

Procedures for Hearings concerning the need for Environmental Impact Assessment



Planning Appeals
Commission

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Introduction

[1] This publication is intended to inform and assist all those who take part, in whatever capacity, in hearings conducted by the Planning Appeals Commission in relation to determinations that development proposals require environmental impact assessment. The procedures set out here have been drawn up under powers conferred on the Commission by Section 204(5) of the Planning Act (Northern Ireland) 2011. They are based on the well established principles of openness, fairness and impartiality. All participants in hearings are expected to follow these procedures and to act in a co-operative and reasonable manner.

[2] Participants are entitled to represent themselves at a hearing but they may wish to appoint a professional adviser. The Royal Town Planning Institute has an online directory of planning consultants, which may be accessed at www.rtpi.co.uk. Advice may also be sought from Community Places, a not-for-profit voluntary organisation which provides free advice on planning issues to community groups and individuals. It can be contacted at 2 Downshire Place, Belfast BT2 7JQ or by telephone on 028 9023 9444. Its website is www.communityplaces.info.

The Planning Appeals Commission

[3] The Planning Appeals Commission is a statutory tribunal, independent of any government department or agency. Members of the Commission are public appointees and are called Commissioners. They have varied backgrounds and qualifications including town planning, architecture, environmental science and law. Administrative staff are responsible for the Commission's day-to-day work. While they are available to deal with queries from the public about procedures, they are unable to comment on the merits of any case.

[4] All information presented to the Commission is processed in accordance with the Data Protection Act 2018 and UK GDPR (see Appendix 1).

The Legislation

[5] The Planning (Environmental Impact Assessment) Regulations (Northern Ireland) 2017 prohibit the granting of planning permission or a subsequent consent for certain kinds of development (known as EIA development) unless environmental information has first been taken into consideration. A subsequent consent is an approval required by a condition attached to a planning permission, which must be obtained before development can begin. EIA development means all development of a description specified in Schedule 1 to the Regulations and any development of a description specified in Schedule 2 which is likely to have significant effects on the environment by virtue of factors such as its nature, size and location.

[6] Before applying for planning permission or a subsequent consent, a developer may ask the planning authority that will be dealing with the application to determine whether the proposed development would be EIA development. In some cases that authority will be the district council and in others it will be the Department for Infrastructure. If the authority determines that the proposal is for EIA development, the applicant will be required to submit an environmental statement. An environmental statement is a statement that includes the information required to assess the environmental effects of the development. An applicant who does not agree with the determination may notify the planning authority that he or she proposes to seek a hearing before the Commission. This must be done within **four weeks** of the determination.

[7] Where an application for planning permission or a subsequent consent is made without an environmental statement, the planning authority may determine that the proposal is for EIA development. On being notified of the determination, the applicant must inform the authority in writing that he or she accepts the determination and proposes to provide an environmental statement or that he or she does not accept the determination and proposes to seek a hearing before the Commission. This must be done within **four weeks** of the determination, otherwise the application will be deemed to be refused and there will be no right to appeal against the refusal.

[8] A planning authority may issue an enforcement notice where it appears that there has been a breach of planning control. Where the authority concludes that the development to which an enforcement notice relates involves EIA development, it must serve with the enforcement notice a second notice stating why it has reached that conclusion and requiring anyone who appeals against the enforcement notice to submit an environmental statement to the Commission. If a person who is appealing against an enforcement notice does not agree that the development in question is EIA development, he or she may within **four weeks** of the service of the enforcement notice ask for a hearing before the Commission for the purposes of considering that issue.

[9] The EIA Regulations make clear that following a hearing, the power to confirm, amend or withdraw a determination that an environmental statement is needed rests in all cases with the planning authority. The Commission's role is advisory only.

Organisation of the Hearing

[10] When a hearing is requested, the Commission is responsible for organising it. Appendix 2 sets out the main events. The Chief Commissioner will appoint a Commissioner (or Commissioners) to conduct the proceedings.

[11] The Commission will write to the applicant, the Department and any third parties known to have expressed an interest in the development proposal advising them of:-

- the time and place of the hearing and any related meeting;
- the arrangements for submitting written statements of case; and
- the way in which the proceedings will be conducted.

Statements of Case

[12] Statements of case must be **confined to the EIA issue**. They should not exceed **1,500 words**, otherwise the main points being made may not be readily identifiable. Statements containing more than 1,500 words should be accompanied by a summary of less than 1,500 words. Statements of case must include **all** the evidence to support the party's case, including the evidence of all its witnesses. Appendices may be used for supporting information but argument must be confined to the main body of the statement. Full copies of any case law being relied upon must be provided. Parties should seek to agree facts and methodologies at an early stage. The extent of any agreement should be identified in the statements of case.

[13] Statements of case must be **submitted on time** and will be exchanged by the Commission on a reciprocal basis. Any party that does not submit a statement of case by the date specified will not receive copies of other parties' statements of case. **The time limit for submission of statements of case will be applied strictly and will be extended only in the most compelling circumstances.**

[14] Parties seeking to introduce new issues at the hearing will have to persuade the Commissioner that they are relevant issues and that they could not have been dealt with in the statement of case. The introduction of such late evidence is to be avoided as it could result in delays.

What Will Happen at the Hearing?

[15] The Commissioner will conduct the hearing openly, fairly and impartially. It will run smoothly if everyone co-operates. The Commissioner will direct when people should speak or ask questions and any problems should be raised with him or her **in public** at an appropriate time during the proceedings. The Commissioner will ensure that all parties are given an opportunity to express their views.

[16] The hearing will take the form of a round-table discussion led by the Commissioner, who will invite comments on what appear to be the main issues and matters requiring further clarification. All parties will have an opportunity to put forward views and may be assisted by an agent or adviser. However, written evidence should not be repeated. Statements of case will be taken as read. Written rebuttal evidence may not be introduced but there will be an opportunity to raise relevant rebuttal points during the discussion. When the Commissioner considers that an issue has been sufficiently clarified, he or she will move on to the next issue. Cross-examination and formal legal submissions will not be necessary, but in complex cases the Commissioner may allow some questioning between parties on issues not already covered in the discussion.

[17] The hearing is a public forum. All statements are made in public and all documents presented become public. Anyone wishing to attend the hearing to observe or take part who has special needs, such as a requirement for disabled access, should contact the Commission at an early stage so that appropriate arrangements can be made.

Close of the Hearing

[18] When all the evidence has been heard, the Commissioner will close the proceedings and indicate when he or she expects to deliver a report to the planning authority. The Commissioner will examine all the evidence presented, visit the application site if necessary and prepare the report. The report will not summarise the evidence but will set out a reasoned consideration of the main issues and recommend whether the EIA determination should be confirmed, amended or withdrawn.

[19] The planning authority is required to consider the Commission's report before making a final decision on the EIA determination but it is not obliged to accept the Commission's recommendation. The timing of publication of the report will be a matter for the planning authority.

Complaints

[20] Details of the Commission's complaints system are provided on its website www.pacni.gov.uk.

Appendix 1

DATA PROTECTION AND FREEDOM OF INFORMATION

The Data Protection Act 2018 and UK GDPR regulates the processing of information relating to individuals, including the obtaining, holding, use or disclosure of such information. The Commission is fully committed to complying with the Act.

The Commission receives a range of personal information from a number of sources, which falls within the remit of the Data Protection Act 2018 and UK GDPR. This includes representations about development proposals. 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 a development proposal.

This information is held and considered by the Commission in accordance with the principles set out in the Data Protection Act 2018 and UK GDPR. It is only used by the Commission for the purpose for which it was provided. It is only retained as long as reasonably necessary, usually no longer than three years from the completion of the Commission's work. However, all Commission reports and 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 report or decision, which may be retained indefinitely.

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 Commission's supervision.

An individual should therefore only provide personal or sensitive information that he/she accepts will be available to the public. No-one should present personal information about other people without their consent. Information provided will not be vetted or redacted by the Commission because of its role to carry out its functions as an independent decision maker in an open, fair and transparent manner.

Under the Data Protection Act 2018 and UK GDPR, 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 2018 and UK GDPR 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 Commission's 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 a Commission report or 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 Commission's Complaints System which is published under Publications on the Commission's 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

The Information Commissioner's Office – Northern Ireland
10th Floor
Causeway Tower
9 James Street South
Belfast BT2 8DN
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

The Chief Administrative Officer
4th Floor
92 Ann Street
Belfast
BT1 3HH
Telephone number: (028) 9024 4710
Fax number: (028) 9031 1338
e-mail address: info@pacni.gov.uk
website address: www.pacni.gov.uk

The Commission reviews its procedures regularly to ensure continued compliance with the Data Protection Act 2018 and UK GDPR.

Freedom of Information Act - The Commission is not identified as a Public Authority 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 Commission but the Regulations do not apply to the extent that the Commission is acting in a judicial capacity. Nonetheless, as a tribunal which operates openly fairly and impartially, the Commission seeks to comply with the spirit of the Act and Regulations.

Appendix 2

THE MAIN EVENTS

The applicant seeks a hearing before the Commission.

The Commission notifies the applicant, the planning authority and any other interested parties of the arrangements for the hearing.

Parties prepare and submit statements of case, which are exchanged by the Commission.

The Commissioner conducts the hearing.

The Commissioner prepares a report and recommendation.

The Commission sends the report to the planning authority.

The planning authority considers the report and recommendation.

The planning authority decides whether to confirm, amend or withdraw the EIA determination and publishes the Commission’s report.

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