



Subject:	Independent Examination of Local Development Plans - Consultation on Draft Procedures by Planning Appeals Commission
Date:	6 February 2017
Reporting Officer:	Keith Sutherland, Development Plans and Policy Manager
Contact Officer:	Mark Whittaker, Senior Planning Officer

Is this report restricted?	Yes	<input type="checkbox"/>	No	<input checked="" type="checkbox"/>
Is the decision eligible for Call-in?	Yes	<input checked="" type="checkbox"/>	No	<input type="checkbox"/>

1.0	Purpose of Report or Summary of Main Issues
1.1	To present for consideration and comment a consultation from the Planning Appeals Commission on Draft Procedures for the independent examination of Local Development Plans.
1.2	The Planning Appeals Commission (PAC) has consulted the Council on the preparation of a guidance document in relation to the procedures surrounding the independent examination stage of the Local Development Plan. It has issued a consultation document comprising draft procedures for comment – copy attached at Appendix 2.
1.3	The closing date for submissions is 27 th March 2017. The proposed draft response is attached in Appendix 1 for consideration.
2.0	Recommendation
2.1	It is recommended that the Committee notes the consultation draft procedures document issued by the PAC (see Appendix 2). It is further recommended that the Committee considers the draft written response to the PAC (see Appendix 1) and, if appropriate, approve its submission to the PAC as the Council's response to the consultation.
3.0	Main Report
3.1	<u>Introduction</u> Members will be aware that the new Belfast Local Development Plan is currently in preparation and the Council's Preferred Options Paper has recently been published for consultation. The Plan is made up of two main components: the Draft Plan Strategy and the Local Policies Plan. Following extensive engagement, both parts of the Plan will be subject to an independent examination, which will be carried out by the PAC.
3.2	The independent examination is specifically to assess the conformity of the plan documents with the statutory requirements and their soundness. The concept of soundness is based on a number of tests set out in the former Department of the Environment's Development Plan Practice Note 6. The tests are based upon three categories which relate to (1) how the development plan document has been produced; (2)

	<p>the alignment with central government/regional plans, policy and guidance; and (3) the coherence, consistency and effectiveness of its content. A summary of the tests for soundness is included at Appendix 3 of the PAC's consultation document.</p> <p><u>Consultation Document</u></p>
3.3	<p>The PAC's draft independent examination procedures document provides guidance on a number of key matters. These include the making of representations, the submission of the plan documents to the Department (and the PAC), the independent examination hearing itself and the PAC's final report. The guidance is aimed at all parties involved in the process, including planning authorities, consultants, developers, interest groups and individual objectors.</p>
3.3	<p>The commitment by the PAC to prepare procedural guidance on the independent examination of the Local Development Plan is to be welcomed. The guidance will be useful in preparing for and participating in examinations, particularly in the context of the new planning process and new planning authorities.</p>
3.5	<p>The draft guidance stresses that the independent examination of the plan documents is solely on statutory requirements and soundness. This fact is referred to throughout the guidance and it is important that all parties are fully aware of this requirement. Restricting the examination to such matters should result in more focussed and efficient public hearings.</p>
3.6	<p>The draft document provides guidance on how representations should be made – again confirming that they should relate to soundness. It encourages the use of forms for making representations and supports brevity and clarity. It suggests that individuals with a common concern could make a joint submission and, in this regard, it states that the substance of representations is more important than the volume. Similarly, it confirms that written representations will be given equal weight to oral submissions.</p>
3.7	<p>The draft guidance sets out the information that the planning authorities should make available to the Department for Infrastructure and PAC in submitting plan documents for examination. This includes an analysis of submissions and the Council's opinion on them. It also includes any supporting evidence, such as topic papers, technical supplements and a self-assessment of legal compliance and soundness.</p>
3.8	<p>In advance of the actual independent examination public hearing, the guidance states that the PAC will give initial consideration to procedural and soundness matters. In the event that the PAC thinks that the plan is deficient in some way, it will engage with the planning authority and other relevant parties to seek a resolution.</p>
3.9	<p>The draft guidance provides detail on the format of the public hearing sessions. Hearings will be in the form of a round table discussion, chaired by a Commissioner and avoiding undue legalism. This more informal approach is welcomed as undue formality can lead to very adversarial and legalistic exchanges. In this regard, the Commissioner will have to ensure that the informal approach is maintained and that all persons have equal opportunity to make their views known.</p>
3.10	<p>Following the public hearing sessions, the Commissioner will prepare a report on the plan document's legality and soundness. This report is made to the Department for Infrastructure, which will then decide whether to direct the plan document to be adopted, modified or withdrawn.</p>
3.11	<p>It is noted that, throughout the draft document, there is little reference to timescales. In this regard, it is important that the independent examination stages of the LDP process are as</p>

<p>3.12</p> <p>3.13</p> <p>3.14</p> <p>3.15</p>	<p>efficient and effective as possible and do not result in undue delay to the plan. This is of particular importance as the Council has published a timetable for the preparation of the LDP and significant time spent in the examination stages, which is outside the Council's direct control, could prejudice the timely adoption of the new plan. This raises concerns that delays could ultimately affect the Plan's soundness. It is considered that the finalised guidance document should give indicative timeframes for each stage of the examination process, including the pre-hearing stage, the hearing itself and the final reporting stage.</p> <p>The recommended response is set out in Appendix 1. In summary, the proposed procedures document around the independent examination of LDP documents is welcomed. This is a new procedure within a new planning system and the procedural guidance should be helpful to all parties involved in the process. However, there are a number of important matters that should be expanded on or clarified, including the format of the hearing sessions and indicative timeframes for the stages of the process. These matters are highlighted in the draft response.</p> <p><u>Finance and Resource Implications</u> There are no resource implications associated with this report.</p> <p><u>Asset and Other Implications</u> None noted.</p> <p><u>Equality or Good Relations Implications</u> There are no relevant equality or good relations implications attached to this report.</p>
<p>4.0</p>	<p>Appendices</p>
	<p>Appendix 1 – Draft Council Response to Independent Examination of LDPs Draft Procedures (PAC)</p> <p>Appendix 2 – Independent Examination of LDPs Draft Procedures (PAC Consultation Document)</p>

Appendix 1: Draft Council Response to the ‘Independent Examination of Local Development Plans - Draft Procedures’ (PAC)

Planning & Place

Your reference

Our reference 244488

Date

Chief Administrative Officer
Planning Appeals Commission
Park House
Great Victoria Street
Belfast
BT2 7AG

Dear Mr Purvis,

INDEPENDENT EXAMINATION OF LOCAL DEVELOPMENT PLANS CONSULTATION ON DRAFT PROCEDURES

I refer to your recent consultation on the Draft Procedures for the Independent Examination of Local Development Plans and thank you for affording the City Council the opportunity to comment on the draft document. I can confirm that the City Council has considered the draft document and wishes to make the following comments at this time.

The commitment by the Planning Appeals Commission (PAC) to prepare procedural guidance on the independent examination of the Local Development Plan is welcomed. The guidance will be useful in preparing for, and participating in, such examinations, particularly in the context of the new planning process and new planning authorities.

The consultation draft document provides guidance on a number of key matters and stages of the examination process. These include the making of representations, the submission of the plan documents to the Department (and the PAC), the independent examination hearing itself and the PAC’s final report. The guidance is aimed at all parties involved in the process, including planning authorities, consultants, developers, interest groups and individual objectors. In this regard, it is noted that the document is generally easily understood and accessible to all.

The draft document stresses that the independent examination of the plan documents is solely on statutory requirements and soundness. This fact is referred to throughout the document and it is important that all parties are fully aware of this requirement. Restricting the examination to such matters should result in more focussed and efficient public hearings. Hopefully, the wide circulation of the finalised document in due course should ensure that all parties understand the legislative context and how to play their part in the process.

The draft document provides guidance on how representations should be made – again confirming that they should relate to soundness. It is noted that the document encourages co-operation between individual objectors sharing a common objective. Whilst this is agreed as a desirable outcome, it is not clear how this might be achieved in practice. Additional guidance and examples might be useful on this matter.

The draft document encourages the use of forms for making representations and supports brevity and clarity in such representations. It confirms that the substance of representations is more important than the volume. This approach is supported. However, it is considered that other methods of making representations, such as Citizen Space and email, are still required and may be more accessible to a wider cross-section of people. In addition, it is considered important that any forms are written in plain English and include guidance notes where possible. This is particularly important around the concept of 'soundness', as this might not be easily understood by some.

The absence of any right of a hearing on counter-representations is noted in the draft document. This is important and the final document should expand on this matter, including an explanation of the relevant legislative context. In this regard, it might also be helpful to add all relevant extracts from the primary and secondary legislation as an appendix to the document for ease of reference.

As the final document will be available to a wide audience, there is merit in reminding all parties that representations will be published. In order to avoid issues around data protection, the final document might remind all parties that we the planning authority will pass details, including personal contact data, to the PAC. This matter might be linked to Appendix 1 of the draft document, which deals with data protection.

The draft document correctly confirms that written representations will be given equal weight to oral submissions. It is hoped that this will help to reduce the number of oral submissions and, consequently, the length of the hearing sessions. It is considered that the final document should provide greater clarity or examples on when written submission will suffice and where oral evidence might be beneficial.

The draft guidance sets out the information that the planning authorities should make available to the Department for Infrastructure and PAC in submitting plan documents for examination. This includes an analysis of submissions and the Council's opinion on them. It also includes any supporting evidence, such as topic papers, technical supplements and a self-assessment of legal compliance and soundness. It would be helpful to provide a check list of the documentation that the PAC requires by statute and other documentation that would be desirable. In addition, in relation to the analysis of representations, the final document should specify all the data headings required in the database to ensure adequate functionality is built-in at the start of the process.

A plan document should not be submitted to the Department (and then to the PAC) unless the planning authority believes it is legally robust and sound. This is, naturally, accepted. In advance of the actual independent examination public hearing, the document states that the PAC will give initial consideration to procedural and soundness matters. In the event that the PAC thinks that the plan is deficient in some way, it will engage with the planning authority and other relevant parties to seek a resolution. It would be useful to clarify the role of the Department for Infrastructure at this stage as, technically, it is the Department that is seeking the independent examination.

The draft guidance provides detail on the format of the public hearing sessions. It states that a Commissioner will draw up a detailed programme for the hearings, informed by the topics and issues raised. It states that the proceedings should be in the form of a round table discussion, chaired by a Commissioner and avoiding undue legalism. This more informal approach is welcomed as undue formality can lead to very adversarial and legalistic exchanges. In this regard, the commissioner(s) should ensure that the informal approach is maintained and that all persons have equal opportunity to make their views known. Careful control of the hearing by the Commissioner(s) will therefore be of the utmost importance.

The draft document notes that the Commissioner(s) might seek expert evidence from persons or bodies who have not made representations. Whilst this is generally acceptable, it is important to put in place governance arrangements to ensure objectivity and fairness.

Following the public hearing sessions, the Commissioner(s) will prepare a report on the plan document's legality and soundness. This report is made to the Department for Infrastructure, which will then decide whether to direct the plan document to be adopted, modified or withdrawn. Whilst this may be the remit of the Department, it is considered that the final procedures document should also provide for circulation of the report to the relevant planning authority.

It is noted that, throughout the draft document, there is little reference to timescales. In this regard, it is important that the independent examination stages of the LDP process are as efficient and effective as possible and do not result in undue delay to the plan. This is of particular importance as the Council has published a timetable for the preparation of the LDP and significant time spent in the examination stages, which is outside the Council's direct control, could prejudice the timely adoption of the new plan. This could ultimately prejudice the soundness of the plan. It is considered that the finalised guidance document should give indicative timeframes for each stage of the examination process, including the pre-hearing stage, the hearing itself and the final reporting stage. Whilst it is accepted that the actual timeframes may be difficult to predict, the document should give an indication of anticipated timeframes when an element of the process is within the control of the PAC.

I trust that the above comments are helpful and will be taken into account when finalising the document for publication. The draft procedures document is welcomed and I look forward to hearing from you further in due course.

Should you require any further clarification, please contact Mark Whittaker, Development Planning & Policy Team, Planning & Place, Tel: 02890 320202 ext. 2321.

Yours sincerely



PHIL WILLIAMS
Director of Planning and Place