



The Planning
Inspectorate

LOCAL DEVELOPMENT FRAMEWORKS

Examining Development Plan Documents:
Procedure Guidance

August 2009 (2nd Edition)



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Introduction

1. This document is concerned with the procedural aspects of dealing with the examination of development plan documents (DPDs). This second edition provides a revised model form (and model note) for the gathering of representations at publication stage. Pre-submission procedural matters are detailed in the Plan Making Manual¹.
2. The qualitative analysis carried out by the appointed Inspector in relation to checking the legal compliance and soundness of DPDs is dealt with in the Inspectorate document '*Examining Development Plan Documents: Soundness Guidance (August 2009)*'².
3. This guide is aimed at all those involved in the process of examining a DPD, including Inspectors who will seek to work within the parameters set out in this guidance. Whilst the statutory basis for the examination is provided in section 20 of the Planning and Compulsory Purchase Act 2004 (as amended) (the 2004 Act)³, the detailed procedural aspects of the examination are not prescribed in legislation. This affords some flexibility in administering the examination process to accommodate the needs of all those involved. However, Inspectors will seek in the interest of consistency to have regard to the spirit of other procedure rules governing determination procedures to ensure matters such as the timely circulation of papers and reasonable notice to participants for pre-hearing meetings are administered fairly⁴.

Footnotes

1. View at: <http://www.pas.gov.uk/pas/core/page.do?pageId=51391>
2. View at: http://www.planning-inspectorate.gov.uk/pins/appeals/local_dev/ldf_testing_soundness.pdf
3. View the 2004 Act at:
http://www.opsi.gov.uk/acts/acts2004/ukpga_20040005_en_1
View the amending 2008 Act at:
http://www.opsi.gov.uk/acts/acts2008/pdf/ukpga_20080029_en.pdf
4. In relation to the hearing start date, the Town and Country (Local Development) (England) Regulations 2004 prescribe that at least 6 weeks notice should be given before hearings commence. See regulation 34 of 2004 Regulations. View at: <http://www.opsi.gov.uk/si/si2004/20042204.htm>. Also note that the 2004 Regulations have been amended by regulations made in 2008 and 2009. View the 2008 Regulations at: http://www.opsi.gov.uk/si/si2008/pdf/uksi_20081371_en.pdf View the 2009 Regulations at: http://www.opsi.gov.uk/si/si2009/pdf/uksi_20090401_en.pdf

Overview

An efficient examination process

4. The key procedural change in relation to the examination of DPDs under the Town and Country Planning (Local Development) (England) (Amendment) Regulations 2008⁵ is that Local Planning Authorities (LPAs) now publish the draft DPD for the gathering of representations prior to submission and provide the Inspectorate with a summary of the main issues raised in the representations on submission. This offers a key opportunity to speed up the examination process since Inspectors now have all the necessary material on submission. As such the Inspectorate seeks to deliver a far more challenging examination timetable in recognition of the need to ensure priority DPDs particularly are taken through the examination process as quickly as is practicable.
5. The Inspectorate will now aim to deliver fact check reports on most examinations (those with 8 hearing days or less) within 6 months from submission. See tables 1 and 2 below for further guidance.
6. Equally it is essential that LPAs are equipped to move swiftly into the examination process on submission, particularly making sure there is provision of a complete evidence base and ensuring a Programme Officer (PO) is in place. It must be remembered that the examination process starts on submission of the DPD.
7. LPAs should rigorously assess the DPD before it is published under Regulation 27 to ensure that it is a plan which they think is sound. The document published should be the document they intend to submit under Regulation 30 to the Inspectorate. The 2004 Act specifically provides that a LPA must not submit the DPD unless it considers the document is ready for examination⁶. Changes after submission by the LPA should be unnecessary and may be disregarded by the Inspector unless there are exceptional reasons that justify them.
8. The Inspector assesses the whole document for legal compliance and soundness – this means dealing with the main issues which go to the heart of the DPD, and not getting involved unnecessarily with the details of the plan. The examination must centre on the issues identified by the Inspector having regard to the requirements of legal compliance and the 3 soundness tests.

Footnotes

5. Regulation 27. View at http://www.opsi.gov.uk/si/si2008/pdf/uksi_20081371_en.pdf

6. See section 20(2).

9. The Inspector takes control of the examination process from start to finish. He/she will be proactive from the time of appointment, in order to see if there are problems with the document which can be identified at an early stage. This may necessitate holding an exploratory meeting. The Inspector will define the matters and issues which will provide the focus for the hearings. For Inspectors, frontloading effectively means that by the time the hearing sessions start, they must be thoroughly familiar with the document, how it was prepared and the issues it raises.
10. Hearing sessions are based on the Inspector's definition of matters and issues, and are not driven by the representations. The sessions will be inquisitorial, with the Inspector probing the issues as opposed to an adversarial approach. Those who have sought changes to the DPD and signalled a wish to be heard must be invited to the hearings. If essential, additional parties who did not ask to attend, may be invited by the Inspector to contribute specialist expertise and knowledge.
11. Inspectors will draft reports on the premise that they should aim to be brief, avoiding direct reference to 'representations' as far as possible. They will provide clear conclusions in relation to legal compliance and the soundness tests. Inspectors will be mindful that the DPD is the local authority's document and will start from the assumption that the LPA has submitted what it considers to be a sound plan⁷.

The key role of team working in the Inspectorate

12. An important feature of the examination process is that it is founded on team working involving the lead Inspector, administrators and Inspectorate planning officers. Depending on the complexity of a DPD, the lead Inspector may further be supported by an Assistant Inspector or specialist advisor. Inspectors' reports will be subject to peer review in order to achieve the highest possible level of consistency.

Footnotes

7. Paragraph 4.49, PPS12.

The Procedural Timeline - Examination of a DPD

Table 1: DPD with hearing session lasting up to 8 days

Week	Key Actions
1	<ul style="list-style-type: none"> • LPA submits DPD to the Secretary of State (in practice to the Planning Inspectorate) including a full and complete evidence base and regulation 30(1)(d) and 30(1)(e) statements. • IMPORTANT: Revised arrangements mean that it is essential that the Programme Officer (PO) is in place by submission given there is no post submission consultation stage.
2	<ul style="list-style-type: none"> • The Inspectorate will proceed to appointment of the Inspector (which will be dependent on PO being in place). The Inspectorate will carry out an initial scoping of the DPD (procedure and content) then pass to the Inspector.
3+ onwards	<ul style="list-style-type: none"> • Inspector will commence early appraisal of the DPD and make contact with the PO. Inspector will confirm the Pre-Hearing Meeting (PHM) date through the PO and provisional hearing start date. • Inspector will look for any fundamental or cumulative flaws in the DPD and write to the authority in the first instance where there are major concerns. If an exploratory meeting is required the Inspector will advise the LPA through the PO (note: an exploratory meeting is likely to lead to a consequent delay in the examination timetable). • Inspector will produce some initial Guidance Notes for participants to be circulated before the PHM. • Inspector will start giving consideration to the structure of hearings, allocate participants to hearing sessions and decide what additional material is needed from participants. • LPA may be asked to provide papers on specific issues highlighted by the Inspector. However, papers should not be put forward if not asked for by Inspector (e.g. if LPA wishes to produce topic papers, these should be part of the evidence base submitted with the DPD). • PO sends initial letter to representors.
6	<ul style="list-style-type: none"> • PO clarifies and confirms attendance at the hearings. • PO circulates Inspector's Guidance Notes to representors. LPA prepares answer to any matters and issues raised by the Inspector in the early correspondence.
7	<ul style="list-style-type: none"> • Inspector will aim to finalise the programme for the hearing sessions and the Matters & Issues/agenda for the hearings by the time of the PHM.

Week	Key Actions
8 PHM	<ul style="list-style-type: none"> • PRE-HEARING MEETING. • <u>Aim to have PHM 8 weeks after submission</u> (6 weeks before hearing sessions start). • It is important that all those who wish to be involved in the examination, particularly those attending the hearing sessions attend the PHM; at the PHM, the Inspector may invite statements from the participants on the Matters & Issues identified for the examination. • If a DPD is very straightforward and not contentious, the Inspector may deal with the DPD by written representations negating the need for a PHM and hearing sessions. Similarly where an Inspector intends to deal with the DPD through 1 or 2 days hearing session, the Inspector may deal with the PHM matters solely by exchange of correspondence. • LPA to ensure start of the hearing sessions is advertised by this stage i.e. at least 6 weeks in advance of commencing – regulation 34(2).
9+ onwards	<ul style="list-style-type: none"> • PO should circulate the Notes of the PHM, along with the programme for the hearing sessions and Matters/Agenda for the hearings as soon as practicable after the PHM. • LPA & participants will start work on providing any material requested by Inspector at the PHM – Inspector takes charge of process of what may be submitted. Date for submission of responses to the Inspector will usually be the same for all parties – process is to inform Inspector not create counter arguments and rebuttals. • The LPA and other participants in the examination have around 3 weeks after the PHM to produce their statements for the hearing session.
12	<ul style="list-style-type: none"> • Responses and statements from LPA and participants due. • PO circulates the statements - important that the statements from the LPA and other participants should be available well before the hearings commence, so that everyone (including the Inspector) is fully aware of the evidence/points being made. PO needs to circulate the LPA's statements and those of the other participants.
13	<ul style="list-style-type: none"> • PO circulates final detailed agendas for the discussions at each of the hearing sessions to the relevant participants.

Week	Key Actions
14+ onwards Hearings	<ul style="list-style-type: none"> • HEARING SESSIONS COMMENCE. • The hearing sessions form an important part of the examination process; all participants should attend on the relevant day. • Inspector will announce the report delivery date at the last hearing session (taking into account the time required for the internal quality assurance (QA) process).
17+ onwards Reporting	<ul style="list-style-type: none"> • After the hearings have concluded and the Inspector is reporting, no further representations/papers will be necessary unless specifically requested by the Inspector (the examination remains open throughout the reporting period).
23	<ul style="list-style-type: none"> • The report will be subject to an internal QA process in the Inspectorate before dispatch. This process takes around 3 weeks.
26 Fast check dispatch	<ul style="list-style-type: none"> • LPA has 2 weeks to carry out the fact check.
28 Comments from LPA	<ul style="list-style-type: none"> • Inspector will respond to the fact check matters raised by the LPA.
29 Final Report	<ul style="list-style-type: none"> • Final report will be dispatched.

Table 2: DPD with hearing sessions lasting up to 12 days⁸

Week	Key Actions
1-14	<ul style="list-style-type: none"> • As set out in Table 1 above.
14+ onwards Hearings	<ul style="list-style-type: none"> • HEARING SESSIONS COMMENCE. • The hearing sessions form an important part of the examination process; all participants should attend on the relevant day. • Inspector will announce the report delivery date at the last hearing session (taking into account the time required for the internal quality assurance (QA) process).
19+ onwards Reporting	<ul style="list-style-type: none"> • After the hearings have concluded and the Inspector is reporting, no further representations/papers will be necessary unless specifically requested by the Inspector (the examination remains open throughout the reporting period).
31	<ul style="list-style-type: none"> • The report will be subject to an internal QA process in the Inspectorate before dispatch. This process takes around 3 weeks.
34 Fast check dispatch	<ul style="list-style-type: none"> • LPA has 2 weeks to carry out the fact check.
36 Comments From LPA	<ul style="list-style-type: none"> • Inspector will respond to the fact check matters raised by the LPA.
37 Final Report	<ul style="list-style-type: none"> • Final report will be dispatched.

Footnotes

8. Potentially, a very complex DPD may necessitate more than 12 hearing days. In these circumstances, the Inspectorate LDF administrative team will discuss an appropriately tailored timetable with the LPA.

Section 1: Submission (Weeks 0-2)

Initial tasks

- 1.1 The LPA will publish the draft DPD for gathering of representations but the examination process does not start until the published DPD is submitted. On submission the LPA submits the DPD⁹ to the Secretary of State (in practice the Planning Inspectorate) including a full and complete evidence base and regulation 30(d) and 30(e) statements¹⁰. From the Inspectorate's perspective it is absolutely paramount that the PO is established in post by submission stage (having handled the representations at publication stage) so that arrangements can be made to schedule the stages of the examination in conjunction with the LPA.
- 1.2 Providing the LPA has met the statutory and procedural requirements on submission, the Inspectorate will appoint the Inspector and will reserve the Inspector's time. The Inspectorate's administrative team (LDF team) will assist the Inspector in setting the programme for examining the DPD, allowing for the initial desk based examination time, the conduct of a 'Pre-Hearing Meeting' (PHM), hearing sessions and reporting.
- 1.3 The Inspector will be allocated time according to the complexity of the DPD. Experience to date shows that the number of Inspector days required to examine DPDs will vary according to a number of factors including the complexity of the subject matter and the level of interest locally in the DPD. The LDF team can offer advice on likely time requirements for individual DPD examinations to local authorities with indicative costs.
- 1.4 Experience to date suggests the following:
 - At least half an Inspector's time on examining a DPD is likely to be spent on the initial examination of the document and preparation for the hearing sessions;
 - DPD examinations typically sit for only a few days, usually no more than 8 (some may have no hearing sessions). However additional sitting days may be necessary for more complex and controversial DPDs; and

Footnotes

9. The submitted DPD may include an addendum setting out focused changes to the DPD, produced following the regulation 27 publication exercise. References in the guide to the submitted DPD should be read to include any submitted addendum, where relevant.
10. See paragraphs 1.1 and 1.2 of the Inspectorate publication 'Examining Development Plan Documents: Soundness Guidance'. View at: http://www.planning-inspectorate.gov.uk/pins/appeals/local_dev/ldf_testing_soundness.pdf

- Reporting periods are shorter than for old-style development plans. If the hearing sessions are carefully structured around the main matters and issues, reports should flow easily and logically. This takes into account the fact that the reports no longer respond to individual representations and hence can be much more focussed on the critical matters and issues.

Early scoping

- 1.5 Within the first 2 weeks the Inspectorate will carry out early scoping of the DPD both in relation to procedure and content to pass to the Inspector.
- 1.6 Administrators will do initial checks on the DPD and consider whether the DPD is procedurally sound (subject to the Inspector's consideration). Inspectorate planning officers carry out a more detailed qualitative check and provide a comprehensive scoping report for the Inspector. Inspectorate planning officers may also provide support at the hearing sessions and may help to prepare initial drafts of parts of the Inspector's report. However the ultimate responsibility for the whole report rests with the Inspector.
- 1.7 If the DPD raises high-level technical issues, appropriate arrangements will be made to provide specialist support to the lead Inspector, which may involve using an Assistant Inspector or engaging an external specialist advisor. The support an Assistant Inspector or advisor may provide can be wide ranging but may include provision of particular technical/specialist issues briefing; advising on matters and issues considered at the hearing session(s) and assistance with the consideration and drafting of recommendations for the Inspector's binding report.
- 1.8 The examination process provides considerable flexibility in the way that events may unfold. It enables the Inspector to hold procedural meetings (before the hearings commence) or further hearing sessions if they are needed at any stage throughout the process of the examination. In view of this flexibility the Inspector will keep in close contact with the LDF administrative team and PO to ensure, if any variation from the agreed programme is seen to be necessary, this is communicated to all parties with an interest.

Section 2: Preparation and Initial Examination (Weeks 3-7)

- 2.1 By week 3 the Inspector will commence early appraisal of the DPD and make contact with the PO. This initial contact enables the Inspector to begin to establish working arrangements. The Inspector will confirm the PHM date through the PO and the provisional hearing start date. The PO will send an initial letter to representors to make contact and set out the tentative scheduling of the examination.
- 2.2 More in-depth reading of the documentation during this period should enable the Inspector to:
- Identify the matters and issues (ensuring there are no fundamental or cumulative flaws¹¹) and establish the structure of the hearings;
 - Allocate participants to hearing sessions; and
 - Decide what additional material is needed from participants.

Where an addendum has been submitted with the published DPD, the Inspector will also make an early assessment of the status of the addendum i.e. consider whether it deals with 'focused changes'¹²; has been through public consultation and has been subject to sustainability appraisal where necessary.

Identifying matter and issues

- 2.3 An early task for the Inspector is to establish the matters and issues to be investigated at the hearings and the Inspector will do so before the PHM. These terms are used as follows:
- 'matters' - examples of which are housing provision, employment land provision, settlement strategy or flood risk;
 - 'issues' - or the key points on which decisions about the soundness of the document will depend; and
 - 'Inspector's questions' - these will be related to the issues and should be investigated at the hearing part of the examination.

Footnotes

11. Cumulative flaws will indicate a situation where the Inspector potentially might need to make so many changes to the submitted DPD that the plan could end up being a very different document to that submitted (which is likely to compromise the community involvement and sustainability appraisal considerations).
12. 'Focused changes' (and 'extensive changes') which relate to pre-submission procedure are explained in the Plan Making Manual, along with the production of an addendum to a published DPD. View at: <http://www.pas.gov.uk/pas/core/page.do?pageId=64905>
Advice is also provided on dealing with minor post publication changes (editing).

2.4 The examination will be structured around the issues identified by the Inspector as critical to the soundness of the document. The summary of main issues provided by the LPA in the regulation 30(e) statement is particularly helpful to the Inspector. However, whilst the subject matter of the representations will be taken into account, it will not dictate the structure of the examination, as the absence of representations on a matter is not a guarantee of soundness (and vice versa). Rather, the structure must derive from the Inspector's proactive and inquisitorial approach to considering soundness. The Inspector will take charge of the examination and will not spend time at the hearings (subject to the right to be heard) considering things which will not help a decision as to whether the document is sound.

Fundamental / Cumulative flaws and exploratory meetings

2.5 In looking at the matters and issues, Inspectors will seek to identify any fundamental or cumulative flaws at the first possible opportunity. This will avoid wasted time and money if the submitted DPD has major problems (or may even on the face of it appear unsound). The early work may identify key issues or concerns that the Inspector will need to discuss prior to any hearing session. Because the examination starts on submission there is scope for the Inspector to hold an early exploratory meeting(s), usually before the PHM, to clarify any matters and issues which may affect the examination process.

2.6 If the Inspector forms an early view that the submitted DPD may have serious shortcomings that point to potential unsoundness, the Inspector will bring this to the attention of the LPA. In this first instance this will be done in writing (via the PO) and if not subsequently resolved by an exchange of correspondence, an exploratory meeting will be scheduled.

2.7 Inspectors are unlikely to reach any conclusive findings of unsoundness at this stage, but may give an indication of their concerns at an exploratory meeting. It will be difficult for the Inspector to reach a conclusive finding of unsoundness prior to holding the hearing sessions where the evidence can be properly tested. Exceptionally, the Inspector may consider that the examination cannot be completed without additional work being undertaken (such as the need for further sustainability appraisal of alternative options) which may necessitate consideration of a suspension of the examination or, in the worse case scenario, withdrawal of the DPD.

2.8 Under the 2008 revised regulatory arrangements for submission, exploratory meetings should not be common place. LPAs have an opportunity (if necessary to ensure its soundness) to provide an addendum to the published DPD prior to submission¹³.

Footnotes

13. View further guidance at: <http://www.pas.gov.uk/pas/core/page.do?pageId=64053>

2.9 Further guidance on the procedures relating to exploratory meetings and suspension is provided in Section 9 'Exceptional Procedures' of this guide.

Allocating participants to hearings

2.10 Those with a right to appear and be heard are limited to those that are defined in section 20 (6) of the 2004 Act i.e. any person(s) that has made representations seeking a change to the DPD. However, the Inspector is not precluded from inviting anyone to appear and be heard at a hearing session(s) where he or she thinks that person is needed to enable the soundness of the plan to be determined. However, Inspectors cannot require any person to attend and give evidence at the hearing part of the examination.

2.11 An Inspector will begin by allocating those who wish to be heard to one of the main matters or issues. Representors with an interest in similar issues, policies and geographical areas will be invited to the same hearing session. The PO will also provide assistance to the Inspector in the allocation process. Anyone who wishes to be heard but whose concerns do not fit with the main issues will be allocated to a minor matters session at the end of the hearings. The PO should seek to explain to such representors that their concerns do not go to the heart of the Inspector's issues, to give them an opportunity to review whether they still wish to be heard or have the matter dealt with by way of written representations.

2.12 Bodies such as the Government Office, the Regional Assembly, the Highways Agency or Environment Agency may not have sought to attend, but they may have specialist information or expertise about which the Inspector needs to hear more. However, invitations to parties who have not sought to attend the hearing sessions will be issued sparingly in respect of the resource pressures on such organisations.

2.13 Copies of the matters, issues and questions for each hearing session will be sent out shortly before the pre-hearing meeting to all representors with a list of the participants who are to be invited to each session. By week 6 or around 2 weeks before the PHM the PO will clarify and confirm attendance at the hearing sessions. The Inspector will want to finalise the programme for the hearing sessions and the Matters & Issues/agenda for the hearings as soon as possible after the PHM.

Additional written material needed from participants

2.14 Papers should not be put forward if not asked for by the Inspector (e.g. if a LPA wishes to produce topic papers, these should be part of the evidence base submitted with the DPD). Similarly participants should ensure that all their evidence is provided with their representation and not expect an opportunity to submit further material during the examination.

- 2.15 The Inspector has to take charge of the process concerning submission of written material as many representors may still be in the mind-set of presenting their statements as further developments of an original 'objection'. LPAs and other participants should await specific instructions from the appointed Inspector as to what additional material, if any, the Inspector wants them to produce before the hearings start. In making a decision about what additional material may be needed, the Inspector will be guided by what he or she considers to be the critically important issues in relation to the soundness of the DPD and the material already submitted. The issues could include an issue or issues identified by the Inspector but not raised in any representation.
- 2.16 The Inspector will develop his/her list of issues and questions to which he/she will need a written response from representors. The Inspector may issue a fuller discussion note where he or she considers this is necessary to assist in explaining the context for the points needing further clarification. Where there is a substantial case being made on a matter in the representations, the Inspector may seek a statement of common ground from the parties to help focus the issues. However, the fact that the parties may agree on certain issues will not prejudice the Inspector's ability to probe those issues further to his/her satisfaction.
- 2.17 Any additional material produced by participants in response to a specific request from the Inspector will be circulated by the PO. In order to avoid a situation where the parties make further submissions countering the arguments of others (rather than focus on what the Inspector has requested), the date for submission of responses to any particular issues should normally be the same for all parties.

Guidance notes

- 2.18 The Inspector will produce initial Guidance Notes for participants to be circulated before the PHM, which outline the procedures to be used at the examination, and what is expected at the hearing sessions. These can speed up the PHM and help participants to get to grips with the procedures.

Section 3: The Pre-Hearing Meeting (Week 8)

- 3.1 A suitable date for the PHM will be set very soon after submission to ensure that reasonable notice is provided. The notice period is not prescribed but we recommend the LPA should give at least 4 weeks notice. Parties can expect the PHM for DPDs to be around 8 weeks after submission.
- 3.2 It is important that all those who wish to be involved in the examination, particularly those involved in the hearing sessions, attend the PHM. Both the authority and those that have made representations seeking changes to the DPD should be prepared to take an active role at the PHM. Whilst non-attendance at the PHM by persons seeking changes to the DPD will not prejudice the right to be heard, it is considered desirable that those who seek to appear at the examination make every effort to attend such meetings. This is because the PHM will not only deal with procedural matters but will also provide an opportunity for consideration of what the crucial issues are that need to be considered in detail at the hearings.
- 3.3 If a DPD is very straightforward, not contentious and no one wishes to appear before the Inspector, the Inspector may deal with the DPD by written representations negating the need for a PHM and hearing sessions. Similarly where an Inspector intends to deal with the DPD through only 1 or 2 days of hearing sessions, the Inspector may deal with the PHM matters solely by exchange of correspondence.
- 3.4 At the PHM the Inspector will:
 - Explain that he/she has been appointed to carry out an independent examination of the DPD to determine legal compliance and soundness and subsequently produce a report to the LPA with binding recommendations;
 - Explain that the document as submitted should be considered by the LPA to be sound. The Inspector should strongly discourage the LPA from seeking changes to a document either before or during the hearing sessions;
 - Explain the role of the PO¹⁴ as an impartial person assisting the Inspector with administrative and procedural matters; acting as the channel of communication outside the examination between the Inspector, the LPA and members of the public; making the

Footnotes

14. Guidance on the role of the programme officer is available on the LDF page of the Inspectorate's website (http://www.planning-inspectorate.gov.uk/pins/appeals/local_dev/index.htm). The Inspectorate also provides programme officer training sessions for LPA employees - for further information please email ldf.team@pins.gsi.gov.uk

arrangements for the hearing sessions and liaising with everyone involved to ensure that they run smoothly; ensuring that all the documentation connected with the examination is received, recorded and distributed and maintaining the Examination Library¹⁵ of core documents;

- Outline the procedures to be followed during the examination including the hearing sessions process;
- Make clear that all the evidence will be considered and that written representations carry as much weight as oral evidence;
- Explain the role of the Inspector's recently-circulated list of matters, issues and questions, in focusing discussion at the hearing sessions and enabling the Inspector to confirm legal compliance and test soundness. The Inspector should hear discussion and gain agreement as to what are the main issues and be receptive to varying them if reasonable changes to issues are put forward. He/she will stress the importance of any examination statements being written only in response to the issues and questions;
- Discuss the timetable for hearing sessions, and the likely timing of participants' appearances. Everyone should be informed that the programme may change and participants must keep in touch with the PO. The Inspector should emphasise the need for the examination timetable to be met;
- Ascertain whether the LPA has undertaken a 'self-assessment' exercise. This should be provided with the submitted DPD. If not, the LPA may be encouraged to prepare one before the hearing sessions;
- Offer an opportunity for questions to be put to the Inspector and for him/her to put questions to others; and
- If relevant, make clear the status of an addendum if it has been submitted with the published DPD. If the Inspector accepts the addendum is part of the submission, the Inspector will confirm that he or she also accepts the representations made on the addendum.

3.5 The Inspector will also seek confirmation from the LPA that the procedural and other matters have been appropriately addressed, particularly:

- That the DPD has been prepared in accordance with the statutory procedures;

Footnotes

15. The Examination Library should contain documents relevant to the DPD including existing plans, Planning Policy Statements, the Regional Spatial Strategy (or the London Plan), committee reports, research reports and any other information likely to be used during the examination.

- That requirements for sustainability appraisal have been met;
- That any requirements for appropriate assessment under the Habitats Regulations have been met before publication;
- That the regional body has confirmed general conformity with the RSS, or, in London, that the Mayor has indicated general conformity with the London Plan (note - the Inspector is entitled to take his/her own view on conformity); and
- That a list of core documents, providing the evidence base, has been drawn up and is available for inspection both on-line (wherever possible) and in paper form.

3.6 Statements from participants on the matters and issues should only be submitted if requested by the Inspector and must be focussed on the defined issues and questions. Where the Inspector considers it necessary, he/she can ask representors participating in hearing sessions to submit statements of limited length (not more than 3000 words is appropriate). The Inspector may invite representors who have decided not to attend the hearings to submit written statements as well, but any such requests will be limited to those who have addressed the particular matter being discussed and have sought a change to the plan in their original written representation.

3.7 A deadline will be provided at the PHM for return of statements. It should be set around 2 weeks before the start of the first hearings (i.e. around week 12). The Inspector must have sufficient time to absorb the contents of the statements. Therefore, where statements are not submitted within the deadline set by the Inspector, it will cause particular problems and the Inspector will not countenance rearranging any hearing sessions to accommodate late submission, without very good reason.

3.8 It should not normally be necessary for the LPA to submit its statement on a different (later) date than other participants. The process no longer centres on 'responding to objections'. Like everyone else, the LPA is invited to address the Inspector's soundness agenda. However, in some instances the Inspector may decide that there are advantages in having a response from the LPA to statements made by representors. In these cases different submission dates will be set by the Inspector.

3.9 The LPA should ensure that by the time the PHM is held, the hearing sessions start date has been advertised in accordance with the regulatory requirement, with a view to the hearings commencing at week 14.

3.10 The PO should circulate the Notes of the PHM, along with the programme for the hearing sessions and Matters/Agenda for the hearings as soon as practicable after the PHM.

Section 4: Before the First Hearing Sessions (Weeks 9-14)

- 4.1 At this stage the LPA and participants will start work on providing any material requested by Inspector at the PHM. The LPA and other participants can expect around 3 weeks after the PHM to produce their statements for the hearing session. As soon as the statements are received, the PO will circulate the LPA's statements and those of the other participants.

Agendas for hearing sessions

- 4.2 It is important the statements from the LPA and other participants are available well before the hearings commence so that everyone (including the Inspector) is fully aware of the evidence/points being made. In many cases, the agenda for hearings can be the same as the Inspector's note circulated earlier for the preparation of statements. Clearly, if the same list of issues and questions is used as an agenda, there will be no need to circulate another paper. However, if additional questions are raised, or some points are satisfactorily clarified by the written submissions, the agenda for the hearings may need to be reviewed by the Inspector.
- 4.3 The Inspector's note or agenda will create a strong focus on the day, by identifying a clear sequence of issues and questions that will need further examination, and may include a brief summary of the common themes of agreement/ disagreement emerging from the participants' statements. The note may also clarify any technical matters such as the methodology used in a housing needs assessment study. In some instances a technical seminar may be held in advance of the hearing sessions (see below under Section 9 Exceptional Procedures).
- 4.4 Assuming that it has been revised since the PHM, the PO should circulate the Inspector's note/detailed agenda for the discussion at each of the hearing sessions to all the participants concerned with a particular matter a week before the matter is discussed (likely to be week 13).

Section 5: Hearing Sessions (Week 14 onwards)

Managing the hearing sessions

- 5.1 The hearing sessions form an important part of the examination process. The Inspector will have completed the desk based examination of the DPD and will be looking to the hearing sessions to satisfy him/her on the remaining issues where he/she needs clarification to determine soundness.
- 5.2 The emphasis at the hearing sessions will be on informality with the Inspector inquiring into and leading a debate on the issues identified in advance. The Inspector will invite participation from those who wish to be heard and anyone else who might be required to properly explore the relevant issue. Experience shows that the group should not be larger than 15 to 20 people.
- 5.3 As such, the most appropriate room layout for the hearing session(s) will comprise a rectangular table arrangement with seats for up to 20 persons. There should be one seat per representor. Any requests for additional seats will be treated on their merits (in terms of the potential contribution of a person's evidence to the Inspector's understanding of the issues and having regard for overall numbers), but normally any additional representatives should sit behind the lead speaker and 'hot-seat' at an appropriate time if necessary. Similarly the LPA may wish to have support staff available sitting behind the person who is representing the LPA at the table.
- 5.4 Parties making late requests to attend hearings who have not sent in representations in accordance with the statutory timetable will not be heard, although they may attend as observers. Inspectors will adopt a robust approach and refuse to hear late representations, unless exceptionally the party concerned has particular knowledge and expertise which the Inspector needs to hear to investigate the soundness of the document. Representors who are supporting the LPA at submission stage do not have a right to appear. As previously noted, the starting point for the examination is the assumption that the LPA has submitted what it considers to be a sound plan and supporters will not be seeking a change to the plan. A firm line will be taken against supporters' requests to appear since their position is represented by the Council. However, if the Inspector considers that it would be helpful to be informed about a matter that goes to soundness by someone supporting the DPD, he or she may invite them to participate.

- 5.5 As the hearing programme will be based on group sessions, parties wishing to appear will be expected to attend the sessions relevant to their representations or to send a representative if they are unable to attend on that particular day. Failing this, where all reasonable steps have been taken to facilitate attendance, they will have to rely on written representations.
- 5.6 The programme will be intensive and focussed within the hearings part of the examination. Because of the nature of the hearing sessions it is likely that the Inspector will usually sit for an intensive 3 days a week to allow adequate preparation time between sessions. This can vary depending on the nature of the DPD and on whether more than one Inspector is allocated to the DPD in question. Where hearings extend for more than 9 sitting days (2-3 weeks) the Inspector is likely to take a break to allow adequate time for preparation. In our experience LPAs also find the examinations very demanding and need time to prepare material and frequently have to prepare responses to matters raised in earlier sessions.

Opening the hearing

- 5.7 All documentation at the hearing session will be taken as read and hence the sessions will be focussed on matters that the Inspector has identified for discussion. As previously noted, the Inspector will already have determined at an early stage the matters and issues on the basis of having all the material before him/her and it is therefore unhelpful to the process to submit further unsolicited evidence. The Inspector will exercise his/her discretion in turning away unsolicited material that is not relevant to the soundness of the document.
- 5.8 On the first day, the Inspector will:
- Open briefly, setting out the purpose and character of the hearing sessions as well as explaining the potential outcomes of the examination;
 - Explain clearly the scope that he/she has for making changes to the document; and
 - Invite the LPA to introduce the DPD and comment briefly on its soundness, but the sessions will move on rapidly to consider the first main matter.
- 5.9 The first matter will usually be to confirm that the legal compliance issues have been met. The hearing sessions should follow the agenda set out by the Inspector.

Formats for hearing evidence

- 5.10 It is for the Inspector to decide the procedure at the hearings. He/she will reinforce the message that there should be no formal presentation of evidence and only exceptionally will formal cross-examination be used. Representors who have sought changes to a DPD and indicated a wish to speak at the hearing sessions must be given the right to be heard. However, the Inspector determines the format for hearing the evidence. The Inspector must at all times adopt an inquisitorial approach and ensure that all the evidence is properly tested.
- 5.11 The most common format will be hearing sessions to which a number of participants who have concerns regarding the same matter are invited. Hearings are the most efficient mechanism and should be capable of being used in examinations for all different types of DPD.
- 5.12 Sometimes respondents seek to have their views put by a barrister or solicitor, usually accompanied by a specialist such as a planning consultant. Lawyers, in our experience, have adapted well to informal hearing debate, sensing when best to contribute themselves and when to allow the specialist to comment. Lawyers will not however be permitted to adopt a formal 'advocacy' role as a matter of course, as this can unnerve other participants and undermine the principle of equal partners in the discussion.
- 5.13 There may be occasions when the skills of lawyers/advocates need to be used. The hearing session format allows the Inspector to adjust proceedings to suit the matters and issues being discussed. It may be appropriate that part of the hearing session allows for formal presentation of evidence followed by cross-examination and re-examination. This will only happen in very exceptional instances where the Inspector is convinced that a formal approach is essential to adequately test the evidence. If any participant (including the LPA) wishes the Inspector to consider dealing with a particular subject using this formal approach, he/she must be prepared to make a strong case for this. This is most likely to be appropriate where the Inspector feels that the issues raised are highly technical or complex. The final decision about whether a formal approach is appropriate rests with the Inspector. Participants will be informed ahead of the hearing session that cross examination is to be permitted on a particular subject.
- 5.14 Consequently there will usually be no need for any party to employ advocates to present their case although there is no reason why barristers or solicitors cannot take part in the informal group discussions on the same basis as any other party.
- 5.15 LPAs may find that a fruitful way of using advocates is at earlier stages in the preparation process. Professionals familiar with presenting cases may prove useful in reviewing the adequacy and appropriateness of the evidence base and marshalling the evidence to assist the Inspector to explore the issues raised in relation to legal compliance and the soundness tests.

Hearing participants

- 5.16 The Inspector will take charge of the hearing and, in particular, avoid simply going round the table asking each party to comment on each item. The discussion must enable the Inspector to probe the issues thoroughly and test the available evidence. The Inspector will open the discussion on each issue and nominate someone who has an interest in that issue or question to start the discussion each time. Ideally, different parties should be identified to start, to provide reassurance that everyone will have an opportunity to have their say. The Inspector should direct the occasion by bringing respondents into the discussion in a logical order, reflecting their likely contributions. The LPA will be invited to contribute to issues at whatever seem to be the most appropriate moments. Experience suggests that if participants are given name plates of 'toblerone' shape, which can be stood on end when that person wishes to speak, this can be particularly helpful. Once the discussion has reached the point at which no more is likely to be said to assist the Inspector's conclusions on soundness, the Inspector will move discussion on to the next issue.
- 5.17 Grouped appearances help to keep the focus on the Inspector's soundness agenda rather than on individual representations seeking a change to the DPD. In a session relating to a single matter (e.g. employment land provision), it will often be possible to accommodate both participants with views about the general soundness of the policy and those with concerns about particular locations.
- 5.18 Where the Inspector wishes to pursue a matter of soundness not raised in the representations, it may be necessary to programme a session at which he/she can question the LPA. Whilst there would be no other participants, this session would of course be open to the public. In practice, such a session is most appropriately attached to another session in which other matters or issues are being discussed.

Large numbers of participants

- 5.19 If large numbers of persons (in excess of 20) wish to be heard at a particular session, the Inspector will consider ways of reducing the number. Inspectors should not try to manage too large a number of participants – the Inspector may find it difficult to direct the discussion, exercise fairness in hearing participants and take notes of the proceedings. As such there is a need to be pragmatic and the Inspector's approach will be to:
- Remind those concerned that written representations carry the same weight as oral evidence. On this basis persons and parties should think carefully whether there is a need to appear;
 - Ask those with very similar views to appoint a single spokesperson;
 - Consider sub-dividing the matter for discussion; and

- Determine, if necessary, more than one session on the same issue be held. Representors scheduled for the second session may be encouraged to observe the first hearing session in order to acquaint themselves with procedures and format and it may become apparent that it is unnecessary for the Inspector to hear arguments twice (leading some to decide against attending the later hearing session). The PO should be on hand to assist in discussing this with representors.

5.20 Where there are large intensive sessions, Inspectors may need the assistance of a note-taker. The Inspector may be supported by an Assistant Inspector or Inspectorate planning officer which will make note taking much easier but this is unlikely in most cases and cannot be relied upon. If the Inspector has concerns about note-taking and needs assistance, he/she may ask, through the PO, the LPA to identify a suitable person from the LPA to assist in advance. Notes taken are merely intended as an 'aide-memoir' for the Inspector and are not examination documents (although they will be released if requested under the Freedom of Information legislation).

Post submission LPA changes to a submitted DPD

5.21 The Inspector will take the published DPD (and if relevant, the addendum submitted with the DPD) to be the final word of the LPA on submission¹⁶.

5.22 The intention is that LPAs will not seek changes after submission because the frontloading process should have considered the full range of options and policy approaches. Therefore, there is a very strong post submission expectation that changes will not be necessary and this is a key premise of delivering the streamlined examination timetable. LPAs should only seek changes after submission in very exceptional circumstances. The provision for changes after submission is to cater for the unexpected and is not intended to allow the LPA to complete or finalise the preparation of the DPD.

5.23 Such changes should, where appropriate, be subject to the same process of publicity and opportunity to make representations as the DPD. If the change would alter the thrust of a policy, extend the range of development that a policy would apply to, delete a policy or introduce a new policy, two very important considerations need to be borne in mind. First, the change must not undermine, or possibly undermine, the sustainability credentials of the plan. Second, is the change a matter that has been subject to adequate community engagement? If there is a problem with either of these matters the change may, in some

Footnotes

16. Advice is set out in the Plan Making manual on the production of an addendum post publication, prior to submission.

instances, by acceptable provided the LPA has taken appropriate steps to demonstrate that the sustainability credentials of the plan are intact or that further adequate community engagement has occurred.

- 5.24 This process may generate fresh representations. In the interests of fairness, the Inspector will extend the right to appear at the hearings to those who seek an amendment which follows directly from the LPA's proposed post-submission changes¹⁷.
- 5.25 Where the LPA are proposing such changes, the Inspector will expect the material to be made available without the need for undue delay to the examination timetable. Guidance on the procedures relating to the consideration of suspension of the examination, in limited circumstances, to allow further work by the LPA is provided in Section 9 'Exceptional Procedures' of this guide.

Post submission Inspector changes to a submitted DPD

- 5.26 The Inspector examines the DPD (and any post publication addendum of focused changes he or she accepts) 'as submitted'. Where the Inspector identifies the need for changes, the changes and likely extent of changes should be fully discussed at the hearings.
- 5.27 If the Inspector considers that the DPD (and/or addendum) may require changes after submission to make it sound, he/she must be satisfied that requirements for public consultation and sustainability appraisal have been met with regard to the changes (as set out in paragraph 5.23 above). Where the Inspector has identified that large numbers of changes are needed, this can make the examination and the reporting process considerably more complex and may point to cumulative flaws that amount to the 'as submitted' document being unsound.
- 5.28 Where the Inspector identifies changes necessary which relate to presentational flaws or matters of clarification, the LPA may be encouraged to take responsibility for undertaking work of an editorial nature (assuming the underlying strategy is sound). No new evidence should be submitted and the changes must not materially affect the substance of the submitted plan. Such changes should be provided by the LPA so that they can simply be accepted by the Inspector if not controversial. However, Inspectors should be wary of LPAs going beyond the agreed remit of changes of this nature which might raise issues in relation to prejudicing the participatory processes already undertaken and sustainability appraisal work.

Footnotes

17. Similarly, in circumstances where the LPA has published a DPD that has been subject to any material change post publication but prior to submission (which will be set out in an addendum), the Inspector will take into account representations made about any such change and hear those that are exercising their statutory right to appear at the hearing sessions.

Concluding the scheduled hearing sessions

- 5.29 The Inspector should announce at the end of the last hearing session the expected date of delivery of the report to the LPA for a 'fact check'. The date will be confirmed with the LPA by the LDF team in writing. When calculating the date for providing the report to the LPA, Inspectors will add on around at least 3 weeks for the internal QA process as set out in tables 1 and 2 above.
- 5.30 A practical problem can occur if the PO is released from post at the end of the hearing sessions as there will be no direct channel of communication with the Inspector. Local authorities are requested to keep the PO in post, at least on a part-time or 'as needed' basis after the hearing sessions until the Inspector's fact check report is delivered. If the PO will be unavailable, the authority must ensure that an administrative officer will be able to handle correspondence and provide a point of contact. The LDF team in the Inspectorate must be informed if any problems relating to the PO arise.
- 5.31 The Inspector may consider holding a brief rounding-up session at the end of the last hearing day with the LPA and other representors. This provides an opportunity for the parties to discuss how the hearings have been organised and run. It should provide for a two-way exchange of views and enable lessons to be learnt in order that the Inspectorate can improve the examination process for all concerned.

Further material and exploratory hearing sessions

- 5.32 The Inspector may seek necessary written clarification of any matters and issues raised during the hearings part of the examination. However, Inspectors will only request additional information that is essential to allow a decision regarding soundness to be made; unsolicited material and 'responses' after the last hearing session that have not been requested by the Inspector will not be accepted.
- 5.33 As the examination remains open whilst the Inspector is writing the report, the Inspector may potentially hold further sessions during the reporting period. This option is to be exercised only if absolutely necessary e.g. where a fundamental soundness issue has not been resolved.

Section 6: Report Writing (Week 17 onwards¹⁸)

Key principles for reporting

- 6.1 In drafting the report, the Inspector will concentrate on:
- reaching clear conclusions, backed by reasoned judgments, on the compliance requirements of the 2004 Act & Regulations and meeting the legal requirement of soundness; and
 - setting out (where appropriate) precise binding recommendations on any changes to the policies, other supporting text, and/or Proposals Map that are required to overcome any correctable aspect of unsoundness identified by the Inspector.
- 6.2 The Inspector will start on the premise that the report should be as short as possible, whilst ensuring it is clearly reasoned to justify the conclusions. It is important to remember that the Inspector will not seek to 'improve' the plan. In many instances representations are made about matters that do not go to the heart of the soundness of the plan. The Inspector will not make recommendations about these matters even if the Inspector feels that the representation is well founded. The approach is that it is the LPA's document and the Inspector will only make changes that go to the issue of soundness. In relation to each recommendation, Inspectors are required to ask themselves whether the plan would be unsound if the recommendation was not made. If the answer to that question is in the negative, the recommendation should not be set out.
- 6.3 Noting that we are not dealing with 'inquiries into objections', reports will not summarise the cases of individual parties, should avoid as far as possible direct references to specific representations and should not describe discussions at the hearing sessions. The report will explain why the Inspector, based on a consideration of all the evidence and his/her professional expertise and judgment, has reached a particular view on legal compliance and soundness.

Footnotes

18. For up to 12 day hearing, week 19 onwards.

Structure of the report

6.4 The report will be sub-divided into the following key sections:

- *An Introduction* - setting out the purpose of examination; a brief commentary on the examination carried out and a brief explanation of the structure of report. The introduction will also provide an overall conclusion in summary which makes clear the outcome of the examination.
- *Legal compliance check* – comprising conclusions with reasoning as to whether legal compliance requirements have been met.
- *Tests of justification, effectiveness and consistency with national policy* – reports are not structured around soundness test headings but are **sub-divided** into sections by **main issues**, broken down into the issue, the reasoning and the conclusion. However, all tests will be referred to in the report.
- *Conclusions* - will be set out clearly in terms of legal compliance and the soundness tests.

6.5 If the document is found to be unsound, the main issues section will be subdivided to (a) cover all the issues which led to a conclusion of unsoundness which cannot be overcome by the Inspector, and (b) cover other issues which proved controversial at the examination but did not amount to unsoundness or could be remedied by new wording.

Inspector recommendations

6.6 The changes sought are 'recommendations' in the sense that there is no statutory requirement for the LPA to adopt a DPD [s23(2) and (3) of the 2004 Act]. However, if the LPA proceed to adoption, then the Inspector's recommendations will be binding.

6.7 The changes to the DPD which are specified by the Inspector to make it sound will be set out clearly. The changes which the Inspector specifies will be grouped at the end of sections which deal with the issues within the report. They will be prefaced by the words: 'The following changes are necessary to make the document sound...'

6.8 As recommendations are potentially binding, the exact wording of any change must be given in every instance. Inspectors' reports may permit LPAs to make consequential changes to a DPD in order to remove any inconsistencies following the Inspectors' amendments. However, such changes should be very limited, e.g. alterations to paragraph or page numbers. Any other inconsistencies should be identified by LPAs in the 'fact check'¹⁹.

Footnotes

19. Further information on the 'fact check' stage is provided in Section 7 of this guide.

- 6.9 Where a DPD has been submitted with an addendum setting out focused post publication changes the Inspector will, subject to legal compliance and soundness considerations, clarify that the addendum (as amended by way of recommendations if necessary) should be inserted into the DPD. This will be set out along the following lines: 'I announced at the PHM that I accepted the addendum as part of the submission. For the avoidance of doubt, I state that the changes the addendum makes should be added to the published DPD (*subject to any changes indicated in my main recommendations*) in order to provide a straightforward document for adoption.'
- 6.10 Inspectors are generally discouraged from appending 'track change' annexes to their reports. Similarly LPAs should not seek to provide track change documents to the Inspector.
- 6.11 A glossary may sometimes be provided in the report if appropriate. Other appendices, for example listing the 3 tests of soundness, participants or core documents, are not needed. This type of material if prepared should be kept by the LPA in the Examination Library.

Section 7: Delivery of Fact Check Report to LPA (Week 26²⁰)

- 7.1 The fact check report will be sent to the authority in electronic and paper format, accompanied by a separate covering letter to the Chief Executive of the LPA. This will briefly report that the pre-hearing and hearing sessions have been held (on specified dates) and that the requirements of an examination under S20(5) of the 2004 Act have been fulfilled. The overall conclusions on soundness will be given.
- 7.2 The report will be copied to the relevant Government Office (GO). Section 21 of the 2004 Act provides that the Secretary of State may consider intervention by 'direction' where the recommendations of the binding report are considered to be in conflict with issues of regional or national importance and extend beyond the area of the plan making authority. Any issues raised by the GO will be made publicly available.
- 7.3 If a DPD is sound subject to changes, the binding recommendations within the Inspector's report will seek to set out the changes to remedy any unsoundness. Recommendations may consist of redrafted text, the omission of a policy or section of text (or the inclusion of a new one), or changes to the Proposals Map. However such binding changes can only be made if the Inspector is confident that the changed DPD would not be vulnerable to challenge on the grounds that proper procedures had not been followed, in particular, in relation to the sustainability appraisal process and proper community involvement (i.e. neither third parties nor the LPA should be taken unaware). This will require careful judgment by the Inspector in the circumstances of the case.
- 7.4 It is also possible that a DPD might be found sound in an abridged form. It may be feasible to separate and extract the unsound elements, without prejudicing the document as a whole. However, again there is a particular need for the Inspector to have regard to the implications of the stakeholder involvement and sustainability appraisal requirements.

Unsound DPDs

- 7.5 The Inspectorate is doing all it can to ensure that DPDs do not go fully through the examination process to be found unsound. The early scoping work, use of exploratory meeting and suspension (exceptionally) are aimed at mitigating such an occurrence.

Footnotes

20. For up to 12 day hearing weeks 34-36.

- 7.6 An unsound conclusion has important resource implications, both in terms of time spent by the Inspector examining the document and the investment in time and commitment by the LPA and other stakeholders that will have been made up to that point. However, that situation should be much less likely to occur if the LPA has followed the good practice guidance and front-loaded consultation procedures and Inspectors are proactive in the early stages by identifying fundamental concerns early in the examination process.

Responding to fact check

- 7.7 LPAs may not question the Inspector's conclusions although they may seek clarification on any conclusions considered to be unclear. LPAs should complete the fact check within 2 weeks of receiving the fact check report.
- 7.8 Whilst the fact check report is the tentative final report, LPAs are advised not to publish until the fact check process is complete and the final report is issued by the Inspectorate.

Section 8: Delivery of Final Report (Week 29²¹)

- 8.1 Once the fact check has been completed and the Inspector has responded to any points raised, the final report will be submitted to the authority in electronic and paper format.
- 8.2 The Inspectorate will not publish the report. The report is produced for the LPA and it is the authority's responsibility to publish it. Similarly the Inspectorate will not make known the outcome of a completed DPD examination until that information has been placed in the public domain by the LPA. A list is available on the Planning Inspectorate website which details those DPDs that have been submitted for examination and the outcomes²².
- 8.3 LPAs will be invoiced for the completed examination in accordance with the Service Level Agreement (SLA)²³ agreed between the Inspectorate and the LPA. The charging regime is set out in the Town and Country Planning (Costs of Independent Examinations) (Standard Daily Amount) (England) Regulations 2006 SI 2006 No. 3227.

Footnotes

21. For up to 12 day hearing week 37
22. This is regularly updated and can be viewed at the foot of the page at:
http://www.planning-inspectorate.gov.uk/pins/appeals/local_dev/index.htm
23. The SLA covers the arrangements between the Inspectorate and the LPA for the examination and the delivery of the Inspector's binding report.

Section 9: Exceptional Procedures

Exploratory Meetings

Overview

- 9.1 The need for an exploratory meeting will usually arise through significant concerns about the key matters and issues identified in the Inspector's initial reading of the submitted DPD. Inspectors will only call exploratory meetings where they have serious concerns about some aspect of the submitted DPD. LPAs should therefore treat exploratory meetings in quite a different way to the PHM, which is called as a matter of course.
- 9.2 While generally the purpose of a DPD exploratory meeting is to assist the conduct of the examination (rather than for the Inspector to draw conclusions about the soundness of the plan), there is scope for looking at the content of the DPD such as considering whether further evidence is required on a specific issue to deal with matters raised in written representations.
- 9.3 Since the exploratory meeting is an early mechanism to explore concerns, an Inspector would not normally hold an exploratory meeting once the hearing sessions have commenced. If serious concerns were emerging during hearing sessions, the approach of the Inspector would be to table an additional hearing session to review where the examination has got to and discuss concerns arising. An additional hearing session might also occur where the Inspector, in reviewing his/her conclusion of the hearing sessions, identifies a matter(s) affecting soundness which needs to be investigated further.

Approach and purpose of the exploratory meeting

- 9.4 The basis of the meeting will be that the Inspector has identified some key concerns about the DPD in his/her early consideration of the document which need to be discussed. The Inspector will explain why the exploratory meeting has been called and how he/she will regard the information obtained at the meeting: the premise of the meeting will be that the Inspector has some concerns on x, y and z but will not have determined the plan to be unsound at this point. He or she will be looking for clarification on certain matters and issues which should hopefully inform the way forward in the examination, or in extremis the Inspector may need to inform parties that he or she is unclear how the matters and issues can be rectified (see paragraph 9.13).

Participants, Notice and Timing

- 9.5 An exploratory meeting should involve the LPA and the GO. The Inspector may also invite any representors who have made significant points about the matters and issues that are causing concern. Exploratory meetings must be public meetings and thus any person may attend and observe. Inspectors will ensure that the exploratory meeting does not become an examination of the DPD where only two parties, the LPA and GO, have had the opportunity to make representations - there will be issues of fairness if no other party has a formal opportunity to make representations.
- 9.6 The meeting will be arranged by the PO and publicised by the LPA – this should be in a manner consistent with any commitment in the LPA’s SCI – and at minimum provide reasonable notice. It is also recommended the LPA place an advertisement on their website to publicise the meeting at the earliest opportunity.
- 9.7 The invitation letter will emphasise that formal evidence will not be heard and that the Inspector will determine how to progress the examination following that meeting.

Inspector role

- 9.8 The Inspector will produce an agenda/list of questions to send out in advance to identify the main points for discussion.
- 9.9 Evidence will not generally be tested at an exploratory session (if evidence is to be tested a hearing session will be set up) but the Inspector could voice concerns about an incomplete or inadequate evidence base. The Inspector may use the meeting to explore with the parties what additional material is needed to properly inform the examination.
- 9.10 It should provide an opportunity to deal with matters such as to clarify:
- the representations received from the GO or RPB;
 - the extent/nature of the evidence the LPA has submitted to the examination; and
 - the extent to which the approach outlined in PPS12 has been followed.
- 9.11 This can be a difficult experience for all involved, particularly the LPA, which will have invested a lot of time in the plan preparation. The Inspector will be leading the meeting and it is important that he/she communicates his/her concerns clearly and in a sensitive manner.

9.12 It is important that the discussion is then reported at the PHM, assuming the examination is to proceed. All exploratory meetings will be held in public and a note of the meeting will be agreed with those who participated. The papers relating to the exploratory meeting should be made available in the Examination Library. This should include any issues papers produced at the request of the Inspector by parties to the meeting and a note of the exploratory meeting.

Possible outcomes of the meeting

9.13 Outcomes:

- (i) Local authority seeks Secretary of State agreement to withdraw. Where the Inspector has serious concerns which look unlikely to be rectified, he/she may invite the LPA to discuss with the GO a direction to withdraw. The Inspector may set a deadline for a response.
- (ii) Issues resolved – the issues are resolved to the satisfaction of the Inspector and the examination will proceed to the PHM, or if held after the PHM, to the hearing sessions. The meeting will be reported to the PHM or the first scheduled hearing session.
- (iii) Temporary suspension - the Inspector may agree to a short term suspension of the examination for the LPA to do more work (suspension is covered in detail later in this section of the guide). This may mean rescheduling the hearing sessions.
- (iv) Inspector remains concerned and issues remain unaddressed by the LPA – the Inspector will proceed to, and report the exploratory meeting to, the PHM. If the Inspector has continuing concerns he/she will indicate so at the PHM and may then schedule a hearing session to deal with the key issue(s) of concern first. The hearing session will allow an opportunity to make representations on whether the LPA and participants agree with the Inspector and how the examination should be progressed. The Inspector may make a decision based upon those representations at the hearing session whether to continue with the examination or in extremis determine the DPD is unsound on a fundamentally important point and formally recommend withdrawal.

9.14 An exploratory meeting is an unscheduled element of the indicative examination timetable and where one is held LPAs and other participants will need to recognise that it may introduce an element of delay into the examination programme. The extent to which the exploratory meeting disrupts the examinations programme will be dependent on the outcome of the meeting. Where for example the issues are resolved, the delay should only be a short matter of weeks. However, where an Inspector agrees to a temporary suspension, this may potentially run for several months. However any delay beyond 6 months suggests that the appropriate course of action is withdrawal and re-submission of the DPD once the problems have been resolved.

Suspension

- 9.20 It may be possible for the Inspector to delay proceedings where a major change is necessary - suspend the examination - to allow the matter to be addressed but this delay should not be unreasonable. If a large amount of additional work/consultation is required it suggests that the frontloading process has failed. In such circumstances it is unlikely that a finding of soundness can safely be made.
- 9.21 As a general principle, suspension goes against the wider policy objective of speeding up the plan process and developing evidence to inform choices made during plan making. LPAs may seek to argue that suspending an examination might be a swifter route to achieving the aims of the new plan-making system. However, this represents a short-term view. It is important that LPAs submit sound DPDs, backed up by a comprehensive, up-to-date and robust evidence base. Only in that way can the examination process be speeded up.
- 9.22 There may be circumstances where it may be effective to call a temporary halt to the examination process to enable the LPA to go away and do more work, without having to go right back to the start of the plan preparation process.

A suspension request may arise through a number of routes including:

- holding of an early exploratory meeting by the appointed Inspector (possibly on the back of representations – in practice particularly those of a Government Office);
- concerns about the matters and issues identified by the Inspector at the PHM; or
- the LPA's own post-submission re-appraisal of the document (LPAs are particularly likely to do this where findings of unsoundness emerge from other DPD examinations, which cast some doubt over their own approach where there are similarities).

- 9.23 If contemplating the suitability of suspending the examination, questions the Inspector will consider are:

i. What is the scale and nature of the work required to overcome the perceived shortcoming of the document?

Is it to:

- (a) commission new evidence, which raises an issue about the basis on which the document has been prepared, or
- (b) to ensure proper consultation has taken place which would rectify a potential procedural unsoundness?

Point (a) would suggest the evidential base for the plan is not

sound and the risk of commissioning new evidence is that it may lead to major changes to the submitted document. However, (b) might suggest a consultation exercise could enable the Inspector to proceed without undue delay.

ii. How long will it take to do the work?

Up to 6 months suspension might be acceptable but a period greater than this would not²⁴. A delay of more than 6 months would create a great deal of uncertainty within the examination process for those who have submitted representations at the publication stage. Furthermore a delay of this period should only be necessary if the LPA were proposing major changes to the DPD which had not been adequately frontloaded in which case it should be withdrawn to allow the proper procedures to be followed for a revised version of the DPD.

iii. What will the further work lead to?

If it leads to a substantially revised document to that submitted, it begs the question of what the Inspector is examining and seems therefore to be inappropriate. However, if it provides strengthened evidence which does not lead to major changes, it will not be likely to lead to significant delay.

9.24 There will be particular matters the Inspector will have to consider when the examination resumes:

- If the DPD has been changed, it may have to undergo another consultation period so that interested persons have the opportunity to make representations about the changes;
- A further sustainability appraisal may be necessary to ensure compliance with the requirements of SEA; and
- If a further SA is carried out, it will be necessary to consult upon the SA in order to comply with the SEA Regulations (Environmental Assessment of Plans and Programmes Regulations 2004²⁵).

Footnotes

24. Where practicable, the Inspector may consider a partial suspension i.e. suspending the examination only in relation to a part of the DPD where further work is needed. This can allow the examination to continue into the remaining elements of the DPD, which will provide less disruption to the examination timetable. However, this will only be appropriate in very limited circumstances e.g. where the matter on which further work is needed is discrete or separate and is unlikely to undermine the soundness of the remainder of the DPD. This approach would necessitate an extra hearing session (s) to be scheduled after the main hearings to consider the further work once completed.

25. View at: http://www.opsi.gov.uk/si/si2004/uksi_20041633_en.pdf

Withdrawal

- 9.25 If major additional work needs to be carried out on a DPD, it is likely that the submitted DPD was not 'sound' on submission and the LPA should follow the withdrawal route through the GO. Where an LPA is aware that the examination is identifying unsoundness in relation to their DPD, it is inappropriate generally for the LPA to try to short-circuit the system by seeking to rectify a seriously flawed document through suspension (as opposed to withdrawing it and submitting a sound document).
- 9.26 Where a LPA is reluctant to seek withdrawal the Inspector will advise that the examination will proceed with the risk to the LPA that the document might be found to be unsound. It is in no-one's interest if time and money is spent on a DPD examination which is heading towards a very clear outcome of unsoundness.

Technical Seminars

- 9.27 If a DPD is based on technical considerations the Inspector may seek to hold a technical seminar at which the methodology and basis of the evidence being presented can be explained. The seminar will not test the evidence but will be held in order that all parties have an understanding of technical basis for the evidence. The intention is to save time during the hearing sessions and to give all parties a clear understanding of the methodology used in the preparation of the evidence. Matters such as the appropriateness of the methodology can, if necessary, then be explored on an informed basis at the hearing sessions.
- 9.28 If a technical session is required the parties who have presented the technical evidence will be asked to prepare explanatory material which will be circulated to other parties who have been invited to attend the hearing sessions where that material is to be considered. These other parties and anyone else who is interested may attend the technical session but the session will not be used to test the methodology, assumptions used or conclusions drawn as these are matters that should properly be considered in the normal hearing sessions. Notification procedures for technical sessions should be the same as for exploratory meetings.

Annex: Model Representation Form and Model Guidance Note for Development Plan Documents

1. When the LPA publish the DPD, the authority will advertise publication in the local newspaper(s); place the DPD on the LPAs website and on deposit at its main office and other suitable venues. The LPA will also send copies of the DPD to the consultation bodies described in the 2004 Regulations (as amended), and will invite representations on the submitted document within six weeks.
2. A suggested model form and guidance note is provided below for LPAs to use in inviting representations on DPDs at publication stage. Copies of the form and accompanying note should be made available by the LPA on request or should be available for download on the local authority website. The completed form may be submitted to the local authority either by post or via the email address provided by the local authority for making representations.
3. The LPA should indicate the date and time by which representations should be received. Only those who make representations within the period set by the LPA (no less than 6 weeks) will have the right to have their representation considered at the examination.
4. Careful consideration should be given by those making a representation in deciding how the representation should be dealt with i.e. by written representation or by exercising the right to be heard. Only where a change is sought to the DPD is there a right for the representation to be heard at the hearing session. It is important to note that written and oral representations carry exactly the same weight and will be given equal consideration in the examination process. When making a representation seeking a change to the published DPD, representors should be as specific as possible in setting out what issue it is they are making a representation on and what changes should be made to make the document legally compliant or sound.
5. The publication of the draft DPD should be informed by earlier extensive public participation to ensure that what the council publishes is sound. This makes it less likely that matters will be raised at this stage which have not been the subject of previous representations. The Inspector will not be able to make a change unless it relates to an issue which has been subject to the proper procedures of community involvement and sustainability appraisal. In the absence of clear evidence that such procedures have been carried out, the Inspector will only be able to give limited consideration to such representations.

Model Representation Form for Development Plan Documents

LPA Logo	Development Plan Document (DPD) Publication Stage Representation Form	Ref: (For official use only)
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Name of the DPD to which this representation relates:

Please return to [LPA] BY [time and date] 2008

This form has two parts –

Part A – Personal Details

Part B – Your representation(s). Please fill in a separate sheet for each representation you wish to make.

Part A

1. Personal Details*

2. Agent's Details (if applicable)

**If an agent is appointed, please complete only the Title, Name and Organisation boxes below but complete the full contact details of the agent in 2.*

Title	<input type="text"/>	<input type="text"/>
First Name	<input type="text"/>	<input type="text"/>
Last Name	<input type="text"/>	<input type="text"/>
Job Title (where relevant)	<input type="text"/>	<input type="text"/>
Organisation (where relevant)	<input type="text"/>	<input type="text"/>
Address Line 1	<input type="text"/>	<input type="text"/>
Line 2	<input type="text"/>	<input type="text"/>
Line 3	<input type="text"/>	<input type="text"/>
Line 4	<input type="text"/>	<input type="text"/>
Post Code	<input type="text"/>	<input type="text"/>
Telephone Number	<input type="text"/>	<input type="text"/>
E-mail Address (where relevant)	<input type="text"/>	<input type="text"/>

Part B – Please use a separate sheet for each representation

Name or Organisation :

3. To which part of the DPD does this representation relate?

Paragraph Policy Proposals Map

4. Do you consider the DPD is :

4.(1) Legally compliant	Yes	<input type="text"/>	No	<input type="text"/>
4.(2) Sound*	Yes	<input type="text"/>	No	<input type="text"/>

****The considerations in relation to the DPD being 'Sound' are explained in Planning Policy Statement 12 in paragraphs 4.36 – 4.47, 4.51 and 5.52 and the boxed text.***

*If you have entered **No** to 4.(2), please continue to Q5. In all other circumstances, please go to Q6.*

5. Do you consider the DPD is **unsound** because it is not:

(1) Justified

(2) Effective

(3) Consistent with national policy

6. Please give details of why you consider the DPD is not legally compliant or is unsound. Please be as precise as possible.

If you wish to support the legal compliance or soundness of the DPD, please also use this box to set out your comments.

(Continue on a separate sheet /expand box if necessary)

7. Please set out what change(s) you consider necessary to make the DPD legally compliant or sound, having regard to the test you have identified at 5 above where this relates to soundness. You will need to say why this change will make the DPD legally compliant or sound. It will be helpful if you are able to put forward your suggested revised wording of any policy or text. Please be as precise as possible.

(Continue on a separate sheet /expand box if necessary)

Please note your representation should cover succinctly all the information, evidence and supporting information necessary to support/justify the representation and the suggested change, as there will not normally be a subsequent opportunity to make further representations based on the original representation at publication stage.

After this stage, further submissions will be only at the request of the Inspector, based on the matters and issues he/she identifies for examination.

8. If your representation is seeking a change, do you consider it necessary to participate at the oral part of the examination?

No, I do not wish to participate at the oral examination

Yes, I wish to participate at the oral examination

9. If you wish to participate at the oral part of the examination, please outline why you consider this to be necessary:

Please note the Inspector will determine the most appropriate procedure to adopt to hear those who have indicated that they wish to participate at the oral part of the examination.

Signature:

Date:

Notes to Accompany Model Representation Form for Development Plan Documents

1. Introduction

- 1.1 The development plan document (DPD) is published in order for representations to be made prior to submission. The representations will be considered alongside the published DPD when submitted, which will be examined by a Planning Inspector. The Planning and Compulsory Purchase Act 2004 (as amended)²⁶ (the 2004 Act) states that the purpose of the examination is to consider whether the DPD complies with the legal requirements and is 'sound'.

2. Legal Compliance

- 2.1 The Inspector will first check that the DPD meets the legal requirements under s20(5)(a) of the 2004 Act before moving on to test for soundness.

You should consider the following before making a representation on legal compliance:

- The DPD in question should be within the current Local Development Scheme (LDS) and the key stages should have been followed. The LDS is effectively a programme of work prepared by the LPA, setting out the Local Development Documents it proposes to produce over a 3 year period. It will set out the key stages in the production of any DPDs which the LPA propose to bring forward for independent examination. If the DPD is not in the current LDS it should not have been published for representations. The LDS should be on the LPA's website and available at their main offices.
- The process of community involvement for the DPD in question should be in general accordance with the LPA's Statement of Community Involvement (where one exists). The Statement of Community Involvement (SCI) is a document which sets out a LPA's strategy for involving the community in the preparation and revision of Local Development Documents (including DPDs) and the consideration of planning applications.

Footnotes

26. View the 2004 Act at:

http://www.opsi.gov.uk/acts/acts2004/ukpga_20040005_en_1

View the amending 2008 Act at:

http://www.opsi.gov.uk/acts/acts2008/pdf/ukpga_20080029_en.pdf

- The DPD should comply with the Town and County Planning (Local Development) (England Regulations) 2004 (as amended)²⁷. On publication, the LPA must publish the documents prescribed in the regulations, and make them available at their principal offices and their website. The LPA must also place local advertisements and notify the DPD bodies (as set out in the regulations) and any persons who have requested to be notified.
- The LPA is required to provide a Sustainability Appraisal Report when they publish a DPD. This should identify the process by which the Sustainability Appraisal has been carried out, and the baseline information used to inform the process and the outcomes of that process. Sustainability Appraisal is a tool for appraising policies to ensure they reflect social, environmental, and economic factors.
- The DPD should have regard to national policy and conform generally to the Regional Spatial Strategy (RSS). The RSS sets out the region's policies in relation to the development and use of land and forms part of the development plan for LPAs. In London it is called the Spatial Development Strategy.
- The DPD must have regard to any Sustainable Community Strategy (SCS) for its area (i.e. county and district). The SCS is usually prepared by the Local Strategic Partnership which is representative of a range of interests in the LPA's area. The SCS is subject to consultation but not to an independent examination.

3. Soundness

3.1 Soundness is explained fully in Planning Policy Statement 12: Local Spatial Planning in paragraphs 4.36 – 4.47, 4.51 and 5.52 and the boxed text²⁸. The Inspector has to be satisfied that the DPD is justified, effective and consistent with national policy. To be sound a DPD should be:

- **Justified**

This means that the DPD should be founded on a robust and credible evidence base involving:

- Evidence of participation of the local community and others having a stake in the area

Footnotes

27. View the 2004 Regulations at:

<http://www.opsi.gov.uk/si/si2004/20042204.htm>

View the 2008 amending Regulations at:

http://www.opsi.gov.uk/si/si2008/pdf/uksi_20081371_en.pdf

View the 2009 amending Regulations at:

http://www.opsi.gov.uk/si/si2009/pdf/uksi_20090401_en.pdf

28. View at <http://www.communities.gov.uk/publications/planningandbuilding/pps12lsp>

- Research/fact finding: the choices made in the plan are backed up by facts

The DPD should also provide the most appropriate strategy when considered against reasonable alternatives. These alternatives should be realistic and subject to sustainability appraisal. The DPD should show how the policies and proposals help to ensure that the social, environmental, economic and resource use objectives of sustainability will be achieved.

● **Effective**

This means the DPD should be deliverable, embracing:

- Sound infrastructure delivery planning
- Having no regulatory or national planning barriers to delivery
- Delivery partners who are signed up to it
- Coherence with the strategies of neighbouring authorities

The DPD should also be flexible and able to be monitored.

The DPD should indicate who is to be responsible for making sure that the policies and proposals happen and when they will happen.

The plan should be flexible to deal with changing circumstances, which may involve minor changes to respond to the outcome of the monitoring process or more significant changes to respond to problems such as lack of funding for major infrastructure proposals. Although it is important that policies are flexible, the DPD should make clear that major changes may require a formal review including public consultation.

Any measures which the LPA has included to make sure that targets are met should be clearly linked to an Annual Monitoring Report. This report must be produced each year by all local authorities and will show whether the DPD needs amendment.

● **Consistent with national policy**

The DPD should be consistent with national policy. Where there is a departure, LPAs must provide clear and convincing reasoning to justify their approach. Conversely, you may feel the LPA should include a policy or policies which would depart from national or regional policy to some degree in order to meet a clearly identified and fully justified local need, but they have not done so. In this instance it will be important for you to say in your representations what the local circumstances are that justify a different policy approach to that in national or regional policy and support your assertion with evidence.

3.2 If you think the content of a DPD is not sound because it does not include a policy where it should do, you should go through the following steps before making representations:

- Is the issue with which you are concerned already covered specifically by any national planning policy or in the Regional Spatial Strategy (or the Spatial Development Strategy in London)? If so it does not need to be included.
- Is what you are concerned with covered by any other policies in the DPD on which you are seeking to make representations or in any other DPD in the LPA's Local Development Framework (LDF). There is no need for repetition between documents in the LDF.
- If the policy is not covered elsewhere, in what way is the DPD unsound without the policy?
- If the DPD is unsound without the policy, what should the policy say?

4. General advice

4.1 If you wish to make a representation seeking a change to a DPD or part of a DPD you should make clear in what way the DPD or part of the DPD is not sound having regard to the legal compliance check and three tests set out above. You should try to support your representation by evidence showing why the DPD should be changed. It will be helpful if you also say precisely how you think the DPD should be changed. Representations should cover succinctly all the information, evidence and supporting information necessary to support/justify the representation and the suggested change, as there will not normally be a subsequent opportunity to make further submissions based on the original representation made at publication. After this stage, further submissions will be only at the request of the Inspector, based on the matters and issues he/she identifies for examination.

4.2 Where there are groups who share a common view on how they wish to see a DPD changed, it would be very helpful for that group to send a single representation which represents the view, rather than for a large number of individuals to send in separate representations which repeat the same points. In such cases the group should indicate how many people it is representing and how the representation has been authorised.

4.3 Further detailed guidance on the preparation, publication and examination of DPDs is provided in *PPS12* and in *The Plan Making Manual*²⁹.

Footnotes

29. View at <http://www.pas.gov.uk/pas/core/page.do?pageId=51391>