

THE GOVERNMENT'S PLANNING ACT 2008 CONSULTATION ON EXAMINATION PROCEDURES FOR NATIONALLY SIGNIFICANT INFRASTRUCTURE PROJECTS

Cabinet Member	Councillor Keith Burrows
Cabinet Portfolio	Planning & Transportation
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Papers with report	None

HEADLINE INFORMATION

Purpose of report	<p>This report advises Members of the Government's Planning Act 2008 Consultation on the Examination Procedures for Nationally Significant Infrastructure Projects. It provides an overview of key elements of the consultation document and Officers response to it. It also sets out the implications for the Council especially in relation to the third runway, which, if it progresses, would be considered under this new planning regime.</p>
Contribution to our plans and strategies	<p>This consultation relates to a suite of draft regulations and guidance documents on the examination procedure for dealing with major infrastructural projects which will be considered by the newly formed Infrastructure Planning Commission.</p> <p>These changes to the planning system will affect the decision making process for planning, and may affect the delivery of a number of corporate strategies as well as impacting Council resources.</p>
Financial Cost	<p>Whilst there is no direct cost associated with responding to these documents, there will be a financial burden on the local planning authority in relation to R3 and other large scale developments that would now come under the remit of the Infrastructure Planning Committee.</p> <p>It is considered that any costs of nationally significant projects such as this should be met by either the Government or the promoter of the scheme. Officers will be seeking to ensure this is addressed through this consultation process.</p>

Relevant Policy Overview Committee	Residents' and Environmental Services
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Ward(s) affected	All
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RECOMMENDATION

That Cabinet:

- 1. Notes the contents of this report regarding the Government's Planning Act 2008 Consultation on Examination Procedures for Nationally Significant Infrastructure Projects.**
- 2. Notes the potential financial burden that these procedures place on the local planning authority in relation to R3.**
- 3. Endorses the response to the Government on its Planning Act 2008 Consultation on the Examination Procedures for Nationally Significant Infrastructure Projects as set out in Appendix 1, for submission to the Government.**

INFORMATION

Reasons for recommendation

This is the third of a series of consultations on the operation of the newly formed Infrastructure Planning Commission under the Planning Act 2008. This third consultation deals with the examination procedures under the new Act.

Under the provisions of the new Act, promoters of certain large scale schemes will submit a development consent order to the Infrastructure Planning Commission rather than local planning authority. At present, the Commission will determine the application in most cases. The Third Runway would be the first of the proposals within Hillingdon that could be considered under this new regime. Before this Act (as in the case of Terminal 5), local planning authorities had the power to make decisions on this type of application.

The new Act has implications for the level of influence that local councils and communities will have on future developments within their areas. It is important that the Council's and community's participation in the examination process does not place an unreasonable financial burden on the local planning authority.

Alternative options considered

- I. Agree the response to the Government in full or in part
- II. Make no response to the Governments proposals

Comments of Policy Overview Committee(s)

The Residents and Environmental Services Policy Overview Committee have not commented on the report.

Supporting Information

1. The Planning Act 2008 establishes a new system for dealing with nationally significant projects such as R3. These large scale projects, like R3, will be dealt with by the Infrastructure Planning Commission (IPC).
2. As part of the implementation of the Act, new regulations and guidance are proposed. Consultation has been undertaken previously on:
 - (a) The list of statutory consultees in relation to applications received. This list includes local planning authorities directly affected by proposed schemes or adjoining the local authority that is affected by proposals
 - (b) Pre-application discussions and the submission of applications. The Council's main concerns were twofold. First, that the loss of substantial fee income from local planning authority should be offset by the promoter of schemes or the Government in enabling it to meet its statutory obligations under the new Act. Secondly, that any consultation undertaken to date in relation to the third runway should not form part of the consultation BAA is required to undertake in promoting the third runway scheme.
3. This latest consultation deals with the examination procedures for development consent orders. The consultation ends on 5 October 2009 and the Government intend to bring the revised regulations and guidance documents into force on 1 March 2010.
4. Of note, the introductory section of the document clarifies the timeframe for consultation on the Airports NPS, which it intends to consult on in 2011 with the aim of designating it by the end of that year.
5. The key areas covered are:
 - (a) Examination procedure
 - (b) Local Impacts Study
 - (c) Compulsory purchase of land associated with proposed development
 - (d) Fees that can be charged by the IPC

A brief summary of each of these elements and its implications for the Council are set out in the sections that follow.

6. The proposed response to the consultation is attached as Appendix 1.

Examination Procedures

7. The draft examination procedure rules are intended to expand on the structure already laid out by the Planning Act. The following table provides an overview of the process:

Development Consent Order submitted	Project development and pre-application consultation by promoter of scheme according to a Consultation Strategy agreed by the local planning authority
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Validation	<ul style="list-style-type: none"> • The IPC has 28 days to validate the application, including whether pre-application consultation has been undertaken in accordance with the regulations • Heads of Terms for any section 106 agreement will be included. The local planning authority will need to ensure that any monitoring and enforcement costs they would incur associated with implementation of any Order are covered within the agreement • It is the responsibility of the applicant to notify affected parties of the application, make copies available, and advise of the deadline for receipt of initial comments (28 days). • The IPC appoints a panel or single commission as the examining body.
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Initial Assessment by IPC	The examining body will make an initial assessment of the main issues arising from the application based on an examination of the application documents and any relevant representations received. This assessment will generally be completed within 21 days beginning the day after the deadline for representations.
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Preliminary meeting	<ul style="list-style-type: none"> • The examining body is required to hold a preliminary meeting giving the applicant, interested parties and any other persons it chooses to invite, at least 21 days notice of the meeting. • The examining body will advise meeting participants of how the application will be examined and also the timetable for examination. • The timetable will set out the date by which further written representations are to be received, for any hearings to make oral representations, for completion of local impact reports and receipt of statement of common ground. • The timetable must also specify the date by which the local impact report from the relevant authority, or authorities must be received; as well as the date by which the examining authority is to receive comments on the content of the local impact report from interested parties.
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Lead up to Hearings	<ul style="list-style-type: none"> • Completion of local impact report by local planning authority within a 6 week period starting from the day following the end of the preliminary meeting • Further opportunity to prepare further written representations • Statement of Common Ground prepared by promoter
↓	

	<ul style="list-style-type: none"> of scheme and main objectors It is for the examining authority to determine how the application is to be examined, but must comply with the Procedural Rules made by the Lord Chancellor, and have regard to any published guidance This process may be by Hearings or written representations.
Hearings ↓	<ul style="list-style-type: none"> The Planning Act 2008 allows for concurrent sessions to be used to examine specific issues. One or more assessors can be appointed to advise commissioners about applications of a specialist nature outside the normal experience of commissioners. This examination process is to be completed within 6 months.
Decision ↓	<ul style="list-style-type: none"> The examining body has 3 months to issue a decision and statement of reasons In some cases, where there is no National Policy Statement in place, the examining body will make recommendations only and the decision will be the responsibility of the Secretary of State.
Post decision	6 week window for legal challenge

8. Of note, any aviation related applications, would be likely to be dealt with by a Panel rather than a single commissioner because of the level of public interest in the outcome and complexity of the case. This also applies to nuclear power plants.
9. In addition to the Hearing process set out above, the examining body may decide to use written representations instead. This process is unlikely to be used in the case of the third runway.
10. Although the legislation states that only 'interested parties' have an automatic right to participate in the examination of an application, the examining authority may allow others to make written or verbal representations. Interested parties include applicants, statutory bodies, the relevant planning authorities and anyone who has made comments on the proposals.
11. Also of note, it is stated that in most cases it will be the examining authority that will ask questions of persons making oral representations at hearings. However, there is scope for a barrister, solicitor or advocate to be appointed when requested by the examining body.

Implications for the Council

12. In relation to the third runway, the examination process would place considerable pressure on Council resources. The procedure envisages at least 2 rounds of written representations, and where a hearing is required, the preparation of Statement of Common Ground as well as a local impact study. The timeframes for the preparation of these documents short, with the target for completing the whole examination process only 6 months. To be able to respond within these timeframes, staff

resources would have to be diverted from other work; or, consultants would need to be employed with associated cost implications. Specialist consultants may also be needed for issues such as surface access, housing, provision of education facilities, and biodiversity and ecology matters.

Local Impacts Study

13. Under the Planning Act any directly affected local planning authorities and the Greater London Authority would be requested to prepare a local impacts report. It was anticipated that this guidance would clarify the scope of this report. No clarification has been provided.
14. There is also a lack of clarity in the guidance on the timing of the report. Section 60 of the Planning Act 2008 states that the local planning authority or authorities should be advised of requirement to prepare a local impacts report by the IPC once the application for an order has been accepted. It is suggested in the Guidance that the preparation of the local impacts report will be timetabled as part of the examination process. It is also proposed that in most cases the impact report should be received within six weeks from the day following the preliminary meeting, although there is the flexibility to extend this timeframe.

Implications for the Council

15. Although it is unclear in the guidance, this would suggest that there would be a period of 16 weeks for the local planning authority to prepare a local impacts report from the date the development consent notice was received. In the case of the third runway, the Council is likely to want to prepare a local impact report with other affected local authorities and the Greater London Authority as there are many cross boundary issues (e.g. provision of housing, options for schools).
16. This timeframe would be very short given the likely scope of this report and its contribution to this new planning process. Such a report would be likely to go to Cabinet before being used as part of the Council's evidence base in the development consent order process.
17. Because of the scope that would need to be covered, work on this report would need to start in advance of the development consent order being submitted by BAA. Along with the issue of funding of this work, for a project that would have national benefit but significant local impact, is an issue, particularly given that the local planning authority would receive no fee income.
18. It is noted that interested parties (the application, statutory consultees, objectors) would have 21 days to submit their comments on the local impact report.

Compulsory Purchase of Land

19. One of the objectives in setting up the IPC was to unify various statutory processes under one regime. This means that the procedure for the compulsory purchase of land has been incorporated within the new process.
20. Under the Act, the applicant has a duty to notify the examining authority of the names and other required information, of each person affected in relation to the application.

21. After consultation responses have been received following the preliminary meeting, the examining authority will advise anyone with an interest in land of the date by which it is to receive requests to hold a compulsory acquisition hearing. There may be one or more hearings.
22. In making its decision to approve the compulsory purchase of land, the decision-maker must be satisfied that such purchase is required for the development and that there is a compelling case in the public interest for the compulsory acquisition.
23. An Order for the compulsory purchase of land under the Planning Act is made in a single stage and does not have to be confirmed by another party. Unless it is subject to a special parliamentary procedure, an order granting consent under the Planning Act becomes operative when it is made. There is a six week period where a legal challenge can be made against the Order.

Implications for the Council

24. In the case of the third runway, the Council would not only participate in this process as the local planning authority, but also as a landowner affected through the compulsory purchase provisions. Again, this would place additional requirements on Council resources.
25. Once the Order is made, there would be substantial work in local land charges registering a notice against any land acquired. If this were to happen, these costs should be met by BAA as the promoter of the scheme rather than the Council.

Fees that can be Charged by the IPC

26. As part of the new system, the Government intends to apply the well established principle of the applicant paying fees to cover the IPC's costs of processing applications, rather than funding it through taxation. An impact analysis has been included setting out the anticipated costs as well as a fee breakdown. While the policy intention is to maximize, so far as reasonable and practicable, recovery of costs associated with the processing of applications, no recognition is given to the costs of participating in this process for affected local planning authorities, in particular, the preparation of a local impacts report.

Implications for the Council

27. No recognition is given to the cost to local planning authorities of participating in the examination process. In the case of the third runway, this is likely to be substantial. It is considered that these costs should have been recognised in the impact analysis.

Financial Implications

28. As this report is recommending a response to a consultation, there are no direct financial implications for the council at this stage.
29. However, as with the previous consultation, Officers will be emphasising the importance of ensuring that the costs of the examination process, particularly in the Council meeting its statutory responsibilities, are met by the Government or by the promoter of such schemes.

EFFECT ON RESIDENTS, SERVICE USERS & COMMUNITIES

What will be the effect of the recommendation?

This document sets out some of the operating parameters for the functioning of the IPC process, which will have implications on the influence that local councils and communities will have on future developments within their areas.

These issues warrant the submission of the Council's response to the government. It is important that the Government recognises the impact that the proposed development will have on affected authorities and makes provision for the costs of schemes considered to be of national benefit have on local planning authorities and their residents. It is also important that realistic timeframes for response are set out given the significance of these projects and limited Council resources available to deal with them.

Consultation Carried Out or Required

None.

CORPORATE IMPLICATIONS

Corporate Finance

This report is recommending a response to the Government's Planning Act 2008 Consultation and as such Corporate Finance is satisfied that there are no direct financial implications for the Authority, at this stage, associated with responding to this consultation. There is a potential financial burden on the local planning authority in relation to large scale developments that would now come under the remit of the newly formed Infrastructure Planning Commission. As such Officers will be emphasising the importance of ensuring that costs associated with the examination process, are met by the Government or promoter of such schemes, particularly where the council has to meet its statutory obligations.

Legal

Legal Services have considered the content of this report. This is a response to a Central Government Consultation. Central Government will be required to conscientiously take into account the Council's responses before taking an ultimate decision on the content of the Guidance and Regulations.

BACKGROUND PAPERS

The Government's Planning Act 2008 Consultation on the Examination Procedures for Nationally Significant Infrastructure Projects (CLG in July 2009).

Appendix 1

Response to the Department for Communities and Local Government on its 'Planning Act 2008 - Consultation on the Pre-Application Consultation and Application Procedures for Nationally Significant Infrastructure Projects'

EXAMINATION PROCEDURES

Consultation question 1:

Do you agree that the draft rules provide a comprehensive set of procedures that explain how the provisions contained in the Planning Act on examinations would work in practice? If not, what additional points do you believe should be added?

Response to Consultation question 1:

It would be useful to have the procedure shown in flow chart form for both written representations and hearings.

A significant piece of work for local planning authorities affected by proposals is the local impacts study. Reading the Act in combination with the guidance, it would suggest that there is a 16 week period from the time the development consent order is validated until this report needs to be completed. This is based on the following breakdown:

- 28 day consultation following validation of consent order (trigger for notification where application is
- 21 day period for initial assessment by examining body
- 21 days notice of preliminary meeting
- 6 weeks (42 days) following preliminary meeting

This implies that it would be largely completed once the development consent order has been completed, putting considerable pressure on limited Council resources. It should also be noted that it is likely that approval of a local impacts report would have member impact and is likely to need to go to Cabinet or a Council sub-committee for ratification. Reports generally need to be prepared 2 weeks prior to meetings.

In reality, it is likely that this local impact report would form part of the consultation response and would start being developed as part of the pre-application process. The guidance needs to provide greater clarity on:

- Timeframes
- Content and purpose
- Joint preparation of local impacts reports where there are cross boundary issues
- Resourcing

Consultation question 2:

What assessors would be acceptable to assist the examining authority to consider the relevant issues. To what extent would independent regulators, for example, the Health and Safety Executive, be suitable?

Response to Consultation question 2:

It would be appropriate to use independent assessors. It may also be appropriate to seek input from interested parties at the preliminary meeting.

Consultation question 3:

Are there any inconsistencies or unintended consequences in the rules as drafted?

Response to Consultation question 3:

A full assessment has not been undertaken, however, as previously identified, there is a lack of clarity on local impact assessments.

Local planning authorities have limited resources, will receive no fee income, and the rules and supporting information do not clarify how local planning authority input will be funded. This has implications for local planning authorities effectively participation in the process and ensuring that the local impacts of these schemes are minimised.

Officers have attended various presentations on the new legislation at which Officials from Communities and Local Government have stated that there is an expectation that local planning authorities will utilise Section 93 of the Local Government Act 2003 and Section 139 of the Local Government Act 1972 to secure funding for their input into the process.

It would appear that the provision made by section 93 is likely to require amendment or modification by statutory instrument to enable local authorities to reach agreement with applicants, or the IPC for the funding of assessments and other discretionary activities in association with the process. The guidance should encourage this approach. It should also encourage a joint local authority impact assessment or other processes or hearings.

Consultation question 4:

What further action, if any, should Government take to facilitate the effective running of the examination?

Response to Consultation question 4:

A key issue is the cost to local communities impacted by developments being progressed in the national interest in participating in this process. The local planning authority should receive, as a minimum, the equivalent planning fee, to undertake its responsibilities in representing its local communities. Ideally a full impact analysis should be undertaken to identify the costs imposed on the local planning authority and how these will be funded through the process either by the Government or the promoter of the scheme.

Consultation question 5:

Do you think transcribers, or other less costly methods of documenting evidence (e.g. audio/video recording) should be used during IPC examinations?

Response to Consultation question 5:

Irrespective of the approach taken, it is important that this information is available electronically for use during the examination process.

Consultation question 6:

Do you agree with the list of statutory parties? Are there any others which you feel should be included?

Response to Consultation question 6:

This list appears to be comprehensive

Consultation question 7:

Is the information required to be stated in the registration form appropriate? If not, what omissions or additions would you make?

NATIONAL SECURITY**Consultation question 8:**

Do you agree that the proposals in these rules adequately allow for the protection of information relating to defence and national security, while still ensuring that individual rights are protected? If not, what omissions or additions would you make?

Response to Consultation question 8:

No comment

Consultation question 9:

Are there any inconsistencies or unintended consequences between these rules and the main examination procedure rules?

Response to Consultation question 9:

No comment

GUIDANCE ON EXAMINATION PROCEDURES**Consultation question 10:**

Do you agree that the draft guidance, when combined with the Act and draft rules, would provide a firm principles-based framework for how the IPC should conduct and manage examinations into applications for NSIPs? If not, what changes should be made?

Response to Consultation question 10:

No comment

MATTERS TO BE TAKEN ACCOUNT OF IN DECISIONS ON APPLICATIONS FOR DEVELOPMENT CONSENT

Consultation question 11:

Are there any 'have regard to' requirements on decision makers that have been missed from the list in this statutory instrument?

Response to Consultation question 11:

No comment

MATTERS WHICH CANNOT BE INCLUDED IN DEVELOPMENT CONSENT ORDERS

Consultation question 12:

Does the list set out in the SI capture all those consents that should be protected?

Response to Consultation question 12:

No comment

MATTERS RELATING TO APPLICATIONS FOR COMPULSORY ACQUISITION OF LAND

Consultation question 13:

Do you agree with the principles set out in the regulations?

Response to Consultation question 13:

These principles are supported

REGULATIONS ON THE DURATION OF POWERS TO COMPLETE COMPULSORY ACQUISITION

Consultation question 14:

Do you agree that a duration of five years is appropriate for development consent orders under the Planning Act?

Response to Consultation question 14:

Yes this is an appropriate timeframe for the commencement of development

Consultation question 15:

Do you agree that a five year period is also appropriate as the period within which a notice to treat must be served under section 5 of the Compulsory Purchase Act 1965?

Response to Consultation question 15:

No comment

Consultation question 16:

Do you have any comments about the procedures for the compulsory acquisition of land which are set out in the guidance document?

Response to Consultation question 16:

No comment

APPLICATION FEES

Consultation Question 17:

Bearing in mind the need to achieve a simple fee structure, do you agree that the three categories of day-rate provide a sufficient range of flexibility on the resources that might be involved?

Response to Consultation question 17:

This seems appropriate. As highlighted previously, the costs incurred by local planning authorities have not been addressed at all. The burden of dealing with national infrastructure projects should be borne by the developer or promoter and not the local communities impacted by the development. As noted previously, how this will be addressed needs to be clearly articulated in the rules and guidance. This also applies to the pre-application process.

Consultation Question 18:

Do you have any comments on the fee estimates and impact assessment, in particular the estimated resource requirements for each activity of the IPC?

Response to Consultation question 18:

See response to the previous comments

Consultation Question 19:

Do you have any comments on the draft fee regulations?

Response to Consultation question 19:

These regulations should deal with fees, or other appropriate form of payment, that should be made to the local planning authorities in fulfilling their responsibilities under the Act. This would include:

- Commenting on and approving the Statement of Community Consultation
- Commenting on the Consultation Report
- Producing a Local Impact Statement
- Entering into planning agreements
- Determining related applications where appropriate
- Monitoring and enforcement of the implementation of consents
- Implementation of conditions and agreements

It raises the question of whether the Government should also be contributing to the costs of local planning authorities participating in this process, given that they will receive no fee income to deal with these substantial applications and the substantial national benefit these schemes will deliver. This would cover:

- Assisting in identifying appropriate consultation approaches for the preparation of NPS
- Participating in the pre-application process, including review of reports prepared by promoters of schemes
- Participation in the pre-examination and examination process

At a very minimum, these matters should be addressed in the guidance.

Consultation Question 20:

Do you have any comments on the assessment of the impact on small and medium enterprises?

Response to Consultation question 20:

It is agreed that because the fee structure it is not considered that there will be a disproportionate impact on small and medium businesses

Consultation Question 21:

Do you have any comments on the merits of introducing a cap into the draft fee regulations?

Response to Consultation question 21:

Consistent with the policies and objectives set out in the document centred around a user pays principle, and on the basis that there is flexibility in setting fees at different stages of the process, it is considered appropriate that that there is no cap on fees.

Consultation Question 22:

Do you have any comments on the miscellaneous prescribed provisions?

Response to Consultation question 22:

No comment