



Meeting note

Status	Final
Author	The Planning Inspectorate
Date	22 January 2019
Meeting with	No Third Runway Coalition
Venue	Planning Inspectorate Offices, Bristol
Attendees	No Third Runway Coalition The Planning Inspectorate
Meeting objectives	To discuss the Planning Act 2008 process
Circulation	All attendees

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 displayed a copy of the PA2008 process presentation, previously presented to the Heathrow Strategic Planning Group (HSPG), provided at **Annex A**.

Introductions

No Third Runway Coalition (N3RC) introduced itself and who it represented. NR3C explained that that it wished to learn more about the PA2008 process in order to facilitate its engagement in the examination of the application by Heathrow Airport Limited (HAL) for the Expansion of Heathrow Airport (Third Runway), due for submission in 2020.

The Inspectorate outlined its suite of Advice Notes available on the National Infrastructure Planning website¹ and highlighted the various videos² created by the Inspectorate to help individuals and organisations understand and engage with the PA2008 process.

The PA2008 process

¹ <https://infrastructure.planninginspectorate.gov.uk/legislation-and-advice/advice-notes/>

² <https://infrastructure.planninginspectorate.gov.uk/application-process/the-process/>;
<https://infrastructure.planninginspectorate.gov.uk/application-process/participating-in-the-process/>

The Inspectorate explained the various stages and associated timeframes of the PA2008 process, highlighting those stages that have clearly defined statutory deadlines attached to them.

N3RC queried whether or how dispute on the content of the Airports National Policy Statement (ANPS) would be allowed during any Examination of the proposals for expansion at Heathrow. The Inspectorate advised that where a relevant NPS is in place the provisions of PA2008 are clear in respect of what the Secretary of State must have regard to in deciding any application (s104 PA2008³). Section 106 of the PA2008⁴ sets out matters that may be disregarded, including representations relating to the merits of national policy set out in a National Policy Statement.

N3RC queried whether the Inspectorate had engaged directly with relevant local authorities⁵ to date and enquired how they were identified. The Inspectorate noted that it had liaised with some of the relevant local authorities through the Heathrow Strategic Planning Group (HSPG) and explained how they were identified⁶. N3RC queried whether flight paths might influence whether an authority was considered as relevant. The Inspectorate explained that the list of relevant authorities was derived from an applicant's redline boundary of the Order Limits, as defined by the PA2008. A definitive list of the relevant local authorities for the application by HAL would not be identified until an application had been formally submitted.

The Inspectorate outlined the role of the local authorities during all stages of the PA2008 process. N3RC queried whether the London Borough of Richmond upon Thames (LBRT) would be identified as a relevant local authority. The Inspectorate advised it was likely that it would be identified as a neighbouring local authority and to check the Inspectorate's Scoping Opinion to confirm if LBRT had been identified at the Scoping⁷ stage.

N3RC asked whether there was a statutory deadline for submission of the application. The Inspectorate advised that there was not a deadline for submission of an application but that upon submission there was a period of 28 days (starting with the day after submission) for the Inspectorate to determine whether to accept the application to progress to examination. The Inspectorate noted the provisions of s55 of the PA2008 and drew attention to published s55 checklists for other projects as an informative guide to the considerations undertaken at Acceptance. The Inspectorate explained that it makes the Acceptance decision under delegated authority from the Secretary of State for Homes, Communities and Local Government. N3RC asked that if an application could lead to the Secretary of State doing something unlawful, would this be picked up at the Acceptance stage. The Inspectorate noted the provisions of s55 of the PA2008 in respect of Acceptance decisions and also noted the provisions of s104(4). It would ultimately be for the Secretary of State to decide whether or not making a development consent order in accordance with any relevant National Policy Statement would lead to the United Kingdom being in breach of any of its international obligations.

³ <http://www.legislation.gov.uk/ukpga/2008/29/section/104>

⁴ <http://www.legislation.gov.uk/ukpga/2008/29/section/106>

⁵ <http://www.legislation.gov.uk/ukpga/2008/29/section/43>

⁶ [Advice Note Two: The role of local authorities in the development consent process](#)

⁷ Table A3 of the [Scoping Opinion](#) listed LBRTC as a relevant local authority.

N3RC queried at what stage the Examining Authority (ExA) was appointed and the likely size of a Panel that would consider an application such as the expansion of Heathrow. The Inspectorate explained the criteria that are considered when determining the size and composition of a Panel and noted the scale and complexity of any application for expansion of Heathrow. The Inspectorate explained that an ExA would be appointed during the Pre-examination stage.

N3RC queried if relevant local authorities were consulted on the content of the Statement of Community Consultation (SoCC) and the adequacy of the Applicant's statutory consultation. The Inspectorate advised that legislation required applicants to consult the host local authorities on the preparation of a SoCC, however it can be common practice that all relevant local authorities are consulted on the draft SoCC. The Inspectorate noted that following receipt of an application, all relevant local authorities are invited to submit Adequacy of Consultation Representations setting out whether, in the local authority's opinion, the Applicant has met its duties in carrying out statutory consultation. These representations are considered as part of the Acceptance tests.

Planning Performance Agreements were briefly discussed with N3RC querying whether financial contributions would only be for relevant local authorities. The Inspectorate advised it should correspond directly with HAL with regards to financial contributions and agreements.

The Inspectorate provided an overview of the Pre-examination stage and explained that there was not a statutory time limit for the stage. Factors that could affect the overall length of the Pre-examination stage include the length of the Relevant Representation (RR) period; when the ExA is appointed; and when the Preliminary Meeting is scheduled. N3RC asked if there was a statutory length the RR period must be. The Inspectorate advised that the statutory minimum for the RR period is 30 days, but it was for applicants to determine the time given for people to register as Interested Parties.

N3RC asked for more information on Statements of Common Ground (SoCG) and their content. The Inspectorate explained that SoCGs are requested early in an Examination to set out areas of agreement and disagreement between the Applicant and other key parties. A list of the ExA's preferred SoCGs are often identified in an appendix to the invitation to attend the Preliminary Meeting – the Rule 6 letter.

There was discussion on the Initial Assessment of Principal Issues (IAPIs). The Inspectorate advised that an ExA drafted its IAPIs from the relevant issues identified in the RRs and the application documents. The IAPIs are used to frame the examination but are not intended to be an exhaustive list of the issues that the ExA will consider. ExAs will consider all issues that are relevant and important to the examination of an application, whether or not they are included in the IAPI. N3RC noted that it would encourage its members to begin early drafting of RRs to ensure the key issues were captured.

The Inspectorate outlined that the six-month Examination stage was structured by an Examination Timetable (ET). The examination process is predominantly a written process, with supplementary provision for various types of hearings. ExAs conduct Examinations in an inquisitorial manner and decide following receipt of written submissions, what evidence requires further probing and testing through written

questions and hearings. The ET also includes deadlines for the Inspectorate to publish certain notifications and documents.

The Inspectorate provided an overview of the different types of hearings and the triggers for when certain hearings must be held – namely Issue Specific Hearings; Compulsory Acquisition Hearings and Open Floor Hearings⁸. N3RC queried the duration of Open Floor Hearings and who was eligible to attend and speak at them. The Inspectorate advised that any person could attend; however, those persons with a legal right to participate – Interested Parties (IP) – would be prioritised to speak. OFHs are closed once the ExA is content that all persons present who have requested to speak have had the opportunity to do so.

N3RC highlighted that its members may be hesitant to participate in an OFH due to the scale of the application and questioned the weight given to oral representations from members of the public. The Inspectorate reiterated that the PA2008 process is principally a written process. Representation made orally at any hearings do not carry more weight than representations made in the written form. All IP have equal status in examinations, and whether in written or oral form it is the relevance and importance of the issues raised that will attract weight in an ExA's deliberations. The Inspectorate referred to examples where communities had effectively participated in previous Examinations under the PA2008 process⁹. For larger schemes, multiple OFH sessions are often scheduled in various locations most likely to be affected by the Proposed Development to ensure all IPs have an opportunity to attend and make representations.

The Inspectorate explained that following the close of the six-month Examination, the ExA has three months to draft and submit its Recommendation Report to the relevant Secretary of State, who in turn has a further three months to make a decision on whether consent is granted. In this case the relevant Secretary of State is the Secretary of State for Transport. N3RC queried whether the decision was judged solely by the ANPS. The Inspectorate explained that any other matters which the Secretary of State considers important and relevant matters outside of the ANPS were also considered (s104 of the PA2008).

N3RC explained that the proposed increase in flights had led to concerns regarding additional noise and queried whether the Civil Aviation Authority (CAA) would be consulted. The Inspectorate confirmed the CAA would be identified as a Statutory Party for the purposes of the examination of HAL's application.

N3RC queried whether it should start encouraging relevant local authorities to prepare for HAL's application. The Inspectorate noted that various applications under the PA2008 had been located in or around London and have already been subject to examinations; for example the Silvertown Tunnel application. Most relevant local authorities associated with HAL's application would therefore have experience in preparing for and engaging in Examinations under the PA2008. N3RC confirmed it had started to engage with the Heathrow Community Engagement Board (HCEB). The Inspectorate also advised direct engagement with HAL.

⁸ [Advice Note 8.5: The Examination: hearings and site inspections](#)

⁹ eg Navitus Bay Wind Park: <https://infrastructure.planninginspectorate.gov.uk/projects/south-east/navitus-bay-wind-park/>

There was brief discussion on HAL's consultation programme to date. N3RC queried whether the results of HAL's Statutory Consultation would be available to view. The Inspectorate advised that an applicant's suite of application documents must include a Consultation Report which sets out the details of the statutory consultation that the applicant had carried out, any relevant responses and the account taken of those responses. The Inspectorate noted it could also request all consultation responses from an applicant¹⁰ when deciding at the Acceptance stage whether the tests under s55 PA2008 had been met.

N3RC noted the difference between provisions and requirements in a DCO that could be subject to enforcement action and discussions/agreements/other mechanisms that an applicant may wish to engage with local communities on. N3RC noted that the role of, or expectations on, local authorities maybe different in each case, noting legacy issues in the surrounding boroughs from the Terminal 5 inquiry. N3RC enquired whether there was scope for the Inspectorate to attend any of its meetings with local authorities, to reassure them that the process would be fair. The Inspectorate advised it would consider any such invitations, should be able to attend a meeting convened by N3RC to reassure local authorities, and was available to provide N3RC and its members with further advice in any interim via the contact details on the project webpage being via email:

heathrowairport@planninginspectorate.gov.uk or 0303 444 5000.

¹⁰ <http://www.legislation.gov.uk/ukxi/2009/2264/regulation/5/made>





The Planning
Inspectorate

Heathrow Strategic Planning Group: The Planning Act 2008 process

Susannah Guest, Infrastructure Planning Lead

Richard Price, National Infrastructure Case Manager

Paul Hudson, Examining Inspector (Pre-application)

Richard Hunt, Senior EIA and Land Rights Advisor



Planning Act 2008

- Nationally Significant Infrastructure Projects
 - Thresholds (s23)
 - Offences (s160)
- Development Consent Orders
- National Policy Statements
- The Planning Inspectorate
- The Secretary of State



Planning Act 2008



Principles



- Single consents regime
- Statutory timescales
- National policy statements
- Frontloaded
- Written process
- Inquisitorial



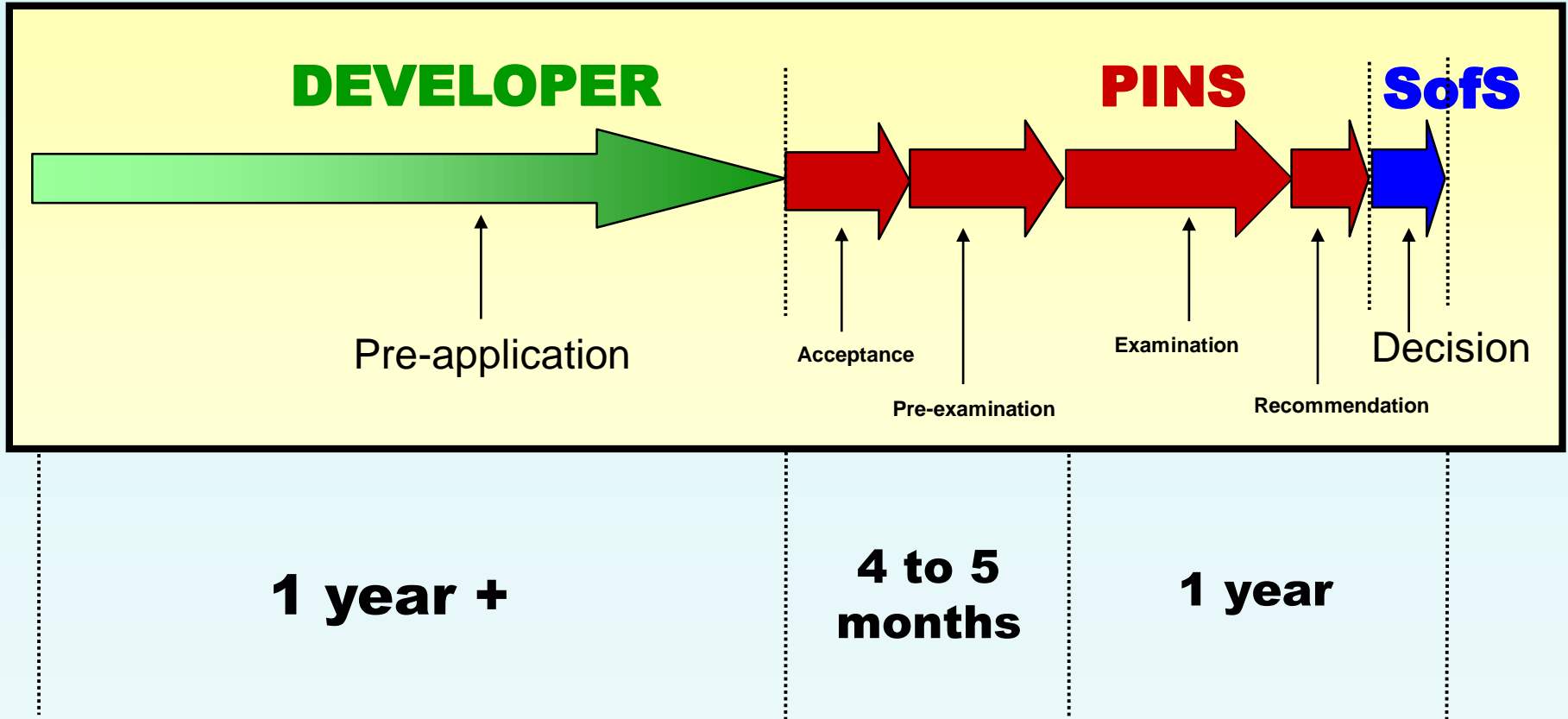
High-profile projects

- Open, transparent, impartial
- National/ international interest
- Government interest
- Education – outreach
- Social media
- Risk management
- Resource management
- Legal challenge



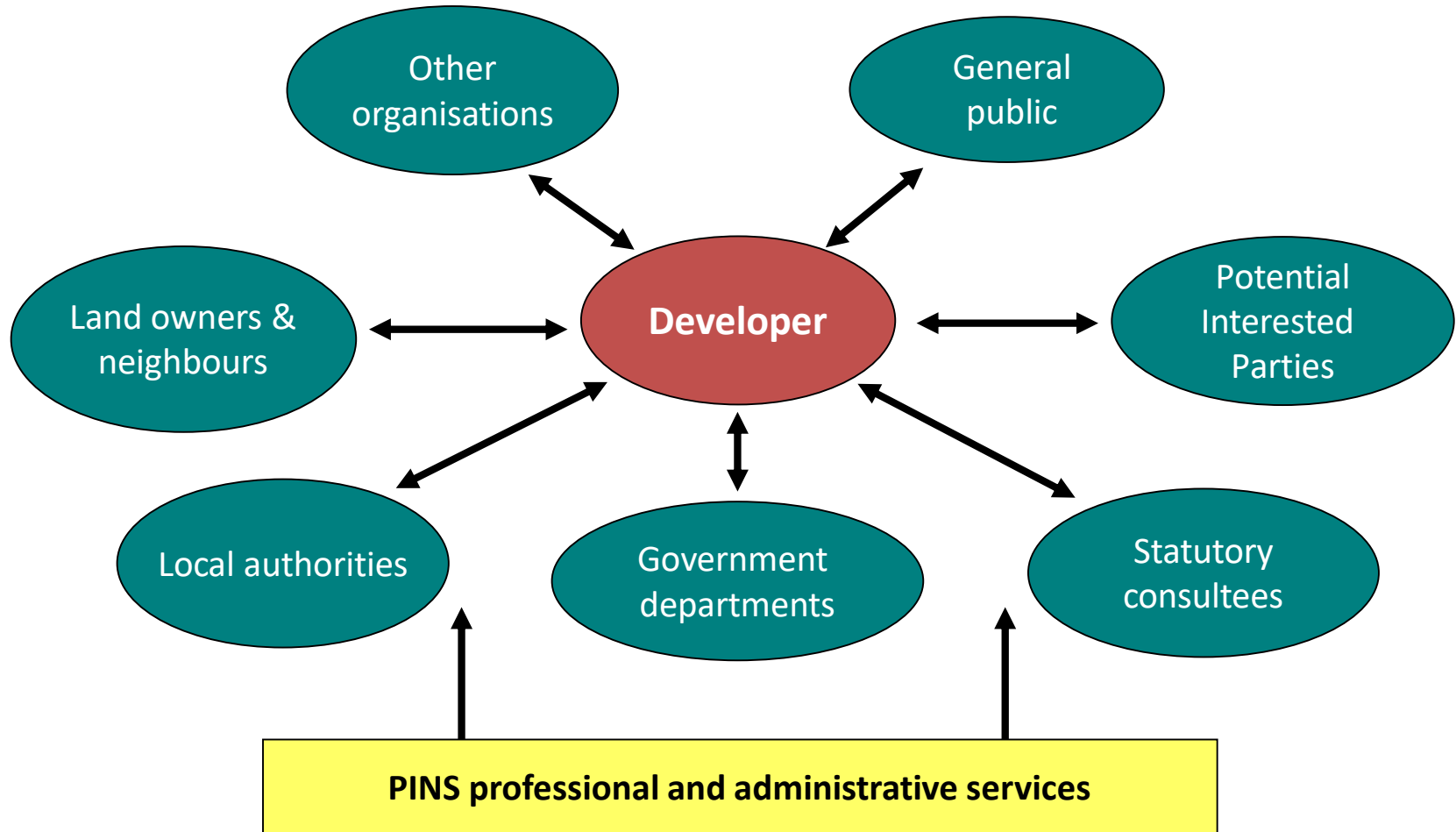


The PA2008 process





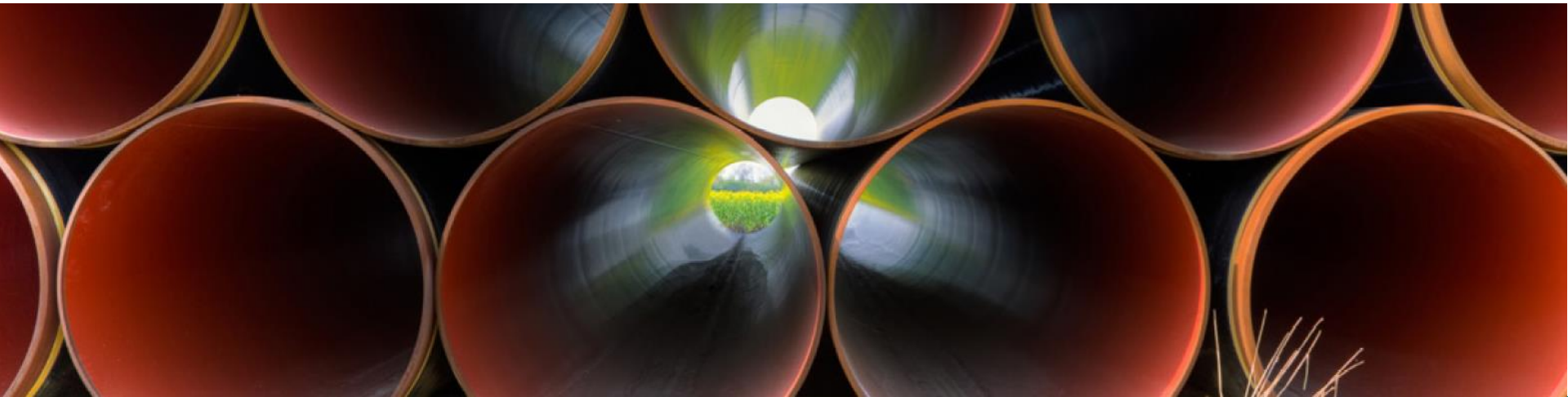
Pre-application engagement model





The Applicant's role

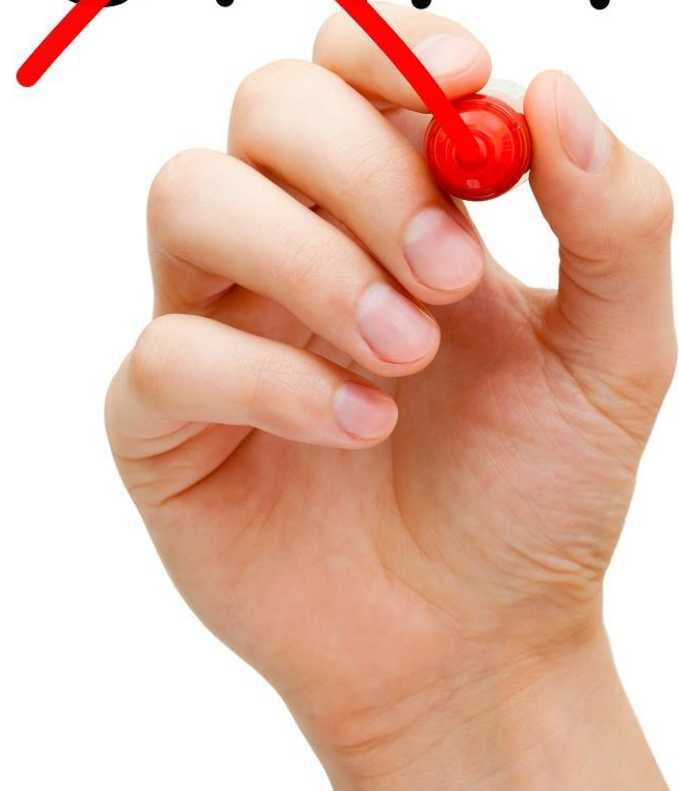
- EIA (PEIR)
- Non-statutory/ statutory consultation
- Design evolution (mitigation)
- Assemble order lands
- Prepare application documents
- Total application: No shocks!





Pre-application for local authorities

~~UNPREPARED~~



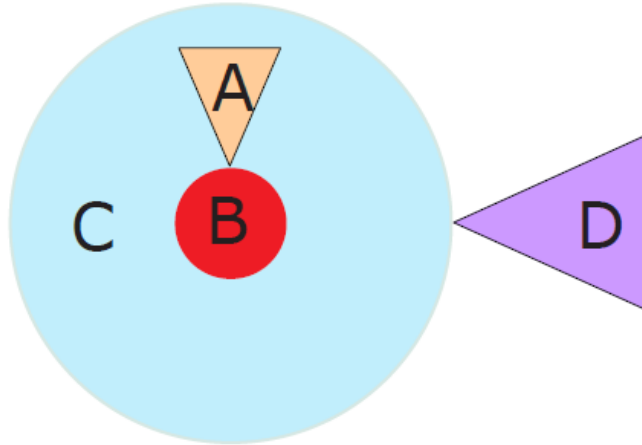
- Statutory consultee
- 'Community Champions' (SoCC)
- PPAs
- Objective technical evidence
- Discharge of Requirements (on land)*
- Enforcement*

* early and on-going dialogue: No shocks, no surprises!

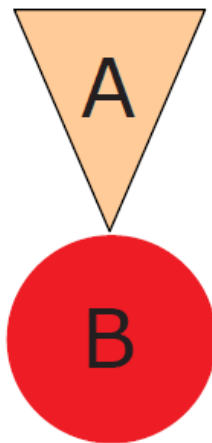


Local authorities: who's who?

Where B is a lower tier district council



Where B is a unitary authority



A is a neighbouring local authority (s43(3)) that shares a boundary with a unitary council or lower-tier district council within whose area development is situated.

B is either a unitary council or a lower-tier district council in which the development is situated – a host authority.

C is an upper-tier county council in which the development is situated – a host authority.

D is either a unitary council or an upper tier county council which shares a boundary with a host 'C' authority - a neighbouring authority (s43(3))



Pre-application for statutory consultees

- EIA consultation bodies (Scoping)
- Statutory Government advisors
- Statutory undertakers
- Protective provisions
- Early and ongoing dialogue!
- Other consents/ licences
- Statements of Common Ground





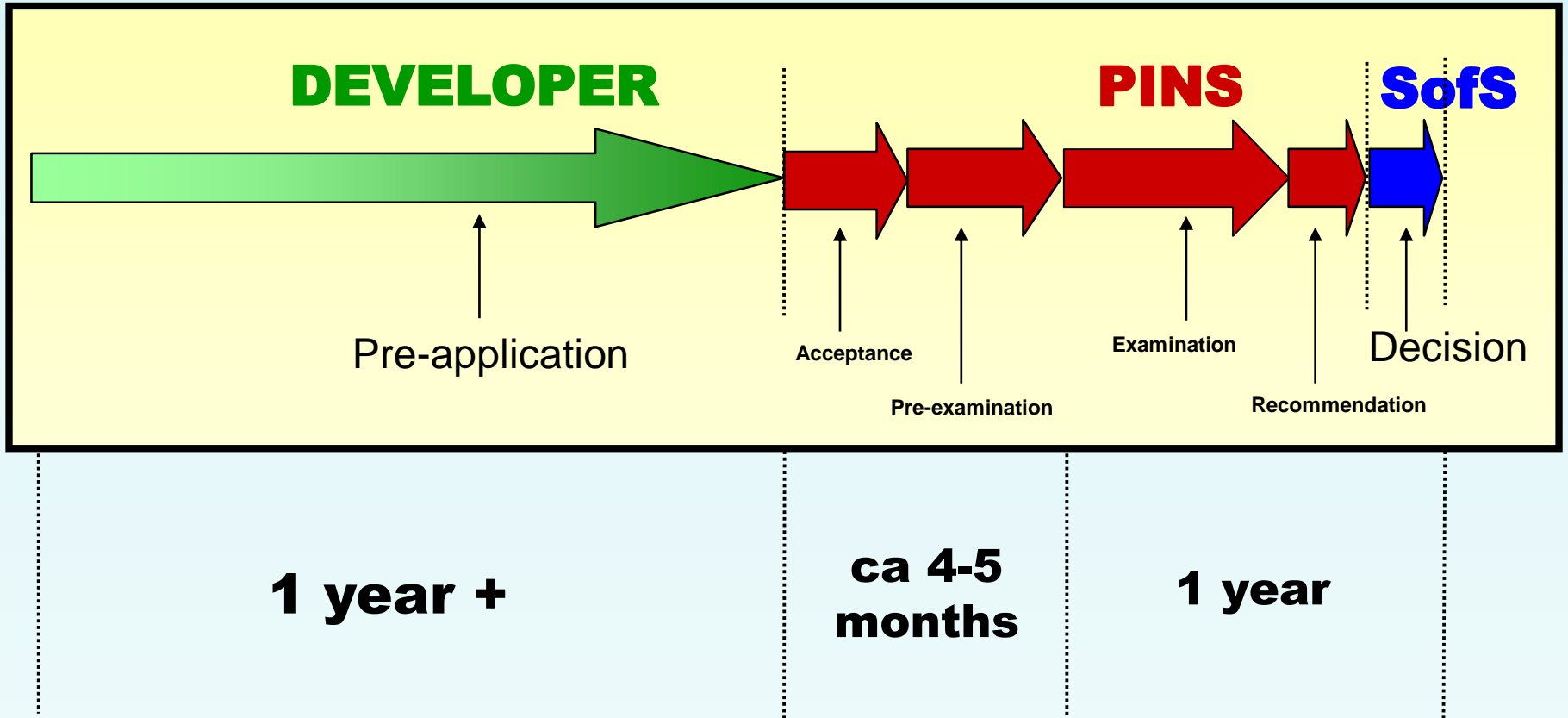
Environmental engagement during Pre-application

- **Ongoing engagement**
 - **Environmental Impact Assessment (EIA) and Habitats Regulations Assessment (HRA)**
- **Scoping**
 - **EIA Scoping Opinion on behalf of Secretary of State (June 2018)**
 - **Initial transboundary screening (August 2018)**
- **Preliminary Environmental Information Report (s42)**
- **HRA and evidence plans**
 - **Sweetman**
- **Interest/ Access to Land (s52 & s53)**
- **Licences and permits**
- **Advice Notes**





The PA2008 process (again!)





Acceptance stage

- APFP Regulations
- 28 days to decide
- Full application
- Principal tests:
 - NSIP
 - Consultation Report
 - **Adequacy of Consultation**
 - Full suite of documents
 - Ensure all plans are correct
 - Satisfactory standard
- The Examining Authority





Pre-examination

- Application accepted
- Examining Authority appointed
- **Relevant Representations**
- Initial Assessment of Principal Issues
- Preliminary Meeting
- **Local authorities**
 - Local Impact Report
 - SoCG

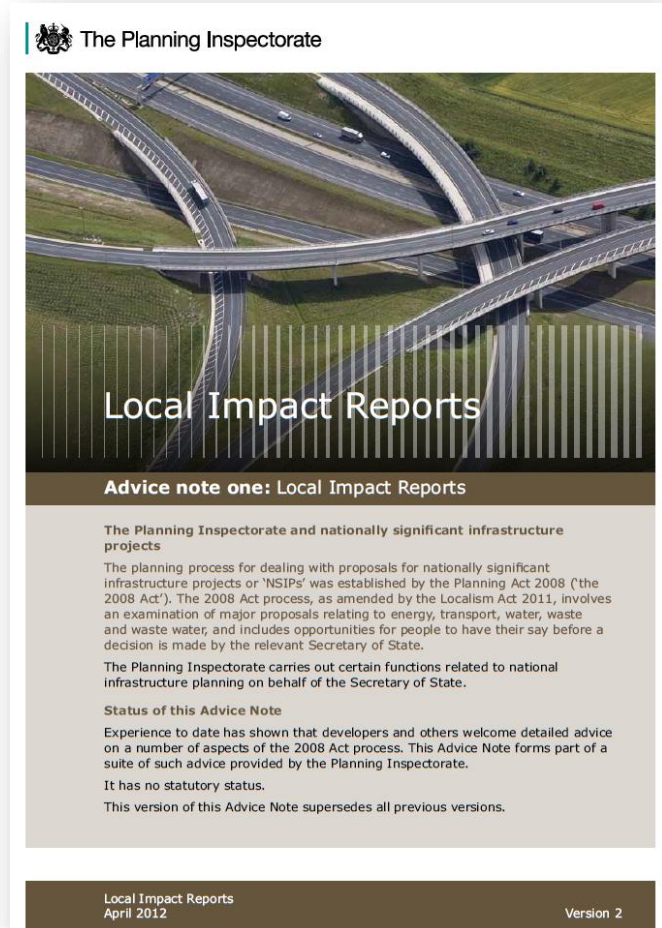




Local Impact Reports

“...a report in writing giving details of the likely impact of the proposed development on the authority’s area (or any part of that area)”.
(Section 60 PA2008)

- ExA and SoS must have regard
- Positive, negative and neutral impacts on local area
- Joint LIR
- Get ahead!



<https://infrastructure.planninginspectorate.gov.uk/wp-content/uploads/2013/04/Advice-note-1v2.pdf>



Environmental matters

- Environmental Statement, HRA Report and associated documents
- Flexibility
- Securing mitigation by Requirement
- Management/monitoring plans
- Licences and permits

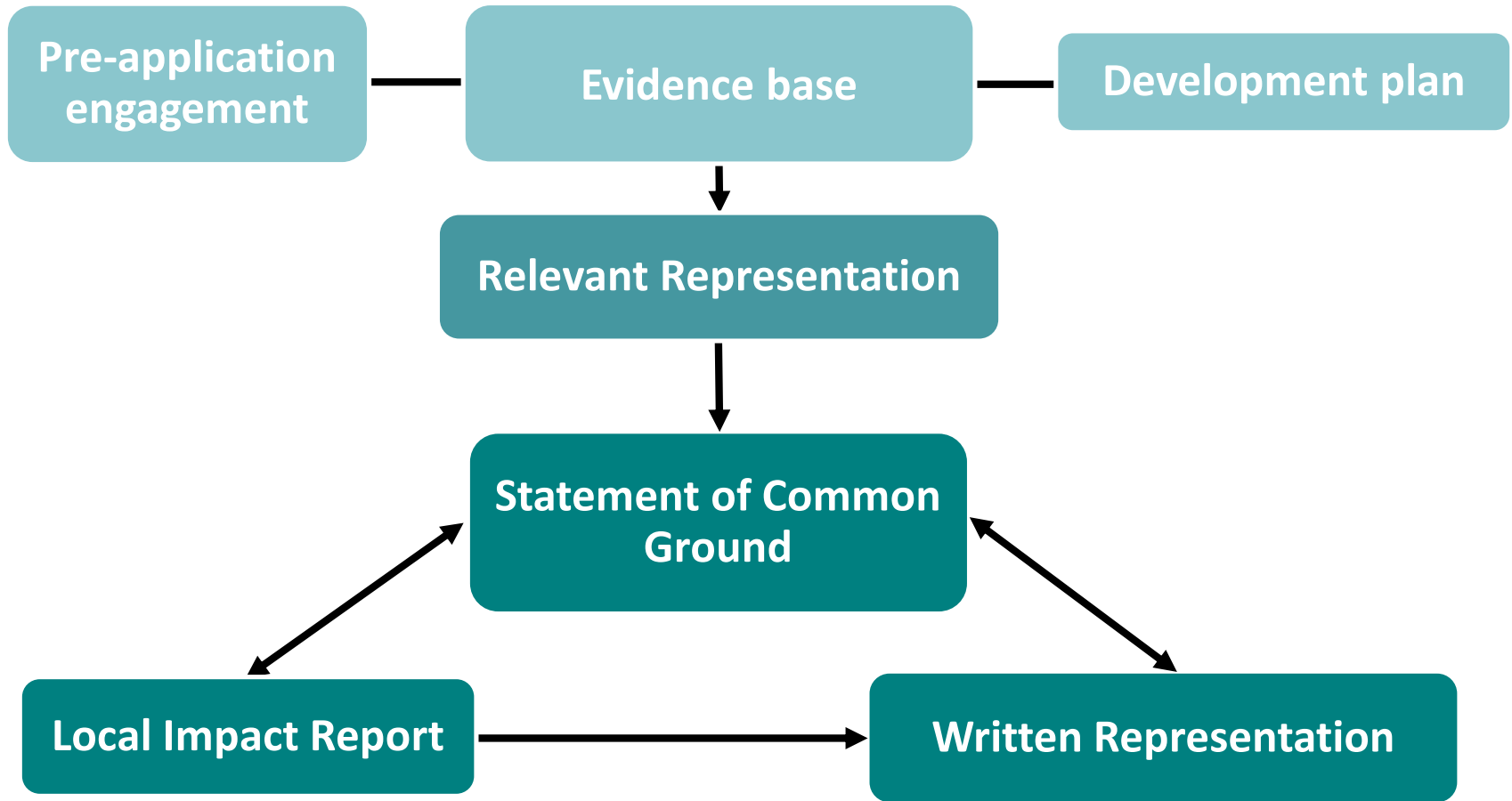


Examination stage

- Six months
- Certainty
- Inquisitorial
- Relevant and important
- NPS(s)
- Local policy context



Key examination documents/ submissions for local authorities





Recommendation stage

- ExA has three months
- Recommendation report taking account of:
 - National Policy Statement(s)
 - Local Impact Reports
 - Important and relevant matters
 - International obligations
- Recommended DCO included



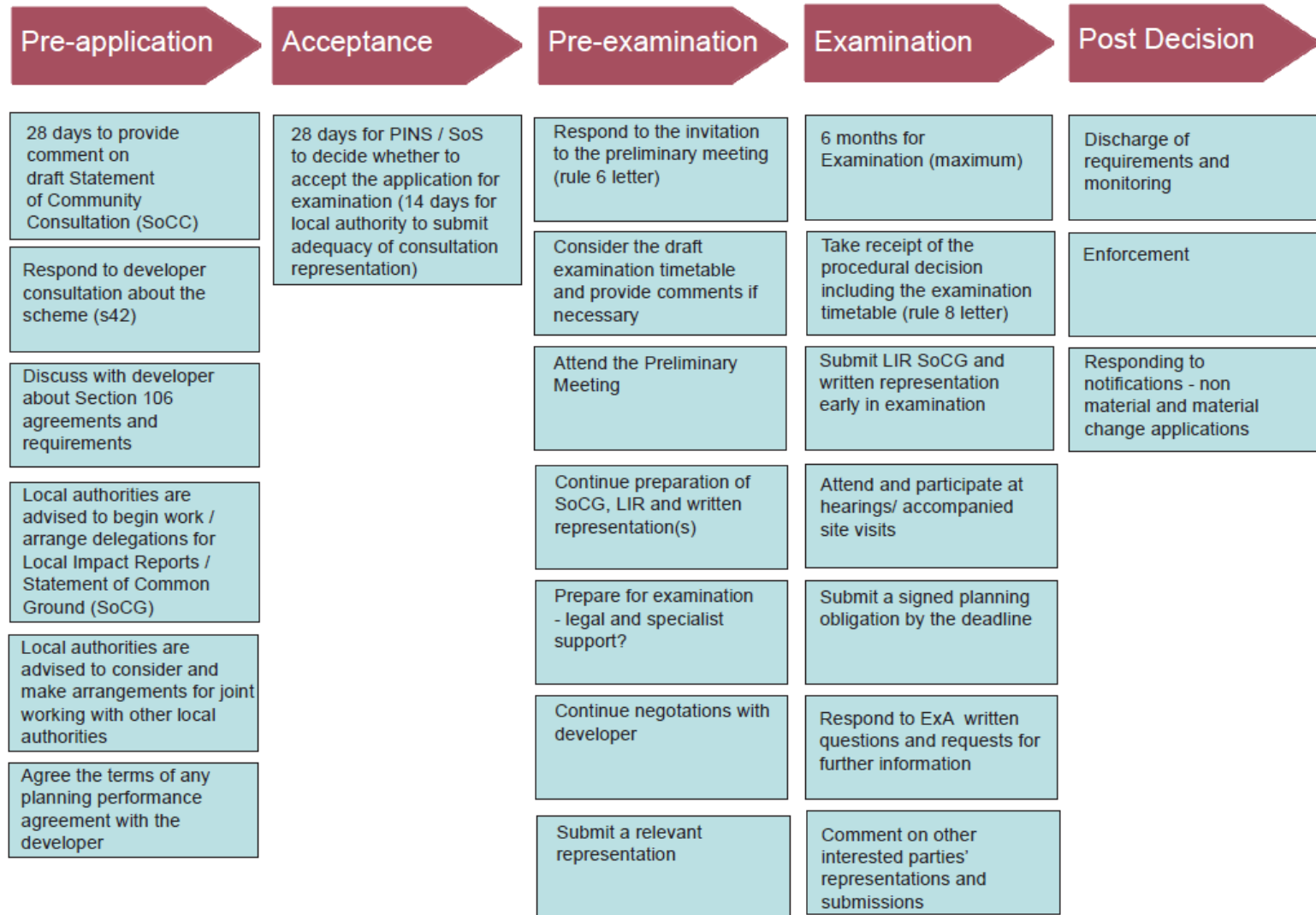
Decision stage

- Relevant SoS has three months
- Decision taking account of:
 - National Policy Statement(s)
 - Local Impact Reports
 - Important and relevant matters
 - International obligations
- Judicial review





Summary: role of local authorities





Legislation, guidance and advice

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Enquiries: 0303 444 5000

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Questions?

