



The Planning Inspectorate  
Yr Arolygiaeth Gynllunio

# **Local Development Plan Examinations**

Procedure Guidance

**August 2015**

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## 1. Introduction and overview

- 1.1. This guidance is concerned with the procedural aspects of Local Development Plan (LDP) examinations. It is aimed at all those involved in the process of examining an LDP, including Inspectors.
- 1.2. The statutory basis for LDP examinations is provided in section 64 of the [Planning and Compulsory Purchase Act 2004](#) (the 2004 Act) and in the [Town and Country Planning \(Local Development Plan\) \(Wales\) Regulations 2005 \(as amended\)](#). The Welsh Government's [Planning Policy Wales \(Chapter 2, August 2015\)](#) and [Local Development Plan Manual \(August 2015\)](#) identify general principles for the examination of LDPs.
- 1.3. Detailed procedural aspects of LDP examinations are not covered by legislation or Welsh Government policy. This affords some flexibility in administering the examination process to accommodate the needs of all those involved. However, to assist participants and ensure consistency in approach, examinations will usually be undertaken within the parameters set out in this guidance. Inspectors will also have regard to the spirit of the rules governing other procedures to ensure everyone is dealt with fairly in matters such as the timely circulation of papers and reasonable notice in advance of hearings<sup>1</sup>.
- 1.4. Separate guidance for Local Planning Authorities on the LDP submission process is provided in '[Preparing for submission: guidance for Local Planning Authorities](#)', which is available via the [Welsh Government's website](#).
- 1.5. LDP examinations may focus on a completely new or replacement plan; or they may be concerned with proposed revisions to an adopted plan. References to 'LDP' or 'Plan' in this guidance refers to either:
  - The LDP as submitted for examination (for new or replacement plans), or
  - The adopted LDP as proposed to be revised (for plan revisions).

### ***Principles of the examination process***

- 1.6. The role of the appointed Inspector is to carry out an independent assessment of the overall soundness of the plan and that it satisfies the statutory requirements for its preparation. The Inspector's role is not to improve the LDP but to make recommendations to ensure it is sound. This means dealing with the main issues which go to the heart of the LDP and not getting involved with the details of the plan unless this is necessary to conclude on the Plan's soundness. Provided they do not fall foul of the

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<sup>1</sup> [The Town and Country Planning \(Local Development Plan\) \(Wales\) Regulations 2005 \(as amended\)](#) prescribe that at least 6 weeks' notice should be given before hearings commence (Reg 23).

soundness tests, Inspectors will not concern themselves with minor drafting or typographical errors.

- 1.7. The examination is based on the Inspector's definition of matters and issues and is not driven by the representations. Hearing sessions will be inquisitorial, with the Inspector probing relevant issues with the aid of participants. Those who have sought changes to the submitted plan or plan revisions and have signalled a wish to be heard must be invited to the hearings. If the Inspector considers that they would assist his/her understanding of the issues in question, other parties may also be invited to attend. For Inspectors, early engagement means that by the time the hearing sessions start, they will be thoroughly familiar with the plan, how it was prepared and the issues it raises. Representations made in writing and at hearings are given equal weight.
- 1.8. The Inspector takes control of the examination process from start to finish. He/she will be proactive from the time of appointment, in order to see if there are problems with the plan which can be identified at an early stage. This may necessitate holding an exploratory meeting (see Chapter 9 for more details).
- 1.9. Inspectors will prepare their Examination Reports on the premise that they should aim to be brief, avoiding direct reference to representations as far as possible. They will provide clear conclusions and recommendations on the content of the LDP, including any recommended changes following the deposit consultation, in relation to the soundness tests. Reports will be subject to peer review in order to achieve the highest possible level of consistency.
- 1.10. Section 65 of the 2004 Act provides the Welsh Government's powers of intervention by direction where the recommendations of a binding report are considered to raise issues of national importance or extend beyond the area of the plan making authority. Paragraph 2.6.4 of Planning Policy Wales makes clear that the Welsh Government will only use such powers in a limited range of circumstances and as a last resort. The Planning Inspectorate will provide the Welsh Government with a copy of the draft report on the examination of the LDP when sent to the LPA for fact checking.

### ***Resources and timescales***

- 1.11. The Inspectorate is committed to delivering the Inspector's Report within 12 months of the submission of an LDP for examination (and considerably less for minor revisions to an existing plan). For this to be achieved it is essential that LPAs are equipped to move swiftly into the examination process on submission, particularly by making sure that the plan is sound, is accompanied by all required submission documents (including representations) and is supported by a complete evidence base.

- 1.12. Depending on the complexity of a plan, the lead Inspector may be supported by other Inspectors, specialist advisors or planning officers. Time will be allocated according to the complexity of the LDP.
- 1.13. The overall length of the examination will depend on the complexity and scope of issues subject to examination. Experience indicates that a full LDP examination can take up to 12 months, but a substantially shorter timeframe is likely where the examination relates only to revisions to an adopted plan. Under the amended 2005 Regulations, LPAs can opt to follow a 'short form' procedure for partial revisions that would not affect the plan strategy (see the LDP Manual para 10.2.6). Irrespective of the issues raised, in such situations a Pre-Hearing Meeting will not be necessary and the examination may be able to proceed via written representations. Tables 1 to 3 outline three theoretical examination timescales of between 18 and 43 weeks in length.

**Table 1: Examination schedule – full LDP**

- Replacement LDP or full LDP revision
- Hearing sessions lasting up to 20 days.

<b>Week</b>	<b>Key actions</b>
1+ onwards	<ul style="list-style-type: none"> <li>• LPA submits LDP and supporting documents to the Welsh Government and the Planning Inspectorate.</li> <li>• Provided a PO is in place and all documents have been submitted, the Inspectorate will proceed to appointment of the Inspector. The Inspectorate will carry out an initial scoping of the LDP (procedure and content) which will be passed to the appointed Inspector.</li> </ul>
2+ onwards	<ul style="list-style-type: none"> <li>• Inspector will commence early appraisal of the LDP and make contact with the PO. Inspector will confirm the Pre-Hearing Meeting (PHM) date through the PO and provisional hearing start date. LPA advertise the PHM, giving at least 4 weeks' notice.</li> <li>• Inspector will look for any fundamental or cumulative flaws in the LDP and write to the authority in the first instance where there are major concerns. If an exploratory meeting is required the Inspector will advise the LPA through the PO (Note: an exploratory meeting is likely to lead to a consequent delay in the examination timetable).</li> <li>• Inspector will start giving consideration to the structure of hearings, allocate participants to hearing sessions and decide what additional material is needed from participants.</li> <li>• LPA may be asked to respond to questions on specific issues highlighted by the Inspector. However, papers should not be put forward if not asked for by Inspector.</li> <li>• PO sends initial letter to representors.</li> </ul>
7	<ul style="list-style-type: none"> <li>• Inspector will aim to finalise the programme for the hearing sessions and the draft list of matters and issues for the hearings in advance of the PHM.</li> <li>• PO circulates Inspector's Guidance Notes to representors and confirms attendance at the hearings.</li> <li>• LPA to advertise the start date of the hearing sessions at least 6</li> </ul>

	weeks in advance.
8	<p><b>PRE-HEARING MEETING (PHM)</b></p> <ul style="list-style-type: none"> <li>• Aim to have PHM 8 weeks after submission (6 weeks before hearing sessions start).</li> <li>• The merits of the LDP will not be discussed at the PHM but the Inspector may invite comments from the participants on the draft matters and issues identified for the examination.</li> </ul>
9+ onwards	<ul style="list-style-type: none"> <li>• PO should circulate the notes of the PHM, along with the programme for the hearing sessions and final list of matters and issues for the hearings as soon as practicable after the PHM.</li> <li>• LPA &amp; participants will start work on providing any written statements requested by Inspector. The Inspector takes charge of process of what may be submitted. The date for submission of responses to the Inspector will usually be the same for all parties. The aim will be to inform Inspector not create counter arguments.</li> <li>• The Inspector may make provision for the submission of rebuttal statements if he/she considers they would be helpful.</li> <li>• The LPA and other participants in the examination have around 4 weeks to produce their statements for the hearing session.</li> </ul>
12	<ul style="list-style-type: none"> <li>• Responses and statements from LPA and participants due.</li> <li>• PO circulates written statements from the LPA and other participants well before the hearings commence, so that all parties are fully aware of the evidence/points being made.</li> </ul>
13	PO circulates final detailed agendas for the discussions at each of the hearing sessions to the relevant participants.
14+ onwards	<p><b>HEARING SESSIONS<sup>2</sup></b></p> <ul style="list-style-type: none"> <li>• The hearing sessions form an important part of the examination process; all participants should attend on the relevant day.</li> <li>• It is likely that action points will be agreed after each session. The LPA commences work on 'Matters Arising Changes' it proposes to make to the plan, including Sustainability Appraisal.</li> <li>• Inspector will announce the report delivery date at the last hearing session (taking into account the time required for the internal quality assurance process).</li> </ul>
19 + onwards	<p><b>REPORTING</b></p> <ul style="list-style-type: none"> <li>• After the hearings have concluded and the Inspector is reporting, no further representations/papers will be necessary unless specifically requested by the Inspector (the examination remains open throughout the reporting period).</li> <li>• Consultation on any 'Matters Arising Changes' are carried out by the LPA and responses forwarded to the Inspector.</li> <li>• If the Inspector considers that additional changes are needed to the plan which require consultation/SA, he/she will ask the LPA to undertake the relevant work.</li> </ul>
38	The report will be subject to an internal Quality Assurance process in the Inspectorate before dispatch. This process takes around 2 weeks.

<sup>2</sup> It is likely that the Inspector will programme a break between blocks of hearings.

40	<b>FACT CHECK DISPATCH</b> LPA has 2 weeks to carry out the fact check.
42	Inspector will respond to the fact check matters and comments raised by the LPA.
43	<b>FINAL REPORT</b> Final report will be dispatched.

**Table 2: Examination schedule – LDP revision (including plan strategy)**

- Revision of adopted LDP – long form process (i.e. includes Preferred Strategy stage)
- Strategic/significant issues raised, but limited in scope
- Hearing sessions lasting up to 10 days.

<b>Week</b>	<b>Key actions</b>
1 to 13	As per Table 1. The examination will focus on the proposed revisions to the adopted LDP.
14 and 15	<b>HEARING SESSIONS</b> <ul style="list-style-type: none"> <li>• As per Table 1.</li> </ul>
16 + onwards	<b>REPORTING</b> <ul style="list-style-type: none"> <li>• As per Table 1.</li> </ul>
26	The report will be subject to an internal Quality Assurance process in the Inspectorate before dispatch. This process takes around 2 weeks.
28	<b>FACT CHECK DISPATCH</b> LPA has 2 weeks to carry out the fact check.
30	Inspector will respond to the fact check matters and comments raised by the LPA.
32	<b>FINAL REPORT</b> Final report will be dispatched.

**Table 3: Examination schedule – partial revision; LDP strategy not affected**

- LDP partial revision – short form process (i.e. no Preferred Strategy stage)
- Limited number of non-strategic policies subject to revision
- Hearing sessions lasting up to 4 days, with no PHM.

<b>Week</b>	<b>Key actions</b>
1 and 2	As per Table 1. The examination will focus on the proposed revisions to the adopted LDP.
3-4	<ul style="list-style-type: none"> <li>• Hearing sessions and matters and issues drafted.</li> <li>• PO circulates Inspector’s Guidance Notes to participants and confirms attendance at hearings. (If plan revisions are straightforward and not contentious, hearing sessions may not be required. In such cases the examination will proceed via written representations.)</li> <li>• LPA advertises the start date of the hearing sessions at least 6 weeks in advance.</li> <li>• LPA and participants start work on providing any written statements requested by Inspector. The Inspector takes charge of process of what may be submitted. The date for submission of responses to the</li> </ul>

	Inspector will usually be the same for all parties. The aim will be to inform Inspector not create counter arguments.
8	<ul style="list-style-type: none"> <li>• Responses and statements from LPA and participants due.</li> <li>• PO circulates written statements from the LPA and other participants well before the hearings commence, so that all parties are fully aware of the evidence/points being made.</li> </ul>
9	PO circulates detailed hearing sessions agendas to relevant participants.
10+ onwards	<b>HEARING SESSIONS</b> <ul style="list-style-type: none"> <li>• Tasks as per Table 1.</li> </ul>
11 + onwards	<b>REPORTING</b> <ul style="list-style-type: none"> <li>• Tasks as per Table 1.</li> </ul>
15	The report will be subject to an internal Quality Assurance process in the Inspectorate before dispatch. This process takes 1 week.
16	<b>FACT CHECK DISPATCH</b> LPA has 1 week to carry out the fact check.
17	Inspector will respond to the fact check matters and comments raised by the LPA.
18	<b>FINAL REPORT</b> Final report will be dispatched.

## **2. Submission**

- 2.1. The examination process does not start until the LDP or plan revisions are submitted to the Welsh Government and the Planning Inspectorate including a full and complete evidence base, supporting documentation and focussed changes addendum if produced<sup>3</sup>. The Programme Officer (PO) should be established in post at deposit stage and be in a position, as soon as the Plan is submitted, to act as a liaison between the Inspector and the LPA with the aim of arranging the Pre-Hearing Meeting (PHM) and a date for the hearings.
- 2.2. Providing the LPA has met the statutory and procedural requirements on submission and a PO is in place, the Inspectorate will appoint the Inspector and will reserve the Inspector's time. Although the Inspector will not be formally appointed until the LDP is submitted, in practice the Inspectorate will need to have reserved the Inspector for this work many months in advance. It is therefore essential that the LPA keeps in close touch with the Inspectorate after the deposit stage to give the maximum notice of any change in the anticipated date of submission. The Inspectorate's Local Development Plans team will assist the Inspector in assessing the amount of preparation, sitting and reporting time likely to be necessary.

### ***Early scoping***

- 2.3. Within the first 2 weeks the Inspectorate's planning officers will carry out early scoping of the LDP both in relation to procedure and content to pass to the Inspector. If high-level technical issues are raised, appropriate arrangements may be made to provide specialist support to the lead Inspector, which may involve using an Assistant Inspector or engaging an external specialist advisor. Inspectorate planning officers may also provide support at the hearing sessions and may help to prepare initial drafts of parts of the Inspector's report. However the ultimate responsibility for the whole report rests with the Inspector.
- 2.4. The examination process provides considerable flexibility in the way that events may unfold. It enables the Inspector to hold procedural meetings (before the hearings commence) or further hearing sessions if they are needed at any stage throughout the process of the examination. In view of this flexibility the Inspector will keep in close contact with the PO to ensure any necessary variation from the agreed programme is communicated to all parties.

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<sup>3</sup> Separate guidance for Local Planning Authorities on the LDP submission process is provided in 'Preparing for submission: guidance for Local Planning Authorities'.

## ***Pre-submission 'focussed' or 'minor' changes to the Deposit LDP/plan revisions***

- 2.5. Section 64(2)(b) of the 2004 Act specifically provides that a LPA must not submit an LDP unless it considers the plan is ready for examination. LPAs should rigorously assess an LDP before deposit to ensure that it is a plan which it considers is sound, having regard to the Welsh Government's soundness tests (see Appendix). The LDP or plan revisions placed on deposit should be those which the LPA intends to submit for examination. Having considered representations made on the deposit proposals, an LPA may opt to make 'focussed changes' prior to submission, but these should be exceptional and should clearly relate to potential soundness issues.
- 2.6. The Inspector will make clear the status of (any) 'focussed changes' addendum at a Pre-Hearing Meeting (PHM). Provided the focussed changes addendum has been the subject of consultation and revised SA/SEA/HRA processes (if necessary) it will be accepted as part of the submitted LDP or plan revisions. The LDP/plan revisions and focussed changes addendum would be read together and be the starting point for considerations of soundness.
- 2.7. Any minor editing changes, including drafting and typographical errors should be set out in a separate schedule and submitted with the LDP documents. Minor editing changes need not be advertised and, provided the Inspector accepts that they are minor, they will be treated as part of the LDP and not referred to in the Inspector's report. Should the Inspector consider that any changes in the schedule are not minor he/she will inform the LPA at the earliest opportunity. Any changes considered to be significant will need to be extracted from the schedule if the latter is to be accepted as part of the submitted plan. As these changes will not have been included in any addendum and, therefore, not advertised they will not be embedded as part of the LDP/plan revisions, and would need to be treated as post-submission changes.

## ***Plan revision or replacement***

- 2.8. Where an examination relates to the revision or replacement of an adopted LDP, the LPA will have prepared a Review Report<sup>4</sup> to identify which parts of the adopted plan need to be revised, and, where appropriate, what revision procedure is to be followed. This report is important in determining the scope of the examination. Paragraph 2.5.25 of PPW states that the examination of proposed revisions will be in the context of the adopted plan. Consequently, an Inspector will not usually examine 'other' parts of the adopted plan (i.e. those parts not proposed to be changed) unless:

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<sup>4</sup> LPAs are required to prepare a Review Report prior to any proposed revision / replacement, following a full or selective review (s69 and Reg 41).

- The evidence indicates that 'other' parts of the plan may be unsound, or
- The proposed revisions will have clear consequential impacts on 'other' parts of the plan which may put at risk the soundness of the plan as a whole.

- 2.9. Where an adopted LDP is to be revised in part, the examination will usually focus on a 'marked-up' version of the adopted plan incorporating revisions (i.e. with changes to text shown in bold/strike-through). Where revisions are relatively self-contained, the examination document may contain only those part(s) of the plan subject to change (this applies particularly to plans which have been the subject of a 'short form' revision procedure).
- 2.10. If an adopted LDP is to be revised in full (i.e. a new strategy is proposed, with implications for all plan policies/allocations), or a replacement plan has been deposited, a 'clean' version of the new plan will be the subject of the examination.

### **3. Preparation and initial examination**

- 3.1. By no later than week 2 the Inspector will commence early appraisal of the LDP or plan revisions and make contact with the PO. This initial contact enables the Inspector to begin to establish working arrangements. The Inspector will confirm the PHM date through the PO and the provisional hearing start date. The PO will send an initial letter to representors to make contact and set out the tentative scheduling of the examination. The Inspector will provide Guidance Notes for participants. The Notes will outline the procedures to be used at the examination, the deadlines for the submission of further material requested by the Inspector and what is expected at the hearing sessions. These can speed up the Pre-Hearing Meeting (PHM) by helping participants understand the procedures.
- 3.2. More in-depth reading of the documentation during this period should enable the Inspector to:
- Identify the matters and issues including any fundamental or cumulative flaws<sup>5</sup> which might indicate the need for an exploratory meeting;
  - Establish the structure of the hearings;
  - Allocate participants to hearing sessions; and
  - Decide if and what additional material is needed from participants.

#### ***Identifying matters and issues***

- 3.3. The examination will be structured around the issues identified by the Inspector as critical to the soundness of the plan. Of particular help to the Inspector is the LPA's statement of the main issues raised during the deposit consultation, how these issues have been addressed in the Plan and its recommendations on the representations; this is provided by the LPA in its Consultation Report under regulation 22 (2)(c). However, the main issues identified by the LPA will not dictate the structure of the examination, as the absence of representations on a matter is not a guarantee of soundness (and vice versa). Rather, the structure must derive from the Inspector's proactive and inquisitorial approach to considering soundness. The Inspector will avoid spending time at the hearings considering things which will not help a decision as to whether the plan is sound.
- 3.4. An early task for the Inspector is to establish the 'matters' and 'issues' to be investigated during the examination:
- 'Matters' - examples of which are housing provision, employment land provision, settlement strategy or flood risk;

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<sup>5</sup> Cumulative flaws would indicate a potentially serious situation where the Inspector might need to make so many changes to the submitted LDP that the plan could end up being a very different document to that submitted (which is likely to compromise the community involvement and sustainability appraisal considerations).

- 'Issues' - or the key points on which decisions about the soundness of the plan will depend.
- 3.5. The Inspector will usually prepare a draft list of matters and issues for discussion at the Pre-Hearing Meeting (if one is being held). The finalised list will then form the basis for any written or oral evidence provided by examination participants.
  - 3.6. For plan revisions, the Inspector will consider all representations made during the deposit consultation but will formulate matters and issues only insofar as they relate to the plan revisions proposed by the LPA, plus any other parts of the plan which the Inspector considers may be affected as a consequence of the plan revisions.

### ***Fundamental / cumulative flaws***

- 3.7. In looking at the matters and issues, Inspectors will seek to identify any fundamental or cumulative flaws at the earliest opportunity. This will avoid wasted time and money if the submitted/revised LDP has major problems (or may even on the face of it appear unsound). The early work may identify key issues or concerns that the Inspector will need to discuss prior to any hearing session. Because the examination starts on submission there is scope for the Inspector to hold early exploratory meeting(s), usually before the PHM, to clarify any matters and issues which may affect the examination process.
- 3.8. If the Inspector forms the view that the submitted/revised LDP has serious shortcomings, he/she will bring this to the attention of the LPA as soon as possible. In the first instance this will be done in writing (via the PO) and, if not subsequently resolved by an exchange of correspondence, an exploratory meeting will be scheduled.
- 3.9. Inspectors are unlikely to reach any conclusive findings at this stage but will give an indication of their concerns at an exploratory meeting. It will be difficult for the Inspector to reach a conclusive finding of unsoundness prior to holding the hearing sessions, which is where the evidence is tested. Exceptionally, the Inspector may consider that the examination cannot be completed without additional work being undertaken (such as the need for further sustainability appraisal of alternative options) which may necessitate consideration of a suspension of the examination or, in the worst case scenario, withdrawal of the LDP or plan revisions.
- 3.10. Further guidance on the procedures relating to exploratory meetings and suspension is provided in Chapter 9.

### ***Allocating participants to hearings***

- 3.11. Those with a right to appear and be heard are limited to those defined in section 64 (6) of the 2004 Act (i.e. any person(s) that has made

representations seeking a change to the LDP or proposed plan revisions). However, the Inspector may invite anyone to appear and be heard at a hearing session(s) where he or she thinks that person is needed to enable the soundness of the plan to be determined. Invitations to parties who have not sought to attend the hearing sessions will be issued only where necessary. Inspectors cannot require any person to attend the hearing part of the examination.

- 3.12. An Inspector will begin by allocating those who wish to be heard to one of the main matters or issues<sup>6</sup>. Representors with an interest in similar issues, policies and geographical areas will be invited to the same hearing session. The PO will assist the Inspector in the allocation process. Anyone who wishes to be heard but whose concerns do not fit with the main issues will usually be heard at sessions towards the end of the hearings. Representors should remember that written representations carry equal weight to those made at a hearing.
- 3.13. Where revisions to an existing plan are being examined, representations may have been made which do not relate to the proposed plan revisions. In such circumstances, the Inspector has the discretion to determine the relevance of these representations and, consequently, whether an objection requires to be heard at a hearing session.
- 3.14. Prior to the PHM, the PO will clarify and confirm attendance at the hearing sessions. The Inspector will finalise the programme for the hearing sessions as soon as possible after the PHM.

### ***Additional written material from participants***

- 3.15. Papers should not be put forward if not asked for by the Inspector. LPAs and other participants should await specific instructions from the appointed Inspector as to what additional material, if any, they need to produce before the hearings start. Unsolicited written material from any party, including the LPA, is likely to be returned by the Inspector.
- 3.16. In making a decision about what additional material may be needed, the Inspector will be guided by what he or she considers to be the critically important issues in relation to the soundness of the LDP and the material already submitted. These could include something identified by the Inspector but not raised in any representation. The Inspector will develop a list of matters and issues to which he/she may need a written response from representors. The Inspector may issue a more detailed discussion note where he or she considers this is necessary to assist in explaining the points needing further clarification. Where a substantive issue is raised by an objector the Inspector may invite the submission of a statement of common

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<sup>6</sup> It is helpful if the LPA identifies which representors wish to be heard in relation to particular matters (see '[Preparing for submission: guidance for Local Planning Authorities](#)' for more information).

ground (SoCG) if one was not submitted with the LDP<sup>7</sup>. However, the fact that the parties may agree on certain issues will not prevent the Inspector probing those issues further if necessary.

- 3.17. Any additional material produced by participants in response to a specific request from the Inspector will be circulated by the PO. Written material which does not respond to the Inspector's matters and issues will be returned.

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<sup>7</sup> The LDP Manual recommends SoCG in advance of submission.

## 4. The Pre-Hearing Meeting

- 4.1. If one is required, a suitable date for the PHM will be set very soon after submission to ensure that reasonable notice is provided. The period is not prescribed but we recommend the LPA should give at least 4 weeks' notice. Parties can expect the PHM to be around 8 weeks after submission. However this could be delayed if the LPA consults on 'focussed' changes to the deposit LDP or plan revisions following submission.
- 4.2. It is important that all those who wish to be involved in the hearing sessions attend the PHM. Both the authority and those that have made representations seeking changes to the LDP or proposed plan revisions should be prepared to take an active role at the PHM. Whilst non-attendance at the PHM will not prejudice their right to be heard, those who intend to appear at the examination should make every effort to attend. The merits of the plan will not be discussed at the PHM. However, in addition to procedural matters parties will be invited to comment on the matters and issues identified for consideration by the Inspector.
- 4.3. If straightforward, uncontentious plan revisions are proposed, and no one wishes to appear at a hearing, the Inspector may deal with the examination by written representations, avoiding the need for a PHM. Similarly where an Inspector intends to deal with the examination through a limited number of hearing sessions, the Inspector may deal with the PHM matters solely by exchange of correspondence.
- 4.4. At the PHM the Inspector will:
  - Explain that he/she has been appointed to carry out an independent examination of the submitted/revised LDP to ensure that it satisfies the statutory requirements for its preparation and is 'sound', and to subsequently produce a report to the LPA with binding recommendations;
  - Explain that the LDP as submitted, or as revised by the proposed plan revisions, should be considered by the LPA to be sound;
  - Explain the role of the PO as an impartial person assisting the Inspector with administrative and procedural matters; acting as the channel of communication between the Inspector, the LPA and members of the public; making the arrangements for the hearing sessions and liaising with everyone to ensure smooth running; ensuring that all the documentation connected with the examination is received, recorded and distributed and maintaining the Examination Library of core documents;
  - Outline the procedures to be followed during the examination including the hearing sessions;
  - Make clear that all the evidence will be considered and that written representations carry as much weight as oral evidence;
  - Explain the role of the Inspector's list of matters and issues in focusing discussion at the hearing sessions and enabling the Inspector to confirm legal compliance and test soundness. The Inspector will hear discussion and gain agreement on the draft list of matters and issues and be

receptive to varying them if reasonable changes are put forward. He/she will stress that any examination statements must deal only with the matters and issues;

- Discuss the timetable for hearing sessions, and the likely timing of participants' appearances. Everyone should be informed that the programme may change and participants must keep in touch with the PO. The Inspector will emphasise the need for the examination timetable to be met; and
- Offer an opportunity for questions to be put to the Inspector on procedural matters and for him/her to put questions to others.

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

- That the LDP/plan revisions have been prepared in accordance with the statutory procedures;
- That requirements for sustainability appraisal have been met;
- That any requirements for appropriate assessment under the Habitats Regulations were met before submission; and
- That a list of core documents, providing the evidence base, has been drawn up and is available for inspection both online (wherever possible) and in paper form.

4.6. The LPA should ensure that by the time the PHM is held, the hearing sessions start date has been advertised in accordance with the regulatory requirement (Chapter 1 outlines indicative timescales for hearings sessions).

4.7. The Inspector will explain at the PHM the essentially informal nature of the hearing sessions. If any participant (including the LPA) considers a more formal approach is needed to any particular issue they must raise this with the Inspector at the earliest opportunity, preferably at the PHM if not before.

4.8. The PO will circulate the notes of the PHM, along with the programme for the hearing sessions and the final list of matters and issues for the hearings, as soon as practicable after the PHM.

## **5. Preparing for the hearing sessions**

### ***Written statements***

- 5.1. Statements from participants on the matters and issues should only be submitted if requested by the Inspector and must be focussed on the defined matters and issues. Where the Inspector considers it necessary, he/she can ask participants in hearing sessions to submit statements of limited length (not more than 3,000 words).
- 5.2. The LPA and participants should start work on providing any material requested by the Inspector as soon as possible. A deadline will be provided for return of statements. It should be set around 2 weeks before the start of the first hearings. It is important that everyone adheres to the timetable and deadlines set by the Inspector for the submission of statements so that the Inspector has sufficient time to absorb their contents and prepare properly for the hearings. Only in exceptional circumstances will the Inspector countenance rearranging any hearing sessions to accommodate late submission.
- 5.3. The PO will exchange and/or circulate statements as soon as they are received. It should not normally be necessary for the LPA to submit its statement on a different (later) date than other participants. The process no longer centres on 'responding to objections'. Like everyone else, the LPA is invited to address the Inspector's matters and issues. However, in some instances the Inspector may decide that there are advantages in having a response from the LPA to statements made by representors. In these cases different submission dates will be set by the Inspector.

### ***Agendas for hearing sessions***

- 5.4. In many cases, the agenda for hearings will be the same as the 'matters and issues' identified by the Inspector for the preparation of written statements. Clearly, if the same list of matters and issues is used as an agenda, there will be no need to circulate another paper. However, if additional questions are raised, or some points are satisfactorily clarified by the written submissions, the agenda for the hearings may be reviewed by the Inspector.
- 5.5. The Inspector's note or agenda will create a strong focus for each hearing session by identifying a clear sequence of issues and questions that will need further examination. It may include a brief summary of the common themes of agreement/ disagreement emerging from the participants' statements. The note may also clarify any technical matters such as the methodology used in a housing needs assessment study. In some instances a technical seminar may be held in advance of the hearing sessions (see Chapter 9).
- 5.6. If it has been revised since the PHM, the PO will circulate the Inspector's note/detailed agenda for the discussion at each of the hearing sessions to all the participants concerned a week before the matter is discussed.

## 6. Hearing sessions

- 6.1. Where they are required, hearing sessions form an important part of the examination process. The Inspector will have completed the desk based examination of the LDP and will be looking to the hearing sessions to satisfy him/her on the remaining issues needing clarification to determine soundness.
- 6.2. The emphasis at the hearing sessions will be on informality with the Inspector exploring and leading a debate on the issues identified in advance. The Inspector will invite participation from those who wish to be heard and anyone else who might be required to properly explore the relevant issue; the group should not be larger than 15 to 20 people.
- 6.3. The most appropriate room layout for the hearing session(s) will comprise a rectangular table arrangement with seats for up to 20 persons. Where possible all contributors to the discussion will be seated at the table. If this is not possible any parties represented by a team or a group sharing the same views will be asked to nominate a lead speaker. Similarly the LPA may wish to have support staff available sitting behind the person representing it.
- 6.4. Parties making late requests to attend hearings who have not sent in representations in accordance with the statutory timetable do not have the right to be heard, although they may attend to observe any hearing session as these are held in public. Inspectors will adopt a robust approach and will not consider late representations not formally accepted by the LPA. Inspectors have the authority to invite any party to take part in the hearings and may invite people and/or bodies with the knowledge and expertise necessary for a thorough investigation of the plan. The Inspector will ensure that any party invited to participate in this way does not use this invitation as a means to introduce late representations that have previously been rejected by the LPA as not duly made.
- 6.5. Representors who are supporting the submitted LDP or plan revisions do not have a right to appear. As previously noted, the starting point for the examination is the assumption that the LPA considers its submitted or revised LDP to be sound. A firm line will be taken against supporters' requests to appear since their position is represented by the LPA. However, if the Inspector considers that it would be helpful to be informed about a matter that goes to soundness by someone supporting the submitted or revised LDP, he or she may invite them to participate.
- 6.6. As the hearing programme will be based on group sessions, parties wishing to appear will be expected to attend the sessions relevant to their representations or to send a representative if they are unable to attend on that particular day. Failing this, where all reasonable steps have been taken to facilitate attendance, they will have to rely on written representations.
- 6.7. The hearings programme will be intensive and focussed. Because of the nature of the hearing sessions it is likely that the Inspector will usually sit for

an intensive 3 or 4 days a week to allow adequate preparation time between sessions. This can vary depending on the nature of the LDP and on whether more than one Inspector is allocated to the plan in question. It is likely that the programme will include a break. LPAs may find the examinations very demanding and will need time to prepare material and responses to matters raised in earlier sessions.

- 6.8. It is envisaged that the Inspector will normally hold hearing sessions considering strategic issues first and any break will usually follow these strategy sessions. This will enable the Inspector to consider the strategy and allow the evidence gathered to inform the matters and issues to be considered later. It is possible that in this break issues could be identified that change the way the hearings proceed, change agendas or bring to light the need for additional sessions.

### ***Opening the hearing sessions***

- 6.9. All documentation at the hearings will be taken as read and hence the sessions will be focussed on matters that the Inspector has identified for discussion. The hearing sessions should follow the agenda set out by the Inspector. As previously noted, the Inspector will already have determined at an early stage the matters and issues on the basis of having all the material before him/her and it is therefore unhelpful to the process to submit further unsolicited evidence. The Inspector will exercise his/her discretion in turning away unsolicited material that is not relevant to the soundness of the plan.
- 6.10. On the first day, the Inspector will:
- Open briefly, setting out the purpose and character of the hearing sessions as well as explaining the potential outcomes of the examination;
  - Explain clearly the scope that he/she has for making changes to the plan to ensure adoption of a sound LDP; and
  - Invite the LPA to introduce the LDP or plan revisions and comment on its soundness should it wish. However this is not necessary and any introduction should be brief as the session will move on rapidly to consider the first main matter.

### ***Formats for hearing evidence***

- 6.11. It is for the Inspector to decide the procedure at the hearings. There should be no need for formal presentation of evidence and only exceptionally will formal cross-examination be used. Representors who have sought changes to an LDP or proposed plan revisions and have indicated a wish to speak at the hearing sessions have the right to be heard. However, the Inspector determines the format for hearing the evidence. The Inspector will adopt an inquisitorial approach and ensure that the LDP is properly tested against the tests of soundness and the submitted evidence.

- 6.12. The most common format will be hearing sessions to which a number of participants who have concerns regarding the same matter are invited. Hearings are the most efficient mechanism and should be capable of being used to examine all LDPs.
- 6.13. Sometimes respondents seek to have their views put by a barrister or solicitor, usually accompanied by a specialist such as a planning consultant. Whilst this is acceptable, lawyers will not be permitted to adopt a formal 'advocacy' role as a matter of course, as this can unnerve other participants and undermine the principle of equal partners in the discussion.
- 6.14. Nevertheless, there may be occasions when the skills of lawyers/advocates need to be used. The hearing session format allows the Inspector to adjust proceedings to suit the matters and issues being discussed. It may be appropriate that part of the hearing session allows for formal presentation of evidence followed by cross-examination and re-examination. This will only happen in very exceptional instances where the Inspector is convinced that a formal approach is essential to adequately test the evidence. This is most likely to be appropriate where the Inspector feels that the issues raised are highly technical or complex.
- 6.15. If any participant wishes the Inspector to consider dealing with a particular subject using this formal approach, he/she must be prepared to make a strong case. Parties must inform the Inspector as a soon as possible if they consider a formal approach is necessary. This request should be accompanied by a detailed justification. Other participants will be informed and, in the interests of fairness, invited to consider whether they would like similar representation. The availability of advocates can be an issue and, in coming to a decision about whether a formal approach is appropriate, the Inspector will have regard to the impact on the programme.
- 6.16. The final decision rests with the Inspector. Where it is decided that a formal approach is necessary, participants will be informed ahead of the hearing session that cross examination is to be permitted on a particular subject.
- 6.17. Consequently there will usually be no need for any party to employ advocates to present their case. Barristers and solicitors can take part in the informal group discussions on the same basis as any other party subject to the constraints on the number that can reasonably take part in the discussions.
- 6.18. LPAs may find that a fruitful way of using advocates is at earlier stages in the preparation process. Professionals familiar with presenting cases can be particularly helpful in reviewing the adequacy and appropriateness of the evidence base and marshalling the evidence to assist the Inspector to explore the issues of soundness.

## ***Hearing participants***

- 6.19. The Inspector will take charge of the hearing and, in particular, avoid simply going round the table asking each party to comment on each item. The Inspector will begin by making a few brief comments on the matters to be covered, before inviting participants to make their contribution to the debate. The session will progress under the Inspector's guidance, drawing participants into the discussion in such a way as to enable him/her to gain the information necessary to come to a firm conclusion on the relevant issues. Experience suggests that, where there are a large number of participants, 'toblerone' shaped nameplates, which can be stood on end when a person wishes to speak can be helpful. Once the discussion has reached the point at which no more is likely to be said to assist the Inspector he/she will move discussion on to the next issue.
- 6.20. Grouped appearances help to keep the focus on the Inspector's agenda rather than on individual representations seeking a change to the LDP. In a session relating to a single matter (e.g. employment land provision), it may be possible to accommodate participants with views about the general soundness of the policy and those with concerns about particular sites.
- 6.21. If the Inspector wishes to pursue a matter of soundness not raised in the representations, it may be necessary to programme a session at which he/she can question the LPA. Whilst there may be no other participants, this session would be open to the public. In practice, such a session is most appropriately attached to another session in which other matters or issues are being discussed.

## ***Large numbers of participants***

- 6.22. If large numbers of persons (in excess of 20) wish to be heard at a particular session, the Inspector will seek to reduce the number. Inspectors will not try to manage too large a number of participants as they may find it difficult to direct the discussion, exercise fairness in hearing participants and take notes of the proceedings. As such there is a need to be pragmatic and the Inspector's approach will be to:
- Remind those concerned that written representations carry the same weight as oral evidence. On this basis persons and parties should think carefully whether there is a need to appear;
  - Ask those with very similar views to appoint a single spokesperson;
  - Consider sub-dividing the matter for discussion; and
  - Hold more than one session on the same issue. Participants scheduled for the second session may be encouraged to observe the first hearing session in order to acquaint themselves with procedures and format. It will be unnecessary for the Inspector to hear arguments twice which could lead some to decide against attending the later hearing session. The PO will be on hand to assist in discussing this with participants.

- 6.23. Where there are large intensive sessions, Inspectors may need the assistance of a note-taker and may be supported by an Assistant Inspector or Inspectorate planning officer. This will make note taking much easier but it will not always be possible and cannot be relied upon. If the Inspector has concerns about note-taking and needs assistance, he/she may ask, through the PO, the LPA to identify a suitable person from the LPA to assist in advance. Notes are merely intended as an 'aide-memoir' for the Inspector and are not examination documents.

### ***Matters Arising Changes / agreed actions***

- 6.24. LPAs should not seek changes after submission because the frontloading process should have considered the full range of options and policy approaches. The opportunity for the LPA to respond to representations occurs prior to submission via proposed 'focussed' changes (see Chapter 2).
- 6.25. Changes after submission should be at the instigation of the Inspector in response to any soundness concerns which arise during the examination. These are often referred to as 'Matters Arising Changes'.
- 6.26. If necessary, at the end of each hearing session, the Inspector will confirm with the LPA any actions it needs to take in response to soundness issues raised during the discussion (e.g. to make specific changes to LDP policies, or to clarify matters in relation to the evidence base). Lists of 'action points' may be agreed with the LPA and published in the Examination Library. In addition, the LPA will be required to maintain a schedule of consequential 'Matters Arising Changes' which it proposes to make to the submitted or revised LDP. This schedule should identify the page number, policy/allocation references and/or paragraph proposed to be amended; and must identify any deletions or insertions via struck-through or emboldened text.
- 6.27. Where the Inspector identifies the need for specific changes to the plan these will, where possible, be fully discussed at the hearings. However, there may be occasions where an Inspector only concludes that a change is necessary having considered all the evidence submitted to the examination.
- 6.28. There is also the possibility that significant problems or cumulative flaws are identified which the Inspector considers cannot be rectified. In such a situation it is likely that the submitted or revised LDP will be found to be unsound.
- 6.29. If the Inspector considers that the LDP or plan revisions (including any addendum) should and can be changed after submission to make the plan sound, he/she must be satisfied that requirements for public consultation and sustainability appraisal have been met with regard to the changes. Where the Inspector considers this is not the case he/she will request the LPA to carry out the necessary consultation and work on sustainability appraisal. The Inspector will expect the material to be made available

without the need for undue delay to the examination. Guidance on the limited circumstances in which an examination may be suspended to allow further work by the LPA is provided in Chapter 9.

- 6.30. This process may generate fresh representations. In the interests of fairness, the Inspector will extend the right to appear at the hearings to those who seek an amendment which follows directly from the proposed post-submission changes.
- 6.31. Where changes are identified which relate to presentational flaws or errors, the Inspector will request the LPA to take responsibility for undertaking work of an editorial nature. Such changes must not materially affect the substance or soundness of the submitted plan (see paragraph 2.7).

### ***Concluding the scheduled hearing sessions***

- 6.32. The Inspector will announce at the end of the last hearing session the expected date of delivery of the report to the LPA for a 'fact check'. The date will be confirmed in writing with the LPA by the Inspectorate.
- 6.33. A practical problem can occur if the PO is released from post at the end of the hearing sessions as there will be no direct channel of communication with the Inspector. LPAs must keep the PO in post, at least on a part-time or 'as needed' basis after the hearing sessions, until the Inspector's fact check report is delivered. If the PO will be unavailable, the authority must ensure that an administrative officer will be able to handle correspondence and provide a point of contact. The Inspectorate's development plans team in Cardiff must be informed if any problems relating to the PO arise.
- 6.34. The Inspector may hold a brief rounding-up session at the end of the last hearing day with the LPA and other representors. This provides an opportunity for the parties to discuss how the hearings have been organised and run. It will provide for a two-way exchange of views and enable lessons to be learnt in order that the Inspectorate can improve the examination process for all concerned.

### ***Further material and additional hearing sessions***

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

## **7. Report writing**

### ***Key principles for reporting***

- 7.1. In drafting the report, the Inspector will concentrate on:
- reaching clear conclusions, backed by reasoned judgments, on the compliance requirements of the 2004 Act and Regulations and meeting the legal requirement of soundness; and
  - setting out (where appropriate) precise binding recommendations on any changes to the policies, other supporting text, and/or Proposals Map that are required to overcome any correctable aspect of unsoundness identified by the Inspector.
- 7.2. The Inspector will start on the premise that the report should be as short as possible, whilst ensuring it is clearly reasoned to justify the conclusions. Since the Inspector is not dealing with 'inquiries into objections', reports will not summarise the cases of individual parties, will avoid as far as possible direct references to specific representations and will not describe discussions at the hearing sessions. The report will explain why the Inspector, based on a consideration of all the evidence and his/her professional expertise and judgment, has reached a particular view on how the plan satisfies the statutory requirements for its preparation and the tests of soundness.

### ***Structure of the report***

- 7.3. The report will be sub-divided into the following key sections:
- An Introduction - setting out the purpose of examination; a brief commentary on the examination carried out and a brief explanation of the structure of the report. The introduction will also provide an overall conclusion summarising the outcome of the examination.
  - Procedural requirements – summarising the plan preparation process and whether it has met the requirements of the 2004 Act and Regulations.
  - Topic-based chapters which identify the main issues, setting out the Inspector's reasoning and conclusions.
  - Overall Conclusion – whether the Plan (either as submitted or as modified by the plan revisions) is sound with changes or fundamentally unsound and cannot be changed by the Inspector.
- 7.4. If the plan is found to be unsound, the main issues section will be subdivided to (a) cover all the issues which led to a conclusion of unsoundness which cannot be overcome by the Inspector, and (b) cover other issues which proved controversial at the examination but did not amount to unsoundness or could be remedied.
- 7.5. Where a 'focussed changes' addendum has been submitted the Inspector will clarify its status early in the report. Where the addendum has been accepted as part of the submitted LDP or plan revisions the Inspector will recommend

that it (amended by way of binding recommendations, if necessary) should be inserted into the LDP prior to adoption.

- 7.6. A glossary may sometimes be provided. Other appendices, for example listing the tests of soundness, participants or core documents, are not needed. This type of material if prepared should be kept by the LPA in the Examination Library.

### ***Changes recommended by the Inspector***

- 7.7. If an LDP is found sound subject to changes, the Inspector's report will identify binding recommendations. Recommendations may consist of redrafted text, the omission of a policy or section of text (or the inclusion of a new one), or changes to the Proposals Map, provided what remains comprises a sound plan when read as a whole. The Inspector's recommendations are binding and the LPA must adopt the LDP as recommended to be changed by the Inspector unless the Welsh Government directs it not to.
- 7.8. The Inspector will consider the extent to which any 'Matters Arising Changes' (MACs) proposed by the LPA are necessary to address soundness issues raised during the examination. Where the Inspector concludes that some or all MACs are necessary for the plan to be found sound, the schedule of MACs will be appended to the report. If the Inspector concludes that additional changes are necessary for soundness, these will be identified in a separate appendix of recommended 'Inspector Changes' (ICs). Any changes to the LDP specified by the Inspector to make it sound (whether MACs or ICs) will be identified in the report. As recommendations are binding, the exact wording of any change must be specified in the appendices to the report.
- 7.9. Binding changes can only be made if the Inspector is confident that they are based on evidence and that the changed LDP would not be vulnerable to challenge on the grounds that proper procedures had not been followed. This will require careful judgment by the Inspector in the circumstances of the case as to whether any proposed MACs or ICs may require public consultation, Sustainability Appraisal or Habitats Regulations Assessment.
- 7.10. It is important to remember that the Inspector will not seek to improve a plan he/she considers to be sound. However, Inspectors will consider changes designed to create an appropriate and deliverable LDP. In many instances representations are made about matters that do not affect the soundness of the plan. The Inspector will not make recommendations about these matters even if he/she considers the representation well-founded. It is the LPA's plan and the Inspector will only make changes that ensure the LDP is sound. In relation to each change, Inspectors will ask themselves whether the plan would be unsound if it was not made. If the answer is 'No', no change will be recommended.

- 7.11. Consequently, any minor editing changes proposed by the LPA which do not affect the soundness of the plan will not be referred to in the Inspector's report. However, Inspectors' reports may permit LPAs to make consequential changes to an LDP in order to remove any inconsistencies following the Inspectors' recommended changes.

### ***Unsound LDPs***

- 7.12. A conclusion at the end of the examination process that a plan is not sound has important resource implications, both in terms of time spent by the Inspector and the investment in time and commitment by the LPA and other stakeholders. The Inspectorate is doing all it can to ensure that fundamental problems are identified early. The early scoping work, use of exploratory meeting and suspension (exceptionally) are aimed at mitigating such an occurrence. Such a situation is much less likely to occur if the LPA has followed the good practice guidance and front-loaded consultation procedures and responded properly and responsibly to concerns raised by the Inspector at an exploratory meeting.

## **8. Delivery of the report to the LPA**

### ***The fact check report***

- 8.1. The fact check report will be sent to the LPA in electronic and paper format, accompanied by a separate covering letter to its Chief Executive. This will briefly report that the pre-hearing and hearing sessions have been held (on specified dates) and that the requirements of an examination under S64(5) of the 2004 Act have been fulfilled. The overall conclusions on soundness will be given.
- 8.2. The report will be copied to the Welsh Government. Section 65 and 67(4) of the 2004 Act provides that the Welsh Government may consider intervention by 'direction' prior to adoption where the recommendations of the binding report are considered to be in conflict with national policy. Any issues raised by the Welsh Government will be made publicly available.
- 8.3. When responding to the fact check report, LPAs may not question the Inspector's conclusions although they may seek clarification on any conclusions considered to be unclear. LPAs should complete the fact check within 2 weeks of receiving the fact check report (or 1 week for shorter reports relating to partial plan revisions).
- 8.4. Whilst the fact check report is the tentative final report, LPAs should not publish it until the fact check process is complete and the final report is issued by the Inspectorate.

### ***The final report***

- 8.5. Once the fact check has been completed and the Inspector has responded to any points raised, the final report will be submitted to the authority in electronic and paper format.
- 8.6. The Inspectorate will not publish the report; this is produced for the LPA and it is the authority's responsibility to publish it. Similarly the Inspectorate will not make known the outcome of a completed LDP examination until that information has been placed in the public domain by the LPA.
- 8.7. Under the Planning Inspectorate's Welsh Language Scheme, reports will be translated into the Welsh language prior to being issued to Gwynedd and Anglesey councils and the Snowdonia National Park Authority. The definitive report will be the original report as written by the Inspector, prior to being translated.

- 8.8. LPAs will be invoiced for the examination in accordance with the Service Level Agreement (SLA)<sup>8</sup> agreed between the Inspectorate and the LPA. The intention is that authorities will be invoiced monthly but the Inspectorate is prepared to discuss this with individual authorities when agreeing the SLA. The current charging regime is set out in [The Local Inquiries, Qualifying Inquiries and Qualifying Procedures \(Standard Daily Amount\) \(Wales\) Regulations](#).

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<sup>8</sup> The SLA covers the arrangements between the Inspectorate and the LPA for the examination and the delivery of the Inspector's binding report.

## **9. Exceptional procedures**

### **Exploratory meetings**

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

#### ***Approach and purpose of the exploratory meeting***

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

#### ***Participants, notice and timing***

- 9.5. An exploratory meeting should involve the LPA and the Welsh Government. The Inspector may also invite any representors who have made significant points about the matters and issues that are causing concern. Exploratory meetings must be public meetings and thus any person may attend and observe. Inspectors will ensure that the exploratory meeting does not become an examination of the LDP where only two parties, the LPA and Welsh Government, have had the opportunity to make representations.

There will be issues of fairness if no other party has a formal opportunity to make representations.

- 9.6. The meeting will be arranged by the PO and publicised by the LPA, this should be in a manner consistent with any commitment in the LPA's Community Involvement Scheme. If possible at least 4 weeks' notice should be provided. It is also recommended the LPA place an advertisement on their website to publicise the meeting at the earliest opportunity.
- 9.7. The invitation letter will emphasise that formal evidence will not be heard and that the Inspector will determine how to progress the examination following that meeting.

### ***Role of the Inspector***

- 9.8. The Inspector will produce an agenda/list of questions to send out in advance to identify the main points for discussion.
- 9.9. Evidence will not be tested at an exploratory meeting (evidence is only tested at hearing sessions) but the Inspector will voice concerns about an incomplete or inadequate evidence base. The Inspector may use the meeting to explore with the parties what additional material is needed to properly inform the examination and the timetable to provide that material.
- 9.10. It provides an opportunity to deal with matters such as to clarify:
- the representations received from the Welsh Government; and
  - the extent/nature of the evidence the LPA has submitted to the examination.
- 9.11. This can be a difficult experience for all involved, particularly the LPA, which will have invested a lot of time in the plan preparation. The Inspector will be leading the meeting and will ensure that he/she communicates his/her concerns clearly and in a sensitive manner.
- 9.12. It is important that the discussion is then reported at the PHM or subsequent hearing session, assuming the examination is to proceed. All exploratory meetings will be held in public and a note of the meeting will be agreed with those who participated. The papers relating to the exploratory meeting will be made available in the Examination Library. This should include any issues papers produced at the request of the Inspector by parties to the meeting.

### ***Possible outcomes of the meeting***

- 9.13. Possible outcomes of the meeting are:
- (i) The Inspector recommends that the LDP is withdrawn and that recommendation is not overruled by the Welsh Government.
  - (ii) The issues are resolved to the satisfaction of the Inspector and the examination proceeds to the PHM, or if held after the PHM, to the

hearing sessions. The meeting will be reported to the PHM or the first scheduled hearing session.

- (iii) Temporary suspension - the Inspector may agree to a short term suspension of the examination for the LPA to do more work (suspension is covered in detail in paragraphs 9.15-20). This may mean rescheduling the hearing sessions.
- (iv) Inspector remains concerned and issues remain unaddressed by the LPA – the Inspector will proceed to, and report the exploratory meeting to, the PHM or subsequent hearing session. If the Inspector has continuing concerns he/she will indicate so at the PHM or subsequent hearing session and may then schedule a hearing session to deal with the key issue(s) of concern first. The hearing session will allow an opportunity to make representations on whether the LPA and participants agree with the Inspector and how the examination should be progressed. The Inspector will make a decision based upon those representations at the hearing session whether to continue with the examination or determine the submitted or revised LDP is unsound on a fundamentally important point and formally recommend withdrawal.

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

## **Suspension**

- 9.15. It may be possible for the Inspector to delay proceedings where a major change is necessary and suspend the examination to allow the matter to be addressed, but this delay should not be unreasonable. If a large amount of additional work/consultation is required it suggests that the frontloading process has failed. In such circumstances it is unlikely that a finding of soundness can safely be made and the inspector may recommend that the LDP or plan revisions are withdrawn.
- 9.16. As a general principle, suspension goes against the wider policy objective of speeding up the plan process and developing evidence to inform choices made during plan making. LPAs may seek to argue that suspending an examination might be a swifter route to achieving the aims of the new plan-making system. However, this represents a short-term view. It is important that LPAs submit sound LDPs, backed up by a comprehensive, up-to-date and robust evidence base. Only in that way can the examination process be speeded up.

- 9.17. There may be circumstances where it may be effective to call a temporary halt to the examination process to enable the LPA to do more work, without having to go back to the start of the plan preparation process.
- 9.18. A suspension request may arise through a number of routes including:
- holding of an early exploratory meeting by the appointed Inspector (possibly on the back of representations, particularly those of the Welsh Government);
  - concerns about the matters and issues identified by the Inspector at the PHM; or
  - a request by the Inspector for additional work to be carried out or information to be provided as a result of evidence coming forward through the hearing sessions.
- 9.19. If contemplating the suitability of suspending the examination, questions the Inspector will consider are:

**(i) What is the scale and nature of the work required to overcome the perceived shortcoming of the plan?**

Is it to:

- a. reinforce existing evidence or make it more robust;
- b. ensure proper consultation has taken place which would rectify a potential procedural unsoundness; or
- c. commission new evidence, which raises an issue about the basis on which the plan has been prepared?

Point (c) would suggest the evidential base for the plan is not sound and the risk of commissioning new evidence is that it may lead to major changes to the submitted or revised LDP. However, (a) and (b) might suggest additional work or a consultation exercise could enable the Inspector to proceed without undue delay.

**(ii) How long will it take to do the work?**

Up to 6 months suspension might be acceptable but a period greater than this would not. A delay of more than 6 months would create uncertainty within the examination process for those who have submitted representations at the deposit stage and would strongly suggest that the LDP or plan revisions have not been adequately frontloaded, in which case it should be withdrawn to allow the proper procedures to be followed for a revised version of the plan.

**(iii) What will the further work lead to?**

If it leads to a substantially different LDP to that submitted, this raises the question of what the Inspector is examining and suspension therefore would

seem inappropriate. However, if it provides strengthened evidence which does not lead to major changes, it will not be likely to lead to significant delay.

- 9.20. There will be particular matters the Inspector will have to consider when the examination resumes after suspension:
- If LPA proposes new changes to the LDP, it may have to undergo another consultation period so that interested persons have the opportunity to make representations about the changes;
  - If the new proposed change is fundamental and goes to the heart of the LDP, or the extent of cumulative change is significant the Inspector will need to consider whether the examination can continue;
  - A further sustainability appraisal may be necessary to ensure compliance with the requirements of SEA; and
  - If a further SA is carried out, it will be necessary to consult upon the SA in order to comply with the Strategic Environmental Assessment Regulations.

## **Withdrawal**

- 9.21. Under section 66 of the Planning and Compulsory Purchase Act 2004, after submission, an LDP can only be withdrawn if a) an Inspector recommends that it be withdrawn and that recommendation is not overruled by the Welsh Government or b) the Welsh Government directs that an LDP is withdrawn.

## **Technical seminars**

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

## **Appendix - Procedural requirements and the tests of soundness: key questions and evidence**

Section 64 (5) of the Planning and Compulsory Purchase Act identifies two purposes of an independent examination. The first is to ensure that the LDP or plan revisions have been prepared in accordance with **procedural requirements**; and the second is to determine whether the plan is **'sound'**.

### ***Procedural requirements***

To ensure that time is not spent examining in detail a plan that is very clearly procedurally unsound, the Inspectorate will carry out an early screening of every submitted LDP (or proposed plan revisions) to ensure that:

- It has been prepared in accordance with the Delivery Agreement including the Community Involvement Scheme (CIS).
- The plan and its policies have been subjected to sustainability appraisal, including strategic environmental assessment.
- An Appropriate Assessment has been carried out under the Habitat Regulations 1994.

The LPA must submit a Consultation Report, a Sustainability Appraisal Report and a Habitats Regulations Assessment Report to demonstrate that it has complied with procedural requirements (for more information see 'Preparing for submission: guidance for Local Planning Authorities').

### ***Soundness tests***

Section 8.2.1.2 of the **LDP Manual (2015)** contains three 'tests of soundness' which underpin LDP examinations, and identifies key questions in relation to each test. Suggested evidence requirements in relation to each soundness test are identified below.

#### ***Test 1: Does the plan fit? (i.e. is it clear that the LDP is consistent with other plans?)***

A range of documents may be relevant, particularly the policy documents with land use implications produced by other organisations. It would not be appropriate for the LDP to list all the strategies and documents taken into account in its preparation. These can be part of a background/topic paper used by the LPA to demonstrate that this test of soundness is met.

The LPA should:

- Explain how strategic policies and allocations are consistent with national policy, the Wales Spatial Plan, well-being goals and the Welsh National Marine Plan
- Avoid wasteful/unnecessary repetition of national development management policies, explaining and justifying why local development management policies are required
- Explain how the plan adequately takes account of the requirements of other public and private sector organisations/departments, such as those of transport bodies, utility companies and agencies providing services in the area, including their future plans and any requirement for land and premises

- Explain how the plan relates to the Single Integrated Plan or the National Park Management Plan, identifying policies and proposals which deliver key components of that strategy which relate to the use and development of land
- Demonstrate how the plan is consistent with those of neighbouring LPAs.

Representations from bodies that consider the LDP either does or does not have sufficient regard to other relevant strategies for which they are responsible will be significant. The SA report and SEA must provide justification for a departure from national policy. Inspectors will, based on the relevant evidence, determine the weight that should be given to representations from bodies that are responsible for other relevant strategies that have been taken into account in the LDP.

***Test 2: Is the plan appropriate? (i.e. is the plan appropriate for the area in the light of the evidence?)***

To assess this test a range of locally-specific evidence will need to be provided. The evidence should clearly support the plan's strategy and policies. Local evidence must be proportionate, robust and credible and prepared in accordance with national planning policy and good practice guidance.

The Sustainability Appraisal Report is a fundamental part of the evidence base. The report should set out the options and the process by which they have been objectively assessed. The report should explain how the LPA considered reasonable and credible alternatives when preparing the plan. LPAs will not be expected to deal with every possible alternative or option but they will be expected to consider those put to them during the process of preparation and engagement. Where a balance has been struck in taking decisions between competing alternatives, it should be clear how those decisions were taken.

A typical evidence base for an LDP may include the following (suggested examples only):

- Procedural evidence:
  - Sustainability Appraisal Report (incorporating SEA, Candidate / Alternative Sites assessment, and Welsh language assessment).
  - Habitats Regulations Assessment: the report should set out the results of the appraisal process of the LDP as required by the Habitats Regulations and as explained in TAN 5, Nature Conservation and Planning (particularly Annex 6).
  - The Consultation Report
  - The Review Report (for plan revision or replacement).
- Spatial strategy evidence:
  - Settlement hierarchy and boundary assessment
  - Green Belt / green wedge study.
  - Housing (or urban) capacity study
- Land use needs evidence:
  - Housing Needs Assessment
  - Local Housing Market Assessment (including Gypsy and Traveller sites)
  - Joint Housing Land Availability Study / housing trajectory
  - Employment Land Assessment
  - Retail needs/capacity assessment
  - Infrastructure Assessment/Plan
  - Transport Assessment(s)
  - Open Space and Recreation Assessment.
- Environmental capacity evidence:
  - Strategic Flood Consequence Assessments

- Agricultural land quality
- Biodiversity / nature conservation assessment
- Landscape Character Assessment
- Heritage/archaeological surveys
- Renewable energy assessment
- Minerals / geological studies
- Waste studies.
- Deliverability evidence:
  - Viability study (affordable housing, etc)
  - Site promoter/infrastructure provider statements, etc
  - Risk assessments / sensitivity testing analyses.

### ***Test 3: Will the plan deliver (i.e. is it likely to be effective?)***

The evidence will be broadly similar to that required to assess test 2. In relation to site allocations or alternative sites, however, additional evidence may include site-specific reports or information provided by public and private sector delivery bodies, relevant infrastructure providers or site promoters, on practical deliverability issues/matters. Viability evidence should demonstrate that proposals (particularly allocations) are likely to be delivered as anticipated.

Evidence which assesses risks to delivery can be useful in justifying appropriate contingency provisions (e.g. the 'flexibility allowance' built into the housing target). Sensitivity testing of the LDP's policies or proposals can also identify other risks to non-delivery. For example, if the strategy is dependent on the construction of a by-pass, the LPA should carry out an assessment of the risk of that piece of infrastructure not being delivered and the consequences of this failure for the plan as a whole.

Background papers may need to elaborate on the delivery mechanisms and timescales for implementation which relate to the targets and milestones contained in the plan's monitoring framework. It should be clear how indicators and targets are to be measured. Triggers for plan review should be clearly identified.

Finally, for a plan to be effective, development management policies must provide a robust, clear and consistent framework for considering planning applications.