

Kings Lynn B Connection Project - Feedback on Consultation Report Framework

Guidance

The Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 (the regulations) set out the prescribed form of application at Schedule 2, and prescribed documents and information at regulations 5 and 6. The Consultation Report must accompany the application.

The applicant is required to have regard to the IPC's and the Secretary of States's Guidance on Part 5 Chapter 2 of the PA2008 (s50).

The Department for Communities and Local Government (DCLG) has issued guidance for this purpose:

- *"Planning Act 2008 - Guidance on pre-application consultation"*

The IPC has also issued guidance:

- *"IPC Guidance Note 1 On Pre-Application Stages"* (Chapter 2 Of The Planning Act 2008) (Revision 2 - August 2011)

IPC Advice Note 14 (AN14)

The IPC has also issued advice (not subject to s50 PA2008) on how to produce a consultation report:

<http://infrastructure.independent.gov.uk/wp-content/uploads/2011/10/Advice-note-14-Consultation-report.pdf>

Points of particular relevance in this case include:

- The primary purpose of the report is to capture and reflect upon the responses received from three distinct pre-application consultee groups – prescribed consultees and local authorities (s42), the local community (s47) and respondents to wider publicity (s48). The report must then explain how the developer has met its duty to have regard to relevant responses (s49)
- It is important that the consultation report is clear and enables the IPC to quickly identify whether the statutory requirements have been met, given that the IPC has only 28 days to decide whether to accept an application
- Where non-statutory consultation has been carried out, this should be clearly distinguished from the statutory consultation
- Local authorities are normally only given 14 days to provide a statement about whether or not ss42, 47 and 48 have been complied with, so it is useful for applicants to share drafts of the consultation report with them as early as possible
- A summary of responses is helpful, grouped under s42 (including s43 and 44), s47 and 48 categories; it may be advisable to have a separate commentary and summary of responses for each phase of the consultation

- The summary of responses should include details alongside each entry to indicate (for the purposes of s49) what regard has been had to the response received
- Annex A to AN14 provides an Indicative Schedule of Relevant Responses – a series of tables setting out who was consulted and when, and summarising their responses and the regard had to those responses:
<http://infrastructure.independent.gov.uk/wp-content/uploads/2011/10/Annex-A-advice-note-14.doc>
- Where a SoCC has been updated, the updated SoCCs should be included; a narrative about the reasons for the review and update would be useful
- The IPC will need to be satisfied that local authorities were consulted correctly in connection with the preparation of the SoCCs, and that the applicant had regard to their comments.

General comments on the proposed Consultation Report Framework

The IPC is not prescriptive about the form of Consultation Report, and it is for applicants to provide a report in a suitable form, bearing in mind the advice in AN14.

Overall, the Consultation Report should be an iterative document, describing what took place and discussing why and how consultation evolved throughout the pre-application stage.

The IPC has to be satisfied that the pre-application consultation meets the statutory requirements. Whilst the proposed framework seems on the face of it to be comprehensive, it would assist the IPC's consideration of the report if it was more clearly structured to reflect its primary purpose of capturing and reflecting upon the responses of the three distinct pre-application groups in relation to the formal pre-application consultation process.

This could perhaps be done by giving an overview of the process, followed by separate sections dealing with the s42 consultation, the Statement of Community Consultation and s47 consultation, the s48 publicity, and concluding with a brief outline of the statutory requirements and how it is considered that they have been met.

Multi-stage consultation has taken place in this case. Although beneficial, there is no requirement for this in the Planning Act 2008. Therefore, it is important that the consultation stage that the applicant has treated as the formal consultation for the purposes of PA2008 Part 5 is clearly identified in the report.

Regardless of the form chosen for the report, we also have the following comments:

Explanatory Text:

- AN14 notes that explanatory text should be provided, summarising all the consultation activity in chronological order. This section should define all formal and informal pre-application consultation and explain the relationship between any initial strategic options stage, any subsequent informal consultation that may have taken place, and identify the statutory consultation carried out for the purposes of the Planning Act 2008.
- National Grid (NG) initially intended to host 2 stages of consultation, however 3 were undertaken. The rationale behind this should be discussed.

- A diagram/timeline illustrating the consultation that was undertaken could be included in this section. From previous experience, this has been a useful tool in helping readers visualise the consultation process as a whole.

Informal Consultation:

- A section of the report could include how informal consultation was undertaken, a summary of the responses received and to what extent they were taken into account/ led to a change in the development proposal.
- Your email notes that stages 1 & 2 of consultation were informal however included within the appendices are newspaper clippings of a SoCCs at these stages. The publication of a SoCC suggests that consultation was undertaken with LAs on the draft and that the applicant intends to consult the community as prescribed in the SoCC. We advise that clarification on this matter is provided within the appropriate section of the report.

Formal Consultation:

S47 (SoCC) Consultation

- This section should demonstrate how the SoCC has evolved from its first draft. It is advised that, to give a full account of what took place, both formal and informal consultation on the SoCC is described. The final SoCC, on which the statutory pre-application consultation was based, should be identified.
- AN14 notes that evidence should be included to show which local authorities (LAs) were consulted about the content of the draft SoCC; what the Las' comments were; confirmation that they were given a minimum of 28 days to provide comments and a description about how the applicant had regard to the Las' comments.
- The tables in Annex A to AN14 could be used to summarise responses to the draft SoCCs.
- This section should explain how consultation has been undertaken that accords with the SoCC.

S42 Consultation

- This section should explain how s42 has been complied with
- Append a list of s42 consultees, separately identifying statutory consultees (Schedule 1 of the Regulations), s43 local authorities, s44 consultees and any other groups of consultees.

S48 Consultation

- This section should explain how s48 and Regulation 4 of the regulations has been complied with
- Append the newsletter clippings' and provide a typed-up version of the wording used if the clipping is difficult to read.

S49 – duty to have regard to relevant responses

- This section should explain how s49 of the regulations has been complied with
- Identify the deadline date applied to the formal pre-application consultation and evidence this by appending the relevant letters/publications.
- Highlight any responses which were received beyond the deadline and describe to what extent these were taken into account. (i.e. did it lead to any change in the proposed development)
- Annex A of AN14 suggests a way of tabulating relevant responses, and what regard has been given to each of them.

Appendices

Appendices to the Consultation Report should be used to provide documentary support for statements made within the report and to provide evidence of the applicant's compliance with statutory requirements. We therefore advise that you provide all the information upon which you may rely.

Submitted application

Please be aware that during the acceptance stage and in accordance with regulation 5(5), the IPC may ask for copies of all responses to consultation carried out under Part 5 of the PA2008. We suggest that hard and electronic copies of all consultation correspondence is prepared in anticipation of this eventuality to minimise delay during the 28 day acceptance deadline. As noted in AN14, the IPC cannot suspend the acceptance stage pending the submission of the consultation responses.

13 December 2011

The IPC gives advice about applying for an order granting development consent or making representations about an application (or a proposed application). The IPC takes care to ensure that the advice we provide is accurate. This communication does not however constitute legal advice upon which you can rely and you should note that IPC lawyers are not covered by the compulsory professional indemnity insurance scheme. You should obtain your own legal advice and professional advice as required.

We are required by law to publish on our website a record of the advice we provide and to record on our website the name of the person or organisation who asked for the advice. We will however protect the privacy of any other personal information which you choose to share with us and we will not hold the information any longer than is necessary.

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<http://infrastructure.independent.gov.uk/who-we-are/corporate-info/policy/openness/>.

