



The developer's pre-application duties

Advice note sixteen: The developer's pre-application consultation, publicity and notification duties

The Planning Inspectorate and nationally significant infrastructure projects

The planning process for dealing with proposals for nationally significant infrastructure projects, or 'NSIPs', was established by the Planning Act 2008 ('the 2008 Act'). The 2008 Act process, as amended by the Localism Act 2011, involves an examination of major proposals relating to energy, transport, water, waste and waste water, and includes opportunities for people to have their say before a decision is made by the relevant Secretary of State.

The Planning Inspectorate carries out certain functions related to national infrastructure planning on behalf of the Secretary of State.

Status of this Advice Note

Experience to date has shown that developers and others welcome detailed advice on a number of aspects of the 2008 Act process. This Advice Note forms part of a suite of such advice provided by the Planning Inspectorate. It has no statutory status.



Introduction

The purpose of this Advice Note is to explain some of the developer's pre-application consultation, publicity and notification duties. It contains advice that was previously contained in the Infrastructure Planning Commission's Guidance Note 1 at paragraphs 6 to 24. That advice has been updated to take account of changes brought in by the Localism Act 2011.

This Advice Note is set out as follows:

- Options for pre-application programme
- Notification of proposed application
- Consultation and publicity stages – general
- s42 consultation
- s47 consultation
- Additional guidance on the content of the Statement of Community Consultation ("SOCC")
- Publication of SOCC
- s48 publicity
- s49 duty to take account of responses

Further information on the pre-application stages is contained in [guidance published by the Department for Communities and Local Government](#), which should be read first.

Options for pre-application programme

The statutory requirements allow some flexibility for developers to determine the most applicable programme by

which they will be able to comply most effectively with their duties. The overriding intention of the legislation is to ensure that detailed matters are consulted upon and solutions or mitigation negotiated with the local community, landowners, statutory consultees and local authorities before submission of the application for development consent.

Notification of proposed application

If the developer considers that the project is a NSIP which requires development consent under the Act, it must notify the Secretary of State of the proposed application (s46). This notification should be sent to Planning Inspectorate at the address below. This must be done on or before commencing formal pre-application consultation and the Planning Inspectorate must be sent the same information as proposed to be used for the s42 consultation; the intention is therefore that the two steps will happen relatively close together. Regulation 6 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 ("EIA Regulations") must also be followed before commencing the 42 consultation – for further information on Regulation 6, please see Advice Note 7: screening and scoping under the EIA Regulations.

The Planning Inspectorate encourages developers to notify it as soon as feasible as it assists the Planning Inspectorate in its processing both by allocating staff to particular projects and by storing and managing information received relating to a definite proposed project.



Consultation and publicity stages – general

Following notification, there are two separate formal stages of consultation on the proposed application: one under s42 with statutory consultees, local authorities, landowners and significantly affected persons and a second under s47 with the local community in accordance with the SOCC.

There is also a stage for publicity under s48 and Regulation 4 of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 (“the APFP Regulations”) when a notice about the proposed application is published.

s42 consultation

This can be carried out first and changes to the scheme can be made as a result – for example to take account of fundamental environmental issues such as flooding – before the community consultation is carried out. A balance needs to be achieved between providing well developed details which may only be possible after extensive project development work and a less precise definition which can be amended in the light of consultation. The Planning Inspectorate will expect the balance between these issues to be carefully considered, and it may be that an approach to the local authority under s47 prior to publishing the SOCC could seek

the local authority’s advice on whether an early community consultation would be advisable in the circumstances of the case.

There is nothing laid down in the 2008 Act or relevant Regulations that requires preliminary environmental information to be provided at the s42 consultation stage. If very little information on the project is provided to local authorities, statutory consultees, landowners and others at the s42 stage, the ability to demonstrate that comments have been taken into account in developing the proposal could be hampered.

It is therefore possible to comply with the statutory requirements under s46 and s42 of the 2008 Act with less than full information on the application, but unless there is a clear iterative consultation process followed and further documentation provided to consultees during the process the developer will risk being unable to demonstrate that the scheme was carefully considered in the light of consultation responses received.

The consultation report to be submitted with the application is where the applicant will set out how in its view it has complied with its duties (see [Advice Note 14: Compiling the consultation report](#)).



s47 consultation

There is a duty on the developer to first consult the local authority in respect of the content of the SOCC (s47(2)). Their knowledge is key. For example, socio-economic, cultural, historical and other characteristics may influence decisions on the geographical extent of consultation and the methods that will be most effective in the particular local circumstances. Local authorities will also hold valuable information on umbrella community groups in the local area which could complement responses from the population generally.

The SOCC needs to state whether the proposal is EIA development and how the preliminary environmental information is to be consulted upon (Reg 10 of the EIA Regulations), and so when a developer consults a local authority on the SOCC the local authority will need to have the preliminary environmental information so that its response can be an informed one. The consultation with local authorities under s42 and contact with local authorities on the SOCC under s47 can occur in parallel.

Consultation with the local community and the role of the SOCC

The appropriate area for consultation must include “people living in the vicinity of the land” (s47(1)).

There is a statutory duty on the potential applicant to carry out the

consultation as proposed in the SOCC (s47(7)) and therefore the content of that document is important so that the community understands on what and how it will be consulted.

Additional guidance on the content of the SOCC

To ensure the local community appreciates the context within which they are being consulted, the SOCC should include a succinct summary of the Planning Inspectorate’s role as examining authority, and draw attention to the status of National Policy Statements (NPSs). If a relevant NPS is in place, it is important to provide a realistic steer to the local community on the appropriate scope of any subsequent feed-back. It should also highlight the importance of the pre-application consultation in relation to the examination process.

The SOCC should provide sufficient detail of the project, referring to both positive benefits to the local community that would result from the development and to the issues which could be considered negative elements of the NSIP so as to encourage participation in the process. The scale of the proposal should be described. The SOCC should also indicate what information will be provided during the consultation process on the scope for any associated land restoration, landscaping, other mitigation or compensatory measures for natural habitats impact.

The developer should consider whether the most appropriate consultation will



involve multiple stages, and whether there is a role for building knowledge at early stages which could help communities understand either technical or other elements of the proposal. It is more likely that the quality of response and the sense of satisfaction felt in the community that views have been taken seriously will be enhanced by enabling members of the public to give valuable, informed local insights. If the developer decides such methods are appropriate to the scheme, the details should be included in the SOCC.

If relevant, the SOCC should also take account of any other major consultation exercises being undertaken in the area, for example in relation to planning applications or development plans proceeding under different legislation. The aim should be to achieve a programme that minimises confusion and possible “consultation fatigue”.

SOCC publicity

Once finalised, the SOCC must be publicised and made available for inspection by the public in accordance with section 47.

s48 publicity

It is important to be aware of the matters to be publicised about the application under s48 and Regulation 4 of the APFP Regulations. It would be helpful if the published deadlines for receipt of views on the application are as close as possible to deadlines given to landowners and local authorities etc. in the s42 consultation. If the development is EIA development, applicants should also ensure that they comply with Regulation 11 of the EIA Regulations when the notice is published.

s49 duty to take account of responses

Under s49 there is a duty on the developer to take account of responses to the consultation under s42 and s47 and publicity under s48. The developer is of course encouraged to carry out on-going consultation with statutory consultees before formally submitting its application; this will assist the developer to comply with its s49 duty. (See also [Advice Note 14: Compiling the consultation report](#))

Further information

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