



## Meeting note

<b>File reference</b>	TR020003
<b>Status</b>	<b>Final</b>
<b>Author</b>	The Planning Inspectorate
<b>Date</b>	7 November 2019
<b>Meeting with</b>	Heathrow Community Engagement Board (HCEB)
<b>Venue</b>	Planning Inspectorate offices, Bristol
<b>Meeting objectives</b>	To discuss the Planning Act 2008 process
<b>Circulation</b>	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.

### Introduction and general

The Heathrow Community Engagement Board (HCEB) introduced itself and summarised its remit<sup>1</sup>. HCEB is an independently chaired body constituted to provide the functions of an airport consultative committee for Heathrow Airport (in accordance with Section 35 of the Civil Aviation Act 1982) and the functions of the 'Heathrow Airport community engagement board' (as set out in the Airports National Policy Statement (ANPS)). HCEB explained that it did not have a view in favour or against increased runway capacity at Heathrow Airport. HCEB existed to increase the participation of the diverse group of communities and stakeholders in the airport's planning and decision-making processes and to work with these communities to provide challenge & scrutiny of the airports' day-to-day operations and expansion proposals.

HCEB explained that that it wanted to learn more about the PA2008 process in order to be able to encourage and enhance the engagement of affected communities, including hard to reach groups, in a future Examination. HCEB confirmed that it intended to offer training on the PA2008 process to local community groups. The discussions noted that there might be potential for the Inspectorate to help with any such procedural materials.

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<sup>1</sup> <https://www.hceb.org.uk/>

HCEB confirmed that the emerging application by Heathrow West Limited (HWL)<sup>2</sup> did not fall within its remit. HCEB acknowledged the emerging application for the Western Rail Link to Heathrow (WRLH) and queried whether it was classified as a rail or aviation scheme. The Inspectorate confirmed that Network Rail's proposals for WRLH were classified as a rail project for the purposes of the PA2008. On the basis of information currently in the public domain, the WRLH scheme was not reliant on HAL, or another applicant, delivering increased runway capacity at Heathrow Airport.

HCEB noted that a number of applications for Development Consent Orders (DCO) were expected to be submitted to the Inspectorate in summer 2020 and queried how the Inspectorate had planned to resource that spike in activity. The Inspectorate summarised its approach to resourcing and reassured HCEB that its resource plan for summer 2020 and beyond took account of all anticipated submissions and was expected to be robust.

HCEB described how some parts of the community were engaging with HAL's proposals more than others. It queried how the Inspectorate educates the public about its ability to participate in the PA2008 process. The Inspectorate signposted its suite of Advice Notes<sup>3</sup> and FAQ documents<sup>4</sup>; a number of which are aimed at assisting local communities in respect of understanding and engaging with the PA2008 process.

The Inspectorate summarised its engagement to date with various stakeholders including HAL, the Civil Aviation Authority (CAA), Heathrow Strategic Planning Group (HSPG), and No Third Runway Coalition.

The Inspectorate queried whether HCEB would be working together with HSPG. HCEB explained that it would be important for HCEB and HSPG to consult each other on their respective work streams in order to optimise their discrete roles in the PA2008 process whilst maintaining their independence.

The Inspectorate queried whether HCEB would have a role engaging on behalf of members of the community who either couldn't, or wouldn't, participate. HCEB explained that it anticipated holding community training events to help people understand the process but it's role would not include representing groups or individuals with the process on their behalf. HCEB would consider whether it was appropriate to register as an IP to make its own evidence-based representations in the course of the Examination.

## **The PA2008 process**

### ***The Acceptance stage***

HCEB requested an overview of the Acceptance stage. The Inspectorate explained that it has 28 days to review applications against the Acceptance tests which are set out in s55 of the PA2008 and in The Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009<sup>5</sup>. If an application is accepted to proceed to

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<sup>2</sup> <https://infrastructure.planninginspectorate.gov.uk/projects/london/heathrow-western-hub/>

<sup>3</sup> <https://infrastructure.planninginspectorate.gov.uk/legislation-and-advice/advice-notes/>

<sup>4</sup> <https://infrastructure.planninginspectorate.gov.uk/application-process/frequently-asked-questions/>

<sup>5</sup> <http://www.legislation.gov.uk/ukxi/2009/2264/contents/made>

Examination, the Inspectorate publishes a 's55 Checklist' setting out how the application satisfied the Acceptance tests.

HCEB queried whether an Acceptance decision could be subject to Judicial Review. The Inspectorate advised that s118 of the PA2008 contains the provisions for legal challenges relating to applications for DCOs.

Relevant local authorities are invited to make an Adequacy of Consultation Representation (AoCR) comprising their opinion on the Applicant's compliance with s42, 47 and 48 of the PA2008. HCEB queried whether members of the public could make an AoCR. The Inspectorate explained members of the public should raise any concerns regarding consultation with the Applicant promptly. If the group or individual is not satisfied with the Applicant's response, they can contact their local authority which can take account of any concerns in making its AoCR.

HCEB queried whether an application can still be accepted if negative AoCRs are received. The Inspectorate advised that receipt of a negative AoCR would not automatically lead to a non-Acceptance decision, rather it would weigh against the performance of the application against the Acceptance tests. Some types of consultation shortfalls can be remedied during the Pre-Examination stage without prejudicing affected parties eg through additional targeted consultation.

### ***The Pre-Examination stage***

HCEB queried the stage at which an Examining Authority (ExA) can be appointed. The Inspectorate advised that the PA2008 allows for an ExA to be appointed as soon as an application has been accepted for Examination ie at the beginning of the Pre-Examination stage.

HCEB queried the stage at which members of the public could register to become IPs. The Inspectorate advised that applicants have a statutory duty under s56 of PA2008 to notify certain parties<sup>6</sup> of an accepted application and also to advertise the acceptance of the application in local and national press. The notification and advertisement must include, amongst other things, details of how and when anybody, including members of the public, can register to become an IP by making a Relevant Representations (RR). Applicants must provide a minimum of 30 days for persons to register in this way. The Inspectorate clarified that a RR is an initial, summarised representation about a Proposed Development. Anybody who makes a RR will be invited to make a more detailed Written Representation at the Examination stage.

HCEB requested clarification as to whether a record of the registered IPs would be publicised. The Inspectorate advised that all valid RRs would be published alongside the authors name on the National Infrastructure Planning website.

The Inspectorate explained that an Initial Assessment of Principal Issues (IAPI) is derived by the appointed ExA from its reading of the issues identified in the RRs and the content of the application documents. The IAPI is used to frame the Examination but it is not intended to be an exhaustive or exclusive list of the issues that the ExA

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<sup>6</sup> A prescribed list of Statutory Parties and persons with a legal interest in land that would be affected by the Proposed Development (including persons who the Applicant thinks may be able to make a relevant claim for compensation)

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. The IAPI is communicated to IPs in their invitation to the Preliminary Meeting<sup>7</sup>.

### ***The Examination stage***

The Inspectorate explained that examination under the PA2008 is inquisitorial rather than adversarial. It is a predominantly written process with the majority of evidence submitted in written submissions for timetabled deadlines.

The Inspectorate provided an overview of the three types of hearings that the PA2008 makes provision for; namely Issue Specific Hearings (ISH), Compulsory Acquisition Hearings (CAH) and Open Floor Hearings (OFH)<sup>8</sup>. A CAH must be held if a person with a legal interest in land affected by a Proposed Development requests to be heard. An OFH must be held if an IP requests to be heard on any matter. It is for an ExA to decide to hold ISHs on the issues that it thinks will be assisted by oral examination. ISHs are generally technical hearings, dealing with aspects of the Environmental Statement or the form and functions of the draft DCO.

HCEB enquired whether an ExA could request participation from specific bodies at hearings. The Inspectorate advised that agendas for hearings generally include a list of bodies the ExA would like to attend to assist discussion; however attendance is not compulsory. HCEB queried how the Inspectorate decides where hearings are held. The Inspectorate advised that hearings are held in appropriate venues within the vicinity of the Proposed Development. Requests or suggestions by IPs for hearings to be held in specific locations may also be considered.

HCEB queried whether or not HAL would have to fulfil certain conditions before the proposed runway came into operation, for example proposed improved surface access. The Inspectorate summarised the process by which a draft DCO is typically examined by an ExA. IPs can propose new or amended draft DCO provisions<sup>9</sup> in the course of an Examination. The ExA would consider the need for / appropriateness of such proposals, asking questions of IPs (including the Applicant) as necessary.

HCEB queried the maximum length of the Examination stage. The Inspectorate explained that an Examination under the PA2008 can be no longer than six months; unless an extension is granted by Parliament.

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<sup>7</sup> See Advice Note 8.3: <https://infrastructure.planninginspectorate.gov.uk/legislation-and-advice/advice-notes/>

<sup>8</sup> See Advice Note 8.4: <https://infrastructure.planninginspectorate.gov.uk/legislation-and-advice/advice-notes/>

<sup>9</sup> eg Requirements, which are analogous to planning conditions attached to a traditional Town and Country Planning Act planning decisions