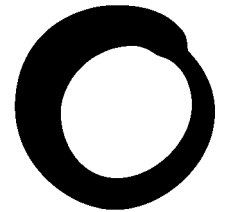


**May 2008**



**Friends of  
the Earth**

# **Public Inquiries: A campaigner's guide**

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## Introduction

A public inquiry is an examination conducted by the Inspector into a plan or planning application. The inquiry is there to set forward the case for and against a decision – with regards to a planning application, or to a whole plan including its policies. The inspector is part of an independent body in England and Wales.

Through the public inquiry process you can make your voice heard in local decision-making. More often than no you will probably be objecting to either an application or a policy proposal, but occasionally (and increasingly) you will be supporting good policy proposals or planning applications such as eco-housing or renewable energy projects.

You have a right to be heard if you want to change the local plan – if you are in support, it is at the inspector's discretion that you can have a say.

## Public Inquiries and all that Jazz....

### Spelling mistake already?

No. Inquiry is spelt with an 'I' not an 'E'. Common mistake!

### So what exactly is an Inquiry?

There are many forms of inquiry, but essentially there is an arm of the government called the Planning Inspectorate who hold highly structured meetings, and usually the public are allowed to attend and speak. They look in detail at a wide variety of planning documents and decisions. Long inquiries lasting more than a week are fairly rare, while 20% of cases are dealt with at hearings which last less than a day.

### Who is the Planning Inspectorate?

The Planning Inspectorate is an Executive Agency which serves the Department for Communities and Local Government and the National Assembly for Wales. Scotland and Northern Ireland each have their own equivalent of the Planning Inspectorate.

### What do they do?

The Inspectorate's main work is the processing of planning and enforcement appeals and holding examinations into development plans e.g. Local Development Frameworks and Regional Spatial Strategies (see annex on resources). The Inspectorate also deal with a wide variety of other planning related casework including advertisement appeals, and reporting on planning applications called in for decision by the Secretary of State, various compulsory purchase orders, rights of way cases and cases arising from the Environmental Protection and Water Acts and the Transport and Works Act and other Highways Legislation. In addition they process applications for awards of costs which may arise from any of these.

The basic principle is that all parties should be allowed a fair chance to put forward their point of view whether in writing, or at a public hearing. Where a particular site is involved, it will be visited by the Inspector appointed to deal with the case. All evidence presented will be considered before a decision is made, which will also take published government policy into account. In most cases the decision is taken by the Inspector; in others the Inspector will

prepare a report and make a recommendation to the Secretary of State.

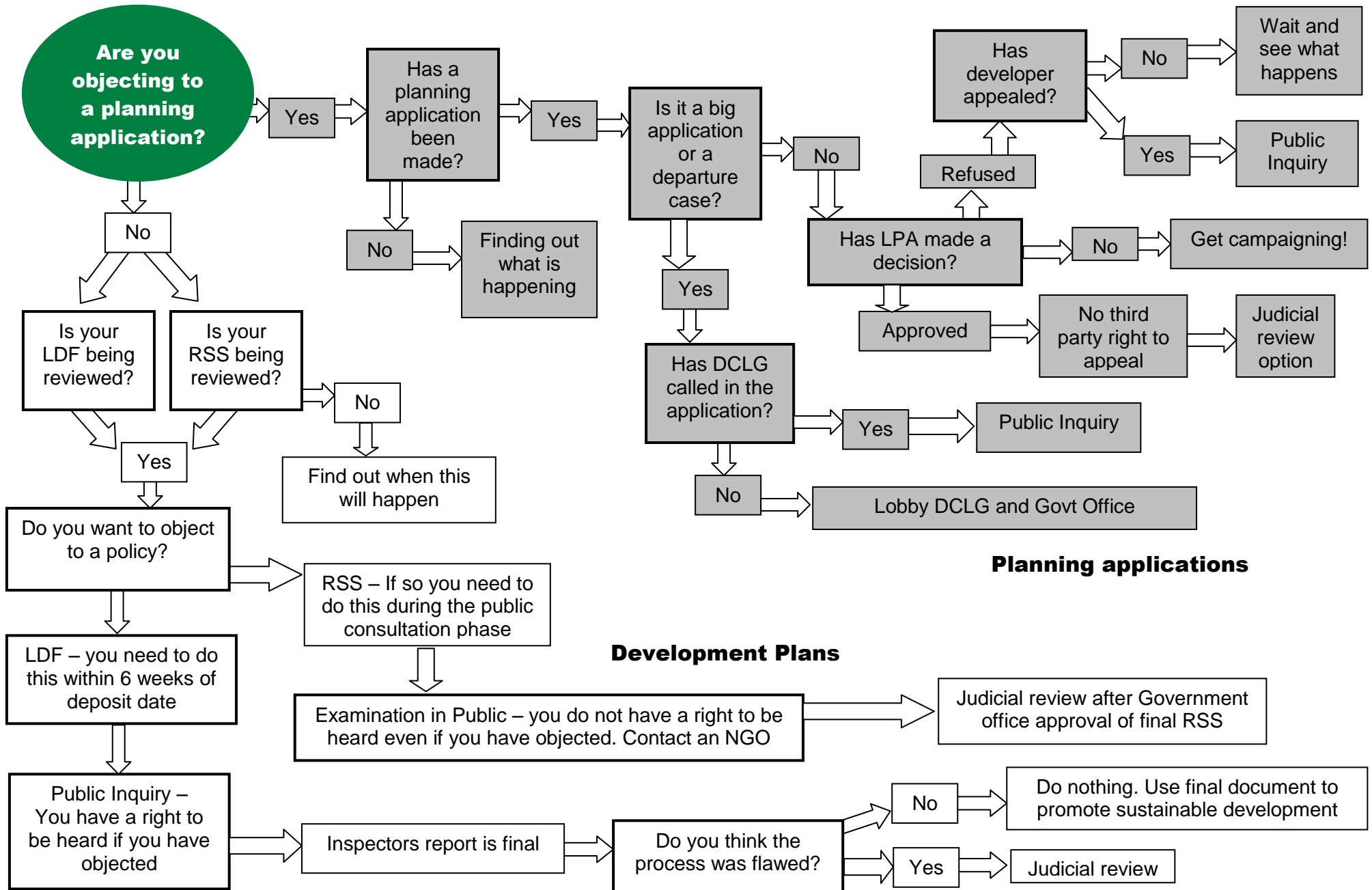
### **Big stuff then, huh?**

Very. The Inspectorate plays a vital role taking decisions which will affect both businesses and the public. On the whole they do great work and are very stretched with their workload. We may not necessarily always like the decisions they make, but Friends of the Earth fully support the Inspectorate and the work they do. The diagram over the page attempts to give some structure to the vexed question of 'what is an inquiry and when do they happen?'

### **How does the public Inquiry fit in with the rest of the campaign?**

There is absolutely NO substitute for a well organised visual public campaign. The Inspector will hear about the campaign, read articles in local papers and see banners, window stickers etc. during his travels. Running a campaign is beyond the scope of this briefing but it is absolutely essential that in the run up to a public inquiry, during and beyond, a campaign is run to highlight the public concern or views on the issue at hand. Remember to pick your campaign issues wisely – the most obvious need not be the most effective. Not many public inquiries are won solely on environmental grounds.

### Route map to Public Inquiry



## Section 1: Overview

This briefing gives the background to planning inquiries and how they work in England. There are some helpful tips throughout the briefing and the Annexes list where to go for further information and advice. Section 2 describes the different types of inquiry and the differences between them. Section 3 outlines the procedures for an inquiry, and then sections 4 and 5 discuss evidence in detail.

There are sets of rules and regulations which go with any formal procedure, be it a hearing, examination or an inquiry. It can get very complicated and messy, but if you are keen to learn more go to the references at the end of this briefing and use the links.

### Key points in the public inquiry process

1. Key points in the public inquiry process
  - Notification letter
2. Pre inquiry meeting
3. Statements of case
4. Proofs of evidence
5. Public Inquiry
6. Decision
7. Appeals

During the lead up to an inquiry, there will be a set of deadlines to get certain things done. For example, a meeting may be held to discuss inquiry matters (but not the application itself) some weeks before the start of the inquiry - this is called a *pre inquiry meeting* or PIM for short (see section 3). *Proofs of evidence* are required from all who are involved, including the applicant (more usually known as the appellant), supporters, objectors, local planning authority and statutory consultees). A proof of evidence (POE) is essentially the case which is being made but in writing, so that the inspector and all other parties involved can easily read and refer to the arguments. These need to be written in a particular way, as described in section 4.

### Top tip: get hold of the inquiry timetable

As soon as the inquiry is announced with the notification letter, the clock starts ticking. This letter will be sent by the relevant authority e.g. Local authority, Planning Inspectorate, Office of the Deputy Prime Minister. There are really crucial things for you to be aware of, as the timetable is usually set in stone and if you miss a deadline, it could jeopardise your involvement in an inquiry.

More often than not you will be objecting to either an application or a policy proposal, but occasionally (and increasingly) you will be supporting good policy proposals or planning applications such as eco housing or renewable energy projects. The case you make needs to accurately reflect your position, but the rules and process apply to both scenarios. Whether supporters will be allowed to present evidence is a matter for the Inspector to decide.

Above all, it is really important to find out who is 'on your side', and network. In this way you can compare approaches and arguments, and lend support to one another during the inquiry process. This will aid both your argument and your standing with the Inspector. It also avoids wasting time at the inquiry by repeating evidence given by

someone else; repeating evidence does not strengthen it in the view of the inspector.

### **Remember – networking with others is key to success at a Public Inquiry**

The best advice however, is very simple. As soon as you find out about an inquiry or hearing or whatever, ring up your local authority planning department and find out who the contact person is. That person will then be able to steer you in the right direction and help you with timetables, inquiry preparation, presentation etc. A Programme Officer (PO) will be employed for development plan examinations and may be employed for other inquiries. But whether or not a PO is appointed the local authority planning department will be able to advise you on the inquiry arrangements.

If a public inquiry is called for a planning application that concerns you, you have a good opportunity to present your case on behalf of your community. However, your involvement in the inquiry process can demand considerable commitment from you and your supporters. Organising your evidence and preparing your case can involve large amounts of time, effort, resources and, very likely, teamwork. But it may be still worth objecting even if you can't do so much preparation, just to flag the issues and support other objectors.

### **Types of Inquiry**

The different types of inquiry are summarised here and described in detail in section 2.

The planning system has two parts, which have different kinds of public inquiry:

- i) setting policy (development plans) and
- ii) determining planning applications (development control).

Planning policy is set at both regional and local levels, and can be found in the form of maps and policy statements which are used to decide where development should take place and whether planning applications should be allowed. One of the final stages of deciding these documents is an Examination. Examinations discuss amendments proposed by the objectors to the draft document. For regional policies in England, the planning policy document is called the Regional Spatial Strategy (RSS) and the hearing is called an *Examination in Public* (EIP) (see section 2.4). For local policies in England, the document is called a Local Development Framework (LDF) and the hearing is called an *Examination* (see section 2.5). In Wales there is no equivalent to the RSS, the Wales Spatial Plan is approved directly by the National Assembly for Wales. The equivalent to the LDF is the Local Development Plan (LDP) – see the Wales pack for the relevant briefings.

Three types of inquiries relate to planning applications, namely *Appeals*, *Call-ins* and *Major Infrastructure Projects*. Appeals (see section 2) happen when the applicant appeals against the refusal of planning permission by the Council. Call-ins (see section 2) and Major Infrastructure Projects (see section 2) are developments of national significance, so the decision is taken away from the council by the Secretary of State. These inquiries are generally very formal and similar to a law court. Cross examination is allowed, but don't let that put you off. **The public do have a right to be heard** at such inquiries, providing you have commented on the application when it was first advertised.

## The Inspector

The inspector will be from the Planning Inspectorate. He or she will have a great deal of knowledge and experience of planning and the planning system, and will be professionally qualified (for example a former local planning officer). The inspector may have one or more assistant inspectors.

The inspector has considerable discretion in running the inquiry, deciding the timetable and so on. If you have difficulties or special requirements it is well worth talking to the inspector, who may be able to help, or at least take them into account. Inspectors will try to ensure that the views of unrepresented third parties are understood and that they are not intimidated by the formality of the proceedings. However, some objectors do give long rambling speeches that are largely irrelevant to the inquiry – the inspector can and will intervene to stop repetitious or irrelevant submissions. State your case clearly and concisely. The inspectors have clear guidelines on what is and is not relevant to a planning inquiry, and they will set out what the main issues are when the inquiry opens – it is therefore really important that you are able to show how your case is relevant.

**Top tip! The Inspector is your friend...**

### How to get into the inquiry

As the name suggests, the public can attend and listen to all public inquiries, but are only allowed to present evidence at some, subject to the inspector's discretion. The public does have a right to join in some types of inquiry and section 2 explains which types of inquiry give you that right.

Although you may have a right to be heard, you will need to tell the Planning Inspectorate that you want to make a case so that you can be included in the timetable and the mailings. Usually this means you need to make a formal objection or statement of support to the Inspectorate. This objection or statement can be a few sentences (called a Statement of Case) stating that your full case will be given later (as a Proof of Evidence). It should state broadly what your objection is.

At Examinations in Public you can only join in if you are invited. For these inquiries, the inspector chooses the topics to be discussed. He or she invites participants who are likely to make significant or interesting comments relating to these topics. If you want to be included in the inquiry you will need to make a significant objection on all the topics you are interested in, or join with a local NGO that is objecting.

### The stages in an inquiry

The inquiry timetable is outlined in section 3 and listed in full in Annex D.

The inquiry, hearing or examination timetable is started with a notification letter, usually sent by the Planning Inspectorate or the relevant Government Office.

It is crucial that you start getting all the relevant information about the inquiry from this date, as a rigid timetable kicks in as to when things have to happen. Indeed, any prior preparation of your case will be useful and save you time and stress.

Larger inquiries will have a *pre-inquiry meeting* (see section 3). Those who have said they wish to speak at the inquiry are invited. This is to discuss the arrangements for the inquiry. It is an opportunity to raise any problems you have and ask questions about procedure. But the merits of the planning application will not be discussed.

**Top Tip: make sure you attend the Pre Inquiry Meetings and find out all you need to know.**

In most types of inquiry, you will be expected to give written evidence some time before you get a chance to speak. This will state your case fully, although you will be able to expand on it verbally. Copies of this will be given to other participants and you will receive, or have access to, copies of theirs, and possibly a response to your evidence.

After this, you will be able to give written or verbal evidence. This may be in the form of an informal discussion or formal evidence with cross examination by other participants, depending on whether a hearing or inquiry is held.

The inspector will generally make one or more visits to the site or sites. There will be no discussion of the case at the site visit, although the inspector will need to be accompanied by the appellant (person who has put in the application to develop) or owner of the site to enable the inspector to get onto the site. You may be allowed to accompany the Inspector if he/she gives permission and the owner of the land has no objection.

### **Evidence**

If you are appearing at an inquiry, hearing or examination the evidence you give will be both written and spoken. To be successful, you will need to give a strong and clear case. You will need to be factual as far as you can, but you can add how you feel about it. Controversial points need to be supported by evidence, usually in the form of references to accepted authorities.

**Top tip: be absolutely clear about what you are giving evidence on.**

Written evidence is better if it is concise. You can use your verbal evidence to summarise your case and expand on it. You can read a speech or talk from notes or off the cuff. It is not necessary to read out your submitted written evidence as all the evidence is likely to be taken as read by the Inspector.

There are rules about what is and is not relevant to a planning inquiry. In general, environmental concerns are relevant, but you may need to explain why it is relevant. For this purpose you can quote government, regional or local plan policies.

You will need to gather information to support your case. You can use the Freedom of Information Act and Environmental Information Regulations to gather the information. You need to read carefully the case of your opponents so that you can dispute the arguments they give. There are often technical reports that give details.

Verbal evidence may be given in an informal discussion or formally. In the formal case, you state your case and then you may be cross-examined on your evidence by the developer or the Council. You can also cross-examine their evidence if you wish and the Inspector gives you permission.

**Top tip: do not underestimate the time taken to prepare and present your case.**

## Section 2: Types of Inquiry

### Planning Appeals

Planning Appeals are held when an application for planning permission has been refused by the Council (or has had conditions attached to it) and the developer has then appealed against the Council decision or where the developer appeals against the Council's failure to give a decision within the agreed period.

For most Planning Appeals, the inspector decides whether to uphold or change the decision of the Council, and gives that decision in a document which is sent to the Council and the developer, and to anyone else who asks for a copy. A small percentage is decided by the Secretary of State, usually because the development is large or controversial.

Further information can be found in section 7.

### Call-ins

A Call-in is a planning application that has been 'called in' by the Secretary of State (SoS) Communities and Local Government (in England) or the Minister for Environment, Planning and Countryside (National Assembly for Wales) before the Council has made a decision. The call-in means that the SoS will decide on the application. The inspector produces a report and recommendations, and the SoS then makes a decision on the basis of that report.

If you think that an application should be called in (see Annex B for criteria) then you must write to the Secretary of State in England or at the Welsh Assembly Government and ask for the application to be called in, clearly explaining why.

The criteria to decide whether to call in an application in England are in Annex B. The criteria in Wales are contained in Planning Policy Wales 2002. If a letter is issued to the local planning authority, an Inspector is then appointed, and the process begins.

**Remember – once the notification letter is sent out, the clock starts ticking!**

### Major Infrastructure Projects

For certain types of large **energy** developments in England and Wales, the planning application is decided by the UK government with advice from the relevant department. **Transport** decisions are devolved to the Welsh Assembly Government, while the Department for Transport deals with them in England. These types of development are known as Major Infrastructure Projects (MIPs), and may include airports, petrol refineries and power stations. There is a strict list of criteria of what constitutes a MIP, given in Annex A.

These inquiries are formal, like a court of law, with lawyers and cross-examination. For a large and complex project the inquiry may continue for months or even years. The case put forward by the developer will be substantial and will almost always include a *Statement of Environmental Impact* (SEI).

MIP inquiries are very similar to call-ins, as a project can only be defined as a MIP if

called-in, but follow slightly different rules.

### **Examinations in Public (EIP)**

In England EIPs are held when examining draft Regional Spatial Strategies (RSS). They are conducted by a Panel consisting of a Chair and an Inspector, and supported by a Panel Secretary. The RSS is drafted by the Regional Assembly (or in the case of London, the London Plan is prepared by the London Assembly) and the EIP will consider the Deposit Draft. The public (or private sector) have no right to be heard – you have to be invited by the examining Panel. You are most likely to be invited if you have made significant objections to the Deposit Draft RSS. The Regional body or Assembly will be coordinating the RSS. The Panel Secretariat will issue all information regarding matters to be discussed, participants to be invited etc.

EIPs will generally last only a few weeks and are informal (but very serious!). They take the form of a structured discussion led by a member of the Panel. An EIP will consider only topics chosen by the Panel. Each topic will be considered as a round-table discussion with each of the invited participants, the Regional Assembly representatives, local Councils and other statutory bodies such as the Government regional office, the Highways Agency and the Environment Agency. Participants are invited to topics on which they could make significant comment.

The Inspector will consider the written and oral cases on matters selected for Examination and report to the Secretary of State with recommendations. The Secretary of State will then decide what to do, but will need to justify his/her decisions.

Wales does not have a regional planning body so the situation is very different to that of England. Wales does not have Regional Spatial Strategies but a single Wales Spatial Plan which is divided into five areas, which is approved after consultation by the National Assembly for Wales and does not undergo an EIP.

**Remember - there is no right to be heard at the regional level**

### **Development Plan Inquiries and Examinations**

Development plan inquiries are held into objections to old-style development plans, such as your Council's Local Plan. Examinations are held to consider the soundness of the development plan documents (DPDs), under the new Local Development Framework (LDF) system (Local Development Plans in Wales), which has replaced the old development plan system. Anyone who makes an objection to an old-style plan within the timescale set by the LPA and asks to appear in person has a right to appear at the inquiry. Similarly, anyone who makes representations seeking changes to the Development Plan Documents (DPD) and asking to be heard in person has a right to be heard at the examination. The scale of the plan or DPD and the number and scale of the objections to it, or of the representations on the DPD, will determine how long the inquiry or examination lasts, from a few weeks to several months. See references for the Inspectorate's guides on the new examination and soundness systems.

**Warning: the situation is about to change for Statements of Community Involvement and will lose the obligation to hold an examination with a right to be heard**

## Section 3: Procedures

For Development Plan Document (DPD) examinations in England, the Inspector will consider all representations that have been received within the six week period following submission of the DPD to the Planning Inspectorate. In Wales there is only one document known as a Local Development Plan (LDP) and representations on it are submitted direct to the local planning authority. However the basis for holding Examinations into these documents in both England and Wales is essentially the same. If anyone has exercised their right to be heard in person, their representations will be heard by the Inspector at hearings (structured discussions led by the Inspector involving the LPA and people who have made representations) or round table discussions (a more formal discussion on e.g. housing supply figures), or at formal hearings where lawyers may be present. The inspector will then produce a report which is legally binding upon the LPA, covering the soundness of the DPD and any recommendations for changes that are needed to make the document sound. There is nothing anyone else can do, except in exceptional circumstances a Judicial Review.

### Pre-inquiry/pre-examination meeting (PIM/PEM)

Over the last few years it has become customary for the Inspectorate to arrange pre-inquiry meetings prior to inquiries which are expected to last several weeks, either because highly technical evidence is likely to be submitted or because the inquiry is to deal with several proposals involving more than one applicant or appellant. All the participants will be invited to this meeting.

In holding such meetings the inspector's objective is to encourage the parties to prepare for the inquiry, so that time will not be wasted or taken up with matters which are not relevant or in dispute.

Insofar as inquiry time is saved, the parties benefit directly; they are also likely to benefit indirectly where the inspector's task of preparing a decision letter or report is made easier.

Among the matters which may be discussed and resolved at pre-inquiry meetings are the timetable, the sitting hours, evidence formats, and the procedure at the inquiry. There may also be discussion about preparation and exchange of proofs, including format (e.g. to include a summary and with technical material as appendices), presentation and the timing of exchange of proofs in advance of the inquiry or of being submitted.

**Top tip: If you are not sure about something, ask the question at the pre inquiry meeting.**

### Timetable

Please refer to Annex D for an indication of the way that the inquiry will be timetabled (programmed), but in essence the timetable produced by the programme officer in consultation with the Inspector will set out what will happen by when. The inquiry programme is a matter for the Inspector's discretion, and needs to be arranged in an efficient and businesslike way, although the programme officer will do their best to meet the needs of people participating in the examination. The aim of the inquiry programme is to give all participants a clear framework in which to operate, to avoid time wasting

and ensure efficiency.

The inspector and programme officer will need estimates of the duration of the cases (including presentation, cross examination and re-examination) to be provided to allow a programme to be prepared prior to the inquiry.

Deadlines for submission of written evidence will be clearly set along with other relevant issues such as when the Inquiry will be in session.

### **Hours**

Inquiries normally sit from 10am to 5pm, four days per week starting on Tuesdays. It is very important that you make your case at the PIM if you or your group will find it difficult to attend during working hours. For example, you may wish to ask whether some evening sessions can be arranged so that people at work can have a chance to speak. Evening sessions are held at the Inspector's discretion.

### **Presentation of cases**

Whether parts of the evidence should be dealt with on a topic basis, what the inspector will be looking for in opening and closing submissions will be decided at the PIM. You may wish to ask for sessions where you will be able to present your own evidence and put questions to the appellant's witnesses on the same day. Otherwise, you may need to be at the inquiry for more than one day waiting to put your questions. Keeping in touch with the programme officer, where there is one, should help to avoid this problem.

## Section 4: Evidence

### Outline statement of case

An outline statement of case is a summary of the argument you are going to make. This is not required at Examinations into policy documents, but only in planning application inquiries, such as appeals.

Where a pre-inquiry meeting is held the local planning authority and the applicant/appellant will be required to provide an outline statement of case within eight weeks of the relevant date in order to provide the inspector with an idea of the issues to be aired at the eventual inquiry. An outline statement of case may also be required from any other major party which has indicated an intention to appear at the inquiry.

An outline statement of case is not intended to be the full summary of the submissions to be made at the inquiry. In the case of an appeal, the appellant's outline statement of case can be a list of the headings, with a short expansion of the grounds of appeal. In the case of the local planning authority it can be a list of the headings with a short expansion of the reasons for refusal.

Where there is a 'call-in', both the local planning authority and the applicant will need to assess what evidence is to be presented in order to cover the matters identified by the Secretary of State as important to his consideration of the proposals. Consequently, the outline statements of case of both the applicant and the local planning authority will set out the headings which will deal with the Secretary of State's points and, if appropriate, indicate whether the matters identified by the Secretary of State are sufficient for an understanding of the proposals and sufficient to form a basis for the Secretary of State's decision.

For an example of a statement of case, see Annex C.

Everyone involved in an Inquiry may need to produce for the Inspector a Statement of Case. However, if you are not going to be saying very much, check at the Pre Inquiry Meeting or send the Inspector a letter.

### Proof of Evidence

A proof of evidence is a written account of the case you want to put before the inspector at the inquiry.

Set aside as much time as possible to prepare it. Make sure that your points are easy to follow, as you will need to take the inspector through the arguments. Your evidence should be:-

1. clearly set out; this will help you to understand your case and help the inspector to understand it;
2. clearly written; use plain English;
3. supported by appropriate evidence;
4. comprehensive, but succinct. Don't leave things out just because you are reluctant to deal with them. If you introduce difficult issues at this stage, it will give you time to

think about how best to present them at an appeal;

5. truthful. If you are found to be dishonest, it will devalue your evidence; and

6. accurate. If you exaggerate your case, it will weaken it.

Presentation of your proof of evidence is important. Prepare a number of copies of your proofs of evidence. Find out at the PIM how many copies are needed and who needs them. Have some spare in case anyone at the inquiry session needs a copy. There is often a charge for using the photocopier supplied by the LPA. Double space what you intend to read out. Check for spelling and other silly things they would pick up on.

Proofs are page numbered and paragraph numbered. Make sure your name and group is on each sheet, with perhaps the date and session if appropriate - anything to be helpful! Staple documents rather than paperclip (as the latter get lost). Use size 12 font or larger.

**Top tip: keep it simple, to the point and accurate**

### **Structure**

It may help to structure your evidence as follows.

- 1 Establish your qualifications for giving evidence. Describe your involvement in local organisations and give details of any organisation that you are representing, including membership numbers.
- 2 Point out the features of the site that are important to you. Although others may do this, it is important to put your case in context, in your own way. Highlight what makes the proposed development unacceptable or acceptable.
- 3 Point out elements of particular concern or areas you support.
- 4 Draw attention to the elements of the development plan, national planning guidance and other official documents that strengthen your case. Only quote from them sparingly, but explain their relevance to the appeal.
- 5 Use any information about the history of the site that illustrates why the development would be inappropriate or otherwise.
- 6 Outline why you want the inspector to either turn down the appeal or approve it. You need to show the harm or benefits the proposal would cause. Use graphs, diagrams and statistics to simplify your case.
- 7 Include a summary of your evidence if it exceeds 1,500 words.
- 8 Supply any documents you have referred to in your evidence that the inspector will not have access to; the inspector will have copies of all national planning documents and the local planning authority will supply local policy documents.

**Top tip: keep your evidence short and focussed**

## Section 5: Oral evidence

### Oral evidence

You will need to have a written copy of your 'Proof of Evidence'. Use your time to explain the Proof of Evidence to the Inspector, and flesh out the details.

### Presenting your evidence

When delivering your evidence, take a deep breath. This is your opportunity; remember, you have a right to be there. Take your time, as long as you are not wasting time and explain things in your proof if needed.

Play humble and say this is your first time at a public inquiry. You can ask the Inquiry to stop you if need.

### Cross-examination

You have the right to refuse to be cross-examined. However evidence that has been tested by questioning can usually be given more weight by the inspector. The object of cross-examination is two-fold:

1. to challenge evidence put forward by a witness to reduce its weight in the eyes of the inspector; and
2. to bring out helpful evidence from the witness

If it is your first time at cross examination or presenting evidence, be sure to tell the inspector. Remember, the Inspector's job is to get information and facts, not to have fun in seeing nervous people get trashed by heavy handed advocates.

If you are being cross-examined do not make the mistake of saving up good points to be introduced later during cross-examination, as the opportunity may not happen. Many lawyers at public inquiries are reluctant to cross-examine third parties.

If you are being cross-examined by an aggressive lawyer, stay calm and polite. Your evidence is there in writing in your proof of evidence, so refer the lawyer to the answer if it is in the proof. Some questions you will be able to answer, others not, but it is OK to answer that you don't know. You can also say you will find out the information if needed. If, having been cross-examined, you feel there was something in the cross-examination you did not make clear, ask the inspector for an opportunity to do so. Remember to listen carefully and answer the question you are asked. Do not answer what you think the person cross-examining might mean by the question or try to anticipate the next question. If the point put to you is correct then do not try to be evasive. Answer 'Yes' if that is the correct answer. If you have answered the question put to you but wish to qualify the answer then you should be allowed to do so. If the person asking the questions tried to stop you qualifying your answer, then tell the inspector that you wish to qualify or add to your answer. But answer the question first without being evasive.

If you are cross-examining others, questions can be asked that arise out of the witness's whole proof of evidence, not just the summary. You can have someone next

to you to find documents and places in documents if you want. That person should have a copy of what you are saying. Leading questions – which indicate the answer you want – play an important part in cross-examination. But you must not use leading questions if you are asking questions of a witness on your side.

Do not try to cross-examine another party's witness without preparing first. Make sure that you prepare the questions you wish to ask based on their proofs of evidence and sort out the order in which you propose to ask them. It helps to ensure that your questions are well tied down to answers which the witness has already given or to statements in the proof of evidence. Make sure that you do not ask the same questions which have already been asked, as the inspector will stop you if you repeat questions already answered.

Listen carefully to the cross-examination which has already taken place and make notes of important answers. It may give you further materials for your cross-examination.

Cross-examination can be difficult when a witness stonewalls all your questions. Explain that the question has not been answered and try again. Perhaps try putting it a different way. Be polite but firm. If you are having no success, ask the inspector for help. You cannot always get the answer you want, but you should get an answer. Pay attention to the questions asked by the inspector of all witness. This is one of the few pointers you will get about the issues on which the inspector is focusing.

## Section 6: The decision

### Decisions

The vast majority of planning applications are decided by Councils without a public inquiry, but a public inquiry can be held before a decision is made if the application is important or controversial. In this case the decision will be made by the Secretary of State (rather than the Council), taking into account the report and recommendation of the inquiry inspector. These cases are 'Call ins' because the application is 'called in' by the Secretary of State (see section 3.2). Major infrastructure projects have their own type of inquiry (see section 3.3), but are a form of call-in Inquiry. If an application is refused by the Council and the developer appeals then an inquiry or hearing will be held if the case is of sufficient complexity to warrant more than a site visit and exchange of written representations (see section 3.1).

When the discussions with all parties are complete, the inspector will write down his or her conclusions. In the case of a planning appeal, the inspector will make a decision and write a 'decision document'. This decision can then be challenged in the High Court by the developer (appellant), the LPA, or any person who made representations during the course of a planning appeal. In enforcement appeals the right of challenge is restricted to the appellant, LPA and those having an interest in the land to which the enforcement notice relates. Judicial Review is the only recourse you will have if you are not covered by any of these as there are no third party rights of appeal in the UK.

For other inquiries (e.g. a call-in or RSS Examination in Public), the Inspector will write a report and make recommendations to the Secretary of State, or National Assembly for Wales, who will make the final decisions.

For Local Development Framework inquiries, the Inspectors decision is binding, and will be presented to the local authority.

### **Remember - the Inspector's report for LDFs is binding**

### **The decision document or letter**

In most circumstances the decision will be made by the Inspector, except on those cases requiring reports with a recommendation to the Secretary of State who will make the final decision.

The decision will be in the form of a document or letter, sent out to all parties involved. It will be worth keeping any eye on any relevant web sites.

### **Challenging the decision**

Appeal decisions can only be challenged via the High Court within 6 weeks of the date of the decision. The local authority's decision to adopt a development plan or DPD after an inquiry or examinations can also be challenged in the High Court. It is also now possible to request the correction of a 'correctable error' by making a request in writing within 6 weeks, provided the error is not part of any reasons given for the decision. See section 56 of the Planning and Compulsory Purchase Act 2004 regarding correctable errors, and also the section on complaints in the Planning Inspectorate website which covers complaints and challenges.

## **Annex A - Major Infrastructure Projects inquiries procedure**

The Major Infrastructure Project Inquiries Procedure Rules came into force on 25 August 2005 and apply to Inquiries into a Major Infrastructure Project in England, where an application for planning permission has been referred to the Secretary of State (Department for Communities and Local Government) or an appeal has been lodged against a decision of the local planning authority; or an application for listed buildings consent has been referred to the Secretary of State, or an application for the variation or discharge of conditions upon a listed buildings consent or an appeal to the Secretary of State (Department for Communities and Local Government) in respect of the decision or non-determination of an application for listed building consent by the local planning authority, or an application for conservation area consent referred to the Secretary of State (DCLG) or an appeal to the Secretary of State (DCLG) against the refusal or non-determination of the local planning authority of an application for conservation area consent.

What constitutes a major infrastructure project is defined within the Rules, and descriptions of major infrastructure projects are set out in the Schedule to the Rules as follows:

### ***Description of Major Infrastructure Project***

- (1) *Crude-oil refineries (excluding undertakings manufacturing only lubricants from crude oil) and installation for the gasification and liquefaction of 500 tonnes or more of coal or bituminous shale per day.*
- (2)(a) *Installations for the reprocessing of irradiated nuclear fuel.*
- (b) *Installations designed:*
  - (i) *for the production or enrichment of nuclear fuel;*
  - (ii) *for the processing of irradiated nuclear fuel or high-level radioactive waste;*
  - (iii) *for the final disposal of irradiated nuclear fuel;*
  - (iv) *solely for the final disposal of radioactive waste; or*
  - (v) *solely for the storage (planned for more than 10 years) of irradiated nuclear fuels or radioactive waste in a different site than the production site.*
- (3) *Integrated chemical installations, that is to say, installations for the manufacture on an industrial scale of substances using chemical conversion processes, in which several units are juxtaposed and are functionally linked to one another and which are:*
  - (a) *for the production of base organic chemicals;*
  - (b) *for the production of basic inorganic chemicals;*
  - (c) *for the production of phosphorous-, nitrogen- or potassium-based fertilizers (simple or compound fertilizers);*
  - (d) *for the production of basic plant health products and of biocides;*
  - (e) *for the production of basic pharmaceutical products using a chemical or biological process; or*
  - (f) *for the production of explosives.*
- (4) (a) *Construction of airports with a basic runway length of 2,100 metres or more.*
- (b) *Construction of a new runway, which allows an addition to the number of occasions on which aircraft may take off or land.*
- (c) *Extension of any runway by more than 100 metres.*

- (d) *Construction of a new airport terminal, or the expansion of an existing terminal, which provides additional capacity for more than 5 million passengers per annum.*
- (e) *Construction of facilities which provide additional capacity for more than 100,000 tonnes of air cargo per annum.*
- (f) *Construction of tramways, railways (including elevated and underground railways), suspended lines or similar lines of a particular type, used exclusively or mainly for passenger transport, where the area of the work exceeds 1 hectare.*
- (5) (a) *Inland waterways, canalisation and flood-relief works where the area of the work exceeds 1 hectare.*
- (b) *Ports for inland-waterways traffic which permit the passage of vessels of over 1,350 tonnes.*
- (c) *Trading ports, piers for loading and unloading connected to land and outside ports (excluding ferry piers), which can take vessels of over 1,350 tonnes.*
- (d) *Construction of other harbours and port installations, including fishing harbours, where the area of the works exceeds 1 hectare.*
- (6) *Waste water treatment plants with a capacity exceeding 150,000 population equivalent as defined in Article 2 point (6) of Directive 91/271/EEC.*
- (7) *Extraction of petroleum and natural gas for commercial purposes where the amount extracted exceeds 500 tonnes per day in the case of petroleum and 500,000 cubic metres per day in the case of gas.*
- (8) *Dams and other installations designed for the holding back or permanent storage of water, where a new or additional amount of water held back or stored exceeds 10 million cubic metres.*
- (9) *Pipelines for the transport of gas, oil or chemicals where the area of the works exceeds 1 hectare or, in the case of a gas pipeline, the installation has a design operating pressure exceeding 7 bar gauge.*
- (10) *Quarries and open-cast mines and deep mines where the production level is greater than 2 million tonnes per annum.*
- (11) *Installation for storage of petroleum, petrochemical or chemical products with a capacity of 200,000 tonnes or more.*

## Annex B - Call ins

The policy for 'recovering' appeals for the Secretary of State's determination is to be found in a House of Commons Hansard Written Answer for 25 July 2000:

*Angela Smith: To ask the Secretary of State for the Environment, Transport and the Regions what is his policy on recovering planning appeals in England. [132884]*

*Mr Raynsford: Most planning appeals are transferred to The Planning Inspectorate for Inspectors to decide on behalf of the Secretary of State. Typically between 100 and 150 appeals have been recovered by the Secretary of State for his own determination, out of around 13,000 planning appeals each year. My right hon. Friend's policy for recovering cases is set out in the following guidelines:*

- 7. Proposals for development of major importance having more than local significance.*
- 8. Proposals giving rise to significant public controversy.*
- 9. Proposals which raise important or novel issues of development control.*
- 10. Retail or leisure development over 9,000 sq m.*
- 11. Proposals for significant development in the Green Belt.*
- 12. Major proposals involving the winning and working of minerals.*
- 13. Proposals which raise legal difficulties.*
- 14. Proposals against which another Government Department has raised major objections.*
- 15. Cases which can only be decided in conjunction with a case over which Inspectors have no jurisdiction (so-called "linked" cases).*
- 16. There may on occasion be other cases which merit recovery because of the particular circumstances.*

These criteria replace the previous guidelines for recovering appeals set out in the 1986 White Paper 'Planning appeals, call in and major public inquiries (command 43)

25 July 2000: Column 594W

## **Annex C – Statement of Case example**

Application by Peel Airports (Finningley) Ltd:

Land at Doncaster Finningley Airport, Hayfield Lane Doncaster

Your Reference: APP/F4410/V/01/000266

Rule 6: Outline Statement of Case submitted by Friends of the Earth

The proposed Finningley airport is a large scale development with local, regional, national and international implications for land use, the environment and communities.

The task for all planning decision making is to reach a balanced judgement as to the economic benefits and social and environmental impacts of a land use development. FOE believes that the application at Finningley fails to demonstrate a transport and an economic case for the development which outweighs the undoubted environmental and social impacts.

The applicant has failed to demonstrate that there is a need for additional airport capacity in the region. Whilst the stated regeneration and employment benefits of the application remain not proven the application will have a number of notable environmental and social impacts, relating to noise and air pollution, nature conservation, transport and climate change. These environmental impacts mean that the development is also in breach of well established national planning frameworks.

For these reasons FOE Y&H believe that there is a clear case for the application for Finningley airport to be refused.

At the Public Inquiry Friends of the Earth will examine:

- the relationship between the application and the Doncaster UDP & the planning brief for the airport; emerging Regional Planning Guidance; national planning guidance, and aviation & transport policy; and European guidance and directives;
- the need for the development and, within the trend of regional and national aviation growth, the case for the development not to proceed;
- transport and accessibility issues associated with the application;
- the environmental and social impact of the application (e.g noise and air pollution, nature conservation, consequential development, and other aspects), and also economic and funding aspects; and whether the development is consistent with sustainable development principles and will contribute to overall sustainable development; and will show that a case for the proposed development has not been made.

Further detail of the case to be submitted by FOE are set out in the FOE initial statement previously submitted to the Planning Inspectorate and circulated to all parties by the latter's letter of 18th July.

FOE are opposed to the development proceeding; in particular circumstances FOE would wish to see appropriate conditions imposed.

### **Document list**

In addition to documents listed by other parties:

17. AEF/ Brendon Sewill: Airports Policy - a flawed approach 2000; Tax Free Aviation 2000
18. BAA Heathrow: Heathrow Area Employee Travel Initiative
19. Berkeley Hanover Consulting: The impacts of future aviation growth in the UK 2000
20. David Banister, Joseph Berechman: Transport investment and economic development
21. DETR: Northern Air Services Study, and Regional Air Services Coordinating Study
22. DETR: Future of Transport White Paper 1998
23. DETR Guidance on Airport Transport Forums and Airport Surface Access Strategies 1999
24. DETR: UK Climate Change Strategy 2000
25. FOE: Plane Crazy - airport growth in the UK 1999
26. FOE: Aviation and noise 1998
27. FOE: Aviation and global climate change 2000
28. FOE: From planes to trains 2000
29. FOE Netherlands: The Myths of Flying - putting aviation's economic benefits into perspective 1998
30. FOE Netherlands: Environmental Policies at Europe's Airports
31. Institute for Public Policy Research: Air Transport Growth: the macroeconomic viewpoint 2001; Plane Trading - policies for reducing the climate change effects of international aviation
32. IPCC: Aviation and the Global Atmosphere 1999
33. John Whitelegg, Nick Williams: The Plane Truth - aviation and the environment 2001
34. Railtrack: Network Management Statement
35. Regional Aviation Environment Forum: Response to Future of Aviation 2001
36. Royal Commission on Environmental Pollution 18th report: Transport and the Environment 1994; 22nd report: Energy - the Changing Climate 2000
37. SACTRA: Transport and the Economy 1999
38. Strategic Rail Authority: A strategic Agenda 2001; documents relating to the East Coast Main Line franchise renewal.

## Annex D - Inquiry Timetable

Weeks before Inquiry	Regional Spatial Strategy	Local Development Framework (development plan document)	Appeal -written Appeal 6 months within of refusal	Appeal -hearing	Public Inquiry (SoS Rules 2000)	Call-in by Secretary of State	MIPs on or after 24 August 2005
	10 months before – appointment of Chair & Inspectors						Prior to MIP Inquiry, make your case to be a Major participants (Rule 6d party) and allowed to be formally represented, or to give evidence (Rule 6e)
	9 months before – appointment of panel secretary and panel assistant.						Outline SoC to be presented within 8 weeks of notice First PIM to be held within 16 weeks of notification letter
24 weeks							Max time 24 weeks from initial date to PI
22 weeks						Call-in letter and SOM sent. Max time 22weeks from initial date to PI	
21 weeks						PINS acknowledges receipt of all documents for call-in	

20 weeks					PINS acknowledges receipt of all documents for appeal. Inquiry date set not later than 20 weeks. LPA notifies stats.	LPA to inform all who made representations at the application stage to be notified of timetable	End of registration period. Those who register are sent an acknowledgement letter confirming status
18 weeks					LPA to ensure that SoS and the Appellant receive a completed appeals questionnaire and a copy of each of the documents referred to in it. All who made representations at the application stage to be notified and timetable. Inspector name to be announced.		
16						Rule 6 Statement of Cases submitted	Outline statements of case submitted. Outline statements due from other parties (Usually major participants)
14					All initial outline statements of case to be submitted	Where PIM called by SOS outline statement's of cases submitted	Where PIM called by SOS outline statement's of cases submitted
12	1st preliminary meeting – public.		Day 1 - DOE acknowledgement Day 5 - LPA notifies everyone who	Notice of appeal, acknowledged by PINS.			

	Consultation draft list of matters and participants.		submitted representations on original planning application	Appellant and LPA offered local inquiry or hearing			
11					Responses to Statements of Case	Responses to statements of case	
10			LPA completes questionnaire about the case to PINS	* LPA returns questionnaire to PINS. * Interested parties and consultees notified.			Last PIM Last pre inquiry meeting 10 weeks before inquiry start date. Timetable for submission of SOC/proofs statement of case set
8	End of consultation on matters and participants.	Pre examination meeting (or 12 weeks for more complex documents). Timetable to be set by Inspector	Representations from interested persons		Inspector announces the matters he particularly wishes to be informed about.	Pre Inquiry Meeting	
7		LPA to adopt as quickly as possible			2 weeks notice given of Pre Inquiry Meeting		
6	Revised list published		LPA separate statement (if any)	All written hearing statements to PINS			
5	2 <sup>nd</sup> preliminary meeting – public						
4					4 weeks notice given of PI.	Deadline for submission of	SoCG submitted as agreed at PIM

					Deadline of all Proofs of Evidence to SoS	Proofs and Statement of Common Ground	PoEs to be submitted as agreed in PIM
3			Appellants & LPA response to representations	LPA / Appellant comments on hearing statements to PINS			
2				A hearing date is offered and must be accepted or not within 7 days			Issue of SoS approved inquiry timetable
0	EiP likely to last 3 – 6 weeks			Public Hearing	Public Inquiry	Public inquiry	MIP inquiry start
	2-3 months – Panel report to GO				No date for findings needed, though Govt targets are set each year.		Decision letter as soon as possible (months?) If called, further evidence possible within 3 weeks of letter
	Within 2 weeks of report made public. 8 week consultation.						High court challenge within 6 weeks. Document inspection available for 6 weeks after decision.
	7 weeks after event					Inspector's report submitted	
	2 months after consultation revised RSS published.						

## Sources of help

It is vital that you get hold of several excellent publications which go into much greater detail than this briefing.

Planning Inspectorate guides in general:

<http://www.planning-inspectorate.gov.uk/pins/appeals/guides.htm>

A Framework for Assessing Soundness and Focussing Representation on Development Plan Documents and Statements of Community Involvement (England)

<http://www.planning-inspectorate.gov.uk>

Guide to the Examination of Local Development Plans (Wales)

<http://www.planning-inspectorate.gov.uk>

LDFs and Development Plan Inquiries and Examinations

[http://www.planning-inspectorate.gov.uk/pins/appeals/local\\_dev/dev\\_plan\\_inquiry\\_practice.htm](http://www.planning-inspectorate.gov.uk/pins/appeals/local_dev/dev_plan_inquiry_practice.htm)

Planning appeals procedures: Circular 05/00

<http://www.communities.gov.uk/index.asp?id=1144370>

Inquiry by hearing or by letter?

[http://www.planning-inspectorate.gov.uk/pins/appeals/planning\\_appeals/indicative\\_criteria.htm](http://www.planning-inspectorate.gov.uk/pins/appeals/planning_appeals/indicative_criteria.htm)

Call ins

[http://www.planning-inspectorate.gov.uk/pins/appeals/advert\\_appeals/called\\_in\\_appeals\\_guide.htm](http://www.planning-inspectorate.gov.uk/pins/appeals/advert_appeals/called_in_appeals_guide.htm)

Planning inquiries into Major Infrastructure Projects

ODPM/DCLG Circular 07/2005

<http://www.communities.gov.uk/index.asp?id=1164612>

Statutory Instrument 2005 No. 2115: The Town and Country Planning (Major Infrastructure Project Inquiries Procedure) (England) Rules 2005

<http://www.opsi.gov.uk/si/si2005/20052115.htm>

Transport and works act orders unit 1992

[http://www.dft.gov.uk/stellent/groups/dft\\_about/documents/divisionhomepage/030776\\_hcsp](http://www.dft.gov.uk/stellent/groups/dft_about/documents/divisionhomepage/030776_hcsp)

Transport and Works Act 1992

[http://www.opsi.gov.uk/acts/acts1992/Ukpga\\_19920042\\_en\\_1.htm](http://www.opsi.gov.uk/acts/acts1992/Ukpga_19920042_en_1.htm)

The Transport and Works (Inquiries Procedure) Rule 2004

<http://www.opsi.gov.uk/si/si2004/20042018.htm>

The Conduct of Planning Inquiries

<http://www.planning->

[inspectorate.gov.uk/pins/inquiries/conduct/conduct\\_inquiries\\_20020204.htm](http://www.planning-inspectorate.gov.uk/pins/inquiries/conduct/conduct_inquiries_20020204.htm)

Inspectors Code of Conduct

[http://www.planning-inspectorate.gov.uk/pins/inquiries/conduct\\_inspector/conduct\\_inspectors\\_code.htm](http://www.planning-inspectorate.gov.uk/pins/inquiries/conduct_inspector/conduct_inspectors_code.htm)

Enforcement appeals

[http://www.planning-inspectorate.gov.uk/pins/appeals/enforcement\\_appeals/guide\\_making\\_enfo\\_appeal\\_RL10.pdf](http://www.planning-inspectorate.gov.uk/pins/appeals/enforcement_appeals/guide_making_enfo_appeal_RL10.pdf)

Guide to taking part in enforcement appeals:

[http://www.planning-inspectorate.gov.uk/pins/appeals/enforcement\\_appeals/guide\\_taking\\_part\\_enforcement\\_rl12\\_jan04.pdf](http://www.planning-inspectorate.gov.uk/pins/appeals/enforcement_appeals/guide_taking_part_enforcement_rl12_jan04.pdf)

Making a complaint – Planning Inspectorate

[http://www.planning-inspectorate.gov.uk/pins/agency\\_info/complaints\\_dealing.htm](http://www.planning-inspectorate.gov.uk/pins/agency_info/complaints_dealing.htm)

## Further information and guidance:

Friends of the Earth – Tel: 020 7490 1555  
26-28 Underwood Street  
London N1 4JQ  
Website: [www.foe.co.uk](http://www.foe.co.uk)

### **Planning**

Email: [planning@foe.co.uk](mailto:planning@foe.co.uk)  
Website: [www.YourPlanningRights.co.uk](http://www.YourPlanningRights.co.uk)

### **Right to Know**

Email: [right2know@foe.co.uk](mailto:right2know@foe.co.uk)  
Website: [www.RightToKnowOnline.org](http://www.RightToKnowOnline.org)

### **Rights and Justice Centre**

Email: [legal@foe.co.uk](mailto:legal@foe.co.uk)

## Useful web sites

### **Government**

Department for Communities and Local Government  
<http://www.communities.gov.uk/>

The Planning Inspectorate  
<http://www.planning-inspectorate.gov.uk/>

Environment Agency  
[www.environment-agency.gov.uk/](http://www.environment-agency.gov.uk/)

Information Commissioners Office  
[www.ico.gov.uk](http://www.ico.gov.uk)

The Planning and Compulsory Purchase Act 2004  
[www.legislation.hmso.gov.uk/acts/acts2004/20040005.htm](http://www.legislation.hmso.gov.uk/acts/acts2004/20040005.htm)

Planning Portal  
[www.planningportal.gov.uk](http://www.planningportal.gov.uk)

### **Non Governmental Organisations (NGO)**

Campaign to Protect Rural England planning site  
[www.planninghelp.org.uk](http://www.planninghelp.org.uk)

Environmental Law Foundation  
[www.elflaw.org/](http://www.elflaw.org/)

Liberty  
[www.liberty-human-rights.org.uk/](http://www.liberty-human-rights.org.uk/)

Neighbourhood Initiatives Foundation  
[www.nif.co.uk/](http://www.nif.co.uk/)

Planning Aid  
[www.planningaid.rtpi.org.uk](http://www.planningaid.rtpi.org.uk)

Wildlife and Countryside Link.  
[www.wcl.org.uk](http://www.wcl.org.uk)