

# Reference Guide to Nationally Significant Infrastructure Projects (NSIPs)

What officers need to look out for



Supported by



Department for Levelling Up,  
Housing & Communities

## Acknowledgement

In drafting this guidance, we have taken advantage of the wealth of information available on the Planning Inspectorate website, to explain processes and documents. Readers are advised to visit the Planning Inspectorate website for its full advice and guidance notes: <https://infrastructure.planninginspectorate.gov.uk>

We would like to thank the Department for Levelling Up, Communities and Housing and their funding through the NSIP Challenge and Innovation Fund for supporting the production of this guidance.

**Please note:** This guidance has been written to the best of knowledge of Suffolk County Council's officers, based on its experience in NSIPs. However, Suffolk County Council does not accept any liability for the information and interpretations provided in this document.

## Key Acronyms

<b>AoC</b>	Adequacy of Consultation	<b>NSIP</b>	Nationally Significant Infrastructure Project
<b>ASI</b>	Accompanied site inspection	<b>OFH</b>	Open Floor Hearings
<b>CAH</b>	Compulsory Acquisition Hearings	<b>PINS</b>	Planning Inspectorate
<b>DCO</b>	Development Consent Order	<b>PPA</b>	Planning Performance Agreement
<b>DLUHC</b>	Department for Levelling Up, Housing and Communities	<b>RR</b>	Relevant Representation
<b>ExA</b>	Examining Authority (see below)	<b>SALC</b>	Suffolk Association of Local Councils
<b>ExQ</b>	Examining Authority's Questions	<b>SCC</b>	Suffolk County Council
<b>ISH</b>	Issue Specific Hearings	<b>SoCC</b>	The Statement of Community Consultation
<b>LIR</b>	Local Impact Report	<b>SoCG</b>	Statements of Common Ground
		<b>SoS</b>	Secretary of State
		<b>WR</b>	Written Representation

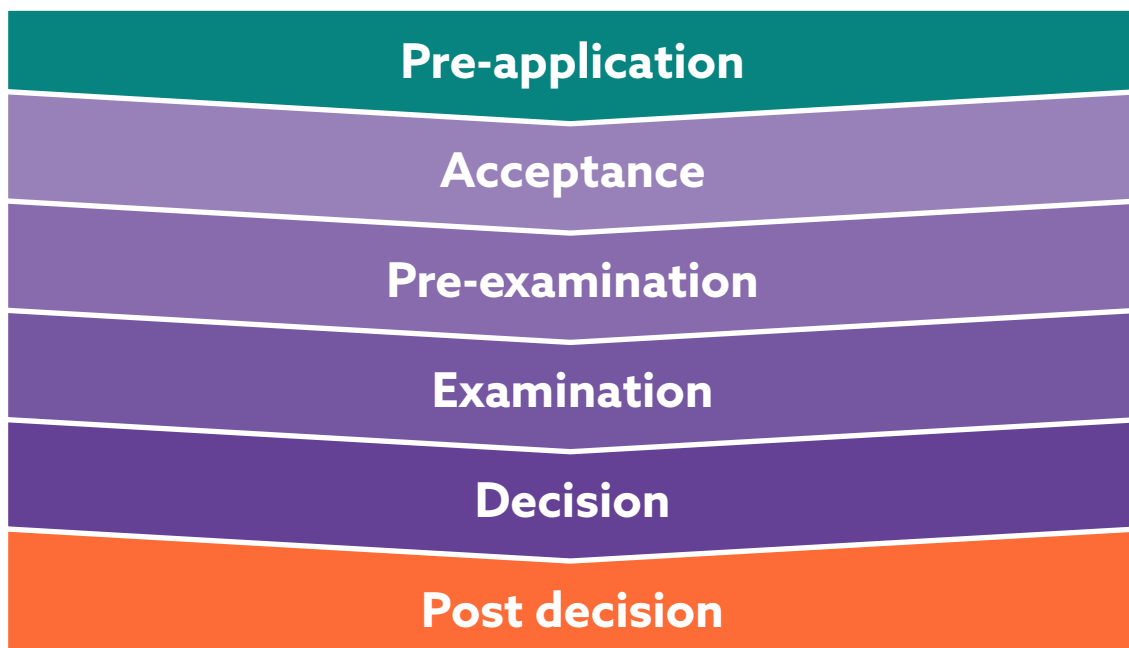
# What is an NSIP?

An NSIP is a Nationally Significant Infrastructure Project. They are projects of certain types, over a certain size, which are considered by the Government to be so big and nationally important that permission to build them needs to be given at a national level, by the responsible Secretary of State. The thresholds for NSIPs are set out in sections 15 to 30A of the PA2008. This process is separate from developments under the Town & Country Planning Act 1990, with NSIPs having an emphasis on pre-application work shaping the design of the project.

Instead of applying to the local authority for Planning Permission, the developer must apply to the Planning Inspectorate for a different permission called a Development Consent Order (DCO). The PA2008 process was introduced to streamline the decision-making process for major infrastructure projects. Since then, over 110 NSIPs have been consented in the UK.

The Planning Inspectorate (PINS) is responsible for undertaking the DCO examinations, and will write a report with recommendations to the Secretary of State to help support their decision making.

An NSIP will follow 6 stages in this order:



The concept is that an NSIP front loads the planning process. This means there is more emphasis placed on shaping a development before an examination starts. Depending on the complexity of the project, it can take several years to get to the examination phase.

To speed up NSIPs further in the future, fast track consenting has been proposed. This will be used when certain criteria are met, shortening the examination period for certain applications. This places even more weight on the pre-application stage for those wanting to respond to/ shape a proposal.

It is noted that Government is aiming to reform the NSIP process to reduce the time an NSIP takes, from application to decision, down to 17 months to get critical infrastructure projects built within an acceptable timescale.

## What is a Development Consent Order (DCO)?

Development consent is required for development if the development is or forms an NSIP. Consent is achieved through a Development Consent Order (DCO), a super-consent that can include:

- Planning permission,
- Power to interfere with highways (e.g., to construct and maintain new streets, alter or divert streets, or stop or restrict the use of streets),
- Power to take steps to protect buildings and enter on land to survey and investigate it,
- Power to compulsorily acquire land and rights over land and to take temporary possession of land,
- Power to fell or lop trees,
- Power to override usual consents that protect the public from nuisance, etc.

The Development Consent Order operates under the Planning Act 2008, which was introduced to streamline decision-making for major infrastructure projects.

## Suffolk County Council as an NSIP Centre of Excellence

Suffolk is seeing a very large amount of NSIPs being pursued in its area, with around nineteen NSIPs that have been approved, have submitted applications, or are in the pipeline for future applications. Over the past few years, Suffolk County Council has built up a significant amount of knowledge and expertise in the NSIP process, by its involvement in a number of NSIPs, most notably Sizewell C.

In recognition of its significant experience and strong expertise in NSIPs, Suffolk County Council secured, in 2022/23 and 2023/24, funding from the Department for Levelling Up, Housing and Communities (DLUHC) to host an NSIP Centre of

Excellence, and run a series of seminars and a conference on NSIPs. As part of this initiative, Suffolk County Council reissued this reference guide to make it available to all local authorities. This is an updated second version from December 2023, taking into account further learning and developments.

## Document Overview

This guidance has been written by Suffolk County Council. Originally written as an internal reference document for its officers involved in an NSIP, the guidance and lessons learnt by Suffolk County Council will have relevance to any local authority in England. It should be noted that, due to Suffolk County Council's own experience, the focus of some of the sections of this guidance is on upper tier local authorities.

The document can be used both as an introduction to NSIPs, and as a reference guide and reminder of key issues that need to be addressed and process to be undertaken at certain stages.

The document includes:

- Definitions of key documents, stages and procedures within the NSIP process, with advice when to expect this, and what to look out for;
- Advice and lessons learnt for each stage of the process. The lessons are taken from the work Suffolk County Council has undertaken to date on NSIPs.

To provide a quick overview of core responsibilities for each document/process, we have colour coded the headings:

Activities undertaken predominantly by the local authority's project lead/planning team/NSIP core team

Activities which may usually also involve local authority technical officer/service areas

Activities by PINS or Secretary of state or Applicant

Officers new to NSIPs may wish to first have a look at a short film produced by the Planning Inspectorate to explain the process:

<https://infrastructure.planninginspectorate.gov.uk/application-process/the-process/>

**For further information, and if you have any queries arising from this guidance, please contact Suffolk County Council's NSIP team at [nsips@suffolk.gov.uk](mailto:nsips@suffolk.gov.uk)**

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# The roles of local authorities in the NSIP process

Table from Advice Note two: The role of local authorities in the development consent process | National Infrastructure Planning (planninginspectorate.gov.uk). Highlights added by SCC to indicate local authority focussed activities:

Activities undertaken predominantly by the local authority's project lead/planning team/NSIP core team
Activities which may usually also involve local authority technical officer/service areas
Activities by PINS or Secretary of state or Applicant

Pre-application	Acceptance	Pre-examination	Examination	Post Decision
28 days to provide comment on draft Statement of Community Consultation (SoCC)	28 days for PINS to decide whether to accept the application for examination	Respond to the invitation to the preliminary meeting (rule 6 letter)	6 months for Examination (maximum)	Discharge of Requirements (DoR) and monitoring
Respond to developer consultation about the scheme (s42)	Local authority submits adequacy of consultation (AoC) representation	Submit a Relevant Representation (RR)	Take receipt of the procedural decision including the examination timetable (rule 8 letter)	Local Planning Authority carries out enforcement where necessary
Discuss with developer about Planning Obligation (Section 106) agreements and requirements		Consider the draft examination timetable and provide comments if necessary	Submit LIR, SoCG, and WR early in examination	Responding to notifications - non material and material change applications
Local authorities are advised to begin work / arrange delegations for Local Impact Reports (LIR) / Statement of Common Ground (SoCG)		Attend the Preliminary Meeting	Attend and participate at hearings/ accompanied site visits (ASI)	
Local authorities are advised to consider and make arrangements for joint working with other local authorities		Continue preparation of SoCG, LIR and Written Representation(s) (WR)	Submit a signed planning obligation by the deadline	
Agree the terms of any Planning Performance Agreements (PPA) with the developer		Prepare for examination - legal and specialist support?	Respond to ExA written questions and requests for further information	
		Continue negotiations with developer	Comment on other interested parties' representations and submissions	

# Advice relevant throughout all stages

## General advice / lessons learnt

It is important to understand the limitations and opportunities that the role of a local authority has in the NSIP DCO process. As set out in the introduction, unlike Town and Country Planning Action (TCPA) applications, DCO applications are not determined by the local authority but by the relevant Secretary of State. Hence, the local authority is not a decision-maker but a key statutory consultee. While this limits the scale of influence of the local authority, it does provide opportunities as well. A local authority response can be much wider than when determining a TCPA application, allowing for a greater community leadership role and the opportunity to promote community benefits in their widest sense. It also gives the option to be more nuanced in the response, e.g., by objecting to some elements of the proposals and supporting others.

### **Suffolk County Council recommends:**

- a. Focus on ensuring any representation of your organisation is credible and robust. Ensure that representations are reflecting or in line with local strategy and policy (planning policy as well as wider policy such as a council's declaration of a climate emergency), are evidence-based, realistic (what can realistically be changed by the promoter?), and consistent and coherent throughout the whole process. It is not the place of the examination and pre-examination process to question national policy and law; these should, if required, be raised separately and directly with government departments.
- b. Even if your administration is opposed to the scheme, it is crucial for the local authority to constructively engage with the proposals put forward by the applicant and to make representations throughout the process, raising specific issues aimed at improving the scheme and reducing its impacts. This is your best opportunity to make the proposals better should the scheme be approved by the Secretary of State. Even if the local authority is opposed, you should not miss this opportunity.
- c. A core team to coordinate all aspects of the NSIP, led by an individual with project / programme management skills, and featuring strong planning expertise. This is essential for professional handling of any NSIP.
- d. A strong understanding within the core team of the political process and political sensitivities is crucial to ensure that a political mandate is maintained. It is important for affected councillors to understand the principles of needing to retain credibility and for the administration to authorise officers to constructively engage with the development and the developer, even if they are minded to oppose the scheme.
- e. Throughout the process, aim to drive the issues that matter to the local authority when talking to the developer; take frequently charge of, or influence, the agenda.



- f. Be clear what the key issues/concerns are and how they could be resolved. Always remember to set out clearly from the start what your local authority's interests and objectives are, and do not assume automatically that any of these are the same for the developer.
- g. Make sure that you go to key meetings/negotiations with more than one Council representative. This is so someone can take full note of what has been said and can provide backup.
- h. Nurture relationships with key partner organisations.
- i. Ensure internal resourcing is planned ahead, and aim to negotiate a 0.1 - Planning Performance Agreement (PPA) to cover for this.
- j. Don't underestimate resource requirements.
- k. Aim for continuity of officers dealing with each NSIP if possible.

Typically, an NSIP is significant for the local area in many ways, and its significance goes beyond considerations within the planning scope and scope of the Development Consent Order (DCO) regime. To do justice to this wider dimension, you should maximise wider opportunities (e.g. economic and skills) and plan for wider risks (e.g. on availability of labour or indirect public health impacts). To achieve this wider dimension it is important to take a project/programme approach that takes a wider perspective than planning, although planning considerations will be at the core.

With the increasing number of NSIPs being proposed in England, cumulative impacts between NSIPs are becoming increasingly important and complex to consider – and may need a wider perspective (and Government involvement) than what the DCO process for an individual NSIP would allow for.

## 0.1 Planning Performance Agreement (PPA)

### **When:**

It is recommended for a local authority to seek a PPA with the developer throughout all stages – from pre-submission to commencement. Some developers do not wish to enter into a PPA beyond pre-application, which Suffolk County Council considers is not reasonable. After commencement, our preference is to secure developer funding through more legally robust ways, such as Planning Obligations.

### **What:**

A Planning Performance Agreement (PPA) is between a developer and a local authority. It secures payments from the developer to the local authority so that the local authority can respond to the developer's proposal. Note that, currently, a developer is under no obligation to enter into a PPA with a local authority.

**Advice/Lessons learnt:**

NSIPs are very resource intense for a local authority. To avoid under-resourcing or needing to cut services elsewhere in the Council to resource NSIPs, a fair PPA is crucial for the local authority to undertake its roles to the best effect.

A PPA is essential throughout all stages i.e., from pre-examination until post-examination periods, and needs to provide medium-term certainty over funding. Therefore, negotiating a fair PPA from the outset is of the highest priority.

The Department for Levelling Up Housing and Communities has set out in a consultation on operational reforms an intention to move towards full cost recovery in the NSIP system, but this is not currently set out in guidance. Local Authorities may find Suffolk County Council's guidance for project promoters on expectations for PPAs for NSIPs to be a helpful starting point for discussions.

A fair PPA will achieve full cost recovery of any costs related to the local authority's engagement in relation to the development proposal. Suffolk County Council's experience with NSIPs suggests that the best approach for a PPA (both for the local authority and the developer) is to agree on fixed monthly payments based on realistic resource estimates; this gives both the local authority and the developer certainty on funding/expenditure, which allows the local authority to flex resources, and avoids creating an industry of time sheet approval mechanisms.

Our experience of working with smaller developers is that sometimes a fair PPA is very difficult to negotiate, and it is not always possible to agree on a simple mechanism for approving payments. In these cases, it may be necessary to escalate when an impasse is reached. Senior officers (and, in the most protracted negotiations, senior administration members) can be asked to back officers up and push for more funds via letters or high-level meetings. Ultimately, in the absence of clear government guidance on the appropriate level of funding, a view may need to be taken on what level of resources the council can devote to a project given the agreed level of funding.

The PPA needs to charge VAT (HMRC advice), and should be index-linked.

Important: Even a reasonably fair PPA may not cover full costs - e.g. legal costs of examination can be considerable, and some independent consultants advice may (in some circumstances) not be appropriate to be directly funded by PPA moneys. It is advisable to have a strategy to build up contingency by not always recharging services where extra work can be absorbed - i.e., principally only recharge if new staff/backfill is needed - and retaining corporate on-costs in the budget, with the expectation that corporate services absorb additional costs.

# 1. Pre-Application

## General advice / lessons learnt

Pre-application begins when the Planning Inspectorate (PINS) is informed by a developer that they intend to submit an application for development consent. Before submitting an application, the developer is required to consult on their proposals.

The pre-application stage is the best opportunity to amend the proposals and address concerns. At this stage, you need to set up all the relationships, establish your teams, and do your best to influence the developer. You may wish to start drafting your Local Impact Report (LIR) now.

### 1. Deal with the developer and respond to their proposals:

- a. Agree 0.1 - Planning Performance Agreement (PPA) with the developer.
- b. Establish positive and professional relationship with the developer.
- c. Where appropriate, consider escalation routes with the developer (in case this is required in the future)– establish relationships at different levels (technical, SRO, Chief Exec/Director and Leader/Lead Member as required).
- d. Set out (for the developer) clearly the issues that need to be addressed, and any additional information required, with clear “asks” of the developer, as soon as the issues arise/you become aware of them.
- e. Try to get a good understanding very early on, of key modelling approaches (e.g. transport models, gravity models), as much of the documentation and mitigation relies on these.
- f. Discuss with the developer early on monitoring requirements and responsibilities.

### 2. Set up your team:

- a. Establish a programme management approach: Appoint a Senior Responsible Officer (SRO) with sufficient levels of involvement and seniority, a project manager/case officer in charge of coordinating the input (this could be the lead planning officer) and define your core team for the project. A blend of project management and town and country planning expertise is beneficial.
- b. Appoint your solicitors and KC (mix of solicitor and KC helpful - see below).
- c. Establish engagement with/lead officers for, all affected services.
- d. Estimate staff resources to be required for each service area (to also feed into your 0.1 - Planning Performance Agreement (PPA) ask) and agree recharging.
- e. Make sure that there are sufficient opportunities for officer meetings across technical areas, as sometimes cross-impacts are not otherwise recognised.
- f. Consider if you need to appoint any external advisors e.g. traffic modelling.

### **3. Involve your Councillors, take them on the journey:**

- a. Lead Members already need to be involved at this stage. Officers must be aware and understand the likely political stance of the local authority. This includes politically contentious issues/topics and the ideal outcomes for the local authority.
- b. Agree with your political leadership if any pre-submission consultations need to be agreed by Cabinet (e.g. Suffolk County Council's Cabinet usually seeks to approve the statutory consultation response, as well as the Relevant Representation – see below).
- c. Establish regular briefings for all members within the locality - this instils confidence and ensures we are listening to local members and are aware of local community perspectives and issues.

### **4. Work with partner organisations:**

- a. Primary focus must be on robust discussions with the Applicant – don't get distracted from that.
- b. Agree with affected upper/lower tier local authorities in your area (and any neighbouring authorities if applicable) how you will work together. Do all you can do to work towards commonality of issues – but accept that you will not always achieve this across the board.
- c. Where the other host authorities do not have prior experience with NSIPs, Suffolk's experience is that the County Council may be well placed to position itself as a leader by offering to collaborate on key shared documents such as the Local Impact Report and by spearheading discussions on the PPA. Seek buy-in for your priorities, prepare to compromise to accommodate minor differences of opinion, but take a strong stance and defend the Council's position on key issues and those on which a strong political steer has been given. A coordinated and united approach from local authorities can amplify leverage in discussion with the applicant and provide credibility in front of the ExA.
- d. Establish strong links with the key relevant partners organisations, e.g. environmental stakeholders (statutory and NGOs), blue light services, health partners. It is important to work in close partnership, provide support, and, where possible, support each other's arguments, to strengthen your local authority's voice and position.
- e. County Council Highways, Fire, Police and Ambulance often benefit from collaboration to consider road traffic impacts.

### **5. Work with the community / town and parish councils:**

- a. Consider how you engage with the local community. Consult your members about this. Do you want to hold briefing events to support the understanding of Parish Councils of the proposals and the process, and for you to understand their concerns? Do you want to set up newsletters? Or is this too resource intense?

- b. Clearly explain to the local community, the role of the local authority in the NSIP process (a consultee who can advise / try to persuade, but cannot force changes upon developers, and are not responsible for designing or delivering schemes), to avoid wrong expectations later on.
- c. Town and parish councils are statutory consultees in their own right, but they tend not to be able to engage with NSIPs with the same intensity as local authorities due to the resource requirements. Suffolk County Council considers it important for town and parish councils to develop their capability to represent themselves effectively and has published, in collaboration with Suffolk Association of Local Councils (SALC), separate guidance for a parish council audience, which can be found here - <https://www.suffolk.gov.uk/asset-library/getting-to-grips-with-nsips.pdf>
- d. Take a political steer on what activity (if any) is required to keep parish councils abreast of the council's position and the state of negotiations with the developer. The appropriate level of engagement will vary from project to project and officers must take a lead from the council's political leadership on this issue.

## 6. Get organised:

- a. Establish your document management approach – SharePoint? Do you need to establish shared document arrangements with third parties – e.g. other local authorities in your area, legal advisors?
- b. Establish audit trail to evidence that you have raised issues with the developer.
- c. Use templates for your responses, that allow for clear representations. Put some formality to your responses. Ensure paragraphs and pages are numbered. When responding to documents, consider either using tables quoting developer's text and comment or, where proposing amendments to documents, use tracked changes.

## 1.1 Environmental Impact Assessment Screening Opinion

### When:

During the pre-submission period; 28-day deadline.

### What:

A screening opinion states whether an environmental impact assessment is required as part of a development proposal. If the Secretary of State either:

- Receives a notification that the applicant proposes to provide an Environmental Statement (ES) (Regulation 6 of The Infrastructure Planning (Environmental Impact Assessment) Regulations 2017) or
- Adopts a positive screening opinion

The Secretary of State must consult affected local authorities in writing. Local authorities should provide the Planning Inspectorate with any comments they may have on the proposed scope of the Environmental Impact Assessment (EIA) within 28 days.

## 1.2 Environmental Impact Assessment Scoping Opinion

**When:**

During the pre-submission period; the Planning Inspectorate must adopt a scoping opinion within 42 days of receiving a scoping request (electronic copy). (Regulation 10(6) of the EIA Regulations. If screening and scoping requests are submitted simultaneously for the same project, the 42 day period starts from the date that the Secretary of State adopts a positive screening opinion (Regulation 10(7)).) Consultation bodies (including Local Authorities) will be given 28 days to respond to a scoping consultation.

**What:**

The EIA Regulations allow a person who proposes to make an application for an order granting development consent to ask the Secretary of State to state in writing its opinion as to the scope and level of detail of the information to be provided in the ES.

Most importantly, a scoping request will seek to have some issues 'scoped out' of the environmental statement. It is crucial for the local authority to be aware of any issues which the developer is seeking to have scoped out, and to be prepared to make arguments where it disagrees. It is not impossible to bring up issues which are scoped out at this stage later in the process, but it will be much harder to justify.

## 1.3 Non-statutory Consultation

**When:**

As soon as there is sufficient detail on a proposed development, during the pre-application period.

**What:**

Although optional, developers are encouraged to undertake initial consultation to allow local communities to have a say at an early stage of the application. It is an opportunity for communities to influence the proposed development. The local community will gain knowledge of the project and understand its potential impacts. Feedback may help developers focus on the most viable options as early as possible.



## 1.4 The Statement of Community Consultation (SoCC)

**When:**

During the pre-application period, at least 28 days must be given for responses.

**What:**

The Statement of Community Consultation (SoCC) is produced by the applicant to establish the way it will consult with the local community at the pre-application stage. The SoCC must reflect the unique circumstances of each application. The draft SoCC is sent to the host local authorities for comment. The applicant must have regard to any comments made by the local authority about the proposed consultation strategy but is not bound to accept or implement them.

It may be worth the council canvassing key local interests, such as parish councils, for ideas on how community consultation is best carried out to inform its response to the SoCC. This can provide an opportunity for the council to champion local interests.

It may be necessary for the developer to carry out additional consultation in response to feedback from consultees or where a significant change is made to the project. In these circumstances, the developer may revise the SoCC and seek the agreement of the relevant local authority for the revised approach.

Once the SoCC is finalised, adverts will appear in local newspapers explaining where the public can view it.

## 1.5 Statutory Consultation

**When:**

During the pre-application period.

**What:**

Before submitting an application, applicants have a statutory duty to consult on their proposals. The length of time taken to prepare and consult on a project will vary depending upon its scale and complexity. It is also likely that a developer wishes to engage with the local authority directly in pre-submission discussions.

**Advice / lessons learnt:**

Responding to a developer's Pre-application consultation, and involving in direct discussions with the developer, is the best time to influence a project, whether you agree with it, disagree with it, or believe it could be improved.

## 2. Acceptance

### General advice / lessons learnt

The acceptance stage begins when a developer formally submits an application for development consent to the Planning Inspectorate (PINS). There then follows a period of up to 28 days (starting with the day after the application is submitted) for PINS, on behalf of the Secretary of State, to decide whether or not the application meets the standard required to be examined.

If the application is accepted, the letter to the applicant confirming this will be published on the National Infrastructure Planning website and pre-examination will begin. During the acceptance stage PINS will ask the host county and district local authorities in addition to the neighbouring local authorities whether the applicants pre-application consultation was adequate. The local authority's statutory duties in this period are limited to submitting an Adequacy of Consultation (AoC) representation.

For the local authority to make good use of this period, it is important to have early sight of the 2.1 - Development Consent Order (DCO) application documents at the point when the applicant first submits them. The local authority should prioritise encouraging the Applicant to share all (or at least some) of the documents at the point of submission. This is the stage where you need to have all your structures and approaches set up to be ready for the examination period. Discuss with the Applicant the timescales for the Relevant Representation.

### 2.1 Development Consent Order (DCO) application documents

**When:**

Between one month and a week before submission the Planning Inspectorate (PINS) will normally send a letter to relevant local authorities to advise them of the likely submission date of the application. It is within the Applicant's discretion whether or not the application documents are published on the PINS website, or shared with the local authority, at submission. Only once accepted by PINS is there a requirement for the submission to be published.

**What:**

The Development Consent Order (DCO) application documents include the draft DCO and the Environmental Statement. The draft DCO is the precursor to the Development Consent Order (DCO) which will be examined, and amended, during the examination. During the examination, it is likely that amendments and additions will be submitted by the applicant to the application documents, to which the local authority may wish to respond. All documents will be published in the PINS 4.2 - Examination Library. See page 4 for more information on the DCO.

## 2.2 Adequacy of consultation (AoC) representation

**When:**

As soon as possible after receipt of the application.

**What:**

The Planning Inspectorate will invite the host and neighbouring local authorities to submit an adequacy of consultation representation (AoC). The Planning Inspectorate must have regard to any comments it receives from host and neighbouring authorities in deciding whether or not to accept an application. The AoC is a representation as to whether the applicant has complied, in relation to the proposed application, with:

- Its duties under sections 42, 47 and 48 of the PA 2008 relating to consultation and publicity.
- Its duty to consult a relevant local authority about the preparation of the Statement of Community Consultation (SoCC) (whether the applicant had regard to the local authority's comments on the draft SoCC).
- The commitments set out in the SoCC in terms of undertaking the pre-application consultation in compliance with the stated consultation methodology.

**Advice / lessons learnt:**

The bar is set quite low within the Planning Act as to whether the statutory duties have been met.

Even if the Applicant has met its legal duties, the representation provides an opportunity to the local authority to comment on any shortcomings of the consultations.

## 3. Pre-examination

### General advice / lessons learnt

The pre-examination phase commences as soon as the Development Consent Order (DCO) application has been accepted by the Planning Inspectorate (PINS) and takes approximately 3 months. The start of the pre-examination phase begins with the appointment of the Examining Authority (ExA). This can be a single Examining Inspector or a panel of up to 5 Examining Inspectors. The ExA will value documents submitted to them that are well structured and easy to read.

This is a key stage to establish the Council's position and strategy, through formal approvals. For Suffolk County Council, it is typically at this point that the Council seeks Cabinet approval for its NSIP response and seeks delegated authority for engagement in the examination, and this ideally includes approval of the draft 3.1 - Relevant Representation (RR).

#### 1. Establish political position, with clear democratic mandate for examination stage:

- a. At this stage you need to have established the political stance of the Council as to what the key issues and contentious topics are. Pick your battles, with consideration to what is realistically achievable. Discuss with lead councillors where they want to be at the end of the examination – what would be the ideal outcome, what would this mean for the Council's position? What would it mean if we cannot achieve the ideal outcomes? Focus on ensuring that any stance is credible and realistic.
- b. Involve local members in shaping the stances which will be set out in the council's 3.1 - Relevant Representation (RR).
- c. A clear political mandate (where applicable, by a Cabinet decision) with clarity of delegation to officers is important at this point, for the local authority to become ready for the examination – the democratic mandate needs to enable officers to respond swiftly during the examination. There will not normally be time to go back to Cabinet once the Examination has commenced.

#### 2. Refine your position and set out succinct list of issues to be resolved:

- a. Set out clearly issues and asks that need to be addressed – and how they can be resolved.
- b. Take credible and coherent points of objection (or support) – that way our voice carries more weight with the Examining Authority, developer and Secretary of State.
- c. Set out clearly what your locality's and your council's interests and objectives are, and do not assume automatically that these are the same for the developer – even in areas where interests seemingly overlap, e.g. supply chain and skills, the developer has different priorities and emphases (to reduce expenditure /maximise deliverability) compared to local authorities (to minimise impacts/maximise local opportunities), even if the headline objectives may sound very similar.

### 3. Continue working with the developer

- a. Continue maintaining a professional and positive relationship with the developer, even if there are fundamental disagreements.
- b. Agree with developer how to engage during examination, including channels of escalation.
- c. Make sure you have an audit trail of your discussions with and representations to the developer, to be able to evidence in the examination you are not presenting anything that hasn't been raised directly with the developer before.

### 4. Plan resourcing for the examination:

- a. You need to ensure now that you have appropriate officer resource available throughout examination period in all key topic areas, including e.g. holiday rota.
- b. Consider and book in any support function resources required to do a good job: e.g. robust specialist legal advice (solicitor and KC), Section 106 expertise, a data analyst to verify modelling and estimated impacts, finance support.
- c. Agree how to use your legal advisors – recommendation to have a blend of external expert solicitors and KC. Drafting details of e.g. requirements, section 106, etc. is best dealt with by solicitors with their familiarity in those fields. KC best for marshalling planning arguments for different topic areas and making sure that we can make our arguments clearly heard. KC (or junior KC if appropriate) well placed to lead hearings.

### 5. Communication

- a. Spell out again to the community what local authority's role is – a consultee who can advise / try to persuade, but cannot force changes upon developer, and not responsible for designing or delivering schemes.

## 3.1 Relevant Representation (RR)

#### **When:**

This needs to be completed soon after acceptance. Following publication of a statutory notice, the applicant is required to allow at least 28 days, from the day after the notice is last published, for anyone wishing to submit a relevant representation to do so. It is in the Applicant's discretion to extend this period.

#### **What:**

A Relevant Representation should include a summary of what the local authority agrees and/or disagrees with in the application, what they consider the main issues to be, and their impact. The content of relevant representations is used by the Examining Authority to help inform their initial assessment of principal issues for examination.

Any organisation or individual who wishes to make submissions during the examination needs to submit a Relevant Representation to register as an "Interested Party".

Interested Parties have further opportunities to develop on these points, most notably in a Written Representation (WR), once the examination has commenced. Issues (or potential issues) need to be referenced in the RR, even if at a high level, as you do not want to have to introduce new issues later during the examination that have not been raised before.

**If the Council considers that an NSIP response requires Cabinet approval (which Suffolk County Council considers is the case for any NSIP within its geography), it is typically at this point. If timelines allow, the Cabinet Report includes a draft Relevant Representation as an Appendix.**

**Advice / lessons learnt:**

Within the Relevant Representation, set out a succinct list of concerns and issues (with clear asks/options to address the concern) that need to be addressed. This helps both the Examining Authority to determine principal issues for examination, and the Applicant to be clear about, and be incentivised to resolve, areas of objection/concern.

If the Relevant Representation's content is approved by Cabinet, by clearly setting out the key issues, and potential ways to resolve these, the democratic mandate, and delegations to officers throughout the examination become more defined.

Note that, even if additional information has been requested, you should, as much as possible, set out what you think are the right responses to impacts that you judge to be likely.

Ensure that any issue (or potential Issue) is referenced, even if at a high level, as you do not want to have to introduce new issues during the examination that have not been raised at all.

Please note: The Council is able to develop more fully the points made in the Relevant Representation in the 4.4 - Local Impact Report (LIR) and in a 4.5 - Written Representation (WR), once examination has commenced.



## 3.2 Appointment of the Examining Authority (ExA)

**When:**

Prior to the 3.5 - Preliminary Meeting.

**What:**

The Examining Authority (ExA) is the Inspector, or the Panel of Inspectors appointed by PINS to conduct the Examination of the application. This is set out in the Rule 6 letter, in advance of the 3.5 - Preliminary Meeting.

## 3.3 Draft timetable

**When:**

Prior to the 3.5 - Preliminary Meeting.

**What:**

The draft timetable will set out a proposal for a range of 4.3 - Deadlines (to submit representations) and other dates for such things as:

- Making written representations,
- For the ExA to ask an initial set of 4.7 - Examining Authority's Questions (ExQs) about any matter contained in the application, 3.1 - Relevant Representation (RR), 4.5 - Written Representation (WR), or anything else considered relevant,
- For the applicant and interested parties to comment in writing on any 3.1 - Relevant Representation (RR), 4.5 - Written Representation (WR), or responses provided to the 4.7 - Examining Authority's Questions (ExQs)
- Examination deadlines for additional rounds of questions, written representations, dates of hearings etc.

Consider the structure of the examination as a whole, not just the detail of when the deadlines and hearings occur. If the draft timetable presents difficulties, there is an opportunity to make these known to the ExA before the timetable is finalised shortly after the Preliminary Meeting.

## 3.4 Initial Assessment of Principal Issues

**When:**

Prior to the 3.5 - Preliminary Meeting.

**What:**

The ExA decides how to examine an application; however, it must make an initial assessment of the principal issues arising on the application prior to 3.5 - Preliminary Meeting. This is usually listed as Appendix C to

the Rule 6 letter which gives notice of 3.5 - Preliminary Meeting. The list is not comprehensive: The Examining Authority will have regard to all matters raised during examination. The initial assessment of principal issues usually form an agenda item at the Preliminary Meeting, allowing parties to comment on the initial list and raise other potential issues. The Local Authority has an opportunity to comment on the list of issues in its submission in advance of the 3.5 - Preliminary Meeting (Deadline A).

## 3.5 Preliminary Meeting

**When:**

This is a procedural meeting held after the deadline for making a Relevant Representation has passed and once the Examining Authority has made its 3.3 - Draft timetable.

**What:**

The purpose of the Preliminary Meeting is to discuss the procedure and timetable to be followed during the examination stage, which will be a maximum of 6 months. The Preliminary Meeting is not the time or place to raise matters related to the merits of the application or for members to make politically motivated speeches. It will cover:

- The draft examination timetable;
- The ExA's initial assessment of the principal issues;
- Any procedural decisions the ExA chooses to make at this stage.

The preliminary meeting is a public event where any interested party can raise comments about the procedure and timetable proposed for the examination. Sometimes, the preliminary meeting is adjourned to a second day, which does not have to be the day after the first day.

The 6-month examination period commences at the close of the (second, if two are held) preliminary meeting.

**Advice / lessons learnt:**

If the draft timetable presents difficulties to the local authority, there is an opportunity to make these constraints known to the Examining Authority before the timetable is finalised shortly after the Preliminary Meeting.

## 4. Examination

### General advice / lessons learnt

The examination commences the day after the Preliminary Meeting (see 3.5 - Preliminary Meeting). The Examining Authority (ExA) has a maximum of 6 months to carry out the examination. During this stage, Interested Parties are invited to provide more details of their views in writing and in Hearings. The ExA considers important and relevant matters, including Interested Party (IP) representations, any supporting evidence, and answers to the ExA's questions.

The examination is primarily a written process, enabling Interested Parties (IPs) to develop concerns more fully in written representations. The examination goes through a series of stages where further representations are sought by the ExA from IPs. Local Authorities will be heavily involved throughout the examination, including by submitting a 4.4 - Local Impact Report (LIR), Statements of Common Ground (SoCG), attending Issue Specific Hearings (ISHs) and responding to ExA questions.

The examination period is very intense for all involved, with limited advance notice of when topics will be covered. Challenge for teams to respond to volume of documents in short timescales on top of day jobs, particularly during (and even more so towards the end of) the examination. Local Authorities should take note of the Examination timetable and plan accordingly.

Compensation funds can be secured through Planning Obligations to mitigate the residual impacts of the project. Such funds can be a valuable asset for the community.

There is no benefit in repeating a point made in a previous submission, as the ExA are already aware of the issues, unless there is further information or evidence that you consider significant. All documents received by the Planning Inspectorate (PINS) will be published on the National Infrastructure Planning website.

#### **1. Maintain political mandate and buy-in throughout the examination:**

- a. Make sure you plan in regular briefings with the relevant senior Members.
- b. Ensure that any important submissions have been agreed in writing by senior officer and lead member (in accordance with the agreed delegation).
- c. Work with lead members to brief local Members and seek their local feedback.

#### **2. Make your case to best effect to the Examining Authority:**

- a. Be clear in any issue you raise if and how the issue can be resolved within the existing DCO submission, and set out credible alternatives – during the examination and, if still unresolved, at the end of the examination in a 4.14 - Final Position Statement. Have narrative that links any mitigation asks back to the impacts.

- b. Aim for “equality of arms” during the examination: A good KC and solicitors will allow Council to be able to confidently respond to the developers’ typically well-resourced legal team.
- c. Stick to your messages throughout – regularly revisit what has been said in our 3.1 - Relevant Representation (RR), 4.4 - Local Impact Report (LIR) and other submissions.
- d. Preparation is key - particularly for 4.11 - Issue Specific Hearings (ISHs).

**3. Plan in staff resources, be aware of wider service impacts, and utilise team to best effect:**

- a. Do not under-estimate the significant amount of time taken up by the examination across all services – even for officers in services with only more limited impacts.
- b. Team resilience in all affected services is key: Have a back-up staff member in case of absence, and so that people can take leave as they will need a break in this intense period.
- c. Strong core team is key to success – the better it is resourced, the more burden it can take from service areas, by providing guidance, summaries of documents, etc.
- d. Be well organised, in project management and time planning, to be alert to deadlines and lead-in times, and in parallel to prioritise and plan for negotiations with developer.
- e. Remind all staff, that securing improvements, mitigations, compensation is more important than just feeding Examining Authority’s Deadlines.
- f. Make sure there are sufficient opportunities for officer meetings across technical areas, as sometimes cross-impacts not recognised otherwise.
- g. Be aware that other service functions may suffer as experienced staff are taken out of their day jobs. This cannot be completely avoided, but resource planning will help to alleviate.
- h. Expect a considerable rush of last-minute negotiations, discussions, refinements (particularly obligations, conditions and Statements of Common Ground) – ensure you have key staff fully available for the examination over the last 6-8 weeks of the examination.

**4. Continue prioritising engagement with the applicant:**

- a. While engaging in and feeding into the examination process set by the Examining Authority (ExA), ensure that you continue to maintain dialogue with the Applicant, and try to resolve issues outside of the Examination where possible.
- b. A well-established relationship at Leader/Chief Executive level (or lead member/director level, dependent on the significance of the NSIP) with the developer, nurtured through regular meetings, helps to allow diffusion for areas of disagreement and to allow escalation. By deferring areas of disagreement to more senior levels, technical meetings can be kept professional and constructive.

# Topic specific lessons learnt - Examination

## 1. Natural environment

- a. Follow the mitigation hierarchy: Whilst compensation funds may be necessary and useful to mitigate for residual impacts, the emphasis has to be first on minimising residual impacts and working up with the applicant meaningful mitigation. It is useful for the Council to be proactive by providing a list of desired measures/changes to the scheme.
- b. In particular for environmental mitigation, seeking early implementation of mitigation and compensation measures is important – where possible, request these to be in place before commencement.
- c. The EIA process focusses on HRA (Habitat Regulations Assessment) species and habitats which Natural England will lead on – local authorities have an important role to consider the bigger picture and impacts on non-HRA species.
- d. Consider increased uncertainty in forecasting due to climate change.
- e. Biodiversity net gain considerations.

## 2. Skills and economic development

- a. As these topics focus on opportunities, remember that the developer is primarily interested in de-risking their project – so whilst it appears that the objectives are the same, there is some difference, and we need to be clear what our specific objectives are, in terms of maximising local opportunities.
- b. Some of the issues and opportunities arising in skills and economic development may be outside of the planning sphere of the examination. Ensure that there is always a close linkage between planning and wider discussions and consider early on which elements are to be considered as planning asks, and which ones aren't and how those that are not can be secured through other means than planning obligations and conditions.

## 3. Flood and Water

- a. Experience in NSIPs shows that this topic is often not sufficiently prioritised by developers. We need to set out very clearly from the start how fundamental suitable drainage solutions are for the acceptability of the project, what information is required, and the criteria for acceptable mitigation.

## 4. Cumulative impacts

- a. It is important to consider how a specific project sits in the context of other projects in the area or coming forward in the future. In particular, be aware of mitigations that may overlap or be counterproductive, cumulative transport impacts.
- a. It has been found to be a weaknesses of the NSIP system that it can be difficult to examine several NSIPs in a coordinated way, which can lead to sub-optimal solutions, and potentially failing to address wider facilitating infrastructure needs in a coordinated way.

## 4.1 Examination timetable

**When:**

After the preliminary meeting, the Examining Authority will publish a timetable.

**What:**

The timetable will set out a range of 4.3 - Deadlines (to submit representations) and other dates for:

- Making written representations.
- The Examining Authority to ask an initial set of 4.7 - Examining Authority's Questions (ExQs) in writing about any matter contained in the application, 3.1 - Relevant Representation (RR), 4.5 - Written Representation (WR), or anything else considered relevant.
- The Applicant and Interest Parties to comment in writing on any 3.1 - Relevant Representation (RR), 4.5 - Written Representation (WR), or responses provided to 4.7 - Examining Authority's Questions (ExQs)
- Additional deadlines for further rounds of questions, comments, hearings and written representations

Note: The timetable evolves during examination.

**Advice / lessons learnt:**

As the timetable evolves during the examination and more deadlines and hearing might be added, do not rely on it e.g. to allow the team to all go on holiday during an apparently quiet period.

Deadlines are usually tight. For 4.11 - Issue Specific Hearings (ISHs), plan in preparation time and time to write up post-hearing submission.

Great effort is required to deal with multiple (complex) matters of law and evidence arising in the limited time.

## 4.2 Examination Library

**When:**

The Examining Authority will set up an Examination Library at the start of the examination.

**What:**

The Examination Library lists each document that has been submitted to the examination by any party and documents that have been issued by



PINS. Each document linked in the examination library receives a unique reference number which should be used when referring to it in submissions. All documents in the Examination Library are on the PINS website and a hyperlink is provided for each one. The Examination Library will be updated regularly so it is important to ensure that the latest version of any document is being looked at.

The submission documents will include a wide variety of information including application forms, plans and maps, the draft DCO, information related to compulsory acquisition, a report on the pre-application consultation, all documents forming the Environmental Statement, and miscellaneous other information which may be required as part of the application.

#### **Advice / lessons learnt**

Make sure you're looking at the most recent version of (say) draft DCO.

When referencing other documents published from previous deadlines, ensure to include the reference number from the Examination Library.

### 4.3 Deadlines (to submit representations)

#### **When:**

The 4.1 - Examination timetable publishes a number of deadlines throughout the examination. Typically, there are in the region of 10 deadlines in an examination, the last one being close to the date of the close of examination.

#### **What:**

A series of stages where further representations are sought by Examining Authority from Interested Parties. An NSIP Examination is primarily a written process. Each deadline sets out what information is required to be submitted.

#### **Advice / lessons learnt:**

When preparing documents, remember that the Examining Authority will have to read hundreds, if not thousands, of documents, so make the Examining Authority's life as easy as possible. Ensure that you make your written representations as user friendly as possible, including:

- Number paragraphs and pages;
- Be as concise as possible; avoid repetition;
- Use short sentences and paragraphs / consider sub-headings;

- Avoid paper-chases: include links to other published material / documents in Examination Library;
- Be clear as to what you want: explain the problem and what you want done about it;
- Present credible alternatives where applicable, that there is no technical impediment to your solution, and, if you can, indicate the cost of your solution;
- If you want the DCO to be amended, provide amended version of the provision (track changed) and Explanatory Memorandum;
- Likewise, provide preferred text if seeking amendment to one of the control documents.

The project's core team/the NSIP team will need to share templates for submissions with the wider team, and has the responsibility to coordinate and ensure the documents are adequate.

## 4.4 Local Impact Report (LIR)

### **When:**

Early on during examination (one of the first deadlines). It is recommended for preparation to commence well in advance of examination because scale of task and limited time between notification and expiry of deadline.

### **What:**

The Local Impact Report is a written report by host local authorities giving details of the likely impact of the proposed development on the authority's area (or any part of that area); it must be taken into account by the Examining Authority and the Secretary of State. PINS Advice Note 1 includes the list of topics that could be covered in an LIR. It is worth noting the LIR is often consists of several hundred pages.

As per PINS advice note 1, the LIR should:

- provide local knowledge and experience;
- evidence of local concerns and issues e.g. local evidence of flooding, local social / economic issues or local knowledge of travel patterns to community facilities;
- LIRs are expected to contain appraisal of development's compliance with local policy and guidance;
- Advice note encourages local authorities to give views on relative importance of different social, environmental or economic issues and the scheme's impacts on them;

- The LIR should consider impact of DCO articles, requirements and obligations and any changes the local authority considers are needed;
- The LIR should consist of statements of positive, negative and neutral local impacts;
- No need for a balancing exercise between impacts.

**Advice / lessons learnt:**

The LIR is the most important document the local authority produces during the examination, so the production of a robust and comprehensive document needs to be prioritised. The production of the LIR is often a very time-consuming piece of work, resulting in a several-hundred-page document. If producing it jointly with other local authorities (recommended), while some work can be shared, the challenge of bringing together multiple views can be time-consuming and complex.

If the LIR is substantial in volume, make sure it remains user friendly and to the point – for example, by including summary boxes for each section, or for all impacts.

There is no need for the LIR to replicate applicant's Environmental Impact Assessment/Statement.

PINS Advice Note 1 states that the LIR should be distinguished from any representation a Local Authority may choose to make in respect of the application's merits. Please note that further elaboration with regard to the application's merit can be made in the 4.5 - Written Representation (WR). However, from Suffolk County Council's experience, we consider it nevertheless helpful to indicate within the LIR the Council's views on acceptability of individual proposals and specify any asks/desired solutions/improvements/mitigations to address impacts.

PINS Advice Note 1 states that the LIR does not need to assess against National Planning Statements (NPS) (as this would duplicate the Examining Authority's role). Having said that, we consider that it is still helpful to refer to National Planning Statements and other national policy to strengthen the case and use as a background for our assessment of impacts.

## 4.5 Written Representation (WR)

**When:**

Early on in the examination – often at the same deadline as the 4.4 - Local Impact Report (LIR).

**What:**

Written Representation and 4.4 - Local Impact Report (LIR) are distinct documents allowing the local authority to express information differently. The 4.4 - Local Impact Report (LIR) is a technical document setting out an evidence-based assessment of all the impacts of a proposal on the communities affected, while a Written Representation is the most appropriate document to set out the authority's view on the application i.e. whether or not it supports the application and its reasons.

**Advice / lessons learnt:**

Local authorities will have set out their stance in their 4.4 - Local Impact Report (LIR), and provided detail to issues within the 4.4 - Local Impact Report (LIR). Therefore, a local authority may decide not to submit a Written Representation, if it would only duplicate what has been submitted in other documents.

However, the Written Representation provides an opportunity for the local authority to provide further detail on its overall assessment of the merits of the proposals or aspects of the proposals, where it feels that the 4.4 - Local Impact Report (LIR) may not be the right vehicle to pursue these.

## 4.6 Statements of Common Ground (SoCG)/ Principal Areas of Disagreement Summary Statements (PADSS)

**When:**

The ExA will set deadlines for submission of SoCG in the post Preliminary Meeting letter; however, early submission is encouraged. A final SoCG is expected to be submitted at the final Deadline of the examination. Usually, the SoCG begins with few items agreed, and as the examination progresses more items may become agreed. This final version is often signed by both parties. The local authority should be sure that they are happy that an issue is resolved before agreeing it in the SoCG.

**What:**

A Statement of Common Ground (SoCG) is agreed between the Applicant and another stakeholder which:

- sets out any matters on which the applicant and another party (parties) agree.
- identifies those areas where agreement has not been reached.

It is possible for the local authority to enter more than one; and different SoCG with different parties.

The statement should include references to show where those matters are dealt with in the written representations or other documentary evidence.

More recently, SCC has noted the ExA requesting Principal Areas of Disagreement Summary Statements (PADSS) instead of SoCG. These documents serve a similar purpose, but focus on areas of disagreement.

**Advice / lessons learnt:**

A useful document that ensures evidence and examination focuses on the material differences between the parties. To be helpful to the Examining Authority, do not lose focus or get lost in the detail. Explore common ground with other stakeholders (e.g. District Council).

## 4.7 Examining Authority's Questions (ExQs)

**When:**

The first set of Examining Authorities Questions (ExQs) are usually early in the examination, likely to be followed by around two more rounds of questions.

**What:**

Questions by the Examining Authority, usually directed to the Applicant, local authorities or other key consultees. These can be wide ranging, and are likely to cover strategic, legal as well as technical questions, and may relate to any matter contained in the application, RRs, WRs, or anything else considered relevant.

**Advice / lessons learnt:**

Each ExQ tends to be directed to the applicant and/or specific interested parties. If you have something important to say on a question not directed at you, you should consider your response and reply at the next deadline, when you can comment on the responses submitted to the initial ExQ.

## 4.8 Planning Obligations (Section 106)/Deed of Obligation (Section 111)

### **When:**

A signed and dated agreement (where required) will usually need to be submitted by the final Deadline. The ExA might request for drafts to be submitted at intervening deadlines of the examination, to give other interested parties the opportunity to submit comments on the draft agreement to the ExA.

Because these agreements are negotiated in considerable detail, the negotiations may carry on until the last minute of the examination.

### **What:**

Planning Obligations are legal obligations which secure mitigation and compensation in respect of a development proposal. They are entered into under section 106 of the Town and Country Planning Act 1990 and must satisfy certain statutory tests. If those tests cannot be satisfied, commitments might be secured by an agreement entered into under section 111 of the Local Government Act 1972. Whether an agreement is entered into under section 106 or section 111, it will be dated and executed as a deed by all the parties to it, e.g. the applicant and the relevant local authorities.

Note: A signed Planning Obligation cannot be amended by the Secretary of State.

### **Advice / lessons learnt:**

Planning Obligations are perhaps the most important document to be agreed by the local authority, and need to be prioritised during the examination, as they secure the mitigation and compensation funding, directly for:

- the local authority,
- third party organisations,
- the wider Suffolk community (in form of mitigation/compensation funds where applicable).

The advice note rightly states that "Brinkmanship by any party is inappropriate and may backfire within the context of a timetabled examination."

Notwithstanding this, there will be a substantial amount of negotiation with the Applicant around the evidence base and what levels of mitigation are considered appropriate.

Have a clear narrative that any relates mitigation obligation back to impact - ensure no ambiguity

Try to secure any payments/mitigations/appropriate resourcing for discharging



etc. through a legally binding document – Deed of Obligation/Section 106 or Development Consent Order (DCO).

A key element within the Obligations should be monitoring arrangements, setting out monitoring responsibilities and reporting arrangements, alongside possible trigger points for mitigation effective Build in, where appropriate, an adaptive impact assessment process (plan, monitor and manage).

When negotiating obligations, aim to build in flexibility on how and when to be allowed to spend money, and make sure money is accessible without undue burdens. Watch out for any conditions how the money can be claimed.

Remember to build in indexation.

Negotiations can carry on until the last minute and beyond – and are likely to intensify in the last few weeks of the examination. Plan in resource (both of chief negotiators and of technical advice) accordingly.

If the developer does not wish to pursue Planning Obligations, consider carefully how mitigation, compensation, staff resources, monitoring arrangements can be legally secured.

### **Information - Community Benefits**

Community benefits are outside of the planning balance (and so the Secretary of State does not give them any weight when making their decision), and therefore the examination. The Supreme Court judgement (*R vs Resilient Energy Severndale Ltd and Forest of Dean District Council, 2019*) outlined that community benefits are non-material considerations and therefore not compulsory for developers to provide. There is expected to be forthcoming guidance on community benefits for transmission infrastructure in late 2023, and guidance exists for onshore wind, which was published in December 2021. Subsequently, the guidance around community benefits is still evolving, and therefore the dynamics and process are still to be fully established.

Community benefits are additional to the required mitigation and compensation and are voluntarily offered by the developer. These are used to fund local initiatives, in recognition of the important role of communities, which are hosting national infrastructure.

Community benefits would be procured formally by the local authority. To understand the community's needs, before examination, the local authority should consult the local councils. Since community benefit as a concept is still emerging, it is anticipated that community benefits will be secured via section 111 agreement. SCC supports the principle of developers providing community benefits for communities hosting national infrastructure. These funds would be for small scale community initiatives.

Community benefits provide an opportunity to improve the communities':

- Quality of life,
- Rejuvenation of community assets
- Improvements to the resilience and function of the environment and the community

It is very important that community benefits are not negotiated as part of a quid pro quo, for example in exchange for withdrawal of an objection. Properly implemented, community benefits should not present a conflict of interest, because they are not connected to the planning merits of the project.

## 4.9 Development Consent Order (DCO)

### **When:**

A draft DCO will be included within the original 2.1 - Development Consent Order (DCO) application documents. At the last deadline of the examination, a final draft DCO will be submitted by the Applicant. The Secretary of State is able to make amendments to the DCO before adoption.

### **What:**

The DCO is a statutory order which provides consent for the project and means that a range of other consents, such as planning permission and listed building consent, will not be required. A DCO can also include provisions authorising the Compulsory Acquisition of land or of interests in or rights over land which is the subject of an application. A draft DCO is submitted by applicants with every application.

Key elements of the DCO of particular relevance to a County Council:

- Highways provisions: Often significant amount of detail related to County Council responsibilities as street authority.
- Requirements: The Planning conditions of a DCO. Generally, requirements will be discharged by a local authority (SCC often discharges transport, rights of way and archaeology requirements but will have an interest in other requirements). Requirements should be precise, enforceable, necessary, relevant to the development, relevant to planning and reasonable in all other respects.
- Protective provisions: it may be appropriate for the County Council to seek Protective Provisions, particularly as Highways Authority.

See page 4 for more information on the DCO.

**Advice / lessons learnt:**

Legal/solicitors' advice on the DCO will be important, as this is complex legal territory. Requirements will need to be carefully considered, including resource implications for the local authority if it is discharging / or has input into discharging of requirements.

If mitigation and compensation funding is not agreed through 4.8 - Planning Obligations (Section 106)/Deed of Obligation (Section 111), try to secure any payments/mitigations/appropriate resourcing for discharging etc. in the DCO.

It is common for DCOs to set out a number of pre-commencement activities which may be carried out by the undertaker without triggering requirements or obligations. The Local Authorities will want to ensure that this language is proportionate and unambiguous, and that there is a shared understanding with the promoter as to what kinds of activity are covered by this. For example, if new accesses be provided does this also cover private access roads?

## 4.10 Open Floor Hearings (OFHs)

**When:**

Typically, one set of OFHs will be held close to the beginning of the examination, but additional ones later on are possible. OFHs can be requested by interested parties and must be held if requested.

**What:**

Typically, OFHs are community focused, with an emphasis on individuals and community representatives putting their views directly to the Examining Authority and, where appropriate, being questioned about them. There is usually no agenda for these hearings. The PINS Advice Note 2 states: "In this context there may be a limited role for the local authority as a technical / statutory consultee."

**Advice / lessons learnt:**

The PINS Advice Note 2 states: "Local councillors may find these hearings are suited to their role as a community representative, but should be clear with the ExA in what capacity they are speaking (on behalf of the local authority / themselves / their constituents)."

Typically, the responsible Cabinet Member is likely to wish to speak at the OFH to provide a high-level political/corporate perspective from the Council. It is not appropriate at this occasion for the County Council representation to go into detail at the OFH, as the local authority has other opportunities to present its views.

## 4.11 Issue Specific Hearings (ISHs)

**When:**

A number of ISHs will be scheduled throughout the examination phase. The ExA will try to issue an agenda a week in advance of an ISH in order to provide interested parties with a guide as to who will need to attend and what will be discussed.

**What:**

Issue Specific Hearings (ISHs) are held by the ExA to explore in detail a specific topic or set of topics e.g. DCO / obligations / transport impact but can also be site-specific. These hearings are held only if the ExA considers them necessary for an adequate examination of an issue or for an interested party to have a fair chance to put forward their case.

Issue specific hearings are inquisitorial, and the ExA will generally ask questions of the participants. Cross examination is an exception but can be requested by an interested party.

ISHs may be run solely in-person, solely online/virtual, or as hybrid meetings (i.e. as in-person meetings with the option to join the meeting remotely via your device on MS Teams).

**Advice / lessons learnt:**

If you feel that a topic should be the subject of ISH, and is not proposed, you can raise this at the 3.5 - Preliminary Meeting in relation to the draft Examination Timetable.

Preparation is key for issue specific hearings. A good KC will be able to lead on our interests throughout the hearing, but to be effective, a comprehensive briefing with the KC is essential.

As the agenda is usually only issues a week in advance of the ISH, there is only limited time to prepare based on the agenda – do not wait for the agenda to commence preparations.

Good practice is to fill in the post-hearing submission template in advance of the hearing with all the detail, so that it is at hand for the KC and technical officers. Make sure you cross-refer to the documents on the PINS library with the correct reference number and page/paragraph.

Keep the following in mind:

- Avoid repetition;
- Don't complain without explaining what remedy is sought;
- Don't pull rabbits out of the hat – make sure your concerns have been raised previously

- Aim for concise delivery of presentation which gets to the point
- If feasible, aim for joint presentations (e.g. joining up with other IPs with similar / same concerns and have joint statements, or agreement that one puts across the agreed argument, and the other endorses this argument)
- It is useful to be concise at the hearings and not to get drawn too much into detail – instead, be ready to cross-refer to already submitted document or offer detailed written information afterwards.

During the hearing, communication is key – for virtual hearings, we have found that WhatsApp groups between officers and KC worked well. For virtual hearings with many interdependencies across our service, it may be useful to bring officers together in a room in the officer, to be more effective in responding across the topic areas.

After the hearing, you need to provide written summary of oral submissions within the deadline. Note that the written submission can include not just what has been said, but also what you would have liked to say but had no opportunity to do so, as well as any additional information which may have been requested at the ISH.

## 4.12 Compulsory Acquisition Hearings (CAHs)

**When:**

Probably around halfway through the examination.

**What:**

CAHs take place at the request of anyone whose interest in land or rights over land are proposed to be compulsorily acquired. A local authority's legal team are likely to play an important role in ensuring that the local authority's interests as a landowner, leaseholder and/or other land interests are properly considered.

**Advice / lessons learnt:**

If the local authority does not have land interests, it is still advisable to attend the CAH to be available for comment if requested. Much of the advice for 4.11 - Issue Specific Hearings (ISHs) above equally applies to CAHs.

## 4.13 Accompanied site inspection (ASI)

**When:**

Usually in advance of the first 4.11 - Issue Specific Hearings (ISHs).

**What:**

An ASI is a visit by the ExA to the development site(s). The local authority is invited to attend, to point out specific locations, views etc. The ASI is not an opportunity to discuss the merits of the proposal, but to point out features of the site relevant to points made elsewhere.

**Advice / lessons learnt:**

It is recommended the local authority sends a core team member, and if appropriate specific technical experts, to attend the ASI. This is so the local authority can point specific locations out to the Examining Authority, as well as to have knowledge of what was seen and pointed out during the ASI.

## 4.14 Final Position Statement

**When:**

To be submitted at the final Deadline.

**What:**

This is not a formally required document requested by the Examining Authority. However, if set out with clarity, it offers an important opportunity for the local authority to set out succinctly, if and how the overall position of the local authority has changed, and whether there are still any outstanding issues that the local authority wishes to see addressed in the Examining Authority's report and, in turn, be considered as part of the decision by the Secretary of State.

**Advice / lessons learnt:**

Whilst not formally required, a clear final position of the host local authority at end of an examination can be helpful, for credibility and impact. The Council's voice carries more weight both with Examining Authority, developer and Secretary of State if it takes credible and coherent points of objection.

The Final Position Statement enables the Council to give a clear view to the Secretary of State of our views as representative of the local community. It is helpful for the Council to have a clear position as to whether a development should or should not happen - or what needs to happen to make it acceptable, with clear pathway how issues can be resolved - so that the Council can pull its weight as statutory consultee and as voice of our communities. Setting out how these concerns could still be resolved at this late stage underlines the credibility of our position.

## 5. Decision

### General advice / lessons learnt

After the close of the examination, the Examining Authority needs to submit a report to the Secretary of State within three months. The ExA carefully considers all the important and relevant matters, including the representations from interested parties. The Secretary of State then has another three months to make his/her decision (although it is not uncommon that this period is extended). The Secretary of State's decision letter and the ExA's report and recommendation are both published on the National Infrastructure Planning website.

- a. Consider whether you want to update (or re-iterate) your 4.14 - Final Position Statement in a letter to the Secretary of State – updates may be helpful if further work has been undertaken between the Council and the developer after the close of examination.
- b. Be prepared to respond to questions from the Secretary of State.
- c. Agree with the developer if any work is expected to be undertaken between end of examination and commencement.
- d. Consider whether you need an interim 0.1 - Planning Performance Agreement (PPA) with the developer, to bridge the period between end of examination and commencement.
- e. Tidy up the examination documentation – prepare guidance as to the legal agreements and what they mean.

## 6. Post decision

### General advice / lessons learnt

Once development consent has been granted by the Secretary of State, the developer can commence the project, subject to the completion of any pre-commencement commitments set out in the Development Consent Order (DCO) or in an agreement. Often there are changes post consent, and sometimes a change in management, requiring new relationships to be formed. There is a 6-week period in which the decision may be challenged in the High Court. The Secretary of State's decision letter, including information about legal challenge, is sent to all interested parties and published on the National Infrastructure Planning website.

Interested Parties (including local authorities) will continue to be kept up to date with progress by PINS and about any post consent change applications (whether material or non-material considerations) which have been made to the Secretary of State. SCC aims to be open and inform communities of its own roles, responsibilities, and what had been agreed to mitigate against any future conflicts.

#### Key lessons

- a. Do not underestimate very significant resource requirements post consent – make sure you secure funding for this from the developer within 4.8 - Planning Obligations (Section 106)/Deed of Obligation (Section 111).
- b. Expect there to be changes post consent, and ensure that you are ready to deal with change management. Non-material changes may usually be approved by the local authorities; material changes would go back to the Secretary of State.
- c. Remember to continue to engage with local communities – by being open and reminding communities of the Council's roles and responsibilities, what had been agreed and how we are progressing in our responsibilities, and keeping communities up to date with any post consent change applications, future conflicts can be reduced/avoided.
- d. If there are multiple NSIPs (or other major developments) in one locality, keep an eye on cumulative impacts and the potential lack of coordination between developers. A local authority may need to facilitate dialogue between developers to ensure impacts are not exacerbated and opportunities for coordination are maximised.



## 6.1 Discharge of Requirements (DoR)

**When:**

As defined in the DCO.

**What:**

The Discharge of Requirements within a Development Consent Order (DCO) is roughly equivalent to the discharge of a planning condition. Generally, requirements will be discharged by a local authority, but how requirements are handled can vary considerably between different projects. If local councils are interested in particular requirements, it is important to read the relevant provision of the DCO to understand how the process will work for that specific project and, if there is any uncertainty, to discuss it with the named discharging authority.

The discharge of a requirement does not usually require broad public engagement as a formal part of decision-making. Requirements are intended to be narrow in scope, technical in nature, and unrelated to the principle of development.

Unlike planning applications, there are typically no site notices posted for discharge of requirements applications, however information pertaining to discharges of requirements can often be found online, on the website of the relevant discharging authority.

Generally, requirements will be discharged by a local authority. In recent DCOs in Suffolk, division of responsibilities between councils tends to be based on statutory responsibilities: Suffolk County Council often discharges transport, rights of way and archaeology requirements, and at times surface water drainage requirements while the district council will usually discharge requirements related to detailed design, landscape and ecology. SCC will maintain an interest in being consulted on other requirements where they are discharged by the Local Planning Authority.

In Suffolk, where Suffolk County Council is the discharging authority, it notifies relevant parish councils of applications to discharge requirements on a discretionary basis, if their area falls within the site described by the application materials. Other authorities may instead require parish councils to sign up for notifications on their planning webpages.

**Advice / lessons learnt:**

Watch out for any "deemed approval" clauses - these mean that if the Council does not respond within a set timeframe to submissions by the developer, this leads to an automatic approval.

## 6.2 Implementing Section 106 or Section 111 agreements

**When:**

At/after commencement of the development.

**What:**

County and district councils have a key role to ensure an agreement entered into under Section 106 or Section 111 is implemented. They, and the developer if applicable, will engage with other stakeholders benefitting from the agreement's commitments, as required.

**Advice / lessons learnt:**

Each funding and mitigation measure may come with its own conditions - be it approval through a governance group or need to evidence that impacts have occurred and are linked to the development. Make sure you are aware of these and collect from the start baseline data and set up monitoring arrangements to ensure you have the right evidence if and when it is needed. This is an important role to be shared between core team and service areas.

Again, watch out for any "deemed approval" clauses - these mean that if the Council does not respond within a set timeframe to submissions by the developer, this leads to an automatic approval.

# Glossary

Table adapted from the glossary on [Advice Note Eight: Overview of the nationally significant infrastructure planning process for members of the public and others | National Infrastructure Planning \(planninginspectorate.gov.uk\)](#)

<b>Term</b>	<b>Description</b>
<b>Commencement</b>	To carry out any material operation, as defined in section 155 of the PA2008 (when development begins), unless the DCO itself includes a different definition.
<b>Compulsory Acquisition</b>	The power to force the sale of land or rights, which can be sought as part of a DCO.
<b>Development Consent</b>	A single consent required for large projects, that replaces Planning Permission and also some other technical consents. Applications are examined by PINS and decided by the Secretary of State.
<b>Examination</b>	A period of no more than 6 months in which an application for Development Consent is examined. An examination can include hearings and deadlines for written submissions; and the ExA may ask questions. Every examination is different, to suit the needs of the project.
<b>Examining Authority (ExA)</b>	The panel of one or more Inspectors who will examine an application.
<b>Interested Party</b>	A term taken from legislation, this refers to a person (or a group or company) who has registered to participate in the examination.
<b>Nationally Significant Infrastructure Project</b>	A project that, by reason of its scale and/or importance, needs Development Consent before it can be built or operated. The term is defined in the PA2008.
<b>Preliminary Meeting</b>	A meeting held by the ExA before the start of the examination, to discuss the timetable for the examination of an application.
<b>Relevant Representation</b>	A term taken from legislation, this refers to a form that is completed before the examination begins, to register as an interested party.

<b>Representation</b>	A comment or submission from an interested party about the merits of an application that is received by the ExA's deadline.
<b>Rule 6 letter</b>	The letter that is sent to interested parties, inviting them to the Preliminary Meeting.
<b>Rule 8 letter</b>	The letter that follows the Preliminary Meeting and sets out the timetable for the examination.
<b>Secretary of State</b>	The minister with responsibility for the area of government business that an application relates to. For example, as of September 2023, the Secretary of State for the Department for Energy Security and Net Zero is Claire Coutinho.
<b>The Planning Inspectorate</b>	An executive agency of the UK Government, the Planning Inspectorate (colloquially 'PINS') is responsible for administering applications for Development Consent. They are also responsible for other things, including appeals against the refusal of planning permission.
<b>Timetable</b>	The deadlines and events in the examination, as set out in the Rule 8 letter, and sometimes changed during the examination.

## Sources of further information

### PINS website

- Legislation, guidance and advice at <https://infrastructure.planninginspectorate.gov.uk/legislation-and-advice/>
- A short film produced by the Planning Inspectorate explaining the DCO process at <https://infrastructure.planninginspectorate.gov.uk/application-process/the-process/>
- Example documents at <https://infrastructure.planninginspectorate.gov.uk/application-process/example-documents/>

Sign up to updates on PINS website - you can do that on the project front page of any NSIP in the system and listed on the PINS website - <https://infrastructure.planninginspectorate.gov.uk/>

### Suffolk County Council website

- Overview of NSIPs in Suffolk and where SCC publishes it's Relevant Representation's and Local Impact Report's: [Nationally Significant Infrastructure Projects \(NSIPs\) | Suffolk County Council](#)
- Information about the Council's energy infrastructure policy and strategic engagement with Government: <https://www.suffolk.gov.uk/planning-waste-and-environment/major-infrastructure-projects/energy-infrastructure-policy?nodeId=e7c63923-795f-5579-a54c-a9bd0e83adcf&entryId=c2c4b87f-d147-5f73-acfb-24316502adc0>
- Our PPA guidance - <https://www.suffolk.gov.uk/asset-library/planning-performance-agreements-for-nationally-significant-infrastructure-projects.pdf>

### DLUHC Website

- DLUHC NSIP Reforms Action Plan: <https://www.gov.uk/government/publications/nationally-significant-infrastructure-projects-nsip-reforms-action-plan/nationally-significant-infrastructure-action-plan-for-reforms-to-the-planning-process>

## Contact

If you have any queries arising from this guidance, please contact Suffolk County Council's NSIP team at [nsips@suffolk.gov.uk](mailto:nsips@suffolk.gov.uk)

