



Meeting note

File reference	Consenting Forum	
Status	Final	
Author	Hannah Pratt	
Date	20 January 2015	
Meeting with	Consenting Forum	
Venue	Meeting Room 4/00, Temple Quay House, Temple Quay, Bristol BS1 6PN	
Attendees	David Price	Planning Inspectorate
	Frances Russell	Planning Inspectorate
	Simone Wilding	Planning Inspectorate
	Hannah Pratt	Planning Inspectorate
	Shane Gould	English Heritage
	Sally Holloway	Environment Agency (by telephone)
	Reena Rollason	Environment Agency (by telephone)
	Alec Rhodes	Forestry Commission
	Paul Hill-Gibbins	Major Infrastructure & Environment Unit
	James Bussell	Natural England
	Sarah Wood	Natural Resources Wales
	Shelley Vince	Natural Resources Wales
	Deanna Groom	Royal Commission on the Ancient and Historical Monuments of Wales (by telephone)
Meeting objectives	To discuss experiences of the pre-application and examination phases	
Circulation	All attendees	

1. Pre-application experience

The Planning Inspectorate explained that since the last forum was held, they have been working on improving its pre-application service for applicants and other stakeholders to assist with developing applications that are fit for examination. A Pre-application Prospectus was published in May 2014 which clarifies and formalises the pre-application service that the Planning Inspectorate offers to applicants and has received positive feedback to date. This service includes an opportunity for tri-partite meetings with the Planning Inspectorate acting as facilitators between applicants and statutory bodies, which is an offer that has been taken up by developers on a number of projects. Meetings can be held at the request of either applicants or statutory parties.

NRW noted the helpfulness of the prospectus and that they would consider setting out their approach to pre-application advice in updates to their annex to advice note 11.

Attendees noted applicants all have different approaches to the pre-application stage and that the level of engagement differs between projects. The Planning Inspectorate stressed how useful it is to be aware of potential issues on projects during the pre-application phase and encouraged attendees to raise issues with the relevant case leader or Infrastructure Planning Lead, or through the Consents Service Unit as appropriate. The Planning Inspectorate explained that if they become aware of issues during the pre-application stage they have the ability to issue section 51 advice to assist in resolving issues.

It was acknowledged that tri-partite meetings can be a useful mechanism to encourage discussion between parties, but that they are often held too close to submission date when all parties are under pressure to resolve issues. All parties agreed it would be useful to widen inception meetings to other statutory parties and that further meetings with all parties would be useful after section 42 consultation was completed. It was acknowledged that the take up of this would be on a case-by-case basis and the Planning Inspectorate encouraged attendees to advocate such meetings with applicants.

Since August 2014, the Planning Inspectorate has, with permission from the applicant, published application documents on the Planning Portal following submission but before formal acceptance. Attendees noted that this was useful and gave them additional time to consider their relevant representations.

Attendees expressed concern that the standard of some applications was poor and that the acceptance test had lowered. The Planning Inspectorate explained that the Localism Act has introduced the 'satisfactory standard test'. Applications can therefore be accepted despite some minor technical breaches. However, it was accepted that well prepared applications are in everybody's interest hence the Inspectorate's increased focus on examinations to date to enable learning and provide improved pre-application advice. Good practice documents taken from decided applications that have passed the judicial review period are identified on the Planning Portal and all attendees were encouraged to identify documents they considered to demonstrate good practice (in particular any documents identified in The Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 and Statements of Common Ground).

Natural England explained that the Evidence Plan process had proved to be particularly useful for tracking issues through the pre-application stage and forming the basis of Statements of Common Ground. Natural Resources Wales queried whether the process could be widened to Welsh projects. The Planning Inspectorate would be supportive of this and it was agreed to discuss further outside of the meeting.

2. Examination experience

The Planning Inspectorate explained that the Development Consent Order drafting advice note was published in October 2014 and will be kept under review; suggestions were welcomed from attendees. The Planning Inspectorate is also currently drafting an advice note on changes to projects during the examination stage.

The Planning Inspectorate noted that industry has raised concerns over consistency specifically regarding the levels of questioning during examination and that this is being addressed internally. The use of cross-examination at hearings has also been queried and the Planning Inspectorate explained that this is at the discretion of the Examining Authority but should not be the norm.

Natural England welcomed the provision of early and detailed agendas and timetables which are now published and stated they have good relationships with Planning Inspectorate case officers.

Natural Resources Wales noted that the addition of extra deadlines into timetables with tight timeframes has presented difficulties for them as they cannot plan for this work in the same way as deadlines set out in the original timetable. The Planning Inspectorate explained that they endeavour not to add in deadlines however this can be unavoidable when unexpected information arises during an examination.

The Planning Inspectorate has trialled publishing a live examination document which is updated after each deadline. It aids in navigating around documents and provides short references to all documents. The aim is for a live examination documents to be introduced for all live projects soon.

English Heritage noted that it is not always clear why Rule 17 questions have been raised or what is required of them. The Planning Inspectorate explained that Rule 17's are usually directed at particular parties, however they are to date mostly copied to all interested parties and it is for recipients to determine the relevance. It is expected that going forward interested parties will be informed in the Rule 8 letter that Rule 17 questions will only be sent to the party of whom the question is asked and published on the Infrastructure Portal. Interested Parties will therefore need to either sign up for alerts from the website or regularly check the website if they may also want to answer questions not directly addressed at them.

The Planning Inspectorate explained the Infrastructure Bill is currently progressing through Parliament. Following Royal Assent and the relevant powers coming into force (expected by October 2015) it will be possible to appoint an Examining Authority immediately upon acceptance (which is earlier than at present), and also panels of two inspectors.

The Bill also contains the enabling powers for changes to the Change Regulations. The earliest that these can come into force is around 2 months post Royal Assent, i.e. June/July 2105. The main changes are:

- for non-material changes the applicant will be responsible to undertake notification and publication duties,
- shortening of the maximum timescales for material change applications (4 months for examination, 2 months for recommendation and 2 months for decision),
- introduction of the possibility not to hold an examination for a material change if the Secretary of State considers this appropriate after having taken into consideration responses received and provided a further opportunity to comment on not holding an examination to those who submitted a representation to the change application process.

CLG has also committed to publishing guidance for post-decision change applications around the same time that the regulations will come into force.

There are also a couple of 2014 implementation plan strands that will need to be decided by the next government. For example, there is a proposal to merge the relevant and written representation stage. Irrespective of the proposed change, the Planning Inspectorate advised attendees to include as much detail as possible in their relevant representations as this enables Examining Authorities to be aware of all issues when they are formulating their first round of questions. In turn all issues can then be addressed at an early stage. It is also important to clearly identify the importance of each issue.

Likely changes to section 150 consents were also highlighted as indicated in summary form in the Autumn Statement: the inclusion of European Protected Species licenses is to be taken forward through legislation in the next parliament. Six Environment Agency permits will be streamlined within the Environment Agency permitting regime by 2017. 3 Environment Agency permits are to be included in DCOs through changes in this Parliament. The Government's detailed response on s150 consents is expected shortly.

3. Status of Environment Agency guidance notes for assessing air quality impacts and approach to in-combination assessment

It was noted that the application of Environment Agency air quality assessment guidance has been an issue raised during the examination of some projects. It was agreed that further detailed discussion on the issue was required outside of the meeting. Natural England and Natural Resources Wales both expressed an interest in joining future discussions on this subject.

4. Habitats Regulations Assessment – projects with different consenting bodies

The concept of 'salami slicing' was discussed in relation to requirements under the Habitats Regulations. The Planning Inspectorate stated that it was important to understand the distinction between projects that deliberately sub divide aspects of the development in order to fall below legislative thresholds and those that are required to obtain a number of consents and are at various stages in the delivery of these consents. Natural England explained that where there is a large project with a number of aspects which are permitted under different regimes, their approach is to ensure that all impacts of the project in its entirety are considered for the purpose of the Habitats Regulations. The Planning Inspectorate agreed with this approach and noted that the National Policy Statement acknowledges some development (e.g. grid connections) may form separate projects and that some aspects of the project may be at different stages in the planning process; therefore there may be a limitation on the level of information that an applicant can provide. The Planning Inspectorate explained the need to consider reasonableness in requesting information for a non-DCO project that they have no control (e.g. if mitigation is not within the control of the DCO).

Natural England acknowledged this and noted that they consider it prudent to make applicants aware of the risk of negative assessment for subsequent projects submitted for planning consent. Providing all relevant information at an early stage therefore enables better risk management. NE expressed concern over potential pressure to grant consent for subsequent projects despite negative impacts, even if those have come to light through additional information.

The Planning Inspectorate also referred to the Defra guidance document on competent authority cooperation¹. It was accepted that this document provided some useful information regarding the extent to which a competent authority can accept the reasoning and conclusions of another competent authority. However, the guidance does not address the specific issue identified above. The Planning Inspectorate also noted a recent Judicial Review request in relation to the Clocaenog Wind Farm DCO which has some relevance to the issues discussed above. Further details regarding this case will be disseminated to the group as and when it is possible to do so.

5. Forthcoming projects

The Planning Inspectorate explained that they are anticipating a similar level of applications in 2014 to 2015, with more transport schemes likely.

Attendees requested a graphical breakdown of predicted future project by region and sector.

6. Web-survey

The Planning Inspectorate encouraged all attendees to complete the web-survey which is available on the Planning Portal.

7. AOB

It was agreed that the Consenting Forum was useful and that they should be held approximately every 4 months. The Planning Inspectorate will revise the Terms of Reference to reflect this.

The Planning Inspectorate apologised for the administrative error which resulted in the Environment Agency not receiving a scoping consultation for the Tavistock to Bere Alston Railway project and assured the Environment Agency that measures had been put in place to prevent this happening again.

As of 1 April 2015, English Heritage will separate into two organisations. English Heritage will be the charitable organisation that continues to manage sites, whereas Historic England will be responsible for providing planning advice.

English Heritage, the Environment Agency, Natural England and Natural Resources Wales confirmed they aim to complete revisions to their annexes of advice note 11 by the end of the financial year.

8. Actions

1. Attendees to send any identified good practice documents to Hannah Pratt.
2. Natural Resources Wales and the Planning Inspectorate to discuss the use of Evidence Plans in Wales.
3. Planning Inspectorate to arrange meeting with relevant parties (including the Environment Agency, Natural England and Natural Resources Wales) to discuss air quality assessment guidance documents.

¹ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/69580/pb13809-habitats-guidance.pdf

4. Environment Agency to confirm the status of 'Environment Agency (2007) The EU Habitats and Birds Directive Handbook – Appendix 7, Stage 1 and 2 Assessment of new PIR permissions under the Habitats Regulations '
5. Planning Inspectorate to provide graphical breakdown of predicted future project by region and sector.
6. Planning Inspectorate to update Terms of Reference for the forum.