

Planning Forum internal advice note

Consultations in the Planning Application Process: Operating Principles for Planning Authorities and Consultees

Introduction

The purpose of this advice note is to reflect the best practice principles, discussed and agreed through Planning Forum workshops with statutory consultees (November 2020) and Planning Authority representatives (January 2021), for the efficient and effective operation of the development management consultation process.

The '*Discussion Paper Examining the Role of Statutory Consultees in the Planning Process*' (September 2019), highlights that consultees play an essential role in the planning process. The consultation process, in itself, is an important element of an efficient, effective and transparent planning system; and it relies on there being effective engagement between Planning Authorities and consultees throughout the development management process. While consultees can provide the necessary expertise to advise on the technical and specialist aspects of a proposal, responsibility rests with developers, agents and planning staff to ensure that all necessary information is available and consultations are correct and absolutely necessary.

The first part of the note sets out seven 'operating principles' and associated actions for consultees and Planning Authorities to adhere to which, if applied consistently and with common sense and collaboration, should assist in helping to enhance the consultation process and ultimately improve the performance of the development management system, both in terms of quality and speed.

The second part of the note sets out, for information purposes, the role and input required from consultees in support of the full end-to-end development management process, including pre- and post-decision stages and other

associated work (including enforcement action). This should help to manage expectations around the process and assist consultees in planning for resource requirements etc.

Obviously not all the stages/input described will be relevant to every planning application and some elements, such as judicial review, will be rare. Equally, the list is not intended to be exhaustive or to preclude communication about other matters, including the 'non-statutory' advice and support provided by consultees to all stakeholders in the system.

This advice should be considered alongside other related guidance which has already been produced by the Department, councils or consultees, including Development Management Practice Note 18: 'The Consultation Process and Duty to Respond'¹. The Department would particularly reference the useful guidance which has been developed by Belfast City Council, including its internal 'Planning Consultation Checklist' which sets out practical and factual advice for its planning officers on whom to consult and in what circumstances.

Review and Update

This document will be updated following the introduction of the new Planning IT system. Further reviews will be undertaken as required.

¹ Development Management Practice Note 18: 'The Consultation Process and Duty to Respond' can be viewed on this link https://www.infrastructure-ni.gov.uk/sites/default/files/publications/infrastructure/dmpn-18-consultation-process-v2-may-2016_0.pdf

Operating Principles for the Practical Management of Consultations in the Planning Application Process

1 	<p>There is effective communication and accessibility between planning authorities and statutory consultees</p> <ul style="list-style-type: none"> • Planning authorities and statutory consultees share staffing structures and a central list of key contact details for all teams involved in the consultation process. Contact between planning authorities and consultees is proportionate to the needs of the individual planning application. • Planning Authority and case officer names are included on all consultation requests. 	5 	<p>Consultees publish guidance and advice which is sufficiently comprehensive and clear</p> <ul style="list-style-type: none"> • Consultees ensure that guidance and standing advice is up-to-date and relevant to planning application consultation requirements.
2 	<p>Consultations only take place where necessary</p> <ul style="list-style-type: none"> • Each Planning Authority prepares its own consultation checklist to guide planning staff on whom to consult and when. • Planning staff scrutinise every proposal to determine if a consultation or re-consultation is required by legislation or necessary properly to assess the application and make an effective decision. • Planning staff consider all appropriate guidance and standing advice before issuing a consultation. 	6 	<p>Consultation responses are clear, concise, and stay within the parameters of the consultee's remit and expertise; and they are returned within the statutory target unless there are exceptional circumstances</p> <ul style="list-style-type: none"> • Consultee responses focus on the relevant issues and on what matters need to be addressed to make the proposal acceptable. • Where the proposal does not meet the relevant requirements and is unacceptable, consultees give clear and precise reasoning including any recommended grounds for refusal. • Where the proposal is considered acceptable subject to conditions, consultees should explain this and provide reasoning which enables planning authorities to draft planning conditions which are necessary and reasonable, as well as enforceable, precise and relevant both to planning and to subject proposal. • Where a time extension is required to provide a substantive response to a consultation, the consultee liaises with the Planning Authority and provides a robust explanation outlining what the exceptional circumstances are for not being able to respond within the statutory timeframe.²
3 	<p>Consultation requests are clear and concise</p> <ul style="list-style-type: none"> • In cases where the purpose of the consultation or re-consultation is not obvious, planning authorities provide clear and concise reasons for the consultation, why it is considered necessary and what advice is sought. 		
4 	<p>All necessary documents are uploaded to the Planning I.T. system and clearly labelled</p> <ul style="list-style-type: none"> • Planning authorities upload from digital copies where possible and encourage applicants/agents to submit information in digital format. • Planning authorities provide an overview / list of all documents to be reviewed by the consultee with the consultation. 	7 	<p>The back-office Planning I.T. system is updated as soon as practicable following receipt of consultation responses</p> <ul style="list-style-type: none"> • Planning authorities close all consultations on the Planning I.T. system as soon as possible once the consultation process has completed.

² Planning Forum Internal Advice Note on extensions <https://www.infrastructure-ni.gov.uk/publications/extensions-statutory-consultations-exceptional-circumstances>

Role of Consultees in the Development Management Process

Pre-application discussions (PADs)

- Provide advice on key issues for the proposal relevant to the consultee's area of expertise. This will include identification of key considerations, potential impacts and opportunities for the proposal, e.g. protected routes, historic monuments, nature reserves etc.
- Provide advice on the information and reports required to be submitted in order to adequately assess a planning application (including reference to publicly available standing advice and guidance).
- Participate in PAD meetings, as appropriate, and liaise with Planning Authorities to ensure meetings are prioritised, targeted and attendance is proportionate.
- Provide comment where detailed information is provided (without prejudice to the formal statutory planning process).

It is important to emphasise that the onus is on the applicant/agent to provide adequate information, including the scoping of potential constraints and impacts etc., to inform the PAD process and to enable consultees to provide useful advice.

- The nature of pre-application engagement will of course vary depending on the individual proposal.

Environmental Impact Assessment (EIA)

Formal EIA-related consultation will come directly from a Planning Authority. Developers, however, may seek informally to engage with consultees in relation to EIA at any point prior to the submission of their planning application. This should be handled by applying the PAD advice (above).

Consultees' role in the formal stages of the EIA process:

Screening – it is the Planning Authority's role to determine whether a proposed

development is EIA development and requires an Environmental Statement, based on readily available information and that provided by the applicant, which they assess against Schedules 1-3 of the EIA Regulations. However, in some cases planning authorities may seek additional perspective from statutory consultees to help inform their determination on whether a proposal is likely to have significant environmental effects. There is no formal basis, within the EIA Regulations, for a Planning Authority to undertake engagement to inform their screening determination and, as such, any response from a consultee will be on a voluntary basis.

Scoping – applicants of EIA development have the option to request a Scoping Opinion from the Planning Authority. Where a Planning Authority receives a scoping request from a developer, they are required to respond within 6 weeks and in this period are required to consult with statutory consultees to help determine what should be included in the Environmental Statement. Consultees should review the information provided by the Planning Authority, in order to:

- Identify and justify issues / concerns / gaps in the developer's proposed approach to assessment, which relate to environmental topics within the consultee's remit.
- Highlight the interactions between the development proposal and the environment, which are likely to lead to significant environmental effects (whether positive or negative).
- Provide comment on whether the consultee agrees with the developer's proposed methods of assessment, which may include data sources, modelling software, etc.
- Highlight and, as relevant, provide links to access any relevant environmental data / information the consultee organisation holds that may be of use to the scope of the EIA process.

It is important that consultees respond to EIA scoping consultations, as a failure to do so is more likely to lead to delays at the planning application stage and will reduce the consultee's ability to influence the proposed development's

positive and negative environmental effects. As such, consultees are strongly encouraged to respond within the timelines set by the Planning Authority.

Environmental Statement – All planning applications classed as EIA development must be accompanied by an Environmental Statement (ES), setting out the findings of the assessment. The ES is a key information source for responding to the *planning application* itself. In addition to the advice on this (below), the consultee's focus in reviewing and responding to the ES should be on whether:

- The ES's likely significant environmental effects findings align with the consultee's assessment of the proposed development's effects, and where they do not, the consultee should provide and justify its views.
- Gaps in the assessment process, or the findings presented in the ES, mean there is insufficient information to understand the proposal's likely significant environmental effects.
- Specific environmental design features or mitigation measures set out in the ES should be developed into planning conditions by the Planning Authority.

Planning applications (including those involving EIA – see section on Environmental Statement above)

- Provide a substantive consultation response within statutory/non statutory timeframe (including re-consultations).
- Comment on material planning considerations only, not matters which fall under other legislation or regulatory regimes (for which 'informatives' may be appropriate to include in a decision notice granting planning permission). In EIA cases the advice and comment should be in relation to *likely significant effects* (whether positive or negative).
- Request an extension where, in exceptional circumstances, the statutory timeframe cannot be met.
- Request further information only where required to assist decision-making.
- Provide specific comment on third party representations, if new and substantive issues have been raised and evidence provided.

- Where the conditional grant of planning permission is recommended, the reasoning should enable planning officers to draft conditions which are necessary and reasonable, as well as enforceable, precise and relevant both to planning and to the development to be permitted.³
- Where the proposal does not meet the relevant requirements and is unacceptable, consultees should give clear and precise reasoning including grounds for refusal, should the Planning Authority wish to determine the application. Such grounds for refusal should, in the opinion of the consultee, be defensible at appeal.
- Attend planning committees and Pre-Determination Hearings, when necessary and proportionate.

Section 76 Planning Agreements

- Provide specialist input, if required, into the drafting of planning agreements (prior to grant of planning permission).
- Provide specialist input into proposals or applications to modify or discharge planning agreements.

Post decision

- Provide consultation response on applications to discharge conditions (the above actions under *planning applications* can also apply to an application to discharge a condition).
- Provide expert input or affidavits in relation to any judicial review challenge.
- Provide expert input or advice on Ombudsman cases.

Enforcement

- Provide oral and written expert advice to Planning Authorities in relation to enforcement cases.

³Development Management Practice Note – planning conditions https://www.infrastructure-ni.gov.uk/sites/default/files/publications/infrastructure/dmpn-20-use-of-planning-conditions-v1-april-2015_0.pdf

- Report any potential breaches of planning conditions (or planning agreements) to the relevant Planning Authority enforcement team.
- Provide expert input to Planning Authorities in their post decision compliance checks of planning condition and planning agreement implementation and monitoring requirements, as relevant to the consultee's remit.
- Attend site visits and meetings with the Planning Authority and the developer (if requested and arranged by the Planning Authority), as appropriate.
- Discuss remedial action with Planning Authorities.

Appeals/public inquiries/hearings

- Provide written evidence and input to Statements of Case.
- Review applicant's statement of case and provide any rebuttal comments.
- Attend the appeal/inquiry/hearing as an expert witness, as appropriate.

Planning applications includes crown development, listed building consent, consent to demolish within a conservation area, consent to display an advertisement, applications to vary conditions and hazardous substances consent. Appeals includes appeals against a planning decision, non-determination of an application or an enforcement notice and appeals against refusal or non-determination of applications to modify of planning agreements. Hearings include hearings into Notices of Opinion issued by the Department and hearings into EIA Determinations 21/04/2021.