

Planning Appeals Commission

Procedures for Independent Examination of Development Plans

Contents - Procedures for Independent Examination of Development Plans

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Introduction

- (1) This booklet is to assist those taking part in an Independent Examination.

The procedures set out below have been drawn up under Article 111(5) of the Planning (NI) Order 1991. They are based on the principles of openness, fairness and impartiality which the Commission practices. As there are no statutory rules for the conduct of an Independent Examination, this document sets out Commission procedures. All are required to follow these procedures and must act in a fair and reasonable way and respect rulings by the Commission and/or Commissioner.

- (2) If you need help about pursuing an objection or representations about objections (counter-objections) you may wish to contact a professional adviser. Planning Aid Northern Ireland has been set up by the Royal Town Planning Institute for those who cannot afford professional advice and can be contacted at Community Technical Aid, 2 Downshire Place, BELFAST, BT2 7JQ, Tel No 028 90239444, E-mail info@communitytechnicalaid.org.

The Planning Appeals Commission

- (3) The Planning Appeals Commission (PAC) operates under the Planning (Northern Ireland) Order 1991. It is an independent body which, at the request of the Department of the Environment (DoE) conducts Examinations to hear objections and to report on them to the DoE. The PAC is not part of any Government Department.
- (4) Members of the PAC are called Commissioners and they are public appointees. They have varied backgrounds and qualifications including town planning, architecture, environmental science and law. They make recommendations to the PAC or the DoE on the outcome of objections after studying written submissions from the parties involved and after conducting the Examination.

The PAC report on Examination can be made by:

- (a) a single Commissioner reporting directly to the DoE, or
- (b) a panel of Commissioners, all appointed to conduct the Examination reporting directly to the DoE; or
- (c) a panel of Commissioners, including the appointed Commissioner(s) and other Commissioners, considering the appointed Commissioner's report and then reporting to the DoE.

- (5) The Commissioner (or the Panel of Commissioners) makes recommendations on the evidence presented to it on each objection and, based on that evidence, aims to make recommendations in an efficient manner through the most effective procedures appropriate to each objection. To do this Commissioners require the co-operation of all involved. The PAC is committed to ensuring that the Examination process is as user friendly as possible and involves the best possible use of resources.
- (6) Administrative staff are responsible for the day-to-day operation of the PAC's work. While they are available to deal with enquiries from the public about procedures, they are unable to comment on the merits of objections or counter-objections or offer advice or guidance on the possible outcome of any case.

The Legislation

- (7) The development plan system is set out in Part III of The Planning (NI) Order 1991 and supplemented by the Planning (Development Plans) Regulations (NI) as amended. A Development Plan sets general guidelines for development in an area.

Role of the Department of the Environment before the Examination

- (8) The DoE publishes notice of its intention to prepare a Development Plan or to alter an existing Plan and invites comments from the public. It consults the District Council(s) for the Plan area. It produces Preliminary Proposals or an Issues Paper for the Plan area and invites comments within a set period. The DoE considers those comments and then produces a Draft Plan. The DoE advertises that the Draft Plan is available for public inspection and time is allowed for objections. Any objections received are advertised and time is allowed for counter-objections.
- (9) If the DoE is unable to resolve the objections, it may ask the PAC to hold an Examination to consider objections.

Objections to a Draft Development Plan submitted outside the set period cannot be considered by the PAC. The scope of the objection cannot be extended at the Examination. The PAC cannot consider representations in support of the Draft Plan. Counter-objections submitted outside the set period cannot be considered by the PAC.

Organisation of the Examination

- (10) The Examination is organised by the PAC and the organisation commences when the PAC receives a request from the DoE to conduct an Examination. A Programme Officer from the PAC administrative staff is appointed. The Chief Commissioner appoints a Commissioner or Commissioners to conduct the Examination and decides the type of report. The Chief Commissioner will decide whether the PAC report shall be made by the Commissioner who conducts the Examination or by a Panel of Commissioners, some or all of whom may be conducting the Examination. If a Panel is appointed, the Chief Commissioner will nominate a chairman who will have a casting vote. There are two types of Examination report: -
- (a) a **full report** summarises the cases for the parties followed by the Commissioner's or the Panel's reasoning and recommendation based on each objection or group of objections;
 - (b) a **short report** does not summarise the cases for the parties but sets out the Commissioner's or the Panel's reasoning and recommendations.
- (11) To enable everyone to submit their evidence in writing before the Examination starts and to ensure that Examinations run efficiently, the PAC usually organises a number of pre-Examination meetings. Appendix 1 sets out the main events in organising the Examination.

Notification of Arrangements

- (12) The PAC writes to the DoE and all objectors and counter-objectors informing them of the time and place of the Examination and pre-Examination meetings. A questionnaire is sent to objectors asking them to indicate how they intend to proceed. These questionnaires are used to draw up the programme for the Examination and it is therefore important that they are carefully completed. You must indicate whether you will be taking part in the Examination. If on your questionnaire you nominate an agent to represent you, the PAC will correspond with your agent and not with you.
- (13) The DoE also advertises the arrangements for the Examination in the local papers.

How to Pursue an Objection

The PAC will consider all objections to the Draft Plan which have not been withdrawn whether or not the objector takes part in the Examination.

- (14) There are three methods of pursuing objections. You should select **one** of these and indicate this on your questionnaire.
- (a) **rely on your original letter of objection to the DoE.** No further written submission is required; or
 - (b) **make a further written submission but not take part in the Examination.** All written submissions from objectors, counter-objectors and the DoE should be given to the PAC by the date indicated. The PAC will exchange submissions as appropriate and invite comments by a set date; or
 - (c) **make a further written submission and take part in the Examination.** All written submissions from objectors, counter-objectors and the DoE should be given to the PAC by a set date. The PAC will exchange submissions as appropriate.

Any counter-objectors must follow the method selected by the objector.

You should indicate how you wish to pursue your objection on the questionnaire. If you do not return the questionnaire by the set date, the PAC will assume that you intend to rely on your original letter of objection and no further correspondence about the Examination will be sent to you.

At the Examination, objections will be considered in accordance with the final Examination programme. Written submissions will not be read out at the Examination which will concentrate on the issues in dispute.

Parties pursuing the same objection/counter-objection

- (15) The PAC encourages such parties to join together to prepare written submissions and/or to participate in the Examination. The substance of representations is of more significance than the volume of objectors/counter-objectors. A single submission produced jointly is acceptable and spokespersons can be chosen to deal with separate issues and to ask and answer questions or discuss issues on behalf of the group during the Examination. The spokesperson can be assisted by the group during the Examination. Similarly, agents representing groups pursuing the same objections should co-operate with one another.

Counter-objectors

- (16) Counter-objectors must be objecting to a specific objection, must use that objection number and must follow the processing procedure selected by the objector.

Written Submissions

- (17) You should set out in your written submission all points you wish to rely on and all evidence to support your case, including the evidence of all your witnesses. The introduction of new points at the Examination should be avoided as it could result in adjournment, wasting everyone's time.

The DoE submission should address the issues raised by the objection concisely but comprehensively, ensuring that all relevant information is included. Objectors' submissions should set out fully the points they wish to raise and, as appropriate, should indicate how the Plan should be altered to take account of their objection. It should be noted that the area or scope of the original objection submitted to the DoE cannot be extended. Counter-objectors' submissions should be confined to addressing the objection.

Submissions should not exceed 1,500 words. The use of electronic submissions is encouraged and any maps should be A3 or A4 size only.

Changing your mind

- (18) Objections may be withdrawn at any time and the objector or agent should confirm the withdrawal in writing. If an objection is withdrawn any associated counter-objection falls. The PAC will notify any counter-objectors if an objection is withdrawn. If an objector indicated on the questionnaire that he/she wished to take part in the Examination and wishes to change to one of the other options, he/she can do so.

The PAC should be informed immediately of any change of mind. Objectors and agents **must** inform the PAC immediately if they decide they no longer wish to participate in the Examination. It is wasteful of everyone's time and simply bad manners if participants fail to appear at organised Examination sessions.

The Pre-Examination Meetings

- (19) These meetings are held in advance of the opening of the Examination to organise it. Pre-Examination meetings are conducted by Commissioners, are attended by PAC Administrative staff and DoE officials and are usually held in the evenings. The PAC will decide the number of pre-Examination meetings required.

The **first pre-Examination meeting** - The procedure to be followed at the Examination is explained and an outline programme is usually provided. This first pre-Examination meeting also enables objectors to meet one another, facilitating co-operation if they are pursuing the same point or objection.

The **second pre-Examination meeting** - A draft Examination programme will be tabled and any procedural problems arising can be discussed. It will also facilitate the exchange of submission if this has not been done electronically.

There may be pre-Examination meetings to deal with general and strategic objections with further pre-Examination meetings to deal with site specific objections (see paragraph 22). This is explained at the first pre-Examination meeting.

The final Examination programme is sent out to everyone who is participating in the Examination.

If anyone wishes to attend the pre-Examination meetings and/or observe or take part in the Examination and has special needs such as a requirement for disabled access, they should contact the PAC at an early stage so that appropriate arrangements can be made.

The Examination - What happens?

- (20) The Examination is controlled by the presiding Commissioner who will apply the principles of openness, fairness and impartiality. The Commissioner follows accepted PAC practice and procedure though he/she may depart from this if he/she judges it appropriate. The Examination will run smoothly if all co-operate with the Commissioner. All participants have a duty to act in a fair and reasonable way and to respect rulings by the Commissioner.
- (21) The Commissioner will direct when parties should speak or ask questions and any problems should be raised with him/her **in public** at an appropriate time. The Commissioner will ensure that all are given an opportunity to express their views and to ask and answer questions as appropriate.

- (22) **Objections are heard** in accordance with the final programme. This will have been issued to all who stated that they wished to take part in the Examination. General and strategic objections covering matters such as the Plan objectives, development strategy, population and housing land allocation are considered first and then site specific objections and/or locational issues are considered with these objections grouped by reference to the town, village or area concerned. Documents submitted in advance are not read out at the Examination. The Examination will concentrate on discussing or questioning the points raised in these documents. The DoE may call a range of witnesses from other government departments, public bodies or consultants to defend its plan.

Procedure at the Examination

- (23) The Examination will involve round table discussion directed by the Commissioner. All parties will be given the opportunity to join in the discussion and to challenge points raised by opposing parties. Participants may be assisted or represented in the discussion by an Agent or Adviser and may be legally represented, though representation is not essential. To ensure the Examination runs efficiently, objections will be grouped in accordance with the issues raised and the area they refer to as far as possible.
- (24) The Commissioner(s) will identify, the issues to be addressed during the discussion and may invite, in advance, further written or oral evidence from the participants. The Commissioner will direct an open discussion on each issue in-turn. If the Commissioner considers it necessary, he/she may invite participants to question one another on specific issues.
- (25) As all issues and relevant material should be contained in the written documents submitted in advance, it is not expected that new issues will be raised at the hearing of the objection although the Commissioner's attention should be drawn to changes that have taken place since the written submissions were produced. Further documents will only be accepted at the discretion of the Commissioner. If they are accepted, sufficient copies must be made available for the PAC and the other participating parties. If parties have reached agreement on aspects of the objection or technical evidence this should be identified for the Commissioner, but the hearing of the objection will not normally be postponed to allow negotiations.

The purpose of the Examination is to enable objectors to explain their objections. The presiding Commissioner will ensure that this is done in the most efficient and effective way. The Administrative staff and Commissioners at the Examination and pre-Examination meetings will assist everyone with procedures though they will not discuss the planning merits of any case.

Observing the Examination

- (26) If you are not participating in the public Examination but just wish to observe, you may do so. The updated programme is available at the Examination venue and on the PAC website. You may also contact the PAC Administrative staff for further information.
- (27) Written Submissions are usually published on the PAC website. The Examination is a public forum, all statements are made in public and all documents presented become public. The press and members of the public may attend as they wish. Proceedings may be recorded only with the prior permission of the presiding Commissioner and copies of the recordings with a transcript must be provided for the PAC and all who request them.

Close of the Examination

- (28) When all the objections/counter-objections have been heard, the Commissioner will close the Examination. **Submission of new evidence after the close of the Examination is only acceptable in exceptional circumstances and with prior agreement.** All parties concerned will be invited to comment upon such evidence within a set period. When closing the Examination the Commissioner will indicate when the Examination report is expected to be delivered to the DoE. This date is also noted on the PAC website.
- (29) The appointed Commissioner(s) will consider all the evidence presented on each objection, will visit sites as appropriate and will prepare the report. A **full report** will concisely but comprehensively summarise the evidence presented and indicate the reasoned consideration and advice based on each objection or group of objections. A full report is necessary when Commissioners other than presiding Commissioners are involved in deciding PAC recommendations to the DoE. A **short report** will not summarise the evidence presented but will indicate the reasoned consideration and advice based on each objection or group of objections. A short report is appropriate when presiding Commissioners are reporting directly to the DoE.

The arrangements for visiting sites will be explained at the Examination but there are generally no site visits at which the parties accompany the Commissioner(s).

- (30) If the recommendations and advice to the DoE is to be made by a Panel of Commissioners, the Panel usually visits the area covered by the Development Plan and, as required by the Planning Order, decides collectively its recommendations to the DoE. The report is presented to the DoE and this is noted on the PAC website. Neither the PAC report nor the Commissioner's report is released to the public at this stage.

Role of the Department of the Environment after the Examination

- (31) The DoE must consider objections made and the PAC's report of the Examination and must prepare a public statement on the decisions reached in the light of the PAC report and the reasons for those decisions. The DoE may, by Statutory Order, adopt the Plan, alter, repeal or replace all or part of the Plan or may reject the Plan. Notice of the adoption of the Plan must be advertised and a copy of the final Plan made available for inspection by the public. The PAC's report on the Examination is also released by the DoE at this stage.

Complaints

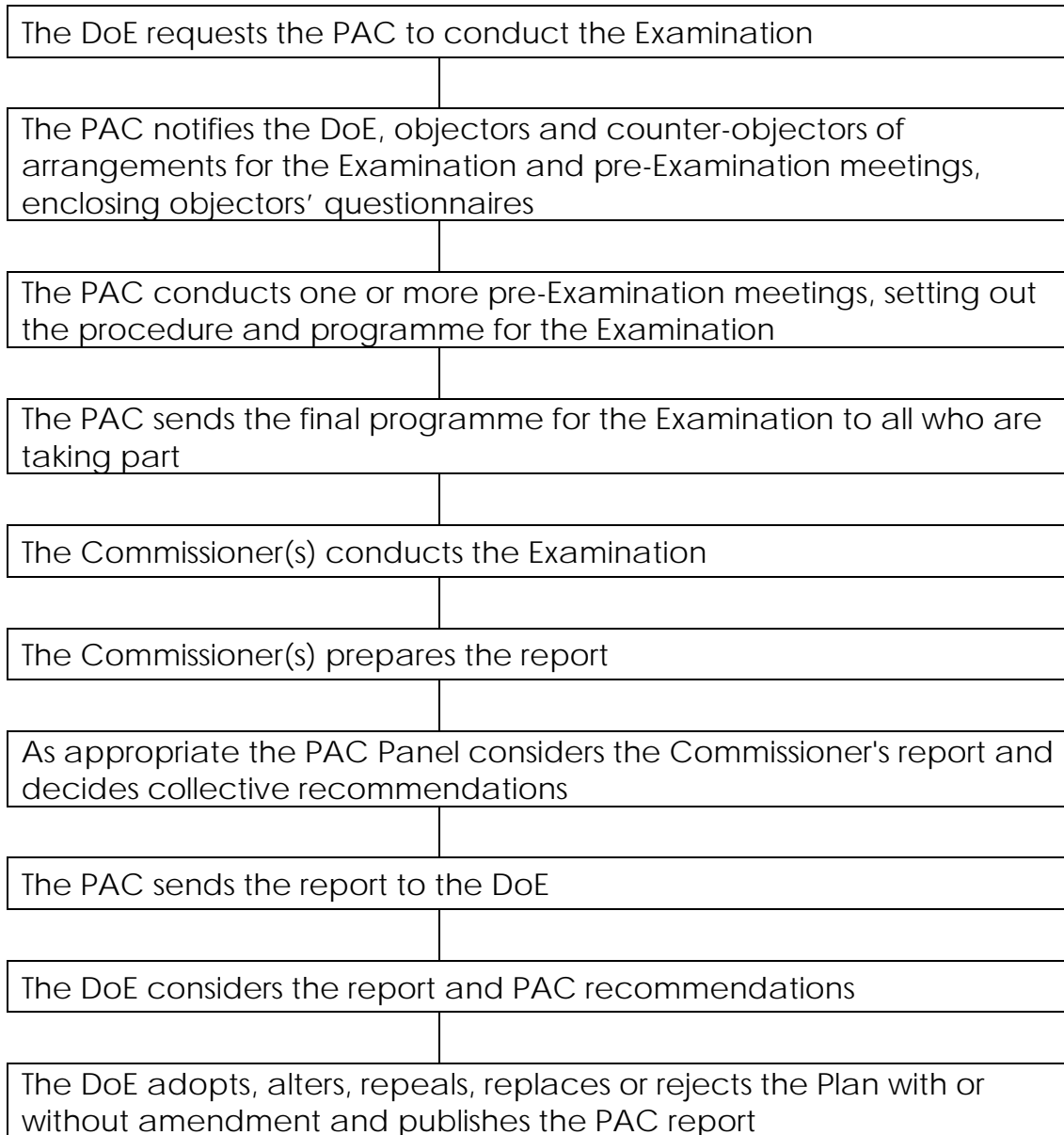
- (32) A complaint is any expression of dissatisfaction, by anyone involved in the process, about the way the PAC handled an objection or counter-objection. Complaints must be made within six months of the DoE's decision on the Plan. A complaint should be made in writing to the Chief Administrative Officer of the PAC and will normally be acknowledged within 7 working days of receipt. Complaints raising issues relating on the merits of any aspect of the plan will not be responded to until consideration has been completed and the PAC report sent to DoE. If legal proceedings are initiated while a complaint is under consideration, the matter will be addressed through the legal process and not the complaints system.
- (33) Apart from the circumstances set out above, complaints will be investigated and a full reply will normally be issued within four weeks. Where this is not possible a holding reply will be issued within the four weeks indicating when a full response will be made. All complaints are investigated at management level by persons not directly involved in the matter giving rise to the complaint. Anyone dissatisfied with the written response to their complaint may request a meeting to discuss the matter. Complaint files are open for public inspection.

- (34) An independent Complaints Audit Panel, consisting of two members appointed respectively by the Royal Town Planning Institute and the Bar Council, reviews the operation of the Complaints System on an annual basis and presents a report to the Chief Commissioner which is available to the public.

Complaints to the Parliamentary Ombudsman for Northern Ireland

- (35) If you have a complaint about maladministration by any member of the PAC's administrative staff you can ask the Ombudsman to investigate the matter. The Ombudsman has no power to question the merits of the Commission's or the Commissioner's recommendation on an objection.

The Examination Procedure - The Main Events



DATA PROTECTION AND FREEDOM OF INFORMATION IN THE PLANNING AND WATER APPEALS COMMISSIONS

The Data Protection Act regulates the processing of information relating to individuals, including the obtaining, holding, use or disclosure of such information. The Commissions are fully committed to complying with the Act.

When processing an appeal, representations about a major development under Article 31 of the Planning (NI) Order 1991 or objections to a draft development plan, the Commissions receive a range of personal information from a number of sources, which falls within the remit of the Data Protection Act. This includes:-

- the original application, together with any documents of support or objection;
- the appeal form, together with any other documents of support or objection.

The information received by the Commission varies but may include

- details of an individual's name, address and occupation;
- information about the health, personal or family circumstances of an individual; and
- an individual's opinions about an application or appeal.

This information is held and considered by the Commissions in accordance with the principles set out in the Data Protection Act.

It is only used by the Commissions for considering the appeal or objection. It is only retained as long as reasonably necessary, usually no longer than a year from the completion of the Commission's work. However, all appeal decisions must have clear reasons for the conclusions reached and it may be necessary to refer to an individual's personal or family circumstances in a decision. All decisions are published on the Commissions' website at www.pacni.gov.uk and retained indefinitely. In addition, the Department of the Environment must register all appeal decisions by the Planning Appeals Commission in the Planning Register.

The Commission is a tribunal and must operate openly, fairly and impartially. All documents on casework files can be viewed by any member of the public, under the Commissions' supervision.

An individual should therefore only provide personal information that he/she

accepts will be available to the public. No-one should present personal information about other people (including family members) unless he/she has informed the person concerned and it has been agreed that the information could be provided to the Commission.

Under the Data Protection Act, an individual can request access to his/her personal information held by the Commission. Such requests should be in writing and sent to the address below. There is a charge of £10 for requests and the person making the request will also need to send proof of identity. A request made under the Data Protection Act should include:-

- the specific information which is being sought;
- who you are and how you can be contacted;
- how you would like to receive the information.

Please also identify any accessibility requirements you may have and if you need to receive the information in a particular format, for example, large print, Braille etc.

You are entitled to a response to your request within 40 calendar days. It is in the Commissions' and your interests to hold accurate data. If the data is inaccurate, you can ask us to erase, amend or add to the information though you should note that personal or family circumstances referred to in an appeal decision cannot be changed. There will be no charge for this.

Any complaints about how the Commission dealt with requests about information, will be processed in accordance with the Commissions Complaints System which is published under Publications on Commissions website. These complaints will not be reviewed by the Complaints Audit Panel, see below.

If you remain dissatisfied with the Commission's response to your information request you may contact the Information Commissioner at

51 Adelaide Street
BELFAST BT2 8FE
Telephone number: (028) 9026-9380
Fax number: (028) 9026-9388
email address: ni@ico.gsi.gov.uk; or
website address: www.ico.gov.uk.

Requests for access to personal information should be sent to

Chief Administrative Officer
Park House
87-91 Great Victoria Street
BELFAST BT2 7AG
Telephone number: (028) 9024-4710
Fax number: (028) 9031-1338
e-mail address: info@pacni.gov.uk
website address: www.pacni.gov.uk

The Commissions will review procedures regularly to ensure continued compliance with the Data Protection Act.

Freedom of Information Act - The Commissions are not identified as Public Authorities under the Act. The Environmental Information Regulations 2004 apply to any body that has public responsibilities relating to the environment, exercises functions of a public nature relating to the environment or provides public services relating to the environment. This could include the Commissions but the Regulations do not apply to the extent that the Commissions are acting in a judicial capacity. Nonetheless, as tribunals, which operate openly fairly and impartially, the Commissions seek to comply with the spirit of the Act and Regulations.

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