



Meeting note

Status	Final
Author	National Infrastructure Planning Association /Siân Evans & Pat Pikniczka (The Planning Inspectorate)
Date	8 October 2014
Workshop with	National Infrastructure Planning Association
Venue	Temple Quay House, Bristol
Workshop	DCO Examinations NIPA survey
Circulation	All attendees

Summary of key points discussed:

The National Infrastructure Planning Association (NIPA) conducted a survey with their members about current practice during the examination phase of Development Consent Order (DCO) applications. The workshop was held with the Planning Inspectorate (PINS) to discuss the results.

Overall, NIPA has expressed a high degree of satisfaction with the work of PINS and the Planning Act 2008 (PA2008) regime. NIPA also considers that the examination process generally works very well and is the right one for determining Nationally Significant Infrastructure Projects. NIPA is aware that PINS is regularly reviewing the examination process. The workshop examined each stage of the process with the benefit of the survey results to see if there were any further potential improvements that could be identified.

Pre-Examination

The pre-examination stage is the only phase of the post-application process without a fixed timescale. This stage also provides PINS with some opportunity to manage issues that may arise at acceptance of more complex or 'under prepared' applications. The strong view at the workshop was therefore that retaining some element of flexibility is essential to avoid having to turn down 'borderline' schemes.

Relevant Representations and Written Representations

Timing, value and relation between relevant representations (RR) and written representations (WR) were discussed. NIPA advised that some survey responses had suggested that combining the two types of representations into one stage would be beneficial in order to reduce duplication.

PINS advised that although WRs may sometimes include repetitive content already included in the RRs, they currently play an important role in the Planning Act 2008 process (PA 2008). Moreover, it was explained that RRs have multiple purposes. They:

- enable people to become an Interested Party (IP) for the project with relatively little effort;
- allow people to express their initial views about the application which often takes the 'heat' out and as a result there are fewer WRs submitted later on in the process;
- raise issues which assists with the appointment of the Examining Authority (ExA) and inform the ExA (once appointed) to 'sift' issues and only select those that need to be examined.

PINS advised that combining both representations into one stage may be challenging for the above reasons and risks making the process harder for the public to understand.

PINS advised that in response to RRs and WRs, parties do not have to duplicate comments and assured NIPA that all comments are taken into account. PINS suggested that instead of these stages being merged the current system could be made more user friendly for instance by simplifying the RR form and making it clearer and easier to understand for members of the public in particular. PINS explained that these changes to the RR form require amendments to secondary legislation which is currently under consideration as a part of the 2014 Review.

Rule 6 Letter

The invitation to the preliminary meeting (PM), the Rule 6 letter, plays an important role during the pre-examination stage and it has grown in significance. Through the draft timetable it sets out key examination steps, requests for Statements of Common Ground (SoCGs) and other information.

The Rule 6 letter also includes the list of the ExA's initial list of principal issues which provides a signpost to the likely content of the first round of questions.

NIPA advised that there is a case for PINS to be more clearly "open for business" during the pre-examination period. PINS explained that while pre-examination may appear to be a quiet period this time is used for appointing the ExA, making an initial assessment of principal issues and drafting the timetable for examination. NIPA suggested that advice could be issued as part of an updated suite to explain that PINS takes responsibility for active case management – particularly once changes are in place which allows the early appointment of the ExA. NIPA suggested these activities could include:

- Proactively setting out expectations early for SoCGs including the identification of relevant parties.
- Providing an open forum for communication for IPs and applicants, whilst observing protocols to ensure that any advice is shared publicly.
- Facilitating discussion about potential changes that an applicant may wish to propose to applications well in advance of the PM.
- Requiring IPs to set out in advance matters which they intend to raise at the PM (in summary) and to publish these.

- Bringing forward the publication date of the Rule 6.
- Providing greater detail in the Rule 6 letters so that they give the clearest indication of the ExA's intentions for the examination (already in hand).

Before Preliminary Meeting (PM)

NIPA advised that applicants would find it helpful if PINS is more proactive with IPs. It was explained that allowing for pre-examination correspondence and proposed changes to the application material to be submitted at this stage could perhaps ease the meeting.

NIPA advised that it would be easier if a Rule 6 letter is published in draft form on the website and comments were invited. In addition, NIPA advised that it would be helpful if PM attendees could be asked to submit their questions/summary of points they wish to raise at the PM in advance of the meeting and to publish these.

PINS explained that the second half of the pre-examination stage is a busy period; It is anticipated that this stage will be made more efficient through the early appointment of the ExA which is currently being introduced through the Infrastructure Planning Bill. Once these changes are in place (expected in spring 2015) the ExA will have more time to assess and resolve issues before the PM where possible.

PINS explained that the mailing list for a project is also prepared during pre-examination. This list plays a key role in the process and that it would greatly assist if applicants could submit their accurate mailing list with all persons as contacted for the purpose of s56 and s59 certification.

Principal Issues

PINS explained that the purpose of identifying a list of initial principal issues is to communicate to the applicant and interested parties the key areas on which to work on together. The list also serves to establish whether all issues have been identified correctly as they will form the basis of the examination. However, the initial principal issues are a snapshot in time and issues which are not identified at this stage may crop up later in the examination. It was generally agreed that identification of the principal issues can be helpful in providing a focus for the examination.

The PM provides the ExA with an opportunity to set out the examination structure early to be able to get through the right path in the examination.

NIPA advised that a more detailed agenda for the PM would be helpful for the applicant and other parties.

PINS also advised that it does not help the process if the application changes substantially prior to the start of the examination.

Examination

PINS emphasised the importance of the Section 56 certification process and that doing this robustly should be high on an applicant's risk register.

The survey identified a high level of satisfaction with the way in which PMs are conducted. PINS advised that meetings are invaluable for IPs in particular, who are often unfamiliar with the process.

There is a danger that discussion of principal issues at a PM could distract from consideration of the examination timetable. ExAs need to control this aspect of the PM carefully to avoid discussion of merits. Responsibility is on the ExA to make the meetings as helpful and informative as possible without appearing to be disinterested in other issues raised by IPs. NIPA's survey found that it would be more helpful to the users of the process to have more detail at the PM of protocol for hearings, agendas etc. PINS advised that a more detailed Rule 6 letter may be a part of this. NIPA stated that immediately following the end of the PM or before, it would be helpful to have an outreach type meeting between the Case Team and IPs. PINS advised that the Case Team is usually available before and after the meeting to answer any questions but will consider building on this approach.

Local Impact Report (LIR)

It was agreed that including a request for LIRs in the Rule 6 letter would be helpful in order to provide enough time for the local authority to prepare its document. PINS explained that LIRs play an important role in the PA2008 process and therefore the LIR should be a local expression of impacts rather than the political position of a council.

NIPA advised that LIRs and WRs very often include repetitive content. PINS are clear that these have separate and important functions and would resist them being combined, even if the LIR was an appendix to the WR. The LIR should be factual and objective, whilst WRs can (if desired) complement this with the overall view of the authority and whether it thinks the development should be consented or not.

It was explained that for the LIR to be beneficial to an examination it should highlight key policies, issues, identify the site and set out impacts and benefits to the local communities.

NIPA advised that it would be useful to have feedback from PINS on the quality of LIRs at the end of examination. PINS advised that the ExA's recommendation report to the Secretary of State includes a section on the LIR and provides comments on it. PINS also intends to republish Advice Note 2 shortly which is intended to provide advice to local authorities about how they participate in the process.

The statutory obligation to have regard to LIRs prevents amalgamation with other types of representation an authority may make. PINS highlighted the importance of LIRs and stated that it was important that these were submitted. NIPA advised that the advice note on LIRs is generally good but often not observed. There is a role for revisions to the guidance to reinforce the distinction between LIRs and WRs. There is also a role for placing further good practice examples on PINS' website.

PINS advised that joint submissions between local authorities are very much welcomed.

Some survey responses had suggested that it would be helpful if LIRs submitted at the beginning of the examination can be revised and re-submitted (if required) near

the close of the examination. This would ensure that should the local authority discussions with the applicant progress during the course of the examination, the LIR could reflect this.

Statements of Common Ground (SoCG)

Respondents to the NIPA survey would welcome further advice and guidance on SoCGs, including format. In PINS' experience applicants often overload SoCGs with matters which are already well known to the ExA. More focused SoCGs centred on factual and objective matters would be more helpful to ExAs. PINS advised that "draft" SoCGs are of limited value. At the same time it was recognised that agreeing SoCGs is an iterative process and it helps the ExA to understand what has been agreed and what remains outstanding. It is therefore very helpful if SoCGs identify both matters of agreement and disagreement. Submitting an updated SoCG at the end of an examination if the parties and the ExA think this would be helpful should therefore remain an option. Ie SoCGs can help with a 'shaking down' process tracking the resolution of issues from the relevant representation stage through the examination.

PINS welcomes joint SoCGs, particularly from parties with a common interest such as eg environmental and/or nature conservation issues. NIPA advised that more good practice example SoCGs could be identified on PINS' website. PINS are considering whether they can be more proactive, to encourage earlier and better SoCGs.

PINS advised that although SoCGs tend to focus on agreements between the applicant and statutory parties, SoCGs can also be helpful between the applicant and other parties.

PINS explained that the pre-application stage should be used effectively to start negotiating SoCGs. Moreover, PINS advised that the Pre-application Prospectus for developers offers a service to developers for instance in the form of regular meetings and outreach events where PINS can act impartially to facilitate engagement between parties.

Operational Administration

Close liaison between applicants and the Case Team ensures clarity over the division of responsibilities between the applicant and PINS for administration of the examination on a case by case basis; PINS advised that it is constantly looking at ways of improving the speed with which information can be received, exchanged and/or published on the website. It referred to the project email alerts which people can sign up to as this will alert them to activity on any chosen project. PINS also uses Twitter to communicate with the public.

NIPA advised on inconsistency in redaction of documents. It also advised that applicants would find it helpful if the Case Team could inform the applicant immediately about issues and once submissions have been published on the website. NIPA stated that it would be helpful to have a timetable on the website organised by deadlines rather than folders. PINS advised that this is already available on the website.

PINS advised that they are looking at continued improvement of the website, particularly in terms of the cataloguing of documents. PINS are intending to undertake a website survey shortly and would encourage NIPA members to complete it.

PINS are examining the potential for a reduction in the extent of hard copy documents required. PINS is also intending to bring the published timetable to life with links to examination documents. It was noted that PINS now only deposit documents electronically during examinations. Hard copies are only provided on an exceptional basis where required. It was discussed that some documents, for example photomontages, are very difficult to view electronically. This indicates the need for printing facilities to be available at deposit locations, although the likelihood of such facilities being able to print photomontages or indeed maps to the appropriate scales may be problematic.

PINS advised that every project has a programme officer allocated to liaise with an applicant in order to make arrangements for hearings and other events.

NIPA advised that document size on the website remains a problem with poor download speeds across large areas of the country making accessing larger documents more difficult.

Planning Obligations

Attendees discussed the difficulties caused by mitigation measures being pursued through agreements between parties, rather than through the DCO. There is a risk that this could reduce the transparency of the examination and the ability to enforce mitigation. PINS is aware that planning obligations need to be examined as they form part of the package of necessary mitigation for a project.

NIPA advised that it is helpful if ExAs are explicit in the examination on what he/she considers is necessary in this respect. Current practice on the examination of planning obligations varies to a substantial degree between cases.

PINS advised that the extent to which other matters in planning obligations are taken into account (such as community benefits) will depend upon the circumstances in each case. The ExA can only take into account planning matters that are clearly and reasonably related to the case.

NIPA explained that signing planning obligations can be challenging sometimes in particular where the local authority do not want to cooperate and where the applicant does not know the extent to which the ExA considers the potential obligations to be necessary.

Open Floor Hearings (OFH)

PINS is aware that the practice for the timing and running of OFHs varies to some degree from one examination to another. To a large extent however, this is deliberate and relates to a number of matters including the complexity of the case and its controversy.

Depending on the circumstances of a case the timing of OFHs works better earlier or later in the examination to serve different purposes. The practice relating to an

applicant's participation in OFHs varies. In some cases, applicants are simply asked to observe but in others applicants are allowed to take a more active role by sometimes speaking to clarify matters or to respond to matters. PINS regard this as much a choice for applicants, although the relevant approach in each case is for the ExA to set and also dependent on the nature of the examination and the issues involved.

Examinations, Questions and Hearings

The survey found that the process overall works well. All parties are aware that timescales can be curtailed in the busiest examinations but equally that the ExA strives to do its best to manage the intense workload in the interests of fairness. Most respondents to the NIPA survey encouraged more detailed agendas for hearings that are published in advance to assist all parties in preparing for the hearings. PINS aims for agendas to be prepared and published as soon as practicable and at least one week in advance of the relevant hearing. NIPA would also welcome confirmation at the end of a hearing who has responsibility for what actions. PINS also agreed to consider the suggestion that there should be more time allocated in the timetable for written answers to questions in exchange for less time to respond to written answers.

There are differences in protocol at hearings. In particular, during some examinations it is possible to submit material on the day of a hearing where that is helpful to the discussion. At others the submission of material is not allowed. PINS explained that this also depends on the nature of the project and needing to ensure fairness to all parties. If a rule is to be introduced it would need to be rather restrictive (ie state that material cannot be submitted) to ensure deliverability on all projects. PINS therefore prefers retaining flexibility.

It was agreed that it is not normally necessary to examine drafting details of DCOs during hearings and that maximum use should be made of written exchanges for this. It was acknowledged that the majority of IPs are unfamiliar with the process and PINS' accommodation of non-expert participants was important for fairness. PINS advised that it is currently producing a video guide on taking part in hearings which will be available on the website in the future.

Examinations Generally

Attendees discussed whether or not it would be useful to request from applicants a Statement of Case as an additional application document. In PINS' view there are enough other required documents in which this information can be sensibly included. Eg the Planning Statement is often relied on as the principal explanation of the case. It was noted that the Explanatory Memorandum is often underused and could be utilised more to set out the case for an application.

PINS welcomes documents such as a Mitigation Route Map, which helps to identify what mitigation is proposed within the ES and precisely where it is secured through the DCO or planning obligations. Best practice on Environmental Impact Assessment (EIA) is moving increasingly in this direction.

Respondents to the NIPA survey and NIPA representatives at the workshop made the case that it would be helpful if the ExA was able to be more open about its emerging

thinking during the examination. There is very limited opportunity for parties to ask questions of the ExA but, in principle, some two-way communication would assist the process if it was used sparingly and efficiently. PINS main concern in relation to this is to maintain absolute impartiality and not be seen to pre-judge any issue, which is understood by NIPA. However NIPA considers that the practice adopted increasingly by Inspectors and High Court judges in proactively guiding the examination and assisting the parties may have scope for further exploration in DCO examinations.

Level of Detail

PINS stated that it is strongly advisable for more detail to be submitted with applications, rather than less (see comments on Mitigation Route Maps above). In PINS' experience, it is fairer to IPs and communities for there to be as much precision as possible around the nature of the proposals. In principle, flexibility can be maintained through a Rochdale Envelope approach, although this makes EIA and other assessments more complex and also makes effective mitigation more difficult to define. The difficulty with the Rochdale Envelope approach is also that it encourages consenting of the 'worst case' whereas from a community and environmental perspective the aim is to minimise impacts. By contrast, respondents to the NIPA survey tended to feel that it is essential for many infrastructure projects from a commercial/deliverability perspective to have sufficient flexibility at the application stage, which in many cases is likely to lead to a degree of variation.

PINS advised applicants should provide as clear as possible an explanation of the need for flexibility and demonstrating how that flexibility has both been assessed and the necessary mitigation assured. The scope for relying on subsequent processes is often narrow and can only be relied upon if they guarantee the necessary level of mitigation required for the implementation of the DCO.

Post-submission changes to applications

Recent experience shows that it is increasingly common for PINS to accept changes to applications as long as these are reasonable in scale (and consequences) and proposed early enough in the examination. Respondents to the NIPA survey reported mixed experience at examinations around these issues. All parties recognised that there would be a benefit in having further guidance and advice on this matter.

All agreed that the ability to make changes to an application should not be seen as a contingency to address ill prepared applications.