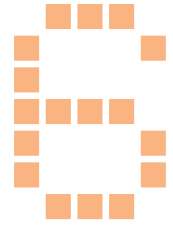


PLAN PREPARATION

Examinations



Introduction

This information sheet provides an introduction to 'Examinations'. It is Sheet 6 of a series of 17 that forms an information pack to help you understand and get involved in the planning system.

All Development Plans will be examined by an independent Inspector or Panel. This is to try and resolve any conflicts that might have arisen in the preparation of the policy documents, and to test that the final document is 'sound' or reasonable. If you have been involved in the early stages of preparing these policy documents where you have made formal written comments you can take part in the Examination.

This information sheet describes the purpose and format of Examinations, and provides advice on preparing and presenting your case.

The information sheet is split into two parts, the first dealing with Independent Examination of the local layer of Development Plan Documents. See sheet 4 for more information. The second part briefly looks at getting involved in an Examination in Public, which is part of the preparation of Regional Spatial Strategy. See Sheets 2 and 3 for more information.

Please Note: We are in the early stages of a new planning system, and only a handful of Examinations have taken place at the time of writing. Those who have had experience of public local inquiries into development plans will find a different approach taking place. The new Examinations system has less focus on dealing with objections to specific aspects of a plan and a greater emphasis on the overall clarity of the plan.

1. Independent Examinations: Local Development Plan Documents

Purpose of Independent Examinations

Before Development Plan Documents can be adopted (finalised) they must be looked at by an independent Inspector at an Examination. Inspectors are appointed by the Secretary of State for the Department for Communities Local Government (DCLG). The Examination checks if all the legal and policy requirements been observed and whether the final document provides reasonable and effective planning

responses to issues identified.

The Inspector will test how 'sound' (reasonable) the document is by assessing relevant evidence from both the local planning authority and any formal written comments. These can be from individuals, commercial, community and voluntary organisations, and Government (central or regional). The Inspector will only take into account the comments made when the document has been formally submitted (see Sheets 4 and 5). The Inspector will assume that the document is 'sound' unless evidence presented at the Examination proves otherwise.

The Inspector will produce a binding Report containing necessary amendments to ensure the final document is 'sound'. The local planning authority must abide by the Inspector's decisions.

Criteria for testing the document: The Nine tests of Soundness

When assessing whether the Development Plan Document is sound (reasonable), the Inspector will look at nine 'tests of soundness'. See box on Information Sheet 5 for a full list of the tests and helpful tips. **In general, the tests look at three main areas:**

- >> **The procedures followed:** Tests 1 to 3 require the Inspector to check the local planning authority has followed correct procedures when preparing the Development Plan Document.
- >> **Conformity:** Tests 4 and 5 require the Inspector to check that the Development Plan Document conforms (is in line) with the range of other plans and policies which cover the Development Plan Document area.
- >> **Coherence, Consistency and Effectiveness:** Tests 6 to 9 require the Inspector to make sure that the Development Plan Document is consistent with other Development Plan Documents being prepared by the authority, that the policies and proposals can be implemented and are sufficiently flexible to accommodate change.

For further information on how the tests of soundness will be applied and what evidence will be looked at, refer to the Planning Inspectorate's guide 'Development Plans Examinations – A guide to the process of Assessing the Soundness of Development Plan Document'. See Sheet 16 for contacts and publications.

What to expect at an Examination

The Examination process

You may have been involved in the preparation of the Development Plan Document at an earlier stage. The local planning authority should have attempted to address any concerns raised as part of its plan preparation processes, but there may still be outstanding issues which need to be addressed. If you want to get involved in the Examination itself and/or maintain previous comments through to the Examination you must make written representations (comments) at the Submission stage. At this stage the local planning authority will publish its proposed Development Plan Document (known as the 'submission document') for consultation. There is a period of 6 weeks for consultation. Any comments you wish to make should be made on the appropriate form.

The local planning authority must submit all proposed Development Plan Documents, relevant technical reports and studies and any written representations made to the Secretary of State for the Department of Communities and Local Government. A Planning Inspector is appointed by the Secretary of State to run the Examination. The local planning authority will appoint a 'Programme Officer', who assists the Inspector with the administration and organisation of the Examination. Make a note of the Programme Officer's contact details; they will be key to organising your involvement in the Examination.

It is important to understand that the Examination is the opportunity for the Inspector to explore the issues raised and to assess how well the Development Plan Document meets the tests of soundness, see box on Information Sheet 5.

The Inspector can run the Examination in one of four ways:

- >> **written representations** – where the Inspector believes that the testing process can be carried out through written communication without the need for face-to-face discussion;
- >> **round table discussions** – where the Inspector chairs a discussion with the relevant people. Round table discussions are normally used to discuss wide ranging issues (for example, housing land supply);
- >> **informal hearings** – where the Inspector will lead a discussion, in an informal setting without legal representation. Informal hearings are often used to discuss representations about specific sites;
- >> **formal hearings** – where the Inspector considers that a more formal approach is required and that evidence should be subject to cross-examination. Lawyers are often present at formal hearings.

The procedure used will depend on the issue or evidence that the Inspector is dealing with and the nature of the representa-

tions themselves. All written comments made in the six week consultation period at submission stage will be considered fully by the Inspector in all types of Examination.

You will only be able to appear in front of the Inspector if you are seeking a change to the document. You must make this clear on the formal representation form. If no-one wants to appear in person at the Examination, the Inspector could decide that they have all the information required to produce a report and not make use of the other procedures. The weight given by the Inspector to evidence dealt with through written representations will be equal to that from hearings. It is expected that most people's comments will continue to be dealt with through written representation procedure.

How an Examination is run

The Inspector (along with the Programme Officer) will set a timetable for the Examination process; this will normally be spread over several months to accommodate preparation time, information gathering and analysis and the production of the Inspector's Report. Relatively small-scale Examinations should take only a few months, but larger scale ones may take longer (up to twelve months).

If the Inspector decides that the Examination can be carried out through written representations, they will then consider the 'soundness' of the Development Plan Document. All written representations (comments) that have been made will be considered. If necessary the Inspector will seek clarification of any points relevant to the Examination of the Development Plan Document. Inspectors will aim to be helpful to people who are not used to getting involved in the planning system. See Sheet 5 for information on how to write effective comments.

The dates, times and location of hearings will be publicised by the local planning authority well in advance. No expenses can be paid to (or costs imposed on) any participant. A programme for the Examination will be drawn by the Inspector with the help of the Programme Officer. This timetable will be provided to all involved with the Examination. It is possible to negotiate timings at this point. For example, to arrange for evening sessions.

Usually there will be a Pre-Examination meeting at least eight weeks before the Examination opens. All participants will be invited to this meeting to discuss the way that the Examination will be run. The Inspector may try to persuade participants to work together where they have similar views. If the Inspector requests further documents, these should be submitted according to the time table set at the Pre - Examination meeting.

The Inspector will visit the sites. The visits will normally be unaccompanied, unless the Inspector needs access to private land.

The Inspector will open the hearing and summarise the issues to be discussed. The hearing will then consider these issues, with the Inspector leading the discussion and inviting participants to contribute their views at the appropriate time. The Inspector may require participants to clarify their evidence

and may refuse to hear matters which are thought to be irrelevant or repetitious. The approach will be co-operative rather than confrontational.

Only when the hearing is shown as 'formal' will the Inspector allow 'advocates' (lawyers) to cross-examine participants.

Making a Case at Examination – How can you get involved

As set out above, to be involved in an Examination you need to make formal written representations or comments at the Submission Stage on the form provided by your local planning authority (See Sheet 5 to find out how to make these comments). It is very important to be aware of the purpose of the Examination before making formal written comments. The purpose of Examinations is to test the 'soundness' of Development Plan Document.

Representations must be based on 'planning' considerations, and related to the 'tests of soundness', see Sheet 5.

Comments need to be relevant to the type of plan under discussion. For example, a 'Core Strategy' document is concerned with policy and should attract generalised comments emphasising impacts which affect the area as a whole. By contrast, an 'Area Action Plan' will include details of specific sites and therefore detailed comments on more localised affects are appropriate.

The tests of soundness emphasise the need for evidence to back up arguments and therefore if you participate in an Examination you will need to carry out research to support your case. Examples of background material and evidence include the local planning authority's own documents, expert opinions, and statistics. This evidence can be used to back up your comments and help you develop alternatives. You should be aware that consideration of alternative policies and proposals should have already taken place at a much earlier stage in the preparation of the Development Plan Document (i.e evidence gathering and issues and options). This is to allow time for the necessary consultation and sustainability appraisals of the alternatives to be carried out.

If you make comments at the submission stage, you may not need to make any further comments or appear in person at an Examination. It is important to realise that the Inspector will consider any comments made in writing at submission stage with the same importance as comments made in person at the Examination. If anything is unclear, the Inspector may contact you.

If you want to appear in front of an Inspector at a round table discussion, hearing or formal hearing, your written comments made at submission stage, will need to seek a change to the proposed policies or proposals.

After all the formal representations have been received, your local planning authority will prepare responses to the main issues, these are known as 'Position Statements'. You will be

given an opportunity to respond to these statements. Your comments should be made in writing and you must keep to the deadlines.

Participants who wish to pursue their comments as far as they can, may wish to employ specialist help to prepare and present their case. A list of fully qualified planning consultants can be found at www.rtpiconsultants.co.uk. If you are eligible, your regional Planning Aid service may be able to help. Guidance is also available at the Planning Inspectorate website www.planning-inspectorate.gov.uk and from the Planning Portal (www.planningportal.gov.uk).

Attending an Examination

The following guidelines should be useful if you appear in front of an Inspector at a round table discussion, hearing or formal hearing. Remember, you will need to state in your original written representations (made at the submission stage) that you would like to appear (or be heard) at the Examination.

If hearings (formal and informal) are new to you:

- >> Attend the opening session, familiarise yourself with the layout, procedures and atmosphere of the formal hearing before your own appearance.
- >> Remember you have an important role to play in bringing local issues and views before the Inspector.
- >> This is your opportunity to outline your case at the Examination and in particular to the Inspector
- >> The Inspector is there to give everyone a fair hearing and will not allow others who may be more familiar with the process to intimidate you or put you under undue pressure. The Inspector will go to great lengths to make sure that your case has been fully understood.

See more tips for attending Hearings overleaf.

The Inspector's Report

Once the Inspector has considered the 'soundness' of the Development Plan Document, a binding report will be provided to the local planning authority. This will cover the issues raised as a result of the Inspector's Examination of the Development Plan Document and will make a series of recommendations. The local planning authority must follow the recommendations made, that is, the report is binding upon the local planning authority. This is a vital aspect of the new system.

2.The Regional Spatial Strategy

The above description covers the Independent Examination of plans prepared by your local planning authority. The full 'Development Plan' for any area also includes the Regional Spatial Strategy (RSS) prepared by your Regional Planning Body, see sheet 2 for further information. The Regional Spatial Strategy is important in giving a regional-level context to the Local Development Frameworks. This Strategy is also subject to independent scrutiny, but through an 'Examination in Public' (EiP)

held by a Panel of experts appointed by the Secretary of State. The Examination in Public is different from an Examination of a local Development Plan Document mainly in the restrictions on who has a right to appear at (put a case to) the Panel. The panel consists of two or more members always including an Inspector. The Planning Inspectorate have a pool of appropriately experienced people who can chair the panel. Participants at an Examination in Public are invited to put forward a case and be involved in the discussions around particular topic areas; there is no absolute right to be heard. Participants are usually chosen on the grounds of the importance of their arguments and their relevance to regional strategic issues.

Therefore those most likely to be included are groups and 'large-scale interests', such as Chambers of Commerce - rather than individuals. As the Regional Spatial Strategy does not deal with specific sites, there are no 'objections' - only discussions of policy principles.

Even if individuals and local groups are not invited to participate, it can be vitally important for local groups to make a case at regional level, as these regional policies will ultimately lead to action on the ground. The only route available here is make a written case to the Panel, outlining the situation and explaining how regional policy can impact on the local situation.

See Sheet 2 and 3 for more information on getting involved with the regional level of planning policy.

Tips for presenting your case:

- >> Speak slowly and clearly,
- >> Make eye contact with your audience
- >> Make sure the Inspector has the chance to write down what you say (slow delivery or a pause to consult papers or take a sip of water may be helpful).

Undergoing cross-examination (formal hearings only)

Once you have given your evidence, you will probably be questioned on your case by the local planning authority and also by the Inspector. You may also be asked questions about the local planning authority's case and the plan. This is known as cross- Examination. There are four basic reasons why you are cross - examined:

- >> To test the facts behind your case;
- >> To test the opinions you have formed based on those facts;
- >> To try and expose any defects in your case;
- >> To make sure the Inspector fully understands your case.

How can you prepare for cross-examination?

Preparation starts when you write your evidence. Whilst writing, think ahead and anticipate the questions you may be asked. Take steps to cover those questions in your evidence. You should also remember that once you've put something in writing, it is very hard to withdraw it when you're being questioned, unless circumstances have changed.

It is a good idea to test out your evidence before you submit it. Get a friend or colleague to read your evidence to see if they understand your case. They may be able to point out anything that may be missing. Remember that you may be questioned on the local planning authority's case and the plan itself, where they relate to your case.

There are six simple rules to follow when answering questions:

- >> Keep calm and take your time

- >> Keep your replies short and simple
- >> Make sure you understand the question – if you don't, ask for it to be repeated or rephrased.
- >> If you don't know the answer to something, say so.
- >> If you have been proved wrong, perhaps on a matter of fact, don't be afraid to acknowledge this.
- >> Make sure you have answered the question you were asked

Examining the local planning authority's evidence (formal hearing only)

Having given your evidence and undergone cross-examination at a formal hearing, it can be tempting to sit back, relax and call it a day – don't! One of the main reasons for appearing in person at an Examination is to have the chance to examine the local planning authority's case – don't waste it!

Good preparation is the key:

- >> Make sure you are familiar with the plan.
- >> Make sure you are familiar with the local planning authority's case.
- >> Look for any gaps or inconsistencies in the local planning authority's evidence that are not fully explained.
- >> Look for statements that might be open to challenge.
- >> Listen carefully to the questioning of the local planning authority's witnesses by its own legal team – it may raise points you had not thought about.
- >> Make a list of the questions you want to put in cross-examination before you get to the inquiry. You can then add or delete questions as necessary as the inquiry proceeds.
- >> Keep your questions to the evidence being presented, as that is all that the Inspector is interested in.
- >> Resist the temptation to air other concerns or grievances you may have.