



# The Planning Inspectorate

An Executive Agency in Communities and Local Government and the National Assembly for Wales

## Development Plan Document Examination Procedural Advisory Notes

*These notes do not seek to cover all matters required by the Planning and Compulsory purchase Act 2004 or the Town and Country Planning (Local Development)(England) Regulations 2004. They are intended as general procedural guidance to local planning authorities submitting Development Plan Documents (DPDs) to the Inspectorate for examination.*

*This guidance applies to the LDF system as at **October 2007**. LPAs should be aware The Planning White paper seeks to place the examination after the final consultation period, which would necessitate amendment of the 2004 regulations and a review of PPS12 and Planning Inspectorate guidance.*

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](mailto: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 to appreciate the implications of the fact that the examination process is now concerned with the 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 and to provide the Inspectorate with a summary of the main issues raised in the representations. 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 submission.

Once submitted local planning authorities 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. 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.

## **1. Prior to Submission**

### **Quality of DPD**

1.1 LPAs should consider reviewing the evidence base to ensure that it is complete and sufficiently comprehensive for the specific DPD in question. The expectation is that no further material will be specifically requested by the inspector. 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 council 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 submission. A document checklist is provided at Annex 1 which sets out the Planning Inspectorate's document submission requirements.

1.2 Make sure as far as possible that the document you propose to submit is the council's final word on the content of the DPD. Making changes in the run up to the hearing part of the examination will create significant problems, not least because the inspector's ability to make changes is subject to constraints (and there is no longer a modifications stage). 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.

1.3 Carry out a self assessment of the DPD using the PAS guide<sup>1</sup>. 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 should 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.

### **Examination arrangements**

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<sup>1</sup> View at: <http://www.pas.gov.uk/pas/core/page.do?pageId=14614>

1.4 Appoint a programme officer (PO)<sup>2</sup>. The early appointment of a PO helps considerably not least in setting up an appropriate data base and in helping to ensure that you are properly prepared for the examination. **A PO must be in place before an inspector will be appointed.** It is essential to keep PINs 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.

1.5 Adequate provision should be made for accommodating the hearing sessions, the programme officer 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 PEM. Consideration should be given to matters such as access for the disabled and the facilities for the hard of hearing. 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 data base and ideally the inspector should also be provided with this facility. The Council should ensure that these computers are not linked into the wider council system.

## **Database**

1.6 The importance of the data base cannot be over-emphasised. Having a suitable data base in place from the outset allows the council 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 data base takes place at the beginning of the process.** As a minimum PINS requires the data base to include fields for a unique representation number, a unique representor number, the part of the DPD that the representation relates to and the test of soundness that the representation relates to. The council may well want a variety of other matters on the data base. The Data base field for tests of soundness should be an optional field. It is helpful to populate this field where possible but there are likely to be some representations where no reference is made to the tests of soundness. The data base 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 eg the HBF or all representations that refer to a specific test 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 2 contains the guidance we provide on the data base in our programme officer training courses.

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<sup>2</sup> Section 3.2 of 'Development Plans Examination – A Guide to Assessing the Soundness of Development Plan Documents' provides advice on the appointment and role of the programme officer. View at:  
[http://www.planning-inspectorate.gov.uk/pins/appeals/local\\_dev/Soundness\\_of\\_dpd.htm#guidance](http://www.planning-inspectorate.gov.uk/pins/appeals/local_dev/Soundness_of_dpd.htm#guidance)

1.7 Discuss the IT implications and needs with the council's IT department. Consider if and how the council'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.

## 2. Submission

2.1 **The examination starts as soon as the DPD is submitted and PINS is committed to completing the examination within a very tight timetable as set out in PPS12.** 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 submitted<sup>3</sup>). 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.

### Submission representations

2.2 It is advisable to populate the data base as the representations are received during the 6-week consultation period. The PO should be in post so this may be done by them. The representations should be checked to make sure they are in time and relate to the DPD under consideration. 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 6 week period have the statutory right to have their representations considered.

2.3 Collate the representations. Experience has shown that it will be most effective to collate 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. Thus the inspector will receive a distinct separate bundle of papers for each policy. The regulations require that the local authority send copies of the representations to the Inspectorate. Experience shows that the most helpful approach is for the authority to also prepare a schedule in plan order of the representations received. The schedule should give reference details (including wherever possible which test/s of soundness are being referred to) as well as a brief summary of what change is being sought. Some authorities have queried whether the representations should be in soundness test order. In many cases this is not practical not least because many of the representations do not refer to a test of soundness or refer to the wrong test of soundness or refer more than 1 test. It will be up to the

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<sup>3</sup> The lpa may not withdraw the **submitted** document without the consent of the SOS – Section 22(2) 2004 Act

inspector to decide how to address the tests of soundness in the context of the representations.

2.3 Where those making representations have not understood the tests of soundness or have clearly made a mistake, about which test of soundness the representation relates to the council 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 council is seeking to influence them. The most practical approach is probably for the data base to simply reflect what, if anything, the representors have said about the tests of soundness. However the Council should begin the process of assessing what the principal issues being raised are and which of the tests of soundness are being used by those seeking a change to the DPD.

### **3. Post Submission Consultation Period**

3.1 Complete the data base and the collation of the representations as soon as possible so that minimal delay occurs between the end of the statutory consultation period and progress to any hearing stages of the examination.

3.2 Authorities should consider whether the representations have resulted in the need for further consultation in accordance with regulations 32 (handling of site allocation representations) and 33 (representations on a site allocation representation).

3.3 The LPA should not be making changes in response to the post submission consultation process if the front loaded process has been effective. If major changes are required it suggests that the preparation process was inadequate in that it failed to identify and assess alternative options adequately and that the final DPD was not ready for submission. In these circumstances the LPA should approach the relevant government office to discuss the options for resolving the matter. If only very minor changes are required (e.g. editorial changes) prepare a schedule of these changes for the inspector to consider.

3.4 On submission PINS will discuss with the LPA dates for any Pre Examination Meeting (PEM) and start dates for any hearing stage (in accordance with the SLA). These will be agreed with the Inspector and the PEM and the start date for the hearings sessions will be confirmed.

3.5 Prepare a summary of the main issues raised in the submission representations and send this to PINS - see regulation 31(2) (c) (iii). This also needs to be sent to the GO and the RPB (GLA in London)

### **4. Before the PEM**

4.1 Confirm the team to be fielded by the council and ensure that they are available to attend the PEM

4.2 The Inspector will provide a PEM note/agenda which will include the matters and issues. Consider whether the council needs to request any adjustments to the agenda.

## **5. At the PEM**

5.1 The inspector will: -

1. introduce himself/herself and the PO
2. invite the council 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 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.

5.2 A note of the PEM will be circulated by the inspector via the PO to all those who have made representations.

## **6. The Examination**

### **Hearing sessions**

6.1 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 council at the table.

6.2 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. Councils 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 tests of soundness<sup>4</sup>.

6.3 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**

6.4 Because of the intensive nature of the hearing sessions it is likely that the inspector will usually sit 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 councils 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.

6.5 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 completion of the post submission consultation stage. It is therefore not helpful to the process to submit further unsolicited evidence.

### **Note taker**

6.6 Some inspectors may ask if the council 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

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<sup>4</sup> View at:

[http://www.planning-inspectorate.gov.uk/pins/appeals/local\\_dev/Soundness\\_of\\_dpd.htm#guidance](http://www.planning-inspectorate.gov.uk/pins/appeals/local_dev/Soundness_of_dpd.htm#guidance)

of the examination documentation and will not be disclosed other than if required by the Freedom of Information Act.

### **Refreshments**

6.7 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 council to decide.

**LDF Operational Team  
Planning Inspectorate  
October 2007**

## **Annex 1: DPD Submission Checklist**

### **On submission we will require the following:**

Two copies of the submission DPD

Two copies of the submission Sustainability Appraisal

Two copies of the Statement of Compliance (Regulation 28 Statement). (This should include a list of consultees for both Regulation 25 and 26 consultation stages.)

Two copies of the DPD matters

Two copies of the Preferred Options and Submission newspaper adverts.

One copy of the Statement of Community Involvement

One copy of the Self Assessment

One copy of the Appropriate Assessment (or evidence of appropriate scoping work/ copy of a letter from Natural England that confirms an Appropriate Assessment is not required.)

One copy of the Equalities Impact Assessment.

One copy of the latest Local Development Scheme

One copy of the latest Annual Monitoring Report

One copy of the Community Strategy (in the case of Borough / District councils also one copy of the County's Community Strategy if one exists. County Councils should include all the Community Strategies produced within their area.)

One copy of the letter to the Regional Planning Body requesting confirmation of the conformity of the DPD with the RSS.

One copy of the Local Plan (for Districts / Boroughs etc, also one copy of the County plan).

One copy of all the documents that comprise the Evidence Base. (For ease of definition this should include **at the minimum** a copy of all documents referenced in the submitted DPD.)

*Electronic copies of all of the above on CD.*

All the above (apart from the newspaper adverts) should be available on the appropriate page of the Council's website. (*Actual documents or links thereto.*)

Additionally, we will require the name and contact details for the appointed Programme Officer, the proposed venue for the examination, a preferred start date for the sessions and an estimate of the duration.

**Once the submission stage consultation is complete** the LPA should send to the Case Officer one electronic and one hard copy of the Regulation 31 Statement.

Should a further consultation be required on alternative sites (Regulation 32) the LPA should send the Case Officer (both electronically and in hard copy) the following:

Copy of the statutory advertisement:  
Regulation 33 statement which should include details of the alternative sites consulted upon.

The programme officer should also be instructed to inform the Case Officer of the production of any Topic papers and / or Statements requested by the Inspector.

## **Annex 2 : The Database**

The database is essential in ensuring the examination runs smoothly and effectively and provides the Programme Officer with the means to control all aspects of the process.

If the database has already been set up, the Programme Officer should inspect it carefully to ensure that it can provide the information in the format required both for the Council and The Inspector.

### **Table and Fields**

Separate tables for respondents and representations, linked by respondent number are required

### **The Respondents Table**

Fields for inclusion are:

Respondent 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 Respondent 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 respondent'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 entitle 'Reason' enables the appropriate information to be recorded.

## The Representations Table

Fields for inclusion are:

Respondent Number  
Representation Number  
Object/support  
Policy  
Chapter/Paragraph  
Test of Soundness (1 – 9)  
Intent  
Summary of Representation  
Council's response  
Council's proposed action  
Respondent Evidence No  
Council Evidence No

- One record per representation
- Each representation number should be a numerical sequence for each respondent e.g 01, 02 etc
- Every representation should have a different number
- The representation number can reflect the policy referred to e.g 1234/01 or 2345/Gen1. This can be produced automatically by combing two database fields and inserting a stroke (/) between them.
- Councils are strongly discouraged from producing pre-examination changes. However where representations relate to PECs or Omission Sites it will be necessary for this to be included in the database by the use of a suffix e.g 004/02/PEC or 004/02/OM

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

### The Intent Field

This identifies how the respondents 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 test of soundness and or policy.**

Only duly made representations, either objecting or supporting should be entered on the database.

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