



Section 53: Rights of Entry (Planning Act 2008)

Advice note five: Section 53

Status of this Advice Note

This version of advice note 5 supersedes all previous versions.

Background

A section 53 (s53) authorisation request¹ and any subsequent s53 authorisation relate to rights of entry to land.

A number of authorisation requests received by the Planning Inspectorate to date have been submitted with insufficient information, resulting in delays in determination. Applicants should ensure they provide all of the information detailed in this advice note to prevent such delays.

Summary of this Advice Note

This note provides advice to Applicants and to those with an interest in the land to which the authorisation request relates (for example, owners, occupiers, tenants and lessees) ('persons with interest') as to how the process works and what they need to do.

A person ('the Applicant') who proposes to make or who has made a Development Consent Order ('DCO') application under the Planning Act 2008, as amended (the 'PA2008') may apply for authorisation from the Secretary of State for a right to enter land owned by third parties, in order to carry out surveys and take levels and/or in order to facilitate compliance with statutory provisions implementing the Environmental Impact Assessment Directive² or Habitats Directive³, under s53 of the PA2008. This may include the power to search and bore to ascertain the nature of the subsoil or the presence of minerals or other matter in it⁴ and/or to take and process samples⁵.

The Secretary of State can only authorise⁶ a right of entry onto third party land in connection with:

- (i) a proposed application for a DCO under the PA2008;
- (ii) an application for a DCO under the PA2008 whether in relation to that or any other land, that has been accepted for examination by the Secretary of State; or

1. s53 of the PA2008
2. Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment, as amended from time to time (s53(1A)(a) of the PA2008)
3. Council Directive 92/43/EC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora, as amended from time to time (s53(1A)(b) of the PA2008)
4. s53(3) of the PA2008
5. s53(3A) of the PA2008
6. s53(1) of the PA2008

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(iii) a DCO which has been made under the PA2008, that includes provision authorising the compulsory acquisition of that land or of an interest in it or right over it.

In order to grant a s53 authorisation, the Secretary of State must be satisfied that the proposed Applicant is considering a distinct project of real substance genuinely requiring entry onto the land⁷.

Before seeking a s53 authorisation Applicants should be aware of the expectations set out in the DCLG Guidance⁸. This includes the expectation that Applicants have acted reasonably, through demonstrating that they have first sought to obtain the relevant permission to access land directly and that they consider that they have been unreasonably refused that access⁹.

The authorisation request(s) made by the Applicant and any comments by the persons with interest should be made to the Planning Inspectorate, who determines such requests on behalf of the Secretary of State. Contact details are provided at the end of this advice note under 'Further information'.

The remainder of this advice note is divided into three sections:

A. Information and advice for Applicants (pages 3 to 10)

B. Information and advice for persons with interest (pages 10 to 12)

C. General information and advice for Applicants and persons with interest (pages 13 and 14)

All parties are advised to seek their own legal advice on which they can rely before submitting or commenting on a s53 authorisation request.

7. s53(2) of the PA2008

8. Department for Communities and Local Government - Planning Act 2008: The Infrastructure Planning (Fees) Regulations 2010 Guidance (June 2013) (the 'DCLG Guidance')

9. DCLG Guidance, Annex A



A) Information and advice for Applicants

This section provides advice for Applicants on the information that should be submitted to the Planning Inspectorate.

1. Contacting the Planning Inspectorate before requesting authorisation for a right of entry to gain access onto land

1.1 Applicants are strongly encouraged to contact the Planning Inspectorate at least four weeks in advance of submitting any s53 authorisation request(s). The Planning Inspectorate can provide advice as to the evidence that the Applicant needs to provide, the likely number of authorisation requests, as well as details on the fees and how payment can be made.

2. Number of authorisation requests

2.1 The Planning Inspectorate has discretion to determine the number of authorisation requests made by the Applicant^{A1}. As a general rule and having regard to the DCLG Guidance, the Planning Inspectorate will treat each land parcel representing a registered title or area of unregistered land as constituting a single s53 authorisation request.

2.2 However, there may be occasions where a s53 authorisation request containing more than one land parcel should be treated as a single authorisation request. This may include situations where land ownership appears to have been subdivided specifically for the purpose of creating the need for multiple requests, or where multiple parcels of land are held by the same landowner(s) and these parcels of land are sufficiently neighbouring each other. Applicants should provide justification to the Planning Inspectorate as to why one fee may be appropriate, taking into account how all of the land parcels relate to each other and the complexity of the titles.

3. Fees

3.1 The current fee payable is per request and is determined by the Regulations^{A2}. Fees are payable by BACS payment. Please contact the Planning Inspectorate to obtain these payment details (see contact details at the end of this advice note).

3.2 The Planning Inspectorate will confirm receipt of the fee(s) and the authorisation request(s) to the Applicant. Non-payment of the fee(s) will delay the process because the request will not be considered until the correct payment is received.

3.3 A refund will not be provided if an authorisation request is subsequently withdrawn.

4. Information to be provided with the s53 authorisation request(s)

4.1 The PA2008 does not prescribe a form or process to follow when seeking authorisation under s53. The s53 authorisation request(s) should be made in writing to the Planning Inspectorate. The Applicant should provide the Planning Inspectorate with one hard copy and one electronic copy of each s53 authorisation request, which should comprise the same information. The information provided on the electronic copy should not be protected or encrypted. The hard copy of each request should be provided in an A4 folder. Where multiple requests are submitted, a separate A4 folder should be provided for each request. Where more than one authorisation request is made on the same date, the Applicant may wish to avoid duplication of common documents by producing a separate core document folder which is cross-referred to in each authorisation request.

A1. DCLG Guidance, Annex A

A2. The Infrastructure Planning (Fees) Regulations 2010 (SI 2010/106) (as amended) ('the Fees Regulations') or any subsequent amending or replacement legislation for the time being in force



4.2 The authorisation request(s) covering letter should include all the information listed below and identify where the information provided to support the Applicant's authorisation request(s) can be found within each folder. This should be by reference to a specific 'Tab' within each folder clearly labelled as set out below:

- A1. Contact details
- A2. Description of the project requiring or granted development consent
- A3. Explanation of why authorisation is needed, having regard to the criteria for a s53 authorisation
- A4. Details of the proposed surveys and works
- A5. Identifying persons with interest
- A6. Plans identifying the land for which authorisation to enter is sought
- A7. Information to demonstrate that the Applicant has acted reasonably and has been unreasonably refused access to the land
- A8. Evidence of notifying the persons with interest that a request for authorisation has been made to the Planning Inspectorate
- A9. Duration for which s53 authorisation is sought
- A10. Any conditions subject to which the Applicant thinks any s53 authorisation should be granted
- A11. Check list

The above information is explained further in the following sections.

A1 - Contact details

A1.1 The full name, address, telephone number and email address of the person or organisation making the request(s) should be provided. Where the authorisation request is being made by an organisation, a named point of contact within that organisation should be given, and in such a case, if the authorisation is granted, the organisation itself will be the 'person authorised' to enter the land.

A1.2 If the authorisation request(s) is/are being made by an agent acting on behalf of the Applicant, the same information as requested above should be provided for both the Applicant and the agent.

A1.3 Where an Applicant employs an agent to act on their behalf, the Applicant or agent should provide written confirmation from the Applicant that the agent is indeed authorised to act on their behalf.

A2 - Description of the project requiring or granted development consent

(i) Where an application for a DCO has not yet been submitted:

A description of the proposed nationally significant infrastructure project (NSIP) and any associated development.

(ii) Where an application for a DCO has been accepted for examination:

The reference number of the application.

(iii) Where a DCO has been granted:

A copy of the DCO and land plans. The Applicant should highlight in the covering letter the relevant provision(s) of the DCO that authorise(s) the compulsory acquisition of the land in question (or of an interest in it or right over it).



A3 - Explanation of why authorisation is needed, having regard to the purpose of requesting a right of entry onto land and satisfying the criteria for a s53 authorisation

A3.1 The Applicant should provide a full explanation as to why authorisation for rights of entry is sought. The Applicant should identify if entry onto the land is for *'surveying and taking levels'*^{A3} and/or in order to facilitate compliance with the Environmental Impact Assessment Directive and/or the Habitats Directive^{A4}.

A3.2 Where Applicants are seeking authorisation for *'surveying and taking levels'* of the land, Applicants should also identify whether they are requesting authorisation to *'search and bore for the purposes of ascertaining the nature of the subsoil or the presence of minerals or other matter in it'*^{A5}. Where authorisation is sought for the inclusion of the power to 'search and bore' this will be considered as a request for intrusive surveys, which should be reflected in the draft conditions proposed by the Applicant.

(i) Where an application for a DCO has not yet been submitted:

A3.3 The Applicant should be aware that the Planning Inspectorate, on behalf of the Secretary of State, can only authorise entry in relation to a proposed DCO application if it appears to them that the *'proposed applicant is considering a distinct project of real substance genuinely requiring entry onto the land'*^{A6}.

A3.4 To demonstrate that the Applicant is *'considering a distinct project of real substance'* the Applicant could, by way of example, provide the following information:

- (i) details about what stage in the pre-application consultation the Applicant has reached on the project;
- (ii) whether the Applicant has given notification under s46 of the PA2008; and
- (iii) whether the Applicant has requested a screening or scoping opinion from the Secretary of State.

A3.5 To demonstrate that the proposed project is one *'genuinely requiring entry onto the land'* the Applicant should provide an explanation as to why entry is required, bearing in mind whether entry is sought under the provisions of s53(1) and/or s53(1A) of the PA2008. Evidence that the Applicant may wish to provide to demonstrate this may include details about the proposed surveys and works (please refer to **Section A4** below for further details).

ii) Where an application for a DCO has been accepted for examination; or

(iii) a DCO has been granted:

A3.6 Where a s53 authorisation request relates to an application for a DCO that has been accepted for examination, or to a DCO that has been granted (including provision authorising the compulsory acquisition of the land or of an interest in it or right over it) the Planning Inspectorate expects the Applicant to demonstrate that they have a genuine need to enter onto the land.

A4 - Details of the proposed surveys and works

A4.1 The Applicant should clearly specify what surveys they intend to carry out, outline their methodology and provide an explanation as to why the surveys are connected with the proposed/accepted for examination/consented DCO.

A3. s53(1) of the PA2008
A4. s53(1), s53(1A) and s53(3A) of the PA2008
A5. s53(1) and s53(3) of the PA2008
A6. s53(1)(b) and s53(2)(a) of the PA2008



A4.2 The following information should be provided in relation to each authorisation request:

- the scope of surveys and whether these have been agreed with any relevant regulatory/environmental bodies;
- the survey area, timescale and period, including an indication of whether or not repeat visits would be required; and
- any other survey requirements, including access into buildings and night-time surveys.

Disturbance of protected species

A4.3 Any authorisation which may be granted by the Planning Inspectorate, on behalf of the Secretary of State, under s53 of the PA2008 will not extend to authorising entry onto land for any activity which may lead to committing an offence under:

- the Habitats Regulations^{A7} (European Protected Species);
- the Wildlife and Countryside Act 1981 (as amended); or
- legislation for the protection of specific species, for example, the Protection of Badgers Act 1992.

A4.4 If an Applicant wishes to carry out survey activities on the land that may lead to an offence being committed, consideration should be given as to whether there is a need to obtain a licence from the relevant nature conservation body, for example Natural England or Natural Resources Wales. Where a licence is required, it will be the Applicant's responsibility to ensure this is obtained before undertaking the surveys, if a s53 authorisation is granted.

A5 - Identifying persons with interest

A5.1 A table ('the Table') should be enclosed with the authorisation request(s) which details the known information about the land to which the s53 authorisation request(s) relates and the identity of the persons with interest. Whilst the categories of person that the Applicant can serve a s53 authorisation notice on is not prescribed in s53 of the PA2008, the Planning Inspectorate expects that the Applicant will identify, consult and notify the owners, occupiers, tenants and lessees of the land to which the s53 authorisation request(s) relates. A suggested format for the Table is provided at [Annex A](#).

A5.2 The Applicant should explain how each person with interest has been identified. This should include:

- **for registered land parcels:** providing up-to-date^{A8} official copies of the registered title and title plans. Where the land is registered the Planning Inspectorate expects the Applicant to consult anyone with a registered interest about the proposed s53 authorisation request(s) and to notify them if an authorisation request(s) is made. Where the Applicant is of the opinion that this approach is not appropriate, the reasons why should be clearly explained in the authorisation request; and
- **for unregistered land parcels:** providing evidence to demonstrate that the land is unregistered, such as an up-to-date^{A9} copy of a certificate of the result of the search of the index map in relation to the land (including the map submitted to the Land Registry to undertake the search). The Applicant should also provide evidence to demonstrate how the persons with interest were identified as having an interest in this unregistered land. For example, written confirmation from the persons with interest or a record of a meeting in which the person confirmed their interest in the land.

A7. The Conservation of Habitats and Species Regulations 2010 (SI 490) as amended ('the Habitats Regulations')

A8. The Planning Inspectorate as a rule of thumb, expects the date on the official copies to not exceed 3 months from the day on which the s53 authorisation request(s) were submitted to the Planning Inspectorate

A9. The Planning Inspectorate as a rule of thumb, expects the date on the certificate of the result of search of the index map to not exceed 3 months from the day on which the s53 authorisation request(s) were submitted to the Planning Inspectorate



Statutory Undertakers' Land

A5.3 The authority of an appropriate Minister is required in relation to land held by statutory undertakers^{A10} who object to the proposed surveys on the ground that execution of the works would be seriously detrimental to the carrying-on of their undertaking^{A11}. In the case of land in Wales held by water or sewerage undertakers any such authorisation must be obtained from the Welsh Ministers^{A12}.

A5.4 Applicants are advised to contact the Planning Inspectorate before submitting a s53 authorisation request where they have identified that the proposed request includes land held by statutory undertakers.

Crown land

A5.5 A s53 authorisation may grant rights of entry onto Crown land^{A13}. However, a person cannot exercise that right unless they have the permission of the appropriate Crown authority or the authority of a person who appears to that person to be entitled to give that permission.

A6 - Plans identifying the land for which authorisation to enter is sought

A6.1 A plan, marked as 'Plan A', should be provided to accompany the Table. Plan A should show the following information:

- **outlined in red:** the extent of the development and works^{A14};
- **identified in blue:** any land owned or under the control of the Applicant, or provide confirmation that there is no land owned or under the control of the Applicant shown on Plan A; and
- **identified in green:** land for which rights of entry are sought, if subsequently authorised by the Planning Inspectorate, on behalf of the Secretary of State.

A6.2 Plan A should be no larger than AO size, drawn to an identified scale (not smaller than 1:2500) and show the direction of north.

A6.3 Where any part of the land identified in green on Plan A is registered, the boundary of the registered title number(s) should be clearly shown on Plan A and allocated a parcel number. The boundary of the registered title numbers shown on Plan A should match exactly the boundary of the title number shown on the official copy of the title plan. Where this is not the case the Planning Inspectorate will seek clarification from the Applicant and/or the persons with interest. The allocated parcel number(s) and registered title number(s) should be clearly cross-referenced to the Table, and **up-to-date official copies of the land registry documents** should be provided to the Planning Inspectorate.

A6.4 Where any part of the land identified in green on Plan A is unregistered, the boundary of the unregistered land should be clearly shown on Plan A and allocated a parcel number. The allocated parcel number(s) should be clearly identified on the Table and a clear description of the parcel area by reference to the boundary and any physical features provided. OS grid references for each parcel of unregistered land should be included in the Table.

A10. 'statutory undertakers' means persons who are, or who are deemed to be, statutory undertakers for the purposes of any provision of Part 11 of the Town and Country Planning Act 1990 (s53(11) of the PA2008)

A11. s53(10) of the PA2008

A12. s53(11) of the PA2008

A13. s.54 of the PA2008

A14. The works plan (required under regulation 5(2)(j) the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 (SI 2264)(as amended)), must also show this information



A6.5 Where the full extent of land required for, or affected by, the proposed development^{A15} cannot be identified on a single 'Plan A', for example due to the size of the proposed development, a '**Key Plan**' should be provided with insets. The Key Plan should identify the full extent of land required for, or affected by, the proposed development and the location of the land parcel(s) for which authorisation is sought and the inset plans which should be annotated as Plan A1; Plan A2 etc.

A7 - Information to demonstrate that the Applicant has acted reasonably and has been unreasonably refused access to the land

A7.1 Whilst there is no statutory test in respect of the efforts that the Applicant should make to obtain access to the land prior to making a s53 authorisation request to the Planning Inspectorate, DCLG Guidance states that '*Applicants are expected to act reasonably, first seeking to obtain relevant... permission to access land directly before seeking authorisation under these provisions. Specifically, applicants should only submit requests for...access to parcels of land, where they consider they have been unreasonably refused that...access*'^{A16}

A7.2 Therefore, an Applicant will be expected to demonstrate the reasonable efforts made to obtain entry to the land identified in green on Plan A, prior to making the s53 authorisation request(s) to the Planning Inspectorate, and explain why in their opinion, they have been unreasonably refused that access.

A7.3 It is expected that, wherever possible, there will have been an exchange of correspondence and dialogue between the Applicant and the persons with interest in an attempt to obtain access to the land, prior to making the s53 authorisation request(s). Where dialogue has occurred over a short period of time, the Applicant should explain in their covering letter why they consider that they have been unreasonably refused access, given the short time frame to reach agreement with the persons with interest.

A7.4 The Planning Inspectorate will expect the Applicant to inform the persons with interest that they are considering seeking authorisation under s53, prior to making the authorisation request(s) and to alert these persons to this advice note. Applicants should also endeavour to enter into dialogue with persons with interest on potential conditions to attach to any possible s53 authorisation, prior to making the authorisation request(s). The Applicant should provide evidence of such dialogue in the authorisation request(s).

Schedule of Correspondence

A7.5 To assist the Planning Inspectorate in reviewing the authorisation request(s), the Applicant should provide a schedule ('the Schedule of Correspondence') setting out any correspondence between the Applicant and the persons with interest and/or their agents, including the following information:

- any relevant letters, meeting and telephone notes; and
- the dates that the correspondence was sent and received.

A7.6 Copies of the documents referred to in the Schedule of Correspondence should be provided with the authorisation request(s). Where these documents refer to any other documents e.g. previous letters, these should also be provided. If these documents are not provided, the Planning Inspectorate will ask for copies, which may delay determination of the authorisation request(s).

Corresponding with more than one person with interest

A7.7 Where there is more than one person with an interest in the land in relation to a s53 authorisation request, but

A15. For example, the land plan, (required under regulation 5(2)(i) of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 (SI 2264) (as amended)), must show this information and could be used as a base for Plan A

A16. DCLG Guidance, Annex A



the Applicant has been corresponding with a specific person, the Applicant should provide written evidence that this individual is authorised to act on behalf of all the persons with interest.

A7.8 Likewise, if the Applicant has been corresponding with an agent for the persons with interest, written evidence should be provided to confirm that the agent is authorised to act on behalf of the persons with interest.

A7.9 This evidence should take the form of correspondence from all the persons with interest confirming that the specific person/agent has authority to act on their behalf.

A8 - Evidence of notifying the persons with interest that a request for authorisation has been made to the Planning Inspectorate

A8.1 There is no requirement for the Planning Inspectorate to consult the persons with interest in the land following submission of a s53 authorisation request. However, the Planning Inspectorate expects the Applicant to send a notification letter to each person identified by the Applicant in the Table (and copied to agents acting on their behalf, if applicable), enclosing an exact copy of the authorisation request(s) provided to the Planning Inspectorate. The notification letter should advise the persons with interest that they may provide comments on the authorisation request(s) to the Planning Inspectorate by the deadline specified in the notification letter; this should not be less than 14 days starting the day after the expected date of receipt of the notification by the persons with interest^{A17}.

A8.2 If the land is registered, a copy of the authorisation request should be sent to the address of the persons with interest, as identified in the relevant registered Title Number. Where correspondence is sent to an address which is different from that address, the Applicant should explain why in the authorisation request letter.

A8.3 Each person listed in the Table should receive a separate copy of the documentation, even if the relevant registered Title Number identifies that two or more of them are registered at the same address. This is to ensure that each has been sent a copy of the notification letter with the enclosed authorisation request.

A8.4 Copies of the notification letters should be provided to the Planning Inspectorate. Applicants should note that the Planning Inspectorate may request evidence to demonstrate that these notification letters were delivered, e.g. where the persons with interest dispute receipt of the notification letter. Therefore, Applicants should, in advance, consider how this evidence may be provided.

A8.5 The Planning Inspectorate will also write to the persons with interest to confirm that an authorisation request has been made by the Applicant and to confirm the date by which any comments they may wish to make should be made to the Planning Inspectorate^{A18}. The Planning Inspectorate will assume that the persons with interest do not have any comments to make on the s53 authorisation request if the Planning Inspectorate has not received any comments by this date.

A9 - Duration for which s53 authorisation is sought

A9.1 It is anticipated that authorisation, if granted, would in most cases be expressed to expire either 12 months after the date of the authorisation, or, if made during the pre-application stage, the date of the submission of a DCO application for the proposed development pursuant to s37 of the PA2008 (where the submission of the DCO application is earlier than expiry of that 12 month period).

A17. For example, the land plan, (required under regulation 5(2)(i) of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 (SI 2264) (as amended)), must show this information and could be used as a base for Plan A

A18. This will be the same date as the Applicant has identified in their notification letter to the persons with interest, provided that the deadline specified by the Applicant is not less than 14 days starting the day after the expected date of receipt of the notification by the persons with interest



A9.2 If the Applicant wants the authorisation period to exceed 12 months, or the submission date of the DCO application to the Secretary of State, the Applicant should request this in their covering letter providing a clear explanation of the reasons why. The Planning Inspectorate will take this into consideration when determining the duration of the authorisation notice, if minded to grant authorisation on behalf of the Secretary of State.

A10 - Any conditions subject to which the Applicant thinks any s53 authorisation should be granted

A10.1 If the Planning Inspectorate, on behalf of the Secretary of State, is minded to grant authorisation for a person to enter land, any such authorised person must comply with the requirements of s53 of the PA2008 and any conditions subject to which the authorisation is granted^{A19}. Therefore, the Applicant should also include as part of its request any proposed conditions that it thinks should be attached to the authorisation, if granted. It would assist the Planning Inspectorate if the Applicant could provide details of which draft conditions, if any, have been agreed with the persons with interest. Where draft conditions have not been agreed the Applicant should provide an explanation as to why.

A10.2 Where the Applicant has identified multiple authorisation requests and all of the proposed conditions are the same, the Applicant should state this in the authorisation requests' covering letter. In these circumstances it is not necessary to provide separate draft conditions for each authorisation request. Where the Applicant has identified multiple authorisation requests and is proposing different conditions for each request, then the Applicant should provide a separate set of conditions for each request.

A10.3 The Planning Inspectorate, on behalf of the Secretary of State, will decide whether any proposed conditions are appropriate and may also specify others considered necessary.

A11 - Check list

A11.1 See [Annex B](#) for a check list which the Applicant should complete to help ensure that the required information is provided to the Planning Inspectorate. The completed check list should be provided to the Planning Inspectorate with each s53 authorisation request

A19. s53(4)(c) of the PA2008

[Applicants are also referred to [Section C](#) below]

B) Information and advice for persons with interest in the land

This section is aimed at persons with interest, to help them understand the s53 process and how they can provide their comments to the Planning Inspectorate, prior to the determination being made.

1.1 Persons with interest should note that s53 authorisation relates solely to entry to land for specified purposes in connection with a NSIP or a proposed NSIP (please refer to the '**Introduction**' section of this advice note for further details). Where an application for a DCO has not yet been submitted, authorisation under s53 does not pre-determine whether the proposed application would be accepted for examination by the Secretary of State, or whether the proposed development would be granted development consent, were it to be accepted. Likewise, where an application for a DCO has been accepted for examination, authorisation under s53 does not pre-determine whether development consent would be granted for the proposed development.



2. Before the s53 authorisation request is made

2.1 An Applicant is expected to act reasonably before submitting a s53 authorisation request and first seek to obtain the grant of permission to access the land for the required purpose(s) voluntary from the relevant person(s)^{B1}. It is expected that, wherever possible, there will have been an exchange of correspondence and dialogue between the Applicant and the persons with interest, in an attempt to obtain such access to the land, prior to making the s53 authorisation request. Where this has not occurred, the Planning Inspectorate will seek an explanation from the Applicant. Where appropriate, the Planning Inspectorate would expect the dialogue between the Applicant and persons with interest to include discussions about any proposed conditions subject to which such access to the land would be granted, taking into consideration the current use of the land.

2.2 Where more than one person has an interest in the land, the Planning Inspectorate expects the Applicant to have sought permission from each of those persons, and will seek an explanation from the Applicant if this has not occurred.

2.3 Only where the Applicant considers that they have been unreasonably refused necessary access should they consider making an authorisation request to the Planning Inspectorate^{B2}. In such circumstances, the Applicant should inform persons with interest of their intention to submit a s53 authorisation request, prior to such a request being made and alert these persons to this advice note.

3. Commenting on the Applicant's s53 authorisation request(s)

3.1 Where an Applicant makes a s53 authorisation request, the Planning Inspectorate expects the Applicant to send a notification letter to each person with interest (and, if applicable, copied to agents acting on their behalf), enclosing an exact copy of the authorisation request that was provided to the Planning Inspectorate. The notification letter should advise persons with interest that they may provide comments on the authorisation request(s) to the Planning Inspectorate by the deadline specified in the notification letter; this should not be less than 14 days starting the day after the expected date of receipt of the notification by the persons with interest^{B3}.

3.2 The Planning Inspectorate will also write to the persons with interest to confirm that an authorisation request has been made by the Applicant to the Planning Inspectorate and to confirm the date by which any comments they may wish to make should be submitted to the Planning Inspectorate^{B4}. The Planning Inspectorate will assume that the persons with interest do not have any comments to make on the request if the Planning Inspectorate has not received any comments from them by the date specified.

3.3 Persons with interest may wish to employ an agent to act on their behalf. In such cases, the agent or the relevant person(s) with interest should provide to the Planning Inspectorate written evidence to confirm that the agent is authorised to act on behalf of each of them.

3.4 Persons with interest are advised to review carefully the authorisation request(s) sent to them by the Applicant and are encouraged to provide comment to the Planning Inspectorate, as detailed below.

B1. In accordance with DCLG Guidance, Annex A

B2. DCLG Guidance, Annex A

B3. For example, if the letter is sent by special delivery with guaranteed delivery the next day, then the 14 days minimum timeframe will start the day after the letter is due to arrive i.e. 2 days after the letter is sent

B4. This will be the same date as the Applicant has identified in their notification letter to the persons with interest, provided that the deadline specified by the Applicant is not less than 14 days starting the day after the expected date of receipt of the notification by the persons with interest



3.5 If a person with interest wishes to comment, then it would assist the Planning Inspectorate if the comment(s) were to include the following information, labelled as set out below:

- B1. Confirmation that the information presented in the Applicant's authorisation request is accurate
- B2. Reasons for refusing access to the land
- B3. Comments on the duration of any s53 authorisation
- B4. Comments on the Applicant's proposed conditions

B1 - Confirmation that the information presented in the Applicant's authorisation request is accurate

B1.1 Persons with interest are encouraged to confirm to the Planning Inspectorate whether they consider that the information presented in the Applicant's authorisation request is correct. This includes confirming whether the Schedule of Correspondence enclosed with the authorisation request(s) includes all relevant correspondence; whether all of the correspondence listed in it was received by the persons with interest; and that any meeting and/or telephone notes or other documents provided are an accurate reflection of discussions between the Applicant and persons with interest in relation to which the s53 authorisation request(s) relate(s).

B1.2 Persons with interest are also requested to supply copies to the Planning Inspectorate of any other correspondence they have exchanged with the Applicant that has not been supplied by the Applicant and which they consider is relevant to the s53 authorisation request(s).

B2 - Reasons for refusing access to the land

B2.1 Persons with interest are encouraged to set out clearly to the Planning Inspectorate their reasons for refusing the Applicant access to the land (if there has been any refusal).

B3 - Comments on the duration of any s53 authorisation

B3.1 It is anticipated that authorisation, if granted, would in most cases be expressed to expire either 12 months after the date of the authorisation, or, if made during the pre-application stage, the date of the submission of a DCO application for the proposed development pursuant to s.37 of the PA2008 (where the submission of the DCO application is earlier than expiry of that 12 month period).

B3.2 If the persons with interest wish the authorisation period to differ from the anticipated duration explained above, they should provide to the Planning Inspectorate details of any alternative period they suggest and a clear explanation of the reasons why. The Planning Inspectorate will take this into consideration when determining the duration of the authorisation notice, if minded to grant authorisation on behalf of the Secretary of State.

B4 - Comments on the Applicant's proposed conditions

B4.1 Any authorisation under s53 may be granted subject to conditions which the Secretary of State thinks appropriate^{B5}. The Planning Inspectorate encourages persons with interest to provide comments on any draft conditions proposed by the Applicant, including any suggestions for conditions they may like the Secretary of State to consider imposing, taking into account the current use of the land.

B4.2 The Planning Inspectorate on behalf of the Secretary of State will decide whether any proposed conditions are appropriate and may also specify any others considered appropriate.

[Persons with interest are also referred to Section C below]

B5. s53(4)(c) of the PA2008



C) General information and advice for applicants and persons with interest

This section provides a general overview relevant to both Applicants and persons with interest, explaining how the s53 authorisation request(s) will be administered.

1. Request for further information

1.1 Following the opportunity for the persons with interest to comment on the authorisation request(s), and if the Planning Inspectorate considers it appropriate, the Planning Inspectorate may request further comments or information from the Applicant and/or the persons with interest. If so, the Planning Inspectorate will specify a deadline for this information, which will not be less than 7 days starting the day after the expected date of receipt of that request by the person to whom it is addressed^{C1}. Immediately following the expiration of this deadline, and subject to any subsequent requests for further information, the Planning Inspectorate will move to determine the request on behalf of the Secretary of State.

1.2 Therefore, the Applicant and/or the persons with interest are advised to provide any comments or information by the specified deadline(s) to ensure that they are considered by the Planning Inspectorate.

2. Determination of the s53 authorisation request(s)

2.1 Following receipt of sufficient information, the Planning Inspectorate will take into consideration any information provided by the Applicant and the persons with interest by the specified deadlines, and determine the authorisation request(s) on behalf of the Secretary of State.

2.2 Following determination of the request, the Planning Inspectorate will send a copy of the determination to the Applicant and the persons with interest, either authorising entry onto the land including any conditions, or refusing the request(s). Reasons will be provided to support the determination.

2.3 The determination will be published on the National Infrastructure Planning website and will include the reasons supporting the determination.

3. Timeframe for determination of the authorisation requests

3.1 There is no prescribed statutory timeframe within which the Planning Inspectorate must determine a request for authorisation on behalf of the Secretary of State. However, experience suggests that s53 authorisation requests may take at least 3 months to determine^{C2}, from the date of receipt of the authorisation request(s).

3.2 This timeframe can only be a guide and depends on the complexity and number of authorisation requests, the sufficiency of the initial information provided by the Applicant and any issues raised in responses from the persons with interest. Applicants will need to be aware of this anticipated timeframe and the potential impact it may have on their overall project programme.

4. Human Rights Act 1998

4.1 Article 1 of the First Protocol of the European Convention^{C3} gives a right to peaceful enjoyment of property. Any

C1. For example, if the request for further information is sent electronically, then the 7 days minimum timeframe will start the day after it is due to arrive i.e. the day after it is sent electronically, as it is assumed that any information sent electronically is received on the day it is sent

C2. This is partly dependent on the quality of the application documents and/or the Planning Inspectorate's need to request further information

C3. European Convention on Human Rights (formally the Convention for the Protection of Human Rights and Fundamental Freedoms)



interference with this right should be lawful and proportionate; interference with the right of individuals to peaceful enjoyment of their property can only be in the public interest. The Planning Inspectorate, on behalf of the Secretary of State, will consider in relation to each s53 authorisation request whether the authorisation of entry onto third party land would be lawful and proportionate.

5. Exercising the authorisation

5.1 If an authorisation is granted, any person duly authorised in writing by the Secretary of State may enter the land at any reasonable time in accordance with the provisions of s53 of the PA2008 and the terms of the authorisation, including any conditions set out in the authorisation^{C4}. Before entering the land, a person must, if required to do so, produce evidence of authority to enter that land. Where the land is occupied, 14 days notice must be given prior to entry^{C5}.

5.2 Where any damage is caused to land or chattels as a consequence of exercising rights of entry or in the making of any survey, compensation may be recovered^{C6}. Disputes about the level of compensation payable will be referred to the Upper Tribunal^{C7}.

5.3 Anyone who wilfully obstructs access which has been authorised commits an offence^{C8} which may give rise to criminal liability^{C9}.

5.4 The Planning Inspectorate will not be responsible for ensuring compliance with any s53 authorisations issued on behalf of the Secretary of State.

6. Data protection

6.1 Any information provided by the Applicant, the person(s) with interest, or their agents will be handled by the Planning Inspectorate in accordance with its obligations under the Data Protection Act 1998. As this information is in respect of a private land matter it will not be made available routinely on the National Infrastructure Planning website. However, the Secretary of State's determination letter, along with any conditions and the reasons for the determination, will be made available on the National Infrastructure Planning website following completion of the process.

7. Review of this advice note

7.1 The Planning Inspectorate will keep this advice note under review and will update it as appropriate.

C4.	s53(4)(c) of the PA2008
C5.	s53(4)(b) of the PA2008
C6.	s53(7) of the PA2008
C7.	s53(5) of the PA2008
C8.	s53(5) of the PA2008
C9.	s53(6) of the PA2008

Further information

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