikely to be overcome, he or she may send an interim report to the Department recommending it to direct the council to withdraw the plan. Alternatively, the Commissioner and the parties may agree that the examination process should be suspended to allow the council to undertake further work. A partial suspension affecting only certain elements of the plan is a possibility, provided those elements are distinct and separate and unlikely to undermine the soundness of the remainder of the plan.

Pre Hearing Stage

[26] If any fundamental concerns that have arisen have been overcome, the Commissioner will set a date for the opening of the public hearings and make an estimate of how long they are likely to last. This indicative timetable will be notified to the council and to the other participants about eight weeks before the opening date. It will also be posted on the Commission's website. Those who indicated that they wished to appear will be asked to confirm that this is still the case.

[27] The Commissioner will ask for further written evidence from the council and other relevant parties if he or she identifies gaps in information which are critical to assessing the plan's soundness. The Commissioner may, for example, identify soundness issues that were not raised in the representations. Anyone who receives a request for information

from the Commissioner will be told who else has been asked to provide information about the same matters.

[28] No one should send in written material unless the Commissioner requests it. Unsolicited material will be returned or disregarded unless its sole purpose is to draw attention to an important change in circumstances which has occurred since the plan was referred for independent examination.

[29] The Commissioner may invite organisations and people who have not made representations to provide written evidence where it could be important in determining the soundness of the plan. For example, neighbouring councils or other public bodies may have specialist information or expertise that would assist the Commissioner and some counter objectors may have a distinctive perspective on soundness issues.

[30] The date for submission of responses to any particular information request will normally be the same for all parties concerned. An indicative word limit may be set and where this is exceeded a summary will be required. Responses may be submitted electronically provided virtual file size is not excessive. The maximum file size will be 10 megabytes, unless a different limit is specified in the information request. It is likely that at least four copies will be required of any material submitted in paper format only. All responses received within the period specified will be placed on the website. **Late responses will be returned or disregarded.**

[31] In-depth reading of the documentation will enable the Commissioner to identify the topics and issues that will be the focus of the examination, establish the structure and likely duration of the hearings, and pose relevant questions. **Topics** are the broad subjects to be considered – examples include settlement strategy, housing provision, natural and built heritage, and land subject to constraints. **Issues** are the matters on which the Commissioner's assessment of the plan's soundness will depend. The Commissioner's **questions** will be designed to delve further into the issues.

[32] The Commissioner will draw up a detailed programme for the public hearings. The council will be expected to be represented throughout. Persons who have the right to take part will be allocated to hearing sessions, having regard to the topics they raised and the nature of the issues that the Commissioner will be probing. People and organisations who did not make representations but who provided written evidence at the Commissioner's request may also be invited to participate. The programme and the lists of topics, issues and questions will be placed on the Commission's website and sent to all concerned a minimum of three weeks before the opening date.

The Hearing Sessions

[33] On arrival at the hearing venue, people who have been invited to attend will be directed to the seats allocated to them at a table. Nameplates will be provided for each party. If there is not enough room at the table, additional representatives may sit behind the lead speakers and swop seats when necessary.

[34] The hearing sessions are public events and anyone may come along to observe. The press may attend but there will be no live coverage. Proceedings may be recorded only with the prior permission of the Commissioner and copies of the recording must be provided for the Commission and all who request them. If people who will be taking part

or observing require disabled access or have hearing difficulties or other special needs, they should let the Programme Officer know well in advance.

[35] The Commissioner will conduct the hearing sessions and direct when people should speak. Written material will be taken as read and should not be repeated. All participants must respect the Commissioner's rulings. Any problems should be raised with him or her **in public** at an appropriate time during proceedings. The Commissioner will ensure that all topics and issues relating to soundness are properly discussed.

[36] The hearings will follow the pre-prepared programme and consider the topics, issues and questions which the Commissioner has identified. The Commissioner will lead a series of round-table discussions and draw parties into debate in a logical order. Participants may indicate their wish to speak by turning their nameplates on end. Constructive engagement will be encouraged but questioning between parties will not normally be necessary. Undue legalism should be avoided as it can unnerve other participants and undermine the principle that everyone is an equal partner in discussion. When no more is likely to be said to assist the Commissioner's conclusions on soundness, discussion will move on to the next item.

The Commission's Report

[37] At the end of the last hearing session, the Commissioner will indicate when they expect to deliver a report to the Department. The Commissioner will examine all the evidence relevant to the determination of the soundness of the plan and where necessary visit sites relevant to the soundness tests.

[38] In writing the report, the Commissioner will aim for brevity and concentrate on:-

- reaching clear, reasoned conclusions on the plan's compliance with the statutory requirements and its soundness; and
- setting out any modifications to the plan which are required to overcome any correctable shortcomings in regard to statutory requirements or soundness.

[39] As the examination is not an inquiry into objections, the report will not summarise individual parties' cases. Direct reference to specific representations or the people who made them will generally be avoided, although enough detail will be given to enable the reader to understand how soundness issues emerged from the representations.

[40] The report will culminate in an overall recommendation as to whether the plan should be adopted, with or without modifications, or withdrawn. Modifications will not be recommended unless they are considered necessary to make the plan legally compliant or sound. Modifications which would make the plan unsound will not be recommended.

[41] The Department will be required to consider the Commission's recommendations but will not be obliged to accept them. Release of the report will be a matter for the Department.

Concerns about the Examination

[42] In carrying out its statutory responsibilities for independent examination of local development plans, the Commission will endeavour to provide a high quality public service. However, anyone who was involved in an examination process and is dissatisfied about the way it was conducted can make a formal complaint. Details of the Commission's complaints system are provided on its website www.pacni.gov.uk and a leaflet is available on request. Procedural decisions and rulings made by the Commission or the Commissioner can be challenged on a point of law by applying to the High Court for a judicial review. Anyone considering such a course should seek legal advice.

Appendix 1

DATA PROTECTION AND FREEDOM OF INFORMATION

The Data Protection Act regulates the processing of information relating to individuals, including the obtaining, holding, use or disclosure of such information. The Commission is fully committed to complying with the Act. This notice has been drawn up to provide clarification on the sharing, management and publication of information in relation to the Independent Examination process. It should be read in conjunction with:

- The Commission's published Privacy Notice; and
- The Commission's published Data Protection and Freedom of Information Policy.

Purpose

The Planning Act (Northern Ireland) 2011 and the Planning (Local Development Plan Regulations) (Northern Ireland) 2015, provide for the independent examination of local development plans.

The Department for Infrastructure ("the Department") may appoint the Planning Appeals Commission ("the Commission") to conduct an independent examination in order to consider whether a Council has prepared development plan documents in accordance with legislative requirements and to scrutinise the soundness of the proposed development plan. The Commission is then required to report to the Department with recommendations arising from the independent examination. The Department is obliged to consider the Commission's report and recommendations before directing the Council to adopt, modify or withdraw the proposed development plan.

Legal basis for data processing

The Commission acknowledges that it will process personal data in order to comply with its obligations under the legislation to carry out independent examination of development plans. The lawful basis for the Commission to process personal data is found in Articles 6(1) (c) and (e) of the GDPR, whereby such processing is deemed to be necessary for the Commission to comply with its legal obligations and to perform a task in the public interest, and that the task has a clear basis in law.

Use of data

It is anticipated that the personal data processed by the Commission will include the names, addresses, contact details, land ownership details and occupation of agents, consultants, organisations and members of the public making representations or counter-representations regarding a Council's published development plan documents. It is also anticipated that such representations and counter-representations may include special categories of data.

The Commission will only deal with and process such personal data in line with its purpose and obligations under the legislation to conduct independent examinations.

The data will be processed for the duration of the examination. Correspondence, a timetable for the independent examination and other relevant information will be made available on the Commission's website and will be viewable by any visitor to the website.

Personal data will only be retained for the period specified in the Commission's Retention and Disposal Schedule following completion of the Commission's report and recommendations to the Department.

Obligations

By virtue of the Commission's status as an independent Tribunal and Non-Departmental Public Body established under statute, the Commission, in conducting the independent examination, is a tribunal acting in a judicial capacity as per Recital 20 of the General Data Protection Regulation 2016/679 (GDPR), Article 55(3) GDPR, S117 of the Data Protection Act 2018 (DPA 2018) and Schedule 2 DPA 2018.

The Commission, when conducting such an independent examination and acting in a judicial capacity, is therefore exempt from the following provisions as laid out in Schedule 2 DPA 2018:

- a) Article 5: The Principles
- b) Article 13: Transparency information when collecting personal data directly
- c) Article 14: Transparency information when not collecting personal data directly
- d) Article 5: Subject access
- e) Article 16: Right of rectification
- f) Article 17: Right to erasure
- g) Article 18: Right to restriction of processing
- h) Article 19: Notification regarding rectification, erasure or restriction
- i) Article 20: Right to data portability
- j) Article 21: Right to object

The Commission confirms that it will ensure that:

- Proportionate security and organisational measures are adopted in dealing with personal data in order to protect against unauthorised access to or unauthorised alteration, disclosure or destruction of such personal data and against all forms of unlawful processing of such personal data;
- All administrative staff and Commissioners are trained in Data Protection and GDPR principles and are fully aware of their responsibilities to maintain the security and confidentiality of personal data;
- An effective system is in place to investigate complaints in relation to data processing by the Commission as a tribunal acting in a judicial capacity; and
- Where appropriate the Commission will liaise with the Information Commissioner's Office in respect of general guidance regarding good governance and practice in the processing of data, consistent with current principles of data protection.

Appendix 2

THE EXAMINATION: THE MAIN EVENTS

The council submits the plan for examination to the Department.

The Department refers the plan to the Commission.
A Programme Officer is appointed.

When all necessary information has been provided a Commissioner is appointed to conduct the examination.

The Commissioner makes an initial assessment of the soundness of the plan and holds an exploratory meeting if there are concerns of a fundamental nature.

The Commissioner, if content that the examination should proceed, may seek further written evidence from the council and others.

The Commissioner draws up a detailed programme for the hearings with topics, issues and questions, and allocates participants to particular sessions.

The Commissioner conducts the hearings.

The Commissioner prepares a report with recommendations and it is sent to the Department.

The Department considers the recommendations and decides whether to direct that the plan be adopted, modified or withdrawn.

Appendix 3

TESTS FOR SOUNDNESS

Procedural tests

P1. Has the plan been prepared in accordance with the council's timetable and the Statement of Community Involvement?

P2. Has the council prepared its Preferred Options Paper and taken into account any representations made?

P3. Has the plan been subject to sustainability appraisal including Strategic Environmental Assessment?

P4. Did the council comply with the regulations on the form and content of its plan and on the procedure for preparing the plan?

Consistency tests

C1. Did the council take account of the Regional Development Strategy?

C2. Did the council take account of its Community Plan?

C3. Did the council take account of policy and guidance issued by the Department?

C4. Has the plan had regard to other relevant plans, policies and strategies relating to the council's district or to any adjoining council's district?

Coherence and effectiveness tests

CE1. The plan sets out a coherent strategy from which its policies and allocations logically flow and where cross boundary issues are relevant it is not in conflict with the plans of neighbouring councils.

CE2. The strategy, policies and allocations are realistic and appropriate having considered the relevant alternatives and are founded on a robust evidence base.

CE3. There are clear mechanisms for implementation and monitoring.

CE4. The plan is reasonably flexible to enable it to deal with changing circumstances.

Appendix 4

INDICATIVE STRUCTURE FOR SPREADSHEET TO MANAGE RESPONSES

It is recommended that the spreadsheet should have the following columns:-

Reference number of the representation (*assigned by the Council*)

Contact details for the person or organisation making the representation

- First name
- Last name
- Job title (*where relevant*)
- Organisation (*where relevant*)
- Address Line 1
- Address Line 2
- Address Line 3
- Address Line 4
- Postcode
- Telephone number
- E-mail address

Contact details for the agent for the representation (*if applicable*)

- First name
- Last name
- Job title (*where relevant*)
- Organisation (*where relevant*)
- Address Line 1
- Address Line 2
- Address Line 3
- Address Line 4
- Postcode
- Telephone number
- E-mail address

Summary of issue raised (*maximum 100 characters – if a representation raises more than one issue, a separate row should be used for each issue*)

Paragraph of the plan to which issue relates

Plan policy to which issue relates

Plan proposals map to which issue relates

Location of site to which issue relates (*local policies plans only*)

Soundness test to which issue relates (*use referencing system in Appendix 3*)

Choice of examination procedure – written representation or oral hearing

Hyperlink to representation (*pdf*)

For counter representations, a column should be added to identify the related representations.

The spreadsheet should not be Read Only and should have no in-built formulas. It should be capable of being copied, filtered and modified.

Appendix 5

INFORMATION CHECKLIST

The Commission will need an electronic copy and two hard copies of each of the following documents before the independent examination can proceed:-

- ✓ The development plan document being submitted for independent examination *
- ✓ An appraisal of the sustainability of the development plan document *
- ✓ Where that development plan document is a local policies plan, the adopted plan strategy *
- ✓ The council's statement of community involvement *
- ✓ A report to demonstrate that the council has complied with its statement of community involvement *
- ✓ The notices referred to in Regulations 10(a)(iv), 15(a)(iv) and 17(1)(a)(iii) of the Planning (Local Development Plan) Regulations (Northern Ireland) 2015 *
- ✓ The timetable for plan preparation *
- ✓ The council's community plan
- ✓ The council's preferred options paper
- ✓ A summary of the main issues raised in response to the council's preferred options paper *
- ✓ A statement setting out how those main issues were taken into account in the preparation of the plan *
- ✓ All representations and counter representations which were made on time and sent to the specified address *
- ✓ A spreadsheet for managing those representations and counter representations (see Appendix 4)
- ✓ A statement setting out the number of representations and counter representations and a summary of the main issues raised *
- ✓ A statement of the council's views on those main issues, perhaps in the form of a series of topic papers
- ✓ A table indicating where the council's comments on the main issues raised by each representation are to be found
- ✓ Any technical supplements prepared by the council to inform the plan's contents
- ✓ Any assessment of the plan carried out under the Habitats Regulations
- ✓ Any self-assessment of legal compliance and soundness carried out by the council
- ✓ Such other supporting documents as in the opinion of the council are relevant to the preparation of the plan *

Items marked with an asterisk (*) are prescribed in the Regulations.

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