

# Nationally Significant Infrastructure: how to get involved in the planning process

## Advice note 8.5: Participating in the examination

### **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.

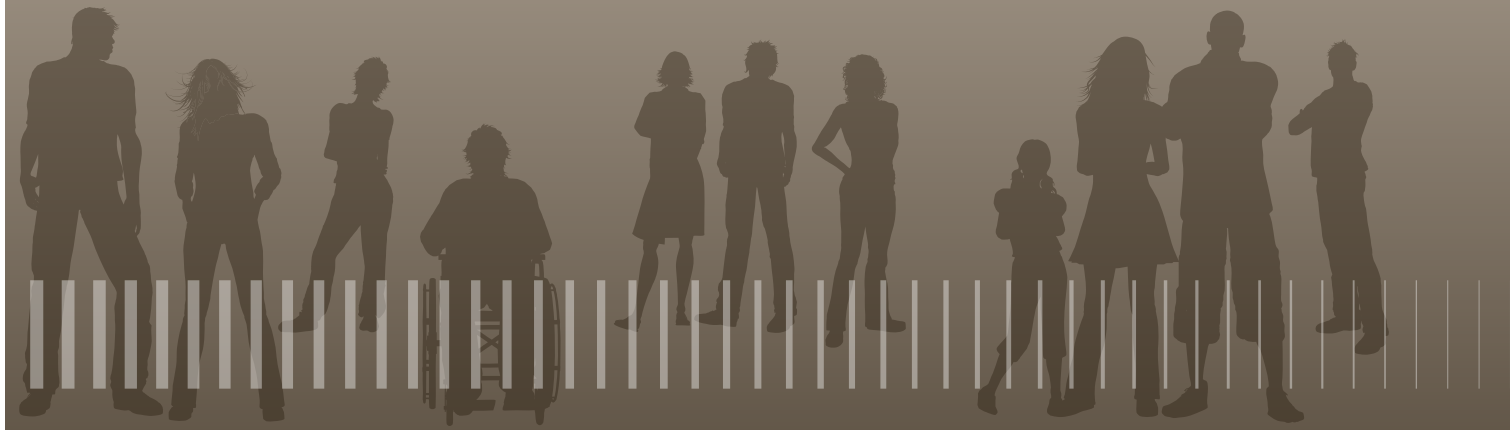
The Planning Inspectorate carries out certain functions related to national infrastructure planning on behalf of the Secretary of State.

### **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.

This version of this Advice Note supersedes all previous versions.



## Introduction

Advice Notes 8.1 – 8.5 have been prepared to help people who may be affected by or interested in a proposal for a NSIP.

Any developer wishing to construct a NSIP must first apply for development consent. For such projects, the relevant Secretary of State will appoint an 'Examining Authority' to examine the application. The Examining Authority will be from the Planning Inspectorate, and will be either a single Inspector or a panel of three or more Inspectors.

Once the examination has been concluded, the Examining Authority will make a recommendation to the Secretary of State, who will make the decision on whether to grant or to refuse consent.

Advice Note 8.1 gives an overview of the planning process for dealing with applications for development consent for NSIPs.

This Advice Note 8.5 relates to the formal examination of accepted applications under procedures governed by the 2008 Act, which starts after the close of the Preliminary Meeting described in Planning Inspectorate Advice Note 8.4.

It explains the opportunities to participate in the examination. It is primarily aimed at those who have registered as "interested parties" under the procedures described in Planning Inspectorate Advice Note 8.3.

It also explains how the final decision is made on the application once the examination has concluded.

## What is the examination?

The Examining Authority examines the key issues arising from an application for development consent.

They consider written representations submitted by the applicant and other participants, and will generally ask questions in order to clarify points raised and to obtain further information. In some circumstances hearings may be held at which the applicant and other interested parties may speak.

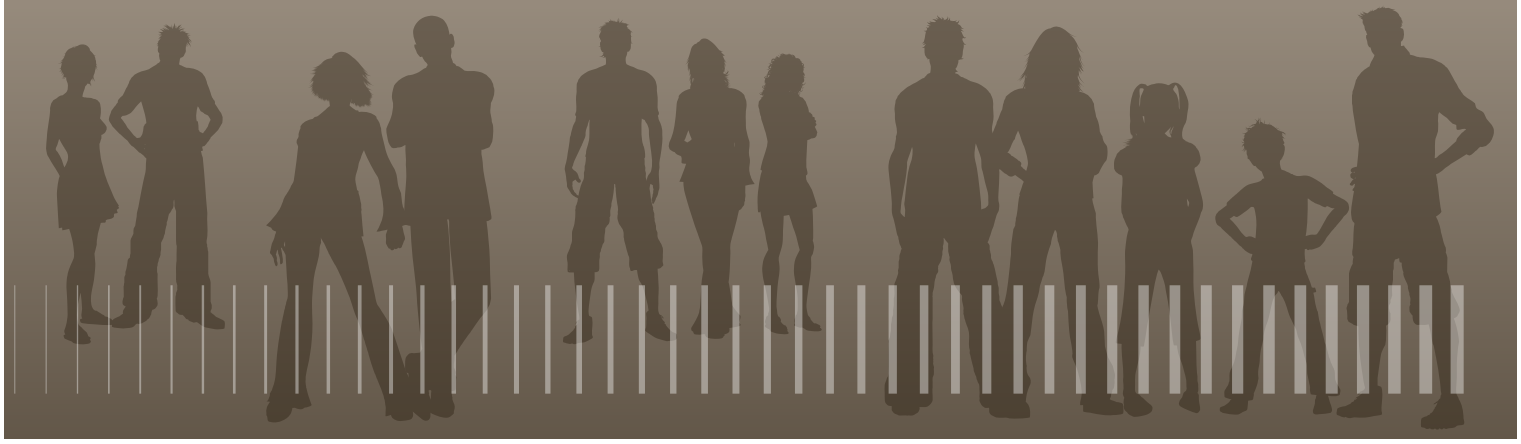
Once the examination has ended, they write a report setting out their conclusions on the application, giving reasons for those conclusions. The report will make a recommendation to the relevant Secretary of State. It is the relevant Secretary of State who then makes the decision on whether to grant development consent or to refuse it.

## How is the examination conducted?

The examination of an application begins on the last day of the Preliminary Meeting and in normal circumstances has to be completed within 6 months.

The examination is first and foremost a written process, based upon the relevant and written representations of interested parties and the written responses to questions asked by the Examining Authority.

As written evidence is such an important part of the examination, it is essential that you make any points you wish to make in writing, before the deadlines set by the Examining Authority.



It is also important to understand that what you say at a hearing should be based on a representation made in writing.

### **Where can I view the timetable for the examination?**

After the Preliminary Meeting, the Examining Authority will write to interested parties and any other people invited to the Preliminary Meeting to confirm the timetable for the examination stage. The timetable will, for example, include deadlines for the receipt of written representations, and local impact reports from relevant local authorities. It may also set dates and times for possible hearings (or set a deadline within which requests for hearings must be made).

The timetable will be available to view on the relevant project page of the National Infrastructure portal<sup>1</sup>, and will also be available on request from the Planning Inspectorate helpline on 0303 444 5000.

### **Where can I view the representations of interested parties?**

You can view all representations on the relevant project page of the National Infrastructure portal.

Paper copies of all representations will also be available locally – for details please contact the Planning Inspectorate helpline on 0303 444 5000.

### **How can interested parties provide more detailed written representations?**

Everyone who has registered as an interested party in relation to an

application is given the opportunity to provide a more detailed written representation, supported with relevant information and evidence, by the deadline set out in the examination timetable. This can be done by emailing the project email address (available on the project page on the National Infrastructure portal<sup>2</sup>). You can also post your representation to: National Infrastructure Directorate, Planning Inspectorate, Temple Quay House, Temple Quay, Bristol BS1 6PN.

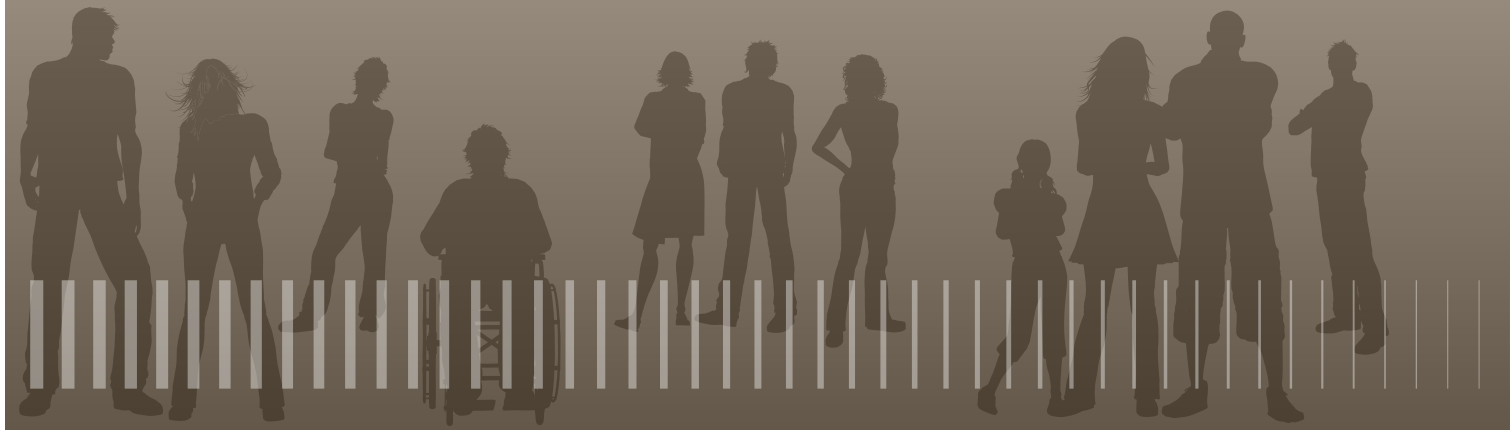
Please mark your representation clearly with the name of the application your representation is about and your unique reference number, which will have been given to you in the letter notifying you of the Preliminary Meeting. If you no longer have this, please contact our Helpline on 0303 444 5000 before submitting your representation.

Please ensure that you post or email your written representation in good time for us to receive it by the specified deadline.

Please remember that the purpose of written representations is to provide the Examining Authority with submissions and evidence regarding issues which are important and relevant to the consideration of the application. You may provide as much or as little detail as you wish in your written representation, but a representation is more likely to carry weight with the Examining Authority if it is specific and supported by evidence.

You can also comment on representations made by others within the timescale set out in the examination timetable. You can do this by post or email. In either

<sup>1</sup> <http://infrastructure.planninginspectorate.gov.uk> <sup>2</sup> <http://infrastructure.planninginspectorate.gov.uk>



case you should make sure that you include the application name, and your unique reference number, as well as the reference number of the representation you wish to comment on.

We are required by law to make copies of representations (and comments on representations) available for public inspection, and copying if requested. This means that none of the information provided, including your contact details, can be treated as confidential although details published on the National Infrastructure portal will be restricted to your name and the text of your representation. A full copy of your representation, including your contact details, will be made available for inspection at public locations. We will remove any personal information about third parties if we think they have not given their consent to including the personal information in the representation.

Anything you have already said in your earlier relevant representation, made at the point of registration with the Planning Inspectorate, will be taken into consideration by the Examining Authority. Therefore, there is no need to produce a further written representation during the examination if you consider that your initial relevant representation included all the detail you wished to provide.

Please note that the Examining Authority may disregard representations which it considers are vexatious or frivolous, or those which deal with the merits of matters of national policy, contained

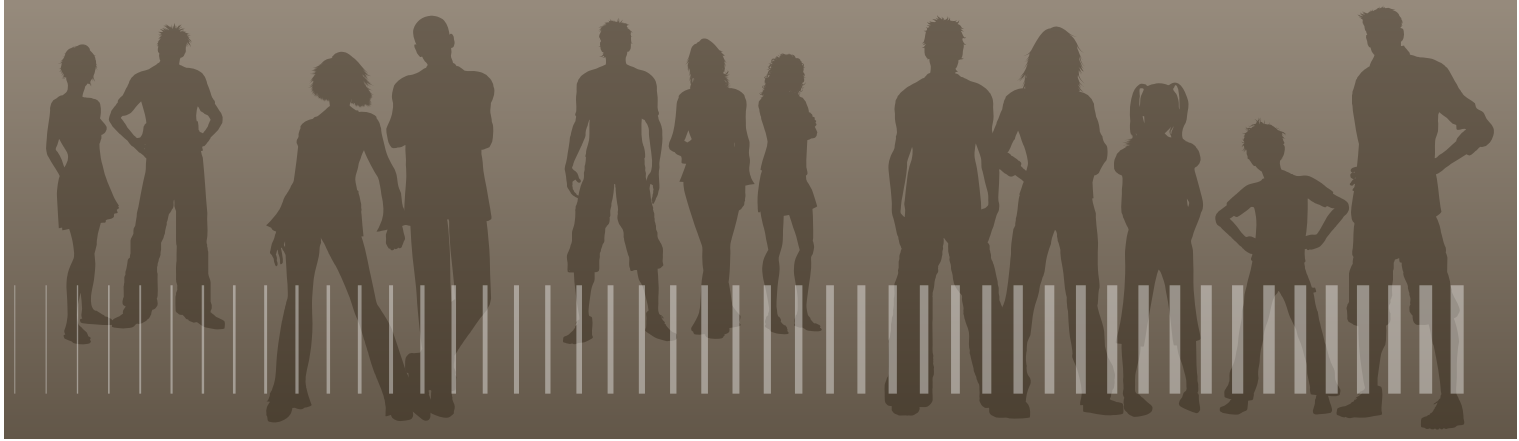
in National Policy Statements (NPSs). Designated NPSs have already been the subject of consultation and parliamentary approval and it is not the role of the examination to debate the merits of national policy.

### **Can I provide a written representation even if I did not submit a valid relevant representation?**

You may write to the Planning Inspectorate, but if you have not registered as an interested party, there is no guarantee that your representation will be taken into account. Whilst the Examining Authority does have discretion to accept written representations even from people who have not submitted a valid relevant representation, this should not be relied upon because people who are not interested parties have no legal entitlement to participate.

If you have not registered as an interested party, you can also consider grouping together with an individual or organisation which has already registered and become an interested party, where they have similar views to your own, so that they can express your views on your behalf.

If you choose to do this, you may also wish to ask this person or organisation to keep you informed regarding the progress of the application, as the Examining Authority only writes directly to interested parties about the progress of the application.



### **When can interested parties provide detailed written representations?**

The deadline for submitting your detailed written representation will be included in the examination timetable set by the Examining Authority. A minimum period of 21 days will be allowed for written representations. All such representations received will be published on the relevant project page on the National Infrastructure portal<sup>3</sup> and copies will also be made available locally at advertised locations.

Written representations form part of the evidence that the Examining Authority will consider in making their recommendation on the application.

### **When will any hearings be held?**

The dates for any hearings that are proposed by the Examining Authority to take place as part of the examination will be set out in the examination timetable. The timetable may also set deadlines for the receipt of requests to hold hearings

If the Examining Authority decides that additional hearings need to be held at any time during the examination, interested parties will be given at least 21 days notice of the date and details.

There are three different types of hearings that may be held:

**Issue specific hearings:** These hearings are held only if the Examining Authority considers they are necessary to ensure adequate examination of an issue or that an interested party has a fair chance to put forward their case. At an issue specific hearing, any interested party can make representations about the issue being considered.

**Open floor hearings:** These can be requested by anyone who has registered and made a relevant representation or by other interested parties. Requests must be made by the deadline which is set by the Examining Authority.

At the hearing, anyone who is an interested party can give oral evidence based on their relevant or written representation.

**Compulsory Acquisition hearings:** These take place at the request of anyone whose interest in land or rights over land are proposed to be compulsorily acquired. Only these 'affected persons' and the applicant have the right to request and be heard at a compulsory acquisition hearing.

At any hearings, the Examining Authority will manage the proceedings and may set a time limit for contributions to ensure fairness to all participants.

### **Who can attend hearings?**

Anyone who is an interested party in relation to an application will be informed in writing by the Planning Inspectorate of the times, dates, and locations of hearings. The details are also published on the relevant project page of the National Infrastructure portal<sup>4</sup>.

Meetings are held in public but to ensure that we can plan for this properly we ask that everyone who wants to attend each session tells us in advance by contacting the case team for the project. If the venue has limited capacity, the Planning Inspectorate may need to offer interested parties a seat ahead of other members of the general public.

<sup>3</sup> <http://infrastructure.planninginspectorate.gov.uk> <sup>4</sup> <http://infrastructure.planninginspectorate.gov.uk>



### **Can I speak at any hearings?**

Any interested party may speak at an open floor or issue specific hearing, subject to the Examining Authority's control over the conduct of the hearing. Any party wishing to speak who has not previously advised the Planning Inspectorate in writing of their wish to do so should inform a member of Inspectorate staff as soon as they arrive at the hearing. The Examining Authority will confirm whether or not this request can be granted at the beginning of the hearing or as relevant matters are explored.

Repeating the same points will not assist the Examining Authority. Therefore, where several people or organisations wish to make the same point, they are encouraged to identify a representative who can speak on their behalf.

### **Where are hearings held?**

Hearings will be held in a venue as close as possible to the location of the project, or at an appropriate location along the route of a linear scheme. When selecting a venue the Planning Inspectorate will take into account the level of interest in the project, the safety of attendees and staff, the availability of public transport and degree of accessibility to people with disabilities.

### **What facilities will be available at the venue?**

The venue selected for the meeting will be wheelchair accessible. Please let the Planning Inspectorate Case Team know (see contact details at end of this note) at least 7 days before hearings if you have any specific needs, for example, due to visual or hearing impairment. This will enable us to ensure that appropriate provision is made.

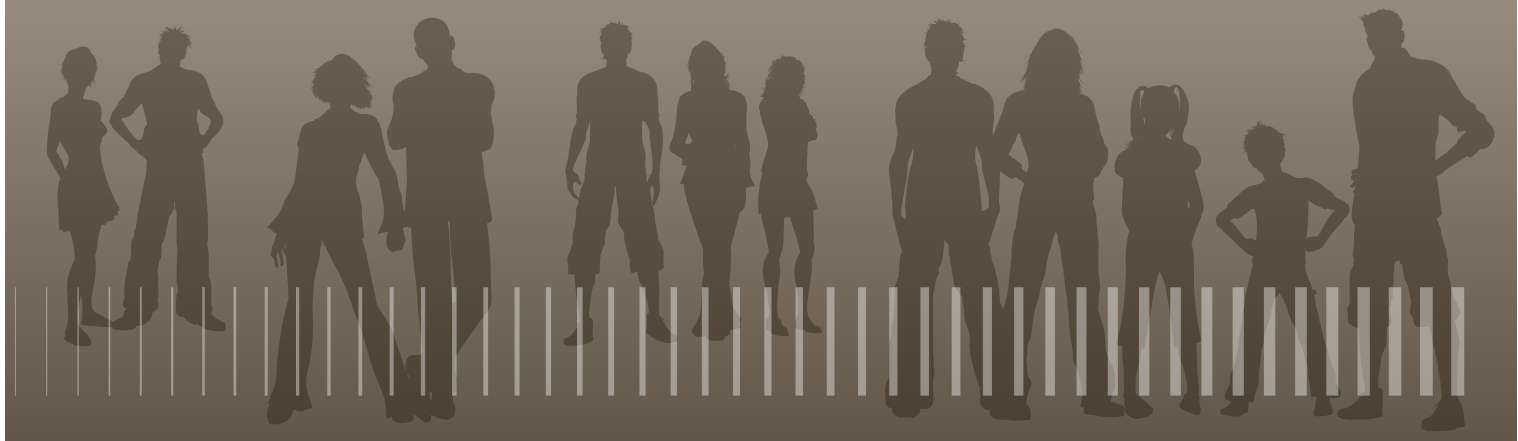
### **What is the local impact report?**

The local impact report (LIR) is a report produced by the local authority (or by several local authorities, for example where there are both county and district councils for the area in which the project is proposed). It sets out what the local authority(s) consider to be the impact of a proposal on their local area(s). The Examining Authority will include a deadline for receiving the LIR in the examination timetable.

### **How can I comment on the LIR?**

Once an LIR is received, it will be published at the relevant project page of the National Infrastructure portal<sup>5</sup> with copies also made available locally at advertised locations. Interested parties can comment to the Planning Inspectorate on the LIR and the deadline for this will be published in the examination timetable. Once the deadline has passed, all comments made on the LIR by the deadline will be made

<sup>5</sup> <http://infrastructure.planninginspectorate.gov.uk>



available for inspection and published on the relevant project page of the National Infrastructure portal.

### **What happens next?**

The Examining Authority will normally complete its examination of an application within 6 months. Following this, it will have up to 3 months to make a recommendation to the relevant Secretary of State on the application. The relevant Secretary of State will then have up to 3 months to reach a decision.

### **What decisions can be made?**

The decision maker has 3 options, either to grant development consent, grant development consent with conditions (known as requirements), or to refuse development consent.

Compulsory acquisition can be confirmed, part confirmed or refused.

A statement of reasons will accompany the decision and both will be published on the relevant project page of the National Infrastructure portal and be notified to interested parties after the final decision has been made.

### **Can I challenge a decision?**

If the decision is to grant development consent, there is a six-week period for legal challenge, which runs from the date of the publication of the order (or the statement of reasons if published later).

If the decision is to refuse to make the order, then the six-week period for legal challenge runs from the date of publication of the statement of reasons.

### **Transitional arrangements for National Infrastructure planning**

Until April 2012, the Planning Inspectorate's functions described in this Advice Note were carried out by the Infrastructure Planning Commission (IPC).

Where an application or proposed applications has been formally notified to the IPC before 1 April 2012, anything done before that date is treated as having been done for the purposes of the 2008 Act provisions as amended by the Localism Act 2011.



## Advice Note 8 series

The Planning Inspectorate has produced a series of non-statutory Advice Notes about a range of process matters. These are available to download on the guidance & advice page of the National Infrastructure portal.

The Planning Inspectorate's Advice Note 8 series explains how to get involved in the National Infrastructure planning process. It includes 5 advice notes, as follows:

**Advice Note 8.1:** How the process works

**Advice Note 8.2:** Responding to the developer's pre-application consultation

**Advice Note 8.3:** How to register and become an interested party in an application

**Advice Note 8.4:** Influencing how an application will be examined – the Preliminary Meeting

**Advice Note 8.5:** Participating in the examination.

If you would like to order copies or you require further information about any of these issues, please contact the Planning Inspectorate:

The Planning Inspectorate, National Infrastructure Directorate, Temple Quay House, Temple Quay, Bristol BS1 6PN

Email: [enquiries@infrastructure.gsi.gov.uk](mailto:enquiries@infrastructure.gsi.gov.uk)

Telephone: 0303 444 5000

Web: <http://infrastructure.planninginspectorate.gov.uk>

Alternatively, for independent planning advice, you may wish to contact Planning Aid:

Planning Aid England Advice Line 0330 123 9244

Email: [advice@planningaid.rtpi.org.uk](mailto:advice@planningaid.rtpi.org.uk)

General enquiries: 020 3206 1880

Email: [info@planningaid.rtpi.org.uk](mailto:info@planningaid.rtpi.org.uk)

Planning Aid for London: 020 7247 4900

Email: [info@planningaidforlondon.org.uk](mailto:info@planningaidforlondon.org.uk)

Planning Aid England Wales: 02920 625 000

Web: [www.planningaidwales.org.uk](http://www.planningaidwales.org.uk)

The content of this advice note was updated in February 2012 in order to provide the most helpful advice to all parties in light of lessons learned through implementation of the process and feedback from all parties.

This advice note was republished on 1<sup>st</sup> April 2012 with changes to reflect the Infrastructure Planning Commission being abolished and the work of the IPC transferring to the Planning Inspectorate under the Localism Act 2011.