



The Planning Inspectorate
Yr Arolygiaeth Gynllunio

The Planning Act 2008 (as amended) Section 53: Rights of entry

Frequently asked questions (FAQ)

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Section 53 Frequently Asked Questions (FAQs)

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TABLE OF CONTENTS

| | | |
|-----------|--|-----------|
| 1. | INTRODUCTION To FAQs | 5 |
| 1.0 | WHAT IS SECTION 53? | 5 |
| 1.1 | WHY HAVE WE CREATED THE S53 FAQs | 5 |
| 1.2 | LEGAL STATUS OF THE S53 FAQs | 5 |
| 2. | Section 53 PROCESS | 6 |
| 2.1 | WHAT LEGISLATION, GUIDANCE AND ADVICE IS AVAILABLE IN RELATION TO S53 AUTHORISATIONS?..... | 6 |
| 2.2 | WHAT INFORMATION IS CONTAINED IN A S53 AUTHORISATION?..... | 7 |
| 2.3 | WHO CAN APPLY FOR S53 AUTHORISATION?..... | 7 |
| 2.4 | HOW SOON CAN AN APPLICATION FOR S53 AUTHORISATION BE MADE AFTER ENTERING VOLUNTARY NEGOTIATIONS WITH A LANDOWNER?. | 8 |
| 2.5 | WHO IS INVOLVED IN A S53 PROCESS?..... | 8 |
| 2.6 | WHO IS AUTHORISED TO ACCESS LAND UNDER A S53 AUTHORISATION AND WHO ARE 'AUTHORISED PERSONS'?..... | 9 |
| 2.7 | WHO IS THE DECISION-MAKER FOR THE S53 AUTHORISATION? | 9 |
| 2.8 | WHAT ACCESS CAN BE INCLUDED WITHIN AN AUTHORISATION? | 9 |
| 2.9 | HOW LONG WILL A S53 AUTHORISATION REQUEST TAKE TO PROCESS?..... | 10 |
| 2.10 | IS THERE AN AUTOMATIC GRANT OF AUTHORISATION AFTER A CERTAIN TIME PERIOD HAS ELAPSED FOLLOWING THE SUBMISSION OF A S53 AUTHORISATION REQUEST?..... | 10 |
| 2.11 | HOW LONG DOES A S53 AUTHORISATION LAST FOR? | 10 |
| 2.12 | ARE THE PARTIES WHOSE LAND IS AFFECTED BY A S53 AUTHORISATION ENTITLED TO COMPENSATION AND WHAT HAPPENS AFTER 'AUTHORISED PERSONS' HAVE COMPLETED THE AUTHORISED ACTIVITIES?..... | 10 |
| 2.13 | IS THERE A LEGAL RIGHT OF CHALLENGE FOR ANY S53 DECISION? . | 11 |
| 3. | COMMENTING ON A S53 AUTHORISATION REQUEST; A S53 AUTHORISATION; OR THE AUTHORISATION PROCESS | 12 |
| 3.1 | AS A MEMBER OF THE PUBLIC, HOW DO I COMMENT ON A S53 AUTHORISATION REQUEST, THE AUTHORISATION OR ANY PART OF THE S53 PROCESS?..... | 12 |
| 4. | WHAT A S53 AUTHORISATION MEANS FOR THE STATUS OF A PROPOSED DEVELOPMENT | 13 |
| 4.1 | DOES A S53 AUTHORISATION DETERMINE WHETHER A PROPOSED DEVELOPMENT IS A NATIONALLY SIGNIFICANT INFRASTRUCTURE PROJECT?..... | 13 |
| 4.2 | DOES A S53 AUTHORISATION DETERMINE WHETHER DEVELOPMENT CONSENT WILL BE GRANTED FOR THE PROPOSED DEVELOPMENT?... | 13 |

| | | |
|-----------|---|-----------|
| 4.3 | DOES A S53 AUTHORISATION MEAN THAT THE INSPECTORATE SUPPORTS A PROPOSED DEVELOPMENT? | 13 |
| 4.4 | DOES A S53 AUTHORISATION MEAN THAT THE INSPECTORATE CONSIDERS A PROPOSED DEVELOPMENT TO BE FINANCIALLY VIABLE?14 | |
| 5. | S53 ENFORCEMENT POWERS | 15 |
| 5.1 | WHAT HAPPENS IF THE CONDITIONS OF A S53 AUTHORISATION ARE BREACHED?..... | 15 |
| 5.2 | TYPICALLY WHO ENFORCES THE S53 AUTHORISATION..... | 15 |
| 5.3 | AS A MEMBER OF THE PUBLIC, IF I NOTICE THAT A S53 APPLICANT BREACHES THE TERMS OF THE S53 AUTHORISATION HOW DO I MAKE A COMPLAINT?..... | 15 |
| 6. | ALTERNATIVE POWERS TO S53 TO ACCESS LAND | 16 |
| 6.1 | CAN AN APPLICANT FOR DEVELOPMENT CONSENT USE S172 OF THE HOUSING AND PLANNING ACT 2016 (AS AMENDED BY THE NEIGHBOURHOOD PLANNING ACT 2017) INSTEAD OF S53 OF THE PA2008 TO GAIN ACCESS TO LAND? | 16 |
| 7. | S53 PUBLICATION REQUIREMENTS | 17 |
| 7.1 | WHAT INFORMATION IS PUBLISHED ABOUT THE S53 AUTHORISATION?17 | |
| 7.2 | WHEN WILL INFORMATION BE PUBLISHED ABOUT A S53 AUTHORISATION PRIOR TO A DECISION? | 17 |
| 8. | HUMAN RIGHTS | 18 |
| 8.0 | WHAT CONSIDERATION IS GIVEN TO HUMAN RIGHTS? | 18 |
| 9. | Acronyms and abbreviations | 19 |

1. INTRODUCTION TO FAQs

1.0 What is Section 53?

- 1.1 Under Section 53 (s53) of the Planning Act 2008 (PA2008) the Planning Inspectorate (the Inspectorate), acting on behalf of the Secretary of State, can authorise a person(s) 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 (EIA) Directive or Habitats Directive, in connection with an application for a Development Consent Order (DCO), a proposed application for a DCO, or a made DCO that includes provision authorising the compulsory acquisition of that land or an interest over it. The power of entry may include the power to search and bore to ascertain the nature of the subsoil or the presence of minerals or other matter in it and/ or to take and process samples.

1.1 Why have we created the S53 FAQs

- 1.2 Section 53 authorisation requests can generate a significant amount of public correspondence. To date, the correspondence has largely related to matters of process and how the s53 authorisation is made.
- 1.3 In order to address, in a consistent and concise manner, points that are regularly raised in relation to the s53 process, the Inspectorate has prepared a series of Frequently Asked Questions (FAQs) regarding the s53 process.
- 1.4 Sections 2 to 8 of this document contain the FAQs and responses.
- 1.5 Section 9 of this document contains a list of abbreviations and terms used in the document.

1.2 Legal status of the s53 FAQs

- 1.6 Any advice given by the Inspectorate does not constitute legal advice upon which s53 applicants (or others) can rely and the Inspectorate cannot provide a definitive interpretation of law.

2. Section 53 PROCESS

2.1 What legislation, guidance and advice is available in relation to s53 authorisations?

Besides this FAQ document, the following documentation is available in relation to s53:

- The Planning Act 2008. Section 53.

<http://www.legislation.gov.uk/ukpga/2008/29/contents>

- Advice Note 5: Section 53: Rights of Entry (Planning Act 2008). March 2017. The Planning Inspectorate. This defines the process that the Inspectorate follows and the content of an authorisation. It is referred to as AN5 in this document.

<https://infrastructure.planninginspectorate.gov.uk/legislation-and-advice/advice-notes/>

- Planning Act 2008. The Infrastructure Planning (Fees) Regulations 2010 guidance. March 2017. Department for Communities and Local Government (DCLG).

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/601392/Planning_Act_2008_revised_fees_guidance.pdf

It is strongly recommended that you read these documents in addition to the FAQs prior to raising any questions relating to the s53 authorisation process.

In addition to these documents, existing s53 authorisations are available on the Inspectorate's National Infrastructure webpages eg Manston Airport s53 can be reviewed at:

<https://infrastructure.planninginspectorate.gov.uk/projects/south-east/manston-airport/?ipcsection=docs>

The Inspectorate is committed to continual improvement and regularly reviews its advice regarding the s53 process to take into account relevant legislative changes, court judgements and feedback received from stakeholders. Advice such as AN5 and this FAQ document may be updated and republished in future; therefore persons with an interest in land should check the Inspectorate's advice pages to make sure that they are using the most up to date version of any advice.

2.2 What information is contained in a s53 authorisation?

A s53 authorisation issued by the Inspectorate comprises:

The written authorisation which sets out the extent and type of access authorised. It is usually accompanied by the following annexes:

- Terms and definitions;
- Plan identifying the land;
- Schedule of conditions; and
- Schedule of surveys.

There is no specified format for an authorisation. The Inspectorate may choose to vary the format of the authorisation from time to time to better suit the needs of individual applications.

The written authorisation is accompanied by a Statement of Reasons setting out why the authorisation has been granted.

2.3 Who can apply for s53 authorisation?

A person can apply for a right to enter land owned by third parties under s53 in connection with an application for a DCO, a proposed application for a DCO, or a made DCO which authorises the compulsory acquisition of that land or a right over that land. Rights of entry can only be granted under s53 for the purpose of surveying and taking levels of it, or in order to facilitate compliance with statutory provisions, implementing the EIA Directive or Habitats Directive. 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 it and/ or to take and process samples.

If authorisation is sought in relation to a proposed application for a DCO (subsection 1(b)) s53(2) of the PA2008 states that:

"(2) Authorisation may be given by the Secretary of State under subsection (1)(b) in relation to any land only if it appears to the Secretary of State that—

(a) the proposed applicant is considering a distinct project of real substance genuinely requiring entry onto the land"

The grant or refusal of a s53 authorisation which relates to a proposed application for a DCO does not have any implications for the acceptance of

any subsequent DCO application. Any subsequent application for a DCO will be considered for acceptance against the statutory tests in s55 of the PA2008.

2.4 How soon can an application for s53 authorisation be made after entering voluntary negotiations with a landowner?

The emphasis of statutory guidance produced by DCLG is for s53 powers to be proportionate (The Infrastructure Planning (Fees) Regulations 2010 guidance, DCLG, March 2017). Section 53 applicants are expected to act reasonably, first seeking to obtain relevant information or permission to access land directly (by private agreement) before seeking authorisation under the provisions of s53. There is no minimum time period set for voluntary negotiations regarding land access. As part of a s53 authorisation request, s53 applicants must justify why they consider that they have been unreasonably refused access and/or information during any negotiation period.

2.5 Who is involved in a s53 process?

There are several parties involved in a s53 process and their respective roles are considered in more detail in AN5. In most cases the parties involved will be:

- the s53 Applicant (the person applying for entry onto the land under s53);
- the Landowner(s) (the person(s) who own the land over which entry is sought);
- persons with an interest in the land (for example, owners, occupiers, tenants and lessees of the land over which entry is sought); and
- the Inspectorate.

There is no mechanism for the public to engage in the process and correspondence from the public regarding a s53 process is not required to be taken into account. Consequently the Inspectorate does not actively seek the views of the public in respect of s53 applications.

2.6 Who is authorised to access land under a s53 authorisation and who are 'authorised persons'?

If granted the s53 will authorise access to land for the 'authorised persons'. The authorised persons are usually defined within the s53 authorisation 'Terms and Definitions' section. Only authorised persons may access the land and they must comply with the terms of the authorisation and its conditions.

2.7 Who is the decision-maker for the s53 authorisation?

Through functions delegated by the Secretary of State for Communities and Local Government, the Inspectorate is the decision-maker in respect of applications for authorisation to access private land under s53 of PA2008.

2.8 What access can be included within an authorisation?

A person may apply for authorisation from the Inspectorate 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 EIA Directive or Habitats Directive, under s53 of 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 it and/or to take, and process, samples of or from any of the following found on, in or over the land -

- (a) water,
- (b) air,
- (c) soil or rock,
- (d) its flora,
- (e) bodily excretions, or dead bodies, of non-human creatures, or
- (f) any non-living thing present as a result of human action.

2.9 How long will a s53 authorisation request take to process?

Our advice note explains that there is no prescribed statutory timeframe within which the Inspectorate must determine the request for authorisation. However, experience to date indicates that s53 authorisation requests take several months to determine, from the date of receipt of the authorisation request(s). 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 s53 Applicant and any issues raised in responses from persons with an interest in the land. Section 53 applicants will need to be aware of this anticipated timeframe and the potential impact it may have on their overall programme.

2.10 Is there an automatic grant of authorisation after a certain time period has elapsed following the submission of a s53 authorisation request?

No. There is no automatic grant of authorisation following a period of time after which an authorisation request has been made.

2.11 How long does a s53 authorisation last for?

It will be for the s53 Applicant to set out the nature of and reasons for the access duration requested. The Inspectorate will consider this information and determine the appropriate duration for any s53 authorisation granted in consideration of all of the evidence.

Typically a s53 authorisation is limited to one year's duration. Acceptance of an application for development consent will normally revoke the s53 rights.

2.12 Are the parties whose land is affected by a s53 authorisation entitled to compensation and what happens after 'authorised persons' have completed the authorised activities?

As part of the decision, the Inspectorate will take into account any interference to the land in question as appropriate. The PA2008 (s53(7))

provides for compensation to be recovered where damage is caused to land or chattels as a consequence of exercising rights of entry or in the making of any survey. The Inspectorate is not required to consider matters of compensation payable, nor is it appropriate for the Inspectorate to do so. Any questions of disputed compensation are to be determined by the upper tribunal under s58(6) of the PA2008.

The Inspectorate expects s53 applicants, as part of their proposed conditions, to include provisions for making good any damage caused to the reasonable satisfaction of the affected person(s). Should no such condition (or an unsuitable version thereof) be proposed, the Inspectorate may specify additional or reworded conditions if they are considered necessary.

2.13 Is there a legal right of challenge for any s53 decision?

Yes. There is an opportunity to challenge a s53 decision. Some previous s53 decisions have been the subject of judicial review. The Inspectorate will always ensure that decisions are underpinned by a robust recommendation based on 'sufficient information' as set out in AN5.

3. COMMENTING ON A S53 AUTHORISATION REQUEST; A S53 AUTHORISATION; OR THE AUTHORISATION PROCESS

3.1 As a member of the public, how do I comment on a s53 authorisation request, the authorisation or any part of the s53 process?

The s53 process is in effect a private negotiation process regarding access to land conducted between the s53 Applicant, the landowner(s) and any persons with interest in land.

There is no mechanism for the public to engage in the process and correspondence from the public regarding an application for authorisation under s53 is unlikely to be relevant to the Inspectorate's determination of the application.

This does not preclude a member of the public from making representations about an application for development consent to the Inspectorate at the appropriate time¹.

¹ See the Inspectorates Advice note 8.2: How to register and participate in an Examination

4. WHAT A S53 AUTHORISATION MEANS FOR THE STATUS OF A PROPOSED DEVELOPMENT

4.1 Does a s53 authorisation determine whether a Proposed Development is a Nationally Significant Infrastructure Project?

No. The grant of an authorisation under s53 does not mean that the Inspectorate has determined that the Proposed Development is a Nationally Significant Infrastructure Project (NSIP). The question of whether a Proposed Development is an NSIP is typically considered at acceptance - the formal point at which an application for a DCO is made to the Inspectorate on behalf of the relevant Secretary of State.

4.2 Does a s53 authorisation determine whether development consent will be granted for the Proposed Development?

No. An authorisation under s53 does not mean that development consent will be granted for the Proposed Development. Development consent can only be granted by the relevant Secretary of State following the acceptance and examination of an application for development consent.

4.3 Does a s53 authorisation mean that the Inspectorate supports a Proposed Development?

No. A s53 authorisation simply means that the Inspectorate considers that a s53 Applicant has met the requirements of s53 of the PA2008.

As with any Proposed Development registered with the Inspectorate, the Inspectorate has no view on the merits of a Proposed Development until the examination process has been completed and the Examining Authority is making a recommendation to the relevant Secretary of State.

4.4 Does a s53 authorisation mean that the Inspectorate considers a Proposed Development to be financially viable?

No. All applications for authorisation to enter land under s53 of the PA2008 are considered and decided in accordance with the legislation.

Any subsequent application for development consent will be considered for acceptance against the statutory tests in s55 of the PA2008. The Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 require applicants for development consent to submit a Funding Statement, if the proposed DCO would authorise the Compulsory Acquisition of land, indicating how the Compulsory Acquisition is proposed to be funded. Concurrently, DCLG's 'Planning Act 2008: Guidance related to procedures for the compulsory acquisition of land' states that the Funding Statement should "*demonstrate that adequate funding is likely to be available to enable the Compulsory Acquisition within the statutory period following the order being made, and that the resource implications of a possible acquisition resulting from a blight notice have been taken account of.*"

If an application for development consent is accepted for examination, matters of funding will be examined by the appointed Examining Authority.

5. S53 ENFORCEMENT POWERS

5.1 What happens if the conditions of a s53 authorisation are breached?

The s53 authorisation will likely include specific conditions relating to a breach of the authorisation. The conditions will specify what would happen in the event that a breach occurs.

5.2 Typically who enforces the s53 authorisation

If an authorisation is given under s53 of the PA2008 it may be exercised by the person or persons to whom it gives authority to enter land, for the purposes specified within it, subject to such person or persons complying with any conditions subject to which it is given.

If an owner or occupier of that land considered there to be a failure to comply with any such conditions or that the person or persons purporting to exercise the authority is (or are) not authorised to do so, then the owner or occupier would need to seek his or her own legal advice as to what action he or she may be able to take in relation to such matters. The Inspectorate does not provide legal advice in relation to such matters.

5.3 As a member of the public, if I notice that a s53 Applicant breaches the terms of the s53 authorisation how do I make a complaint?

The s53 authorisation enables the authorised person to enter land in accordance with the authorisation. Compliance with the authorisation is a matter for the landowner(s) or person(s) with an interest in the land.

You may raise your concerns directly with the authorised person(s), landowner(s) or person(s) with interest in the land, if you choose but they are under no obligation to respond to you.

6. ALTERNATIVE POWERS TO S53 TO ACCESS LAND

6.1 Can an Applicant for development consent use s172 of the Housing and Planning Act 2016 (as amended by the Neighbourhood Planning Act 2017) instead of s53 of the PA2008 to gain access to land?

In the case of a prospective DCO, the policy intention is that the power of entry in s53 of the Planning Act 2008 should be used.

Where an existing specific power of entry has not been limited in scope by Schedule 14 to the Housing and Planning Act 2016, the policy intention is for this existing power to continue to be used in the same way. The Inspectorate notes the principle of statutory interpretation that where a general enactment covers a situation for which specific provision is made by another enactment contained in an earlier Act, it is presumed that the situation is intended to continue to be dealt with by the specific provision rather than the later general one.

Therefore, while the Neighbourhood Planning Bill amends the definition of "acquiring authority" in s172 of the Housing and Planning Act 2016 to remove the link to the definition of "compulsory purchase" in the Acquisition of Land Act 1981, in the case of a prospective DCO, the policy intention is that the more specific power in s53 of the Planning Act 2008 should remain in use.

7. S53 PUBLICATION REQUIREMENTS

7.1 What information is published about the s53 authorisation?

There is no statutory requirement to publish the s53 application and documents associated with the application.

From June 2017 onwards the s53 authorisation and statement of reasons explaining the authorisation decision are the only documents that will routinely be published on the Inspectorate's website.

This does not affect your rights under the Environmental Information Regulations 2004.

7.2 When will information be published about a s53 authorisation prior to a decision?

We do not publish or provide information regarding a s53 authorisation request, until such a request has been determined.

8. HUMAN RIGHTS

8.0 What consideration is given to human rights?

AN5 highlights that in determining an authorisation request, the Inspectorate is required to consider Article 1 of the First Protocol of the European Convention which gives a right to peaceful enjoyment of property. Any 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 Inspectorate will consider, in relation to each s53 authorisation request, whether the authorisation of entry onto third party land would be lawful and proportionate.

9. Acronyms and abbreviations

| | |
|--------|---|
| AN5 | Advice Note 5 |
| CA | Compulsory acquisition |
| CPO | Compulsory purchase order |
| DCLG | Department for Communities and Local Government |
| DCO | Development Consent Order |
| EIA | Environmental Impact Assessment |
| FAQs | Frequently asked questions |
| NSIP | Nationally Significant Infrastructure Project |
| PA2008 | The Planning Act 2008 |
| s53 | Section 53 of the Planning Act 2008 |
| s55 | Section 55 of the Planning Act 2008 |