



The Planning Inspectorate
Yr Arolygiaeth Gynllunio

**The Planning Act 2008 (as amended)
Pre-application procedure:
Section 47 – Community Consultation**

Frequently Asked Questions (FAQ)



July 2017

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1. INTRODUCTION AND PURPOSE OF THIS DOCUMENT

1.1 This FAQ document has been published under section 51 of the Planning Act 2008 (PA2008). Its content consists of advice to local communities about the Pre-application procedure and community consultation. Importantly, in the context of community consultation, it clarifies the role and remit of the Planning Inspectorate at the Pre-application stage of the PA2008 process.

1.2 Section 47 of the PA2008 sets out the duties placed on applicants in respect of consulting the local community, as follows:

(1) The applicant must prepare a statement setting out how the applicant proposes to consult, about the proposed application, people living in the vicinity of the land.

(2) Before preparing the statement, the applicant must consult each local authority that is within section 43(1) about what is to be in the statement.

(3) The deadline for the receipt by the applicant of a local authority's response to consultation under subsection (2) is the end of the period of 28 days that begins with the day after the day on which the local authority receives the consultation documents.

(4) In subsection (3) "the consultation documents" means the documents supplied to the local authority by the applicant for the purpose of consulting the local authority under subsection (2).

(5) In preparing the statement, the applicant must have regard to any response to consultation under subsection (2) that is received by the applicant before the deadline imposed by subsection (3).

(6) Once the applicant has prepared the statement, the applicant must

(za) make the statement available for inspection by the public in a way that is reasonably convenient for people living in the vicinity of the land,

(a) publish in a newspaper circulating in the vicinity of the land, a notice stating where and when the statement can be inspected , and

(b) publish the statement in such manner as may be prescribed.

(7) The applicant must carry out consultation in accordance with the proposals set out in the statement.

1.3 The following documentation is referred to within this FAQ and should be read in conjunction with the advice within it¹:

- The Planning Act 2008. Chapter 2.
- Planning Act 2008: Guidance on the Pre-application process (DCLG, 2015).

¹ All available at: <https://infrastructure.planninginspectorate.gov.uk/legislation-and-advice/>

- Planning Act 2008: Guidance related to procedures for the Compulsory Acquisition of Land (DCLG, 2015).
- Advice note two: The role of local authorities in the development consent process (The Planning Inspectorate, 2015).
- Advice note seven: Environmental Impact Assessment: Preliminary Environmental Information, Screening and Scoping (The Planning Inspectorate, 2015).
- Advice note eight: Overview of the nationally significant infrastructure planning process for members of the public and others (The Planning Inspectorate, 2017).

Advice note eight has been produced in five sections and aims to take members of the public step-by-step through the Planning Act 2008 process:

- Advice note 8.1: Responding to the developer's Pre-application consultation.
- Advice note 8.2: How to register to participate in an Examination.
- Advice note 8.3: Influencing how an application is Examined: the Preliminary Meeting.
- Advice note 8.4: The Examination.
- Advice note 8.5: The Examination: hearings and site inspections.
- Advice note nine: Rochdale Envelope (The Planning Inspectorate, 2012).
- Advice note fourteen: Compiling the consultation report (The Planning Inspectorate, 2012).

1.4 This FAQ will be updated periodically at the discretion of the Planning Inspectorate.

2. FREQUENTLY ASKED QUESTIONS (FAQ)

FAQ 1 **I am concerned about an applicant's Pre-application community consultation. Who should I contact?**

Advice

Please read the Planning Inspectorate's Advice Note 8.1: Responding to the developer's Pre-application consultation².

Where you feel that consultation has been inadequately carried out, you should make your comments to the Applicant in the first instance. Any concerns should be raised promptly during or immediately following the consultation to enable the Applicant to address the issues if appropriate.

FAQ 2 **I am concerned about an applicant's Pre-application community consultation, and have sent comments to the Applicant. Who should I contact if I am not satisfied that the Applicant has or will take account of my comments?**

Advice

If you have provided your comments to the Applicant but remain unsatisfied, you can make comments to the relevant local authority who can consider them as part of their Adequacy of Consultation Representation to the Secretary of State. See **FAQ 3** which explains role of local authorities in the Planning Act 2008 process and **FAQ 8** which explains the role of local authorities in providing an Adequacy of Consultation Representation.

If you are still unsatisfied, you can make comments to the Secretary of State, through the Planning Inspectorate.

If an application is formally submitted to the Planning Inspectorate we can consider your comments in addition to the statutorily required Acceptance tests when making the decision about whether or not to accept the application under section 55 of the Planning Act 2008. It will be for the decision maker (the Planning Inspectorate on behalf of the Secretary of State) to decide the weight to give to the views expressed in your comments based on the individual facts of the case.

Please note that only correspondence regarding an applicant's formal statutory consultation under s42, s47 and/ or s48, or an applicant's subsequent targeted consultation arising following the formal statutory consultation, can be considered at the Acceptance stage. Issues relating to the merits of the application can only be considered during the Examination of an application.

In the Acceptance period, the Planning Inspectorate can also request from the Applicant all responses to its statutory Pre-application consultation³.

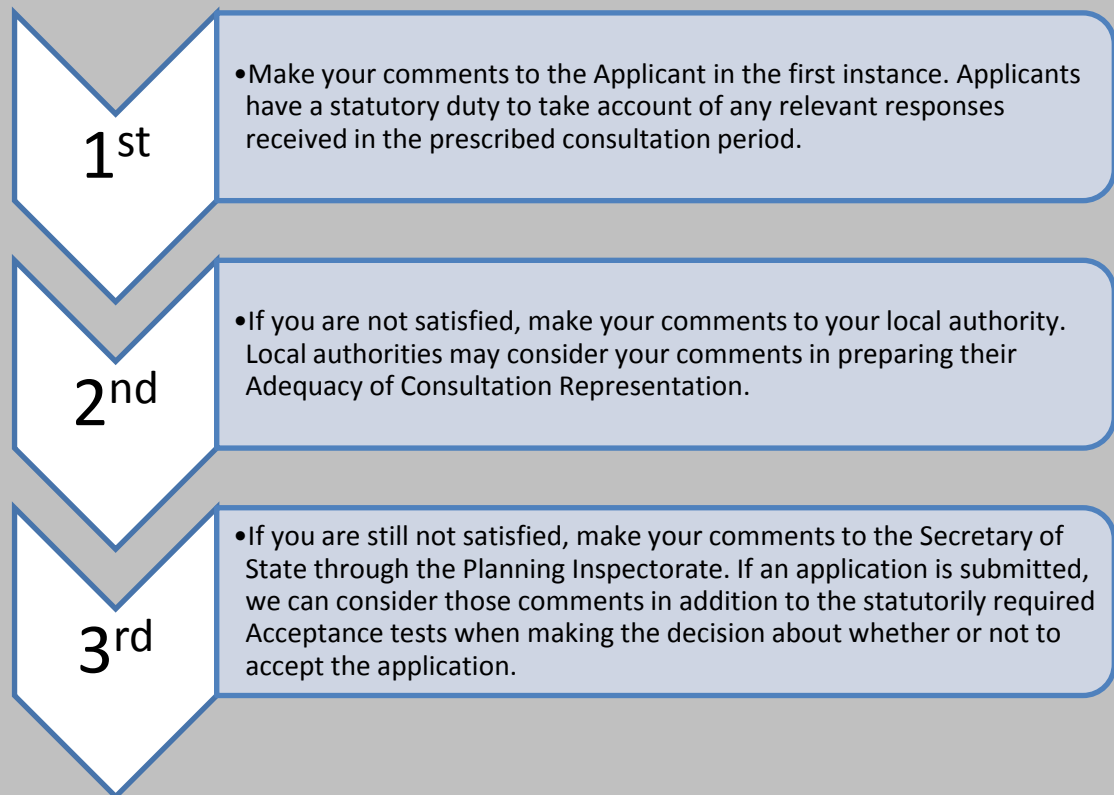
Separately, where you believe you have identified an issue which has not been adequately addressed by an applicant, despite raising it with it as part of their Pre-application consultation exercise, you may wish to make a Relevant Representation about the issue if the application is accepted to be examined. The Examining Authority may then consider this issue during the Examination if it considers it to be relevant. See also **FAQ 9**. It is important to note that the

² <https://infrastructure.planninginspectorate.gov.uk/legislation-and-advice/advice-notes/>

³ Regulation 5(5) of The Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009

Acceptance decision cannot be re-opened during the Examination.

Commenting on an applicant's Pre-application consultation



FAQ 3 What is the role of local authorities at the Pre-application stage of the Planning Act 2008 (PA2008) process?

Advice

Please read the Planning Inspectorate's Advice Note One: Local Impacts Reports and Advice Note Two: The role of local authorities in the development consent process⁴. The Planning Inspectorate has also published a video which explains the role of local authorities⁵.

Local authorities have expert knowledge of the local community, business and other interests in their area and are responsible for various consultations and the development of the local area. Because of this, local authorities have a special role in the PA2008 process.

Section 47 of the PA2008 requires applicants to prepare a Statement of Community Consultation (SoCC) which sets out how an applicant will consult with the local community. An applicant must make its SoCC available for inspection by the public in a way that is reasonably convenient for people living in the vicinity of the land where the Proposed Development would be located. It must then conduct its consultation in line with the SoCC. **FAQ 13** provides further advice about the SoCC.

⁴ <https://infrastructure.planninginspectorate.gov.uk/legislation-and-advice/advice-notes/>

⁵ <https://infrastructure.planninginspectorate.gov.uk/application-process/the-process/>

Before a SoCC is finalised and published, an applicant must consult on its content with each local authority in whose area the Proposed Development is situated. The local authority's aim in responding to consultation about a SoCC should be to ensure that the people affected by a proposal can take part in a thorough, accessible and effective consultation exercise about a Proposed Development.

At the Pre-application stage of the PA2008 process, local authorities also:

- have a role as a statutory consultee for any Proposed Developments in or adjacent to their area and therefore must be consulted by an applicant;
- have a role as a consultation body for the purposes of the Environmental Impact Assessment Regulations and, if a scoping request is made, will be able to comment on the proposed scope of the Applicant's Environmental Statement⁶; and
- can start preparing a Local Impact Report (LIR) for submission during the Examination of an application. In a LIR, local authorities will set out their views on the likely impact of a Proposed Development on their local area and communities⁷.

FAQ 4 Can the Planning Inspectorate make an applicant repeat some or all of its Pre-application community consultation?

Advice The Pre-application consultation process is crucial to the effectiveness of the major infrastructure consenting regime. A thorough process can give the Secretary of State confidence that issues that may arise during the statutory six month Examination stage have been identified, considered, and as far as possible/ necessary, been addressed.

Without adequate consultation, the subsequent application will not be accepted by the Secretary of State when it is submitted to the Planning Inspectorate. If at the Acceptance stage the Secretary of State concludes that the consultation is inadequate, he or she can recommend that the Applicant carries out further consultation activity before the application can be resubmitted and accepted.

FAQ 5 What is Preliminary Environmental Information? How much detail should it contain?

Advice The Department for Communities and Local Government (DCLG) has published guidance on the Pre-application process which explains the role of Preliminary Environmental Information (PEI)⁸. DCLG's guidance is supplemented by the Planning Inspectorate's Advice Note Seven: Environmental Impact Assessment: Preliminary Environmental Information, Screening and Scoping and Advice Note Nine: Rochdale Envelope⁹.

If a Proposed Development is Environmental Impact Assessment (EIA) development, an applicant must set out in its Statement of Community

⁶ See the Planning Inspectorate's Advice note seven: Environmental Impact Assessment: Preliminary Environmental Information, Screening and Scoping, available here: <https://infrastructure.planninginspectorate.gov.uk/legislation-and-advice/advice-notes/>

⁷ See the Planning Inspectorate's Advice note one: Local impact reports, available here: <https://infrastructure.planninginspectorate.gov.uk/legislation-and-advice/advice-notes/>

⁸ <https://infrastructure.planninginspectorate.gov.uk/legislation-and-advice/guidance/>

⁹ <https://infrastructure.planninginspectorate.gov.uk/legislation-and-advice/advice-notes/>

Consultation (SoCC) how it intends to publicise and consult on its PEI. **FAQ 3** and **FAQ 13** provide further advice about the SoCC.

From 16 May 2017 the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 (the 2017 EIA Regulations) are in force. The 2017 EIA Regulations include transitional provisions that (where met) retain the applicability of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009¹⁰ for the Proposed Development. An applicant's PEI will be subject to the interpretation provided in the Regulations that apply to their project. Which regulations apply is dependent upon the applicability of the transitional provisions to the project concerned.

In general PEI will present the preliminary findings of the EIA being carried out by an applicant in respect of a Proposed Development.

For the Pre-application consultation process, applicants are advised to include sufficient PEI to enable consultees to develop an informed view of the Proposed Development. The Applicant has some discretion in the preparation of the PEI. Generally the PEI is not expected to replicate or be a draft of an Environmental Statement (ES) although this is not prevented either.

Applicants must set out clearly what is being consulted on. They must be careful to make clear to local communities what is settled and why, and what remains to be decided, so that local communities can be clear on what to expect. In this respect, PEI is 'preliminary' and applicants should actively seek comments from consultees on its content, and take those comments, where relevant, into account.

The key issue is that the information presented in PEI must provide clarity to all consultees. Applicants should be careful not to assume that non-specialist consultees would not be interested in any technical environmental information.

An applicant's SoCC must include a statement about how the Applicant intends to consult on PEI.

The Planning Inspectorate does not comment on the content or quality of an applicant's PEI. The likely significant environmental effects of a Proposed Development will need to be assessed by an applicant as part of the EIA and presented in the ES. The appointed Examining Authority will undertake the examination of environmental information having regard to the information in the Applicant's ES.

FAQ 6 Why can't an applicant provide specific information about how I will be affected by a Proposed Development?

Advice During Pre-application consultation applicants may not have fixed the precise design details in respect of a Proposed Development. It is also possible that as part of their application an applicant may seek to retain some flexibility in the design of their Proposed Development. Where this is the case, it will result in a more complex level of assessment to determine the likely significant effects. For Environmental Impact Assessment (EIA) developments, applicants will need to prepare an Environmental Statement that includes an assessment of the likely significant effects associated with the Proposed Development. In order to address flexibility in design there is an established approach which

¹⁰ Both available here: <https://infrastructure.planninginspectorate.gov.uk/legislation-and-advice/legislation/>

applies to EIA which is based on a parameter led assessment and identification of a 'worst case scenario'. See **FAQ 7**.

The Planning Inspectorate is aware that during Pre-application consultation applicants may be unable to provide a detailed assessment of the likely effects from the project. However, the information should be sufficient to satisfy the legal requirements with regard to consultation.

This means that the information provided should not be so vague as to prevent a consultee from engaging with Pre-application consultation in a meaningful way. A consultation based on less certainty in respect of design options can provide a barrier to effective engagement. However, allowing flexibility in design can provide increased scope for consultation responses to shape a Proposed Development. In preparing a response, consultees should consider how best they might affect a Proposed Development. Applicants have a statutory duty to explain in any future application how they have taken account of the relevant responses received. See also **FAQ 8**.

FAQ 7 What is the Rochdale Envelope approach?

The Rochdale Envelope approach is an Environmental Impact Assessment (EIA) assessment approach that arises primarily from two cases in respect of outline planning applications under the Town and Country Planning Act 1990. The Planning Inspectorate considers the approach and its applicability to the Planning Act 2008 process, in Advice Note Nine: Rochdale Envelope¹¹.

In summary, the Rochdale Envelope is an approach to EIA which provides a means to ensure that the likely significant effects associated with a Proposed Development are appropriately assessed in circumstances where flexibility in the design is sought. The approach enables an applicant to seek appropriate design flexibility within a Development Consent Order and conduct a parameters based assessment. The parameters inform the definition of a 'worst case scenario' and this will be used for the purposes of the assessment.

The need for flexibility is a matter for the Applicant to explain but may relate to reasons such as, uncertainty in market and end user requirements, procurement of contractor(s) and future technological innovation including changes to operational technology and construction technologies and methods.

FAQ 8 How will the Planning Inspectorate test whether an applicant's Pre-application community consultation was satisfactory?

Advice

The Planning Act 2008 (PA2008) places a number of duties on applicants in respect of Pre-application consultation and all applications for development consent must be accompanied by a 'Consultation Report'. The Consultation Report is prepared under section 37 of the PA2008 and must give details of:

- a) what has been done in compliance with sections 42, 47 and 48 of the PA2008 in relation to an application;
- b) any relevant responses; and
- c) the account taken of any relevant responses.

In the Acceptance period (ie the 28 days following the formal submission of an

¹¹ <https://infrastructure.planninginspectorate.gov.uk/legislation-and-advice/advice-notes/>

application) the Planning Inspectorate will scrutinise all of the application documents, including the evidence provided in the Consultation Report, applying the statutory tests set out in s55 of the PA2008. By the end of the Acceptance period the Planning Inspectorate (on behalf of the Secretary of State) must decide, in accordance with the tests in s55 of the PA2008, whether or not an application should be accepted for Examination.

In reaching the above decision, s55(4) of the PA2008 makes explicit that the Planning Inspectorate must have regard to the Consultation Report and any Adequacy of Consultation Representations made by local authority consultees. Adequacy of Consultation Representations are defined by s55(5) of the PA2008 as representations about whether the Applicant complied with its duties under sections 42, 47 and 48. They are requested from all relevant local authorities on receipt of an application for development consent.

FAQ 9 How do I object to a Proposed Development at the Pre-application stage?

Advice You should make comments about a Proposed Development to the Applicant in the first instance. See **FAQ 1**.

The Planning Inspectorate cannot consider objections to a Proposed Development at the Pre-application stage of the Planning Act 2008 process.

For information about when and how to register as an Interested Party in an Examination (if an application is submitted and the Secretary of State decides that it is of a satisfactory standard to be examined), please see the Planning Inspectorates Advice Note 8.2: How to register to participate in an Examination¹².

FAQ 10 How do I comment on an applicant's Statement of Community Consultation (SoCC)?

Advice Applicants must consult with the relevant local authority or authorities about the content of the draft SoCC, providing advice on the appropriateness of an applicant's suggested community consultation techniques and methods. There is no statutory requirement for an applicant to consult with the local community on the content of a SoCC.

Suggestions could be made to an applicant about the content of a future SoCC by a member of the public in the course of any non-statutory consultation which precedes its statutory consultation under s47 of the Planning Act 2008. But there is no statutory requirement for an applicant to take account of any such suggestions.

FAQ 11 Why wasn't I notified about an applicant's Pre-application community consultation?

Advice Section 42 of the Planning Act 2008 (PA2008) sets out whom an applicant must consult about a Proposed Development.

In respect of consultation with the local community, s47 of the PA2008 prescribes how an applicant must go about consulting people living in the vicinity of a Proposed Development. Section 47(6) sets out how an applicant

¹² <https://infrastructure.planninginspectorate.gov.uk/legislation-and-advice/advice-notes/>

must make the Statement of Community Consultation (SoCC) available to people living within the vicinity of the Proposed Development. There is no statutory duty for an applicant to consult with the local community directly in the form of letters and/ or leaflets.

FAQ 3 and **FAQ 13** provide further advice about the SoCC.

Separately, after making diligent inquiry, applicants are also required to identify and consult with persons who they think would or might be able to make a relevant claim for compensation (eg in respect of noise or light pollution arising from the use of a Proposed Development). These persons must be consulted with directly under s42(d) of the PA2008.

See **FAQ 14** for more information about relevant claims.

FAQ 12 Why isn't there a consultation event scheduled in the place that I live?

Advice

It is for an applicant to decide, in consultation with and taking account of consultation responses from the host local authorities, the location of statutory community consultation events. This process manifests through the preparation of the Statement of Community Consultation (SoCC) under s47 of the Planning Act 2008. **FAQ 3** and **FAQ 13** provide further advice about the SoCC.

If an individual or group thinks that a consultation event should be held in a particular location, they should share their opinion with the Applicant and the host local authority early enough to enable the Applicant and/ or local authority to consider this in developing the SoCC.

Where such an opinion is not shared sufficiently early to allow the SoCC to be informed, an applicant may, at their discretion, be prepared to hold an additional community consultation event outside of the statutory requirements of the SoCC.

FAQ 13 How can I inspect an applicant's consultation documents?

Advice

Locations at which an applicant's consultation documents can be inspected by the local community must be detailed in the Statement of Community of Consultation (SoCC). An applicant must make its SoCC available for inspection by the public in a way that is reasonably convenient for people living in the vicinity of the land where the Proposed Development would be located. **FAQ 3** provides further advice about the SoCC.

Separately, applicants are required by section 48 of the Planning Act 2008 to publicise a Proposed Development. Notice of a Proposed Development must be published:

- for at least two successive weeks in one or more local newspapers circulating in the vicinity in which the Proposed Development would be situated;
- once in a national newspaper;
- once in the London Gazette and, if land in Scotland is affected, the Edinburgh Gazette; and
- where the proposed application relates to offshore development—

- (i) once in Lloyd’s List; and
- (ii) once in an appropriate fishing trade journal.

Amongst other important information prescribed by Regulation 4 of the Infrastructure Planning (Applications: Prescribed Form and Procedure) Regulations 2009¹³, the publication notice must include:

- a statement that the consultation documents, plans and maps showing the nature and location of the Proposed Development are available for inspection free of charge at the places (including at least one address in the vicinity of the proposed development) and times set out in the notice;
- the latest date on which those documents, plans and maps will be available for inspection; and
- whether a charge will be made for copies of any of the documents, plans or maps and the amount of any charge.

FAQ 14 How are decisions made about compensation, and how much will I be entitled to?

Advice

Claims for compensation are a matter dealt with outside of the Planning Act 2008 (PA2008) process. Matters of financial compensation do not fall to be considered during the scope of an Examination which is limited to the consideration of whether the proposed Compulsory Acquisition powers sought by an applicant meet the tests set out in the PA2008.

Broadly, claims for compensation can be made by persons or organisations whose land or whose rights in land could be affected by a Proposed Development. Their land or rights may not be subject to Compulsory Acquisition powers sought in an application or indeed be within the land to which an application relates, but they may still have a right to compensation under either Part 1 of the Land Compensation Act 1973, s10 of the Compulsory Purchase Act 1965 or s152 of the PA2008, if their land or interest is affected by the development.

The issue of compensation could arise in the event that development consent is granted, and an applicant implements a Development Consent Order (DCO). As these matters are governed by the relevant compulsory purchase legislation (see above), the claim and any associated amount of compensation may be something for the Upper Tribunal (Lands Chamber) to consider. However, the adequacy of funding to meet any likely future compensation liabilities arising from the implementation of a DCO, and any mechanisms proposed by an applicant to secure the funding, are issues which would be considered by the Examining Authority as part of an Examination.

The Department for Communities and Local Government has published guidance on the Procedures for Compulsory Acquisition¹⁴.

¹³ <https://infrastructure.planninginspectorate.gov.uk/legislation-and-advice/legislation/n>

¹⁴ <https://infrastructure.planninginspectorate.gov.uk/legislation-and-advice/guidance/>

FAQ 15 Why have I received a land referencing questionnaire? Do I have to complete it?

Advice

If a proposed Development Consent Order (DCO) seeks powers of Compulsory Acquisition and/or Temporary Possession, sections 44, 57 and 59 of the Planning Act 2008 (PA2008) establish that, in seeking to identify all land interests and persons who may be entitled to make a relevant claim, an applicant must make diligent inquiry. Paragraph 50 of the Department for Communities and Local Government's Planning Act 2008: Guidance on the pre-application process explains:

"It is the Applicant's responsibility to demonstrate at submission of the application that due diligence has been undertaken in identifying all land interests and applicants should make every reasonable effort to ensure that the Book of Reference (which records and categorises those land interests) is up to date at the time of submission."

Issuing land referencing questionnaires is one of a number of approaches routinely applied by applicants in seeking to identify all land interests and therefore satisfy the due diligence test set out in the PA2008. In consideration of this test, the land referencing process, from an applicant's perspective, has an important role in the preparation of an application for a DCO which seeks powers of Compulsory Acquisition and/ or Temporary Possession. From the perspective of a person with an interest in the land, volunteering details about their interest(s) in land to an applicant will help to ensure that their interest(s) are reflected accurately in any application, and ensure that their ability to engage in the examination of that application is not compromised.

For these reasons, the Planning Inspectorate therefore encourages recipients to volunteer responses to land referencing questionnaires at the appropriate time. Failing to respond to an applicant's land referencing exercise may have implications for a person's ability to engage effectively in any Examination that follows.

Notwithstanding this, questionnaire recipients are not mandated to volunteer information about their interest(s) in land to an applicant, if they do not wish to do so, and choosing to withhold information about land interests would not compromise any future claims by a person for compensation under the Compulsory Purchase Act 1965; the Land Compensation Act 1973; and/ or s152 of the PA2008.

FAQ 16 What influence do local politicians have over a Proposed Development?

Advice

If an application is submitted to the Planning Inspectorate, and if it is subsequently found to be of a satisfactory standard to be examined, an independent and impartial Examining Authority will be appointed to gather evidence and test information during the six month Examination of the application. A recommendation will then be made to the relevant Secretary of State¹⁵ who must make his/ her decision in accordance with Chapter 5 of the Planning Act 2008 (PA2008). More information about the process is available on our website here:

¹⁵ The minister with responsibility for the area of government business that an application relates to.

<https://infrastructure.planninginspectorate.gov.uk/application-process/>

Anybody can register their interest in an Examination and become an Interested Party (at the appropriate time in the process), and all Interested Parties have the same status in accordance with s102 of the PA2008. See **FAQ 2** and **FAQ 9**.

The PA2008 establishes that no individual or organisation (ie Interested Party), politically affiliated or otherwise, is afforded the potential to have more influence over the Examination of an application than another.

FAQ 17 Why has the Planning Inspectorate attended a Pre-application meeting with an applicant and third party?

Advice Where the need arises, the Planning Inspectorate can offer a facilitation role by participating in round table meetings for example, between an applicant, local authority and statutory consultees. The purpose of such meetings is explained in our Pre-application Prospectus¹⁶.

The Planning Inspectorate is also responsive to meetings requested by other stakeholders. The Planning Inspectorate would consider attending such meetings wherever it thought there would be sufficient value in it attending, taking into account the proposed location, time and stage within the Planning Act 2008 (PA2008) process.

Any advice issued by the Planning Inspectorate at any meetings must be recorded and published to its website under s51 of the PA2008. In practice, this advice is usually presented in the form of a meeting note which may also include a summary of contextual and other information presented in the course of the meeting.

FAQ 18 I am concerned about an applicant's handling of my personal data. Who should I contact?

Advice In all cases, it is the Applicant's responsibility to ensure that the requirements of the Data Protection Act 1998 are satisfied.

Any concerns in respect of data handling could be brought to the attention of the Information Commissioners Office (<https://ico.org.uk/>).

¹⁶ Available here: <https://infrastructure.planninginspectorate.gov.uk/application-process/pre-application-service-for-applicants/>