



## Meeting note

<b>File reference</b>	None
<b>Status</b>	<b>FINAL</b>
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<b>Date</b>	27 March 2014
<b>Meeting with</b>	Bond Dickinson
<b>Venue</b>	The Planning Inspectorate, Temple Quay House, Bristol
<b>Attendees</b>	Richard Guyatt (Bond Dickinson) John Houghton (Bond Dickinson) Jonathan Bower (Bond Dickinson) Clare Rees (Bond Dickinson) Helen Adlard (Planning Inspectorate) Mark Southgate (Planning Inspectorate) Simone Wilding (Planning Inspectorate) Katherine Chapman (Planning Inspectorate)
<b>Meeting objectives</b>	Feedback on the Planning Act 2008 process as managed by the Planning Inspectorate
<b>Circulation</b>	All attendees

### **Summary of key points discussed and advice given:**

Introductions were made by all attendees and roles explained. To assist with the meeting, each attendee identified the Nationally Significant Infrastructure Projects (NSIP) that they had been involved in to date. Projects that attendees were currently involved in were not discussed as part of the meeting.

The Planning Inspectorate (the Inspectorate) explained its openness policy and advised that a note of the meeting would be published under the s51 advice table on the national infrastructure webpages.

It was agreed that feedback and discussion would be best framed around stages of the PA 2008 process namely; pre-application, pre-examination, examination and recommendation.

#### Pre- application

Bond Dickinson (BD) expressed that general experience of pre-application advice and service was good and improving with time as knowledge is gained by staff at the Inspectorate.

BD were grateful that the Inspectorate was pragmatic in its approach in identifying issues with applications and suggesting solutions. Past experience has shown that this has prevented delay on applications.

Advice provided at meetings was seen to have been developing from an initially cautious approach. Inspectorate staff are using experience gained on projects to provide clearer advice and draw upon best practice.

BD felt that there were significant advantages to Examining Inspectors being present at pre-application meetings, as was customary when the PA 2008 was introduced.

The Inspectorate explained that changes in roles of staff within the National Infrastructure vision has led to the development of 'Infrastructure Planning Leads' (IPLs), who assist Case Managers at pre-application meetings. The IPLs have considerable experience of examinations and working with Inspectors. They also work more strategically ensuring knowledge is shared.

The Inspectorate commented that any Statement of Common Ground (SoCG), even if it only identifying uncommon ground at pre-application may assist the Examining Authority when appointed.

BD felt that greater guidance on SoCGs would be helpful as resourcing is an issue for many Statutory Bodies and therefore, any further work required would need to be effective.

The Inspectorate expressed that Evidence Plans may assist with future examinations. BD stated that their experience to date of the new charging regimes, implemented by bodies such as the Environment Agency, is positive.

BD identified that the Inspectorate should continue to advise and engage with Local Authorities. Despite there having been a number of NSIPs, there are still a number of Local Authorities that have not yet been involved in either the pre-application or examination.

The Inspectorate highlighted that videos have been produced to explain the process from the perspective of Local Authorities. The Inspectorate are still holding outreach events when requested and urged that Applicants contact the Inspectorate if they feel that an outreach event may be beneficial.

BD highlighted that, as the number of cases increase, there is a need for consistency between officers in the Inspectorate in their approach and issuing of advice.

#### Pre-Examination

BD highlighted certification under s56 of PA 2008 as requiring further guidance to enable Applicants to fully understand what is required. There can, in some cases, be changes in land ownership between the pre-application stage and certification under s56 of PA 2008. These concerns have been raised through the 2014 review of PA 2008.

Another issue highlighted during pre-examination is the timing of the availability of relevant representations. At present, these are published by the Inspectorate upon receipt of the s56 and s59 certificates and the Regulation 13 certificate, if required. BD suggested relevant representations be available as soon as they are submitted. The Inspectorate noted this request but also highlighted a number of risks that this could bring in enabling relevant representations to include comments on those previously submitted.

BD also requested that the Inspectorate consider any opportunities for Examining Authorities to be appointed earlier, to enable early procedural decisions if they are required.

It was felt that this may also assist in the developing of the Initial Assessment of Principal Issues which are listed in the Rule 6 letter, notifying all Interested Parties of the date time and place of the Preliminary Meeting.

BD felt that the Initial Assessment of Principal Issues varied from case to case as to whether all issues are listed to ensure that no issue was missed or whether only issues on which the examination may turn were listed. Discussion was held surrounding the usefulness of the principal issues.

### Examination

The Inspectorate queried as to whether there were any ways in which interested parties could assist in a quicker examination?

BD explained that some statutory bodies may not comment fully or are unable to participate until the Environmental Statement is finalised, this would be upon submission.

BD explained that it may assist some examinations if affected Local Authorities could pool their resourcing and enable a lead Local Authority to speak on behalf of those involved. Where a development is located in more than one Local Authority area, this could also assist in the discharge of requirements for example.

The Inspectorate noted this and the other suggestions and will feed these into ongoing work with Local Authorities. It was also explained that the Inspectorate was going to look into the potential for Local Authorities who were experienced in the PA 2008 process to advise others and share knowledge.

The issue of uncertainty in relation to principles of cumulative impact and Appropriate Assessment were raised as recurring issues, particularly for offshore wind, that cause problems in examinations. As a result of the evolving situation in relation to knowledge and implementation of the two issues, statutory consultees are often reluctant to provide views early in the process.

The Inspectorate reassured BD that they were aware of this and have been communicating concerns to the Department for Energy and Climate Change. It was also suggested that Applicants and others involved in the consenting of such schemes should continue to raise the issues and work together. Marine Plans may assist in this area.

The Inspectorate requested views/preferences BD may wish to provide on examination timetable. BD made the following suggestions:

- Timetables should be broadly the same for each examination to assist all participants.
- A consistent amount of time should be allowed for responses to first questions.
- Second Written Questions should always be timetabled even if they are not required, as this assists with resource planning.
- An early Development Consent Order (DCO) hearing sets the scene followed by a late DCO hearing to ensure all matters are covered.

- Early DCO hearings should have a greater purpose than just reading the DCO to the Examining Authority.
- It is seen as risky if DCO hearings are left too late in the examination.
- Open Floor Hearings are better at the beginning of the examination.
- Compulsory Acquisition hearings should be held in months 4 or 5 of large cases to ensure that the Applicant is given time to narrow down matters.
- Where Compulsory Acquisition matters are not an issue, due to agreements having been signed, an early hearing may assist.
- DCO drafting notes have been included by some ExAs in some Rule 8 letters setting out some issues from the start of the examination, this is helpful.
- It is not helpful to spend hearings actually drafting DCOs and highlighting editing changes. These are best dealt with in writing.
- Adequate time should be timetabled for the submission of written notes after hearing. For example, if a hearing finishes on a Thursday or Friday, a Monday deadline is very tight.
- S127 process should be set out as this can be confusing for Applicants, Examining Authorities and interested parties.

BD also provided the Inspectorate with feedback on conduct at hearings. It was noted that there was some inconsistency in approach at hearings between Examining Authorities.

Greater clarity was requested on when additional documentation could be submitted to the hearing, could this be on the day, the night or day before or is it inappropriate to submit documents outside of a formal deadline. The Inspectorate noted this. It was understood by BD that some ExAs will not accept additional documentation – this seemed wrong to BD and in any event is inconsistent with the more pragmatic approach taken by other ExAs.

If a panel member to be absent, this should be explained at the beginning of the hearing, so all parties can understand the reasons and can be assured this has no impact on the decision making process.

Where Examining Authorities had published detailed agendas and/or action notes after hearings, it was felt that this was of great assistance to all interested parties, by providing more clarity. It was also more efficient for all parties in preparation and in the hearings

#### Working with and understanding Development Consent Orders

BD highlighted that often Local Authorities are expecting detailed design parameters in relation to components of the scheme to be present in the Code of Construction Practice. This is often not possible as detailed design is still evolving

A similar situation is being noted in relation to the level of detail in Development Consent Orders themselves and it is important that the possibility of having scheme parameters is acceptable to ensure a scheme is commercially viable.

#### Compulsory Acquisition

It may assist ExAs if experience and approaches to CA hearings could be shared to ensure consistency in approach.

BD requested that further guidance be provided by the Inspectorate to advise applicant as to what information is required to prove the case of terms of need and a compelling case in the public interest.

There is also a lack of consistency as to whether ExAs need to see funding guaranteed within the DCO or by an external document such as a parent guarantee..

BD highlighted that the Guidance states that there needs to be a reasonable prospect of funding becoming available, and for land compensation. The Guidance does not suggest that all possible costs that may arise are fully underwritten.

In relation to cross-examination, it was felt that further guidance on when and how this is appropriate and would be conducted would be helpful.

BD felt that cross-examination, where it has been implemented, it has been very successful. However, BD commented that, should ExAs feel that cross-examination is likely, this should be timetabled and the parties notified.

#### Principal Issues

Discussion was held surrounding the issuing of principal issues. It was felt that whilst it can be helpful to know what are considered as issues but there is variation in the approaches adopted by ExAs. Some provide very detailed principal issues, whilst others are quite generic.

The Inspectorate noted this as a matter for further consideration.

#### Website

BD felt that the website had been greatly improved although they expressed disappointment that Twitter accounts had been removed. An issue was also raised in relation to a time delay in email notifications. The Inspectorate noted this as a matter to look into.