



The Planning Inspectorate Yr Arolygiaeth Gynllunio

Meeting note

File reference	Civil Aviation Authority
Status	Final
Author	Louise Evans
Date	27 July 2017
Meeting with	Civil Aviation Authority
Venue	Teleconference
Attendees	Planning Inspectorate (the Inspectorate) Gareth Leigh – Infrastructure Planning Lead Richard Hunt – Senior EIA and Land Rights Advisor Richard Price – Case Manager Louise Evans – Case Officer Civil Aviation Authority (CAA) Imogen Brooks – Lawyer Stuart Lindsey – Manager Airspace Regulation
Meeting objectives	The role of the CAA in the Planning Act 2008 process
Circulation	All

Summary of key points discussed and advice given:

The Planning Inspectorate (the Inspectorate) advised that a note of the meeting would be taken and published on its website in accordance with section 51 of the Planning Act 2008 (the PA2008). Any advice given under section 51 would not constitute legal advice upon which applicants (or others) could rely.

The Inspectorate summarised the decision-making process under the PA2008. At the Pre-application stage the onus is on the Applicant to consult with statutory parties, including the CAA, and where relevant Statements of Common Ground (SoCG) can start to be prepared at this stage. Examining Authorities (ExA) will typically request for final SoCGs to be submitted to an early deadline in the six month Examination Timetable, and early discussions in respect of their content are therefore strongly encouraged by the Inspectorate.

The CAA stated that they wished to give helpful and informative answers when information is requested from them during scoping under the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 (the EIA Regulations) and by an ExA during an Examination. The CAA advised that a single point of contact would be responsible for co-ordinating consultation responses. The CAA asked the Inspectorate to advise them on what questions were likely to be asked of them by an Examining Authority (ExA). The Inspectorate explained that at the pre-application

stage, the first request for a consultation response would be during scoping. The Inspectorate advised that at this stage the CAA should provide commentary on the proposed scope of the EIA, identifying where it was possible that the assessment requirements between the PA2008 process and the CAA airspace change assessment requirements could align. The next formal stage of consultation would be PA2008 section 42 and section 47 consultation on Preliminary Environmental Information (PEI). At this stage, the CAA would be consulted on the initial findings of the assessment by the Applicant. The Inspectorate advised that the CAA should make comments on the consultation materials appropriate to their statutory remit.

The Inspectorate advised that it could not pre-empt what questions an ExA would ask the CAA, but stated that an ExA might be interested in the CAA's views on the relationship between the application for development consent in question and the deliverability of associated airspace change; as regulated by the CAA. The Inspectorate explained that the ExA's questions can be posed to Interested Parties (and others) in writing; either within rounds of written questions which are typically included in an Examination Timetable, or by a request for further information¹ which may be issued at any time. ExA's can also pose questions at oral hearings. Interested Parties are expected to answer questions directed to them to the extent that they are able at a particular time.

The CAA queried whether, if the CAA was only able to give high level responses to an ExA's questions, for example because the information sought was not yet available to the CAA due to the stage of the CAA's airspace change process that had been reached at the time of the question, and the information given by the CAA may not be precise or definitive, whether the CAA may be seen to be unhelpful or obstructive. The Inspectorate advised that a degree of uncertainty in consultee's responses is common, and that the burden is on the Applicant to demonstrate that their proposals are robust in consideration of other consents and licences that may be required. The Inspectorate advised that design evolution will only rule out unacceptable options and impacts, and that an Applicant may go through iterative environmental assessments in order to refine their design options.

The Inspectorate advised that whilst it was not the purpose or responsibility of the PA2008 process to pre-empt decisions by other regulators, an ExA may seek comfort from a regulator that there is no obvious reason(s) why another consent or licence would not be granted. In this regard decisions under the PA2008 are able to rely on other consents and licences to mitigate specific effects which would arise from development.

The Inspectorate advised that it was the responsibility of the Applicant, in consultation with the relevant regulator, to ensure that provisions within a Development Consent Order (DCO) would not constrain or fetter any future decision required to be made by the regulator. In a situation where a licence or permit application required to be considered by a regulator did not dovetail with the provisions within a DCO, an Applicant might have to apply for changes to its DCO in order to ensure alignment so that the DCO and the other licence or permit did not ultimately contain mutually exclusive provisions.

¹ Rule 17 of the Infrastructure Planning (Examination Procedure) Rules 2010

Specific decisions / follow up required?

- PINS advised the CAA to view the Examination Libraries for other projects on the PINS website for examples of the type of questions asked by an ExA during an Examination.