

Frequently Asked Questions (FAQs)

Local Development Frameworks: The Examination of Development Plan Documents (DPDs) and Statements of Community Involvement (SCIs)

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Part 1: Questions of general interest

1. What is the purpose of the Examination?

The Inspector's role is to carry out an independent assessment to ensure that the DPD/SCI satisfies the statutory requirements for its preparation and is 'sound'.

2. Where are the legislative provisions for Local Development Frameworks (LDFs) set out?

Part 2 of the Planning and Compulsory Purchase Act 2004 ('the 2004 Act') and the Town and Country Planning (Local Development) (England) Regulations 2004 ('the 2004 Regulations') provide the statutory framework for LDFs.

3. What does 'sound' mean?

There is no definition for 'sound' in the legislation but it should be considered in this context within its ordinary meaning of 'showing good judgment' and 'able to be trusted' and within the context of fulfilling the expectations of legislation.

4. What is the status of the Planning Inspectorate's Development Plans Examination guides on SCI and DPDs?

The guidance is non statutory guidance and applies in England only. It is intended to provide a framework for the process of carrying out the independent examination using the tests of soundness and ensure consistency of approach. It should be read alongside 'Planning Policy Statement 12: Local Development Frameworks (PPS12)' and its companion guide, 'Creating Local Development Frameworks'.

5. How will the Local Planning Authority (LPA) assess if their DPD/SCI is sound prior to submission?

LPAs may find it useful to carry out an objective self assessment, having regard to the tests in PPS12 and against the key questions in the Planning Inspectorate's Development Plans Examination guide, to satisfy themselves they are submitting a sound DPD. They may submit this assessment as part of their evidence to the Inspector in support of the premise that the document is sound. However, there is no legal requirement for LPAs to conduct a self assessment of soundness.

6. The presumption is that the DPD/SCI is sound unless it is shown to be otherwise as a result of evidence considered at the Examination. Won't this stifle debate, since the onus is on those making representations seeking a change to set out why the plan or statement is unsound?

The Examination should be taking place after the LPA has been through a thorough process of statutory consultation, during which it has considered all the available options to produce what it considers to be a sound plan/statement. The new system means that the Inspector will probe at the Examination and if he/she feels from the evidence submitted that there is a serious difficulty with the plan/statement, the Inspector can recommend changes to the plan/statement.

7. What form will examinations take?

Subject to the right to be heard, the Inspector will determine the appropriate method for examination. Examinations may be conducted using written representations, round table discussions, informal hearings or formal hearings (which may involve cross-examination). PPS12 stresses the use of written representation as the preferred method, especially for SCIs (and it must be stressed that these carry the same weight as appearing at the Examination to give oral representations). An explanation of the types of procedure for the Examination is provided in paragraph D15, PPS12.

8. How will the Inspector determine soundness?

In order to decide whether the DPD/SCI is sound, the Inspector will apply a number of tests to the document. PPS12 sets out the 9 tests of soundness for DPDs (para. 4.24) and SCIs (para 3.10).

The Inspector will need to assess the DPD/SCI using his/her professional judgment based on the evidence available, including the representations made, and in the case of DPDs, the particular circumstances of the DPD and the area in question, against the tests of soundness in PPS12. Each examination will be the responsibility of the appointed Inspector who will carry out his/her job in accordance with the underpinning principle of openness, fairness and impartiality.

9. Will the Inspector consider all the tests of soundness?

Yes, the Inspector should have regard to all the tests of soundness. However the degree of detail he/she will need to go into on each test at the Examination is likely to be determined by the representations made on it, and in the case of DPDs, the nature of the plan.

10. How will an Inspector assess whether the local planning authority's process of deciding between options is sound?

The Inspector's role is not to assess whether the choice process is sound, only to establish whether the development plan document is sound.

11. What if no representations are received on a DPD/SCI? Will the plan/statement be subject to an examination?

An examination is required regardless of whether any representations are received on a DPD or SCI.

However, in the case of SCIs it is expected that issues relating to whether an SCI is sound or not should generally be capable of being addressed by means of an examination by written representations without the need for an oral hearing.

12. Will a representation made at an earlier stage of the plan/statement making process be considered at the Examination?

No. Only those representations made at submission stage will be considered in examining the soundness of DPDs and SCIs.

13. If the Inspector recommends a change to a DPD/SCI, who is to judge if the change is sound?

The Inspector may only make changes in the binding report on the basis of evidence assessed during the examination (whether carried out by written representations or oral hearing). The Inspector would give reasons for the recommendations made (section 20(7)(b) of the 2004 Act).

In the case of SCIs providing the Inspector has the appropriate evidence available at the Examination, most deficiencies in SCIs should be capable of remedy by a change to the SCI by the Inspector.

14. Will the Planning Inspectorate preliminary screen DPDs/SCIs?

On submission, an early assessment of compliance with s20(5)(a) of the 2004 Act and 2004 Regulations will be carried out on behalf of the Inspector to ensure the requirements are met before the document is examined for soundness under s20(5)(b).

15. Can new issues be raised in representations at submission stage?

New issues should not normally be raised at submission stage, as alternative policy options and proposals should be properly aired during the earlier consultation stages. Representations requesting substantial changes to a DPD at submissions stage may present problems for the Inspector, since he/she may only make changes to the DPD if they are sound in accordance with all the tests. The Inspector would not be able, for example, to include a new site proposed at submission stage unless it could be shown that the proposal had been subject to proper procedures of community involvement and sustainability appraisal.

16. When does the examination process start?

The examination process starts on the submission of the DPD/SCI to the Secretary of State.

There may be circumstances where it is appropriate for the DPD/SCI to be rejected prior to the consideration of the plan/statement and representations in the context of the tests of soundness (such as where there is an obvious and fundamental procedural omission), but this will depend on the circumstances. If an Inspector were minded to reject a DPD/SCI as unsound, full reasons would be given.

17. To what extent will the Inspector be considering the sustainability appraisal report?

The role of the Inspector at the examination is to consider the soundness of the development plan document using the sustainability appraisal as part of the evidence base. Guidance is provided in 'Sustainability Appraisal of Regional Spatial Strategies and Local Development Documents' issued by the Office of the Deputy Prime Minister (see pages 54 - 55 which cover the

examination and the issue of late sites and the text box on page 38, PPS12).

18. What is the Inspector's duty in relation to sustainable development?

Section 39 the 2004 Act applies to the Inspector appointed to carry out the independent examination. It requires that he/she must exercise their function with the objective of contributing to the achievement of sustainable development. The Inspector must have regard to national policies and advice contained in guidance issued by the Secretary of State.

19. Can an Inspector reopen an examination?

The Inspector will normally choose to keep the examination open, after hearing all those who wish to be heard and holding all the programmed sessions. This will enable the Inspector to seek further clarification on matters which have been raised under written representations and to address, if necessary any new matters which may arise during the hearing part of the examination (providing these do not materially affect the substance of the plan). Once the report is finalised, the examination cannot be reopened.

20. Will there be supplementary guidance available to Inspectors and will it be made available publicly?

The guides are aimed at all those involved in the preparation and examination of DPDs/SCIs. Where the Inspectorate considers that further guidance might be helpful to Inspectors, particularly where it relates directly to the detailed procedural elements of the Inspectors role at the examination, we shall seek to provide further advice. This advice will be available on request from the Planning Inspectorate.

21. How will best practice be disseminated as the new system of examination beds in?

The Planning Inspectorate will be launching extensive revisions to the development plan pages of their website early in 2006 to enable the dissemination of emerging good practice from the examination of DPDs and SCIs. The Development Plan Examinations guides will also be subject to periodic review and update

Part 2: Questions relating to making representations

22. How will I know when the LPA has submitted a DPD/SCI for examination?

When the LPA submit the DPD/SCI for independent examination, the authority will place it on its website and on deposit at their main office and other suitable venues and give notice by local advertisement in a local newspaper. It will also send copies to the consultation bodies described in the 2004 Regulations, and will invite representations on the submitted document.

23. How long do I have to submit my representation?

In order for your representation to be considered, at the examination, you must make the representation during the specified 6-week consultation period at submission stage.

24. Do I have to use the model form to submit my representation(s)?

No, but you are recommended strongly to do so. The forms and accompanying notes are designed to assist you in focusing your representation and will ensure there is consistency in the way representations are presented and considered, helping the examination process to run smoothly.

Copies of the forms and accompanying notes should be made available by the LPA on request or should be available for download on the local authority website.

25. Do representations seeking a change to a DPD/SCI have to be related to the tests of soundness?

No. But it will assist the Inspector in the examination process if representations seeking changes to the DPD/SCI focus on the tests of soundness. Ideally representations should seek to demonstrate clearly why the DPD/SCI is unsound and what changes are considered necessary to make it sound. Representations must relate to the DPD/SCI itself.

26. Can I use one form to make all my representations?

Where your representation seeks more than one change (and relates to the failure to meet more than one test of soundness), a separate form should be used for your representation on each change and relevant soundness test. A separate form should also be used for a representation supporting the DPD/SCI as opposed to a representation seeking a change.

27. What if I know there are others that share the same concerns as me?

Where there are groups who share a common view on how they wish to see a DPD/SCI changed, it would be very helpful for that group to send a single representation which represents the view, rather than for a large number of individuals to send in separate representations which repeat the same points (repeating the same points will not add weight to the case being made). Groups should indicate how many people they represent and how the representation has been authorised.

28. Can representations to a DPD/SCI be made confidentially?

No. PPS 12 (Annex C, para C10) makes clear that any representations that are received cannot be treated as confidential. This will allow those who have made representations to identify others who have made a similar representation.

29. Can I submit my representation electronically?

Regulation 4 of the 2004 Regulations provides that representations made on the DPD/SCI may be sent/made by way of electronic communications.

The completed form may be submitted to the LPA via the email address which should be provided by the authority for making representations.

30. What is the nature of the legal right to be heard?

Only those seeking a change (i.e. effectively 'objecting') to the DPD/SCI have a right to be heard. Those making representations supporting the DPD do not have the right to be heard. It is for the Inspector to determine the form of right to be heard i.e. whether it is a round table discussion, informal or formal hearing.

When a person intends to exercise this right, it is helpful if they consider how attendance at an examination, as opposed to setting out the case in writing, will help the Inspector consider whether the DPD/SCI is sound.

31. Will the Inspector assist me to make my representation at the examination?

Inspectors are careful to ensure that lay participants who are unfamiliar with an oral hearing are properly guided through the process. However, it is not necessarily the case that an appearance before the Inspector will lead him/her to a better understanding of your point – you should consider carefully whether a written representation might allow you to make your case more clearly.

32. Will I be prejudiced if I don't attend an oral hearing?

No. Written representations are afforded the same weight as examination appearances.

33. What if I refuse a request to appear by an Inspector?

Inspectors have the power to invite additional participants to the examination who have opted not to be heard or who can offer expert advice on a particular issue. However, where a person who has made a written representation declines an invitation to appear, non-attendance will not detract from the weight afforded to their written representation.

34. If I have made a representation seeking a change, will my agreement be sought prior to calling an expert witness to give evidence at an examination?

No. But all relevant parties would be informed of the Inspector's decision to call an expert witness and their comments would be taken into account. Where appropriate, such parties would be given an opportunity to respond to evidence of an expert witness.

35. How will I know the outcome of the examination?

After the examination, the Inspector will produce a report for the LPA with his/her recommendations and reasons. The conclusions reached by the Inspector will be binding and the LPA must incorporate the changes required by the Inspector and then adopt the DPD/SCI.

36. Am I entitled to see a copy of the Inspector's recommendations and reasons in the binding report?

Yes. On adoption of the DPD/SCI, the local planning authority must publish the Inspector's recommendations and reasons. These should be

available for inspection at the LPA's offices and on its website. Notice must also be given to those persons who requested to be notified of their publication.

37. Will I be able to identify specifically how my representation has been dealt with in the Inspector's report?

The report will not summarise any representations submitted to the examination but will focus on whether the development plan document is sound, which the Inspector's conclusions will address.

38. What if I wish to challenge the adopted DPD/SCI?

Any person may challenge the validity of an adopted DPD or SCI on the grounds that it is not in accordance with the powers conferred by the relevant legislation. Applications must be made to the High Court within 6 weeks of the date of the LPA advertising that the DPD/SCI has been adopted.

39. Can persons making representations apply for an award of costs following a DPD/SCI hearing?

No everyone who attends a DPD/SCI hearing will be responsible for meeting their own costs (see para D19, PPS12)

40. Where can I find further information about Local Development Frameworks?

The primary source of guidance is PPS12. There are several other publications that provide guidance which are listed in the Annexes to the DPD and SCI guides. The ODPM website www.odpm.gsi.gov.uk provides many of these documents online.

The Planning Inspectorate is also producing separate guidance leaflets on the examination of DPDs and SCIs aimed specifically at members of the public wishing to participate in the examination process, which will provide more general advice. These leaflets are planned for publication early in 2006.

Part 3: Questions of particular interest to LPAs

41. Where should a formally submitted SCI /DPD be sent?

An LPA should submit their DPD/SCI to the Planning Inspectorate copied to the Government Office. Although the regulations state 4 paper copies, the Planning Inspectorate is content to receive 2 paper copies and 1 electronic copy. In the case of a DPD, this should be supported by a copy of the Sustainability Appraisal Report, any supporting technical documents (such as the urban capacity study and housing needs survey), a copy of the SCI (where one is adopted) and a statement of compliance detailing how the LPA has complied with the SCI (or minimum requirements of the 2004 regulations).

42. Where should the representations received on a submitted DPD/SCI be sent?

An LPA should submit the final representations at Regulation 31 stage to the Programme Officer in hard copy (where a Programme Officer is appointed). It is sufficient for the LPA to provide the Planning Inspectorate with one electronic copy of the representations and a summary of the representations. The Government Office should not be sent copies of the representations at Regulation 31 stage.

43. When will an examination be arranged into a DPD/SCI?

A formal examination will be arranged once the Planning Inspectorate has received the final representations on the submitted DPD/SCI (Regulation 31). At this stage we will know if the DPD/SCI can be dealt with by written reps.

If any persons seeking a change to the DPD/SCI exercise their right "to be heard", then a hearing may be required as opposed to the written representations method. If a hearing is required the LPA should indicate a preferred date for the opening of the examination when they send details of the representations received.

44. How long will an SCI oral hearing last?

This will depend upon the number of persons submitting representations seeking a change who have exercised their right to be heard at an examination. However, it is hoped that the majority of hearings for SCIs will only last 1 or possibly 2 days.

45. How long will a DPD oral hearing last?

The precise length of the individual examination will be determined by the nature of the DPD and the issues involved. The draft programme will indicate how long the examination is anticipated to last and inform participants when they are likely to be required to attend.

The examination programme will show what procedural methods the Inspector intends to adopt having regard to the nature of the DPD and the representations and will indicate who has been invited to each session, having regard to participants' wish to be heard and how the examination is proposed to be structured, having regard to the tests of soundness.

The aim is that from submission of any DPD for examination to issue of the binding report should take no more than 12 months.

46. Will a Pre Examination Meeting be required for an SCI?

In most cases, it is considered unlikely that there will be a need for the Inspector to hold a pre-examination meeting prior to a Statement of Community Involvement examination. In the rare cases when a pre-examination meeting is considered necessary, the procedure will be similar to that for a Development Plan Document.

47. Will a Pre Examination Meeting be required for a DPD?

Where a DPD is simple and straightforward and there are no/limited representations (which may be dealt with by written representations) it is unlikely that a pre examination meeting will be needed. In other cases,

normally a pre-examination meeting or meetings will be held by the Inspector to discuss the management of the examination, including the overall programme for the examination, how representations will be heard and the timetable for submission of evidence. It is desirable that those who wish to appear at the examination make every effort to attend such meetings. For further guidance see paragraphs D26-D32, Annex D, PPS12.

48. Does a Programme Officer need to be appointed for an SCI?

No. In most instances if a hearing is not required, it is not essential to appoint a Programme Officer. However, the LPA should provide the Planning Inspectorate with the name and details of a contact who will have overall responsibility for advertising, giving notification of, and making all arrangements for the hearing. The LPA should also make available a person to provide administrative assistance to the Inspector if required, and this person should be unconnected with the preparation and implementation of the SCI.

49. Does a Programme Officer need to be appointed for a DPD?

In most cases it is likely a Programme Officer will be required. Under the guidance of the appointed Inspector, the Programme Officer will draw up a provisional examination programme and timetable for discussion at the pre-examination meeting, which will be published on the LPA's website.

50. What if documents submitted are incomplete?

The Planning Inspectorate will inform the LPA and set a timetable for the submission of any missing documents to allow the examination to proceed.

51. Will there be a chance to submit additional material before the formal DPD/SCI examination starts? How long will LPAs have to submit revised/additional material?

Prior to the start of the formal examination the Planning Inspectorate will set deadlines for the submission of any further material from those seeking a change to the Statement of Community Involvement together with the deadline for any LPA response. These deadlines will vary according to the nature of the examination, but generally a maximum of 14 days will be allowed. During the examination of the DPD/SCI the Inspector may correspond with the participants to clarify matters raised in their representations and he/she may also direct participants to address particular issues about the soundness of the DPD/SCI. The Inspector will set deadlines for any response. If any party misses any deadlines for the submission of additional representations set by either the Inspector or the Planning Inspectorate, the Inspector may disregard those representations.

52. What if an LPA has not consulted with adjoining parish councils on their DPD/SCI?

The important factor is that adjoining parish councils have a right to be consulted on the DPD/SCI. The possible options include:

- i) If an LPA has not consulted with them under Regulation 25 then they must consult with them under Regulation 26;
- ii) If the Regulation 26 consultation is already underway or has finished but the LPA has not formally submitted their DPD/SCI yet then the LPA must re-

run the Regulation 26 consultation for adjacent parish councils. The adjacent parish councils must be given the statutory 6 weeks consultation period;

iii) If an LPA has formally submitted their DPD/SCI under Regulation 28 but has not consulted the adjacent parish councils at Regulation 25 or 26 stages the LPA should ensure that adjacent parish councils are consulted under the Regulation 28 consultation; or

iv) If the Regulation 28 consultation is already underway or has finished the LPA must re-run the Regulation 28 consultation for adjoining parish councils. The adjoining parish councils must be given the statutory 6 weeks consultation period.

53. What if an LPA has carried out Regulation 25 Pre-submission consultation and Regulation 26 Pre-submission public participation at the same time?

In examining the DPD/SCI under section 20(5) (a) of the 2004 Act the Inspector will need to be satisfied that an LPA has complied with the provisions of both the Act and the Regulations

In order for the Inspector to do this evidence is required to show that no-one has been prejudiced by any failure of an LPA to carry out a separate Regulation 25 consultation. It is a matter for an LPA to decide what evidence to produce. However, they may consider this can be achieved by either:

i) showing that an LPA had made it clear to all Regulation 25 statutory bodies at the time that Regulations 25 & 26 were being carried out concurrently rather than consecutively;

OR, if that is not the case it will be necessary to,

ii) write to the Regulation 25 statutory bodies concerned and seek clarification from them that they do not consider that they have been prejudiced as a result of the authority's decision not to carry out a separate Regulation 25 consultation process because either:

- their concerns are being addressed by the submitted document as a result of representations they made at Regulation 26 stage;
- or that they have made representations on the submitted document which will be considered at the examination.

If an LPA does not do this the Inspector will proceed to make a decision on the submitted document in light of the provisions of Section 20 of the 2004 Act.

54. With regard to the handling of representations by the LPA, regulation 31 requires that a copy of the representations must be made available at the places at which the pre-submission proposals documents were made available under regulation 26(a). Does this have to be a hard copy?

No. Regulation 31(2) (a) does not say that the copy has to be a hard copy so having the representations available electronically at the places would suffice. However, an LPA will have to make hard copies of the

representations available at the places where there are not electronic means available.

LPAs should be aware that regulation 31(2) (a) is quite clear in that LPAs must make a copy of the representation available to be inspected. An LPA would not be in compliance with the regulations if it simply provided a note of all the comments received and possibly the names/organisations responsible.

55. How should LPAs structure their databases for representations?

LPAs should structure their database for representations so that the representations are capable of being listed in a variety of ways including soundness test order, paragraph order or policy order. This will assist the Inspector in determining the most efficient way of carrying out the examination.

It would be helpful if LPAs set out the criteria for testing soundness when advertising/publicising the DPD/SCI at the formal submission stage to help to focus the representations. Each representation should be counted per test of soundness, so that if for example it relates to two tests then that is effectively two representations.

56. What if an adopted SCI has not been complied with in preparing the DPD?

Failure to comply with an adopted SCI may result in a finding of unsoundness.

57. Is there a checklist available for assessing whether a DPD is sound?

A summary of the key question and evidence requirement for DPDs is set out in Annex B of, 'Development Plans Examination – A Guide to the Process of Assessing the Soundness of Development Plan Documents'.

58. When will the relevant Government Office see a copy of the binding DPD/SCI report?

Shortly before the Inspector formally issues the binding report to the Local Planning Authority, he/she will send the draft report to the Local Planning authority to allow it an opportunity for final comment on factual matters (known as 'fact check' stage). The Planning Inspectorate will also provide the relevant Government Office with a copy of the draft at that stage. Any issues raised by the Government Office will be made publicly available.

59. What powers do the Government Office have to intervene at the 'fact check' stage?

Section 20 of the 2004 Act allows for intervention by the Secretary of State where the recommendations of the binding report are considered to be in conflict with issues of regional or national importance and extend beyond the area of the plan making authority.

60. Where can an LPA get specific practical guidance on the examination of DPDs/SCIs?

The Planning Inspectorate can arrange a visit from an advisory team to discuss issues relating to the examination, including modes of representation, suitability of venues and the requirements of the Inspector. However, the final detail of the examination procedures will be a matter for the appointed Inspector to consider.