

**Independent Examination
of Local Development Plans
DRAFT PROCEDURES**



Planning Appeals
Commission

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Introduction

[1] This publication, which is being issued for consultation purposes, explains how the Planning Appeals Commission proposes to carry out independent examinations into local development plans. Although not an exact statement of the law, it is intended to assist those who will be taking part in the examination process.

[2] The Commission has a default power under Section 204(5) of the Planning Act (Northern Ireland) 2011 to determine its procedures. The draft procedures set out here are based on the principles of openness, fairness and impartiality which the Commission practises. When the procedures are finalised, all participants in examinations will be expected to follow them and to act in a co-operative and reasonable manner.

The Planning Appeals Commission

[3] The Planning Appeals Commission is a statutory tribunal, independent of any government department, government agency or district council. It is committed to ensuring that the examination process is as user friendly as possible and involves the best use of resources. Members of the Commission are public appointees and are called Commissioners. They have varied backgrounds and qualifications including town planning, architecture, environmental science and law. Administrative staff are responsible for the Commission's day-to-day work. While they are available to deal with queries from the public about procedures, they are unable to comment on the merits of local development plans or individual representations.

[4] All information presented to the Commission is processed in accordance with the Data Protection Act 1998 (see Appendix 1).

The Legislation

[5] The 2011 Planning Act introduced entirely new provisions for the preparation and examination of local development plans. District councils are required to prepare a plan strategy and a local policies plan for their areas. In this publication, the word "plan" is used for development plan documents of both types. Councils must submit their plans to the Department for Infrastructure and the Department may request the Commission to carry out an independent examination. More detailed provisions are contained in the Planning (Local Development Plan) Regulations (Northern Ireland) 2015.

[6] When a plan is referred to the Commission, a Commissioner (or Commissioners) will be appointed to run the examination. A Programme Officer will also be appointed to administer the process. The examination process will involve the consideration of written evidence as well as the conduct of hearing sessions. Appendix 2 sets out the main events. Any person who has, within the period allowed for doing so, made representations seeking to change the plan has a statutory right to an opportunity to be heard by the Commission. That right does not extend to persons who made counter representations. People are entitled to represent themselves at a hearing but if they need help to present their case, they may wish to appoint a professional adviser.

[7] When the hearing sessions are concluded, the Commissioner will prepare a report to the Department, make recommendations and give reasons for the recommendations. On receipt of the report, it will be for the Department to decide whether to direct the council to adopt the plan as submitted, adopt it with modifications, or withdraw it.

Soundness

[8] The purpose of an examination is to determine whether a plan satisfies statutory requirements and is sound. Legal compliance and soundness are overlapping concepts. In carrying out the examination, the Commissioner will apply a series of tests derived from the Department's Development Plan Practice Note 06. These tests are set out in Appendix 3.

[9] It is very important that all participants appreciate that the focus of the examination and the Commissioner's report will be on the **soundness** of the plan and not on individual representations or sites. This represents a fundamental change from the development plan system that existed before the 2011 Planning Act came into force.

Making Representations

[10] People who make representations seeking to change a plan are strongly advised to state clearly why they consider the plan to be unsound, having regard to the tests in Appendix 3. If the council provides a form for making representations, it should be used. Each suggested change should be the subject of a separate representation. Every representation should say precisely how the plan should be changed in order to achieve soundness. It should be supported, **succinctly**, by all the evidence thought necessary to justify the proposed change. **There will be no further opportunity to submit information unless the Commissioner requests it.**

[11] The substance of the representations is of more significance than the number of people making representations. Where several people share a common view on how a plan should be changed, they are encouraged to co-operate with each other, pool resources and make a single representation.

[12] Persons who make representations seeking to change the plan should indicate whether they are content to have their representations considered in written form only or whether they wish to be heard orally. **The Commission will give every representation the same careful consideration regardless of whether the person who made it is heard orally or not.**

Submitting the Plan

[13] The 2011 Planning Act states that a council must not submit a plan to the Department unless it has complied with the requirements of the Local Development Plan Regulations and unless it thinks that the plan is ready for independent examination. This calls for a critical and rigorous self-assessment of the plan by the council's planning team. The starting point for any examination will be that the council has submitted what it believes to be a sound plan.

[14] The council is required to send the Department certain prescribed documents in addition to the plan. These include:-

- an appraisal of the sustainability of the plan;
- the council's statement of community involvement and evidence that the council has complied with it;
- statutory notices published at various stages of plan preparation;
- the timetable for plan preparation; and
- a summary of the main issues raised in response to the council's preferred options paper and of how those responses were taken into account.

[15] The council is also required to send a copy of all representations made in response to the plan and all counter representations relating to specific sites. It is vitally important that a complete, legible and clearly indexed set of responses is provided, otherwise the examination process may be delayed. The Department will make the representations and counter representations available to the Commission. **No one need correspond directly with the Commission in order to register an interest.**

[16] Before the plan is submitted, the council's planning team should carefully categorise and analyse all representations and counter representations. The council should set up a database to manage the responses received. It should be structured so that the representations are capable of being listed in various ways, including by person, contact details, soundness test, policy, paragraph, plan map and site address; and so that counter representations can be linked to representations and vice versa. The database should highlight those representations where an oral hearing is required.

[17] The council is also required to send at submission stage a summary of the main issues raised in the representations and any supporting documents that in the council's opinion are relevant to the preparation of the plan. While it is not a statutory requirement, it would be very helpful if the council were to set out its views on the main issues it has identified, perhaps in a series of topic papers, as well as its comments on all the representations. Other documents likely to be necessary for the examination include any technical supplements prepared by the council to inform plan making, any assessment carried out under the Habitats Regulations and the council's self-assessment of legal compliance and soundness.

[18] The Department will make available to the Commission all information provided by the council at submission stage. The Programme Officer will ensure that this information is uploaded to a dedicated area on the Commission's website. The website will be updated regularly as the examination proceeds.

Initial Assessment

[19] The Commissioner's first tasks when starting work on a plan will be to consider whether the council has submitted all the information necessary to enable the examination to proceed, to check that all essential regulatory steps have been taken, and to identify any fundamental concerns about the plan's contents. If the Commissioner forms an early view that the plan may have serious shortcomings indicative of unsoundness, these will be raised, in writing, with the council and with anyone who made representations related to those concerns.

[20] Depending on the replies received, the Commissioner may call an **exploratory meeting** with the council and the other relevant parties to discuss the concerns. That will normally happen in advance of the opening of the examination hearings. The Commissioner will lead the meeting, communicate his or her concerns, and invite the participants to give their views. If the concerns are resolved to the Commissioner's satisfaction, the examination process will proceed to the hearing sessions.

[21] Where, as a result of the exploratory meeting, the Commissioner concludes that there remain serious concerns which are unlikely to be overcome, he or she may send an interim report to the Department recommending it to direct the council to withdraw the plan. Alternatively, the Commissioner and the parties may agree that the examination process should be suspended to allow the council to undertake further work. A partial suspension affecting only certain elements of the plan is a possibility, provided those elements are distinct and separate and unlikely to undermine the soundness of the remainder of the plan.

Pre Hearing Stage

[22] If no obvious procedural deficiencies are manifest, or if any concerns that have arisen have been overcome, the Commissioner will set a date for the opening of the public hearings and make an estimate of how long they are likely to last. This indicative timetable will be notified to everyone who has the right to take part about eight weeks before the opening date. It will also be posted on the Commission's website.

[23] No one should send in written material unless the Commissioner requests it. **Unsolicited material will be returned or disregarded.** The Commissioner will ask for further written evidence from the council and other relevant parties if he or she identifies gaps in the information which are critical to assessing the plan's soundness. The Commissioner may, for example, identify soundness issues that were not raised in the representations. Parties are encouraged where possible to narrow down the areas in dispute by agreeing facts and methodologies. The extent of any agreement should be identified in the written responses.

[24] The date for submission of responses to any particular information request will normally be the same for all parties concerned. An indicative word limit may be set. Responses may be submitted electronically provided file size is not excessive, but at least one paper copy must be provided. At least four copies will be required of any material submitted in paper format only. All responses received within the period specified will be placed on the website. **Responses received after the specified date will be returned or disregarded.**

[25] In-depth reading of the documentation will enable the Commissioner to identify the topics and issues that will be the focus of the examination, establish the structure and likely duration of the hearings, and pose relevant questions. **Topics** are the broad subjects to be considered – examples include settlement strategy, housing provision, natural and built heritage, and land subject to constraints. **Issues** are the matters on which the Commissioner's assessment of the plan's soundness will depend. The Commissioner's **questions** will be designed to delve further into the issues.

[26] The Commissioner will draw up a detailed programme for the public hearings. The council will be expected to be represented throughout. Persons who have the right to take part will be allocated to hearing sessions, having regard to the topics they raised and the nature of the issues that the Commissioner will be probing. The programme and the lists of topics, issues and questions will be placed on the Commission's website and sent to all concerned about three weeks before the opening date. Those who indicated that they wished to appear will be asked to confirm that this is still the case.

[27] The Commissioner may invite persons or organisations who have not made representations to attend a hearing session where their evidence could be important in determining the soundness of the plan. For example, neighbouring councils or other public bodies may have specialist information or expertise that the Commissioner wishes to explore.

The Hearing Sessions

[28] On arrival at the hearing venue, people who have been invited to attend will be directed to the seats allocated to them at a rectangular table. Nameplates will be provided for each party. If there is not enough room at the table, additional representatives may sit behind the lead speakers and swop seats when necessary.

[29] The hearing sessions are public events and anyone may come along to observe. The press may attend but there will be no live coverage. Proceedings may be recorded only with the prior permission of the Commissioner and copies of the recording must be provided for the Commission and all who request them. If people who will be taking part or observing require disabled access or have hearing difficulties or other special needs, they should let the Programme Officer know well in advance.

[30] The Commissioner will conduct the hearing sessions and direct when people should speak. Written material will be taken as read and should not be repeated. All participants must respect the Commissioner's rulings. Any problems should be raised with him or her **in public** at an appropriate time during proceedings. The Commissioner will ensure that all topics and issues relating to soundness are properly discussed.

[31] The hearings will follow the pre-prepared programme and consider the topics, issues and questions which the Commissioner has identified. The Commissioner will lead a series of round-table discussions and draw parties into debate in a logical order. Participants may indicate their wish to speak by turning their nameplates on end. When no more is likely to be said to assist the Commissioner's conclusions on soundness, discussion will move on to the next item. Questioning between parties will not normally be permitted. Undue legalism will be discouraged as it can unnerve other participants and undermine the principle that everyone is an equal partner in discussion.

The Commissioner's Report

[32] At the end of the last hearing session, the Commissioner will indicate when he or she expects to deliver a report to the Department. The Commissioner will examine all the evidence relevant to soundness and where necessary visit relevant sites. In writing the report, the Commissioner will aim for brevity and concentrate on:-

- reaching clear, reasoned conclusions on the plan's compliance with the statutory requirements and its soundness; and
- setting out any modifications to the plan which are required to overcome any correctable shortcomings in regard to statutory requirements or soundness.

[33] The report will culminate in an overall recommendation as to whether the plan should be adopted, with or without modifications, or withdrawn. However, modifications will not be recommended unless they are considered necessary to make the plan legally compliant or sound and modifications which would make the plan unsound will not be recommended. Since the examination is not an inquiry into objections, the report will not summarise the cases of individual parties. Direct reference to specific representations or the people who made them will generally be avoided.

[34] The Department will be required to consider the Commission's recommendations but will not be obliged to accept them. Release of the report will be a matter for the Department.

Concerns about the Examination Process

[35] In carrying out its statutory responsibilities for independent examination of local development plans, the Commission will endeavour to provide a high quality public service. However, anyone who was involved in an examination process and is dissatisfied about the way it was conducted can make a formal complaint. Details of the Commission's complaints system are provided on its website www.pacni.gov.uk and a leaflet is available on request. Procedural decisions and rulings made by the Commission or the Commissioner can be challenged on a point of law by applying to the High Court for a judicial review. Anyone considering such a course should seek legal advice.

Commenting on the Draft Procedures

[36] This draft document is being forwarded to all planning authorities and to others in the planning community who come into regular contact with the Commission. Any comments should be made in writing to reach the Commission by no later than **Monday, 27th February 2017**. Comments should be e-mailed to info@pacni.gov.uk or posted or delivered to the Chief Administrative Officer, Planning Appeals Commission, Park House, 87/91 Great Victoria Street, Belfast, BT2 7AG. All comments received will be carefully considered. It is intended that a final version of the procedures will be published by the end of April 2017.

Appendix 1

DATA PROTECTION AND FREEDOM OF INFORMATION

The Data Protection Act regulates the processing of information relating to individuals, including the obtaining, holding, use or disclosure of such information. The Commission is fully committed to complying with the Act.

The Commission receives a range of personal information from a number of sources, which falls within the remit of the Data Protection Act. This includes representations about development proposals. The information received by the Commission varies but may include:-

- details of an individual's name, address and occupation;
- information about the health, personal or family circumstances of an individual; and
- an individual's opinions about a development proposal.

This information is held and considered by the Commission in accordance with the principles set out in the Data Protection Act. It is only used by the Commission for the purpose for which it was provided. It is only retained as long as reasonably necessary, usually no longer than three years from the completion of the Commission's work. However, all Commission reports and decisions must have clear reasons for the conclusions reached and it may be necessary to refer to an individual's personal or family circumstances in a report or decision, which may be retained indefinitely.

The Commission is a tribunal and must operate openly, fairly and impartially. All documents on casework files can be viewed by any member of the public, under the Commission's supervision.

An individual should therefore only provide personal or sensitive information that he/she accepts will be available to the public. No-one should present personal information about other people without their consent. Information provided will not be vetted or redacted by the Commission because of its role to carry out its functions as an independent decision maker in an open, fair and transparent manner.

Under the Data Protection Act, an individual can request access to his/her personal information held by the Commission. Such requests should be in writing and sent to the address below. There is a charge of £10 for requests and the person making the request will also need to send proof of identity.

A request made under the Data Protection Act should include:-

- the specific information which is being sought;
- who you are and how you can be contacted;
- how you would like to receive the information.

Please also identify any accessibility requirements you may have and if you need to receive the information in a particular format, for example, large print, Braille etc.

You are entitled to a response to your request within 40 calendar days. It is in the Commission's and your interests to hold accurate data. If the data is inaccurate, you can ask us to erase, amend or add to the information though you should note that personal or family circumstances referred to in a Commission report or decision cannot be changed. There will be no charge for this.

Any complaints about how the Commission dealt with requests about information will be processed in accordance with the Commission's Complaints System which is published under Publications on the Commission's website. These complaints will not be reviewed by the Complaints Audit Panel, see below.

If you remain dissatisfied with the Commission's response to your information request you may contact the Information Commissioner at

51 Adelaide Street
BELFAST BT2 8FE
Telephone number: (028) 9026-9380
Fax number: (028) 9026-9388
email address: ni@ico.gsi.gov.uk; or
website address: www.ico.gov.uk.

Requests for access to personal information should be sent to

The Chief Administrative Officer
Park House
87-91 Great Victoria Street
BELFAST BT2 7AG
Telephone number: (028) 9024-4710
Fax number: (028) 9031-1338
e-mail address: info@pacni.gov.uk
website address: www.pacni.gov.uk

The Commission reviews its procedures regularly to ensure continued compliance with the Data Protection Act.

Freedom of Information Act - The Commission is not identified as a Public Authority under the Act. The Environmental Information Regulations 2004 apply to any body that has public responsibilities relating to the environment, exercises functions of a public nature relating to the environment or provides public services relating to the environment. This could include the Commission but the Regulations do not apply to the extent that the Commission is acting in a judicial capacity. Nonetheless, as a tribunal which operates openly fairly and impartially, the Commission seeks to comply with the spirit of the Act and Regulations.

Appendix 2

THE EXAMINATION: THE MAIN EVENTS

The council submits the plan for examination to the Department and provides all necessary information including all representations and counter representations.

The Department refers the plan to the Commission and a Commissioner is appointed to conduct the examination. A Programme Officer is also appointed.

The Commissioner makes an initial assessment of the plan and holds an exploratory meeting if there are concerns of a serious nature.

The Commissioner, if content that the examination should proceed, may seek further written evidence from the council and others.

The Commissioner draws up a detailed programme for the hearings with topics, issues and questions, and allocates participants to particular sessions.

The Commissioner conducts the hearings.

The Commissioner prepares a report with recommendations and it is sent to the Department.

The Department considers the recommendations and decides whether to direct that the plan be adopted, modified or withdrawn.

Appendix 3

TESTS FOR SOUNDNESS

Procedural tests

P1. Has the plan been prepared in accordance with the council's timetable and the Statement of Community Involvement?

P2. Has the council prepared its Preferred Options Paper and taken into account any representations made?

P3. Has the plan been subject to sustainability appraisal including Strategic Environmental Assessment?

P4. Did the council comply with the regulations on the form and content of plans and on the procedure for preparing such documents?

Consistency tests

C1. Did the council take account of the Regional Development Strategy?

C2. Did the council take account of its Community Plan?

C3. Did the council take account of policy and guidance issued by the Department?

C4. Has the plan had regard to other relevant plans, policies and strategies relating to the council's district or to any adjoining council's district?

Coherence and effectiveness tests

CE1. Does the plan set out a coherent strategy from which its policies and allocations logically flow? Where cross boundary issues are relevant is it in conflict with the plans of neighbouring councils?

CE2. Are the strategy, policies and allocations realistic and appropriate having considered the relevant alternatives and they are founded on a robust evidence base?

CE3. Are there clear mechanisms for implementation and monitoring?

CE4. Is the plan reasonably flexible to enable it to deal with changing circumstances?

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