

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

Advice note 8.1: How the process works

The Planning Inspectorate and nationally significant infrastructure projects

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

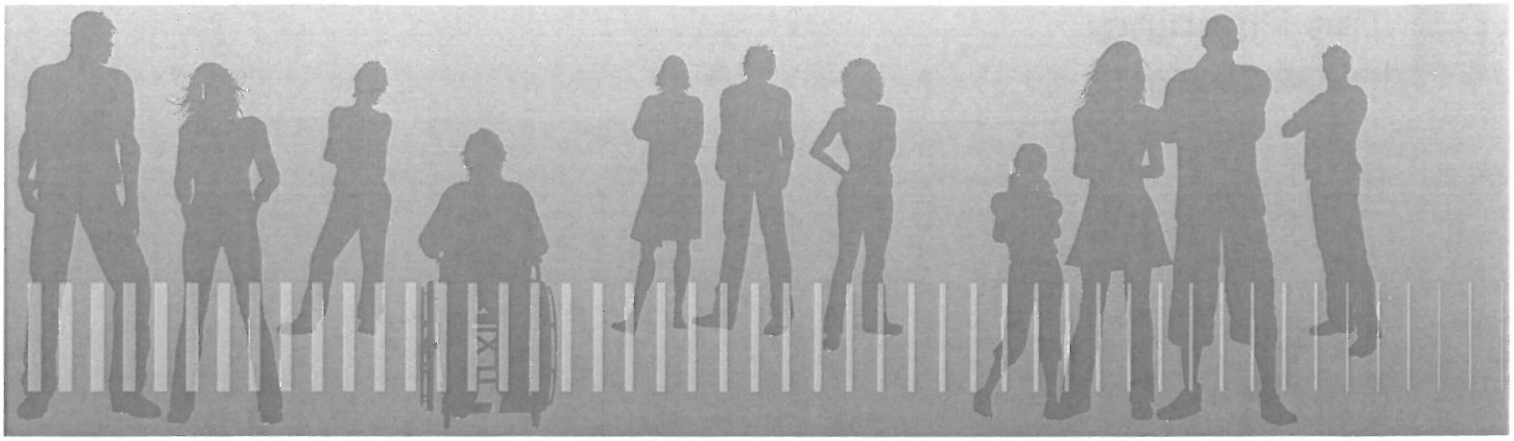
The Planning Inspectorate carries out certain functions related to national infrastructure planning on behalf of the Secretary of State.

Status of this Advice Note

Experience to date has shown that developers and others welcome detailed advice on a number of aspects of the 2008 Act process. This Advice Note forms part of a suite of such advice provided by the Planning Inspectorate ('the Inspectorate').

It has no statutory status.

This version of this Advice Note supersedes all previous versions.



Introduction

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

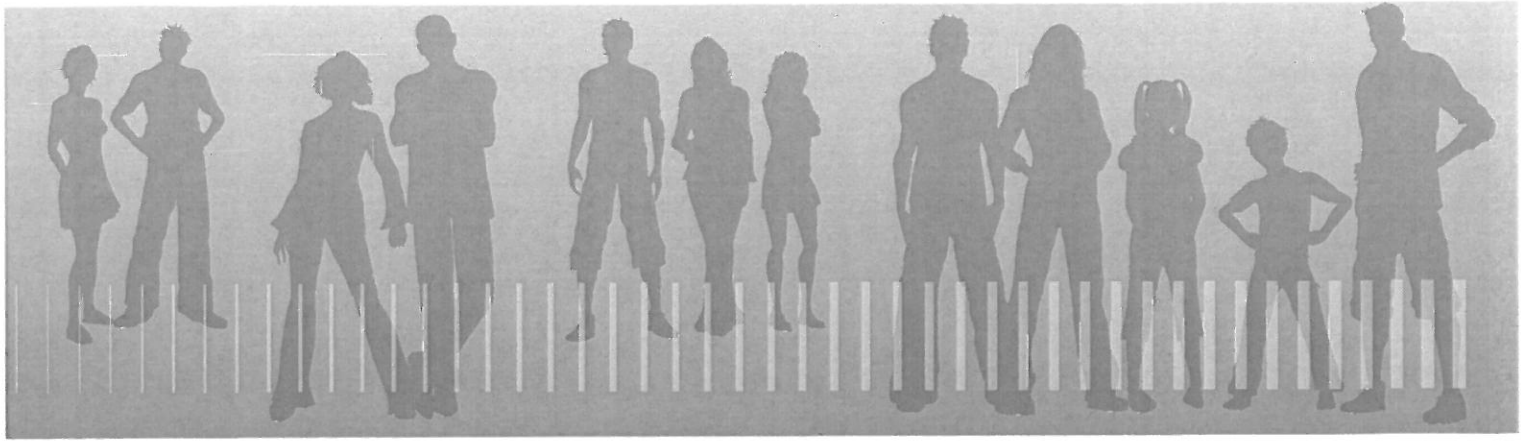
Any developer wishing to construct a NSIP must first apply for development consent. For such projects, the relevant Secretary of State will appoint an 'Examining Authority' to examine the application. The Examining Authority will be from the Planning Inspectorate, and will be either a single Inspector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

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

This Advice Note 8.1 provides an overview of the planning process under the 2008 Act.

It also explains the role of the Planning Inspectorate during the process, and the advice we can provide at each stage to help people who want to participate.

The Planning Act 2008 procedure was introduced to streamline the decision-making process for nationally significant infrastructure projects, making it fairer and faster for communities and developers alike.

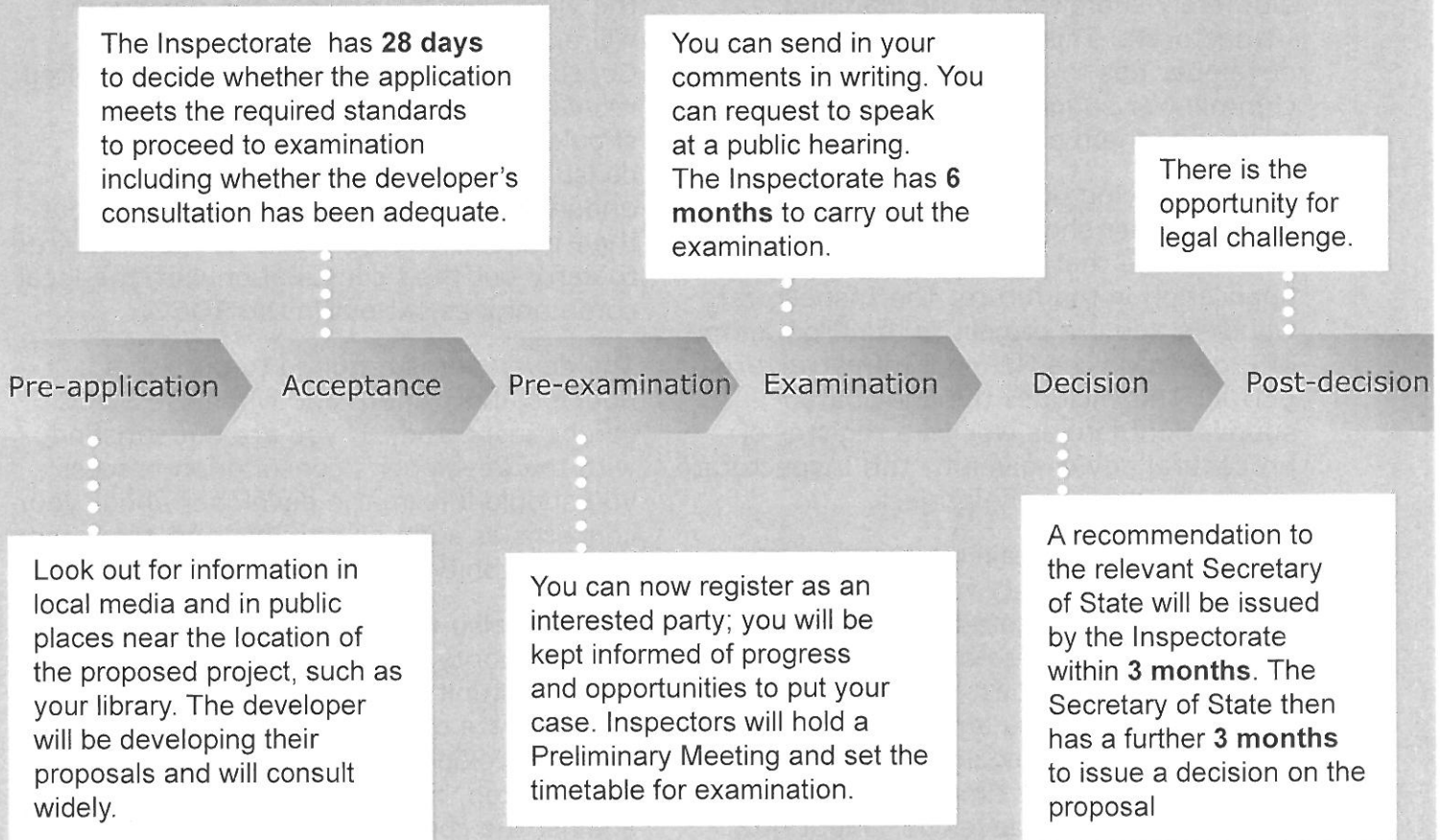


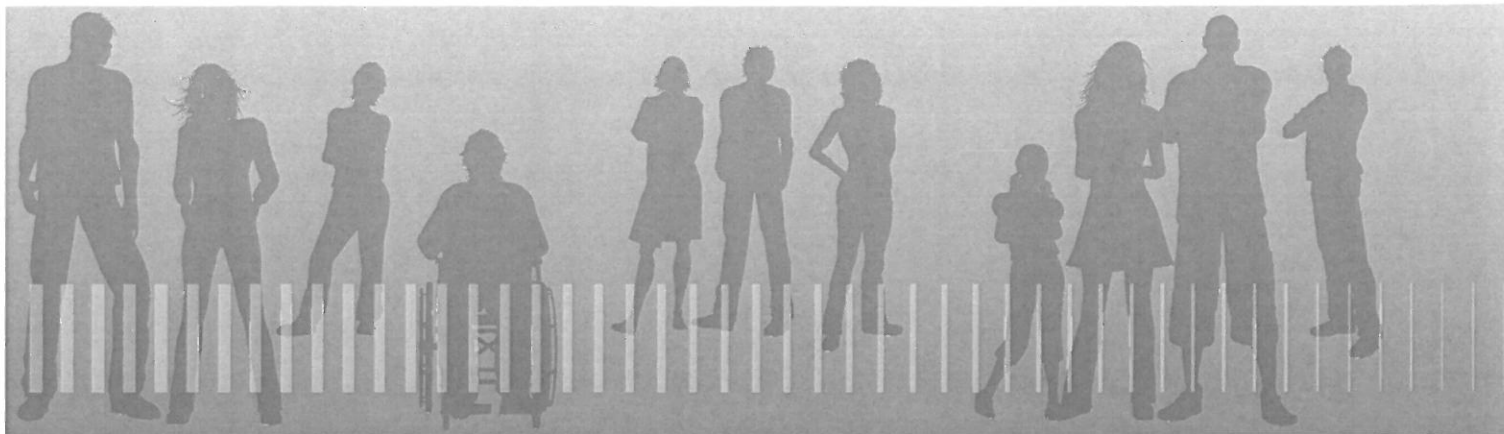
The process in a snapshot

The key stages are:

Timescales shown in bold are the legal maximum

The application process. The six steps





Pre-application

Before submitting an application, the developer is required to carry out extensive consultation on their proposals. This involves providing information about the proposal to various statutory and non statutory bodies and the wider community, responding to questions, listening to suggestions, and taking these into account to influence and inform the application ultimately submitted to the Planning Inspectorate. This does not mean that the developer has to accept or agree with every comment or suggestion made but they must give them proper consideration.

Before carrying out this consultation, the developer should notify the Planning Inspectorate that they intend to submit an application in the future. The Inspectorate will then add the project to the Programme of Projects on the National Infrastructure portal¹. This includes the anticipated submission date as well as a register of procedural advice given by the Inspectorate in connection with the project.

The length of time taken to prepare and consult on the project will vary depending upon its scale and complexity. Responding to the developer's pre-application consultation is the best time to influence a project, whether you agree with it, disagree with it or believe it could be improved. This is also the best time to make any suggestions to the developer about how the impacts of a project could be mitigated. Taking part by commenting at this stage does not prejudice your ability to object to the scheme later in the process and may enable you to influence the design of the project.

¹ www.planningportal.gov.uk/infrastructure

Once an application has been submitted to the Planning Inspectorate, the 2008 Act process lays down a strict timetable. It is not normally possible for substantial changes to be made to an application once it has been submitted. So, if you want to influence the project, you should take part in the developer's pre-application consultation process.

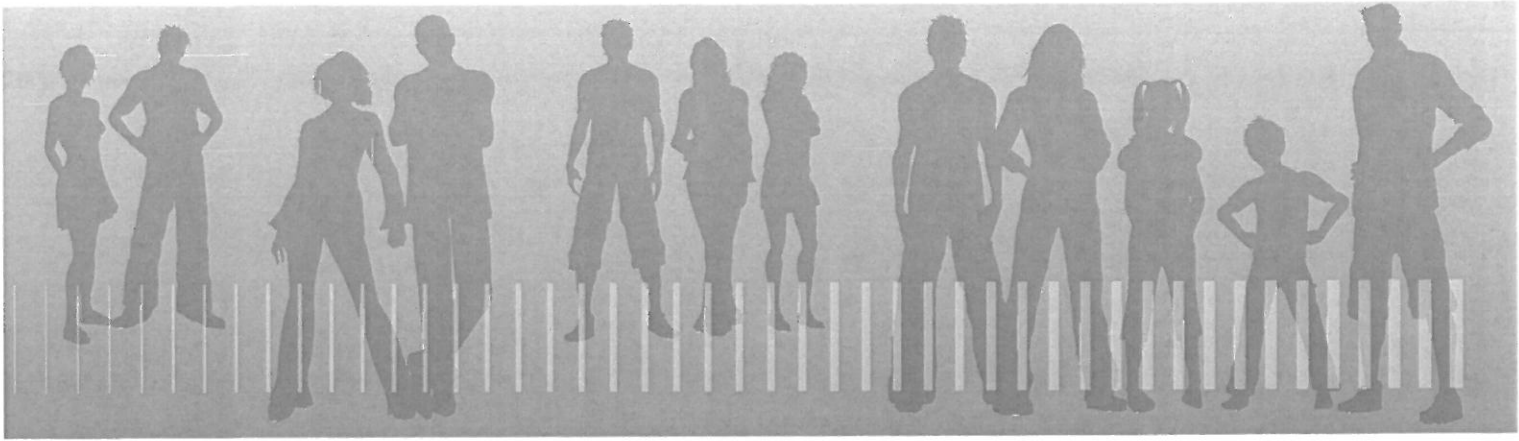
Before formally consulting people living in the vicinity of the project, the developer will prepare a Statement of Community Consultation (SOCC), having first consulted relevant local authorities about what it should contain. The SOCC details the consultation the developer intends to undertake with the local community about their project. The developer is then required to carry out their consultation with the local community as set out in the SOCC.

The developer is required to publish a notice stating where and when the SOCC can be inspected. If you are not satisfied with the developer's consultation process you should inform the developer about your concerns as soon as possible and give them an opportunity to respond.

You may also wish to notify the relevant local authority, as they will later have the opportunity to report to the Planning Inspectorate on their view of the adequacy of the developer's pre-application consultation, measuring what was delivered against the commitments made in the SOCC.

Acceptance

The acceptance stage begins when a developer submits a formal application for development consent to the Planning Inspectorate. From this point forward the developer may be referred to by all parties



as the applicant. There follows a period of up to 28 days (excluding the date of receipt of the application) for the relevant Secretary of State to consider whether or not the application meets the standards required to be formally accepted for examination.

The Secretary of State's decision on whether or not to accept an application is based on a number of legal criteria, including whether or not the applicant's consultation has been adequate, when considered against the statutory tests

Pre-Examination

If an application is formally accepted by the Secretary of State the preparations and arrangements for the examination get underway. First, the Planning Inspectorate notifies the applicant of the acceptance. The applicant is then required to publicise the fact that their application has been accepted and the arrangements for making representations about it.

If you want to ensure that your views about a project are considered by the Examining Authority, you first need to register with the Planning Inspectorate. The easiest way to do this is by completing an online registration form on the National Infrastructure portal (www.planningportal.gov.uk/infrastructure), which has been designed to ensure that you do not miss any of the required sections. The form includes space for you to provide an initial written summary of what you agree and / or disagree with in the application, and this is known as a 'representation'. Representations should relate specifically to the project and its impacts.

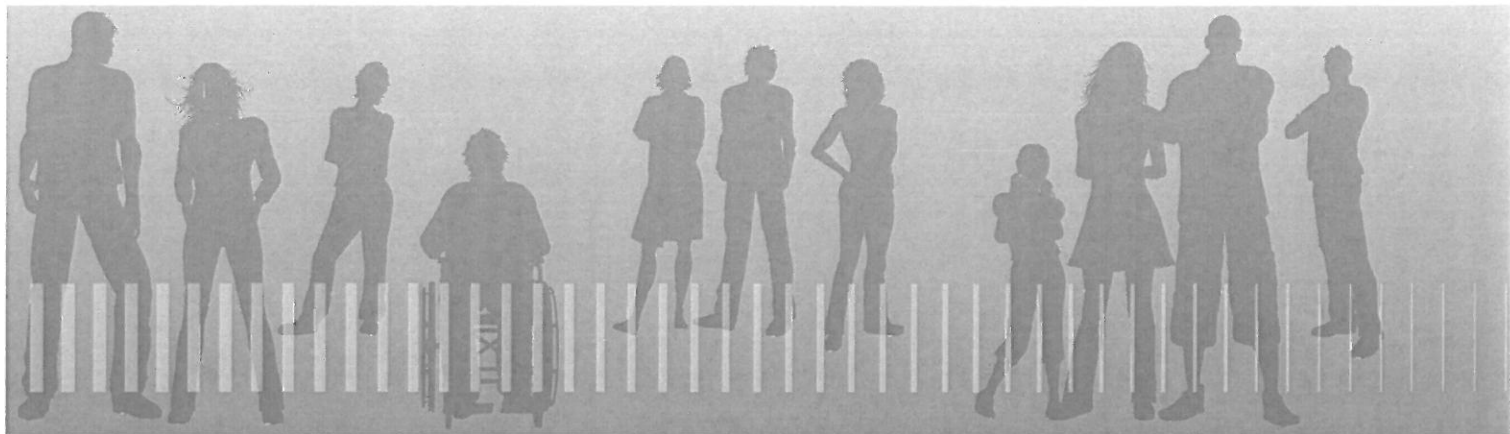
A representation may not be accepted if the registration form is incomplete or submitted after the deadline. Valid representations received during the registration period are known as 'relevant representations'.

At least 28 days will be provided for people to register. After the deadline set by the applicant has passed, the Planning Inspectorate will publish all relevant representations on the National Infrastructure portal².

It is important to note that you must complete all the required sections of the registration form and ensure it is received by the Planning Inspectorate by the deadline. This will give you a legal right to be involved in the examination of the application. If you register online, our form will automatically navigate you to each of the required sections. If you do not have access to the internet, a paper version of the form can be requested from our helpline. However, you are urged to complete the form online if at all possible, due to the safeguards it has built in, which will help to ensure that you do not submit an incomplete registration.

The Examining Authority may disregard representations which are vexatious or frivolous, or deal with the merits of matters of national policy, contained in National Policy Statements (NPSs). NPSs have already been the subject of consultation and parliamentary approval and it is not the role of the examination to debate the merits of national policy. The Examining Authority may also disregard representations which relate just to compensation for compulsory acquisition (rather than the justification or need for such acquisition).

² www.planningportal.gov.uk/infrastructure



People who register by the deadline and make a valid representation to the Planning Inspectorate become 'interested parties' in the application. As an interested party, you will be invited to take part in relevant stages of the examination. You will be informed of the progress of the examination, and at the end of the process, you will be notified of the decision.

Once the period for making a relevant representation has closed the applicant must certify that they have complied with the statutory requirements for giving notice of the accepted application³.

Once the Planning Inspectorate has received this certificate from the applicant, the Secretary of State will appoint the 'Examining Authority' to examine the application.

After the close of the registration period, the Examining Authority has up to 21 days to review the application and all relevant representations and identify the principal issues for examination.

Following this, the Planning Inspectorate invites all interested parties to attend a meeting, known as the Preliminary Meeting. This is chaired by the Examining Authority and is held to consider how the application will be examined. The meeting may include questions and answers about the key issues that will need to be examined, the timetable for the examination and other important organisational details. However, the merits or otherwise of the application will not be

discussed at the meeting, which is purely procedural.

Following the Preliminary Meeting, the Examining Authority will issue a procedural decision including the timetable for the various stages of the examination (including the periods allowed for submission of further written evidence and any hearings the Examining Authority has decided to hold).

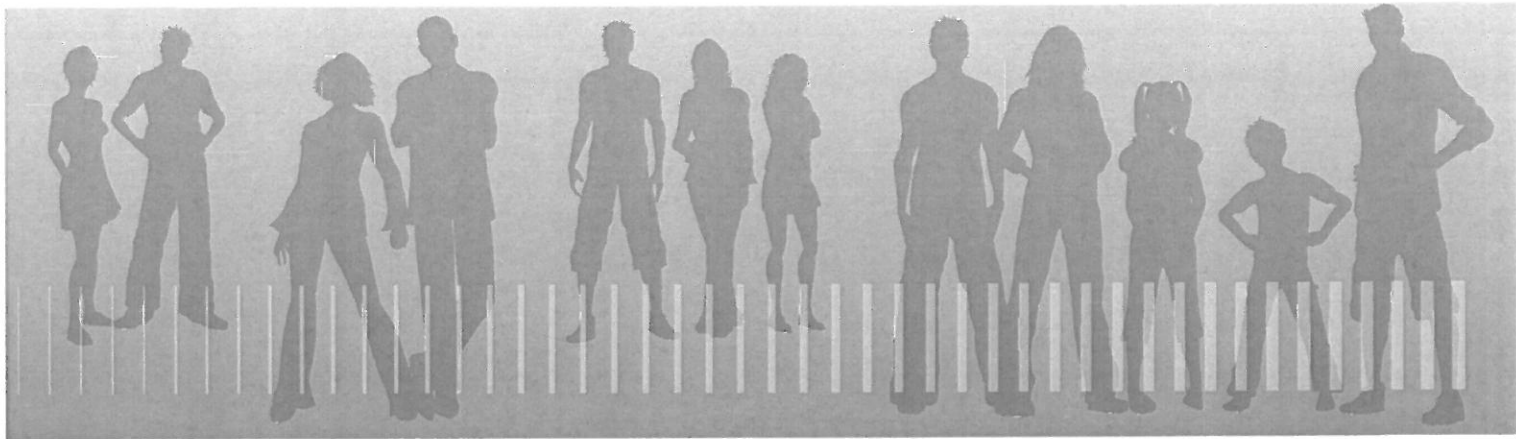
Examination

The Examining Authority has a statutory duty to complete its examination within 6 months after the last day of the Preliminary Meeting. The examination is a formal legal process, during which careful consideration is given to all the important and relevant matters, including the representations of all interested parties, any evidence submitted and answers provided to questions set out in writing and explained at hearings.

During the examination stage, all interested parties will be invited to provide further written evidence, if they wish, about the issues they identified in their representations. The additional information provided is known as a written representation. The Examining Authority is then likely to put written questions to the applicant and other interested parties to clarify points made in representations or to seek additional information.

All interested parties also have the opportunity to comment on the representations of others, and to respond to any comments made on their

³ See sections 56 and 58 of the 2008 Act.



representations. The deadlines for this will be included in the examination timetable.

Whilst the examination is mainly a written process, in certain circumstances hearings may be held. Information about any hearings will be provided in the procedural decision issued to all interested parties following the Preliminary Meeting.

Where a hearing or hearings are required, the Examining Authority will decide how the proceedings are to be conducted.

The Examining Authority's recommendation and the Secretary of State's decision

The Examining Authority must prepare a report on the application to the relevant Secretary of State, including a recommendation, within 3 months of the end of the examination. The Secretary of State then has a further 3 months to make the decision on whether to grant or refuse development consent.

All interested parties will automatically be notified of the Secretary of State's decision. You will also be able to view the decision, and reasons given for making it, on the National Infrastructure portal⁴.

Post decision

Once a decision has been issued on behalf of the Secretary of State, there is a six week period in which the decision may be challenged in the High Court. This process of legal challenge is known as Judicial Review.

⁴ <http://www.planningportal.gov.uk/infrastructure>

Further information about legal challenge will be included with the Secretary of State's decision letter that is sent to all interested parties and published on the National infrastructure portal. Section 118 of the Planning Act 2008 also provides more information.

Transitional arrangements for National Infrastructure planning

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

Where an application or proposed applications has been formally notified⁵ to the IPC before 1 April 2012, anything done before that date is treated as having been done for the purposes of the 2008 Act provisions as amended by the Localism Act 2011⁶.

⁵ Under s46 PA2008

⁶ See The Infrastructure Planning (Transitional Provisions) Direction 2012



Advice Note 8 series

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

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

Advice Note 8.1: How the process works

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

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

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

Advice Note 8.5: Participating in the examination.

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

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

Email: enquiries@infrastructure.gsi.gov.uk

Telephone: 0303 444 5000

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

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

Planning Aid England Advice Line 0330 123 9244

Email: advice@planningaid.rtpi.org.uk

General enquiries: 020 3206 1880

Email: info@planningaid.rtpi.org.uk

Planning Aid for London: 020 7247 4900

Email: info@planningaidforlondon.org.uk

Planning Aid England Wales: 02920 625 000

Web: www.planningaidwales.org.uk

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

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